

("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**G. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule as defined by 5 U.S.C. 804(2).

**H. Petitions for Judicial Review**

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 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, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 23, 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. 7401-7671q.

**Subpart PP—South Carolina**

2. In Section 52.2120, the entry for Regulation number 62.1 Section I Definitions in the "EPA Approved South Carolina Regulations" table in paragraph (c) is revised to read as follows:

**§ 52.2120 Identification of plan.**

\* \* \* \* \*

(c) EPA approved regulations.

**AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA**

State citation	Title/subject	State effective date	EPA approval date	Federal register notice
Regulation No. 62.1	Definitions, Permits Requirements, and Emissions Inventory			
* * * * *				
Section I	Definitions	5/25/90	2/8/99	

\* \* \* \* \*  
[FR Doc. 98-32341 Filed 12-7-98; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[KY-102-106-9903a; FRL-6192-1]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** The Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental

Protection Cabinet (KNREPC), submitted to EPA on February 3, 1998, revisions to the Kentucky State Implementation Plan (SIP) adding Stage II controls at certain gasoline dispensing facilities. Subsequently, on September 11, 1998, the Commonwealth submitted the 15 Percent Volatile Organic Compound (VOC) Reduction Plan (15 Percent Plan) and the Vehicle Inspection and Maintenance (I/M) program.

EPA is approving the Kentucky 15 Percent Plan, the I/M program and the 1990 baseline emissions inventory. The adoption of a 15 Percent Plan, an I/M program, and a baseline emissions inventory are required by the 1990 Clean Air Act Amendments for the Northern Kentucky Counties of Boone, Campbell, and Kenton which are a part of the Cincinnati-Hamilton moderate

nonattainment area for the one-hour ozone National Ambient Air Quality Standard (NAAQS). In addition, in this document, EPA is approving the revisions to the Kentucky SIP for the implementation of the rule regarding Stage II control at gasoline dispensing facilities and revisions to the existing open burning rule which provide a portion of the VOC emission reductions included in the 15 Percent Plan.

**DATES:** This direct final rule is effective on February 8, 1999 without further notice, unless EPA receives adverse comments 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.

**ADDRESSES:** All comments should be addressed to Randy Terry at the Environmental Protection Agency, Region 4, Air Pesticides and Toxics Management Division, 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-102-106-9903. 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 Pesticides & Toxics Management Division, 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:** Randy Terry at 404/562-9032, or Karla McCorkle at 404/562-9043. For additional information concerning the Inspection/Maintenance Program contact Dale Aspy at 404/562-9041.

**SUPPLEMENTARY INFORMATION:** On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act as amended in 1990 (CAA) includes new requirements for the improvement of air quality in nonattainment areas for the ozone NAAQS. Under section 181(a) of the CAA, nonattainment areas were categorized by the severity of the area's ozone problem, and progressively more stringent control measures were required for each category of higher ozone concentrations. The EPA, in response to requirements of the CAA, designated the Cincinnati area as a moderate interstate ozone nonattainment area. This designation includes the Northern Kentucky Counties of Boone, Campbell, and Kenton and the Ohio Counties of Hamilton, Warren, Butler, and Clermont. The basis for classifying an area in a specific category was the ambient air quality data obtained in the three year period 1987-1989. The CAA requires states to submit revisions to the SIP that include a plan for reducing

emissions of VOCs by 15 percent from the 1990 Adjusted Base Year Emissions Inventory. The 15 Percent Plan was required by the CAA to be effective for the 1996 ozone season (April 1 through October 30). The CAA delineates in section 182 the SIP requirements for ozone nonattainment areas based on their classifications.

Kentucky submitted a plan in November 1993, to achieve the 15 percent emission reduction and subsequently revised and resubmitted the plan in March 1994. By the end of the 1994 ozone season, air quality monitoring data for the entire Cincinnati area showed attainment of the NAAQS for ozone and both Ohio and Kentucky requested redesignation of the respective portions of the area to attainment. On February 22, 1995, EPA Region 4 responded to an inquiry from Kentucky, and stated that if an area had reached attainment without the implementation of the emission reduction programs outlined in the proposed 15 percent emission reduction program, then those programs need not be implemented unless necessary to offset growth of emissions in future years. On June 29, 1995, in a letter signed by the Secretary of the KNREPC, the Commonwealth requested that EPA take no further action on Kentucky's proposed 15 Percent Plan for Northern Kentucky. A subsequent violation of the NAAQS for ozone in 1995 in the nonattainment area prompted the EPA to deny Kentucky's request to redesignate the area to attainment, thereby making the 15 Percent Plan again an applicable requirement for the area. On September 11, 1998, the KNREPC submitted a revision to the Kentucky SIP for reducing the emissions of VOCs by 15 percent in the Northern Kentucky portion of the Cincinnati-Hamilton area.

The CAA also included limitations on the credibility of certain types of reductions. Specifically, a state cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures promulgated prior to 1990, or for reductions resulting from requirements to lower the Reid Vapor Pressure (RVP) of gasoline promulgated prior to 1990 or required under section 211(h) of the CAA. Furthermore, the CAA does not allow credit for corrections to motor vehicle I/M Programs or Reasonably Available Control Technology (RACT) rules as these programs were required prior to 1990.

**1990 Baseline Emissions Inventory**

In this action, the EPA is approving the 1990 baseline emissions inventory for the Northern Kentucky portion of the Cincinnati-Hamilton ozone nonattainment area. This inventory satisfies the requirements of section 182(a)(1) of the CAA. Detailed information on the emissions calculations can be obtained at the Regional Office address above. The following table is a summary of the baseline emissions inventory.

CINCINNATI 1990 BASELINE EMISSIONS INVENTORY (Tons/day)

Source category	1990 emissions (tons per day)	Percent of total VOC emissions
Point Sources .....	3.90	5.57
Area Sources .....	13.20	18.86
Mobile Sources .....	17.54	25.06
Non-Highway Mobile sources .....	8.60	12.29
Biogenic Emissions ...	26.75	38.22
Total .....	69.99	100.0

The adjusted base year inventory requires exclusion of emission reductions that would occur by 1996 as a result of the FMVCP and the RVP promulgated prior to 1990. The following table is a summary of the adjusted base year inventory.

CINCINNATI 1990 ADJUSTED BASELINE INVENTORY (Tons/day)

Source category	1990 base year emissions (TPD)	1990 adjusted emissions (TPD)
Point Sources .....	3.90	3.9
Area Sources .....	13.20	12.6
Mobile Sources .....	17.54	13.9
Non-Highway Mobile sources .....	8.60	8.6
Total .....	43.24	39.0

**1990 Rate-of-Progress Inventory**

The Rate-of-Progress Inventory is comprised of the anthropogenic stationary (point and area) and mobile sources in the nonattainment area with all biogenic emissions removed from the baseline inventory. The following table is a summary of the Rate-of-Progress baseline inventory.

CINCINNATI 1990 RATE-OF-PROGRESS  
BASELINE  
(Tons/day)

Source category	1990 emissions (tons per day)	Percent of total VOC emissions
Point Sources .....	3.90	9.0
Area Sources .....	13.20	30.5
Mobile Sources .....	17.54	40.6
Non-Highway Mobile sources .....	8.60	19.8
Total .....	43.24	100.0

**15 Percent Plan**

The Commonwealth of Kentucky submitted a 15 Percent Plan for the Northern Kentucky portion of the nonattainment area on September 11, 1998. This submittal is required in section 182(b)(2) in order to demonstrate reasonable further progress toward attainment of the NAAQS for ozone. The CAA required moderate ozone nonattainment areas to submit a plan by November 15, 1993, and to attain the ozone NAAQS by 1999. In order to demonstrate progress, the area must achieve actual VOC emission reductions of at least 15 percent from the baseline and account for growth during the first six years after enactment

of the CAA. The 15 percent reduction must be based on a decrease from the 1990 baseline emissions, excluding emissions from other reductions programs and emission sources outside the nonattainment area.

**Creditable 15% Reduction**

The adjusted base year inventory of 39.0 tons/day is multiplied by 0.15 to calculate the creditable 15 percent reduction in tons/day. Kentucky needs a reduction of 5.85 tons/day to obtain the creditable 15 percent reduction.

**Total Expected Reductions by 1999**

The total expected reductions by 1999 include the required 15 percent (5.85 tons/day), the reductions from FMCVP and RVP (3.65 tons/day), and the reductions from the I/M program (0.55 tons/day). Kentucky expects to have a total of 10.05 tons/day of reductions by 1999.

**Target Level Emissions for 1999**

To calculate the 1999 target emissions level, the total expected reductions (10.05 tons/day) are subtracted from the 1990 Rate-of-Progress baseline inventory (43.24 tons/day) for the Cincinnati nonattainment area. The resulting 1999 target level emissions are 33.19 tons/day.

**Reductions Needed by 1999 to Achieve 15 Percent Emission Reduction Accounting for Growth**

The reductions needed to achieve 15 percent net growth are determined by subtracting the target level emissions (33.19 tons/day) from the 1999 estimated emissions (41.53 tons/day) giving a total of 8.34 tons/day in additional reductions needed.

**Reductions Required by 1999**

In order to meet the target level required for 1999, Kentucky must reduce VOC emissions by an additional 8.34 tons/day. The 1990 Rate-of-Progress Baseline Inventory is the base inventory from which the 15 percent reduction on existing sources and the reduction from growth by 1999 must be calculated to meet requirements of the CAA.

The following is a summary of the reductions Kentucky will obtain to meet this requirement and the projected emissions for 1999. The projected emissions for 1999 have been calculated by applying the control measures discussed below to the 1999 estimated emissions. More detailed information can be found in the Technical Support Document (TSD) located at the Regional EPA address listed above.

ANTICIPATED EMISSIONS AFTER PLAN IMPLEMENTATION

Source category	1999 projected emissions	Anticipated emissions after plan	Tons reduced
Point Sources .....	3.28	3.09	0.19
Area Sources .....	13.62	11.13	2.49
Mobile Sources .....	15.25	9.94	5.31
Non-Highway Mobile Sources .....	9.38	9.17	0.21
Total .....	41.53	33.33	8.20

The 1999 Target Level Emissions are 33.19 tons/day. The 1999 Projected Emissions after plan implementation are 33.33 tons/day, which provides a 15 percent emission reduction.

**Control Strategies**

*Point Source Control Measures*

Point Source Rule Effectiveness Improvements

Kentucky documented that creditable reductions of VOC emissions have occurred since 1990 due to facilities that improved technology and ceased operation. Additionally, the Cabinet implemented a program to increase the rule effectiveness of emission controls at facilities within this region from the default 80 to 95 percent. This program

increased frequency of inspections at point source facilities to improve the existing emission controls. The increased inspections are expected to account for a 0.19 tons/day reduction from point sources. The projected inventory for 1999 shows emissions of 3.28 tons/day. Documentation of these projected emission reductions are included in the Technical Support Document (TSD).

**Area Source Control Measures**

*Stage I Vapor Control—Increased Rule Effectiveness*

Kentucky implemented a program to increase the rule effectiveness of the Stage I gasoline vapor control program. This program increased the frequency of inspections at gasoline facilities to

guarantee that State I vapor controls work properly. The program is projected to increase the rule effectiveness of Stage I controls from the default 80 to 95 percent, and create an emissions reduction of 0.57 tons/day. Documentation of how the projected emission reductions were calculated is included in the TSD.

*Architectural Coatings, Traffic Paints, Auto Body Refinishing, and Commercial/Consumer Products*

The EPA has determined that implemented or forthcoming federal guidance or regulation will reduce the amount of VOC emissions from Architectural and Industrial Maintenance Coatings, Auto Body Refinishing, and Commercial Consumer

Products. Credit for these reductions can be utilized by state and local agencies in developing plans to achieve the 15 percent VOC emission reduction. The amount of reduction which can be assumed in the plan is 20 percent for application of architectural coatings, 27 percent from auto body refinishing, and 20 percent from Consumer Commercial Products. The emission reduction from these area source programs will result in 1.59 tons/day reduction. The guidance and equations used in these reductions calculations are included in the TSD.

#### Open Burning

On February 3, 1998, the KNREPC, submitted revisions to rule 401 KAR 63:005 Open burning for adoption into the Kentucky SIP.

Section 1-2—The order of Section 1 Applicability and Section 2 Definitions was changed to Section 1 Definitions and Section 2 Applicability.

Section 1—A reference to 401 KAR 63:001 for terms not defined in this section was added.

Section 1(3)—The definition of "Open burning" was amended for clarity to include the burning of any matter without an approved burn chamber with a stack or chimney and approved control devices as open burning.

Section 1(4)—The definition of "Priority I Region" was added for region classification according to Priority I in 401 KAR 50:020 Appendix A.

Section 2—A statement was added that applies to all open burning that is not subject to another regulation in 401 KAR Chapters 50 and 65.

Section 3—Various word structure changes were made to add clarity.

Section 4—The revised restrictions for the three Northern Kentucky counties exceed those that apply to the remainder of the Commonwealth, and will be in effect from May through September on an annual basis. Previously allowed activities which these amendments will prohibit during the specified time period include:

- Fires set for cooking of food for human consumption,
- Fires set for prevention of fire hazard, including disposal of dangerous materials if there is no safe alternative,
- Fires set for instruction and training in the methods of fire fighting,
- Fires set for recognized agricultural, silvicultural, range, and wildlife management,
- Fires set to dispose of accidental spills and the disposal of absorbent material used in their removal, and
- Fires set for recreational and ceremonial purposes.

The restriction of burning activities in ozone nonattainment areas and ozone

maintenance areas during the peak ozone season will result in a reduction of volatile organic compound emissions. The emission reduction credit taken for these rule modifications was 0.90 tons per day. Emissions calculations for this reduction are included in the TSD.

#### Mobile Sources

##### *Inspection/Maintenance (I/M) Program Background*

The CAA requires states to make changes to improve existing I/M programs or to implement new ones for certain nonattainment areas. Section 182(b)(4) of the CAA requires moderate ozone nonattainment areas to develop and implement a basic I/M program. Additionally, section 182(a)(2)(B) of the CAA directed EPA to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. EPA promulgated I/M regulations on November 5, 1992 (57 FR 52950, codified at 40 Code of Federal Regulations (CFR) 51.350-51.373).

The I/M regulation establishes minimum performance standards for I/M programs as well as requirements for the following: network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines. The performance standard for basic I/M programs remains the same as it has been since initial I/M policy was established in 1978, pursuant to the 1977 amendments to the CAA.

On September 11, 1998, the Commonwealth of Kentucky submitted to EPA a basic I/M program for incorporation into the SIP. The program meets the requirements of EPA's rule for a basic I/M program. The basic components of the Kentucky I/M program are listed below.

- Idle test for all vehicles.
- Anti-tampering/anti-misfueling checks on all 1975 and newer vehicles.

- Registration denial for vehicles that do not comply with program requirements.

- Training program for mechanics servicing vehicles in the area.

- Pressure check on 1981 and newer vehicles.

- Opacity check for diesel vehicles.

The full description of the Kentucky I/M program can be found in rule 401 KAR 65:010 of the Kentucky SIP and in Appendix K of the Kentucky 15 percent plan submittal.

##### *Reformulated Gasoline (RFG)*

Kentucky requested to opt-in to the federal RFG program in moderate ozone nonattainment areas within Kentucky beginning in 1995. This program included the three northern Kentucky Counties of Boone, Campbell, and Kenton. In addition, Kentucky has opted to remain in the federal RFG program for this area as it goes into phase II in 2000, which will provide additional VOC reductions.

#### Stage II

On February 3, 1998, Kentucky, submitted rule 401 KAR 59:174 Stage II Controls at Gasoline Dispensing Facilities for adoption into the Kentucky SIP.

The provisions in this regulation meet EPA requirements for gasoline dispensing facilities that install and operate vapor recovery systems that capture gasoline vapors displaced from motor vehicle gasoline tanks during refueling (i.e., Stage II). The reductions due to the installation of Stage II are needed for the required 15 percent reduction in dispensing facilities, which are located in an area that is designated moderate, serious, or severe nonattainment for the ozone NAAQS, and which have an average monthly gasoline throughput of greater than 10,000 gallons, install Stage II vapor recovery systems. Independent small business marketers with an average monthly throughput of 50,000 gallons or less and all other gasoline dispensing facilities with an average monthly throughput of 10,000 gallons or less have been exempted from this regulation. These facilities are required to maintain current records covering a two year period which demonstrate that the applicable throughput limits have not been exceeded.

The CAA specifies that Stage II regulations must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more than 50,000 gallons of gasoline per

month. Section 324 of the CAA defines an ISBM.

Consistent with EPA's guidance, the regulation requires that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency by using a system approved by the California Air Resources Board (CARB). The regulation requires sources to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification of a facility (i.e., 75 percent or more equipment change). Kentucky has also established procedures for enforcing violations of the Stage II requirements.

Kentucky expects a 5.31 ton/day reduction from these mobile source controls.

#### *Non-Highway Mobile Sources*

Kentucky is using a method developed by EPA to use RFG in non-highway mobile sources. The method was described in an August 18, 1993 memo from Phil Lorang, Director of Emission Planning and Strategies Division, of EPA's Office of Mobile Sources. This method provides approximately one-half the on-highway mobile source credit for non-highway mobile sources. Using this method, a 0.21 ton per day reduction is calculated for non-highway mobile sources. Further emission reductions will be realized after Phase II RFG is implemented.

EPA is approving Kentucky's 15 percent plan and the underlying regulations (Stage II and Open Burning), the I/M Program, and the 1990 baseline emissions inventory because they are consistent with EPA guidance and the requirements set forth in the CAA.

#### **Final Action**

The EPA is approving the aforementioned changes to the 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, 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 February 8, 1999 without further notice unless the Agency receives adverse comments by January 7, 1999.

If the EPA receives such comments, then EPA will publish a notice 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. 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 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 12875*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

##### *C. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal

governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

##### *D. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

##### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new

requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### F. 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.

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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