

rather than the rule of the state of licensure;

(ii) Whether the local federal court rule preempts contrary state rules; and

(iii) Whether application of traditional choice-of-law principles directs the attorney to comply with a particular rule.

(2) In the process of considering the factors described in paragraph (b)(1) of this section, the attorney is encouraged to consult with a supervisor or Professional Responsibility Officer to determine the best course of conduct.

(c) *Choice of rules where there is no pending case.*

(1) Where no case is pending, the attorney should generally comply with the ethical rules of the attorney's state of licensure, unless application of traditional choice-of-law principles directs the attorney to comply with the ethical rule of another jurisdiction or court, such as the ethical rule adopted by the court in which the case is likely to be brought.

(2) In the process of considering the factors described in paragraph (c)(1) of this section, the attorney is encouraged to consult with a supervisor or Professional Responsibility Officer to determine the best course of conduct.

(d) *Rules that impose an irreconcilable conflict.* If, after consideration of traditional choice-of-law principles, the attorney concludes that multiple rules may apply to particular conduct and that such rules impose irreconcilable obligations on the attorney, the attorney should consult with a supervisor or Professional Responsibility Officer to determine the best course of conduct.

(e) *Supervisory attorneys.* Each attorney, including supervisory attorneys, must assess his or her ethical obligations with respect to particular conduct. Department attorneys shall not direct any attorney to engage in conduct that violates section 530B. A supervisor or other Department attorney who, in good faith, gives advice or guidance to another Department attorney about the other attorney's ethical obligations should not be deemed to violate these rules.

(f) *Investigative Agents.* A Department attorney shall not direct an investigative agent acting under the attorney's supervision to engage in conduct under circumstances that would violate the attorney's obligations under section 530B. A Department attorney who in good faith provides legal advice or guidance upon request to an investigative agent should not be deemed to violate these rules.

#### § 77.5 No private remedies.

The principles set forth herein, and internal office procedures adopted pursuant hereto, are intended solely for the guidance of attorneys for the government. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party to litigation with the United States, including criminal defendants, targets or subjects of criminal investigations, witnesses in criminal or civil cases (including civil law enforcement proceedings), or plaintiffs or defendants in civil investigations or litigation; or any other person, whether or not a party to litigation with the United States, or their counsel; and shall not be a basis for dismissing criminal or civil charges or proceedings or for excluding relevant evidence in any judicial or administrative proceeding. Nor are any limitations placed on otherwise lawful litigative prerogatives of the Department of Justice as a result of this part.

Dated: April 14, 1999.

**Janet Reno,**

*Attorney General.*

[FR Doc. 99-9845 Filed 4-19-99; 8:45 am]

BILLING CODE 4410-19-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 164-0112a; FRL-6324-8]

#### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Sacramento Metropolitan Air Quality Management District (SMAQMD), Mojave Desert Air Quality Management District (MDAQMD), and the Ventura County Air Pollution Control District (VCAPCD) as Revisions to the California State Implementation Plan (SIP)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rules.

**SUMMARY:** EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from Sacramento Metropolitan Air Quality Management District (SMAQMD), Mojave Desert Air Quality Management District (MDAQMD), and the Ventura County Air Pollution Control District (VCAPCD) as revisions to the California State Implementation Plan (SIP). SMAQMD's Rule 414 controls emissions

of oxides of nitrogen from natural gas-fired water heaters; MDAQMD's Rule 1157 controls emissions from boilers and process heaters; and VCAPCD's Rule 74.16 controls emissions of oxides of nitrogen from oilfield drilling operations. This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving of these rules is to regulate emissions of oxides of nitrogen (NO<sub>x</sub>) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards (NAAQS), and plan requirements for nonattainment areas.

**DATES:** These rules are effective on June 21, 1999 without further notice, unless EPA receives adverse comments by May 20, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that these rules will not take effect.

**ADDRESSES:** Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Sacramento Metropolitan Air Quality Management District (SMAQMD), 8475 Jackson Rd., Suite 200, Sacramento, CA 95826-3904.

Mojave Desert Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182.

Ventura County Air Pollution Control District (VCAPCD), 800 South Victoria Avenue, Ventura, CA 93009.

**FOR FURTHER INFORMATION CONTACT:** Ed Addison, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Telephone: (415) 744-1185.

## SUPPLEMENTARY INFORMATION:

**I. Applicability**

The rules being approved into the California SIP include: SMAQMD's Rule 414, Natural Gas-fired Water Heaters; MDAQMD's Rule 1157, Boilers and Process Heaters; and VCAPCD's Rule 74.16, Oilfield Drilling Operations. SMAQMD's Rule 414 was submitted by the State of California to EPA on March 10, 1998, MDAQMD's Rule 1157 on August 1, 1997 and VCAPCD Rule 74.16 on April 5, 1991.

**II. Background**

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The air quality planning requirements for the reduction of NO<sub>x</sub> emissions through reasonably available control technology (RACT) are set out in section 182(f) of the Clean Air Act.

On November 25, 1992, EPA published a proposed rule entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO<sub>x</sub> requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO<sub>x</sub> ("major" as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. Sacramento Metropolitan Air Quality Management District (SMAQMD), Mojave Desert Air Quality Management District (MDAQMD), and the Ventura County Air Pollution Control District (VCAPCD) are classified as serious or above;<sup>1</sup> therefore these areas are subject to the RACT requirements of section 182(b)(2) cited below and the November 15, 1992 deadline.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO<sub>x</sub>) emissions (not covered by a pre-enactment control

technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO<sub>x</sub> CTGs issued before enactment and EPA has not issued a CTG document for any NO<sub>x</sub> sources since enactment of the CAA. The RACT rules covering NO<sub>x</sub> sources and submitted as SIP revisions are expected to require final installation of the actual NO<sub>x</sub> controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's direct final action for SMAQMD's Rule 414, Natural Gas-fired Water Heaters; MDAQMD's Rule 1157, Boilers and Process Heaters; and VCAPCD's Rule 74.16, Oilfield Drilling Operations.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on March 10, 1998, including SMAQMD's Rule 414, MDAQMD's Rule 1157 was submitted on August 1, 1997 and VCAPCD's Rule 74.16 on April 5, 1991. Rule 414 was found to be complete on May 21, 1998, Rule 1157 on September 30, 1997, and Rule 74.16 on May 21, 1991; pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V<sup>2</sup> and are being finalized for approval into the SIP.

NO<sub>x</sub> emissions contribute to the production of ground level ozone and smog. SMAQMD's Rule 414 controls emissions of oxides of nitrogen from natural gas-fired water heaters; MDAQMD's Rule 1157 controls emissions from boilers and process heaters; and VCAPCD's Rule 74.16 controls emissions of oxides of nitrogen from oilfield drilling operations. These rules were originally adopted as part of Districts' efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and final action for these rules.

**III. EPA Evaluation and Proposed Action**

In determining the approvability of a NO<sub>x</sub> rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO<sub>x</sub> Supplement (57 FR

55620) and various other EPA policy guidance documents.<sup>3</sup> Among those provisions is the requirement that a NO<sub>x</sub> rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO<sub>x</sub> emissions.

For the purposes of assisting State and local agencies in developing NO<sub>x</sub> RACT rules, EPA prepared the NO<sub>x</sub> Supplement to the General Preamble. In the NO<sub>x</sub> Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO<sub>x</sub> emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO<sub>x</sub> (see section 4.5 of the NO<sub>x</sub> Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO<sub>x</sub>. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO<sub>x</sub>. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO<sub>x</sub>. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO<sub>x</sub> RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

The California Air Resources Board (CARB) has developed guidance documents determining Reasonably Available Control Technology and Best Available Retrofit Control Technology. EPA has used CARB's guidance documents in evaluating Sacramento Rule MDAQMD 1157, Emissions from Boilers and Process Heaters; and VCAPCD's Rule 74.16, Oilfield Drilling Operations for consistency with the CAA's RACT requirements.

There is currently no version of SMAQMD's Rule 414, Natural Gas-fired Water Heaters, in the SIP. SMAQMD's Rule 414, Natural Gas-fired Water Heaters, establishes nitrogen oxide emissions for natural gas-fired water heaters with rated heat input of less than 75,000 Btu/hr.

<sup>3</sup> Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 **Federal Register Notice**" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

<sup>1</sup> MDAQMD AND VCAPCD areas retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The Sacramento Metro Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995).

<sup>2</sup> EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

There is currently no version of MDAQMD's Rule 1157, Boilers and Process Heaters, in the SIP. MDAQMD's Rule 1157, Boilers and Process Heaters, establishes RACT emission requirements for oxides of nitrogen (NO<sub>x</sub>) and carbon monoxide (CO) emissions for all new and existing institutional and industrial boilers, steam generators and process heaters with rated heat inputs of greater than or equal to five million Btu per hour (MMBtu/hr), located within the Federal Ozone Non-attainment Area of San Bernardino County. The Rule also establishes Best Available Retrofit Control Technologies (BARCT) emission requirements for any existing unit currently permitted to emit more than five (5) tons per day, or more than 250 tons per year of oxides of nitrogen (NO<sub>x</sub>).

There is currently no version of VCAPCD's Rule 74.16, Oilfield Drilling Operations, in the SIP. VCAPCD's Rule 74.16, Oilfield Drilling Operations, establishes nitrogen oxide emissions limits for stationary internal combustion engines of 50 HP and larger oilfield drilling operations. The rule will require drilling rigs to be electrically powered unless the installation of utility electricity is not cost effective based upon Best Available Control Technology (BACT) Guidelines.

The submitted rules include the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO<sub>x</sub>).
- Compliance and monitoring requirements including compliance schedule, reporting requirements, monitoring and record keeping, and test methods.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, record keeping, and compliance testing in addition to RACT guidance regarding emission limits. SMAQMD's Rule 414, MDAQMD's Rule 1157 and VCAPCD's Rule 74.16 strengthen the SIP through the addition of enforceable measures such as record keeping, test methods, definitions, and more stringent and achievable emissions limits. Incorporation of the amended Rules, SMAQMD's Rule 414, MDAQMD's Rule 1157 and VCAPCD's Rule 74.16, into the SIP would decrease the NO<sub>x</sub> emissions allowed by the SIP.

In evaluating the rules, EPA must also determine whether the section 182(b) requirement for RACT implementation by May 31, 1995 is met. Under certain circumstances, the determination of what constitutes RACT can include consideration of advanced control technologies such as CARB BARCT requirements. The submitted rules, SMAQMD Rule 414, MDAQMD Rule 1157 and VCAPCD Rule 74.16, conform with the CARB Determination of Reasonably Available Control Technology (RACT) and Best Available Retrofit Control Technology (BARCT) for Control of Oxides of Nitrogen and they conform with Section 182(b).

A detailed discussion of the sources controlled, the controls required, and justification for why these controls represent RACT can be found in the Technical Support Documents (TSDs) for SMAQMD's Rule 414, MDAQMD's Rule 1157 and VCAPCD's Rule 74.16, dated November 6, 1998 which are available from the U.S. EPA Region IX office.

EPA has evaluated the submitted rules and has determined them consistent with the CAA, EPA regulations and EPA policy. Therefore, SMAQMD's Rule 414, Emissions of Oxides of Nitrogen from Natural Gas-fired Water Heaters; MDAQMD's Rule 1157, Boilers and Process Heaters; and VCAPCD's Rule 74.16, Oilfield Drilling Operations are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO<sub>x</sub> Supplement to the General Preamble.

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 adverse comments be filed. This rule will be effective June 21, 1999 without further notice unless the Agency receives adverse comments by May 20, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** 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 on 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 June 21, 1999 and no further action will be taken on the proposed rule.

#### 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 Executive Order 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, Executive Order 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, Executive Order 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 rules do not create a mandate on State, local or tribal governments. The rules do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to these rules.

##### 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 rules on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. These rules do not subject to E.O. 13045 because

they do not involve decisions intended to mitigate environmental health or safety risks.

#### D. Executive Order 13084

Under Executive Order 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, Executive Order 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, Executive Order 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 rules do 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 these rules.

#### E. Regulatory Flexibility Act

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. These final rules 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. 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.

#### G. 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 these rules 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 rules in the **Federal Register**. These rules are not "major" rules as defined by 5 U.S.C. 804(2).

#### H. 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 June 21, 1999. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of these rules 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 rules 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen Ozone, Reporting and record keeping 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: April 1, 1999.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

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 *et seq.*

#### Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(183)(i)(B)(4), (248)(i)(D), and (254)(i)(I), to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(183) \* \* \*  
(i) \* \* \*  
(B) \* \* \*

(4) Rule 74.16, adopted January 8, 1991.

\* \* \* \* \*

(248) \* \* \*  
(i) \* \* \*

(D) Mojave Desert Air Quality Management District.

(I) Rule 1157, amended May 19, 1997.

\* \* \* \* \*

(254) \* \* \*  
(i) \* \* \*

(I) Sacramento Metropolitan Air Quality Management District.

(I) Rule 414, adopted August 1, 1996.

\* \* \* \* \*

[FR Doc. 99-9712 Filed 4-19-99; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[TN-204-1-9913a; FRL-6326-9]

**Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Memphis Ozone Maintenance Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Memphis and Shelby County Health Department (MSCHD) ozone (O<sub>3</sub>) maintenance plan. The revisions were submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on September 18, 1997, with supplemental information submitted on June 30, 1998. The MSCHD revised their O<sub>3</sub> maintenance plan by adding new tables which correct errors made in the original base year inventory and maintenance plan. These corrections impact the transportation conformity budget for the greater Memphis Metropolitan Statistical Area.

**DATES:** This direct final rule is effective on June 21, 1999, without further notice, unless EPA receives significant,

material, and adverse comment by May 20, 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 204-1-9913a. 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.

Memphis and Shelby County Health Department, 814 Jefferson Avenue, Memphis, Tennessee 38105. 901/576-7600.

**FOR FURTHER INFORMATION CONTACT:** Steven M. Scofield at 404/562-9034.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On November 12, 1992, Tennessee submitted a maintenance plan and a request to redesignate the Memphis and Shelby County area from nonattainment to attainment for O<sub>3</sub>. In a **Federal Register** notice dated January 17, 1995 (60 FR 3352), EPA approved the Memphis and Shelby County O<sub>3</sub> maintenance plan, including the 1990 base year inventory.

**II. Analysis of State's Submittal**

The revisions to the Memphis and Shelby County O<sub>3</sub> maintenance plan were submitted on September 18, 1997, with supplemental information submitted on June 30, 1998. The MSCHD revised their O<sub>3</sub> maintenance plan by adding new tables which correct errors made in the original 1990 base year inventory and maintenance plan. The submittal included corrected nitrogen oxide (NO<sub>x</sub>) tables and graphs and three new tables for volatile organic compounds (VOCs), carbon monoxide (CO), and NO<sub>x</sub>.

The purpose of the 1990 base year adjustment is to better account for emissions from NO<sub>x</sub> sources. The error correction affects the 2004 emission budget in that additional NO<sub>x</sub> emissions are available in the safety margin. MSCHD has chosen to allocate the additional safety margin to the mobile source sector. These corrections impact the transportation conformity budget for the greater Memphis Metropolitan Statistical Area.

	1990	1993	1996	1999	2002	2004
<b>VOC Emission Inventory Summary (Tons per day)</b>						
Point .....	74.6	30.3	31.4	32.5	33.5	34.2
Area .....	79.3	53.3	54.3	55.2	56.2	56.9
Non-Road .....	31.3	31.9	32.5	33.1	33.7	34.1
Mobile .....	72.1	46.9	44.8	44.3	43.7	43.1
Mobile Budget .....	72.1	112.1	107.5	104.6	101.8	144.5
Biogenics .....	132.6	100.8	100.8	100.8	100.8	100.8
Total .....	390.0	263.2	263.7	265.9	267.9	269.1
<b>NO<sub>x</sub> Emission Inventory Summary (Tons per day)</b>						
Point .....	113.5	119.4	102.0	100.4	72.9	72.0
Area .....	4.2	4.5	4.6	4.7	4.8	4.8
Non-Road .....	80.8	82.3	83.8	85.3	86.8	87.9
Mobile .....	62.9	56.1	54.6	54.8	54.6	54.3
Mobile Budget .....	62.9	56.1	59.5	59.7	71.7	94.3
Biogenics .....	1.6	1.4	1.4	1.4	1.4	1.4
Total .....	263.0	263.7	246.3	246.5	220.5	220.3
<b>CO Emission Inventory Summary (Tons per day)</b>						
Point .....	22.8	18.6	19.3	19.9	20.5	21.0
Area .....	82.6	107.9	109.9	111.8	113.9	115.2
Non-Road .....	109.8	111.8	113.8	115.9	118.0	119.4