commencement date of the enhanced I/M program and

(2) by December 31, 1994, the Commonwealth was required to submit to EPA as a SIP amendment, the amendments to the Pennsylvania I/M regulation, 67 Pa Code § 178.202–205, which require EPA approval prior to implementation of any alternate purge test procedure and incorporate the transient emission standards for Tier 1 vehicles, the Phase 2 standards for all vehicle types and model years, and the transient and evaporative purge test procedures found in the final version of the EPA document entitled ''High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications'', EPA-AA-EPSD-IM–93–1, April 1994.

The proposed rulemaking stated that if the Commonwealth did not submit, by December 31, 1994, a SIP revision in response to the first two conditions of the approval action, the conditional approval would convert to a disapproval. EPA has not received a SIP revision which fulfills the first two conditions of the August 31, 1994 conditional approval. EPA notified the Commonwealth by an April 13, 1995 letter that the conditional approval of the Pennsylvania enhanced I/M SIP had been converted to a full disapproval pursuant to section 110(k)(4) of the Clean Air Act (the Act). This action taken on April 13, 1995 started both the 18 and subsequent 6 month sanctions clocks and the 24-month FIP clock. The Commonwealth must submit and EPA must take rulemaking action to approve an enhanced I/M SIP by October 13, 1996 and April 13, 1997, respectively, in order to halt these sanctions and FIP clocks.

EPA believes that the good cause exception to the notice and comment rulemaking requirement applies to this rulemaking action. [Administrative Procedure Act (APA) section 553(a)(B)]. Section 553(a)(B) of the APA provides that the Agency need not provide notice and an opportunity for comment if the Agency, for good cause, determines that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' In the present circumstance, notice and comment are unnecessary. The conversion of the conditional approval to a disapproval does not require any judgment on the part of the Agency. The issue is clear that the Agency must state whether or not it has received any SIP revision by the required date from the Commonwealth in response to the conditions set forth in the conditional approval of the Commonwealth's enhanced I/M SIP. No substantive review is required for such a determination. The Agency is the only judge of whether or not it has received the SIP revision to meet the conditions of the conditional approval. Because there is nothing on which to comment, notice and comment rulemaking are unnecessary.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Dated: August 2, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2023 is amended by adding paragraph (j) to read as follows:

§ 52.2023 Approval status.

* * * * *

(j) The conditionally approved Pennsylvania enhanced I/M SIP revision (59 FR 44936) submitted on November 3, 1993 by the Pennsylvania Department of Environmental Resources was converted to a disapproval by an April 13, 1995 letter from EPA to Pennsylvania.

§ 52.2026 [Removed and Reserved]

3. Section 52.2026 is removed and reserved.

[FR Doc. 95–22332 Filed 9–8–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[TN–126–6580a; FRL–5282–8]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to Permit Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the permit requirements for major sources of air pollution for the Nashville/Davidson County portion of the Tennessee State Implementation Plan (SIP). EPA is also approving the recodification of this chapter. On November 12, 1993, the State submitted revisions to the Nashville/Davidson portion of the Tennessee SIP on behalf of Nashville/Davidson County. These were revisions to the permit requirements for major sources of air pollution, including revisions to the general definitions, the permit requirements, and the exemptions. As a supplement to this submittal, on July 15, 1994, the State also submitted a request that the recodification of the entire air pollution control rule for Nashville/Davidson County be approved as part of the SIP.

DATES: This final rule will be effective November 13, 1995 unless adverse or critical comments are received by October 11, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Karen C. Borel, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

Bureau of Environmental Health Services, Metropolitan Health Department, Nashville-Davidson County, 311—23rd Avenue, North, Nashville, Tennessee 37203

FOR FURTHER INFORMATION CONTACT: Karen C. Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365 The telephone number is 404/347–3555 x4197. Reference file TN–126–1–6580a.

SUPPLEMENTARY INFORMATION: The State of Tennessee through the Tennessee Department of Environment and Conservation submitted revisions to the Nashville/Davidson County portion of the Tennessee SIP to EPA on November 12, 1993. EPA found these submittals to be complete on January 21, 1994.

A. Permit Requirement Revisions

Nashville/Davidson County officially adopted proposed amendments to the Chapter 10.56, ''Air Pollution Control'' of the Metropolitan Code of Laws on September 14, 1993. These regulatory revisions to their Chapter 10.56 change

the permit requirements for major air pollution sources. EPA is approving all of the following revisions except where it is specifically noted that the proposed revision is not receiving action.

Section 10.56.010—Definitions

Definitions of ''act,'' ''administrator,'' ''major source,'' ''permitted allowable emission,'' and ''volatile organic compounds,'' were added. The definition of ''major stationary source'' was deleted.

A definition for ''Regulated Pollutant'' has been added. However, in response to comments from the EPA this proposed definition is being revised by the State in accordance with their May 30, 1995, letter from Mr. John Walton, Technical Secretary of the Tennessee Air Pollution Control Board, to Mr. Doug Neeley, Chief of the Air Programs Branch of the Region 4 EPA. Therefore, action on the addition of this definition will be taken in future rulemaking.

Section 10.56.020—Construction Permits

Paragraphs (I) through (M) were added to clarify the requirements of their permit program. Paragraph (I) limits the operating time of the new or modified source to the time specified within the permit, but not to exceed one hundred and eighty (180) days. It also requires that the Director be notified of the startup date within five (5) working days of the startup. Paragraph (J) requires that all of the compliance testing required by the construction permit must be done in accordance with the requirements of the SIP and the test results must be submitted to the Director as required by the SIP. Any failure to demonstrate compliance will be sufficient grounds for the Director to require changes in the installation before an operating permit will be granted. Paragraph (K) gives the Director the right to observe any compliance tests and to inspect the installation and operation of the equipment. Paragraph (L) grants the EPA Administrator the right to objection and comment on any application for a construction permit for a major source. Paragraph (M) states that eighteen (18) months after receipt of a complete application for a construction permit the application is considered final, and becomes the permit, if there has been no action by the Director.

Section 10.56.030—Temporary Operating Permit

This section was deleted. All of the requirements previously contained in this section were moved to Sections 10.56.020 and 10.56.040.

Section 10.56.040—Operating Permit

Paragraph (A) was deleted and replaced with a new paragraph (A). All references to ''temporary operating permits'' have been changed to ''construction permits'' in this new paragraph. A minor revision was made to paragraph (B) to limit the operating permit to five (5) years, and paragraphs (C) through (F) were added. Paragraph (C) requires that applications for operating permits be filed by the operators of any sources that were operating prior to the effective date of this regulation. Paragraph (D) grants authority to the Metropolitan Board of Health to specify any additional permitting requirements. Paragraph (E) states that any application for a major source operating permit is also subject to objection and comment by the EPA Administrator. Paragraph (F) declares that an operating permit application may be declared final eighteen (18) months after its receipt, if there has not been any action by the Director.

Section 10.56.050—Exemptions

Nashville has proposed to delete the entire Section 10.56.050 [paragraphs (A) through (D)] and replace it with proposed paragraphs (A) and (B). The new paragraph (A) restates the same exemptions that were previously covered in the deleted paragraphs (A) through (D). The new paragraph (B) states that such quantities of air contaminants which adversely affect the public shall not be discharged from any source, regardless of the exemptions listed in the previous paragraph. Proposed paragraphs (C), (D), and (E) were withdrawn by the State in their letter of May 30, 1995, from Mr. Walton to Mr. Neeley in response to comments from the EPA.

Section 10.56.080—Permit Fees

Nashville has deleted the section on permit fees in its entirety. The proposed replacement Section 10.56.080 was withdrawn by the State in their letter of May 30, 1995, from Mr. Walton to Mr. Neeley in response to comments from the EPA.

Section 10.56.120.B.6—Complaint Notice—Hearings Procedure

The length of time to enter a final order or determination, after final argument, was changed from sixty days to ninety days.

Section 10.56.210—Hazardous Air Pollutants

The definition was deleted, and a new definition was added. The new section defines ''Hazardous Air Pollutants'' in accordance with Section 112 of the Clean Air Act, as amended in 1990 (CAA). This new definition will be used in the issuance of synthetic minor operating permits.

Section 10.56.290—Measurement and Reporting of Emissions

The old title, ''Measurement of Air Contaminants,'' was deleted and the new title was added. Subparagraph 10.56.290.B.3 was added to provide the requirements for notification of compliance tests.

Section 10.56.290.E—Emissions Statement

In this paragraph Nashville/Davidson County requires an annual emissions report from all permitted facilities in accordance with the permitting requirements of Sections 10.56.020 and 10.56.040. In these sections, all sources that emit any regulated air pollutant are required to obtain a permit.

Section 10.56.310—Severability

This section was added to the SIP to address severability. In this new section it is stated that all other provisions of this ordinance will remain in full force and effect in the case where a court declares another section unconstitutional, illegal, or unenforceable.

B. Recodification

On July 15, 1994, the State submitted a request that the recodification of the entire air pollution control rule for Nashville/Davidson County be approved as part of the SIP. The Code of Laws of the Metropolitan Government of Nashville and Davidson County, Tennessee was recodified from Chapter Four, Subchapter One, into new Chapter 10.56, on August 21, 1991. In this document EPA is approving the recodification.

Final Action

EPA is fully approving the submitted revisions to the Nashville/Davidson County portion of the Tennessee SIP, with the exception of the definition of ''regulated pollutant'' in Section 10.56.010 on which action is not being taken in this rulemaking. EPA is also fully approving the recodification of the Air Pollution Control section of the Nashville/Davidson County portion of the Tennessee SIP, as submitted on July 15, 1994. EPA has not reviewed the substance of the remaining regulations, other than those submitted for revision on November 12, 1993. These rules were approved into the SIP in previous rulemakings. The EPA is now merely approving the renumbering system submitted by the State. The EPA's

approval of the renumbering system at this time does not imply any position with respect to the approvability of the substantive rules. To the extent EPA has issued any SIP calls to the State with respect to the adequacy of any of the rules subject to this recodification, EPA will continue to require the State to correct any such rule deficiencies despite EPA's approval of this recodification.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 13, 1995.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.,* EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP Actions

SIP approvals and partial approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2) and 7410(k)(3).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(131) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(131) On November 12, 1993, the State submitted revisions to the Nashville/Davidson County portion of the Tennessee State Implementation Plan (SIP) on behalf of Nashville/Davidson County. These were revisions to the permit requirements for major sources of air pollution, including revisions to the general definitions, the permit requirements, and the exemptions. As a supplement to this submittal, on July 15, 1994, the State also submitted a request that the recodification of the entire air pollution control rule for Nashville/Davidson County be approved as part of the SIP. These revisions and recodification incorporate changes to Nashville's Chapter 10.56, which was previously Chapter 4–1–1, which are required in the Clean Air Act as amended in 1990 and 40 CFR part 51, subpart I.

(i) Incorporation by reference.

Code of Laws of the Metropolitan Government of Nashville and Davidson County, Tennessee, Chapter 10.56, Air

Pollution Control, effective November 10, 1993, except for the following parts:

(A) Section 10.56.010, the definition of ''regulated pollutant'';

(B) Section 10.56.040, Paragraph (F);

(C) Section 10.56.050, Paragraphs (C), (D) and (E);

(D) Section 10.56.080.

(ii) Other material. None.

[FR Doc. 95–22145 Filed 9–8–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WI55–02–7015; FRL–5289–5]

Approval of the State Implementation Plan; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On January 10, 1995, the United States Environmental Protection Agency (USEPA) proposed approval of the State Implementation Plan (SIP) revision request for the Milwaukee ozone nonattainment area (Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties), as submitted by the State of Wisconsin. The purpose of the revision is to offset any growth in emissions from growth in vehicle miles traveled (VMT), or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other measures, as needed to comply with Reasonable Further Progress (RFP) milestones of the Clean Air Act (Act). Wisconsin submitted the implementation plan revision to satisfy the statutory mandates, found in section 182 of the Act, which requires the State to submit a SIP revision that identifies and adopts specific enforceable Transportation Control Measures (TCM) to offset any growth in emissions from growth in VMT, or number of vehicle trips, in severe ozone nonattainment areas. The USEPA received no public comments on the above proposed approval. On May 5, 1995, USEPA finalized the first element of the VMT offset program for the Milwaukee area. This rule finalizes the approval of the second element of the VMT offset program for the Milwaukee area.

EFFECTIVE DATE: This action will be effective October 11, 1995.

ADDRESSES: Copies of the SIP revision, public comments and USEPA's responses are available for inspection at the following address: (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section (AT–18J), Air Toxics and Radiation Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background Information

Section 182(d)(1)(A) of the Act requires States that contain severe ozone nonattainment areas to adopt transportation control measures and transportation control strategies to offset growth in emissions from growth in VMT or number of vehicle trips and to attain reductions in motor vehicle emissions (in combination with other measures) as needed to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are set forth in 182(d)(1)(A) and discussed in the General Preamble to Title I of the Act (57 FR 13498 April 16, 1992).

As described in the proposal, section 182(d)(1)(A) sets forth three elements that must be met by a VMT Offset SIP. Under USEPA's alternative interpretation, the three required elements of section 182(d)(1)(A) are separable, and can be divided into three separate submissions that could be submitted on different dates. Section 179(a) of the Act, in establishing how USEPA would be required to apply mandatory sanctions if a State fails to submit a full SIP, also provides that the sanctions clock starts if a State fails to submit one or more SIP elements, as determined by the Administrator. The USEPA believes that this language provides USEPA the authority to determine that the different elements of the SIP submissions are separable. Moreover, given the continued timing problems addressed above, USEPA believes it is appropriate to allow States to separate the VMT Offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset growth in emissions; (2) the requirement to comply with the 15 percent periodic reduction requirement of the Act; and 3) the requirement to comply with the post-1996 periodic reduction and attainment requirements of the Act.

As noted in the January 10, 1995, proposal, the USEPA would not take final action on the second element until the State has submitted a complete 15 percent ROP plan. On July 13, 1995, the State of Wisconsin submitted a 15 percent ROP plan with fully enforceable rules that have been subject to public hearing. No TCMs were utilized in the ROP plan to meet the 15 percent reduction in emissions. On July 18, 1995, the USEPA determined that this ROP plan was complete.

II. Final Rulemaking Action

In this action, USEPA is approving the second element of the VMT offset SIP revision submitted by the State of Wisconsin. The third element of the Wisconsin VMT offset SIP will also be the subject of a future rulemaking.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected.