

**Final Action**

In this action, EPA is approving the Mississippi FESOP program. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 3, 1995 unless, within 30 days of its publication, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 3, 1995.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the CAA, 42 U.S.C. 7607(b)(2).) The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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 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 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 regulatory 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. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Intergovernmental relations, Particulate matter, Ozone and Sulfur oxides.

Dated: March 1, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

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 Z—Mississippi**

2. Section 52.1270 is amended by adding paragraph (c)(25) to read as follows:

**§ 52.1270 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(25) Revisions to minor source operating permit rules submitted by the Mississippi Department of Environmental Quality on January 26, 1994.

(i) Incorporation by reference.

(A) Regulation APC-S-2, effective January 9, 1994.

(ii) Other material. None.

[FR Doc. 95-10700 Filed 5-1-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 52**

[KY-86-1-6932a; FRL-5189-6]

**Approval and Promulgation of Implementation Plans State: Kentucky; Approval of Revisions to State Implementation Plan Regarding Emission Statements**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet) for the purpose of implementing an emission statement program. The SIP was submitted by the Cabinet on January 15, 1993. As a result of EPA comments, the Cabinet submitted another SIP on December 29, 1994, to satisfy the Federal requirements for an emission statement program.

**DATES:** This final rule will be effective June 16, 1995 unless adverse or critical comments are received by June 1, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to Scott Southwick at the EPA Regional Office listed below.

Copies of the 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.

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 Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

**FOR FURTHER INFORMATION CONTACT:** Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4

Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347-3555, X4207. Reference file KY-86-1-6932a.

**SUPPLEMENTARY INFORMATION:** A SIP revision was submitted by the Commonwealth on January 15, 1993, to satisfy section 182(a)(B) of the Clean Air Act as amended in 1990 (CAA). A second SIP revision was submitted on December 29, 1994 and replaces the first SIP submittal. The second SIP addresses deficiencies of the first SIP revision.

The January 15, 1993, SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete and a letter dated April 27, 1993, was sent to Mr. John Hornback, Director of the Division for Air Quality, indicating the submittal is administratively complete. The December 29, 1994, SIP revision was reviewed by EPA to determine completeness and a letter dated March 3, 1995, was sent to Mr. John Hornback, Director of the Division for Air Quality, indicating the submittal is administratively complete.

There are several key general and specific components of an acceptable emission statement program. Specifically, the state must submit a revision to its SIP and the emission statement program must meet the minimum requirements for reporting. In general, the program must include, at a minimum, provisions for applicability, compliance, and specific source requirements detailed below.

#### A. SIP Revision Submission

The Commonwealth of Kentucky submitted their emission statement regulation on January 15, 1993, which meets the emission statement requirement.

#### B. Program Elements

The Commonwealth emission statement program must, at a minimum, include provisions covering applicability of the regulations, a compliance schedule for sources covered by the regulations, and the specific reporting requirements for sources—including a certification that the information is accurate to the best knowledge of the individual certifying the statement. Kentucky included all of the above, except for certification that the information is accurate, within regulation 401 KAR 50:037 Emission fee. The Cabinet revised their emissions statement program to include a

certification statement. The final revised emission statement program was submitted on December 29, 1994, within regulation 401 KAR 50:035 Permits regulation. This regulation contained all of the required program elements.

#### C. Applicability

Section 182(a)(3)(B) requires that states with areas designated as nonattainment for ozone require emission statement data from sources of volatile organic compounds (VOCs) or oxides of nitrogen (NO<sub>x</sub>) in the nonattainment areas. This requirement applies to all ozone nonattainment areas, regardless of the classification (Marginal, Moderate, etc.). Kentucky's regulation applies to each air pollution source required to have a permit to operate and emits either twenty-five (25) tons per year of NO<sub>x</sub> or VOCs.

The states may waive, with EPA approval, the requirement for emission statements for classes or categories of sources with less than 25 tons per year of actual plant-wide of both NO<sub>x</sub> and VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP-42) or other methods acceptable to EPA. The Kentucky submittal waives the emission statement requirement for sources with less than 25 tons per year of actual plant-wide of both NO<sub>x</sub> and VOC emissions in their 1990 Base Year Emissions Inventory.

#### Final Action

EPA is approving the plan revision submitted by the Commonwealth of Kentucky on December 29, 1994. This submittal meets all of the requirements of emission statements outlined in section 182(a)(3)(B).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective June 16, 1995 unless, by June 1, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not

institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 16, 1995.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the Act, 42 U.S.C. 7607(b)(2)).

The OMB has exempted these actions from review under Executive Order 12866.

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

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 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 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 regulatory 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. E.P.A.*, 427

U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 3, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

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 S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(77) to read as follows:

#### § 52.920 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(77) Revisions to the Commonwealth of Kentucky State Implementation Plan (SIP) concerning emission statements were submitted on December 29, 1994, by the Kentucky Natural Resources and Environmental Protection Cabinet.

(i) Incorporation by reference.

(A) Regulation 401 KAR 50:035 Permits, Section 1, Section 2(1) and Section 10. Regulation became effective September 28, 1994.

(ii) None.

[FR Doc. 95-10696 Filed 5-1-95; 8:45 am]

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### 40 CFR Part 52

[MN29-1-6203a; FRL-5174-7]

### Approval and Promulgation of Implementation Plans; Minnesota

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Direct final rule.

**SUMMARY:** USEPA is approving a revision to the Minnesota State Implementation Plan (SIP) to incorporate new permitting regulations. This revision consists of the State Rules in Chapter 7007, entitled "Air Emission Permits," in conjunction with other rule changes relating to the repeal of prior air permitting rules. Although these rules have been submitted previously to

satisfy the requirements of Title V of the Clean Air Act, the purpose of this submittal is (1) to support federally enforceable permit conditions for limiting sources' potential to emit, (2) to allow the use of permits as vehicles for future SIP revisions, and (3) to update the procedural rules governing the issuance of air permits in Minnesota. USEPA concludes that all three purposes are satisfied.

**DATES:** This action will be effective July 3, 1995 unless adverse or critical comments are received by June 1, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments should be sent to:

William L. MacDowell, Chief,  
Regulation Development Section (AE-17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and USEPA's analysis are available for inspection at the following addresses: (It is recommended that you telephone John Summerhays at (312) 886-6067, before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE-17J), Chicago, Illinois 60604; and Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street, S.W. Washington, D.C., 20460.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Regulation Development Section, Air Enforcement Branch, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604.

### SUPPLEMENTARY INFORMATION:

#### I. Summary of State Submittal

On November 23, 1993, the Minnesota Pollution Control Agency (MPCA) submitted revised air permitting rules for approval as part of the State Implementation Plan (SIP). These rules represent Minnesota's consolidated permitting regulations, which include provisions for operating permits for major sources pursuant to Title V of the Clean Air Act, construction permits for major new sources and major source modifications pursuant to Parts C and D of Title I, and operating and construction permits for minor sources and minor modifications pursuant to State law. Thus, this submittal complements Minnesota's submittal dated November 15, 1993, seeking USEPA approval of the same regulations

as satisfying Title V requirements. Separate rulemaking is being conducted with respect to whether these regulations satisfy Title V requirements. (See the **Federal Register** of September 13, 1994, at 59 FR 46948.)

Minnesota's submittal of November 23, 1993, does not seek to satisfy any specific mandate under the Clean Air Act. As noted above, a separate submittal seeks to satisfy the requirements of Title V. A pair of submittals dated August 5, 1992, and August 26, 1993, have been found to satisfy nonattainment area major new source review requirements (see 59 FR 8578, dated February 23, 1994). The State has not sought to provide State regulations to supersede Federal regulations on attainment area new source review (prevention of significant deterioration).

Instead, the State's submittal of November 23, 1993, seeks approval of updated State permitting regulations which have superseded previously approved regulations, including several provisions to help the State implement its Title V and Title I programs. Minnesota intended with this submittal: (1) to provide a mechanism for intermediate size sources to obtain federally enforceable limitations to become "minor sources," (2) to facilitate future SIP revisions, and (3) to update the federally approved regulations to reflect the updated State permitting regulations. Each of these purposes requires evaluation under different criteria. These purposes and the associated United States Environmental Protection Agency (USEPA) criteria for approval are discussed individually in subsequent sections.

#### A. Federally Enforceable Limitations on Potential To Emit

The first purpose of Minnesota's submittal was to provide a mechanism for intermediate size sources to obtain federally enforceable limitations such that the sources' potential to emit would be below the size thresholds at which major source permits are required. This mechanism involves federally enforceable State operating permits (FESOPs) incorporating the relevant limitations. The State intends to write such permits both in the context of new source review and in the context of Title V permitting. As clarified in a letter from Charles Williams to Valdas Adamkus dated November 21, 1994, the State is requesting this authority with respect to hazardous air pollutants (HAPs) as well as for pollutants with air quality standards ("criteria pollutants").

Criteria for USEPA approval of FESOP programs are given in the **Federal**