

Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any 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 economic impact on a substantial number of small entities. Small entities include small business, 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 Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act 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 (1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 165 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action will impose no new requirements, since

such sources are already subject to these regulations under State law.

Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

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

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 4, 1996.

Phyllis P. Harris,

*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 RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(133) to read as follows:

##### § 52.2220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(133) On September 27, 1994, the State submitted revisions to the Nashville/Davidson County portion of the Tennessee State Implementation Plan (SIP) on behalf of Nashville/Davidson County. These were revisions to the new source review requirements in the Nashville/Davidson County regulations. These revisions incorporate changes to Regulation Number Three, Sections 3-1, 3-2 and 3-3 of the Nashville/Davidson County portion of the Tennessee SIP which bring this into conformance with the new requirements which are required in 40 CFR part 52, subpart I.

(i) Incorporation by reference.

Metropolitan Health Department Division of Pollution Control Regulation Number 3 New Source Review, as amended on August 9, 1994.

(ii) Other material. None.

\* \* \* \* \*

[FR Doc. 96-7911 Filed 4-1-96; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 52

[PA028-5913a; FRL-5427-2]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania-Emission Statement Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the Allegheny County portion of the SIP. This revision consists of an emission statement program for stationary sources that emit volatile organic compounds (VOCs) and/or nitrogen oxides (NO<sub>x</sub>) at or above specified actual emission threshold levels. The intended effect of this action is to approve a regulation for annual reporting of actual emissions by sources that emit VOC and/or NO<sub>x</sub> within the county of Allegheny in accordance with the 1990 Clean Air Act (CAA). This action is being taken under section 110 of the CAA.

**DATES:** This action is effective June 3, 1996 unless notice is received on or before May 2, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Comments must be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Allegheny County Health Department, Bureau of Air Pollution Control, 301 39th Street, Pittsburgh, Pennsylvania 15201.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 597-3164, at the EPA Region III address above. Information can also be requested via E-mail (Quinto.rose@epamail.epa.gov); however, comments must still be submitted in writing.

**SUPPLEMENTARY INFORMATION:** On December 31, 1992, the Commonwealth

of Pennsylvania Department of Environmental Protection (PaDEP) submitted a SIP revision to EPA on Emission Statements. This revision would add new section E to the Allegheny County Health Department-Bureau of Air Pollution Control (ACHD) Rules and Regulations, Article XX, Chapter II (Inspections, Reporting, Tests and Monitoring), § 202 (Reporting Requirements).

### I. Background

The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of Part D of Title I of the CAA, as amended by the Clean Air Act Amendments of 1990. EPA published a "General Preamble" describing EPA's preliminary views on how it intends to review SIPs and SIP revisions submitted under Title I of the CAA, including those state submittals for ozone transport areas within the states (see 57 FR 13498 (April 16, 1992) ["SIP: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990"], 57 FR 18070 (April 28, 1992) ["Appendices to the General Preamble"], and 57 FR 55620 (November 25, 1992) ["SIP: NO<sub>x</sub> Supplement to the General Preamble"]).

EPA also issued a draft guidance document describing the requirements for the emission statement programs discussed in this action, entitled "Guidance on the Implementation of an Emission Statement Program" (GESP), July, 1992. EPA is also conducting a rulemaking process to modify Title 40, Part 51 of the CFR to reflect the requirements of the emission statement program.

Section 182 of the CAA sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal ozone nonattainment areas, which are also applicable by sections 182(b), (c), (d), and (e) to all other ozone nonattainment areas. Among the requirements in section 182(a) is a program for stationary sources to prepare and submit to the state each year emission statements certifying their actual emissions of VOCs and NO<sub>x</sub>. This section of the CAA provides that the states are to submit a revision to their SIPs by November 15, 1992 establishing this emission statement program.

If a source emits either VOC or NO<sub>x</sub> at or above the designated minimum reporting level, the other pollutant should be included in the emission statement, even if it is emitted at levels below the specified cutoffs.

States may waive, with EPA approval, the requirement for an emission

statement for classes or categories of sources with less than 25 tons per year of actual plant-wide NO<sub>x</sub> or VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emissions factors established by EPA, such as those found in the EPA publication AP-42, "Compilation of Air Pollutant Emission Factors" (AP-42, Fifth Edition, January 1995), or other methods acceptable to EPA.

At minimum, the emission statement data should include:

- certification of data accuracy;
- Source identification information;
- Operating schedule;
- Emissions information (to include annual and typical ozone season day emissions);
- Control equipment information; and
- Process data.

EPA developed emission statements data elements to be consistent with other source and state reporting requirements. This consistency is essential to assist states with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

### II. EPA's Evaluation of Pennsylvania's Submittal

#### A. Procedural Background

In accordance with the requirements of 40 CFR § 51.102, ACHD held a public hearing on August 27, 1992 to solicit public comments on the implementation plan for Allegheny County, Pennsylvania. Following the public hearing, the plan was adopted on September 16, 1992 and submitted to EPA on December 31, 1992 as a revision to the SIP.

#### B. Components of Pennsylvania's Emission Statement Program

There are several key and specific components of an acceptable emission statement program. Specifically, Pennsylvania must submit a revision to its SIP consisting of an emission statement program that meets the minimum requirements for reporting by the sources and the state. For the emission statement program to be approvable, Pennsylvania's SIP revision must include, at a minimum, definitions and provisions for applicability, compliance, and specific source reporting requirements and reporting forms.

Pennsylvania's emission statement report form has been revised by amending and adding the definitions of the following terms: actual emissions, annual fuel process rate, certifying

individual, control efficiency, emission factor, emission method code, emission units, facility, oxides of nitrogen, peak ozone season, percent seasonal throughput, process rate, and volatile organic compounds.

ACHD Rules and Regulations, Article XX, Chapter II, § 202, section E requires that persons responsible for each stationary source that emits 25 tpy or more of NO<sub>x</sub> or VOC per calendar year shall report the levels of emissions from the sources in order to track emission reductions and attain the National Ambient Air Quality Standard (NAAQS). The reporting provisions waives the requirement for sources that emit less than 25 tpy under the condition that the class or category is included in the base year and periodic inventories, and the emission factors established by EPA or other methods acceptable to EPA. In addition, section E also requires that a certifying official for each facility provide Pennsylvania with a statement reporting emissions by April 30 of each year, beginning with April 30, 1993 for the emissions discharged during the previous calendar year. Section E in conjunction with the report form provisions, provide specific requirements for the content of these annual emission statements.

#### C. Enforceability

The Commonwealth of Pennsylvania has provisions in its SIP which ensure that the emission statement requirements of section 182(a)(3)(B) and sections 184(b)(2) and 182(f) of the CAA, as required by new section E to the ACHD Rules and Regulations, Article XX, Chapter II (Inspections, Reporting, Tests and Monitoring), § 202 (Reporting Requirements), are adequately enforced.

EPA has determined that the submittal made by the Commonwealth of Pennsylvania satisfies the relevant requirements of the CAA and EPA's guidance document, "Guidance on the Implementation of an Emission Statement Program" (GESP), July 1992. EPA's detailed review of Pennsylvania's Emission Statement Program is contained in a Technical Support Document (TSD) which is available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this document.

### III. Final Action

EPA is approving a revision to the Pennsylvania SIP to include an Emission Statement Program consisting of the addition of new section E to the Allegheny County Health Department-Bureau of Air Quality Control (ACHD) Rules and Regulations, Article XX,

Chapter II (Inspections, Reporting, Tests and Monitoring), § 202 (Reporting Requirements). This revision was submitted to EPA by the Commonwealth of Pennsylvania on December 31, 1992.

EPA is approving this SIP revision 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 become effective June 3, 1996 unless, by May 2, 1996, 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 on June 3, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision of 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, the Administrator certifies 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. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410 (a) (2).

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 that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the 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 Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 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 June 3, 1996. 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 approving Pennsylvania's Emission Statement Program 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, Volatile organic compounds, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, and SIP requirements.

Dated: February 2, 1996.

W. T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(97) to read as follows:

#### § 52.2020 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(97) Revisions to the Pennsylvania State Implementation Plan submitted by the Secretary, Pennsylvania Department of Environmental Protection on December 31, 1992.

(i) Incorporation by reference.

(A) Letter dated December 31, 1992 from the Secretary, Pennsylvania Department of Environmental Protection, submitting a revision to the Allegheny County portion of the Pennsylvania State Implementation Plan.

(B) Addition of new section E to the Allegheny County Health Department-Bureau of Air Pollution Control (ACHD) Rules and Regulations, Article XX, Chapter II (Inspections, Reporting, Tests and Monitoring), § 202 (Reporting Requirements) were effective on October 8, 1992. This revision consists of an emission statement program for stationary sources which emit volatile organic compounds (VOCs) and/or nitrogen oxides (NO<sub>x</sub>) at or above specified actual emission threshold levels. This program applies to stationary sources within the county of Allegheny.

(ii) Additional material.

(A) Remainder of December 31, 1992 state submittal pertaining to Pennsylvania Emission Statement Program.

\* \* \* \* \*

[FR Doc. 96-7913 Filed 4-1-96; 8:45 am]

BILLING CODE 6560-50-P