

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication]. 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) of the Act, 42 U.S.C. 7607 (b)(2).]

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and subchapter I, part D of the 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 impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds.

Union Electric Co. v. U.S.E.P.A., 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 165 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has determined that the rules being approved by this action will impose no new requirements, since such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: July 18, 1996.

A. Stanley Meiburg,
Acting Regional Administrator.

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. 7401-7671q.

Subpart RR—[Amended]

2. Section 52.2220 is amended by adding paragraph (c)(141) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(141) On November 16, 1994, the State submitted revisions to the Nashville/Davidson portion of the Tennessee State Implementation Plan (SIP) on behalf of Nashville/Davidson County. These were revisions to the permit requirements for major sources of air pollution, including revisions to the general definitions, permit requirements, the Board's powers and duties, the variances and hearings procedures, the measurement and reporting of emissions, and the testing procedures. These revisions incorporate changes to Nashville's Chapter 10.56 which are required in the Clean Air Act as amended in 1990 and 40 CFR part 51, subpart I.

(i) Incorporation by reference.

(A) Code of Laws of the Metropolitan Government of Nashville and Davidson County, Tennessee, Chapter 10.56, except Section 10.56.290, Air Pollution Control, approved on October 6, 1994, except Section 10.56.010, definition of "Regulated Pollutant"; Section 10.56.050, paragraphs (C), (D), and (E); Section 10.56.080.

(ii) Other material. None.

[FR Doc. 96-22807 Filed 9-5-96; 8:45 am]

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40 CFR Part 52

[TN 167-1-9627a; FRL-5606-9]

Control Strategy: Ozone (O₃); Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; withdrawal.

SUMMARY: Due to adverse comments, EPA is withdrawing the approval of an exemption request from the oxides of nitrogen (NO_x) reasonably available control technology (RACT) and conformity requirements of the Clean Air Act as amended in 1990 (CAA) for the five county Middle Tennessee (Nashville) moderate ozone (O₃) nonattainment area. The original action was published in the Federal Register on July 11, 1996, as a direct final rule. As stated in the Federal Register document, if adverse or critical comments were received by August 12, 1996, the effective date would be delayed and timely notice would be published in the Federal Register. Therefore, due to receiving adverse comments within the comment period, EPA is withdrawing the final rule and will address all public comments received in a subsequent final rule based on the proposed rule also

published on July 11, 1996. EPA will not institute a second comment period on this document.

EFFECTIVE DATE: This withdrawal is effective September 6, 1996.

FOR FURTHER INFORMATION CONTACT: William C. Denman, Regulatory Planning and Development Section, Air Programs Branch, United States Environmental Protection Agency, Region 4, Atlanta Federal Center, 100 Alabama Street, SW, Atlanta, Georgia 30303-3104, (404) 562-9030.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the July 11, 1996 Federal Register at (61 FR 36502), and in the document located in the proposed rule section of the July 11, 1996 Federal Register at (61 FR 36534).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: August 29, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96-22809 Filed 9-5-96; 8:45 am]

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40 CFR Parts 52 and 81

[FRL-5560-4]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Wyoming; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: EPA is promulgating corrections to the State Implementation Plan (SIP) for the State of Wyoming regarding the State's ambient standards for fluorides and hydrogen sulfide and the State's odor control regulation. EPA has determined that these rules were erroneously incorporated into the SIP. EPA is removing these rules from the approved Wyoming SIP because the rules do not have a reasonable connection to the national ambient air quality standards (NAAQS) and related air quality goals of the Clean Air Act. The intended effect of this correction to the SIP is to make the SIP consistent with the requirements of the Clean Air Act, as amended in 1990 ("the Act"), regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

In addition, EPA is amending the boundary description for the "Powder River Basin" PM-10 unclassifiable area in 40 CFR 81.351. EPA promulgated revisions to 40 CFR 81.351 in a November 3, 1995 rulemaking, and EPA erroneously published an incorrect boundary description for the Powder River Basin area. This document corrects that error.

DATES: This action will become effective on November 5, 1996, unless adverse comments are received within 30 days of publication. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relative to this action are available for inspection during normal business hours at the following location: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8P2-A, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466, (303) 312-6445.

SUPPLEMENTARY INFORMATION:

I. Corrections to SIP

The Act was first amended in 1970. At this time, a large number of SIPs were submitted to EPA to fulfill the new Federal requirements. In many cases, states and districts submitted their entire programs, including many elements not required pursuant to the Act. Due to resource constraints at that time, EPA's review of these submittals focused primarily on the required technical, legal, and enforcement elements of the submittals. At the time, EPA did not perform a detailed review of the numerous provisions submitted, to determine if each provision was related to protection of the NAAQS. Provisions approved as part of states' SIPs should generally be related to attainment and maintenance of the NAAQS, consistent with the authority in section 110 of the Act under which these plans are approved by EPA.

During a recent review of the contents of the Wyoming SIP, EPA determined that three provisions of the State's rules were approved as part of the SIP which did not have a reasonable connection to the NAAQS-related air quality goals of the Act. These State rules include the ambient standard for hydrogen sulfide in Section 7 of the Wyoming Air Quality Standards and Regulations (WAQSR), the 1972 version of the ambient standard for fluorides in Section 11 of

the WAQSR,¹ and the odor control rules in Section 16 of the WAQSR. In addition, documents included in the State's November 19, 1993 title V operating permit program submittal indicated that the State did not consider these three rules part of the federally-approved SIP. EPA consequently notified the State of this discrepancy in a June 26, 1995 letter and offered to correct the SIP pursuant to section 110(k)(6) of the Act by removing these three rules from the SIP, since they are not reasonably connected to the NAAQS-related air quality goals of the Act. The State responded in a letter dated September 19, 1995 requesting that EPA remove these three provisions from the approved SIP.

Section 110(k)(6) of the amended Act provides: Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

Since the State of Wyoming's rules for hydrogen sulfide ambient standards, fluoride ambient standards, and odor control have no reasonable connection to the NAAQS-related air quality goals of the Act and since the State has requested that EPA remove these rules from the approved SIP, EPA has found that approval of these State rules was in error. Consequently, EPA is removing Sections 7, 11, and 16 of the WAQSR from the approved Wyoming SIP pursuant to section 110(k)(6) of the Act.

II. Correction of Boundary Description for the Powder River Basin Area

On November 3, 1995, EPA promulgated revisions to the State of Wyoming's PM-10 area designation table in 40 CFR 81.351 pursuant to the State's adoption and EPA's approval of prevention of significant deterioration (PSD) increments for PM-10 (see 60 FR 55800). In that notice, EPA cited an earlier and incorrect boundary description for the area designated as the "Powder River Basin" in Campbell and Converse counties. EPA promulgated a revised boundary description for the Powder River Basin area on September 12, 1995 (60 FR 47299), and that revised boundary

¹ Section 11 of the WAQSR was amended by the State in 1986, but that version was never submitted to, or approved by, EPA as part of the SIP for Wyoming.