

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

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[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

	1990	1993	1996	1999	2002	2004
<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

	1990	1993	1996	1999	2002	2004
<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

	1990	1993	1996	1999	2002	2004
Mobile .....	455.1	420.1	418.5	417.3	416.5	414.6
Mobile Budget .....	455.1	431.5	426.9	422.4	417.8	414.6
Total .....	670.13	658.4	661.4	664.9	668.9	670.3

### III. Final Action

EPA is approving the revisions to the Memphis and Shelby County Health Department O<sub>3</sub> maintenance plan and 1990 base year inventory.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal 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 document withdrawing the final rule and 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. Parties interested in commenting 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, entitled "Regulatory Planning and Review."

#### B. Executive Order 12875

Under E.O. 12875, 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. 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 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 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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. 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, Executive Order 13084 requires EPA to develop an effective process permitting elected 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### D. 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.

#### 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. 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. 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 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 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 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).

#### 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 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 dioxide, Ozone.

Dated: March 25, 1999.

#### 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 RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(165) to read as follows:

#### § 52.2220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(165) The revisions to the maintenance plan and emission inventory for the Memphis and Shelby County Area which includes Shelby County and the City of Memphis submitted by the Tennessee Department of Environment and Conservation on September 18, 1997, and June 30, 1998, as part of the Tennessee SIP.

(i) Incorporation by reference. Non-Regulatory SIP Submittal Including I. The 1993 Ozone, Nitrogen Oxides, and Carbon Monoxide Triennial Emission Inventory; II. Revisions to the 1990 Base Year Inventory; III. Amendments to the CO and O<sub>3</sub> Maintenance Plans to Specify Conformity Emission Budgets adopted on September 10, 1997.

(A) Mobile and point source emission budgets volatile organic compounds summer season tons per day (PJVCTD3.WK1)

(B) Mobile and point source emission budgets nitrogen oxides summer season tons per day (PjNXTD3.WK1)

(C) Mobile and point source emission budgets carbon monoxide winter season tons per day (PJCOTD3.WK1)

(D) Mobile and point source emission budgets volatile organic compounds summer season tons per day

(E) Mobile and point source emission budgets nitrogen oxides summer season tons per day

(F) Mobile and point source emission budgets carbon monoxide winter season tons per day.

(ii) Other material. None.

[FR Doc. 99-9714 Filed 4-19-99; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[TX 109-1-7412a; FRL-6329-2]

### Rescission of the Conditional Section 182(f) Exemption to the Nitrogen Oxides (NO<sub>x</sub>) Control Requirements for the Dallas/Fort Worth Ozone Nonattainment Area; TX

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

**ACTION:** Direct final rule.

**SUMMARY:** In this direct final action, we, the EPA, are rescinding the conditional nitrogen oxides (NO<sub>x</sub>) exemption for the Dallas/Fort Worth (DFW) ozone nonattainment area. We granted the conditional exemption under the Federal Clean Air Act (Act) on November 21, 1994, conditioned on our approval of initial modeling showing that NO<sub>x</sub> controls were not needed in the DFW area to reach attainment. However, the DFW area failed to attain EPA's National Ambient Air Quality Standard (NAAQS) for ozone by its moderate ozone deadline of November 15, 1996, and we reclassified the area to "serious" ozone nonattainment on February 18, 1998. The modeling conducted for this serious area State Implementation Plan shows control of NO<sub>x</sub> sources will help the area attain the ozone. The State of Texas requested the rescission of the conditional NO<sub>x</sub> exemption based on this new photochemical modeling. We agree with the need for future NO<sub>x</sub> controls and are rescinding the conditional exemption. The State must now implement NO<sub>x</sub> control rules and conformity determinations will have to consider NO<sub>x</sub> in the DFW area.

**DATES:** This direct final rule is effective on June 21, 1999, unless we receive adverse comments by May 20, 1999. If we receive such comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following