

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[TN 190-9930a; TN 196-9931a; FRL-6433-4]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee State Implementation Plan**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: On March 17, 1997, and May 8, 1997, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted revisions to the Tennessee State Implementation Plan (SIP). The revisions pertain to Sulfur Dioxide Emission Regulations for the New Johnsonville and Copper Basin Additional Control Areas. EPA is granting final approval to these revisions.

DATES: This direct final rule is effective November 12, 1999 without further notice, unless EPA receives adverse comment by October 13, 1999. If adverse comment is received, EPA 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: Written comments should be provided to Scott Martin, Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104.

Copies of the 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.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104.

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

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-3104. The telephone number is (404)-562-9036.

SUPPLEMENTARY INFORMATION:

On March 17, 1997, and May 8, 1997, the TDEC submitted revisions to the Tennessee SIP incorporating revisions to Chapter 1200-3-19 Emission Standards and Monitoring Requirements for Particulate and Sulfur Dioxide Nonattainment. A public hearing for these revisions was held on January 16, 1997, and the revisions became State effective on November 30, 1996, and April 16, 1997. The revisions are described below:

Chapter 1200-3-19-.19 Sulfur Dioxide Regulations for the Copper Basin Additional Control Area.

This rule is being revised to remove references to sources that have ceased operation and are being physically removed.

Chapter 1200-3-19-.14 Sulfur Dioxide Emission Regulations for the New Johnsonville Additional Control Area.

Paragraph (1)(b)2 is being amended by correcting a rule cite which reads 1200-3-14-.02(1)(e) to read 1200-3-14-02(1)(d). This corrects a typographical error.

Final Action

EPA is approving the aforementioned changes to the SIP because they are consistent with the Clean Air Act and EPA requirements.

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 November 12, 1999 without further notice unless the Agency receives adverse comments by October 13, 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 November 12, 1999 and no further action will be taken on the proposed rule.

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 Executive Order 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 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 any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 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.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 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 officials 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. Accordingly, the requirements of section 3(b) of Executive Order 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 annual 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 annual 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 November 12, 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 13, 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(c) is amended by revising the following State citations for Chapter 1200-3-19 to read as follows:

§ 52.2220 Identification of plan.

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(c) * * *

EPA Approved Tennessee Regulations

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CHAPTER 1200-3-19 EMISSION STANDARDS AND MONITORING REQUIREMENTS FOR PARTICULATE AND SULFUR DIOXIDE NONATTAINMENT AREAS

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State citation	Title/subject	Adoption date	EPA approval date	Comments
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Section 1200-3-19-.14	Sulfur Dioxide Emission Regulations for the New Johnsonville Nonattainment Area.	04/16/97	9/13/99	

State citation	Title/subject	Adoption date	EPA approval date	Comments
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Section 1200-3-19-.19	Sulfur Dioxide Regulations for the Copper Basin Nonattainment Area.	11/30/96	9/13/99	
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 192-0161; FRL-6434-2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District and Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval to revisions to the California State Implementation Plan (SIP) which concern the rescission of rules for the Mojave Desert Air Quality Management District (MDAQMD) and Tehama County Air Pollution Control District (TCAPCD). These rules concern emissions from orchard heaters and fuel burning equipment. The intended effect of this action is to bring the MDAQMD and TCAPCD SIPs up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This action is effective on October 13, 1999.

ADDRESSES: Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Rulemaking Office, (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392

Tehama County Air Pollution Control District, 1760 Walnut Street, Red Bluff, CA 96080

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being finalized for rescission from the MDAQMD portion of the California SIP are included in San Bernardino County Air Pollution Control District (SBCAPCD) Regulation VI, Orchard, Field or Citrus Grove Heaters, consisting of Rule 100, Definitions; Rule 101, Exceptions; Rule 102, Permits Required; Rule 103, Transfer; Rule 104, Standards for Granting Permits; Rule 109, Denial of Application; Rule 110, Appeals; Rule 120, Fees; Rule 130, Classification of Orchard Heaters; Rule 131, Class I Heaters Designated; Rule 132, Class II Heaters Designated; Rule 133, Identification of Heaters; Rule 134, Use of Incomplete Heaters Prohibited; Rule 135, Cleaning, Repairs; Rule 136, Authority to Classify Orchard Heaters; and Rule 137, Enforcement. These rules were previously submitted by the California Air Resources Board (CARB) to EPA on February 21, 1972 and approved on May 31, 1972 (37 FR 10856) for incorporation into the SIP. These rule rescissions were adopted by the MDAQMD on June 24, 1996 and submitted by CARB to EPA on March 3, 1997.

The rule being finalized for rescission from the TCAPCD portion of the California SIP is TCAPCD Rule 4.13, Fuel Burning Equipment. This rule was previously submitted by CARB to EPA on February 21, 1972 and approved on May 31, 1972 (37 FR 10856) for incorporation into the SIP. This rule rescission was adopted by the TCAPCD on September 10, 1985 and submitted by CARB to EPA on February 10, 1986.

II. Background

On May 31, 1972, the EPA approved SBCAPCD Regulation VI, Rules 100-104, 109, 110, 120, and 130-137, Orchard, Field or Citrus Grove Heaters, for incorporation into the SIP. The SBCAPCD rescinded Regulation VI from its rulebook prior to 1977. The rescission of SBCAPCD Regulation VI was disapproved by EPA on September 8, 1978 (43 FR 40018) as a SIP relaxation. On July 1, 1993, the SBCAPCD became the Mojave Desert Air Quality Management District (MDAQMD) by act of the California Legislature. In 1994, MDAQMD added portions of Riverside County, the Palo Verde Valley, and Blythe. The SBCAPCD rules remain in effect after July 1, 1993 until the MDAQMD rescinds or supersedes them. The rules being finalized for rescission by MDAQMD were originally adopted by SBCAPCD for the purpose of controlling particulate matter PM-10 emissions from orchard heaters. In the spring of 1995, the MDAQMD conducted a survey of affected industry to determine if Class I and Class II orchard heaters were still in use. The survey determined that no known facility within the MDAQMD uses this antiquated technology. Wind machines are currently used to protect crops from frost. Therefore, the rescission of SBCAPCD Regulation VI by MDAQMD does not relax the SIP control strategy.

On July 12, 1990, EPA approved TCAPCD Rule 4.9, Specific Contaminants, and Rule 4.14, Fuel Burning Equipment (Operational), for incorporation into the SIP. Rule 4.13, Fuel Burning Equipment, is submitted for rescission, since Rules 4.9 and 4.14 provide regulation of the same pollutant emissions. Rule 4.9 regulates SO_x and combustion contaminant (particulate matter) emissions by limiting the respective concentrations in the gas, instead of by absolute quantities of emissions. Rule 4.14 regulates NO_x emissions by limiting the concentration in the gas, instead of by absolute quantity of emissions. SIP-approved Rules 4.9 and 4.14 strengthen the SIP relative to Rule 4.13, except for large fuel burning equipment with a capacity in excess of about 500 million British Thermal Units per hour. The TCAPCD