

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[SC-035-1-9833a;FRL-6204-1]

Approval and Promulgation of Implementation Plans; South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Cherokee County ozone maintenance area portion of the South Carolina Air Quality Implementation Plan or State Implementation Plan (SIP) submitted on June 27, 1998, through the South Carolina Department of Health and Environmental Control (SC DHEC). This SIP revision updates the emissions inventory and emissions budget established in the Cherokee County Ozone Maintenance Plan for conducting transportation conformity analyses in accordance with the requirements of the Clean Air Act (CAA).

DATES: This direct final rule is effective February 16, 1999 without further notice, unless EPA receives adverse comment by January 19, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Lynorae Benjamin at Region 4 EPA Air, Pesticides and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. Persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file number SC-035-9833. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), EPA, 401 M Street, SW, Washington, DC 20460.

EPA, Region 4 Air, Pesticides and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

SC DHEC, Bureau of Air Quality, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Lynorae Benjamin at (404) 562-9040. Reference file SC-035-9833.

SUPPLEMENTARY INFORMATION: The following sections: Background, Analysis of the State's Submittal, and Final Action, provide additional information concerning the revisions to the Cherokee County Ozone Maintenance Area portion of the South Carolina SIP.

I. Background

On November 6, 1991, Cherokee County was designated by EPA as a marginal nonattainment area because of multiple exceedances in 1988 of the National Ambient Air Quality Standard (NAAQS) for ozone at the air quality monitor located in the Cowpens National Battle Field. After three consecutive years of satisfactory air quality data, Cherokee County was redesignated to attainment for the one hour ozone standard on December 15, 1992. A maintenance plan for Cherokee County was submitted to and approved by EPA to help assure continued attainment of the ozone standard. MOBILE model 4.1 (the current model at that time) was used to estimate the emissions inventory and emissions budgets for the maintenance plan.

Any update to the mobile emissions budget must use the latest planning assumptions including the currently approved version of the mobile model. The update contained in this SIP submittal uses MOBILE 5a, the currently specified model for use in the preparation or revision of implementation plans in maintenance areas, to estimate emissions inventory and emissions budgets.

II. Analysis of the State's Submittal

As stated previously, this SIP submittal is based on MOBILE 5a, the currently specified model for use in the preparation or revision of implementation plans in maintenance areas, to estimate the emissions inventory and emissions budget levels. This revision also incorporates the addition of an emissions safety margin to the on-road emissions source category. The safety margin is made possible by an emissions reduction in the area source category for nitrogen

oxides (NO_x) and volatile organic compounds (VOC) emissions from residential wood burning. The previous SIP submittal overestimated emissions from residential wood burning. Furthermore, the previous SIP submittal used a projected population growth from 1990 to 2002 of 11.6 percent based on the 1992 South Carolina Statistical Abstracts. More recent data from the 1995 South Carolina Abstracts indicate that the projected growth rate will be 12.5 percent for that period of time.

The CAA, as amended in 1990, defines conformity to an implementation plan as conformity to the plan's purpose of reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Specifically, the CAA requires that transportation improvement programs (TIP) and long range transportation plans that are federally funded or approved not cause or contribute to any new violation, increase the frequency or severity of any existing violation, or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Therefore, the emissions expected from implementation of such transportation plan and programs must be consistent with estimates of emissions from a maintenance plan.

This SIP contains comprehensive inventories for VOC, NO_x, and carbon monoxide (CO) emissions for the Cherokee County Maintenance Area. The inventories include point sources, area sources, on-road mobile, non-road mobile, and biogenic sources, including the safety margin. The emissions safety margin and the on-road emissions source category, combined, comprise the total conformity emissions budget.

The following tables list a summary of the CO, NO_x, and VOC emissions for 1990, as well as a projection of these emissions for 2002. The 1990 data was taken from the "1990 Base Year Ozone Emissions Inventory for Cherokee County, South Carolina Nonattainment Area," March 1995. The on-road mobile source projections are based on MOBILE 5a modeling. All other projections are based on population growth from the 1995 South Carolina Statistical Abstracts. The projected population growth from 1990 to 2002 is 12.5 percent.

CHEROKEE COUNTY MAINTENANCE AREA—SUMMARY: DAILY AND ANNUAL EMISSIONS PROJECTIONS FOR 1990 THROUGH 2002

Pollutant	Tons/Day			Tons/Year		
	1990	2000	2002	1990	2000	2002
VOC	43.47	42.33	42.41	10,148.40	9,739.86	9,772.69
NO _x	9.38	9.24	9.15	3,439.30	3,388.29	3,357.73
CO	74.23	46.64	44.24	30,096.10	20,338.60	19,527.31

CHEROKEE COUNTY MAINTENANCE AREA—DAILY AND ANNUAL VOC EMISSIONS PROJECTIONS FOR 1990 THROUGH 2002

VOC Emissions	Tons/Day			Tons/Year		
	1990	2000	2002	1990	2000	2002
Point Sources	2.02	2.23	2.27	614.10	677.97	690.86
Area Sources	3.79	4.19	4.27	1,596.40	1,762.43	1,795.95
On-road Mobile	6.11	4.32	4.28	2,229.20	1,578.37	1,563.29
Non-road Mobile	0.23	0.25	0.26	71.10	78.49	79.99
Biogenic Sources	31.32	31.32	31.32	5,637.60	5,637.60	5,637.60
Safety margin	NA	0.01	0.01	NA	5.00	5.00
Total	43.47	42.32	42.41	10,148.40	9,739.86	9,772.69

CHEROKEE COUNTY MAINTENANCE AREA—DAILY AND ANNUAL NO_x EMISSIONS PROJECTIONS FOR 1990 THROUGH 2002

NO _x Emissions	Tons/Day			Tons/Year		
	1990	2000	2002	1990	2000	2002
Point Sources	0.82	0.91	0.93	270.20	298.30	303.98
Area Sources	0.21	0.23	0.24	147.10	162.40	165.49
On-road Mobile	7.79	7.45	7.34	2,843.90	2,720.97	2,677.91
Non-road Mobile	0.55	0.61	0.62	178.10	196.62	200.36
Biogenic Sources	NA	NA	NA	NA	NA	NA
Safety margin	NA	0.03	0.03	NA	10.00	10.00
Total	9.37	9.23	9.16	3,439.30	3,388.29	3,357.74

CHEROKEE COUNTY MAINTENANCE AREA—DAILY AND ANNUAL CO EMISSIONS PROJECTIONS FOR 1990 THROUGH 2002

CO Emissions	Tons/Day			Tons/Year		
	1990	2000	2002	1990	2000	2002
Point Sources	0.26	0.29	0.29	83.20	91.85	93.60
Area Sources	5.84	6.45	6.57	5,319.70	5,872.95	5,984.66
On-road Mobile	64.92	36.36	33.77	23,695.80	13,272.67	12,326.98
Non-road Mobile	3.20	3.53	3.60	997.40	1,101.13	1,122.08
Biogenic Sources	NA	NA	NA	NA	NA	NA
Total	74.22	46.63	44.23	30,096.10	20,338.60	19,527.32

III. Final Action

EPA is approving the aforementioned changes to the SIP. The Agency has reviewed this request for revision of the Federally approved SIP for conformance with the provisions of the Amendments enacted on November 15, 1990, and the Transportation Conformity Rule promulgated on November 24, 1993 and amended on August 15, 1997. The Agency has determined that this request conforms to those requirements. Therefore, this action updates and revises the emissions inventory and

emissions budget for the Cherokee County Ozone Maintenance Area.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective February 16, 1999 without further notice unless the Agency receives

relevant adverse comments by January 19, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal of the final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period for this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective

on February 16, 1999 and no further action will be taken on the proposed rule.

The ozone SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the ozone NAAQS. Approval of this motor vehicle emissions budget should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NO_x emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised maintenance plan is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation [section 173(b) of the CAA] and in a SIP deficiency call made pursuant to section 110 (a)(2)(H) of the CAA.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of

section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct

a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies 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 small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Disclaimer Language Approving SIP Revisions in Audit Law States

Nothing in this action should be construed as making any determination or expressing any position regarding South Carolina's audit privilege and penalty immunity law, South Carolina—"S.C. Code Ann. §§ 4857-57-10 *et seq.* (Supp. 1996) or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other CAA program resulting from the effect of South Carolina's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by a state audit privilege or immunity law.

G. 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 annual 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 promulgated does not include a Federal mandate that may result in estimated annual 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

There are exceptions for actions that involve source specific regulations and actions that contain the "good cause" clause for making the action effective sooner than 60 days.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 16, 1999. 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: November 25, 1998.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

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 *et seq.*

Subpart PP—South Carolina

2. Section 52.2120, paragraph (e) is added to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(e) EPA-approved South Carolina non-regulatory provisions.

Provision	State effective date	EPA approval date	Comments
Cherokee County Ozone Attainment Demonstration and Ten-year Maintenance Plan.	06/26/98	December 18, 1998.	
Narrative of the "Emissions Inventory Projections for Cherokee County".	06/26/98	December 18, 1998.	

[FR Doc. 98-33471 Filed 12-17-98; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TN 183-1-9824a; FRL-6204-4]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Sections 111(d)/129 State Plan for Nashville/Davidson County submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on December 24, 1996, for implementing and enforcing

the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons per day of municipal solid waste (MSW). See 40 CFR part 60, subpart Cb. EPA is also approving the Section 111(d) State Plan for Nashville/Davidson County submitted on December 24, 1996, for implementing and enforcing the EG applicable to existing MSW landfills. See 40 CFR part 60, subpart Cc.

DATES: This direct final rule is effective on February 16, 1999 without further notice, unless EPA receives significant, material, and adverse comment by January 19, 1999. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Steven M.

Scofield at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of documents related to this action are available for the public to review during normal business hours at the locations below. If you would like to review these documents, please make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file TN 183-1-9824a. The Region 4 office may have additional documents not available at the other locations.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Steven M. Scofield, 404/562-9034.

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