

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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 18, 2003.

**Laura Yoshii,**

*Acting 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)(297)(i)(E)(2) and (c)(303)(i)(B)(2) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(297) \* \* \*  
(i) \* \* \*  
(E) \* \* \*

(2) Rule 4623, adopted on April 11, 1991 and amended on December 20, 2001.

\* \* \* \* \*

(303) \* \* \*  
(i) \* \* \*  
(B) \* \* \*

(2) Rule 2.21, adopted on March 23, 1994 and amended on June 12, 2002.

\* \* \* \* \*

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BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[TN-238, 255-200406; FRL-7612-2]

### Approval and Promulgation of Implementation Plans: Tennessee: Nitrogen Oxides Budget and Allowance Trading Program

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Tennessee on July 29, 2003. The revision corrects a deficiency identified by EPA in its August 14, 2002, conditional approval of Tennessee's Phase I NO<sub>x</sub> SIP call submittal (67 FR 52913). With this deficiency corrected, EPA is fully approving Tennessee's NO<sub>x</sub> Reduction and Trading Program because it meets the requirements of Phase I of the NO<sub>x</sub> SIP Call that will significantly reduce ozone transport in the eastern United States.

EPA proposed to approve Tennessee's NO<sub>x</sub> Reduction and Trading Program, with one exception, in the August 14, 2002 (67 FR 52913), action. The exception was Tennessee's rule that allowed for the allocation, to NO<sub>x</sub> budget units, of additional allowances that have been generated through NO<sub>x</sub> emission reductions from industrial, mobile, and area source sectors.

However, Tennessee's rule provided for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. Tennessee corrected this deficiency in the revision submitted on July 29, 2003, by requiring EPA approval of any additional allocations generated through NO<sub>x</sub> emissions reductions from industrial, mobile, and area sources. Therefore, EPA is approving Tennessee's NO<sub>x</sub> Reduction and Trading Program.

**EFFECTIVE DATE:** This final rule is effective January 22, 2004.

**ADDRESSES:** Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,  
Region 4, Air Planning Branch, 61  
Forsyth Street, SW., Atlanta, Georgia  
30303-8960.

Tennessee Department of Environment  
and Conservation, L&C Annex, 401  
Church Street, Nashville, Tennessee  
37243.

#### FOR FURTHER INFORMATION CONTACT:

Anne Marie Hoffman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9074. Ms. Hoffman can also be reached via electronic mail at [hoffman.annemarie@epa.gov](mailto:hoffman.annemarie@epa.gov).

**SUPPLEMENTARY INFORMATION:** On November 7, 2000, the Tennessee

Department of Environment and Conservation (TDEC) submitted a draft NO<sub>x</sub> emission control rule to the EPA for pre-adoption review, requesting parallel processing of the development of the rule at the State level and included a schedule for development and adoption of the rule by the State. On January 11, 2001, TDEC submitted adopted revisions to its SIP to meet the requirements of the Phase I NO<sub>x</sub> SIP Call. Tennessee submitted State-effective rule revisions on October 4, 2001. The revisions complied with the requirements of the Phase I NO<sub>x</sub> SIP Call with one exception regarding deficiencies in section 96.40 State trading program budget. Tennessee corrected this deficiency in the revision submitted on July 29, 2003. Included in this document are new rules 1200-3-27-.04 *Standards for Cement Kilns* and 1200-3-27-.06 *NO<sub>x</sub> Budget Trading Program for State Implementation Plans (40 CFR 96)*. The information in this final rule is organized as follows:

#### I. EPA's Action

- A. What action is EPA approving today?
- B. Why is EPA approving this action?
- C. What are the NO<sub>x</sub> SIP Call general requirements?
- D. What is EPA's NO<sub>x</sub> budget and allowance trading program?
- E. What guidance did EPA use to evaluate Tennessee's submittal?
- F. What is the result of EPA's evaluation of Tennessee's program?

#### II. Tennessee's Control of NO<sub>x</sub> Emissions

- A. When did Tennessee submit the SIP revision to EPA in response to the NO<sub>x</sub> SIP Call?
- B. What is the Tennessee NO<sub>x</sub> Budget Trading Program?
- C. What is the Compliance Supplement Pool?
- D. What is the New Source Set-Aside program?

#### III. Final Action

#### IV. Statutory and Executive Order Reviews

#### I. EPA's Action

##### A. What Action Is EPA Approving Today?

EPA is approving revisions to Tennessee's SIP concerning the adoption of its NO<sub>x</sub> Reduction and Trading Program, submitted for parallel processing on November 7, 2000, with additional material submitted on January 11, 2001, and State-effective rules submitted on October 4, 2001, and July 29, 2003.

##### B. Why Is EPA Approving This Action?

EPA is approving this action because Tennessee's NO<sub>x</sub> Reduction and Trading Program regulations meet the requirements of Phase I of the NO<sub>x</sub> SIP Call. EPA proposed to approve Tennessee's NO<sub>x</sub> Reduction and

Trading Program, with one exception, in the August 14, 2002 (67 FR 52913), action. The exception was Tennessee's rule that allowed for the allocation, to NO<sub>x</sub> budget units, of additional allowances that have been generated through NO<sub>x</sub> emission reductions from industrial, mobile, and area source sectors. However, Tennessee's rule provided for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. In a letter dated June 25, 2002, EPA informed Tennessee of this deficiency and how the State could correct the deficiency. In the letter EPA also required the State to commit to correct the deficiency within 12 months. Tennessee corrected this deficiency in the revision submitted on July 29, 2003. Therefore, EPA is approving Tennessee's NO<sub>x</sub> Reduction and Trading Program, including a rule for cement kilns.

**C. What Are the NO<sub>x</sub> SIP Call General Requirements?**

On October 27, 1998, EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO<sub>x</sub> SIP Call." See 63 FR 57356. For detailed information refer to the proposal document (67 FR 52913).

**D. What Is EPA's NO<sub>x</sub> Budget and Allowance Trading Program?**

EPA's model NO<sub>x</sub> budget and allowance trading rule, 40 CFR part 96, sets forth a NO<sub>x</sub> emissions trading program for large EGUs and non-EGUs. For detailed information refer to the proposal document (67 FR 52913).

**E. What Guidance Did EPA Use To Evaluate Tennessee's Submittal?**

The final NO<sub>x</sub> SIP Call rule included a model NO<sub>x</sub> budget trading program regulation. See 40 CFR part 96. EPA used the model rule and 40 CFR 51.121-51.122 to evaluate Tennessee's NO<sub>x</sub> reduction and trading program.

**F. What Is the Result of EPA's Evaluation of Tennessee's Program?**

EPA has evaluated Tennessee's July 29, 2003, SIP submittal and finds it approvable. The Tennessee NO<sub>x</sub> reduction and trading program is consistent with EPA's guidance and meets the requirements of the Phase I NO<sub>x</sub> SIP Call. EPA finds the NO<sub>x</sub> control measures in Tennessee's NO<sub>x</sub> reduction and trading program, including the cement kiln rule, approvable. The July 29, 2003, submittal will strengthen Tennessee's SIP for reducing ground level ozone by providing NO<sub>x</sub> reductions beginning in 2004. Also, EPA finds that the submittal contained the information necessary to demonstrate that Tennessee has the legal authority to implement and enforce the control measures, and to demonstrate appropriate distribution of the compliance supplement pool. Furthermore, EPA finds that the submittal demonstrates that the compliance dates and schedules, and the monitoring, recordkeeping and emission reporting requirements will be met.

**II. Tennessee's Control of NO<sub>x</sub> Emissions**

**A. When Did Tennessee Submit the SIP Revision to EPA in Response to the NO<sub>x</sub> SIP Call?**

On November 7, 2000, the Tennessee Department of Environment and Conservation submitted a draft NO<sub>x</sub> emission control rule to the EPA for pre-adoption review, requesting parallel processing of the development of the rule at the State level and included a schedule for development and adoption of the rule by the State. On January 11, 2001, TDEC submitted adopted revisions to its SIP to meet the requirements of the Phase I NO<sub>x</sub> SIP Call. Tennessee submitted State-effective rule revisions on October 4, 2001, and July 29, 2003.

**B. What Is the Tennessee NO<sub>x</sub> Budget Trading Program?**

Tennessee's rule, as in the model rule, allows the large EGUs and non-EGUs to

participate in the multi-state cap and trade program. For detailed information refer to the proposal document (67 FR 52913).

Tennessee chose to revise the provisions in section 96.40 (State trading program budget) of the model rule by adding a provision at 1200-3-27-.06(1)(f) to allow for the allocation of additional allowances for NO<sub>x</sub> emission reductions from industrial, mobile, and area source sectors. The provision states that Tennessee "may" allocate, to NO<sub>x</sub> budget units, additional allowances generated through NO<sub>x</sub> emission reductions from industrial, mobile, and area source sectors if the reductions are permanent, enforceable, quantifiable, and surplus as determined by and approved by EPA and Tennessee. The provision does not give Tennessee any authority to make such additional allocations unless and until EPA approves the use of NO<sub>x</sub> emission reductions from sources in these sectors to generate allowances. Any program for such use of these emission reductions that is submitted by Tennessee will be reviewed by EPA, as a revision to the SIP, to assure that, before receiving approval, the program will meet the requirements that only emission reductions that are permanent, enforceable, quantifiable, and surplus may be credited for allowances. In order to meet these requirements, the program must, among other things, prevent the crediting for allowances of emissions that may be shifted from sources in the program to sources not covered by the program.

Tennessee's Rule 1200-3-27-.04 *Standards for Cement Kilns* establishes requirements for cement manufacturing facilities. These sources are subject to NO<sub>x</sub> reduction requirements but do not participate in the NO<sub>x</sub> trading program. Cement kilns are not included in the trading program, but will be required to install low NO<sub>x</sub> burners, mid-kiln system firings or technology.

Tennessee's submittal demonstrates that the Phase I NO<sub>x</sub> emission budgets established by EPA will be met as follows:

| Source category        | EPA 2007 NO <sub>x</sub> budget emissions (tons/season) | Tennessee 2007 NO <sub>x</sub> budget emissions (tons/season) |
|------------------------|---|---|
| EGUs .....             | 25,814  | 25,814  |
| Non-EGUs .....         | 5,519   | 5,519   |
| Area Sources .....     | 13,333  | 13,333  |
| Non-road Sources ..... | 52,920  | 52,920  |
| Highway Sources .....  | 66,342  | 66,342  |
| Total .....            | 163,928   | 163,928   |

### C. What Is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO<sub>x</sub> SIP Call, the final NO<sub>x</sub> SIP Call rule provided each affected State with a "compliance supplement pool." For detailed information refer to the proposal document (67 FR 52913).

### D. What Is the New Source Set-Aside Program?

Part 96 requires that new sources hold allowances to cover their emissions. For detailed information refer to the proposal document.

## III. Final Action

EPA has determined that today's rule falls under the "good cause" exemption in section 553(d)(3) of the Administrative Procedures Act (APA), which allows an agency to make a rule effective immediately. Because the NO<sub>x</sub> SIP Call Compliance date is May 31, 2004, EPA believes it is necessary that sources be allowed to begin immediate population of their accounts thereby enabling them prepare for the ozone control season and compliance with their allocations. Thus, in today's rule EPA finds there is good cause to have this rule take effect immediately.

EPA is approving the Tennessee's SIP revision consisting of its draft NO<sub>x</sub> Budget Trading Program, which was submitted on November 7, 2000, with additional material submitted on January 11, 2001, and State-effective rules submitted on October 4, 2001, and July 29, 2003. EPA finds that Tennessee's submittal is approvable because it meets the requirements of the Phase I NO<sub>x</sub> SIP Call.

EPA originally proposed to approve Tennessee's NO<sub>x</sub> Reduction and Trading Program, with one exception, in an August 14, 2002 (67 FR 52913), action. The exception referred to section 96.40 State trading program budget. Tennessee's rule allowed for the allocation of additional allowances that have been generated through NO<sub>x</sub> emission reductions from industrial, mobile, and area source sectors, as described above in section II.B. However, Tennessee's rule provided for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. Tennessee corrected this deficiency in the revision submitted on July 29, 2003, by requiring EPA approval of any additional allocations generated through NO<sub>x</sub> emission reductions from industrial, mobile, and area sources. Therefore, EPA is approving

Tennessee's NO<sub>x</sub> Reduction and Trading Program.

## IV. Statutory and Executive Order Reviews

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. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does 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). This action 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 "Protection of Children From Environmental Health Risks and Safety Risks" (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. 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. 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 March 22, 2004. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 8, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 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. In § 52.2220(c) Table 1 is amended by adding in numerical order new entries for “Section 1200–3–27–.04” and

“Section 1200–3–27–.06” to read as follows:

**§ 52.2220 Identification of plan.**  
 \* \* \* \* \*  
 (c) \* \* \*

TABLE 1.—EPA-APPROVED TENNESSEE REGULATIONS

| State citation              | Title/subject  | Adoption date       | EPA approval date      | Federal Register notice                  |
|-----------------------------|--|---------------------|------------------------|--|
| * * * * *                   | * * * * *  | * * * * *           | * * * * *              | * * * * *                                |
| Section 1200–3–27–.04 ..... | Standards for Cement Kilns.                                    | July 27, 2003 ..... | January 22, 2004 ..... | [Insert FR Page citation of publication] |
| Section 1200–3–27–.06 ..... | NO <sub>x</sub> Trading Budget for State Implementation Plans. | July 27, 2003 ..... | January 22, 2004 ..... | [Insert FR Page citation of publication] |
| * * * * *                   | * * * * *  | * * * * *           | * * * * *              | * * * * *                                |

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 [FR Doc. 04–1231 Filed 1–21–04; 8:45 am]  
**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA275–0423a; FRL–7609–2]

**Revisions to the California State Implementation Plan, South Coast Air Quality Management District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the South Coast Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from food product manufacturing and processing, recordkeeping for VOC sources, and particulate matter (PM) emissions from woodworking operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on March 22, 2004 without further notice, unless EPA receives adverse comments by

February 23, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted SIP revisions, EPA’s technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

- Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;
- California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 “I” Street, Sacramento, CA 95814; and,
- South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>.

[www.arb.ca.gov/drdb/drdbtxt.htm](http://www.arb.ca.gov/drdb/drdbtxt.htm). Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or [wamsley.jerry@epa.gov](mailto:wamsley.jerry@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

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**I. The State’s Submittal**

**A. What Rules Did the State Submit?**

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule No. | Rule title  | Adopted  | Submitted |
|--------------|----------|---|----------|-----------|
| SCAQMD ..... | 1131     | Food Product Manufacturing and Processing Operations .....  | 06/06/03 | 08/11/03  |
| SCAQMD ..... | 109      | Recordkeeping for Volatile Organic Compound Emissions ..... | 05/02/03 | 08/11/03  |
| SCAQMD ..... | 1137     | PM–10 Emission Reductions from Woodworking Operations ..... | 02/01/02 | 11/19/02  |