diagnostic use as an aid in the risk assessment of patients with chronic liver disease for development of hepatocellular carcinoma, in conjunction with other laboratory findings, imaging studies, and clinical assessment.

(b) *Classification*. Class II (special controls). The special control is FDA's guidance document entitled ''Class II Special Controls Guidance Document: AFP-L3% Immunological Test Systems.'' See § 866.1(e) for the availability of this guidance document.

Dated: September 9, 2005.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 05–19863 Filed 10–3–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9223]

RIN 1545–BC20

Value of Life Insurance Contracts When Distributed From a Qualified Retirement Plan; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations that were published in the **Federal Register** on Monday, August 29, 2005 (70 FR 50967) regarding the amount includible in a distributee's income when life insurance contracts are distributed by a qualified retirement plan and regarding the treatment of property sold by a qualified retirement plan to a plan participant or beneficiary for less than fair market value.

FOR FURTHER INFORMATION CONTACT: Concerning the section 79 regulations, Betty Clary at (202) 622–6080; concerning the section 83 regulations, Robert Misner at (202) 622–6030; concerning the section 402 regulations, Bruce Perlin or Linda Marshall at (202) 622–6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9223) that are the subject of this correction are under sections 402(a), 79 and 83 of the Internal Revenue Code.

Need for Correction

As published, TD 9223 contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9223) which was the subject of FR Doc. 05–17046, is corrected as follows:

On page 50969, column 2, in the preamble, under the paragraph heading ''*B. The 2004 Proposed Regulations*'', line 2 from the top of the column, the language ''§ 1.79-(d) to replace the term ''cash'' is corrected read ''§ 1.79–1(d) to replace the term ''cash''.

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 05–19776 Filed 10–3–05; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–KY–0003–200529; FRL–7979–7A]

Approval and Promulgation of Implementation Plans for Kentucky: Inspection and Maintenance Program Removal for Northern Kentucky; New Solvent Metal Cleaning Equipment; Commercial Motor Vehicle and Mobile Equipment Refinishing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving four related revisions to the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky on February 9, 2005. These revisions affect the Northern Kentucky area, which is comprised of the Kentucky Counties of Boone, Campbell, and Kenton, and is part of the Cincinnati-Hamilton Metropolitan Statistical Area. EPA is approving the movement of the regulation underlying the Northern Kentucky inspection and maintenance (I/M) program from the regulatory portion of the Kentucky SIP to the contingency measures section of the Northern Kentucky 1-Hour Ozone Maintenance Plan. EPA is also approving revisions to a Kentucky rule which provides for the control of volatile organic compounds (VOCs) from new solvent metal cleaning equipment. Further, EPA is approving a new rule into the Kentucky SIP affecting commercial motor vehicle and mobile equipment refinishing operations in Northern Kentucky. Finally, EPA is approving updated mobile source category emissions projections with updated, state motor vehicle emission budgets (MVEBs) for the year 2010. This final rule addresses comments made on EPA's proposed rulemaking previously published for this action.

EFFECTIVE DATE: This rule will be effective November 3, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID No. R04–OAR–2004–KY–0003. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via telephone number at (404) 562–9031 or electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

On April 4, 2005, EPA proposed approval of Kentucky's November 12, 2004, proposed SIP revision request, submitted for parallel processing, to move the I/M regulations underlying the Northern Kentucky Vehicle Emissions Testing (VET) Program to the contingency measures section of the Kentucky SIP (70 FR 17029). In that action, EPA also proposed approval of equivalent emissions reductions of VOCs to replace the VET Program from two Kentucky rules. The revisions to Kentucky rule 401 KAR 59:185, ''New solvent metal cleaning equipment,'' require the use of solvents with lower vapor pressures in batch cold cleaning machines used in specified facilities located in the Northern Kentucky Counties of Boone, Campbell, and Kenton. EPA also proposed to approve new rule, 401 KAR 59:760, ''Commercial Motor Vehicle and Mobile Equipment Refinishing Operations,'' into the Kentucky SIP. This new regulation requires the use of, and equipment training for, high efficiency transfer application techniques at autobody repair and refinishing operations in the Northern Kentucky Counties, and prescribes operating procedures to minimize the emissions of VOCs. The emissions reductions from these two rules provide compensating, equivalent emissions reductions for the Northern Kentucky VET Program. (See the proposed rule published April 4, 2005, at 70 FR 17029 for further background and a detailed analysis of the proposed November 12, 2004, SIP revision.) EPA received adverse comments on the proposed rule. Also during this time, on February 9, 2005, Kentucky submitted a final SIP revision. In today's action, EPA is responding to the adverse comments received, describing the clarifications made in the final SIP revision, and taking final action on the February 9, 2005, SIP revision.

II. Today's Action

EPA is approving revisions to the Kentucky SIP related to the Northern Kentucky I/M program, also known as the Northern Kentucky VET Program. Through this final action, EPA is approving the movement of 401 KAR 65:010, the Kentucky SIP regulation for the Northern Kentucky VET Program, from the regulatory portion of the Kentucky SIP to the contingency measures section of the Northern Kentucky 1-Hour Ozone Maintenance Plan, which is part of the Kentucky SIP. The Northern Kentucky VET Program regulation which is subject to today's action is: 401 KAR 65:010, ''Vehicle emission control programs.'' Also in this final action, EPA is approving revisions to 401 KAR 59:185 and adding a new rule, 401 KAR 59:760, to the Kentucky SIP. In addition, EPA is responding to the adverse comments received on the April 4, 2005, rulemaking proposing to approve the aforementioned revisions (70 FR 17029). Finally, EPA is approving updated mobile source category emissions projections using MOBILE6.2, with updated, state MVEBs for the year 2010, of 7.68 tons per summer day (tpsd) VOCs and 17.42 tpsd nitrogen oxides (NO_X). In this final action, EPA is also correcting references to the former 2010 MVEBs developed using MOBILE5, which were stated in the November 12, 2004, proposed SIP submittal and on page 17033 of the April 4, 2005, rule (70 FR 17029), as 7.02 tpsd VOC and 17.33 tpsd NO_X. The correct numbers, as reflected in the latest SIP revision approved by EPA published on May 30, 2003, (68 FR 32382), are 7.33 tpsd VOC and 17.13 tpsd NO_X. (See also the associated proposed rule published March 19, 2003, at 68 FR 13247 for these MVEB values.) Please note that previously the MVEBs for this area were referred to as subarea MVEBs. EPA is now referring to ''subarea'' MVEBs which encompass the entire portion of the nonattainment/maintenance area within one state of a multi-state area as ''state MVEBs,'' and is reserving the ''subarea MVEB'' label for suballocation of MVEBs for portions of nonattainment\maintenance areas that are contained within an individual state.

III. Clarifications Made in the Final SIP Submittal

EPA's proposed approval published April 4, 2005, (70 FR 17029) was made contingent upon Kentucky addressing the requested clarifications in EPA's December 29, 2004, comment letter to Kentucky Division for Air Quality (KDAQ) on the November 12, 2004, proposed SIP revision. (EPA's December 29, 2004, letter is available in the docket for this action on EPA's RME website, which is described in the **ADDRESSES** section of this action.) The final February 9, 2005, submittal addresses these clarifications as follows.

Because the VET Program reduces emissions of carbon monoxide (CO) in addition to VOC and NO_X, a demonstration of non-interference with the CO National Ambient Air Quality Standard (NAAQS), pursuant to section 110(l) of the Clean Air Act (CAA) must be provided. The final submittal illustrates with CO values from 1991 to 2001, the last year of available CO monitoring data, that ambient CO levels are trending downward and have declined significantly in the area. In 2001, ambient CO levels were 93 percent below the 1-hour maximum CO NAAQS and 80 percent below the 8-hour maximum CO NAAQS. Additionally, the submittal notes that the Northern Kentucky area has always been attainment for the CO NAAQS. Based on this information, EPA upholds its preliminary determination stated in the April 4, 2005, (70 FR 17029) proposed rule that closure of the VET Program will not interfere with continued attainment of the CO NAAQS in the Northern Kentucky area.

The KDAQ also clarified references in Appendices B and E to the ratio used to determine equivalency of VOC for NO_X. The references are corrected to read as ''VOC/NO_X'' ratio, which is correctly defined in the four-asterisk footnote in Appendix E and in Appendix B as the total VOC emissions divided by the total NO_X emissions from all source categories in the area.

KDAQ also modified Section 3, ''Operating requirements,'' of 401 KAR 59:760, which formerly used language which mirrored that of the Ozone Transport Commission model rule. EPA explains in its December 29, 2004, comment letter to KDAQ that to be consistent with current Agency policy, this language needed to be revised to include some form of public review for determining other coating application methods which achieve emissions reductions equivalent to high volume low pressure (HVLP) or electrostatic spray application methods. The final version of 401 KAR 59:760 institutes public review by requiring in Section 3(1)(k) that the Kentucky Environmental and Public Protection Cabinet (Cabinet) hold a public hearing on submitted demonstrations of equivalent coating application methods and submit the demonstrations to EPA for approval.

Other items clarified by KDAQ in the final SIP package include making consistent references to the requested effective date to end the VET Program, and specifying the regulation underlying the VET Program to be moved from the regulatory portion of the Kentucky SIP to the contingency measures list. In its February 9, 2005, final SIP submittal, the Commonwealth of Kentucky proposed an effective date of March 31, 2005, for the repeal of 401 KAR 63:010 ''Vehicle Emissions Control Programs.'' EPA clarifies that the correct regulation citation is 401 KAR 65:010. Also, EPA affirms that the effective date for the repeal of this regulation can be no earlier than the effective date of this

final action. (See Response 6 of Section IV below.)

IV. Responses to Comments

The following is a summary of the adverse comments received on the proposed rule published April 4, 2005, at 70 FR 17029 and EPA's responses to these comments.

Comment 1: The commenter states that EPA's Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase I, published April 15, 2004, specifically prohibits the shifting of the I/M program for Northern Kentucky into the contingency category at this time. The commenter cites 40 CFR 51.905(a)(2) as applicable to the Northern Kentucky area because the area is maintenance for the 1-hour ozone NAAQS and nonattainment for the 8-hour ozone NAAQS. A few commenters noted that under EPA's 8-hour ozone anti-backsliding provisions, 1-hour ozone maintenance measures not needed under the area's 8-hour ozone classification must be continued unless shifted to the contingency category before designation as 8-hour ozone nonattainment. The commenters also note that the exception provided in 40 CFR 51.905(b) allows an applicable requirement to be shifted to a contingency measure for an area like Northern Kentucky once the area attains the 8-hour ozone standard, which is currently not the case for the Northern Kentucky area. Another commenter asserts that allowing states to move basic I/M programs to a contingency measure while they are nonattainment for the 8-hour ozone NAAQS conflicts with section 172(e) of the Act, and with the stated rationale and intent underlying EPA's anti-backsliding rule on pages 69 FR 23970 and 69 FR 23977 published April 30, 2004.

Response 1: EPA clarifies that the publication date of the Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase I was April 30, 2004 (69 FR 23951). EPA concurs that 40 CFR 51.905(a)(2) is applicable to the Northern Kentucky area because the area is maintenance for the 1-hour ozone standard and nonattainment for the 8-hour ozone standard, and that I/M programs are listed in 40 CFR 51.900(f)(2) as an applicable requirement at the time of the area's nonattainment designation for the 8-hour ozone NAAQS. EPA also affirms that 40 CFR 51.905(b) requires that an area remains subject to obligations at the time of designation to 8-hour ozone nonattainment until the area attains the 8-hour ozone NAAQS, at which time the State may request such obligations to be shifted to contingency measures, consistent with sections 110(l) and 193 of the CAA. (See 40 CFR 51.905(b).) The provisions of 40 CFR 51.905(b) allow movement of certain obligations to the contingency measures portion of the SIP because the area has shown it does not need these obligations or control measures to meet the 8-hour ozone NAAQS.

While the Northern Kentucky area remains subject to 40 CFR 51.905(b), this action to replace the Northern Kentucky VET Program emissions reductions with other control measures fully satisfies the requirements of 40 CFR 51.905(b). Initially, as described in detail in the response to the next comment (i.e., Response 2), this action approves revisions to an I/M regulation subject to the provisions of 40 CFR 51.372(c), which describes approvable I/M requirements for areas seeking redesignation. Thus, the Northern Kentucky area remains subject to the applicable requirement for an I/M program and will satisfy the requirements of 40 CFR 51.905(b) through the regulatory revisions approved today. This action approves compensating emissions reductions to replace the VET Program which are contemporaneous to the Program's closing to ensure no net change to the air quality in the area at a time when it is not known what control measures are needed for the Northern Kentucky area to attain the 8-hour ozone NAAQS. In addition to the provisions of 40 CFR 51.372(c) discussed below in Response 2, this action also differs from other cases involving 40 CFR 51.905(b) because the VET Program emissions of VOC and NO_X are being replaced with compensating emissions reductions to ensure under section 110(l) of the CAA that doing so will not interfere with any applicable requirement of the CAA, including attainment or maintenance of the NAAQS. (See Response 2 below and the May 11, 2004, letter from EPA to the Louisville Metro Air Pollution Control District available in the docket for this action.)

Concerns raised regarding section 172(e) of the CAA are not applicable to the 8-hour ozone NAAQS since EPA strengthened the ozone NAAQS and made it more protective of public health by replacing the 1-hour ozone standard with the 8-hour ozone standard. The CAA section 172(e) applies in cases where the EPA relaxes a primary NAAQS.

Comment 2a: The commenters challenge the EPA's interpretation of 40 CFR 51.372(c) described in a May 12, 2004, EPA memorandum from Tom Helms and Leila Cook to all Air Program Managers at EPA on ''1-Hour Ozone Maintenance Plans Containing Basic I/M Programs.'' One commenter believes that the memorandum creates a new, unfounded exception to the anti-backsliding provisions promulgated April 15, 2004, in 40 CFR 51.905 based on provisions found in 40 CFR 51.372(c) that were published January 5, 1995 (60 FR 1735). This commenter states that whatever flexibility might have existed by rulemaking in 1995 was constrained in the 2004 rule, which limits the flexibility to shift an applicable requirement to the contingency category by requiring that first an area attain the 8-hour ozone standard.

Response 2a: EPA disagrees with the commenters' allegations that the May 12, 2004, memorandum created a new exception to the anti-backsliding provisions of 40 CFR 51.905. As the memorandum points out, section 51.905 of the anti-backsliding regulations provides only that applicable requirements must be maintained until an area attains the 8-hour ozone standard. In the preamble to those regulations, EPA clearly stated that so long as the statutory requirements for an applicable requirement were met, a State was free to change the details of a state program from those that applied in the SIP on the date that a requirement was determined to be applicable. See 69 FR 23972, 1st col. The May 12, 2004, letter simply points out that in order for basic I/M areas to qualify for redesignation, the statutory requirement to submit a basic I/M SIP can be satisfied through a submission of the legislative authority to develop an I/M program, along with a commitment to adopt or consider adopting regulations to implement an I/M program as a contingency measure should the need arise, and a schedule for program adoption if necessary. It is true that another section of the preamble to the anti-backsliding regulations indicates that in general, applicable requirements should not be transferred to contingency measures until the area attains the 8-hour standard. However, the May 12, 2004, letter clarifies that in light of the existing redesignation rules for basic I/M areas which allow such areas to satisfy the applicable requirement for an I/M program through compliance with section 51.372(c), moving the basic I/M program to a contingency measure coupled with the legislative authority to adopt a regulatory program, constitutes compliance with the applicable basic I/M requirement.

EPA also clarifies that the promulgation date into the Code of Federal Regulations of the anti-backsliding provisions contained in EPA's Final Rule to Implement the 8-

Hour Ozone National Ambient Air Quality Standard—Phase I was June 15, 2004, as indicated in the final rule published April 30, 2004 (69 FR 23951). This final rule was signed by the EPA Administrator April 15, 2004.

Comment 2b: Another commenter declares that what matters for anti-backsliding purposes for the transition from the 1-hour to the 8-hour ozone NAAQS is the area's I/M obligations at the time of the 8-hour nonattainment designation. A commenter indicates that 40 CFR 51.372(c) relates to 1-hour redesignation requests prior to the development of the 8-hour ozone rule, and states that 40 CFR 51.372(c) does not address the applicability of control measures where the ozone NAAQS is tightened and an area is redesignated under the new, more stringent ozone standard.

Response 2b: Although it is true that the determination of which requirements remain applicable is determined based upon the area's 1-hour ozone designation and classification at the time the area is designated for the 8-hour ozone standard, as noted above, areas remain free to change their programs as desired so long as they continue to meet the applicable requirement until they attain the 8-hour ozone standard. In issuing the May 12, 2004, letter, EPA had concluded that nothing in the anti-backsliding regulations indicated that areas were prohibited from meeting applicable requirements with programs that were appropriate based upon a future change to their 1-hour attainment status. Section 51.372(c) by its own terms applies to any area otherwise eligible for redesignation and nothing in the provision indicates that it should not apply to areas that may also be designated nonattainment for another standard. Of course, such areas must meet whatever I/M provisions would apply based on their 8-hour ozone classification, so that some areas may not be able to take advantage of the I/M redesignation rules if they must also submit basic I/M programs under their 8-hour ozone classification. This is not the case for the Northern Kentucky area. Finally, the Northern Kentucky area is not seeking redesignation under the 8-hour standard so the issue of whether section 51.372(c) might apply in such cases does not arise in this rulemaking, although EPA believes that it would continue to apply.

Comment 2c: In addition, the commenters believe that 40 CFR 51.372(c) is a questionable interpretation of the CAA, and that application to this proposed SIP revision is legally unfounded. One commenter specifically purports that 40 CFR 51.372(c) violates the Act and is therefore, illegal.

Response 2c: The commenter appears to be attempting to challenge the provisions of section 51.372(c), to which challenges were required to be brought within 60 days of EPA's final action adopting such regulations, and no such challenges were ever brought. Thus, as no one challenged these regulations when they were initially promulgated, the provisions have been the governing law since 1995. Since, as noted above, EPA clearly indicated in the anti-backsliding regulations that any program which satisfied the requirements for an applicable requirement would be satisfactory, these provisions describe a valid means of satisfying the applicable basic I/M requirement in areas eligible for redesignation under the anti-backsliding regulations.

Comment 2d: Another commenter questions EPA's interpretation since 40 CFR 51.372(c) created a distinction without basis concerning the requirement for a basic I/M program based on whether an area was in attainment or nonattainment for the 1-hour ozone standard, even though the CAA makes no such distinction. This commenter cites the 1990 CAA Amendments, section 182.

Response 2d: As noted above, it is too late to challenge the provisions of 40 CFR 51.372(c), however, EPA believes the regulation constituted a proper interpretation of the statutory provisions of CAA section 182(b)(4). The rationale behind the I/M redesignation rule rested on the specific language in section 182(b)(4) requiring provisions to provide for a basic I/M program and EPA's interpretation that states otherwise eligible for redesignation could meet the obligation to provide such provisions through legislative authority coupled with a commitment and schedule to develop contingency measures as needed. In that respect, the regulation did consider the attainment status of the area, as EPA determined that only in areas eligible for redesignation could the obligation to develop provisions to provide for a basic I/M program be satisfied without an adopted regulatory program.

Comment 3: The commenters believe that only the ''strict'' interpretation of section 110(l) of the CAA explained in a May 11, 2004, letter from the EPA to the Louisville Metro Air Pollution Control District, and in the proposed action published January 3, 2005, at 70 FR 57, is valid. Until EPA completes the guidance on what constitutes ''interference'' under section 110(l) of the Act, the commenters question how the EPA could defend a finding of ''non-interference.'' One commenter asserts that EPA's reasoning is considered unlawful and arbitrary, noting that EPA has re-written the law as it applies to non-interference and in doing so, has used the transition from the 1-hour to the 8-hour ozone NAAQS as a basis for weakening air quality standards. Another commenter states that prior to removing the I/M program from the array of available control measures, the attainment demonstration for the new 8-hour ozone and fine particulate matter (PM2.5) NAAQS should first be developed and the I/M program be shown to be truly surplus to those measures (either in place or to be adopted) needed to meet and maintain these NAAQS. The commenters state that removing the I/M program prior to these attainment demonstrations is of questionable legality; the attainment demonstrations are needed to show noninterference with section 110(l) of the CAA.

Response 3: The Northern Kentucky area is designated nonattainment for the 8-hour ozone and PM2.5 NAAQS. Control strategy SIP revisions showing how the area will attain these NAAQS are due June 15, 2007, for the 8-hour ozone standard and April 5, 2008, for the PM2.5 standard, unless the area attains the standards prior to these due dates. These control strategy SIPs will identify the control measures that will be used to help the area attain the NAAQS. The control measures will be selected by the Commonwealth of Kentucky after public notice and comment.

In a letter dated May 11, 2004, from EPA to Louisville's Assistant County Attorney, EPA provided its interpretation of section 110(l) of the CAA as guidance in relation to an area such as Northern Kentucky that does not yet have an attainment demonstration for the 8-hour ozone nor for the PM2.5 NAAQS. Prior to the time when the control strategy SIP revisions are due, to demonstrate no interference with any applicable NAAQS or requirement of the CAA under section 110(l), EPA has interpreted this section such that States can substitute equivalent (or greater) emissions reductions to compensate for the control measure being moved from the regulatory portion of the SIP to the contingency provisions. As long as actual emissions in the air are not increased, EPA believes that equivalent (or greater) emissions reductions will be acceptable to demonstrate non-interference. EPA does not believe that areas must wait to produce a complete

attainment demonstration to make any revisions to the SIP, provided the status quo air quality is preserved. EPA believes this will not interfere with an area's ability to develop a timely attainment demonstration. This interpretation has been applied in another rulemaking after undergoing public notice and comment. (May 18, 2005, at 70 FR 28429.)

As an acceptable means to demonstrate no interference in order to satisfy section 110(l) of the CAA, the submittal provides for equivalent emissions reductions from two Kentucky rules in the form of VOCs to replace the NO_X and VOC emissions reductions previously gained from the VET Program to ensure actual emissions in the air are not increased pending development of a complete attainment demonstration for the new 8-hour ozone and PM 2.5 standards. (For further information on EPA's analysis of equivalency, see proposed rule published April 4, 2005, at 70 FR 17029.) Even if the area ultimately determines that an I/M program should be re-instituted as part of those future attainment demonstrations, since air quality has not been adversely affected in the interim, EPA believes that section 110(l) will be satisfied.

Comment 4: A commenter writes that it is not enough to be in attainment. We must strive for optimum performance until we are way under the thresholds of attainment. The commenter suggests that all methods of accomplishing cleaner air that are cheap and easy be maintained.

Response 4: EPA acknowledges this comment and notes that except for required control measures pursuant to the CAA based upon a nonattainment area's classification, states have the option to establish additional control measures beyond those required by Federal law. In addition, the Agency supports numerous regulatory and voluntary federal programs to reduce and prevent air emissions that complement existing control strategies to bring an area into attainment. However, the CAA does not require states to implement measures beyond those needed for attainment or maintenance of the NAAQS.

Comment 5: A commenter states that both a plain reading of the CAA section 110(l) and the Commonwealth of Kentucky Senate Joint Resolution (SJR) 3 Section 4 appear to require that the Cabinet first determine whether the I/M program will be necessary for achievement of the 8-hour ozone standard prior to approval of removal of the measure from the current SIP. Whether the VET Program is ''necessary'' as defined in Section 4 of SJR 3 requires that the Cabinet undertake an attainment demonstration to determine both the necessity and availability of additional control measures to achieve the newer 8-hour ozone standard.

Response 5: The comment that an attainment demonstration is required to address section 110(l) of the CAA is addressed in this action under Response 3. Interpretation and enforcement of state legislation and other state legal requirements such as Kentucky SJR 3 is not in EPA's purview in the first instance. The Kentucky Natural Resources and Environmental and Public Protection Cabinet addresses the comment regarding SJR3 in the February 9, 2005, SIP submittal under Response 9(b) of Appendix G, ''Response to Comments Received During Public Comment Period.'' The Cabinet states it does not agree with the comment, and does not read SJR 3 to indicate that the Cabinet must determine if the I/M program will be necessary to achieve the 8-hour ozone NAAQS prior to removal of the program from the current SIP. EPA agrees with the Commonwealth's conclusions on this matter.

Comment 6: The commenter notes that unless and until the EPA approves a revision to the Kentucky SIP to remove the VET Program, the SIP, including the VET Program, must continue to be maintained and enforced as a matter of federal law.

Response 6: EPA concurs with this comment, and affirms that the VET Program in Northern Kentucky must remain in operation up until the effective date of this final action.

Comment 7: The commenter asserts that even if there was legal justification for moving an I/M program to a contingency measure, a State must maintain the legal authority to implement an I/M program as a prerequisite to redesignation to attainment for the 1-hour ozone NAAQS and as an anti-backsliding requirement. The commenter cites 40 CFR 51.372(c) and a portion of section 175A(d) of the Act.

Response 7: The Commonwealth of Kentucky maintains the legal authority to adopt implementing regulations for a basic I/M program without requiring further legislation as required pursuant to 40 CFR 51.372(c)(1). In a letter dated June 14, 2005, from John G. Horne, II, General Counsel of the KDAQ, to Kay Prince of the EPA, KDAQ confirms and clarifies that this statutory authority is maintained in Kentucky Revised Statues 224.20–710 through 224.20–765. (The June 14, 2005, letter is in the RME docket for this action.)

Comment 8: The commenter asserts that the proposed emissions reductions from the current form of 401 KAR 59:185 are not new or surplus because of testimony that the anticipated compliance with the rule has already been achieved to some extent prior to the rule's adoption when the area was nonattainment (for the 1-hour ozone NAAQS).

Response 8: The proposed revisions to 401 KAR 59:185, ''New solvent metal cleaning equipment,'' garner additional emissions reductions beyond those gained from the regulation as it was approved into the Kentucky SIP on June 23, 1994 (59 FR 32343). In the February 9, 2005, submittal, Kentucky presents data showing that in 2005, 0.71 tpsd of VOC is projected to be reduced through these revisions to 401 KAR 59:185.

The proposed revisions that EPA is approving in this action establish a vapor pressure limit for solvents used in cold cleaning degreasing operations in the Northern Kentucky Counties of Boone, Campbell, and Kenton. Section 4(3)(a) of the regulation requires that vendors provide, in these counties only, solvents with a vapor pressure at or below one millimeter of mercury measured at 20 degrees Celsius for solvents sold in units greater than five gallons for use in cold cleaners. Section 4(3)(b) prohibits, in the Northern Kentucky counties, operations of a cold cleaner using a solvent exceeding the vapor pressure limit described for Section 4(3)(a). In addition, Section 4(4) of the regulation requires users to keep records of their solvent purchases. Section 4(2) is revised to include additional operating requirements to minimize VOC emissions.

The revisions contained in the February 9, 2005, submittal became state effective January 4, 2005. No record was found of public testimony in Appendix G of the submittal to suggest that applicable facilities in Boone, Campbell, and Kenton Counties voluntarily followed a lower vapor pressure limit such as the one prescribed in Section 4(3)(a) during the time Northern Kentucky was nonattainment for the 1-hour ozone NAAQS.

Comment 9: The commenter states that there has been no inventory provided to the public for review of facilities that are actually currently using solvent-based degreasing processes, whether those facilities are operating at higher vapor pressures, nor of facilities selling such solvents for use by facilities in the area. The commenter also asserts that the following is missing from the SIP submittal documentation: any detail on the number of sources, the

number of gallons of cold solvent used in the processes for the sources, and which sources are currently using the storage, use, and recovery procedures required by the regulation, and how long those procedures have been in use.

Response 9: Appendix E of the February 9, 2005, submittal lists, for 2005, a projected amount of 1.34 tpsd VOC emissions from facilities with cold cleaning degreasing operations in Northern Kentucky. This 2005 emissions projection is based on actual 1996 emission inventory data from the 1-hour ozone maintenance plan for the area, which was approved by EPA into Kentucky's SIP effective August 30, 2002. (See 67 FR 49600, July 31, 2002.) KDAQ used 1996 emission inventory data because 1996 is the year used for the Northern Kentucky area to demonstrate attainment for the 1-hour ozone NAAQS. Kentucky used emissions factors and methodologies from the May 1991 EPA document, *Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone*, EPA–450/4–91–016. (This document is accessible in RME under the same docket ID number for this action.)

EPA's Consolidated Emissions Reporting Rule (CERR), published June 10, 2002, at 67 FR 39602, requires emissions inventories for area sources, such as cold cleaning degreasing operations, statewide every three years, beginning in 2002. The 2005 inventory is due 17 months after the end of the 2005 calendar year, *i.e.*, June 1, 2007. These emissions inventories of area sources are required to be based on emissions factors and growth projections in accordance with EPA guidance. The detailed data suggested by the commenter to be provided for each affected source is not required for the purpose of this SIP revision nor to satisfy EPA's emissions inventory reporting requirements in the CERR for this type of source. In the February 9, 2005, submittal, Kentucky appropriately applied EPA-approved rule effectiveness and control efficiency factors which reflect the level of emissions reductions expected from this type of rule to estimate the VOC emissions reductions from the revisions to 401 KAR 59:185. EPA has determined that Kentucky's emissions projection methodology is consistent with EPA guidance. (For EPA's complete analysis of the methodology, see proposed rule at 70 FR 17029, April 4, 2005.)

Comment 10: The commenter challenges the reliance on an emission reduction rate of 67 percent for the amendments to 401 KAR 59:185, based on the rate applied in the rulemakings approved for Illinois, Indiana and Maryland's cold cleaning degreasing regulations. The commenter states that the same 67 percent factor may not be appropriate for Kentucky's regulation due to differing regulatory obligations from the other states. The commenter notes that Maryland's regulation appears to prohibit sales of solvents with vapor pressures higher than one millimeter of mercury in all sizes, yet Kentucky prohibits only sales of such solvents in units larger than five gallons. The commenter writes that EPA has incorporated the 67 percent figure by reference without including into the docket for review any of the supporting documentation justifying the choice of emissions factor.

Response 10: In the February 9, 2005, SIP package, KDAQ explains that a 67 percent control efficiency factor was applied to estimate the amount of VOC emissions reductions expected from the revisions made to 401 KAR 59:185. KDAQ notes that this 67 percent control efficiency was also used by the States of Maryland, Indiana, and Illinois in similar regulations addressing cold cleaning degreasing operations. The Agency approved these regulations into the SIPs for these States.

To evaluate the applicability of the 67 percent control efficiency factor to the revisions to 401 KAR 59:185, the Agency reviewed the March 31, 2001, document titled, ''Control Measure Development Support Analysis of Ozone Transport Commission Model Rules,'' prepared for the Ozone Transport Commission (OTC) by E.H. Pechan & Associates, Inc. (A copy of this document is now available in the docket for this action.) Chapter II.F., ''Solvent Cleaning Operations Rule,'' highlights elements of the OTC model rule for this source category, including a vapor pressure limit of one millimeter of mercury. Additionally, Chapter II.F. notes that cold cleaner solvent volatility provisions are based on regulatory programs in place in several States, including Maryland and Illinois. An incremental control effectiveness of 66 percent was estimated for the OTC model rule, which reflects a previous estimate made by the State of Maryland and claimed in the Maryland SIP, and an assessment of the impacts of lower vapor pressure limits in reducing the use of petroleum distillate solvents. Chapter II.F. states on page 20 that 66 percent appears to be a reasonable estimate for an overall control efficiency for the model rule. The Agency notes as additional assurance for reliance on the 67 percent factor, the actual effectiveness of the rule revisions may be assessed by reviewing future year actual emissions inventories.

Regarding the commenter's concerns on sale of cold cleaning solvent, EPA notes that the March 31, 2001, document estimates rule penetration and rule effectiveness at 100 percent for this source category because there are a small number of firms that supply the affected solvents, and thus, a high level of compliance is expected. KDAQ applied a more conservative rule effectiveness value of 80 percent for the revisions to 401 KAR 59:185 that is consistent with Agency policy. (For more detail on rule effectiveness, see the April 4, 2005, proposed rule at 70 FR 17029.)

EPA has evaluated the consistency of the revisions to 401 KAR 59:185 regarding the solvent vapor pressure limit and operating requirements with the OTC model rule and has determined that the revisions (described in Response 8 above) are consistent with the OTC model rule. Further, the Agency believes that it is reasonable that Kentucky would get comparable emissions reductions from a one millimeter of mercury vapor pressure restriction for cold cleaning solvents as other States which have adopted such a vapor pressure restriction.

Regarding the comment that Kentucky's regulation restricts the sale of solvents with a vapor pressure that exceeds one millimeter of mercury to units greater than five gallons for use in cold cleaners, while Maryland applies the prohibition to sales of all sizes, it appears reasonable that industrial users would buy solvents in larger quantities. Furthermore, 401 KAR 59:185 also prohibits in the Northern Kentucky Counties the operation of cold cleaners using a solvent with a vapor pressure that exceeds one millimeter of mercury at 20 degrees Celsius. Thus, regardless whether cold cleaner solvents which exceed this vapor pressure limit may be purchased in units less than or equal to five gallons, no exemption is provided in Kentucky's regulation to allow use of solvents with vapor pressures exceeding one millimeter of mercury at 20 degrees Celsius in cold cleaners operated in the Northern Kentucky Counties.

Comment 11: The commenter writes that the proposed amendments to 401 KAR 59:185 lack enforceability because the Cabinet has not adopted a permitting or licensing process for the affected facilities, nor has any indication been given of the resources needed to inspect these facilities.

Response 11: According to the provisions of Section 4(4) of 401 KAR 59:185, records of solvent sales and solvent purchases must be maintained

for a minimum of five years by affected sources. A permitting or licensing process for the affected facilities in Northern Kentucky is not required to implement the rule revisions according to any federal permitting programs unless an affected source otherwise falls within federal permitting thresholds. Similarly, affected facilities may be required to obtain a permit if they meet any existing state or local permitting thresholds.

As noted under Response 21(b) of Appendix G of the February 9, 2005, submittal, KDAQ plans to enforce the regulation through on-site inspections. EPA regularly conducts audits of states' compliance and enforcement programs to ensure that these programs are adequate. EPA's most recent program evaluation of KDAQ's compliance and enforcement program was conducted in FY 2000. (EPA's 2000 evaluation is included in the docket for this action.) Based upon the findings of this program evaluation, EPA has determined that Kentucky maintains the necessary resources to enforce the SIP pursuant to section 110(a)(2)(C) of the CAA. Kentucky is not required to detail the resources needed for the Commonwealth to inspect the affected facilities subject to 401 KAR 59:185. EPA has reviewed the revisions to 401 KAR 59:185 and believes that these provisions are practicably enforceable, *i.e.*, they are clearly written such that compliance can easily be determined.

Comment 12: The commenter asserts that no offsetting reductions for ending the VET Program at the end of 2004 are provided by the amendments to 401 KAR 59:185 because compliance with the new vapor pressure limits will not be required until December 15, 2007, for sources that become subject to the regulation.

Response 12: EPA first clarifies that the VET Program cannot be ended until on or after the effective date of this final action. (See Response 6.) In its February 9, 2005, final SIP submittal, the Commonwealth of Kentucky proposed an effective date of March 31, 2005, for the repeal of 401 KAR 65:010 ''Vehicle Emissions Control Programs.'' However, it is EPA's understanding that KDAQ will not terminate the VET Program's operation until EPA approves the SIP revision, pursuant to Section 3 of SJR 3, that moves 401 KAR 65:010 to a contingency measure in the SIP. (To view SJR 3, see Appendix A of the February 9, 2005, SIP submittal.)

Section 7(2)(f) of 401 KAR 59:185 provides that final compliance for facilities located in a county previously designated nonattainment or redesignated in 401 KAR 51:010 after June 15, 2004, may be extended until December 15, 2007. The comment pertaining to the December 2007 compliance date is not relevant for two reasons. First, KDAQ has reiterated that such an extension would not be automatic and will be issued on a case-by-case basis. (See KDAQ response under Item 23 of Appendix G in the February 9, 2005, submittal.) Second, KDAQ confirmed in a December 29, 2004, e-mail to EPA that Section 7(2)(f) does not apply to facilities that now become subject to 401 KAR 59:185 due to their cold cleaning operations and their location in Boone, Campbell, and Kenton Counties. (This document is accessible in RME under the same docket ID number for this action.)

The compliance date for the affected Northern Kentucky facilities subject to the revisions to 401 KAR 59:185 which are prohibited from selling and using solvents as specified in Section 4(3) is 60 days after the effective date of the regulation, which is January 4, 2005. EPA also clarifies that the correct effective date is January 4, 2005, not December 8, 2004, as stated in the December 29, 2004, e-mail from KDAQ to EPA.

Comment 13: The commenter states that EPA, in its August 31, 2004, letter, provided no comments concerning the adoption of 401 KAR 59:185 or whether the proposed reductions would be considered acceptable to offset, in part, the loss of the VET program, and whether the reductions would satisfy section 110(l). The commenter writes that it is assumed EPA will provide such comments during the formal federal review process, since EPA will be obligated to respond to these and other comments in determining whether to approve the state submittal. The commenter cites 5 U.S.C. 553.

Response 13: The Agency affirmed in a August 31, 2004, letter from EPA to KDAQ that the EPA had no comments on the proposed revisions to 401 KAR 59:185, nor on Kentucky's analysis predicting 0.71 tpsd VOC from the proposed changes to 401 KAR 59:185. While not expressly stated in the letter, the Agency conducted a thorough review of the proposed revisions prior to issuing the August 31, 2004, letter confirming that the Agency had no further suggested changes to the proposed revisions out for public comment in Kentucky. Further, EPA's April 4, 2005, rulemaking (70 FR 17029) proposing to approve these emissions reductions indicates that the Agency has determined these reductions satisfy section 110(l) of the CAA. (A copy of the August 31, 2004, letter is provided in the docket for this action.)

Comment 14: A commenter states that the proposal must also demonstrate through appropriate modeling that the substitution of amendments to 401 KAR 59:185 and new rule 401 KAR 59:760 which seek to control VOCs and to substitute those reductions for the lost VOC and NO_X controls from the VET Program, will result in equivalent reductions in ozone formation.

Response 14: Modeling is not required to demonstrate equivalency of the VOC emissions reductions from 401 KAR 59:185 and 401 KAR 59:760. As discussed in the April 4, 2005, proposed rule on pages 70 FR 17034 and 70 FR 17035, this equivalency demonstration was performed in accordance with EPA guidance documents as described in Section IV.B.2.b., ''Methodology for substituting VOC for NO_X to determine all 'VOC-equivalent' needed to replace the VET Program.'' One of these guidance documents is EPA's December 1993 NO_X Substitution guidance, which was written for purposes of reasonable further progress requirements under the CAA section 182(c)(2)(B) and equivalency demonstration requirements under the CAA section 182(c)(2)(C) for serious 1-hour ozone nonattainment areas. As stated in this guidance on page 2, section 182(c) of the CAA requires a demonstration of attainment with gridded photochemical modeling for 1-hour ozone nonattainment areas classified serious or above under the CAA Title I, part D, subpart 2. Thus, since Northern Kentucky is not a subpart 2 serious or above area, this type of modeling as part of their equivalency demonstration is not required.

The equivalency demonstration in the February 9, 2005, submittal is to satisfy the CAA section 110(l) demonstration for the 8-hour ozone and PM2.5 NAAQS. The Northern Kentucky area (*i.e.*, Boone, Campbell, and Kenton Counties) is designated a basic 8-hour ozone nonattainment area under the CAA title I, part D, subpart 1, and consequently an attainment demonstration with modeling is required to be submitted by June 15, 2007. By applying the December 1993 guidance to the 8-hour ozone NAAQS, which did not exist in 1993, a basic subpart 1 8-hour ozone nonattainment area is not required to model for equivalency demonstrations, similar to 1-hour ozone nonattainment areas classified under subpart 1. EPA concludes that until the modeled 8-hour ozone attainment demonstration is due, Kentucky can meet 110(l) by providing equivalent emissions reductions such that ambient air quality levels remain the same, and thus no emissions

increase will result that could interfere with plans to develop timely attainment demonstrations.

Comment 15: The commenter writes that 401 KAR 59:760 lacks enforceability because the Cabinet has not adopted a permitting or licensing process for the affected facilities, nor has an explanation been given of the resources needed to conduct compliance inspections of the affected facilities.

Response 15: According to the provisions of Section 5 of 401 KAR 59:760, sources subject to the regulation shall submit documentation to KDAQ sufficient to substantiate that high efficiency transfer application techniques of coatings are in use at these facilities. This documentation must also verify that all employees applying coatings are properly trained in the use of a HVLP sprayer or equivalent application, and the handling of a regulated coating and any solvents used to clean the sprayer.

A permitting or licensing process for these affected sources is not required to implement 401 KAR 59:760 according to any federal permitting programs unless an affected source otherwise falls within federal permitting thresholds. Similarly, affected facilities may be required to obtain a permit if they meet any existing state or local permitting thresholds.

As noted under Response 27(b) of Appendix G of the February 9, 2005, submittal, KDAQ plans to enforce the regulation through on-site inspections. As explained in Response 11 of this action, Kentucky has previously demonstrated that it maintains the necessary resources to enforce the SIP pursuant to section 110(a)(2)(C) of the CAA and is thus not required to detail the resources needed for the Commonwealth to inspect the affected facilities subject to 401 KAR 59:760. EPA has reviewed 401 KAR 59:760 and believes that these provisions are practicably enforceable.

Comment 16: Several commenters state that high transfer efficiency spray gun technology for mobile equipment refinishing operations has been in use in Northern Kentucky for a number of years, and that shop owners with this technology have been using it in accordance with manufacturers' recommendations. The commenters reference a number of sources for this assertion, including: testimony provided at Kentucky's public hearing, a May 2005 automotive paint survey, and 401 KAR 59:760 Compliance Forms reflecting training information for HVLP spray gun operators. One commenter states that the May 2005 automotive paint survey indicated that 89 percent of the 38 sources (*i.e.*, 34 of 38) surveyed were using high transfer efficiency spray guns, and that 98 percent of these sources had been using high transfer efficiency paint spray guns for over one year, and thus, the emissions reductions cannot be claimed as contemporaneous. This commenter also asserts that based on 401 KAR 59:760 Compliance Forms for 26 facilities in Northern Kentucky, the training for many of the HVLP spray gun operators (and presumably the adoption of HVLP at the facility) occurred, in many cases, years before adoption of 401 KAR 59:760 and before the end date of the Northern Kentucky VET Program.

Response 16: KDAQ indicates in Response 38(b) located in Appendix G of the February 9, 2005, submittal that requiring use of HVLP or equivalent coating application equipment, training on proper use of this equipment, and work practice standards will reduce VOC emissions from all subject facilities in the Northern Kentucky area. KDAQ estimates there are approximately 150 potentially impacted sources in the Northern Kentucky area.

The survey referenced and submitted by the commenters was performed by Market Research Services, Inc. (MRSI) dated May 2005. The commenters provided two sets of materials, a power point presentation and a database printout, which summarize answers to four questions. The questions ask whether the facility is currently using a high transfer efficiency paint spray gun, the length of time using a high transfer efficiency paint spray gun, whether the facility follows manufacturers' recommended instructions for using HVLP nozzles, and whether the facility is saving money in paint costs. The results indicate 34 of the 38 sources surveyed in an unspecified geographic area use high transfer efficiency spray guns and 100 percent of these 34 sources follow manufacturers' recommended instructions. The survey shows of these 34 facilities, high transfer efficiency spray guns have been in use by 21 facilities for five or more years, eight facilities for three to four years, and four facilities for one to two years.

Although one of the commenters submitted materials stating that the data relates to the current use of HVLP spray nozzles in the Kentucky Counties of Boone, Campbell, and Kenton, the survey materials submitted do not indicate the survey area. While the database printout includes the words ''Cincinnati, Ohio'' as part of the descriptor title, it is unclear what the relationship of Cincinnati is to the survey results. For example, Cincinnati may be the location for MRSI or the sources surveyed could be located in Cincinnati. Further, it remains unclear whether any of the 38 facilities surveyed are located in Boone, Campbell, or Kenton County. These counties are part of the Cincinnati-Hamilton Metropolitan Statistical Area (MSA), but located in Kentucky outside of the City of Cincinnati. Even if all 38 facilities are located in Northern Kentucky, the survey results cannot be considered representative of the potentially 150 sources in the area subject to 401 KAR 59:760 without further documentation to show how the survey was conducted. For example, no documentation is provided as to how the recipients of the survey were chosen, nor was the response rate for the survey identified. Without further information, the Agency is unable to draw any conclusions on the use of HVLP in the Northern Kentucky area on the basis of the May 2005 MRSI survey.

EPA acknowledges that high transfer efficiency spray guns may have been in use by the autobody repair and refinishing sector for a number of years. However, in the Northern Kentucky area, there has previously been no requirement for facilities to use these efficient spray guns and thus, their proper and consistent use is highly questionable. Given the previous status of HVLP spray gun use in the Northern Kentucky area, it is not feasible to quantify the VOC reductions, if any, that resulted from the use of such equipment before the regulation was adopted. For example, if the equipment was broken, a source might opt for another coating application method that is not of high transfer efficiency to save time since high transfer efficiency was not required.

Additionally, following instructions for the equipment is not commensurate to obtaining formal training on the equipment as required under 401 KAR 59:760. Section 5 of 401 KAR 59:760 requires that documentation must be submitted to KDAQ that high transfer efficiency coating application techniques are in use at the facility and that all employees applying coatings are properly trained in the use of the application equipment, and the handling of a regulated coating and any solvents used to clean the spray gun. This documentation provides added assurance that the equipment is being consistently and properly used in a way that maximizes efficiency and reduces VOC emissions, and is more reliable than survey data.

Also, the material storage requirements in Section 3(3) of 401 KAR 59:760 will reduce VOC emissions.

Materials subject to these provisions include fresh and used coatings, solvents, VOC-containing additives and materials and waste materials, and cloth, paper, or absorbent applicators moistened with any of these items. These materials must be stored in nonabsorbent, non-leaking containers and the containers must be kept closed at all times when not in use.

In an e-mail to EPA dated August 12, 2005, KDAQ provided supplemental information to further support the additional emissions reductions expected from the training requirements of 401 KAR 59:760. KDAQ highlighted results of the Spray Techniques Analysis and Research (STAR) Program at the Iowa Waste Reduction Center as reported by EPA's Design for the Environment (DfE) Program. These results are summarized on EPA's DfE Web site for HVLP spray guns (*http://www.epa.gov/opptintr/dfe/pubs/auto/trainers/sprayandsave.htm*) as follows. On average, an HVLP gun will improve paint transfer from 40 percent to 49 percent over a conventional gun, and if recommended HVLP spraying techniques are adopted and applied properly, transfer efficiency will increase up to 61 percent. KDAQ also notes that the STAR Program begun by the University of Iowa has estimated proper training in the use of HVLP equipment can provide up to a 22 percent increase in transfer efficiency. According to an October 4, 2001, article in Products Finishing magazine on the STAR Program, the average increase in transfer efficiency for trained STAR Program students is cited in Figure 2 of the article as 27 percent, with a corresponding average decrease of VOC emissions and paint usage both by 22 percent. (Although the article elsewhere uses a figure of 22 percent average increase in transfer efficiency for trained STAR students, the data in Figure 2 appears to support the 27 percent figure.) The STAR Program Web site (*http://www.iwrc.org/programs/star.cfm*) provides a link to this magazine article (*http://www.pfonline.com/articles/100401.html*). The data previously described regarding increases in paint transfer efficiency resulting from HVLP use and formal training on HVLP techniques further supports the estimated emissions reductions from requirements of 401 KAR 59:760. (Kentucky's August 12, 2005 e-mail, the referenced EPA DfE Web site information, and the Products Finishing magazine article are available in the docket for this action.)

Another commenter submitted a summary of the number of HVLP guns and number of operators trained (including dates of training where available) for 26 facilities in Northern Kentucky. This data was taken from a review of compliance forms required pursuant to Section 5(1) of 401 KAR 59:760 provided by the KDAQ. The information submitted by the commenter indicates training occurred for HVLP operators at 14 facilities prior to 2005 (except for two operators at one facility) whereas approximately five facilities had their operators trained in 2005 (with the exception of two operators at one facility). The training dates could not be discerned for the remaining seven facilities. The commenter also notes that there are several Compliance Forms in addition to the 26 summarized for which the employment locations of the listed individuals is not provided and thus, were not included. EPA has reviewed this partial summary information of HVLP training dates for a number of facilities in Northern Kentucky which submitted 401 KAR 59:760 Compliance Forms. The information submitted by the commenter does not indicate, in most cases, the length of time the HVLP spray guns have been in use by the 26 reporting facilities in Northern Kentucky. Furthermore, since the information is, as the commenter noted, not complete, it is unclear what the status of HVLP use and training is at the other (unspecified number of) facilities subject to 401 KAR 59:760. Also, as noted in the preceding paragraph, without a regulatory requirement to use HVLP spray guns (or other equivalent technology) in Northern Kentucky, their consistent use prior to the state effective date of 401 KAR 59:760 remains questionable.

EPA has reviewed the comments, supplemental information provided by KDAQ on paint transfer efficiency increases due to HVLP use and training, and Agency guidance for this source type described in Response 17, and believes that consistent use of high transfer efficiency equipment by trained technicians and proper cleaning and material storage as required by 401 KAR 59:760 will result in the estimated reductions of VOC emissions.

Comment 17: A commenter suggests that estimates of projected baseline emissions are not accurate and are grounded in pure conjecture. The commenter believes without an inventory of the affected facilities and the current regulatory and emissions status of those facilities, substituting 401 KAR 59:760 for VET Program emissions reductions does not provide real, contemporaneous reductions.

Response 17: See also Response 9 of this action regarding the emissions projection methodology approved by EPA for area sources.

Appendix E of the February 9, 2005, submittal lists, for 2005, that a projected amount of 0.96 tpsd VOC emissions from mobile equipment refinishing operations in Northern Kentucky is available for reduction after accounting for 37 percent VOC emissions reductions for autobody refinishing allowed by EPA under the conditions specified in a 1994 EPA guidance memorandum. This memorandum, dated (at the bottom) November 21, 1994, is from John Seitz, Director, to the EPA Regional Air Division Directors titled, ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule.'' (The November 21, 1994, EPA memorandum is accessible in RME under the same docket ID number for this action.) The 2005 emissions projection of 0.96 tpsd VOC is based on actual 1996 emission inventory data from the 1-hour ozone maintenance plan for the area. As stated in Response 9 of this action, Kentucky is not required (nor is the data available) to provide a current (*i.e.*, 2005) emissions inventory of mobile equipment refinishing facilities in Northern Kentucky for the purpose of this SIP revision. Kentucky appropriately applied EPA-approved rule effectiveness and control efficiency factors which reflect the level of emissions reductions expected from this type of rule to estimate the VOC emissions reductions from 401 KAR 59:760. EPA has determined that Kentucky's emissions projection methodology is consistent with EPA guidance. (For EPA's complete analysis of the methodology, see proposed rule at 70 FR 17029, April 4, 2005.)

Comment 18: The commenter believes that proposed regulation 401 KAR 59:760 is unclear as to what aspects of the application of VOC-containing compounds to mobile equipment is intended to be regulated. The commenter notes clarification of the scope and certain terms in Sections 3 and 5 of 401 KAR 59:760 are needed. Specifically, the commenter requests clarification to the scope in Section 3 of the term ''finish'' applied to mobile equipment subject to the rule, and in Section 5 regarding exemptions to the term, ''application of automotive touch-up repair and refinishing materials.'' Also in Section 5, the commenter notes that the term, ''high efficiency transfer application techniques,'' appears confusing.

Response 18: To address what aspects of the application of VOC-containing compounds to mobile equipment is intended to be regulated, KDAQ clarifies in Response 25(b) of Appendix G of the final February 9, 2005, SIP package that when applying VOC-containing coatings on mobile equipment, the use of a high efficiency transfer application method is required for an applicable source. Section 4 of 401 KAR 59:760 addresses the exemptions for an applicable source.

Regarding the comment that the term, ''high efficiency transfer application techniques,'' in Section 5 of the regulation appears confusing, KDAQ notes in Response 26(b) of Appendix G of the final SIP package that this section was revised in response to the comment. Specifically, a reference to the techniques described in Section 3 was added to Section 5 to more fully explain the term in question.

In response to the clarifications requested for the term ''finish'' applied to mobile equipment subject to the rule in Section 3, KDAQ amended Section 3(1) of 401 KAR 59:760 by replacing ''finish'' with the more specific phrase, ''coating containing a VOC as a pretreatment, primer, sealant, basecoat, clear coat, or topcoat to mobile equipment for commercial purposes.''

The commenter expresses concerns that use of the term, ''application of automotive touch-up repair and refinishing materials,'' as exempt from the Section 3 requirements of the rule can be read to exclude all application of automotive refinishing materials. EPA first clarifies that this term was used in Section 4(3), not Section 5, of the proposed version of 401 KAR 59:760 submitted in the November 12, 2004, proposed SIP package. To address the commenter's concerns, KDAQ replaced the term with ''application of a coating to mobile equipment solely for repair of small areas of surface damage or minor imperfections.'' Additionally, KDAQ, in response to this comment, affirms the purpose of the Section 4 exemptions in Response 28(b) of Appendix G of the February 9, 2005, final SIP package. Specifically, KDAQ states that the intent of the exclusions listed in Section 4 is to allow facilities the ability to conduct their work properly and affirms that the exemptions are not intended for applicable facilities to circumvent the regulatory requirements.

EPA concurs with the clarifications made to 401 KAR 59:760, state effective March 11, 2005, and the explanatory statements provided by KDAQ in Appendix G of the February 9, 2005, SIP package in response to the commenter's concerns.

Comment 19: The commenter questions the reasoning of Kentucky's political leaders for terminating the VET Program in light of a 2004 study of ambient air data ranking Greater Cincinnati and the Northern Kentucky region as eleventh worst in both ozone and fine particulate pollution according to 2003 data.

Response 19: This comment regarding the Commonwealth's basis for its selection of air pollution control strategies in the Northern Kentucky area is beyond the scope of this action and will not be addressed. Kentucky has the discretion to select the emissions reduction programs it will use to reach attainment of applicable air quality standards and EPA must approve those selections as long as all provisions of the CAA are met. See CAA section 116.

Comment 20: A few commenters claim that if the VET Program is eliminated, fewer vehicle owners will pursue maintenance and thus, vehicles will operate less optimally, further exacerbating pollution in the area. One commenter affirms that this will result in decreased demand for vehicle maintenance providers, causing business loss and job loss within this sector. A commenter questions why it is more appropriate to have small businesses adopt new controls to offset the additional emissions that will result from lack of vehicle maintenance after termination of the I/M program, rather than to test the cars to assure proper maintenance. Another commenter notes that by improving and keeping the VET Program, the stress on the small businesses may be stretched over a longer period of time, as these gradual reductions will be desired to offset increased pollution from the Brent Spence Bridge congestion. This commenter claims that the Brent Spence Bridge is the most significant factor in motor vehicle pollution generation and that over the next decade, pollution will worsen as a result.

Response 20: In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. (See Section VI. of this action.) It is the Commonwealth's discretion to choose to propose replacement, rather than modification, of the VET Program for the purposes of this specific action. The comments related to the Brent Spence Bridge are not specific to the issues contained in the April 4, 2005, proposed rule (70 FR 17029) and thus, will not be addressed here. Any emissions increases resulting from that action will be addressed in appropriate forums relating to approval of such activities, such as the transportation conformity program.

Comment 21: The commenter states that the values for pollution magnitude on which the proposed SIP revision is based derive from models which depend on data measured at a monitoring location. Currently, across the three-county Northern Kentucky area, the commenter notes that there is an average of one monitor per pollutant measured. It is therefore likely that we under-estimate current pollution magnitude.

Response 21: The Northern Kentucky monitoring network consists of the following monitors to address the NAAQS which are currently operating in 2005. Three of the eight ozone monitors in the Cincinnati-Hamilton MSA are located in Boone, Campbell, and Kenton Counties (one monitor per county). Two of the eight PM2.5 monitors in the Cincinnati-Hamilton MSA are located in the Northern Kentucky area in Kenton and Campbell Counties. The Northern Kentucky area also has three monitors, one for each of the following pollutants: sulfur dioxide, nitrogen dioxide, and coarse particulate matter (*i.e.*, PM10). EPA has approved the siting and design of this monitoring network as adequate for this area, and to support the entire MSA monitoring network, and has determined it meets the requirements of 40 CFR part 58. EPA thus believes that ambient levels of pollutants for which the Agency has established NAAQS are adequately monitored for in the Northern Kentucky area.

Comment 22: One commenter requested extensions to the public comment period. Another commenter states that it is entirely inappropriate to curtail the public comment period before the summer period during which citizens may best evaluate the burden of under-maintained vehicular emissions.

Response 22: EPA extended the public comment period on the proposed rule (on April 4, 2005, EPA opened a 30 day period for comments on our proposed action) as requested from May 4, 2005 to May 18, 2005. (May 2, 2005, 70 FR 22623) EPA also accepted comments received in the next few weeks following the May 18, 2005, date. The comment regarding the need to extend the public comment period until the end of the 2005 summer period to evaluate any changes in vehicle emissions is not valid for two main reasons. First, the Northern Kentucky VET Program will continue to be in operation until on or after the effective date of EPA's final action on the February 9, 2005, submittal. If the public comment period were extended on this action, EPA would not be able to take final action and thus, the VET

Program would still be operating, which would invalidate the purpose of the comment period extension. Second, cessation of the VET Program will not yield an immediate change in vehicle emissions. The Program's benefits will continue for a period of time after its cessation, as vehicles inspected and/or repaired up until that time would continue to operate in a manner that meets the emissions specification of the program. Additionally, fleet turnover would continue to occur during this time period, thereby removing older cars from use and replacing them with newer, cleaner cars.

Comment 23: The commenter states that the Commonwealth's earlier proposal to take emissions reduction credit for the shutdown of the electric arc furnace from the Newport Steel Wilder facility was inappropriate because the reductions were not contemporaneous with the cessation of the VET Program and historical emissions numbers were inappropriate to use to determine emissions reductions credit in light of the terms of a pending enforcement order at the time. The commenter urges the EPA to maintain its position concerning the use of the proposed Newport Steel emissions reductions to replace the VET Program's emissions reductions.

Response 23: This comment is not relevant to either the April 4, 2005, (70 FR 17029) proposed rule or the February 9, 2005, SIP submittal since neither the proposed nor the final SIP packages rely on equivalent emissions reductions from the Newport Steel facility. Thus, this comment will not be addressed.

Comment 24: The commenter writes that any reliance by Kentucky or EPA on NO_X emissions reductions that will occur due to controls being installed by utilities in response to the NO_X SIP Call would be inappropriate for several reasons. These reasons include the reductions are not surplus, would require appropriate modeling and analysis to demonstrate equivalent or better air quality benefit in ozone formation, and are not considered permanent nor enforceable without an Order and permanent retirement of equivalent NO_X allowances.

Response 24: This comment is not relevant to either the April 4, 2005, (70 FR 17029) proposed rule or the February 9, 2005, SIP submittal since neither the proposed nor the final SIP packages rely on equivalent emissions reductions of NO_X achieved in response to the NO_X SIP call. Thus, this comment will not be addressed.

Comment 25: Several comments were submitted in support of the Agency's April 4, 2005, proposed rulemaking (70 FR 17029). Many commenters stated that the present VET Program is not an effective means of reducing air pollution. Some commenters urged the Agency to consider other ways to clean up the air and the environment. Other commenters requested to stop the VET Program due to the burden imposed on the Northern Kentucky residents in terms of expense and inconvenience. Several commenters suggested ways to revise the VET Program to improve effectiveness and to make the program less costly.

Response 25: Comments related to the obligations, effectiveness, and cost of the VET Program, and to other methods to clean the air are not specific to the issues contained in the April 4, 2005, proposed rule (70 FR 17029) and thus, will not be addressed. EPA notes that the existing Northern Kentucky VET Program meets the I/M program requirements applicable to the Northern Kentucky area. For the purposes of this specific action, it is the Commonwealth's discretion to choose to propose replacement, rather than modification, of the VET Program.

Comment 26: Some commenters suggested that the EPA identify where to make public comments, as the newspaper article highlighting that the public comment period was open did not mention this.

Response 26: The EPA is not responsible for managing the content of news articles, and was not involved in the newspaper article referenced. The EPA's April 4, 2005, (70 FR 17029) proposed approval of Kentucky's proposed November 12, 2004, SIP revision request provides a number of ways for submitting comments under the **ADDRESSES** section of the proposed action.

V. Final Action

EPA is approving a revision to the Kentucky SIP which moves regulation 401 KAR 65:010 from the regulatory portion of the Kentucky SIP to the contingency measures section of the Kentucky portion of the Northern Kentucky 1-Hour Ozone Maintenance Plan. EPA is also approving revisions to 401 KAR 59:185 with a state effective date of January 4, 2005, and adding a new rule, 401 KAR 59:760, to the SIP, with a state effective date of March 11, 2005. Further, EPA is approving updated mobile source category emissions projections using MOBILE6.2 with updated, state MVEBs for the year 2010 of 7.68 tpsd VOCs and 17.42 tpsd NO_X. In this final action, EPA is also correcting references to the former 2010 MVEBs developed using MOBILE 5, which were stated in the November 12, 2004, proposed SIP submittal and on page 17033 of the April 4, 2005, rule (70 FR 17029), as 7.02 tpsd VOC and 17.33 tpsd NO_X. The correct numbers, as reflected in the latest SIP revision approved by EPA published on May 30, 2003, (68 FR 32382), are 7.33 tpsd VOC and 17.13 tpsd NO_X.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885,

April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 December 5, 2005. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 27, 2005.

J.I. Palmer, Jr.

Regional Administrator, Region 4.

■ 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 *et seq.*

Subpart S—Kentucky

■ 2. Section 52.920 is amended:

■ a. In paragraph (c) by removing from Table 1, 401 KAR 65:010 titled, ''Vehicle emission control programs.''

■ b. In paragraph (c) by revising the entry in Table 1 for 401 KAR 59:185 titled ''New solvent metal cleaning equipment.'' and adding a new entry, 401 KAR 59:760 titled ''Commercial Motor Vehicle and Mobile Equipment Refinishing Operations.'' and

■ c. In paragraph (e) by revising the entire entry for ''Northern Kentucky Maintenance Plan revisions,'' including the entry name to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA-APPROVED KENTUCKY REGULATIONS

Name of source	Title/subject	State effective date	EPA approval date	Explanation
* *	* *		* *	*
401 KAR 59:185	New solvent metal cleaning equipment.	01/04/05	10/04/05 [Insert first page number of publication]	
401 KAR 59:760	Commercial Motor Vehicle and Mobile Equipment Refinishing Operations.	03/11/05	10/04/05 [Insert first page number of publication]	
* *	* *		* *	*

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval	Explanation
* *	* *		* *	*
Northern Kentucky 1-Hour Ozone Maintenance Plan.	Boone, Campbell, and Kenton Counties.	02/09/05	10/04/05 [Insert first page number of publication]	
* *	* *		* *	*

* * * * *

[FR Doc. 05–19875 Filed 10–3–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R06–OAR–2004–NM–0002; FRL–7979–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Bernalillo County, NM; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving three negative declarations submitted by the City of Albuquerque (Bernalillo County) certifying that there are no existing sources subject to the requirement of sections 111(d) and 129 of the Clean Air Act under their jurisdiction. These three negative declarations are for Sulfuric Acid Mist Emissions from Sulfuric Acid Plants, Fluoride Emissions from Phosphate Fertilizer Plants, and Total Reduced Sulfur Emissions from Kraft Pulp Mills. This is a direct final rule action without prior notice and comment because this action is deemed noncontroversial.

DATES: This direct final rule is effective on December 5, 2005 without further notice, unless EPA receives adverse comment by November 3, 2005. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R06-OAR–2004-NM–0002. All documents in the docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/,* once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Boyce, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7259, e-mail address *boyce.kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

I. What Is the Background for This Action?

Section 129 of the CAA requires us to develop new source performance standards (NSPS) and emission guidelines (EG) for the control of certain designated pollutants which includes these categories addressed in today's action: sulfuric acid mist emissions from sulfuric acid plants, fluoride emissions from phosphate fertilizer plants and total reduced sulfur emissions from kraft pulp mills. Such standards shall include emissions limitations and other requirements applicable to new units and guidelines required by section 111(d) of the CAA.

Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines for such existing sources. A designated pollutant is ''any air pollutant, emissions of which are subject to a standard of performance for new stationary sources but for which air quality criteria have not been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA.'' 40 CFR 60.21(a).

Section 129(b) of the CAA also requires us to develop an EG for the control of certain designated pollutants. Under section 129 of the CAA, the EG is not federally enforceable. Section 129(b)(2) requires states to submit State Plans to EPA for approval. State Plans must be at least as protective as the EG, and they become federally enforceable upon EPA approval.

The status of our approvals of State plans for designated facilities (often referred to as ''111(d) plans'' or ''111(d)/129 plans'') is given in separate subparts in 40 CFR part 62, ''Approval and Promulgation of State Plans for Designated Facilities and Pollutants.'' The Federal plan requirements for the control of certain designated pollutants are also codified in separate subparts at the end of part 62.

Procedures and requirements for development and submission of state plans for controlling designated pollutants are given in 40 CFR part 60, ''Standards of Performance for New Stationary Sources,'' subpart B, ''Adoption and Submittal of State Plans for Designated Facilities'' and in 40 CFR part 62, subpart A, ''General Provisions.'' If a State does not have any existing sources of a designated pollutant located within its boundaries, 40 CFR 62.06 provides that the State may submit a letter of certification to that effect, or negative declaration, in lieu of a plan. The negative declaration exempts the State from the requirements of 40 CFR part 60, subpart B, for that designated facility. In the event that a designated facility is located in a State after a negative declaration has been approved by EPA, 40 CFR 62.13 requires that the Federal plan for the designated facility, as required by section 129 of the CAA and 40 CFR 62.02(g), will automatically apply to the facility.

This **Federal Register** action approves negative declarations submitted by the City of Albuquerque (Bernalillo County), New Mexico for the following: sulfuric acid mist emissions from sulfuric acid plants, fluoride emissions from phosphate fertilizer plants and total reduced sulfur emissions from kraft pulp mills.

II. State Submittal

The Albuquerque Environmental Health Department submitted letters dated November 23, 2004, certifying that there are no existing sulfuric acid mist emissions from sulfuric acid plants, no existing fluoride emissions from phosphate fertilizer plants and no existing total reduced sulfur emissions from kraft pulp mills, under its