

maintenance areas of Oregon (the revision did not change any existing boundaries) was submitted to EPA from ODEQ for inclusion into the Oregon SIP.

(i) Incorporation by Reference.

(A) Letter dated September 20, 1995 from the Director of the ODEQ to the EPA Regional Administrator submitting a revision to better define Oregon's existing air quality boundaries found in State regulations OAR 340-23-065 through 340-23-075 (Rules for Open Burning), OAR 340-31-120 (Air Pollution Control Standards for Air Purity and Quality), and OAR 340-31-500 through 340-31-530 (The Air Quality Control Regions and Nonattainment and Maintenance Areas of Oregon), effective May 25, 1995.

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40 CFR Part 52

[MD033-7157a; FRL-5603-1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland 1990 Base Year Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Maryland State Implementation Plan (SIP) which pertains to the 1990 base year emission inventory for the marginal and severe ozone nonattainment areas within the state. The ozone nonattainment areas consist of the counties of Cecil, Ann Arundel, Baltimore City, Baltimore, Carroll, Harford, and Howard (all severe); Queen Anne's and Kent (both marginal). The SIP was submitted by the Maryland Department of the Environment (MDE) for the purpose of establishing the 1990 baseline emissions contributing to the ozone nonattainment problems in Maryland. This action is being taken under section 110 of the Clean Air Act.

DATES: This action is effective November 26, 1996 unless notice is received on or before October 28, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to David Arnold, Section Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public

inspection during normal business hours at the Air, Radiation, and Toxics Division, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566-2182, at the EPA Region III office, or via e-mail at quinto.rose@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION:

Background

Under the 1990 Clean Air Act Amendments (CAAA), states have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAAA requires ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce VOC emissions by 15 percent within six years after 1990 (15% plan). The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the 1990 base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15% plan. The 1990 base year emission inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. The 1990 base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The 1990 base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above that are located outside transport regions.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in

section 182(a)-(e) of Title I of the CAAA. EPA has issued a General Preamble describing EPA's preliminary views on how EPA intends to review SIP revisions submitted under Title I of the CAAA, including requirements for the preparation of the 1990 base year inventory [see 57 FR 13502; April 16, 1992 and 57 FR 18070; April 28, 1992]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Maryland ozone 1990 base year emissions inventory, EPA is applying its interpretations taking into consideration the specific factual issues presented.

Those states containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the CAAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources by November 15, 1992. This inventory is for calendar year 1990 and is denoted as the 1990 base year inventory. It includes both anthropogenic and biogenic sources of volatile organic compound (VOC), nitrogen oxides (NO_x), and carbon monoxide (CO). The inventory is to address actual VOC, NO_x, and CO emissions for the area during the peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as highway mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Criteria for Inventory Approval

There are general and specific components of an acceptable emission inventory. In general, the state must submit a revision to its SIP and the emission inventory must meet the minimum requirements for reporting by source category. Specifically, the source requirements are detailed below.

The Level I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the state and assesses whether the emissions were developed according to current EPA guidance. The data quality is also evaluated.

The Level III review process is outlined here and consists of 10 points that the inventory must include. For a base year emission inventory to be

acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) must be provided and the Quality Assurance (QA) program contained in the IPP must be performed and its implementation documented.

2. Adequate documentation must be provided that enables the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.

3. The point source inventory must be complete.

4. Point source emissions must be prepared or calculated according to the current EPA guidance.

5. The area source inventory must be complete.

6. The area source emissions must be prepared or calculated according to the current EPA guidance.

7. Biogenic emissions must be prepared according to current EPA guidance or another approved technique.

8. The method (e.g., HPMS or a network transportation planning model) used to develop VMT estimates must follow EPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources," U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992. The VMT development methods must be adequately described and documented in the inventory report.

9. The MOBILE model (or EMFAC model for California only) must be correctly used to produce emission factors for each of the vehicle classes.

10. Non-road mobile emissions must be prepared according to current EPA guidance for all of the source categories.

The base year emission inventory is approvable if it passes Levels I, II, and III of the review process. Detailed Levels I and II review procedures can be found in the following document; "Quality Review Guidelines for 1990 Base Year Emission Inventories," Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. Level III review procedures are specified in a memorandum from David Mobley and G. T. Helms to the Regions, "1990 O₃/CO SIP Emission Inventory Level III Acceptance Criteria", October 7, 1992 and revised in a memorandum from John Seitz to the Regional Air Directors, Emission Inventory Issues, dated June 24, 1993.

State Submittal

Maryland Department of the Environment (MDE) submitted a revision to the Maryland SIP on March 21, 1994. The SIP revision consists of 1990 base year emission inventories for the ozone nonattainment areas within the state. In accordance with the requirements of 40 CFR 51.102, public hearings concerning the SIP revision were held on November 4, 8, 9, and 10, 1993 in Westminster, Perryville, Baltimore, and Annapolis, respectively; November 18, 22, and 30, 1993 in Frederick, Prince Frederick, and Silver Spring, respectively.

The Maryland SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). Maryland SIP submittal was found to be complete on June 1, 1994.

EPA Analysis

Based on EPA's level III review findings, Maryland has satisfied all of

EPA's requirements for providing a comprehensive, accurate, and current inventory of actual emissions in the ozone nonattainment areas. A summary of EPA's level III findings is given below.

1. The IPP and QA programs was approved by EPA and implemented on August 11, 1992.

2. The documentation was adequate for all emission types (stationary point, area, non-road mobile, on-road mobile and biogenic sources) for the reviewer to determine the estimation procedures and data sources used to develop the inventory.

3. The point source inventory was found to be complete.

4. The point source emissions were estimated according to EPA guidance.

5. The area source inventory was found to be complete.

6. The area source emissions were estimated according to EPA guidance.

7. The biogenic source emissions were estimated using the Biogenic Emission Inventory System (PC-BEIS) in accordance with EPA guidance.

8. The method used to develop VMT estimates was adequately described and documented.

9. The mobile model was used correctly.

10. The non-road mobile emission estimates were correctly prepared in accordance with EPA guidance.

Thus, EPA has determined that Maryland's submittal meets the essential reporting and documentation requirements for an emission inventory.

A summary of the emission inventories broken down by point, area, biogenic, on-road, and non-road mobile sources are presented in the tables below.

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
Baltimore Non-Attainment Area Ozone Season Emissions in Tons Per Day						
VOC	127.09	40.33	131.50	45.15	180.09	524.16
NO _x	10.60	231.31	161.20	71.58	N/A	474.69
CO	31.92	376.43	1,182.20	345.36	N/A	1,935.91
Kent/Queen Anne's County Ozone Season Emissions in Tons Per Day						
VOC	9.69	0.24	6.60	3.45	70.71	90.69
NO _x	0.72	0.00	7.30	1.77	N/A	9.79
CO	3.12	0.00	54.10	19.43	N/A	76.65
Cecil County Ozone Season Emissions in Tons Per Day						
VOC	9.23	0.55	7.20	2.02	32.96	51.96
NO _x	1.10	0.00	9.30	2.50	N/A	12.90
CO	32.62	0.00	68.70	11.83	N/A	113.15

EPA has determined that the submittal made by the State of Maryland satisfies the relevant requirements of the CAAA. EPA's detailed review of the emission inventories are contained in a Technical Support Document (TSD) which is available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice.

EPA is approving the SIP revision 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, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will become effective November 26, 1996 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. 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 on November 26, 1996.

Final Action

EPA is approving revisions to the Maryland SIP to include the 1990 base year emission inventories for the ozone nonattainment areas within the state. The inventories consist of point, area, non-road mobile, biogenics and on-road mobile source emissions for VOC, NO_x and CO.

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

Executive Order 12866

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.

Regulatory Flexibility Act

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 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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air 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, the Regional Administrator certifies 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 flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly,

no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the CAAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 26, 1996. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the 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 regarding Maryland emission inventory may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 21, 1996.

W. Michael McCabe,

Regional Administrator, Region III.

Part 52, chapter I, title 40 of the 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 V—Maryland

2. Section 52.1075 is added to read as follows:

§ 52.1075 1990 Base Year Emission Inventory

EPA approves as a revision to the Maryland State Implementation Plan the 1990 base year emission inventories for the Maryland ozone nonattainment

areas submitted by the Secretary of Maryland Department of Environment on March 21, 1994. This submittal consists of the 1990 base year point, area, non-road mobile, biogenic and on-road mobile source emission inventories for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NO_x).

[FR Doc. 96-24524 Filed 9-26-96; 8:45 am]

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40 CFR Part 52

[KY81-1-9638; FRL-5607-3]

Approval and Promulgation of Air Quality Implementation Plans; The Commonwealth of Kentucky—Disapproval of the Request to Redesignate the Kentucky Portion of the Cincinnati-Northern Kentucky Moderate Ozone Nonattainment Area to Attainment and the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is disapproving the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet's (Cabinet) request to redesignate the Kentucky portion of the Cincinnati-Northern Kentucky moderate ozone nonattainment area to attainment and the associated maintenance plan as a revision to the state implementation plan (SIP). The EPA determined that the area registered a violation of the ozone national ambient air quality standard (NAAQS). As a result, the Cincinnati-Northern Kentucky area no longer meets the statutory criteria for redesignation to attainment of the ozone NAAQS.

EFFECTIVE DATE: September 27, 1996.

ADDRESSES: 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 Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303-3104.

Division of Air Quality, Department for Environmental Protection, Natural

Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur, 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 404/562-9035. Reference file KY-081-1-9638.

SUPPLEMENTARY INFORMATION: On November 11, 1994, the Cabinet submitted a request to EPA to redesignate the Kentucky portion of the Cincinnati-Northern Kentucky moderate interstate ozone nonattainment area from nonattainment to attainment. On that date, the Cabinet also submitted a maintenance plan for the area as a revision to the Kentucky SIP.

According to section 107(d)(3)(E) of the Clean Air Act (CAA), 42 U.S.C. 7407(d)(3)(E), redesignation requests must meet five specific criteria in order for EPA to redesignate an area from nonattainment to attainment:

1. The Administrator determines that the area has attained the ozone NAAQS;
2. The Administrator has fully approved the applicable implementation plan for the area under section 110(k);
3. The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollution control regulations and other permanent and enforceable reductions;
4. The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and
5. The State containing such area has met all requirements applicable to the area under section 110 and part D.

All five criteria must be satisfied in order for EPA to redesignate an area from nonattainment to attainment. Under the first criteria, the Administrator of EPA is prohibited from redesignating an area to attainment when that area has not attained the NAAQS. The CAA requires the area to be in attainment at the time of the final action on the redesignation. If a violation occurs prior to EPA's final action, the area is no longer in attainment and EPA cannot redesignate the area to attainment status.

At the time of the Commonwealth's redesignation submittal in 1994, the Cincinnati-Northern Kentucky area

appeared to have attained the NAAQS, based on air quality data monitored from 1992 through 1994. However, during EPA's review of the redesignation request, ambient air quality data indicated that the area had registered a violation of the ozone NAAQS in 1995. This ambient data has been quality assured according to established procedures for validating such monitoring data. The Cabinet does not contest that the area violated the NAAQS for ozone during the 1995 ozone season. As a result, the Cincinnati-Northern Kentucky area does not meet the statutory criteria for redesignation to attainment of the ozone NAAQS found in section 107(d)(3)(E)(i) of the CAA.

The maintenance plan SIP revision is not approvable because its demonstration is based on a level of ozone precursor emissions in the ambient air thought to represent an inventory of emissions that would provide for attainment and maintenance. That underlying basis of the maintenance plan's demonstration is no longer valid due to the violation of the NAAQS that occurred during the 1995 ozone season.

Request for Comments

EPA published a document on April 17, 1996, (61 FR 16738) proposing disapproval of the maintenance plan and redesignation request and soliciting comment on the disapproval and relevant issues. EPA received a number of comments on the proposal. Those comments and the response thereto are summarized below.

Comment #1—The violation of the ozone standard which occurred subsequent to the submission of the request cannot be considered evidence that the area did not achieve the ozone standard, by the very definition of the standard as set forth in the Act and the regulations. The continued designation of the area as nonattainment not only fails to serve a useful purpose, but actually inhibits the broader view of urban ozone pollution that will be necessary to improve air quality. Public acceptance of control implementation may be enhanced under an attainment area contingency plan strategy. This is an additional factor which should not be overlooked as EPA and the states struggle to gain public acceptance of new air quality improvement plans.

Response—The CAA authorizes EPA up to 18 months from submittal to act on a state's request to redesignate. If a violation occurs during the pendency of EPA's review, EPA cannot approve the request since the area would not have remained in attainment. Since only a