

QUARTERLY REPORT—Continued

Docket No.	Location	Type	Effective date
01-96-044	Boston, MA	Safety Zone	6/2/96
01-96-052	Southampton, NY	Safety Zone	6/29/96
01-96-060	East River, NY	Security Zone	6/24/96
01-96-061	Branford, CT	Safety Zone	6/29/96
01-96-062	Bridgeport, CT	Safety Zone	6/28/96
02-96-005	Illinois River, M. 162.5	Special Local	6/1/96
02-96-007	Ohio River, M. 461 to M. 462	Reg Nav Area	6/11/96
02-96-009	Ohio River, M. 603.5 to M. 604.5	Special Local	6/15/96
02-96-011	Mississippi River, M. 583 to M. 579.3	Special Local	6/14/96
02-96-012	Illinois River, M. 179.5 to M. 180.5	Special Local	6/23/96
02-96-013	Mississippi River, M. 415.5 to M. 416	Special Local	6/8/96
02-96-014	Missouri River, M. 737 to M. 733	Special Local	6/21/96
02-96-015	Tennessee River, M. 463.5 to M. 464.5	Special Local	6/1/96
05-96-020	Salem River, NJ	Safety Zone	4/24/96
05-96-022	Salem River, NJ	Safety Zone	4/22/96
5-96-023	Delaware River, DE	Safety Zone	4/26/96
05-96-024	Salem River, NJ	Safety Zone	5/2/96
05-96-027	Salem River, NJ	Safety Zone	5/13/96
5-96-029	Delaware Bay, Delaware River, DE	Safety Zone	5/15/96
05-96-035	Atlantic City, NY	Safety Zone	5/24/96
05-96-036	Salem River, NJ	Safety Zone	5/28/96
05-96-037	Chester, PA	Safety Zone	6/1/96
05-96-039	James River, VA	Safety Zone	6/18/96
05-96-040	Salem River, NJ	Safety Zone	6/6/96
05-96-044	Chincoteague, VA	Special Local	6/22/96
05-96-047	James River, VA	Safety Zone	6/27/96
07-96-033	Fort Lauderdale, FL	Special Local	5/9/96
07-96-036	Fajardo, PR	Special Local	5/19/96
07-96-037	Key West, FL	Special Local	5/19/96
07-96-038	Old San Juan, PR	Special Local	5/26/96
07-96-040	Fort Myers Beach, FL	Special Local	6/1/96
08-96-013	Cape Girardeau, MO	Special Local	6/15/96
09-96-004	Milwaukee River, Milwaukee, WI	Safety Zone	5/23/96
13-96-013	Portland, OR	Safety Zone	5/3/96
13-96-016	Portland, OR	Safety Zone	5/31/96
13-96-017	North Bend, OR	Safety Zone	6/12/96

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-113-6768a; TN-122-6767a; TN-133-6568a; TN-138-6766a; TN-163-9625a; TN-170-9630a; FRL-5529-5]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee SIP and the Nashville/Davidson County Portion of the Tennessee SIP Regarding Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document, EPA is acting on revisions to the Tennessee State Implementation Plan (SIP) submitted to EPA by Tennessee, through the Tennessee Department of Air

Pollution Control (TDAPC) which add a new chapter to the Nashville/Davidson County and the State portion of the Tennessee SIP for the control of nitrogen oxide (NO_x) emissions. Only the portions of the Tennessee NO_x rule necessary for the approval of Tennessee's ozone redesignation request are being approved in this notice. EPA is granting an exemption to the area under 182(f) of the Clean Air Act (CAA) from NO_x Reasonably Available Control Technology (RACT) requirements in a separate action. The only sources which will be subject to this rule are tangentially-fired coal burning boilers which have a heat input capacity in excess of 600 million BTU per hour in the five county Nashville ozone nonattainment area.

DATES: This final rule is effective September 27, 1996 unless adverse or critical comments are received by August 28, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to William

Denman at the Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference files TN113-01-6768, TN122-01-6767, TN133-01-6568, TN138-01-6766, TN163-01-9625, and TN170-01-9630. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365, William Denman, 404/347-3555 extension 4208.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243-1531, 615/532-0554.

FOR FURTHER INFORMATION CONTACT: William Denman 404/347-3555, extension 4208.

SUPPLEMENTARY INFORMATION: Tennessee submitted the State's NO_x chapter (1200-3-27) for incorporation into the State's portion of the Tennessee SIP in submittals dated June 14, 1993, (reference file TN113-01-6768) and May 26, 1994, (reference file TN133-01-6568). The State then submitted revisions to chapter 1200-3-27 on July 29, 1994, (reference file TN138-01-6766), February 23, 1996, (reference file TN163-01-9625), and April 29, 1996, (reference file TN170-01-9630). Tennessee submitted the NO_x chapter (Regulation Number 14) for the Nashville/Davidson County portion of the Tennessee SIP on September 28, 1993, (reference file TN122-01-6767). EPA is acting only on the portions of these submittals necessary for the approval of the Nashville ozone redesignation request. EPA is granting an exemption from NO_x RACT requirements for the five county nonattainment area under 182(f) of the CAA. It is necessary for approval of the Nashville ozone redesignation request to approve control measures into the SIP for tangentially-fired coal burning boilers since some NO_x reductions were obtained from these sources prior to the attainment of the ozone standard in the area. The rules are being approved into the SIP as discussed below.

State of Tennessee NO_x Chapter: Chapter 1200-3-27 "Nitrogen Oxides"

1200-3-27-.01 "Definitions": This section contains the definitions for facility and nitrogen oxides and states that the definitions in the Volatile Organic Compound chapter will apply to terms not defined in chapter 1200-3-27. This section is being approved into the Tennessee SIP.

1200-3-27-.02 "General Provisions and Applicability": This rule contains six paragraphs. Paragraph (1) states that the standards and requirements of rule 1200-3-27 will apply to certain sources of nitrogen oxides. Paragraph (2) states that a more stringent emission limit than otherwise specified may be established. Paragraph (3) states that nothing in this chapter shall be used to exempt sources from meeting other applicable requirements. Paragraph (4) prevents sources from concealing emissions. Paragraph (5) requires

sources to pay costs associated with publishing required legal notices for source specific compliance requests. EPA is approving the above paragraphs into the Tennessee SIP. Paragraph (6) contains the emissions statement requirement for NO_x. In an amendment dated February 23, 1996, the State proposed to remove Knox county from the emissions statement requirement. Since Knox county applied for redesignation to attainment for ozone prior to November 14, 1992, and since the State demonstrated that the elimination of this requirement will not adversely affect the area's maintenance of the ozone standard, EPA is approving the emissions statement without Knox County in the applicability portion.

1200-3-27-.03 "Standards and Requirements": Paragraph (1) gives the applicability requirements for NO_x emission standards. Subparagraph (1)(a) requires all sources located in the five county ozone nonattainment area which have the potential to emit 100 tons per year (tpy) or more of NO_x to apply RACT. EPA is not approving subparagraph (1)(a) into the Tennessee SIP. Subparagraph (1)(b) requires all tangentially-fired coal burning boilers located in the five county ozone nonattainment area with a heat input capacity in excess of 600 million BTU per hour to not allow emissions of NO_x from that boiler in excess of 0.45 pounds per million BTU on a 30-day rolling average. EPA is approving paragraph (1) and subparagraph (1)(b) of this section into the Tennessee SIP.

Paragraph (2) states that for the purpose of determining applicability to paragraph (1)(a), the NO_x emissions from all process emission sources and fuel burning equipment shall be totaled. Paragraph (2) is not being approved into the Tennessee SIP because it applies only to those sources subject to subparagraph (1)(a), which is also not being approved into the SIP.

Paragraph (3) determines the compliance schedules for sources subject to this chapter. Subparagraph (3)(a) contains the compliance schedule for tangentially-fired coal burning boilers and is therefore being approved into the Tennessee SIP. Subparagraph (3)(b) contains the compliance schedule for the other sources subject to this rule and is not being approved into the Tennessee SIP.

Paragraph (4) exempts certain sources from the requirements of chapter 1200-3-27. This does not affect those sources subject to rule 1200-3-27-.03(1)(b) which are being approved into the SIP. Therefore, EPA is not approving paragraph (4) into the SIP.

Nashville/Davidson County NO_x Rule: Regulation Number 14—"Regulation for the Control of Nitrogen Oxides"

Section 14-1 "Definitions": This section gives definitions for terms used in this chapter and states that the definitions in Chapter 10.56.010 which is the definitions section of the Nashville/Davidson County Air Pollution Control Chapter shall be used to define terms not defined in this section. EPA is approving this section into the Nashville/Davidson County portion of the Tennessee SIP.

Section 14-2 "Emission Standards": Paragraph (b) requires tangentially-fired coal burning boilers in excess of 600 million BTU per hour to not allow emissions from that boiler to exceed 0.45 pounds per million BTU on a 30-day rolling average. EPA is approving this paragraph (b) of this section into the SIP. The other paragraphs of this section contain requirements for other sources and at this time are not necessary to be SIP approved. Therefore, EPA is not approving the other paragraphs into the SIP at this time.

Section 14-3 "Procedure for Determining RACT": Since EPA is granting an exemption for Davidson County from NO_x RACT requirements in a separate action, this section is not being approved into the SIP.

Section 14-4 "Recordkeeping and Reporting Requirements": This section gives the recordkeeping and reporting requirements for this regulation. EPA is approving this section into the SIP.

Section 14-5 "Compliance Schedule": This section contains the compliance schedule for sources subject to this rule. EPA is approving this section into the SIP.

As stated in the approval of the NO_x RACT exemption request, until the five county middle Tennessee ozone nonattainment area is designated attainment, the continuation of the section 182(f) exemption granted is contingent upon continued monitoring and continued maintenance of the O₃ NAAQS in the entire Middle Tennessee nonattainment area. If there is a violation of the O₃ NAAQS in any portion of the Middle Tennessee nonattainment area, the exemption will no longer be applicable as of the date of any such determination. A determination that the NO_x exemption no longer applies would mean that the NO_x RACT requirement is immediately applicable to the affected area. EPA believes some reasonable period of notice is necessary to provide major stationary sources subject to the RACT requirement time to purchase, install, and operate any required controls.

Accordingly, the State may provide sources a reasonable time period to meet the RACT emission limits after the EPA determination that NO_x RACT requirement is necessary. EPA expects the time period to be as expeditious as practicable, but in no case longer than 24 months. The approval of this exemption from federal NO_x requirements in no way exempts sources from any NO_x controls required by the State.

Final Action

The EPA is approving the aforementioned revisions to the Tennessee SIP because they are consistent with the CAA and EPA policy. This rule making is being published without a prior proposal for approval because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 27, 1996 unless, by August 28, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 27, 1996.

Under section 307(b)(1) of the Clean Air Act (CAA), 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 September 27, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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 CAA, 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 shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan 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. 601 *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 impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA 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, I certify 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 CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA 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 (S.Ct. 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 182 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 examined whether the rules being approved by this action will impose any new requirements. Since such sources are already subject to these regulations under State law, no new requirements are imposed by this approval. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended 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 this rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 14, 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—Tennessee

2. Section 52.2220 is amended by adding (c)(139) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(139) Addition of a new chapter 1200-3-27 "Nitrogen Oxides" submitted by the Tennessee Department of Air Pollution Control (TDAPC) to EPA on June 14, 1993, September 28, 1993, May 26, 1994, July 29, 1994, February 23, 1996.

(i) Incorporation by reference.

(A) Regulation 1200-3-27 "Nitrogen Oxides", 1200-3-27-.01; 1200-3-27-.02; 1200-3-27-.03 (1) introductory sentence, (1)(b), (3) introductory sentence, (3)(a), effective as of October 28, 1995.

(B) Nashville/Davidson County regulation number 14 "Regulation for the Control of Nitrogen Oxides", Section 14-1; Section 14-2 (b); Section 14-4; Section 14-5; adopted on August 10, 1993.

(ii) Other material. None.

[FR Doc. 96-19143 Filed 7-26-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[W167-01-7276a; FRL-5539-1]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: This action approves a State Implementation Plan (SIP) revision for the State of Wisconsin which was submitted pursuant to the EPA general conformity rules set forth at 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. Section 51.851(a) of the general conformity rules requires each State to submit to EPA a revision to its applicable SIP which contains criteria and procedures for assessing conformity of Federal actions to applicable SIPs. The general conformity rules, except for the 40 CFR 51.851(a) language requiring State submission of a SIP revision, are repeated at 40 CFR part 93, subpart B. Wisconsin's SIP revision incorporates verbatim the criteria and procedures set forth at 40 CFR part 93, subpart B. This general conformity SIP revision will enable the State of Wisconsin to implement and enforce the Federal general conformity requirements in the nonattainment and maintenance areas at the State and local level.

This approval is limited only to the general conformity SIP revision submitted pursuant to 40 CFR part 51, subpart W. SIP revisions submitted under 40 CFR part 51, subpart T, relating to conformity of Federal transportation actions funded or approved under Title 23 U.S.C. or the Federal Transit Act, will be addressed in a separate document. This action provides the rationale for the proposed approval and other information.

DATES: This "direct final" rule is effective September 27, 1996 unless EPA receives adverse or critical comments by August 28, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the SIP revision, public comments and EPA's responses are available for inspection at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Michael Leslie at (312) 353-6680 before visiting the Region 5 Office.)

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260-7548.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353-6680.

SUPPLEMENTARY INFORMATION:

I. Background

Section 176(c) of the Clean Air Act (Act), 42 U.S.C. 7506(c), provides that no Federal department, agency, or instrumentality shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to a SIP that has been approved or promulgated pursuant to the Act. Conformity is defined in section 176(c) of the Act as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards (NAAQS) and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

Section 176(c)(4)(A) of the Act requires EPA to promulgate criteria and procedures for determining conformity of all Federal actions to applicable SIPs. Criteria and procedures for determining conformity of Federal actions related to transportation projects funded or approved under Title 23 U.S.C. or the Federal Transit Act are set forth at 40 CFR part 51, subpart T. The criteria and procedures for determining conformity of other Federal actions, the "general

conformity" rules, were published in the November 30, 1993, Federal Register and codified at 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The general conformity rules require the States and local air quality agencies (where applicable) to adopt and submit a general conformity SIP revision to the EPA not later than November 30, 1994.

II. Evaluation of the State's Submittal

Pursuant to the requirements under section 176(c)(4)(C) of the Act the Wisconsin Department of Natural Resources (WDNR) submitted a supplement to its November 30, 1994 general conformity SIP revision to the EPA on October 18, 1995. In its submittal, the State provided ch. NR 489, Wis. Adm. Code which adopts the EPA general conformity rule (40 CFR part 93, subpart B) verbatim. For the time period between the original submittal and the supplemental submittal, the State of Wisconsin was required to comply with 40 CFR part 93, subpart B.

General conformity is required for all areas which are designated nonattainment or maintenance for any NAAQS criteria pollutant. The State of Wisconsin currently has 11 counties designated ozone nonattainment: Door, Keewaunee, Manitowoc, Sheboygan, Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington, and Waukesha. The cities of Green Bay, Madison, and Milwaukee are sulfur dioxide (SO₂) maintenance areas. Four other areas: Rhinelander, Rib Mountain, Rothchild, and Weston are SO₂ nonattainment areas.

The WDNR held a public hearing on the general conformity submittal on March 29, 1995. No substantive comments were made during the public comment period and therefore, no modifications were made to the final adopted rule.

III. EPA Criteria on Submittal

The State's SIP revision must contain criteria and procedures that are no less stringent than the Federal rule. The revision incorporated the provisions of the following sections of 40 CFR part 93, subpart B in essentially verbatim form: Sections 93.150, 93.152, 93.153, 93.154, 93.155, 93.156, 93.157, 93.158, 93.159, 93.160. These sections represent the Federal rule in total. Therefore the ch. NR 489, Wis. Adm. Code meets the above requirement.

IV. EPA Action

The EPA is approving the general conformity SIP revision for the State of