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. Disclaimer Language Approving SIP Revisions in Audit Law States*

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.

*G. 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.

*H. 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).

*I. 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 February 8, 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: November 13, 1998.

**Michael V. Peyton,**

*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)(92) to read as follows:

**§ 52.920 Identification of plan.**

* * * * *

(c) * * *

(92) Revisions to the Kentucky State Implementation Plan submitted by the Natural Resources and Environmental Protection Cabinet on February 3, 1998. The regulations being revised are 401 KAR 59:174 Stage II control at gasoline dispensing facilities, 401 KAR 63:005 Open burning, and 401 KAR 65:010 Vehicle emission control programs rules. Adoption of the Kentucky 15 Percent Plan, the I/M program and the 1990 baseline emissions inventory.

(i) Incorporation by reference.

(A) Division of Air Quality regulations 401 KAR 59:174 Stage II control at gasoline dispensing facilities, 401 KAR 63:005 Open burning, and 401 KAR 65:010 Vehicle emission control programs rules are effective January 12, 1998.

(B) Tables showing the Cincinnati 1990 Baseline Emissions Inventory, 1990 Adjusted Baseline Inventory, and 1990 Rate of Progress Inventory, Summary of Biogenic Emissions and Anticipated Emissions after Plan Implementation which are effective September 11, 1998.

(ii) Other material. None.

[FR Doc. 98–32423 Filed 12–7–98; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[Region VII Docket No. MO–057–1057a; FRL–6197–1]**

## Approval and Promulgation of Implementation Plans; State of Missouri

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing a revision to the State Implementation Plan (SIP) which incorporates new Missouri rule 10 CSR 10–6.330 entitled ''Restriction of Emissions from Batch-Type Charcoal Kilns.'' Missouri's rule requires a

substantial reduction of emissions of volatile organic compounds (VOC) (some of which are toxic), particulate matter ($PM_{10}$), and carbon monoxide (CO) from charcoal-producing ovens commonly called charcoal kilns. The implementation of this rule will result in a significant improvement in air quality, especially in central and southern Missouri where most of these facilities are located.

**DATES:** This direct final rule is effective on February 8, 1999 without further notice, unless the EPA receives adverse comment by January 7, 1999. If adverse comment is received, the 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:** All comments should be addressed to: Joshua A. Tapp at Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the state submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Joshua A. Tapp of the Environmental Protection Agency at (913) 551–7606.

**SUPPLEMENTARY INFORMATION:**

## Background

*What is a SIP?*

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. These ambient standards are established under section 109 of the CAA and they currently address six criteria pollutants. These pollutants are: CO, nitrogen dioxide, ozone, lead, $PM_{10}$, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Currently, each state has a Federally approved SIP which protects air quality, primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

*What is the Federal approval process for a SIP?*

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state may submit the adopted provisions to the EPA and request that these provisions be included in the Federally enforceable SIP. The EPA must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If adverse comments are received, they must be addressed prior to a final action by the EPA.

All state regulations and supporting information approved by the EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which were approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that the EPA has approved a given state regulation with a specific effective date.

*What does Federal approval of a state regulation mean to me?*

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state function. However, once the regulation is Federally approved, the EPA and the public may take enforcement action against violators of these regulations if the state fails to do so.

*What is being acted on in this document?*

Missouri rule 10 CSR 10–6.330, entitled ''Restriction of Emissions from Batch-Type Charcoal Kilns,'' applies throughout the state of Missouri to batch-type charcoal kilns. The majority of these facilities are located in south-central Missouri near the lumber mills which are the primary provider of the waste wood materials commonly used to produce charcoal.

Until recently, batch-type charcoal kilns have operated under exemptions from Missouri visibility regulations (10 CSR 10–3.080) and $PM_{10}$ regulations (10 CSR 10–3.050). In 1991 and 1996, the EPA and the Missouri Department of Natural Resources (MDNR) conducted ambient air quality studies in response to citizen complaints regarding air quality. Data from these studies have shown that this industry has the potential to cause or contribute to violations of the NAAQS for $PM_{10}$.

In response to these data, MDNR and the charcoal industry worked together to develop a plan which ensures maintenance of the NAAQS for $PM_{10}$, but which also concurrently addresses emissions of VOC and CO.

This effort required an evaluation of best performing existing control technologies, new control technologies, and the best available work practices. Based on this review, MDNR determined that afterburners were an acceptable control technology which were capable of reducing emissions of $PM_{10}$ by 98 percent, and CO and VOCs by 99 percent.

MDNR worked with the industry to convert this plan into an enforceable regulation which embodied these requirements in the form of emission limits. Monitoring, maintenance and operating work practices, recordkeeping, and reporting requirements were also incorporated into the rule to improve emission reductions and compliance demonstrations. MDNR held a public hearing on this rule on February 3, 1998. No negative comments were received. The Missouri Air Conservation Commission adopted the rule on March 26, 1998, and it became effective on July 30, 1998.

*What action is being taken by the EPA?*

MDNR submitted this rule for incorporation into the Federally approved SIP on July 30, 1998.

The EPA has reviewed this submittal against all applicable statutory, regulatory, and policy guidelines, and has determined that this rule is consistent with all applicable requirements and will result in a substantial improvement in air quality.

Because the industry participated in the development of this rule, and because there was broad support for this rule during that state administrative and public processes, the EPA views its approval of this rule as non-controversial.

The EPA is, therefore, taking direct final action to approve this rule as a revision to the Missouri SIP.

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, the 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 February 8, 1999 without further notice unless the Agency receives adverse comments by January 7, 1999.

If the EPA receives such comments, then the 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 February 8, 1999 and no further action will be taken on the proposed rule.

**Administrative Requirements**

*A. Executive Order (E.O.) 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

*B. E.O. 12875*

Under E.O. 12875, the 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 the EPA consults with those governments. If the EPA complies by consulting, E.O. 12875 requires the EPA to provide to OMB a description of the extent of the 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, E.O. 12875 requires the 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. See Section F, ''Unfunded Mandates,'' listed below. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

*C. E.O. 13084*

Under E.O. 13084, the 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 the EPA consults with those governments. If the EPA complies by consulting, E.O. 13084 requires the EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of the 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, E.O. 13084 requires the 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. No tribes operated or own any Missouri charcoal kilns, nor are any tribal lands located near these facilities. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

*D. E.O. 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 the 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 that would have a disproportionate effect on children.

*E. Regulatory Flexibility Act (RFA)*

The 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 the 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, the 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, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The 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 preexisting 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. The 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 U.S. Comptroller General 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 24, 1998.

**Dennis Grams,**

*P.E., Regional Administrator, Region VII.*

Part 52, chapter I, title 40 of the 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 AA—Missouri

2. Section 52.1320 is amended by adding new paragraph (c)(111) to read as follows:

**52.1320 Identification of plan.**

* * * * *

(c) * * *

(111) A revision submitted by the Governor's designee on July 30, 1998, that reduces air emissions from batch-type charcoal kilns throughout the state of Missouri.

(i) Incorporation by reference:

(A) New Missouri rule 10 CSR 10–6.330, Restriction of Emissions from Batch-Type Charcoal Kilns, effective July 30, 1998.

[FR Doc. 98–32419 Filed 12–7–98; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[RI–6987a; A–1–FRL–6192–7]**

## Approval and Promulgation of Air Quality Implementation Plans; Interim Final Determination of Correction of Deficiencies in 15 Percent Rate-of-Progress and Contingency Plans; Rhode Island

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving, by direct final rule, State Implementation Plan (SIP) revisions submitted by the State of Rhode Island to address ground level ozone air pollution in the State. The revisions consist of the State's 15 percent rate-of-progress (ROP) plan and contingency plan, and minor revisions to the Rhode Island 1990 emission inventory of ozone precursors. The intended effect of this action is to approve these plans in accordance with the Clean Air Act, 42 U.S.C. 7401 et seq. (the Act). In recognition of this approval of Rhode Island's 15 percent and contingency plans, EPA is making an interim final determination, by this action, that the State has corrected the deficiencies prompting the original disapproval of these plans. The interim final determination will act to defer the application of the offset sanction which would have been implemented on November 19, 1998, and defers the future application of the highway sanction. The interim final action is being taken under Section 110 of the Act.

**DATES:** This direct final rule approving the Rhode Island 15 percent and contingency plans, and minor revisions to the State's 1990 base year inventory, is effective on February 8, 1999 without further notice, unless EPA receives relevant adverse comment by January 7, 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.

The interim final determination is effective upon publication. However, EPA will take comment on this determination as well as EPA's direct final rule approving the State's submittal. Written comments on this interim final determination must be received on or before January 7, 1999. EPA will publish a final notice taking into consideration any relevant adverse comments received on EPA's interim final action.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and at the Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

**FOR FURTHER INFORMATION CONTACT:** Robert F. McConnell, (617) 918–1046.

**SUPPLEMENTARY INFORMATION:** On September 21, 1998, the State of Rhode Island submitted formal revisions to its State Implementation Plan (SIP). The SIP revisions consist of the State's 15 percent ROP and contingency plans, and minor revisions to the Rhode Island 1990 inventory of ozone precursor emissions. The 15 percent plan is designed to meet the requirement in section 182(b)(1) of the Act that certain ozone nonattainment areas achieve a 15 percent reduction in volatile organic compound emissions from a 1990 baseline.

EPA published a limited approval, limited disapproval of 15 percent ROP and contingency plans submitted by Rhode Island in 1994 in the April 17, 1997 **Federal Register** (62 FR 18712). The limited disapproval was issued primarily due to the State's failure to implement the enhanced automobile inspection and maintenance (I/M) program identified within these plans. The failure of Rhode Island to implement its I/M program resulted in