

subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$6,500<sup>1</sup> for each such claim [The regulatory penalty provisions of this part effective on January 30, 1997 remain in effect for any violation of law occurring between January 30, 1997 and March 15, 2004.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than 6,500<sup>2</sup> for each such statement.

\* \* \* \* \*

[FR Doc. 04-3231 Filed 2-12-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FL-91-200323(a); FRL-7622-1]

#### Approval and Promulgation of Implementation Plans; Florida: Southeast Florida Area Maintenance Plan Update

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Florida Department of Environmental Protection (FDEP) on December 20, 2002. This SIP revision satisfies the requirement of the Clean Air Act (CAA) for the second 10-year update for the Southeast Florida area (Dade, Broward, and Palm Beach Counties) 1-hour ozone maintenance plan. For transportation purposes, EPA is also finalizing its adequacy determination of the new Motor Vehicle Emissions Budgets (MVEBs) for the year 2015. EPA has determined that the MVEBs for the year 2015 contained in this SIP revision are adequate for transportation conformity purposes.

**DATES:** This direct final rule is effective April 13, 2004 without further notice,

<sup>1</sup> As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, 110 Stat. 1321).

<sup>2</sup> As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, 110 Stat. 1321).

unless EPA receives adverse comment by March 15, 2004. 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:** Comments may be submitted by mail to: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in Part I.B.1. through 3 of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Heidi LeSane, Air, Pesticides & Toxics Management Division, Air Planning Branch, Regulatory Development Section, U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Mrs. LeSane's phone number is 404-562-9035. She can also be reached via electronic mail at [lesane.heidi@epa.gov](mailto:lesane.heidi@epa.gov) or Lynorae Benjamin, Air, Pesticides & Toxics Management Division, Air Planning Branch, Air Quality Modeling & Transportation Section, U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Ms. Benjamin's phone number is 404-562-9040. She can also be reached via electronic mail at [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. How Can I Get Copies of This Document and Other Related Information?*

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under FL-91. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning

Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment, at the State Air Agency, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

###### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking FL-91" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD-ROM you submit, and in any cover letter accompanying the disk or CD-ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to [lesane.heidi@epa.gov](mailto:lesane.heidi@epa.gov). Please include the text "Public comment on proposed rulemaking FL-91" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through [Regulations.gov](http://www.regulations.gov), EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulation.gov.* Your use of [Regulation.gov](http://www.regulations.gov) is an alternative method of submitting electronic comments to EPA. Go directly to [Regulations.gov](http://www.regulations.gov) at <http://www.regulations.gov>, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD-ROM.* You may submit comments on a disk or CD-ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Please include the text "Public comment on proposed rulemaking FL-91" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, 12th floor, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding Federal holidays.

#### C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## II. Background

The air quality maintenance plan is a requirement of the 1990 CAA for nonattainment areas that come into compliance with the national ambient air quality standard (NAAQS). The Southeast Florida area (Dade, Broward, and Palm Beach Counties) were not in compliance with the 1-hour ozone air quality standard until 1990, when air quality measurements showed compliance with the standard. The State subsequently requested that EPA redesignate these counties as attainment/maintenance for the 1-hour ozone standard. Included with this request was a 10-year air quality maintenance plan covering the years 1995 to 2005. This plan was developed in accordance with the appropriate guidelines. The EPA published approval of this plan on February 24, 1995, and it became effective on April 25, 1995 (60 FR 10325).

Subsequent revisions to this maintenance plan were made. The Florida Department of Environmental Protection (FDEP) revised the original plan to update emissions inventories reflecting more accurate emission estimates, to define specific MVEBs, to remove emissions reduction credits attributable to the motor vehicle inspection program (MVIP) (66 FR 40137), and to provide sub-area MVEBs for the three maintenance counties in Southeast Florida (63 FR 56568). The current plan was approved by EPA on August 2, 2001, and became effective on September 4, 2001 (66 FR 40137).

## III. Analysis of State's Submittal

On December 20, 2002, the FDEP submitted revisions to Florida SIP to provide a 10-year extension to the maintenance plan as required by section 175A(b) of the CAA as amended in 1990. The underlying strategy of the

maintenance plan is to maintain compliance with the 1-hour ozone standard by assuring that current and future emissions of volatile organic compounds (VOC) and nitrogen oxides

(NO<sub>x</sub>) remain at or below attainment year emission levels. The estimated emissions of ozone precursors (*i.e.*, VOC and NO<sub>x</sub>) for the three counties for the Southeast Florida area during the 1990

ozone season are provided in the following table. Projected VOC and NO<sub>x</sub> emissions for 2005 and 2015 are also provided.

VOLATILE ORGANIC COMPOUNDS  
[tons per day]

VOC	Category	1990 base year	2005	2015
Dade .....	Stationary Point .....	11.5	6.0	7.1
	Stationary Area .....	161.0	104.2	121.5
	On-Road Mobile .....	177.7	59.7	32.7
	Non-Road Mobile .....	49.6	38.4	30.3
	Biogenic .....	211.3	211.3	211.3
	Total .....	n/a .....	611	419.6
Safety Margin .....	Calculated as 1990 base-year minus projected year total.	n/a	191.4	208.1
Broward .....	Stationary Point .....	15.2	4.7	5.3
	Stationary Area .....	55.6	71.1	82.7
	On-Road Mobile .....	132.2	52.9	29.1
	Non-Road Mobile .....	36.6	25.9	18.8
	Biogenic .....	174.5	174.5	174.5
	Total .....	n/a .....	414.1	329.1
Safety Margin .....	Calculated as 1990 base-year minus projected year total.	n/a	85	103.7
Palm Beach .....	Stationary Point .....	1.3	2.0	2.3
	Stationary Area .....	84.1	77.7	89.3
	On-Road Mobile .....	99.1	39.6	22.8
	Non-Road Mobile .....	43.9	30.4	22.3
	Biogenic .....	399.6	399.6	399.6
	Total .....	.....	628	549.3
Safety Margin .....	Calculated as 1990 base-year minus projected year total.	n/a	78.7	91.7
Overall Total .....	n/a .....	1653.1	1297.9	1249.5
Total Safety Margin .....	n/a .....	n/a	355.1	403.5

NITROGEN OXIDE  
[tons per day]

NO <sub>x</sub>	Category	1990 base year	2005	2015
Dade .....	Stationary Point .....	41.3	40.9	50.7
	Stationary Area .....	12.5	8.7	9.6
	On-Road Mobile .....	157.3	102.0	42.1
	Non-Road Mobile .....	57.3	67.4	56.2
	Biogenic .....	3.0	3.0	3.0
	Total .....	n/a .....	271.4	222.0
Safety Margin .....	Calculated as 1990 base-year minus projected year total.	n/a	49.4	109.8
Broward .....	Stationary Point .....	109.2	51.5	62.5
	Stationary Area .....	6.9	8.3	9.0
	On-Road Mobile .....	117.0	90.4	37.4
	Non-Road Mobile .....	41.9	49.6	39.9
	Biogenic .....	1.8	1.8	1.8

NITROGEN OXIDE—Continued  
[tons per day]

NO <sub>x</sub>	Category	1990 base year	2005	2015
Total .....	n/a .....	276.8	201.6	150.6
Safety Margin .....	Calculated as 1990 base-year minus projected year total.	n/a	75.2	126.2
Palm Beach .....	Stationary Point .....	37.8	28.1	33.6
	Stationary Area .....	4.2	5.6	6.0
	On-Road Mobile .....	87.7	67.7	29.3
	Non-Road Mobile .....	41.7	49.3	39.4
	Biogenic .....	2.4	2.4	2.4
Total .....	n/a .....	173.8	153.1	110.7
Safety Margin .....	Calculated as 1990 base-year minus projected year total.	n/a	20.7	63.1
Overall Total .....	n/a .....	722.0	576.7	422.8
Total Safety Margin .....	n/a .....	n/a	145.3	299.1

This SIP revision satisfies the requirement of the CAA for the second 10-year update for the Southeast Florida area 1-hour ozone maintenance plan. Changes to the current maintenance plan include revisions to the emissions inventory for both on-road and non-road mobile sources, reflecting improved methodologies contained in the MOBILE6 and NONROAD emission models. New emissions data for both the base year (attainment year) and the projected years (2005 and 2015) are calculated.

#### IV. Finalization of MVEBs Adequacy Determination for Transportation Conformity Purposes

The second 10-year update for the Southeast Florida area 1-hour ozone maintenance plan also contains updated MVEBs in support of the transportation conformity process. These updated MVEBs are defined for volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) for each county in the Southeast Florida maintenance area. The updated budgets for 2005 replace the previous MVEBs contained in the first maintenance plan, which were based on an older emissions estimate using MOBILE5 emission factors for on-road motor vehicles. Additionally, this maintenance plan update provides new MVEBs for the year 2015.

The availability of the SIP with MVEBs for 2015 was placed on EPA's adequacy Web page on January 7, 2003. No request for this SIP submittal or adverse comments were received by the end of the public comment period on February 7, 2003. In this action, EPA finds the 2015 MVEBs adequate for

transportation conformity, and is approving the MVEBs for 2005 and 2015. Note, since the 2005 MVEBs are replacing existing 2005 MVEBs, these budgets are not subject to EPA's adequacy process. This is because EPA generally will not review the adequacy of a budget from a submitted SIP that revises an existing approved SIP with budgets for the same year and CAA requirement (68 FR 38974).

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*e.g.* reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. The MVEBs serve as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEBs in the SIP and revise the MVEBs.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (*e.g.* be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air

quality standards. If a transportation plan does not "conform," most projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEBs contained therein are "adequate" for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs are adequate for transportation conformity purposes, that MVEB can be used by the State and Federal agencies in determining whether proposed transportation projects "conform" to the State implementation plan as required by section 176(c) of the Clean Air Act. EPA's substantive criteria for determining "adequacy" of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining "adequacy" consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs is set out in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision". This guidance is incorporated into EPA's June 30, 2003, EPA proposed rulemaking entitled "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (68 FR

38974). EPA follows this guidance in making its adequacy determination.

Specific emissions budget is defined for VOC and NO<sub>x</sub> for the Southeast Florida area in the Florida submittal. Pursuant to 40 CFR 93.124(d), Southeast Florida has elected to allocate subarea

budgets for each of the counties for the purpose of transportation conformity. The specific MVEBs for Dade County in 2005 and 2015 are 74.6 tpd for VOC and 127.5 tpd for NO<sub>x</sub>. Broward County's MVEB for 2005 and 2015 are 66.1 tpd for VOC and 113 tpd for NO<sub>x</sub>. Palm

Beach County's MVEB for 2005 and 2015 are 49.5 tpd for VOC and 84.6 tpd for NO<sub>x</sub>. With this allocation, each county must demonstrate conformity to the county-specific subarea budgets. The chart below provides a summary of the county-specific subarea budgets.

**MVEB**  
[Tons per day]

County	Pollutant	2005	2015
Dade	VOC	74.6	74.6
	NO <sub>x</sub>	127.5	127.5
Broward	VOC	66.1	66.1
	NO <sub>x</sub>	113.0	113.0
Palm Beach	VOC	49.5	49.5
	NO <sub>x</sub>	84.6	84.6
	VOC	190.2	190.2
Total	NO <sub>x</sub>	325.1	325.1

The MVEBs are defined for each Southeast Florida county, for 2005 and 2015, in the State's submittal. The values, for both years, are equal to the 2005 on-road mobile source projected level of emissions plus a buffer of 25 percent. This buffer, which is an allocation from the safety margin, accounts for uncertainty in the projections and is available because of significant reductions of VOC and NO<sub>x</sub> that have occurred, and are projected to

occur, primarily from mobile sources. The MVEBs are constrained in each of the budget years to assure that the total emissions (*i.e.*, all source categories) do not exceed the 1990 attainment year emissions. In no case are the projected total emissions from mobile sources for any year, greater than the attainment year emissions totals for either VOC or NO<sub>x</sub>.

Under 40 CFR 93.101, the term *safety margin* is the difference between the

attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the air quality health standard. The safety margin credit can be allocated to the transportation sector, however the total emission level must stay below the attainment level.

**SAFETY MARGINS**  
[Tons per day]

VOC	2005	2015	NO <sub>x</sub>	2005	2015
<b>Dade</b>					
Safety Margin	191.4	208.1	Safety Margin	49.4	109.8
Allocation to MVEB	14.9	41.9	Allocation to MVEB	25.5	85.4
Remaining Safety Margin after partial allocation	176.5	166.2	Remaining Safety Margin after partial allocation	23.9	24.4
<b>Broward</b>					
Safety Margin	85	103.7	Safety Margin	75.2	126.2
Allocation to MVEB	13.2	37	Allocation to MVEB	22.6	75.6
Remaining Safety Margin after partial allocation	71.8	66.7	Remaining Safety Margin after partial allocation	52.6	50.6
<b>Palm Beach</b>					
Safety Margin	78.6	91.6	Safety Margin	20.7	63.1
Allocation to MVEB	9.9	26.7	Allocation to MVEB	16.9	55.3
Remaining Safety Margin after partial allocation	68.7	64.9	Remaining Safety Margin after partial allocation	3.8	7.8

**V. Final Action**

EPA is approving the second 10-year update for the Southeast Florida area 1-hour ozone maintenance plan. In this action, EPA also finds the 2015 MVEBs adequate for transportation conformity purposes and is approving the MVEBs for 2005 and 2015. EPA's adequacy determination for the 2015 MVEBs is

based on EPA's finding that the substantive criteria for determining adequacy of a MVEB, under 40 CFR 93.118(e)(4), have been met. The MVEBs will be available for use upon the effective date of this action. The MVEBs, based on the on-road mobile sources, are to be used by the local metropolitan planning organizations and transportation authorities to assure that

transportation plans, programs, and projects are consistent with, and conform to, the long term maintenance of acceptable air quality in the Southeast Florida area.

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 April 13, 2004 without further notice unless the Agency receives adverse comments by March 15, 2004.

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 April 13, 2004 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### VI. 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 (Pub. L. 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. 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 April 13, 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, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 26, 2004.

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 (e), is amended by revising the entry for "Revision to Maintenance Plan for Southeast Florida Area" 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 Plan for Southeast Florida Area.	December 20, 2002 .....	February 13, 2004 .....	[Insert citation of publication]	10 year update.
*	*	*	*	*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[MD151-3107; FRL-7623-4]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; The 2005 ROP Plan for the Baltimore Severe 1-Hour Ozone Nonattainment Area: Revisions to the Plan's Emissions Inventories and Motor Vehicle Emissions Budgets to Reflect MOBILE6**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions amend the Baltimore severe 1-hour ozone nonattainment area's (the Baltimore area's) rate-of-progress (ROP) plan for 2005. These revisions update the plan's emission inventories and motor vehicle emissions budgets (MVEBs) to reflect the use of MOBILE6 while continuing to demonstrate that the ROP requirement for 2005 will be met. The revisions also amend the contingency measures associated with the 2005 ROP plan. These revisions are being approved in accordance with the Clean Air Act (the Act).

**EFFECTIVE DATE:** February 13, 2004.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection

Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Martin Kotsch, (215) 814-3335, or by e-mail at *Kotsch.Martin@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On December 30, 2003 (68 FR 75191), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of revisions to the Baltimore area's ROP plan for 2005. The revisions update the plan's mobile emissions inventories and 2005 MVEBs to reflect the use of MOBILE6, an updated model for calculating mobile emissions of ozone precursors. The NPR also proposed approval of revisions which amend the contingency measures associated with the Baltimore area's 2005 ROP plan. These SIP revisions were proposed under a procedure called parallel processing, whereby EPA proposes a rulemaking action concurrently with a state's procedures for amending its SIP. The State's proposed SIP revisions were submitted to EPA on November 3, 2003, by the Maryland Department of the Environment (MDE). On December 30, 2003 (68 FR 75191), EPA proposed approval of Maryland's November 3, 2003, submittal. No comments were received during the public comment period on EPA's December 30, 2003, proposal. The MDE formally submitted the final SIP revisions on December 23, 2003. That final submittal had no substantive changes from the proposed

version submitted on November 3, 2003. A detailed description of Maryland's submittal and EPA's rationale for its proposed approval were presented in the December 30, 2003, NPR and will not be restated in their entirety here.

**II. Summary of SIP Revisions**

Maryland's December 23, 2003, SIP revisions consist of revised 1990 and 2005 motor vehicle emissions inventories and 2005 MVEBs calculated using the MOBILE6 motor vehicle emissions model. Consistent with EPA's "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity," MDE has demonstrated that the new levels of motor vehicle emissions calculated using MOBILE6 continue to demonstrate the required ROP for the Baltimore area by 2005. In addition to the revised motor vehicle emissions, MDE reallocated some of the contingency measures established in prior SIP revisions to the control measures portion of the 2005 ROP plan. EPA guidance allows States an additional year to adopt new contingency measures to replace those reallocated to the control measures portion of the plan. The State of Maryland's December 23, 2003, SIP revision submittal includes an enforceable commitment to replace those contingency measures reallocated to the control measures portion of the plan and to submit an updated plan reflecting these additional contingency measures by October 31, 2004.

The revised mobile inventories and MVEBs being approved for the Baltimore area's 2005 ROP Plan are shown in tons per day (tpd) in Tables 1 and 2, respectively.

TABLE 1.—MOTOR VEHICLE EMISSIONS INVENTORIES IN THE BALTIMORE AREA'S 2005 ROP PLAN

Nonattainment area	1990	2005		
	VOC (tpd)	NO <sub>x</sub> (tpd)	VOC (tpd)	NO <sub>x</sub> (tpd)
Baltimore .....	165.14	228.21	55.3	146.9