Regulatory Process

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 these rules 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 population of less than 50,000.

SIP approvals under sections 110 and 301(a) 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. 7410(a)(2).

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 Part D 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. The rules being approved for by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal government 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 government in the aggregate or to the private sector.

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 Executive Order 12866 review.

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 this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 30, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.220 is amended by adding paragraphs (c)(197)(i)(A)(*2*) and (c)(224)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(197) * * *

(i) * * *

(A) * * *

(*2*) Rule 463, adopted on March 11, 1994.

* * * * *

(224) * * *

(i) * * *

(B) Ventura County Air Pollution Control District.

(*1*) Rule 70, adopted on May 9, 1995.

* * * * *

[FR Doc. 96–26573 Filed 10–22–96; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[TN–167–1–9702; FRL–5637–1]

Control Strategy: Ozone; Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving an exemption request from the oxides of nitrogen (NO_X) reasonably available control technology (RACT) and conformity requirements of the Clean Air Act as amended in 1990 (CAA) for the five county Middle Tennessee (Nashville) moderate ozone (O_3) nonattainment area. The request for a NO_X RACT and conformity exemption was submitted on March 21, 1995, by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC). The exemption request is based upon the most recent monitoring data, which demonstrate that additional reductions of NO_X would not contribute to attainment of the National Ambient Air Quality Standards (NAAQS). EPA initially published a direct-final rule on July 11, 1996, approving this request. Due to the receipt of adverse comments, EPA withdrew the direct-final rule on September 6, 1996. This document addresses those comments received and grants final approval to the exemption request.

EFFECTIVE DATE: This final rule is effective October 23, 1996.

ADDRESSES: A copy of the exemption request is available for inspection at the following locations (it is recommended that you contact William Denman at (404) 562–9030 before visiting the Region 4 office).

United States Environmental Protection Agency; Air, Pesticides, and Toxics Management Division; Air Planning Branch; Regulatory Planning Section; 100 Alabama Street SW., Atlanta, Georgia 30303.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531, 615/532–0554.

FOR FURTHER INFORMATION CONTACT: William Denman; Regulatory Planning Section; Air Planning Branch; Air Pesticides and Toxics Management Division; U.S. Environmental Protection Agency; 100 Alabama Street SW., Atlanta, Georgia 30303; (404) 562–9030. Reference file TN–167–9702.

SUPPLEMENTARY INFORMATION: The original direct-final rule approving Tennessee's NO_X RACT exemption request was published on July 11, 1996, (61 FR 36502) and provided for a thirty day public comment period which expired on August 12, 1996. Also, on July 11, 1996, a notice of proposed rulemaking for the NO_X RACT exemption was published (61 FR 36534). On August 12, 1996, the New York State Department of Environmental Conservation, the Citizens Commission for Clean Air in the Lake Michigan Basin, and the American Lung Association of Tennessee submitted adverse comments. As a result, a Federal Register document was published on September 6, 1996, withdrawing the direct-final action. In this document, EPA is taking final action on the exemption request and is addressing public comments received on the original direct-final action. The comments received and EPA's responses are given below.

1. The commenter disagrees with EPA viewing the NO_X exemption as non-controversial and taking the direct-final approach to approve the exemption. This view results from the perception that EPA is not granting NO_X exemptions until the New York State's petition for review is decided by the 7th Circuit or settled by the parties.

EPA Response

The approval of this NO_X exemption was published as a direct-final notice because Region 4 felt that all major comments regarding NO_X exemptions had been made on previous actions. These major comments along with the EPA responses were restated in the direct-final rule. The public was in no way impeded from comments under the direct-final format. The other option for approval was to issue only a proposal notice, and then publish a final notice addressing comments. The only difference in the direct-final approach is that, due to the possibility of receiving adverse comments, EPA had simultaneously published a notice of proposed rulemaking, and after withdrawing the direct-final rule now publishes this document as the final rule. EPA has not decided to withhold action on NO_X exemptions until the results of the New York State petition for review before the 7th Circuit are decided.

2. The commenter believes EPA's approval of the Middle Tennessee NO_X exemption request conflicts with section 110(a)(2)(D) of the Clean Air Act because it fails to consider the effects that such action will have on downwind areas. The commenter also believes this action is inconsistent with efforts being taken on state, regional, and national levels to address the problem of transport of NO_X and ozone and that EPA's ''clean data'' policy fails in that it does not address problems of long range transport of ozone.

EPA Response

The requirements for redesignation to attainment of the ozone standard do not currently require areas to address long-range transport. Therefore, since Tennessee's SIP has been determined to contain adequate regulations for continued attainment of the ozone standard and their redesignation request has been determined to meet all the redesignation requirements, Tennessee has met the necessary criteria to be redesignated to attainment. With respect to the requirements under Section 110(a)(2)(D) of the Act, EPA does not believe, nor has the commenter provided any evidence, that granting a NO_X exemption to the Middle Tennessee area will contribute significantly to nonattainment of the ozone standard in another state, or interfere with maintenance of the ozone standard. The matter of long range transport of ozone, NO_X and volatile organic compounds is still under study by EPA.

3. The commenter does not believe the NO_X and VOC programs currently in place in Middle Tennessee are adequate to maintain the ''clean data'' trend for the nonattainment area.

EPA Response

The Nashville ozone nonattainment area has ambient monitoring data that show no violations of the ozone standard during the period of 1992 through 1995 and to date in 1996. EPA has determined that the maintenance plan and contingency measures for the Nashville area are adequate to ensure the attainment of the national ambient air quality standard for ozone. In a separate notice published on July 29, 1996, (61 FR 39326) EPA approved regulations providing for NO_X controls which Tennessee either imposed on major sources prior to attaining the ozone standard or controls which Tennessee used to demonstrate future maintenance of the ozone standard. It should be noted that all major NO_X sources in the area are regulated by the Tennessee regulation for the control of NO_X. This NO_X RACT exemption merely exempts the sources from meeting federal NO_X RACT requirements.

4. The commenter believes that instead of decreasing the focus on nitrogen oxides, recent comprehensive studies indicate we should be increasing efforts to control NO_X as a more effective strategy for controlling ozone in the urban and rural areas of the South. The commenter believes the control of ozone may not be possible without a stronger focus on nitrogen oxides.

EPA Response

As stated previously, the Middle Tennessee ozone nonattainment area attained the national ambient air quality standard for ozone for the three year period 1992 through 1994, including 1995, and has continued to maintain the standard to date. Therefore, not only is the control of ozone in this area possible without a stronger focus on nitrogen oxides, it has been demonstrated since the 1992–1994 attainment period.

5. The commenter believes that the Middle Tennessee Ozone Study Network does not accurately indicate actual ozone and ozone precursor emissions concentrations in the Middle Tennessee moderate ozone nonattainment area.

EPA Response

The Ozone Study Network was not developed for the purpose of determining attainment or nonattainment of the ozone standard. The monitoring network developed and used for the purpose of monitoring attainment or nonattainment ozone levels in the Middle Tennessee ozone nonattainment area meets the requirements of 40 CFR Part 58 and therefore meets the ozone redesignation requirements.

6. The commenter suggests that EPA should reconsider the Middle Tennessee NO_X exemption request, relying upon ambient ozone monitoring data collected in 1992, 1993, and 1994, and review the Southern Oxidant Study 1995 Nashville Intensive Ozone Field Study, and Ozone Transport Assessment Group (OTAG) efforts to characterize, examine, and make regional control recommendations addressing the transport of ozone and ozone precursor emissions. Additionally, the USEPA should await the successful implementation of a ''super-regional'' NO_X strategy prior to approval of the NO_X exemption and must review the

Southern Oxidant Study 1995 Nashville Intensive study and reconcile its results with this NO_X exemption request.

EPA Response

Section 182(f) of the Clean Air Act does not require States to take into account future findings of studies nor future efforts of workgroups when applying for a NO_X exemption. EPA believes Tennessee has met the necessary requirements and has demonstrated through attaining and continued maintenance of the ozone standard for the years 1992 to 1996 that additional NO_X controls are not necessary to meet the national ambient air quality standard for ozone.

7. The ambient monitoring data is suspect due to a sparse ozone monitoring network that consistently fails to accurately monitor elevated ozone concentrations in the Middle Tennessee ozone nonattainment area.

EPA Response

States with areas required to have monitoring networks must meet the requirements of 40 CFR Part 58. EPA has determined that Tennessee's monitoring network meets these requirements. The commenter mentions that on July 12, 1995, during the 1995 Nashville Intensive Ozone Field Study, a Southern Oxidant Study monitor recorded higher levels than the official ozone monitors in the area. The monitoring networks are designed to provide data representative of an entire area's ozone concentration. However, ozone is not distributed evenly throughout the atmosphere and therefore, an infinite number of monitors would be required to determine the exact concentration of ozone at all points.

8. Under 182(f), the Administrator is authorized to waive NO_X RACT and NO_X conformity requirements if the Administrator determines that ''net air quality benefits are greater in the absence of reductions of oxides of nitrogen from the sources concerned,'' or if ''additional reductions of oxides of nitrogen would not contribute to attainment of the national ambient air quality standards for ozone in the area''. The EPA submitted *The Role of Ozone Precursors in Tropospheric Ozone Formation and Control* in July 1993, to meet the 185B requirement of the Clean Air Act. The Administrator must consider the 185B report in evaluating 182(f) NO_X exemption requests.

EPA Response

The middle Tennessee area has three years of attainment data for 1992, 1993, and 1994, and has continued to attain the standard to date in 1996. Therefore, it is obvious that ''additional reductions of oxides of nitrogen would not contribute to attainment of the national ambient air quality standards for ozone in the area'', since the area continues to attain the ozone standard. Therefore, it meets the 182(f) requirement. Under section 185B, the Administrator is not required to consider the report in evaluating the 182(f) NO_X exemption.

9. Approval of the 182(f) NO_X exemption request will have an adverse impact on visibility in the Great Smoky Mountains National Park and the Shenandoah National Park, adversely affect the health of wildlife and fauna in these Class I areas, and should be reevaluated.

EPA Response

Tennessee has adopted and submitted to EPA regulations intended to meet the visibility protection requirements of the CAA. EPA will act on this submittal in a separate notice. EPA does not have the authority under the CAA to regulate NO_X for the purpose of visibility using the requirements intended for meeting the ozone standard. The CAA provides separate regulations to protect visibility in Class I areas.

Final Action

The EPA is today approving Tennessee's request to exempt the Middle Tennessee moderate O_3 nonattainment area from the section 182(f) NO_X RACT and NO_X conformity requirements. Due to the receipt of adverse public comments, the original approval of this request was withdrawn on September 6, 1996. The original proposal notice published on July 11, 1996, proposed the rule for approval and provided for a thirty-day public comment period. Therefore, an additional comment period is not required. This approval is based upon the evidence provided by Tennessee showing compliance with the requirements outlined in the CAA and in applicable EPA guidance. EPA feels all comments received have been adequately addressed and is therefore proceeding with approval of this action.

This action is not a SIP revision and is not subject to the requirements of section 110 of the CAA. The authority to approve or disapprove exemptions from NO_X requirements under section 182 of the CAA was delegated to the Regional Administrator from the Administrator in a memo dated July 6, 1994, from Jonathan Cannon, Assistant Administrator, to the Administrator, titled, ''Proposed Delegation of Authority: 'Exemptions from Nitrogen Oxide Requirements Under Clean Air Act section 182(f) and Related Provisions of the Transportation and General Conformity Rules' Decision Memorandum.'' This action will be effective on October 23, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for 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.

Administrative Requirements

A. 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.

B. 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. section 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.

Granting the NO_X RACT exemption makes less burdensome the requirements on those small entities in middle Tennessee that are regulated under the State's ozone control plan. Accordingly, the Administrator hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

C. 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 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 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.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) 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. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 23, 1996. Filing a petition for reconsideration by the Administrator of this final 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 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 7, 1996.

A. Stanley Meiburg,

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 52.2237 is added to read as follows:

§ 52.2237 NO_X RACT and NO_X Conformity Exemption.

Approval. EPA is approving the section 182(f) oxides of nitrogen (NO_X) reasonably available control technology (RACT) and NO_X conformity exemption request submitted by the Tennessee Department of Environment and Conservation on March 21, 1995, for the five county middle Tennessee (Nashville) ozone moderate nonattainment area. This approval exempts the area from implementing federal NO_X RACT on major sources of NO_X and exempts Tennessee from NO_X conformity. This approval does not exempt sources from any State required or State Implementation Plan (SIP) approved NO_X controls. If a violation of the ozone NAAQS occurs in the area, the exemption from the requirement of section 182(f) of the CAA in the applicable area shall not apply.

[FR Doc. 96–26875 Filed 10–22–96; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[MT001–0001a; FRL–5635–6]

Clean Air Act Approval and Promulgation of State Implementation Plan for Montana; Revisions to the Montana Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State implementation plan (SIP) revisions submitted by the Governor of Montana on May 22, 1995. The revisions being approved in this document include; changes to the State's open burning rules which, among other things, address deficiencies and add new rules for the open burning of Christmas tree waste and open burning for commercial film or video productions; and changes to numerous State regulations to make minor administrative amendments and to update incorporation by reference citations. EPA is approving these revisions because they are consistent with the Clean Air Act (Act).

DATES: This action is effective on December 23, 1996 unless adverse comments are received by November 22, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; Montana Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, Montana 59620–0901; and The Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8P2–A, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, (303) 312–6445.

SUPPLEMENTARY INFORMATION: On May 22, 1995, the Governor of Montana submitted two SIP submittals which are being acted on in this document. One submittal included changes to the State's open burning rules. The second submittal included changes to numerous State regulations to make minor administrative amendments. This document evaluates the State's submittals for conformity with the corresponding Federal regulations and the requirements of the Act.

I. Procedural Analysis of the State's Submissions

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565, April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(a)(B) if a completeness determination is not made by EPA