17. Table 3 to subpart GGG is revised to read as follows:

TABLE 3 TO SUBPART GGG.—SOLUBLE HAP

Compound
1,1-Dimethylhydrazine.
1,4-Dioxane.
Acetonitrile.
Acetophenone.
Diethyl sulfate.
Dimethyl sulfate.
Dinitrotoluene.
Ethylene glycol dimethyl ether.
Ethylene glycol monobutyl ether acetate.
Ethylene glycol monomethyl ether acetate.
Isophorone.
Methanol (methyl alcohol).
Nitrobenzene.
Toluidene.
Triethylamine.

18. Table 9 to subpart GGG. is revised to read as follows:

TABLE 9 TO SUBPART GGG—DEFAULT BIORATES FOR SOLUBLE HAP

Compound name	Biorate (K1), L/g MLVSS-hr
Acetonitrile	0.100
Acetophenone	0.538
Diethyl sulfate	0.105
Dimethyl hydrazine(1,1)	0.227
Dimethyl sulfate	0.178
Dinitrotoluene(2,4)	0.784
Dioxane(1,4)	0.393
Ethylene glycol dimethyl ether	0.364
Ethylene glycol monobutyl ether acetate	0.496
Ethylene glycol monomethyl ether acetate	0.159
Isophorone	0.598
Methanol	[a]
Nitrobenzene	2.300
Toluidine (-0)	0.859
Triethylamine	1.064

[a] For direct dischargers, the default biorate for methanol is 3.5 L/g MLVSS-hr; for indirect dischargers, the default biorate for methanol is 0.2 L/g MLVSS-hr.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–83–1–200101; FRL–7022–3]

Approval and Promulgation of Implementation Plans: Florida; Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) submitted on December 10, 1999, by the State of Florida through the Florida Department of Environmental Protection (FDEP). This submittal consists of revisions to the ozone air quality maintenance plans for the Jacksonville (Duval County) and Southeast Florida (Broward, Dade, and Palm Beach Counties) areas to remove the emission reduction credits attributable to the Motor Vehicle Inspection Program (MVIP) from the future year emission projections contained in those plans. Florida submitted technical amendments to this revision on January 18, 2000. This revision updates the control strategy by removing emissions credit for the MVIP, and as such, transportation conformity must be redetermined by the Metropolitan Planning Organizations (MPOs) within 18 months of the final approval of this notice. EPA proposed approval of this revision to the Florida SIP on March 17, 2000.

EFFECTIVE DATE: This rule will be effective September 4, 2001.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. FL83–200101. The docket is available at the following address for inspection during normal business hours: Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (E-mail: *levasseur.joey@epa.gov*).

SUPPLEMENTARY INFORMATION: The following sections: Background, Response to Comments, and Final Action, provide additional information concerning the revisions to the ozone air quality maintenance plans for the Jacksonville and Southeast Florida areas to remove the emission reduction credits attributable to the MVIP from the future year emission projections contained in those plans.

I. Background

Today's action finalizes EPA's approval of the maintenance plan revisions submitted on December 10, 1999. A detailed description of Florida's submittal may be found in the Notice of Proposed Rulemaking for today's action, which was published in the **Federal Register** on March 17, 2000. On April 13, 2000, EPA extended the proposal's comment period and on June 20, 2000, EPA reopened the comment period and announced a public hearing. The hearing was held on July 20, 2000. EPA received numerous comments during the comment period. In addition to comments on the proposed action, EPA also received comments on the Florida Legislature's decision to shutdown the MVIP in all areas in the State. That decision and action by the Florida Legislature has no bearing on today's action and such comments will not be addressed here.

II. Response to Comments

1. *Comment:* ''Elimination of the MVIP will result in adverse consequences. The likelihood that

damaged or destroyed original equipment catalytic converters will be replaced has diminished and the likelihood that catalytic converters will be illegally removed has increased.''

2. *Comment:* ''Although cleaner engine and fuel technologies will help reduce emissions of tailpipe exhaust and evaporating gasoline, cars must be properly maintained and emission control systems must remain functional if these reductions are to be fully realized. The MVIP serves as a continuing incentive for motorists to have their vehicles serviced regularly, to replace emission control components as needed, and to avoid tampering with emission control equipment.''

Response to comments 1 and 2: The revision to the maintenance plan takes into account the fact that some automobiles will not be properly maintained. This fact is reflected in the increase in the emissions budgets.

3. *Comment:* ''EPA should disapprove Florida's request because it is fundamentally deficient on the merits.''

4. *Comment:* ''FDEP's proposed modification is deficient in several fundamental respects. Among these deficiencies are both procedural and substantive defects, including the following:

The nature and status of FDEP's proposal, and of EPA's notice of proposed rulemaking, are fundamentally ambiguous so that it is impossible to comment meaningfully on the proposal at this time. Thus, any further EPA action on FDEP's proposal would constitute a violation of the Administrative Procedure Act, 5 U.S.C. sections 551–559.

Under the terms of section 175A of the Clean Air Act (CAA), maintenance plans may be revised only once, 8 years after redesignation and, even if ''interim'' modifications were permitted, the request must address projected emissions that occur over a 10 year time frame, commencing from the year of modification of the plan. FDEP must therefore demonstrate attainment of the relevant ozone standard through 2010–11, not merely 2005.

Trends in ozone design values in Southeast Florida and Duval County indicate that the MVIP remains critical to the maintenance of attainment status in those areas. In this regard, despite reductions in volatile organic compounds (VOC) and nitrogen oxides (NO_X) (ozone precursor) emissions, ozone concentrations in the relevant counties over the past several years have remained flat or increased.

FDEP's proposal fails to meet the requirements of CAA section 175A, which require that the MVIP be included in the maintenance plans as a fully qualified, legislatively authorized, contingency measure.

Without the MVIP, Southeast Florida and Duval County will likely be unable to make the transportation conformity demonstrations required by the CAA, and FDEP has failed to address this key concern in any meaningful manner.''

Response to comments 3 and 4: Any revision to the maintenance plan must not have an adverse impact on maintenance of the national ambient air quality standard (NAAQS) for any criteria pollutant. Guidance on this issue is contained in a memorandum dated September 17, 1993, from Michael Shapiro, Acting Assistant Administrator for Air and Radiation entitled, ''State Implementation Plan Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide National Ambient Air Quality Standards on or after November 15, 1992.'' This memo states:

> As a general policy, a state may not relax the adopted and implemented SIP upon the area's redesignation to attainment. States should continue to implement existing control strategies in order to maintain the standard. However, section 175A recognizes that States may be able to move SIP measures to the contingency plan upon redesignation if the state can adequately demonstrate that such action will not interfere with maintenance of the standard.

The requirement for a second 10-year plan does not prohibit revisions to the existing 10-year maintenance plan. A revision to the existing 10-year maintenance plan prior to the required extension does not require the plan to be extended for another 10 years.

Ozone trends are not at issue in this revision. There is no requirement that ozone concentrations cannot increase from one year to another, as long as there is not a violation of the one-hour ozone NAAQS.

In this revision, Florida demonstrates that the area can maintain the one-hour ozone NAAQS without the implementation of the MVIP. The EPA has reviewed the State's emissions inventory and modeling analyses and finds that they meet applicable guidance and requirements. Therefore, the State has made the necessary demonstration that the MVIP is not necessary to maintain the one-hour ozone NAAQS and that attainment of the NAAQS for any other pollutant will not be affected by removing the MVIP from the SIP. In accordance with EPA's November 15, 1992, policy, the State must include the MVIP as a contingency measure in the maintenance plan for the redesignated area, which it has done.

Florida does not in this revision to the maintenance plan need to address the transportation conformity determination issue. This revision only removes the emission reduction credits attributable to the MVIP from the maintenance plan. Florida currently has a transportation conformity plan in place, but will need to perform another transportation conformity determination within 18 months of this final action, due to the revision to the emissions budgets.

5. *Comment:* ''The MVIP is working to reduce air pollution. If the program is working, it should be continued.''

6. *Comment:* ''If the program is not that effective, the EPA should force Florida to enhance the program.''

Response to comments 5 and 6: Ground level ozone is formed by the reaction of hydrocarbons and nitrogen oxides (NO_X) in the presence of sunlight. Both hydrocarbons and NO_X are emitted by vehicles. However, air quality modeling performed by FDEP has indicated that the amount of NO_X in the atmosphere is the controlling factor in the formation of ground level ozone over Florida. Therefore, controlling NO_X becomes a more effective strategy for reducing ground level ozone concentrations. While the MVIP program in Florida has been effective at reducing hydrocarbon and carbon monoxide emissions from vehicles, is was not designed to reduce NO_X. Such an inspection/maintenance program test must be conducted with the vehicle placed under a simulated driving load, on a dynamometer, as in the IM240 test. The implementation of such a test requires new testing equipment and longer test durations. Such a test is not mandated by the CAA for either the South Florida or Duval County ozone maintenance areas, and therefore can not be required by EPA at this time. As noted above, if the State can make the necessary demonstration that the MVIP is not necessary to maintain the one-hour ozone NAAQS, then the EPA cannot require the State to keep the program or to enhance it.

III. Final Action

EPA is approving the aforementioned revisions to the Florida SIP because they are consistent with CAA and EPA requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements

beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

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 October 1, 2001. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: July 16, 2001.

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 K—Florida

2. Section 52.520 is amended by adding a new paragraph (e) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(e) EPA-approved Florida non-regulatory provisions.

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
Revision to Maintenance Plans for the Jacksonville and Southeast Florida Areas.	December 10, 1999	August 2, 2001	[Insert cite of publication].	

[FR Doc. 01–19162 Filed 8–1–01; 8:45 am]

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