

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