

Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Copies of Kentucky's submittals and other information relevant to this action are available for inspection during normal business hours at the following addresses: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601–1403.

Persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day and reference files KY–142.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

On February 28, 2003, the Commonwealth of Kentucky's Natural Resources and Environmental Protection Cabinet submitted revisions to EPA that revises the new source set-aside program by altering the methodology for distributing nitrogen oxides (NO_x) allowances. Rather than grant allowances, the Commonwealth of Kentucky will sell them.

II. Analysis of Kentucky's Submittal

Regulation 401 KAR 51:001 Definitions for 401 KAR Chapter 51

This regulation was revised to allow for the addition of the definitions "General fund", "NO_x Allowance Tracking System (NATS)" and the removal of "Low NO_x burners" that is not used in any of the administrative regulations in 401 KAR Chapter 51.

Regulation 401 KAR 51:160 NO_x Requirements for Large Utility and Industrial Boilers

This revision added language to clarify how to establish a general account, which forms to utilize, and the procedures for moving NO_x allowances between accounts in the NO_x allowance tracking system (NATS). This revision also revises the new source set-aside program to allow Kentucky to sell all allowances which were previously reserved to allocate to new sources. The new source set aside comprises an established percentage of the electric generating unit (EGU) and non-EGU

budgets taken off the top and reserved for new units. The allocation period that begins in 2004 for EGUs that commence commercial operation after May 1, 2001, and before May 1, 2006, is five percent of the tons of NO_x emissions in the Commonwealth trading program budget apportioned to EGUs. For allocation periods beginning in 2007 or later, the allocation for new EGU units is two percent of the tons of NO_x emissions in the Commonwealth trading program budget apportioned to EGUs for the given allocation period. For non-EGUs, for all allocation periods, the allocation for new units is two percent of the NO_x allowances in the Commonwealth trading budget apportioned to non-EGUs for the given allocation period.

In a letter from Kentucky to EPA Region 4, dated February 28, 2003, Kentucky stated that their general account is being established and Kentucky has a contract with a brokerage firm to sell the NO_x allowances. Once a satisfactory sale has been negotiated, Kentucky will transfer the shares from the general account to that of the broker, who will then transfer the allowances from that account to the buyer. An accounting of transfer of the NO_x allowances will be done electronically through NATS. The Kentucky Model Procurement Code provides the Commonwealth the authority to contract with vendors for various services, including advisory and sales services for revenue-generation. The Kentucky Model Procurement Code is set forth at Chapter 45A, Title VI of the Kentucky Revised Statutes and may be viewed at <http://www.lrc.state.ky.us/krs/titles.htm>.

III. Proposed Action

EPA is proposing to approve the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies

that this proposed 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 proposes to approve 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 proposed 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 proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed 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 Clean Air Act. 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 Clean Air Act. 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 proposed 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.*).