

### C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant 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 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 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 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) and 7410(k)(3).

### 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 General Accounting Office

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 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 September 22, 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, Ozone, Reporting and recordkeeping requirements.

Dated: June 19, 1998.

### 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 S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(89) to read as follows:

### § 52.920 Identification of plan.

\* \* \* \* \*

(c)

(89) Revisions to the Kentucky State Implementation Plan submitted by the Natural Resources and Environmental Protection Cabinet on December 19, 1997. The regulations being revised are 401 KAR 50:012 General application and 401 KAR 51:010 Attainment status designations.

(i) Incorporation by reference. Division of Air Quality regulations 401 KAR 50:012 General application and 401 KAR 51:010 Attainment status designations are effective November 12, 1997.

(ii) Other material. None.

[FR Doc. 98-19841 Filed 7-23-98; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[KY-93-9821a; FRL-6125-8]

### Approval and Promulgation of Implementation Plans; Commonwealth of Kentucky

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a revision to the Commonwealth of Kentucky's State Implementation Plan (SIP) for the Prevention of Significant Deterioration (PSD) of air quality. The revision was submitted to EPA on March 21, 1997, by the Commonwealth of Kentucky through the Kentucky Natural Resources and Environmental Protection Cabinet. The PSD rule is revised to incorporate the Federal PSD rule revisions. The changes to the rules incorporate revisions to the "Guidelines on Air Quality Models" document and revise the allowable increase of particulate matter from increments for suspended particulate (TSP) to increments for particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM10). The revision also includes the Federal exclusion for pollution control projects undertaken at electric utility units.

**DATES:** This final rule is effective September 22, 1998 unless adverse or critical comments are received by August 24, 1998. 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 on this action should be addressed to Karla L.

McCorkle at the Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. 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 file KY-93-9821. 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 Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

**FOR FURTHER INFORMATION CONTACT:** Karla L. McCorkle at 404/562-9043.

**SUPPLEMENTARY INFORMATION:** On March 21, 1997, the Commonwealth of Kentucky through the Kentucky Natural Resources and Environmental Protection Cabinet submitted a revision to the Prevention of Significant Deterioration (PSD) rule of the Kentucky SIP. The SIP revision proposes to incorporate the Federal PSD rule revisions. The changes to the Federal rule include a revision to the "Guideline on Air Quality Models" document in the PSD rules, as publicized in the **Federal Register** July 20, 1993 and August 9, 1995, revision to the PSD allowable increases to PM10 increments, as publicized in the **Federal Register** June 3, 1993, and the exclusion for pollution control projects undertaken at electric utility units as publicized in the **Federal Register** July 21, 1992. The specific rule revisions from the March 21, 1997, submittal that are being approved in this action are discussed below.

**Rule 401 KAR 51:017 Sections 1-20**—Throughout these sections, the term "administrative" was added before the word "regulation" for clarity.

**Rule 401 KAR 51:017 Section 1**—Definitions consistent with Federal definitions are added for "clean coal technology," "clean coal technology demonstration project," "electric utility steam generating unit," "pollution control project," "reactivation of a very clean coal-fired electric utility steam generating unit," "repowering,"

"representative actual annual emissions," and "temporary clean coal technology demonstration project." The following definitions have been amended to be consistent with the Federal rules: "actual emissions," "complete," "major modification," and "minor source baseline date."

**Rule 401 KAR 51:017 Sections 6,8,21**—Various sentence and word structure changes were made to add clarity.

**Rule 401 KAR 51:017 Section 6(3)**—This subsection was deleted because it is obsolete.

**Rule 401 KAR 51:017 Sections 1,2,8,9,11,12,18,21**—In these sections, references are amended and added for clarity.

**Rule 401 KAR 51:017 Sections 22,23,24,25**—These sections are updated to reflect changes in PSD increments from TSP to PM10.

**Rule 401 KAR 51:017 Section 8(10)**—This subsection is added to provide an exemption to the requirements of Section 10(2) for major stationary sources of PM10 that are constructing or modifying if a completed permit application was received before the effective date of the maximum allowable increases for PM10. The exemption allows the current maximum allowable increases for TSP as an alternative to that for PM10.

**Rule 401 KAR 51:017 Section 8(11)**—This subsection is added to provide an exemption to the requirements of Section 10(2). This utility exemption of the maximum allowable increases for nitrogen oxides applies to the construction or modification of a stationary source if a completed permit application was received before the effective date.

**Rule 401 KAR 51:017 Section 11(1)**—This section is updated to adopt by reference the new EPA "Guideline on Air Quality Models."

#### **Final Action**

EPA is approving the aforementioned changes to the SIP. The Agency has reviewed this request for revision of the Federally approved SIP for conformance with the provisions of the CAA amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

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 September 22, 1998 without further notice unless the Agency receives relevant adverse comments by August 24, 1998.

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 on the proposed rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 22, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for 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.

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's audit privilege and penalty immunity law KRS 224.01-040 or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

#### **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 Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant 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 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 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 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) and 7410(k)(3).

#### C. 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.

#### D. Submission to Congress and the General Accounting Office

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).

#### E. 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 September 22, 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, Ozone, Reporting and recordkeeping requirements.

Dated: June 19, 1998.

**A. Stanley Meiburg**,  
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 S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(87) to read as follows:

#### § 52.920 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(87) Revisions to the Kentucky State Implementation Plan submitted by the Natural Resources and Environmental Protection Cabinet on March 21, 1997. The regulation being revised is 401 KAR 51:017 Prevention of significant deterioration of air quality.

(i) Incorporation by reference. Division of Air Quality regulations 401 KAR 51:017 Prevention of significant deterioration of air quality effective March 12, 1997.

(ii) Other material. None.

[FR Doc. 98-19836 Filed 7-23-98; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[OR 48-1-7263a; FRL-6127-4]

#### Approval and Promulgation of Implementation Plans: Oregon

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** Environmental Protection Agency (EPA) approves revisions to the Oregon State Implementation Plan (SIP). EPA is approving revisions to Oregon Administrative Rules (OAR) Chapter 340, Division 25 submitted to EPA on August 31, 1995, and October 8, 1996, to satisfy the requirements of section 110 of the Clean Air Act (CAA) and 40 CFR part 51.

**DATES:** This direct final rule is effective on September 22, 1998, without further notice, unless EPA receives relevant adverse comment by August 24, 1998. 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 addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ-107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.