''Determination of Categorical Exclusion'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

The new exemption provision in the Interim Rule rests on the premise that an equivalent level of safety exists to protect the environment. The Coast Guard invites comments on this point.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this Interim Rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This Rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This Rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This Rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This Rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

PART 165—[AMENDED]

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The citation of authority for part 165 is revised to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Revise § 165.100(d)(1)(iii) to read as follows:

§ 165.100 Regulated Navigation Area: Navigable Waters within the First Coast Guard District.

* * * * *

(d) * * *

(1) * * *

(iii) The cognizant Captain of the Port (COTP), upon written application, may authorize an exemption from the requirements of paragraph (d)(1)(i) of this section for—

(A) Any tank barge with a capacity of less than 25,000 barrels, operating in an area with limited depth or width such as a creek or small river; or

(B) Any tank barge operating on any waters within the COTP Zone, until July 1, 2000, provided the operator demonstrates to the satisfaction of the COTP that the barge employs an equivalent level of safety to that provided by the positive control provisions of this section. Each request for an exemption under this paragraph (d)(1)(iii)(B) must be submitted in writing to the cognizant COTP no later than 7 days before the intended transit.

* * * * *

Dated: March 10, 1999.

R.F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 99–6330 Filed 3–12–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY108–9904a; FRL–6307–8]

Approval and Promulgation of Implementation Plans; Kentucky; Approval of Revisions to Basic Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a state implementation plan (SIP) revision submitted on August 27, 1998, by the Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet. This revision modifies the implementation of a basic motor vehicle inspection and maintenance (I/M) program in Jefferson County, Kentucky, to require, beginning January 1, 2001, a check of the On Board Diagnostic (OBD) system of 1996 and newer cars and light duty trucks equipped with the system.

DATES: This final rule is effective May 14, 1999 without further notice, unless EPA receives adverse or critical comments by April 14, 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 on this action should be addressed to Dale Aspy at the Environmental Protection Agency, Region 4 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 KY108–9904. 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 Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Dale Aspy, (404) 562-9041.

Kentucky Natural Resources and Environmental Protection Cabinet, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (505) 573–3382.

Jefferson County Air Pollution Control District, 850 Barret Avenue, Louisville, Kentucky. (502) 574–6000.

FOR FURTHER INFORMATION CONTACT: Dale Aspy at 404/562–9041.

SUPPLEMENTARY INFORMATION:

I. Background

On August 6, 1996, the U.S. Environmental Protection Agency (EPA) promulgated a final rule that established the minimum requirements for inspecting vehicles equipped with OBD systems. Additionally, the OBD test program component was to begin January 1, 1998. An approved OBD program is required for state and local Inspection/Maintenance (I/M) programs by section 203(m)(3) of the Clean Air Act (CAA). Section 182(a)(2)(B)(ii) of the CAA required a State Implementation Plan (SIP) submission by August 6, 1998, for I/M programs to implement an OBD system check. However, on May 4, 1998, EPA published a final rule that delayed until January 1, 2001, the date by which the OBD test component is required to begin. Although EPA delayed the OBD test component date by three years, the CAA requirement for submitting a SIP two years after promulgation of OBD requirements for vehicle manufacturers was not changed. Therefore, in the May 4, 1998, **Federal Register** preamble to the OBD regulation

revisions, EPA indicated it would accept a ''. . . brief SIP amendment which commits to implementing EPA approved OBD checks, as outlined in the I/M OBD rule, by January 1, 2001.'' The Kentucky submission meets the EPA requirements.

II. EPA's Analysis of Changes to the Louisville, Kentucky, Basic I/M Program

EPA's review of the submitted revisions indicates that the Jefferson County I/M program is in accordance with the requirements of the Act. Since Kentucky's OBD testing requirement meets the criteria of the EPA OBD rule, EPA is approving the Kentucky SIP revision for OBD testing in the Jefferson County, Kentucky, basic I/M program.

III. Final Action

EPA is approving this revision to the Kentucky SIP for a basic I/M program in Jefferson County. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse public 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 May 14, 1999 without further notice unless the Agency receives relevant adverse comments by April 14, 1999.

If EPA receives such comments, then EPA will publish a timely withdrawal of the final rule informing the public that the rule will not take effect. All public comments received will be discussed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 14, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 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. If the mandate is unfunded, EPA must 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 written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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 E.O. 12875 do not apply to this rule.

C. 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.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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. If the mandate is unfunded, EPA must 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 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

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, Kentucky 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 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.

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 May 14, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 23, 1999.

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 *et seq.*

Subpart S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(93) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(93) Modifications to the existing basic I/M program in Jefferson County to implement a check of a vehicle's On-Board Diagnostic system, for vehicles of model 1996 and newer that are so equipped, submitted by the Commonwealth of Kentucky on August 27, 1998.

(i) Incorporation by reference. Regulation 8.02, adopted on July 15, 1998.

(ii) Other material. None.

* * * * *

[FR Doc. 99–6253 Filed 3–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–61–7276; FRL–6307–5]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves the State implementation plan (SIP) revision submitted by the State of Oregon for the purpose of bringing about the attainment of the national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The implementation plan was submitted by the State to satisfy certain Federal requirements for an approvable moderate nonattainment area PM–10 SIP for the Oakridge, Oregon, PM–10 nonattainment area. The rationale for the approval is set out both in this action and in supporting technical information which is available at the address indicated. The final action to approve this plan would have the effect of making requirements adopted by the State of Oregon, federally enforceable by EPA.

DATES: This direct final rule is effective on May 14, 1999, without further notice, unless EPA receives adverse comment by April 14, 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: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101. Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and the Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, EPA, Region 10 Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6510.