USEPA permits States to grant SBAP eligibility to sources that do not meet the criteria of sections 507(c)(1) (C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants. Ohio has chosen to grant such eligibility if its resources are underutilized.

USEPA also permits States to exclude from the small business stationary source definition, after consultation with the USEPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA. Ohio's plan contains provisions to exclude such sources.

E. Schedule

The State submitted a detailed schedule for implementation of its SBAP, including milestones for adoption of legislation, adoption of SIP elements, hiring of staff, and other actions necessary to initiate SBAP operations. These dates have now passed, and Ohio has completed its commitments sufficiently to begin providing assistance to small businesses.

F. Confidentiality

An important issue for SBAPs in general, and Ohio's SBAP in particular, is the extent to which the State may promise sources seeking SBAP assistance that the information the State obtains will be kept confidential. On the one hand, sources may choose not to seek the benefits of SBAP assistance without being assured that they will not be penalized for seeking that assistance, whether by becoming subject to enforcement action that they would not otherwise have encountered or by receiving adverse publicity for noncompliance. On the other hand, Section 114 of the CAA specifically provides that emissions data shall not be kept confidential, and a source must not be shielded from enforcement action simply by having requested SBAP assistance

A review by USEPA of earlier Ohio's SBAP submittals, documented in a technical support document dated April 21, 1994, concluded that Ohio's legislation and program description granted excessive confidentiality, including confidentiality of emissions data, and thereby contravened Section 114 of the CAA and USEPA's guidance on the proper balance between confidentiality and enforcement. After further consideration of the confidentiality issue, USEPA

established a revised policy on this issue by a memorandum dated August 12. 1994. The revised policy provides two new options designed to balance the needs of sources (which need to believe they will not be penalized for seeking SBAP assistance) with the needs of USEPA's enforcement and compliance assurance program. The first option under the revised policy, labeled the "correction period option," allows States in specified circumstances to give small businesses up to 90 days to correct violations discovered during SBAP assistance. The second option, labeled the "confidentiality option," allows States with separation between their SBAP and their enforcement program to have the SBAP keep the identity of noncomplying sources confidential, though the SBAP is to provide statistical and other summary information to the enforcement program, and the State is to retain the option of taking enforcement action considering whether SBAP participation reflects good faith effort to achieve compliance.

Ohio has adopted the "confidentiality option." In its description of its SBAP, by memorandum dated April 27, 1995, Ohio uses language very similar to that given in USEPA's policy to describe how it will handle information obtained as a result of SBAP assistance. Ohio's SBAP "will keep confidential information regarding violations detected in the program, including names and locations of businesses, [but] will provide emissions data and general statistical information such as the types of noncompliance being encountered." In addition, the State reserves the right to conduct follow-up audits to assess program effectiveness. At the same time, Ohio's SBAP description states that "[Ohio's] enforcement program is not prohibited from taking action against small businesses who are receiving SBAP assistance. However, considering that [enforcement staff] are granted enforcement discretion, the enforcement program may consider a company's good faith efforts to achieve compliance by participating in the SBAP as a mitigating factor in determining the appropriate enforcement response or civil penalty." The description concludes that "The SBAP will act independently of [Ohio's] enforcement program" but will work with the enforcement program to seek consistency in the compliance advice given. Thus, Ohio's provisions on confidentiality are fully consistent with USEPA's revised policy.

III. Final Action

USEPA concludes that Ohio's SBAP submittals fully satisfy the requirements of Section 507 of the CAA. Because USEPA considers the action noncontroversial and routine, USEPA is taking final action to approve these submittals without prior proposal. This action will become effective on October 16, 1995, unless notice is received by September 14, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-forprofit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. Therefore, because USEPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected. In addition, the statutory and regulatory requirements at issue in this action were in effect prior to January 1, 1996, and are thus not