

Dated: August 21, 1998.

**Paul J. Pluta,**

*Rear Admiral, U.S. Coast Guard Commander,  
Eighth Coast Guard District.*

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BILLING CODE 4910-15-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[AL-047-1-9825a; FRL 6156-9]

#### Approval and Promulgation of Implementation Plans: Revisions to Several Chapters of the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Alabama Department of Environmental Management's (ADEM) Administrative Code submitted on March 5, 1998, by the State of Alabama. They made these revisions to comply with the regulations set forth in the Clean Air Act (CAA). Included are revisions to the definition of volatile organic compounds (VOC), the capture efficiency regulations in Appendix F, and the requirements for new source review.

**DATES:** This action is effective November 13, 1998, unless adverse or critical comments are received by October 14, 1998. If EPA receives such comments, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below. Copies of the material submitted by ADEM may be examined during normal business hours at the following 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,  
Atlanta Federal Center, Region 4 Air  
Planning Branch, Atlanta Federal  
Center, 61 Forsyth Street, SW,  
Atlanta, Georgia 30303-3104.

Alabama Department of Environmental  
Management, 1751 Congressman W.  
L. Dickinson Drive, Montgomery,  
Alabama 36109.

#### FOR FURTHER INFORMATION CONTACT:

Kimberly Bingham, Regulatory Planning  
Section, Air Planning Branch, Air,  
Pesticides and Toxics Management  
Division, Region 4, Environmental  
Protection Agency, Atlanta Federal  
Center, 61 Forsyth Street, SW, Atlanta,  
Georgia 30303. The telephone number is  
(404) 562-9038.

#### SUPPLEMENTARY INFORMATION:

##### I. Analysis of State Submittal

###### *Chapter 335-3-1—General Provisions*

The Alabama Department of Environmental Management (ADEM) submitted the revisions to this chapter to add to the list of chemicals excluded from the definition of VOC on the basis that these chemicals have been determined to have negligible photochemical reactivity. The chemicals listed below have a potential for use as refrigerants, aerosol propellants, fire extinguishants, blowing agents and solvents.

- (HFC-32) Difluoromethane;
- (HFC-161) Ethylfluoride;
- (HFC-236fa) 1,1,1,3,3,3-Hexafluoropropane;
- (HFC-245ca) 1,1,2,2,3-Pentafluoropropane;
- (HFC-245ea) 1,1,2,3,3-Pentafluoropropane;
- (HFC-245eb) 1,1,1,2,3-Pentafluoropropane;
- (HFC-245fa) 1,1,1,3,3-Pentafluoropropane;
- (HFC-236ea) 1,1,1,2,3,3-Hexafluoropropane;
- (HFC-365mfc) 1,1,1,3,3-Pentafluorobutane;
- (HCFC-31) Chlorofluoromethane;
- (HCFC-123a) 1,2-Dichloro-1,1,2-trifluoroethane;
- (HCFC-151a) 1-Chloro-1-fluoroethane;
- (C4F9OCH3) 1,1,1,2,2,3,3,4,4-Nonafluoro-4-methoxybutane;
- ((CF3) 2CFCF2OCH3) 2-(Difluoromethoxymethyl)-1,1,1,2,3,3,3-Heptafluoropropane;
- (C4F9OC2H5) 1-Ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane; and
- ((CF3) 2CFCF2OC2H5) 2-(Ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane.

Periodically EPA updates the list of exempt chemicals after extensive research has been conducted on the specified chemicals. For a more detailed rationale on why these chemicals were found to have negligible photochemical reactivity see the document published in the **Federal Register** on August 25, 1997, (62 FR 44900).

#### *Chapter 335-3-12—Continuous Monitoring Requirements for Existing Sources*

Rule 335-3-12-.02(1)(b) deletes the phrase "of this Chapter" and replaces it with "of Chapter 335-3-10." ADEM submitted this revision to clarify and make the appropriate reference to Chapter 335-3-10.

#### *Chapter 335-3-14—Air Permits*

On August 30, 1993, EPA granted Alabama a waiver exempting new source review offsets for NO<sub>x</sub> in the Birmingham ozone nonattainment area under section 182(f) of the CAA. EPA determined at the time that the area had clean air data that supported the exemption. On August 18, 1995, violations of the ozone national ambient air quality standard were detected. Subsequent exceedances of the ozone NAAQS propelled EPA to rescind the NO<sub>x</sub> waiver effective September 19, 1997. As a result, ADEM revised this chapter to include NO<sub>x</sub> offsets for major new or modified stationary sources of NO<sub>x</sub>. In addition, ADEM submitted minor wording changes. All of the revisions that are being approved in this action are listed below:

- Rule 335-3-14-.01(7)(c) will include a reference to rule "335-3-14-.06";
- Rule 335-3-14-.05(2)(c)2 now reads as follows, "Furthermore, a major facility that is major for volatile organic compounds and/or nitrogen oxides also shall be considered major for the pollutant ozone"; and
- Rule 335-3-14-.05(3)(c) changes the paragraph number (6) to (7).

#### *Appendix F—Capture Efficiency Procedures*

ADEM submitted numerous revisions to Appendix F. ADEM amended the capture efficiency procedures to adopt EPA's current rule.

#### II. Final Action

EPA is approving the aforementioned changes to the SIP. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment 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 relevant adverse comments be filed. This rule will be effective November 13, 1998 without further notice unless the Agency receives relevant adverse comments by October 14, 1998.

If the EPA receives such comments, then EPA will publish a timely

withdrawal of the direct final rule and inform 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. Only 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 13, 1998, and no further action will be taken on the proposed rule.

### III. Administrative Requirements

#### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled Regulatory Planning and Review.

#### B. Executive Order 13045

This final rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an "economically significant" action under Executive Order 12866.

#### C. Regulatory Flexibility

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 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 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 CAA, preparation of 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. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### D. 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 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 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.

#### E. 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).

#### F. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1998. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: August 24, 1998.

**A. Stan Meiburg,**

*Acting Regional Administrator, Region 4.*

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart B—Alabama

2. Section 52.50 is amended by adding paragraph (c)(72) read as follows:

##### § 52.50 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(72) The State of Alabama submitted revisions to the ADEM Administrative Code for the Air Pollution Control Program on March 5, 1998. These revisions involve changes to Chapters 335-3-1, 335-3-12, 335-3-14 and Appendix F.

(i) Incorporation by reference. Rules 335-3-1-.02(gggg), 335-3-12-.02(1)(b), 335-3-14-.01(7)(c), 335-3-14-.05(2)(c)2, 335-3-14-.05(3)(c), and Appendix F were adopted on February 17, 1998.

(ii) Other material. None.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AD34

#### Endangered and Threatened Wildlife and Plants; Final Rule To Determine Endangered or Threatened Status for Six Plants From the Mountains of Southern California

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service (Service) determines endangered status