Federal Register

Tuesday,
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Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–103–; KY–107–; KY–110–; KY–114–; KY–115–; KY–122–200203; FRL–7082–7]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Approval of Revisions to State Implementation Plan; Revised Format for Materials Being Incorporated by Reference for Jefferson County, Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP). The revisions were adopted by the Air Pollution Control District of Jefferson County (APCDJC) and submitted to EPA on February 3, 1998; September 22, 1998; February 11, 1999; May 21, 1999; July 20, 1999; and September 22, 2000, by the Commonwealth of Kentucky (Commonwealth) through the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC). These submittals include miscellaneous rule revisions and the recodification of APCDJC regulations.

EPA is also revising the format of 40 CFR part 52 for materials submitted by the Commonwealth that are incorporated by reference (IBR) into the Jefferson County portion of the Kentucky SIP. This format revision primarily affects the ''Identification of plan'' section of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC, and the Regional Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or State-submitted materials that are not subject to IBR remain unchanged.

EFFECTIVE DATE: This final rule is effective on November 23, 2001.

ADDRESSES: Copies of documents relative to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency; Region 4 Air Planning Branch; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet; Division for Air Quality; 803 Schenkel Lane; Frankfort, Kentucky 40601–1403

Air Pollution Control District of Jefferson County; 850 Barrett Avenue; Louisville, Kentucky 40204

The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day and reference files KY–103, KY–107, KY–110, KY–114, KY–115, KY–122. The Region 4 office may have additional background documents not available at the other locations.

FOR FURTHER INFORMATION CONTACT: Allison Humphris, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, 404/562–9030, (humphris.allison@epa.gov).

SUPPLEMENTARY INFORMATION: The supplemental information is organized in the following order.

I. Rule Revisions Being Approved by EPA in This Action
II. Revised IBR Format for Jefferson County, Kentucky Being Approved by EPA in This Action
III. Final Action
IV. Administrative Requirements

I. Rule Revisions Being Approved by EPA in This Action

The Commonwealth, through KNREPC, submitted to EPA revisions to the Jefferson County portion of the Kentucky SIP, as adopted by APCDJC, on February 3, 1998, September 22, 1998, February 11, 1999, May 21, 1999, July 20, 1999 and September 22, 2000. The revisions include amendments and modifications of APCDJC regulations to ensure consistency with existing CAA and EPA requirements. The revisions also include a recodification that renumbers APCDJC rule sections to make the SIP less complex and corrects typographical errors, capitalization, spelling, and punctuation. Finally, today's action removes existing APCDJC regulations that do not need to be included in the SIP. Some of these regulations are no longer applicable because they have been moved to other portions of the Kentucky SIP, or because APCDJC submitted negative declarations verifying that there are no existing sources in Jefferson County subject to these rules. The remaining regulations removed were incorrectly approved into the Kentucky SIP (i.e. regulations that EPA does not enforce, or that EPA enforces pursuant to other parts of the Code of Federal Regulations).

On June 21, 2001 (66 FR 33216), EPA published a notice of proposed rulemaking (NPR) to approve the above revisions. That NPR provided for a public comment period ending on July 23, 2001. A detailed description of the SIP revisions and EPA's rationale for approving them was provided in the NPR and will not be restated here.

II. Revised IBR Format for Jefferson County, Kentucky Being Approved by EPA in This Action

In this final action, EPA is also revising the format of 40 CFR part 52 for materials submitted by the Commonwealth that are IBR into the Jefferson County portion of the Kentucky SIP. These revisions are consistent with the SIP compilation requirements of section 110(h)(1) of the Clean Air Act (CAA) and the May 22, 1997, (62 FR 27968) **Federal Register**, in which EPA revised the procedures for IBR federally-approved SIP regulations.

The new SIP compilation for Jefferson County will consist of two parts: the federally-approved portion of regulations and source-specific SIP revisions submitted by the Commonwealth. The table identifying federally-approved regulations is provided with this **Federal Register**. The table identifying source-specific SIP revisions will be provided at a later date. All of these regulations have been approved by EPA through previous rule making actions in the **Federal Register**, or are being approved in this action or other actions being published in today's **Federal Register**. Each part has a table of contents identifying each regulation or each source-specific SIP revision. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for the Commonwealth. A copy of the full text of the Commonwealth's current compilation will also be maintained at the Office of Federal Register and EPA's Air Docket and Information Center.

By today's final action, EPA is also revising the organization of the ''Identification of plan'' section. The revised Identification of plan section will still contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA-approved source specific requirements, and (e) EPA-approved nonregulatory provisions, such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc. However, subsection (b) is being amended to include an EPA approval date for Jefferson County, Kentucky regulations, and subsection (c) is being amended to add a table for EPA-approved Jefferson County regulations for Kentucky. All revisions to the applicable SIP become

federally enforceable as of the effective date of the revisions to paragraphs (c), (d) or (e) of the applicable identification of plan found in each subpart of 40 CFR part 52.

III. Final Action

EPA is approving revisions to the Jefferson County portion of the Kentucky SIP that were adopted by the APCDJC and submitted to EPA on February 3, 1998; September 22, 1998; February 11, 1999; May 21, 1999; July 20, 1999; and September 22, 2000 by the Commonwealth through KNREPC. EPA is partially approving revisions to APCDJC Regulation 2.04 Construction or Modification of Major Sources in or Impacting upon Non-Attainment Areas (Emission Offset Requirements). As described in detail in the NPR, EPA is taking no action on subsection 3.2 of this regulation regarding applicability of the offset requirement, because this language conflicts with existing EPA policy. EPA finds that Kentucky's submittals are otherwise fully approvable. EPA is also revising the format of 40 CFR part 52 for materials submitted by the Commonwealth that are IBR into the Jefferson County portion of the Kentucky SIP.

IV. Administrative Requirements

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 (Public Law 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. section 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. section 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 24, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 18, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority for 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. By revising paragraphs (b)(1) and (b)(2).

b. By adding a table to the end of paragraph (c).

The revision and addition read as follows:

§ 52.920 Identification of plan.

* * * * *

(b) * * * (1) Material listed in paragraph (c) of this section with an EPA approval date prior to March 1, 1999, for the Commonwealth of Kentucky (Volume I of the Kentucky State Implementation Plan) and November 23, 2001 for Jefferson County, Kentucky (Volume II of the Kentucky State Implementation Plan) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraph (c) of this section with EPA approval dates after March 1, 1999, for the Commonwealth of Kentucky and November 23, 2001 for Jefferson County, Kentucky will be

incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP Compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of March 1, 1999, for the Commonwealth of Kentucky (Volume I) and November 23, 2001 for Jefferson County, Kentucky (Volume II).

* * * * *

(c) * * *

EPA—APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
Reg 1	General Provisions			
1.01	General Application of Regulations and Standards	11/23/01	66 FR 53660	03/17/99
1.02	Definitions	11/23/01	66 FR 53660	11/19/97
1.03	Abbreviations and Acronyms	11/23/01	66 FR 53660	09/25/96
1.04	Performance Tests	11/23/01	66 FR 53660	11/19/97
1.05	Compliance with Emission Standards and Maintenance Requirements.	11/23/01	66 FR 53660	11/18/92
1.06	Source Self-Monitoring and Reporting	11/23/01	66 FR 53660	12/15/93
1.07	Emissions During Startups, Shutdowns, Malfunctions and Emergencies.	11/23/01	66 FR 53660	01/17/96
1.08	Administrative Procedures	11/23/01	66 FR 53660	09/25/96
1.09	Prohibition of Air Pollution	11/23/01	66 FR 53660	11/16/83
1.10	Circumvention	11/23/01	66 FR 53660	04/19/72
1.11	Control of Open Burning	11/23/01	66 FR 53660	02/22/90
1.14	Control of Fugitive Particulate Emissions	11/23/01	66 FR 53660	01/20/88
Reg 2	Permit Requirements			
2.01	General Application	11/23/01	66 FR 53660	4/21/82
2.02	Air Pollution Regulation Requirements and Exemptions	11/23/01	66 FR 53660	6/21/95
2.03	Permit Requirements, Non-Title V Construction and Operating Permits and Demolition/Renovation Permits.	11/23/01	66 FR 53660	12/15/93
2.04	Construction or Modification of Major Sources in or Impacting Upon Non-Attainment Areas (Emission Offset Requirements).	11/23/01	66 FR 53660	3/17/93
2.05	Prevention of Significant Deterioration of Air Quality	11/13/89	54 FR 47210	4/19/89
2.06	Permit Requirements—Other Sources	11/23/01	66 FR 53660	11/16/83
2.07	Public Notification for Title V, PSD, and Offset Permits; SIP Revisions; and Use of Emission Reduction Credits.	11/23/01	66 FR 53660	6/21/95
2.09	Causes for Permit Suspension	11/23/01	66 FR 53660	6/13/79
2.10	Stack Height Considerations	11/23/01	66 FR 53660	7/19/89
2.11	Air Quality Model Usage	11/23/01	66 FR 53660	5/19/99
2.17	Federally Enforceable District Origin Operating Permits	02/15/00	65 FR 7437	6/21/95
Reg 3	Ambient Air Quality Standards			
3.01	Purpose of Standards and Expression of Non-Degradation Intention.	11/23/01	66 FR 53660	6/13/79
3.02	Applicability of Ambient Air Quality Standards	11/23/01	66 FR 53660	6/13/79
3.03	Definitions	11/23/01	66 FR 53660	6/13/79
3.04	Ambient Air Quality Standards	11/23/01	66 FR 53660	4/20/88
3.05	Methods of Measurement	11/23/01	66 FR 53660	4/20/88
Reg 4	Emergency Episodes			
4.01	General Provisions for Emergency Episodes	11/23/01	66 FR 53660	6/13/79
4.02	Episode Criteria	11/23/01	66 FR 53660	4/20/88
4.03	General Abatement Requirements	11/23/01	66 FR 53660	2/16/83
4.04	Particulate and Sulfur Dioxide Reduction Requirements	11/23/01	66 FR 53660	4/19/72
4.05	Hydrocarbon and Nitrogen Oxides Reduction Requirements	11/23/01	66 FR 53660	2/16/83
4.06	Carbon Monoxide Reduction Requirements	11/23/01	66 FR 53660	2/16/83
4.07	Episode Reporting Requirements	11/23/01	66 FR 53660	6/13/79
Reg 6	Standards of Performance for Existing Affected Facilities			
6.01	General Provisions	11/23/01	66 FR 53660	11/16/83
6.02	Emission Monitoring for Existing Sources	11/23/01	66 FR 53660	11/16/83
6.07	Standards of Performance for Existing Indirect Heat Exchangers.	11/23/01	66 FR 53660	6/13/79
6.08	Standard of Performance for Existing Incinerators	11/23/01	66 FR 53660	6/13/79
6.09	Standards of Performance for Existing Process Operations	11/23/01	66 FR 53660	3/17/99
6.10	Standard of Performance for Existing Process Gas Streams	11/23/01	66 FR 53660	11/16/83

EPA—APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
6.12	Standard of Performance for Existing Asphalt Paving Operations.	11/23/01	66 FR 53661	5/15/91
6.13	Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds.	11/23/01	66 FR 53661	5/15/91
6.14	Standard of Performance for Selected Existing Petroleum Refining Processes and Equipment.	11/23/01	66 FR 53661	4/21/82
6.15	Standard of Performance for Gasoline Transfer to Existing Service Station Storage Tanks (Stage I Vapor Recovery).	01/25/80	45 FR 6092	6/13/79
6.16	Standard of Performance for Existing Large Appliance Surface Coating Operations.	11/23/01	66 FR 53661	5/15/91
6.17	Standard of Performance for Existing Automobile and Truck Surface Coating Operations.	11/23/01	66 FR 53661	11/18/92
6.18	Standards of Performance for Existing Solvent Metal Cleaning Equipment.	11/23/01	66 FR 53661	5/15/91
6.19	Standard of Performance for Existing Metal Furniture Surface Coating Operations.	11/23/01	66 FR 53661	5/15/91
6.20	Standard of Performance for Existing Bulk Gasoline Plants	11/23/01	66 FR 53661	11/16/83
6.21	Standard of Performance for Existing Gasoline Loading Facilities at Bulk Terminals.	11/23/01	66 FR 53661	11/16/83
6.22	Standard of Performance for Existing Volatile Organic Materials Loading Facilities.	11/23/01	66 FR 53661	3/17/93
6.24	Standard of Performance for Existing Sources Using Organic Materials.	11/23/01	66 FR 53661	3/17/93
6.26	Standards of Performance for Existing Volatile Organic Compound Water Separators.	11/23/01	66 FR 53661	6/13/79
6.27	Standards of Performance For Existing Liquid Waste Incinerators.	11/23/01	66 FR 53661	6/13/79
6.28	Standard of Performance for Existing Hot Air Aluminum Atomization Processes.	11/23/01	66 FR 53661	3/18/81
6.29	Standard of Performance for Existing Graphic Arts Facilities Using Rotogravure and Flexography.	11/23/01	66 FR 53661	5/15/91
6.30	Standard of Performance for Existing Factory Surface Coating Operations of Flat Wood Paneling.	11/23/01	66 FR 53661	5/15/91
6.31	Standard of Performance for Existing Miscellaneous Metal Parts and Products Surface-Coating Operations.	11/23/01	66 FR 53661	4/23/96
6.32	Standard of Performance for Leaks from Existing Petroleum Refinery Equipment.	11/23/01	66 FR 53661	5/15/91
6.33	Standard of Performance for Existing Synthesized Pharmaceutical Product Manufacturing Operations.	11/23/01	66 FR 53661	5/15/91
6.34	Standard of Performance for Existing Pneumatic Rubber Tire Manufacturing Plants.	11/23/01	66 FR 53661	5/15/91
6.35	Standard of Performance for Existing Fabric, Vinyl and Paper Surface Coating Operations.	11/23/01	66 FR 53661	5/15/91
6.38	Standard of Performance for Existing Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industries.	11/23/01	66 FR 53661	12/17/86
6.39	Standard of Performance for Equipment Leaks of Volatile Organic Compounds in Existing Synthetic Organic Chemical and Polymer Manufacturing Plants.	11/23/01	66 FR 53661	7/17/96
6.40	Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control).	11/23/01	66 FR 53661	8/18/93
6.42	Reasonably Available Control Technology Requirements for Major Volatile Organic Compound- and Nitrogen Oxides-Emitting Facilities.	11/23/01	66 FR 53661	3/17/99
6.44	Standards of Performance for Existing Commercial Motor Vehicle and Mobile Equipment Refinishing Operations.	11/23/01	66 FR 53661	9/20/95
6.46	Standards of Performance for Existing Ferroalloy and Calcium Carbide Production Facilities.	11/23/01	66 FR 53661	12/21/94
6.48	Standard of Performance for Existing Bakery Oven Operations	11/23/01	66 FR 53661	7/19/95
Reg 7	Standards of Performance for New Affected Facilities			
7.01	General Provisions	11/23/01	66 FR 53661	5/17/00
7.06	Standards of Performance for New Indirect Heat Exchangers	11/23/01	66 FR 53661	4/21/82
7.07	Standard of Performance for New Incinerators	11/23/01	66 FR 53661	9/15/93
7.08	Standards of Performance for New Process Operations	11/23/01	66 FR 53661	3/17/99
7.09	Standards of Performance for New Process Gas Streams	11/23/01	66 FR 53661	6/18/97
7.11	Standard of Performance for New Asphalt Paving Operations	11/23/01	66 FR 53661	5/15/91
7.12	Standard of Performance for New Storage Vessels for Volatile Organic Compounds.	11/23/01	66 FR 53661	5/15/91
7.14	Standard of Performance for Selected New Petroleum Refining Processes and Equipment.	11/23/01	66 FR 53661	6/13/79

EPA—APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
7.15	Standards of Performance for Gasoline Transfer to New Service Station Storage Tanks (Stage I Vapor Recovery).	11/23/01	66 FR 53662	4/20/88
7.18	Standards of Performance for New Solvent Metal Cleaning Equipment.	11/23/01	66 FR 53662	5/15/91
7.20	Standard of Performance for New Gasoline Loading Facilities at Bulk Plants.	11/23/01	66 FR 53662	11/16/83
7.22	Standard of Performance for New Volatile Organic Materials Loading Facilities.	11/23/01	66 FR 53662	3/17/93
7.25	Standard of Performance for New Sources Using Volatile Organic Compounds.	11/23/01	66 FR 53662	3/17/93
7.34	Standard of Performance for New Sulfite Pulp Mills	11/23/01	66 FR 53662	6/13/79
7.35	Standard of Performance for New Ethylene Producing Plants	11/23/01	66 FR 53662	6/13/79
7.36	Standard of Performance for New Volatile Organic Compound Water Separators.	11/23/01	66 FR 53662	6/13/79
7.51	Standard of Performance for New Liquid Waste Incinerators	11/23/01	66 FR 53662	1/20/88
7.52	Standard of Performance for New Fabric, Vinyl, and Paper Surface Coating Operations.	11/23/01	66 FR 53662	5/15/91
7.55	Standard of Performance for New Insulation of Magnet Wire	11/23/01	66 FR 53662	3/17/93
7.56	Standard of Performance for Leaks from New Petroleum Refinery Equipment.	11/23/01	66 FR 53662	5/15/91
7.57	Standard of Performance for New Graphic Arts Facilities Using Rotogravure and Flexography.	11/23/01	66 FR 53662	5/15/91
7.58	Standard of Performance for New Factory Surface Coating Operations of Flat Wood Paneling.	11/23/01	66 FR 53662	5/15/91
7.59	Standard of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations.	11/23/01	66 FR 53662	4/23/96
7.60	Standard of Performance for New Synthesized Pharmaceutical Product Manufacturing Operations.	11/23/01	66 FR 53662	5/15/91
7.77	Standards of Performance for New Blast Furnace Casthouses	11/23/01	66 FR 53662	10/20/93
7.81	Standard of Performance for New or Modified Bakery Oven Operations.	11/23/01	66 FR 53662	5/17/00
Reg 8	Mobile Source Emissions Control			
8.01	Mobile Source Emissions Control Requirements	11/23/01	66 FR 53662	7/14/00
8.02	Vehicle Emissions Testing Procedure	11/23/01	66 FR 53662	7/14/00
8.03	Commuter Vehicle Testing Requirements	07/28/95	60 FR 3870	3/1/93

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[FR Doc. 01–25892 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–131, and KY–133–200201; FRL–7083–1a]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky: Approval of Revisions to State Implementation Plan, Source Specific Requirements, and Nonregulatory Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Kentucky State Implementation Plan (SIP) which concern the control of emissions of volatile organic compounds (VOC) at a specific source in Bullitt County, Kentucky (Publisher's Printing, Inc.), and Regulation 6.49 adopted by the Air Pollution Control District of Jefferson County (APCDJC), Kentucky. Regulation 6.49 specifies reasonably available control technology (RACT) control requirements for VOC emissions at Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry (SOCMI). In addition, EPA is approving negative declarations from Kentucky and from the APCDJC for certain categories of sources subject to Control Techniques Guidelines (CTGs).

EFFECTIVE DATE: This final rule is effective on November 23, 2001.

ADDRESSES: Copies of documents relative to this action are available at the following addresses for inspection during normal business hours. People who want to examine these documents should make an appointment at least 24 hours in advance of the day they want to visit and they should reference files KY–127 and KY–128.

U.S. Environmental Protection Agency—Region 4, Air Planning Branch, Regulatory Development Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303; Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403; Air Pollution Control District of Jefferson County, 850 Barret Avenue, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Raymond S. Gregory, Environmental Engineer, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–9116. Mr. Gregory can also be reached via electronic mail at *gregory.ray@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Final Action
III. Administrative Requirements

I. Background

Under the Clean Air Act (CAA) section 107(d)(4)(A), on November 6, 1991 (56 FR 56694), all of Jefferson

County, portions of Bullitt and Oldham Counties in Kentucky, and the Indiana Counties of Clark and Floyd were designated as the Louisville moderate ozone nonattainment area, as a result of monitored violations of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) during the 1987–1989 time frame. Since that time, Kentucky, Indiana and the APCDJC have adopted and implemented programs required under the CAA for a moderate 1-hour ozone nonattainment area to reduce emissions of VOC and NO_X which are precursors of ozone.

Since the Louisville area was classified as moderate ozone nonattainment, in order to be redesignated, the Louisville area is required to meet the applicable CAA requirements of subpart 2 of part D including RACT requirements for three classes of VOC sources (section 182(b)(2)). The categories are: (A) All sources covered by a CTG document issued between November 15, 1990, and the date of attainment; (B) all sources covered by a CTG issued prior to November 15, 1990; and (C) all other major non-CTG stationary sources of VOCs.

EPA is approving a source-specific non-CTG VOC RACT determination for Publisher's Printing, Inc., submitted on July 3, 2001, by Kentucky as one of the requisites (182(b)(2)(C)) for redesignation of the Kentucky portion of the Louisville 1-hour ozone nonattainment area.

Kentucky submitted a negative declaration on December 14, 1999, for the CTG categories of aerospace, SOCMI, shipbuilding, and wood furniture manufacturing which would apply to the nonattainment portions of Oldham and Bullitt Counties. The APCDJC submitted a negative declaration for Jefferson County for the same four CTG categories on February 26, 2001. The APCDJC withdrew the negative declaration for the SOCMI category on May 1, 2001. EPA is approving the negative declaration from Kentucky (CTG categories of aerospace, SOCMI, shipbuilding, and wood furniture manufacturing), and the negative declaration from the APCDJC (CTG categories of aerospace, shipbuilding, and wood furniture manufacturing). These negative declarations partially fulfill the CAA requirements under 182(b)(2)(A) in the Kentucky portion of the Louisville 1-hour ozone nonattainment area.

APCDJC adopted Regulation 6.49 for control of VOCs from SOCMI sources and Kentucky submitted APCDJC's Regulation 6.49 on July 18, 2001. Final approval of Regulation 6.49 completes the CAA requirement relative to the Kentucky portion of the Louisville 1-hour ozone nonattainment area for 182(b)(2)(A) and is also a requisite to redesignation of the Louisville area.

On July 23, 2001, (66 FR 38229) EPA published a notice of proposed rulemaking (NPR) proposing to approve the above revisions and negative declarations. That NPR provided for a public comment period ending on August 22, 2001. A detailed description of the SIP revisions and EPA's rationale for approving them and the negative declarations was provided in the proposed rule and will not be restated here. No comments were received on EPA's proposal.

II. Final Action

In today's action, the EPA is approving SIP revisions submitted by Kentucky to address outstanding VOC RACT requirements of subpart 2 of Part D, in particular section 182(b)(2), of the CAA. The SIP revisions EPA is approving are VOC RACT requirements for sources subject to the SOCMI CTG for Jefferson County (Regulation 6.49), and source specific VOC RACT requirements for Publisher's Printing, Inc., in Bullitt County, Kentucky. EPA's review of Regulation 6.49 found it to follow the CTG model regulation. EPA found that the VOC RACT requirements specified by Kentucky for Publisher's Printing, Inc., follow the requirements in EPA's September 1993 draft, ''Guideline Series—Control of Volatile Organic Compound Emissions from Offset Lithographic Printing'' and EPA's June 1994, ''Alternative Control Techniques Document: Offset Lithographic Printing'' and are approvable as meeting section 182(b)(2)(C) requirements for Publisher's Printing, Inc. Kentucky submitted the title V permit for Publisher's Printing, Inc., as a source-specific SIP revision.

EPA is approving the negative declaration from Kentucky for the CTG categories of aerospace, SOCMI, shipbuilding, and wood furniture manufacturing, and the negative declaration from the APCDJC for the CTG categories of aerospace, shipbuilding, and wood furniture manufacturing as meeting the section 182(b) VOC RACT requirement for these source categories in the Kentucky portion of the Louisville 1-hour ozone nonattainment area.

The EPA has reviewed Kentucky's requested revisions of the federally-approved SIP for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

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

III. Administrative Requirements

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 (Public Law 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. section 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. section 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 24, 2001. 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 18, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. Section 52.920 is amended:

a. By adding a new entry in numerical order to the last table in paragraph (c).

b. By adding a new entry to the end of the table in paragraph (d).

c. By adding new entries in numerical order to the table in paragraph (e).

The additions read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) *EPA-approved regulations.*

* * * * * * *

EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	*Federal Register* Notice	District effective date
*	*	*	*	*
	Reg 6 Standards of Performance for Existing Affected Facilities			
*	*	*	*	*
6.49	Standards of Performance for Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry.	10/23/01	66 FR 53664	06/20/01
*	*	*	*	*

(d) *EPA-approved source-specific requirements.*

* * * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	*Federal Register* Notice
*	*	*	*	*
Title V permit requiring VOC RACT for Publisher's Printing, Inc., Bullitt County.	KDEPDAQ Permit 21–029–00019 ...	07/20/01	10/23/01	66 FR 53664

(e) *EPA-approved nonregulatory provisions.*

EPA-APPROVED KENTUCKY NONREGULATORY PROVISIONS

Appendix	Title/subject	State effective date	EPA approval date	*Federal Register* Notice
*	* * *	*	*	*
21	Negative Declarations for the nonattainment portions of Bullitt and Oldham Counties in Louisville 1-hour moderate ozone nonattainment area for CTG rules for aerospace, SOCMI, shipbuilding, and wood furniture manufacturing.	12/14/99	10/23/01	66 FR 53665
22	Negative Declarations submitted by the Air Pollution Control District of Jefferson County for the Louisville 1-hour moderate ozone nonattainment area for CTG rules for aerospace, shipbuilding, and wood furniture manufacturing.	02/26/01	10/23/01	66 FR 53665

[FR Doc. 01–25893 Filed 10–22–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[KY–117; KY–126; KY–129; KY–132–200202; IN–121–3; FRL–7082–9]

Approval and Promulgation of Implementation Plans and Redesignation of Areas for Air Quality Planning Purposes; Kentucky and Indiana; Approval of Revisions to State Implementation Plan; Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Louisville moderate 1-hour ozone nonattainment area (Louisville area) has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). The Louisville area includes Jefferson County, and portions of Bullitt and Oldham Counties, Kentucky; and Clark and Floyd Counties, Indiana. This determination is based on three years of complete, quality-assured, ambient air monitoring data for the 1998 to 2000 ozone seasons. On the basis of this determination, EPA is also determining that the State Implementation Plan (SIP) submissions for certain reasonable further progress (RFP) and attainment demonstration requirements, along with certain other related requirements of part D of title I of the Clean Air Act (CAA), are not applicable to the area. EPA is also approving Kentucky's and Indiana's requests submitted March 30, 2001, and April 11, 2001, respectively, as subsequently supplemented, to redesignate the Louisville area to attainment for the 1-hour ozone NAAQS. In approving these requests, EPA is approving the plans for maintaining the 1-hour ozone NAAQS through 2012, as revisions to the Kentucky and Indiana (States) SIPs. EPA is also approving and finding adequate Kentucky's and Indiana's motor vehicle emission budgets (MVEBs) for volatile organic compounds (VOC) and nitrogen oxides(NO_X) in the submitted maintenance plans for transportation conformity purposes. Approval of the MVEBs is based in part on commitments submitted by the States to use the MOBILE6 mobile emission model within a specific timeframe when it becomes available to update the MVEBs. Finally, EPA is approving source-specific Board Orders to control NO_X emissions from 11 sources in Jefferson County, Kentucky. This action finalizes EPA's proposed rulemakings to determine that the Louisville area has attained the 1-hour ozone NAAQS; and to redesignate both the Kentucky and Indiana portions of the Louisville area to attainment for the 1-hour ozone NAAQS, and to approve the 11 source-specific NO_X Reasonably Available Control Technology (RACT) Board Orders as revisions to the Kentucky SIP.

EFFECTIVE DATE: This action will be effective on November 23, 2001.

ADDRESSES: Copies of Kentucky's submittals, as well as other information, are available for inspection during normal business hours at the following locations. U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Development Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. Air Pollution Control District of Jefferson County, 850 Barret Avenue, Louisville, Kentucky 40204. Persons wishing to examine these documents should make an appointment at least 24 hours before the visiting day and reference files KY–117, KY–126, KY–129, and KY–132.

Copies of Indiana's submittals, as well as other information, are available for inspection during normal business hours at the following locations. U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604. Indiana Department of Environmental Management, Office of Air Quality, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206–6015. Indiana Department of Environmental Management Southwest Regional Office, 208 NW 4th Street, Suite 201, Evansville, Indiana 47708–1353. Persons wishing to examine these documents should make an appointment at least 24 hours before the visiting day and reference file IN–121–3.

FOR FURTHER INFORMATION CONTACT: Allison Humphris, Environmental Scientist, or Raymond Gregory, Environmental Engineer, U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Development Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–9030, (404) 562–9116, (*Humphris.Allison@epa.gov*) (*Gregory.Ray@epa.gov*). Mary Portanova, Environmental Engineer, U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, (AR–18J), Air Programs Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, (*Portanova.Mary@epa.gov*)

Table of Contents

I. What is the background for these actions?
II. What comments did we receive and what are our responses?
III. What actions are we taking?
IV. Why are we taking these actions?
V. What are the effects of these actions?
VI. Administrative requirements

Whenever ''we,'' ''us,'' or ''our'' are used it means EPA.

I. What Is the Background for These Actions?

The Louisville area was designated as an ozone nonattainment area in March

1978 (43 FR 8962) and designated as the Louisville moderate 1-hour ozone nonattainment area on November 6, 1991 (56 FR 56694). The Louisville area includes Jefferson County, and portions of Bullitt and Oldham Counties, Kentucky; and Clark and Floyd Counties, Indiana. As the result of programs adopted and implemented by Kentucky, Indiana and the Air Pollution Control District of Jefferson County (APCDJC) to reduce VOC and NO_X emissions since that time, monitors in the Louisville area have recorded three years of complete, quality-assured, ambient air quality monitoring data for the 1998, 1999, and 2000 ozone monitoring seasons, demonstrating attainment of the 1-hour ozone NAAQS. Preliminary data for the 2001 ozone season shows continuing attainment. The initial redesignation requests from Kentucky and Indiana were submitted on March 30, 2001, and April 11, 2001, respectively, and supplemented on July 9, 2001, and August 24, 2001, respectively.

In a notice of proposed rulemaking (NPR) published May 17, 2001, (66 FR 27483) we proposed to determine that the Louisville area has attained the 1-hour ozone NAAQS. On the basis of this determination, we also proposed to determine that the SIP submissions for certain RFP and attainment demonstration requirements, along with certain other related requirements of part D of title I of the CAA, are not applicable to the area for so long as the Louisville area continues to attain the 1-hour ozone NAAQS. The NPR included a detailed description and rationale for EPA's proposed actions, and provided for a public comment period on these actions ending on June 18, 2001. No comments were received on that NPR during the comment period.

In an NPR published June 22, 2001, (66 FR 33505), we proposed to approve the requests by Kentucky and Indiana to redesignate the Louisville area to attainment for the 1-hour ozone NAAQS and to approve source-specific Board Orders adopted by the Air Pollution Control Board of Jefferson County (APCBJC) to control NO_X emissions at 11 sources in Jefferson County. The NPR included more detailed information and rationale for these actions, and provided for a public comment period ending on July 23, 2001. We received comments from three commenters.

II. What Comments Did We Receive and What Are Our Responses?

The summarized comments received and EPA responses to them are provided below.

Comment 1—Attainment of the standard: The commenter believes that the area has failed to show attainment of the 1-hour ozone NAAQS. The commenter points out that EPA's Aerometric Information Retrieval System (AIRS) data base shows that the Charlestown monitor recorded 3.2 estimated exceedances of the 1-hour ozone NAAQS in the three-year period of 1998–2000 and concludes that this translates to an annual average expected exceedance rate of more than 1.05 exceedances per year, and therefore nonattainment.

The commenter also asserts that in determining that three days of data were unlikely to be above the standard, EPA has ignored the potential for exceedances on the eight other days for which data was missing. The commenter claims that additional information should be considered and claims that it was ignored. This includes ''the potential for exceedances on days where no exceedance was recorded, but where data was not available for all daytime hours (even if enough data was available to meet the minimum coverage of 75 percent of hours)''. The commenter also claims that EPA ignored the historic pattern of exceedances in this area, in which years with no exceedances have been followed by years with multiple exceedances. The commenter believes that EPA ignored the concentration levels of ozone exceedances recorded at Charlestown in 1997–99, pointing out that the design value for this three-year period was higher than for the period 1996–98 and that the peak reading in 1998 at Charlestown of 0.156 parts per million (ppm) was one of the highest recorded in the region in recent years. For these reasons, the commenter believes that EPA's proposal is arbitrary and capricious, and fails to adequately consider all of the relevant factors.

Note: Although EPA received no comments on the proposed determination of attainment (66 FR 27483, May 17, 2001), the above comment addresses issues covered in that NPR. Therefore, the following response clarifies EPA's background and rationale for approving both the proposed determination of attainment and the proposed redesignation.

Response 1: The current version of the AIRS database, EPA's air quality data system, calculates that the Charlestown monitor had 3.2 estimated exceedances during the 1998 ozone season, based on the availability of valid AIRS data for 172 out of 183 ozone season days. However, the program only reflects this value because of limitations in the software that are not entirely reflective of the provisions in the CAA. For 11 days during the 1998 ozone monitoring season, incomplete air quality data was available for the Charlestown, Indiana monitor. Three of these days have been documented in AIRS to note that EPA has made a determination, based on documentation presented by the State, and in accordance with 40 CFR part 50, Appendix H, that it is highly unlikely that the 1-hour ozone NAAQS was exceeded (for further explanation, see 66 FR 27483, May 17, 2001) on these three days. 40 CFR part 50, Appendix H states, in part, that: ''[s]ome allowance should also be made for days for which valid daily maximum hourly values were not obtained but which would quite likely have been below the standard.'' It then suggests a criterion that ''may be used'' for ozone.

For one day (August 1, 1998), EPA determined that the 1-hour NAAQS was not exceeded based on records of valid daily maxima below the 75 percent level of the standard for the Charlestown monitor for the days immediately preceding and following this date. This determination is consistent with the example criterion provided in 40 CFR part 50, Appendix H.

For two days early in the 1998 ozone monitoring season (April 3–4, 1998), EPA made a similar determination based on: the State's explanation of the site's failure to collect ozone data during the period, records of valid daily maxima well below the standard for the remaining six Louisville area monitors on those dates, and overwhelming evidence that meteorological conditions were not conducive to ozone formation (i.e. temperatures between 42 and 58 degrees, overcast skies, showers and windy conditions). In addition, no exceedances have ever been recorded at this monitoring site in early April. This determination was made in response to documentation presented by Indiana in a December 11, 2000 request. These materials are available for inspection in the Louisville redesignation dockets. The determination for these two days is consistent with 40 CFR part 50, Appendix H, which EPA interprets as allowing for use of Agency discretion in defining conditions for determining when a missing value may be assumed to be below the level of the standard.

The estimated exceedances for the Charlestown monitor are calculated using the parameters provided in Table 1 and the following equation: $e = v + [(v/n)*(N-n-z)]$. Assuming that the 1-hour ozone NAAQS was not exceeded for 172 of 183 ozone season days, and that valid AIRS data was unavailable for eight days, the Charlestown monitor is calculated as having a total of 3.1 estimated exceedances for the 1998

ozone season. This value was determined in accordance with 40 CFR 50.9 and Appendix H. Since no exceedance was recorded for 1999 or 2000, the average number of expected exceedances for this monitor is 1.0 exceedance per year for the 1998 through 2000 three-year period, using conventional rounding techniques. Thus, the data indicate that the Louisville area has attained the 1-hour ozone NAAQS for this three-year period.

TABLE 1.—PARAMETERS FOR CALCULATION OF ESTIMATED EXCEEDANCES

Variable description	Value for Charlestown monitor for 1998	Comments
e = the estimated number of exceedances for the year,	3.1	Calculated.
N = the number of required monitoring days in the year,	183	Indiana's ozone season is April 1–September 30
n = the number of valid daily maxima,	172	Days with valid data based on 40 CFR 50 and Appendix H.
v = the number of daily values above the level of the standard	3	Based on monitored values.
z = the number of days assumed to be less than the standard level	3	Based on 40 CFR 50 Appendix H, for days that were likely below thestandard.

The commenter claims that, in calculating the 1998–2000 estimated exceedances for the Charlestown monitor, EPA did not consider eight of the 11 days for which no monitoring data was available. Examination of the equation and the values used to calculate the estimated exceedances for 1998 through 2000 shows that this is not the case. In calculating the correction factor to account for missing data (i.e. [(v/n)*(N-n-z)]), EPA does consider the remaining eight days for which no data was recorded. EPA adjusts the difference between the number of required and actual monitoring days (N-n) only by the number of days for which no data was recorded and for which we assumed the daily maximum value to be below the 1-hour NAAQS (i.e. z=3). Thus, EPA took the remaining eight days into account as prescribed in the CAA and 40 CFR 50.9. We did not assume that the daily maximum value for those eight days was below the 1-hour ozone NAAQS, and we adjusted the area's estimated exceedance rate to account for this assumption.

Regarding the adequacy and completeness of the remaining monitoring data used to calculate 1998–2000 estimated exceedances for the Charlestown monitor, EPA notes that there was over 99 percent data completeness on days meeting the 75 percent completeness test at the Charlestown site over the three-year period. Neither the guidance nor 40 CFR contemplates questioning data that meet the 75 percent completeness test. There was also over 97 percent completeness for all days over the three-year period. EPA completed a review of the data and did not find any abnormalities that would indicate that the Charlestown monitor was not being run whenever possible. In addition, Region 5 conducted a performance audit of this monitor on September 26–27, 2000, which confirmed the monitor's performance to be within acceptable limits.

The commenter also claims that EPA ignored the historic pattern of exceedances for the Louisville area. EPA has not ignored historical data in making our determination. Rather, we looked at the historical data presented to us by the States in the context of the provisions of 40 CFR 50.9. When evaluating whether the 1-hour ozone NAAQS has been met, the CAA specifies that EPA must consider the most recent three years of quality-assured monitoring data. As indicated above, the data for the most recent three-year period, i.e., 1998–2000, indicates attainment. Preliminary 2001 ozone season data indicates that the area continues to attain the 1-hour NAAQS. Note that the CAA and EPA guidance also requires that the improvement in air quality be attributable to permanent and enforceable reductions. Our determination that reductions are attributable to permanent and enforceable measures is discussed further in Response 3.

Comment 2—Fully approved SIP and all requirements applicable to the area under section 110 and subpart D: The commenter indicated that, pursuant to section 107(d)(3)(E)(ii) of the CAA, EPA cannot redesignate an area to attainment unless EPA ''has fully approved the applicable implementation plan for the area.'' The commenter contends that EPA has yet to fully approve the applicable implementation plan for the Louisville area, including the specific SIP elements identified in subparts A. through I. of this comment below, as required by the CAA for moderate ozone nonattainment areas. Also, pursuant to section 107(d)(3)(E)(v) of the CAA, EPA cannot redesignate an area to attainment unless the state containing the area ''has met all requirements applicable to the area under section 110 and part D.'' The commenter contends that the States have not yet met the requirement to submit approvable plans that satisfy all CAA-required moderate area ozone SIP elements. The commenter claims that the SIP elements identified in subparts A. through I. of this comment have not been satisfied for the reasons indicated below.

Response 2: As described in the responses to subparts A. through I. of this comment below, EPA believes that both the Kentucky and Indiana portions of the Louisville area have satisfied all applicable moderate area ozone SIP requirements. In acting on a redesignation request, EPA may rely on any SIP approvals that precede, or are performed in conjunction with, the final rulemaking action to redesignate the area. The September 4, 1992 memorandum from John Calcagni, Director, Air Quality Management Division, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' (September 4, 1992 Calcagni memorandum) allows for approval of SIP elements and redesignation to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions. EPA is approving today or has previously approved all remaining portions of the SIP that must be approved prior to redesignation. Therefore, the Kentucky and Indiana SIPs are fully approved.

Comment 2A—Attainment Demonstration: A commenter stated that under the CAA (42 U.S.C. 7502(c)(1), (c)(6), 7511a(b)(1); 7511a(j)) a moderate area is required to submit an attainment demonstration based on modeling or other analytical method determined by EPA to be at least as effective. The

commenter contends that since EPA has not approved an attainment demonstration for the Louisville area as required by the CAA, nor have the States involved submitted an approvable attainment demonstration, the requirements of section 110 and part D have not been met, and that EPA has not fully approved the SIP as required.

Response 2A: An attainment demonstration is not required under EPA's attainment determination policy, as set forth in the May 10, 1995, memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' (May 10, 1995, Seitz memorandum). EPA has explained at length in other actions its rationale for the reasonableness of that interpretation of the CAA and incorporates those explanations by reference here. See, for example, Cleveland-Akron-Lorain, Ohio (61 *FR* 20458, May 7, 1996); Salt Lake and Davis Counties, Utah (60 FR 36723, July 18, 1995); Grand Rapids, MI (61 FR 31832–33, June 21, 1996); and Cincinnati-Hamilton, Ohio and Kentucky (65 FR 37879, June 19, 2000). EPA also reiterates its position set forth in the proposed rulemaking to redesignate the Louisville area (66 *FR* 33505, June 22, 2001), and in the proposed rulemaking to determine that the Louisville area has attained the 1-hour ozone NAAQS (66 *FR* 27483, May 17, 2001). Subpart 2 of part D of title I of the CAA contains various air quality planning and SIP submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with certain other related provisions, as not requiring SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the 1-hour ozone NAAQS (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA has interpreted the general provisions of subpart 1 of part D of title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or section 172(c)(9) contingency measures. As explained in the May 10, 1995, Seitz memorandum, EPA believes it is appropriate to interpret the more specific attainment demonstration and related provisions of subpart 2 in the same manner. (See *Sierra Club* vs *EPA*, 99 F.3d 1551 (10th Cir. 1996))

The attainment demonstration requirements of section 182(b)(1) are that the plan provide for ''such specific annual reductions in emissions* * *as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA.'' If an area has in fact monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble for the Interpretation of title I of the CAA Amendments of 1990 (57 *FR* 13496, April 16, 1992, supplemented at 57 FR 18070, April 28, 1992) (General Preamble). As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached'' (57 FR 13564, April 16, 1992). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS.

EPA has reviewed the 1998–2000 ambient air ozone monitoring data for the Louisville area for consistency with the requirements of 40 CFR part 58. A discussion of this review is included in EPA's proposed determination of attainment for the Louisville area (66 FR 27483, May 17, 2001) and in the response to comment 1. On the basis of this review, EPA has determined that the Louisville area has attained the 1-hour ozone NAAQS during the 1998–2000 period, and is therefore not required to submit an attainment demonstration. Since an attainment demonstration is not required, EPA is not required to approve an attainment demonstration as a requisite to redesignating the Louisville area.

Comment 2B—All reasonably available control measures (RACM): The commenter contends that EPA has not approved a demonstration showing that the Kentucky and Indiana SIPs provide for implementation of all RACM as expeditiously as practicable. 42 U.S.C. 7502(c)(1). The commenter also alleges that the States have not met this requirement for the Louisville area. The commenter contends that EPA has no authority to waive this requirement, which applies in addition to the requirement to demonstrate timely attainment.

Response 2B: The General Preamble treats the RACM requirement as a ''component'' of an area's attainment demonstration. The General Preamble explains that ''section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of RACM as expeditiously as practicable. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area's attainment demonstration.'' Thus, EPA's final suspension of the attainment demonstration requirement pursuant to today's final determination of attainment also suspends the section 172(c)(1) RACM requirement, since the latter is a component of the attainment demonstration.

The General Preamble further states that ''where measures that might in fact be available for implementation in the nonattainment area could not be implemented on a schedule that would advance the date for attainment in the area, EPA would not consider it reasonable to require implementation of such measures.'' Because attainment has been reached for the Louisville area, no additional measures are needed to provide for attainment, nor could the attainment date for the area now be advanced through implementation of RACM. Therefore, no additional RACM controls beyond what are already required in the SIP are necessary for redesignation to attainment.

Comment 2C—RACT: The commenter contends that EPA has not fully approved the Kentucky SIP as meeting the requirement for RACT for all VOC sources within the nonattainment area, including each category of VOC sources covered by Control Technique Guideline (CTG) documents. The commenter further contends that without EPA reopening the public comment period on the redesignation proposal, the public will be deprived of the opportunity to offer fully informed comment as to whether the state plan as a whole meets all of the applicable requirements of section 110 and part D.

Response 2C: As described in the proposed redesignation (66 FR 33511, June 22, 2001), Indiana fulfilled all RACT requirements prior to submittal of its redesignation request. Likewise, Kentucky fulfilled most RACT requirements prior to submittal of its redesignation request. In two final actions signed on September 18, 2001, and a third signed on October 3, 2001, and published elsewhere in the *FR*, EPA approved the following revisions to the Kentucky SIP: Existing VOC RACT regulations; new regulations to address VOC RACT, a source-specific non-CTG VOC RACT determination, and negative declarations. These final actions

addressed all remaining VOC RACT requirements for Kentucky. EPA had previously published NPRs that included proposals for each of these final actions that provided the public with adequate opportunity to offer comments on these revisions to the Kentucky SIP. Comments were received on one of the three NPRs. However, none of these comments addressed the VOC RACT requirements being proposed for approval. Since no comments were received that raised questions regarding the adequacy of the relevant VOC RACT requirements, EPA has issued final approval for these revisions to the Kentucky SIP. Therefore, with these actions, in conjunction with today's action, the Kentucky SIP for the Louisville area 1-hour ozone SIP is fully approved. In acting on a redesignation request, EPA may rely on any SIP approvals that precede, or are performed in conjunction with, the final redesignation action. The September 4, 1992 Calcagni memorandum allows for approval of SIP elements and redesignation to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions. Thus, all RACT requirements have been fully adopted by Kentucky and Indiana and approved by EPA.

Comment 2D—Rate of progress plans: The commenter contends that the CAA required the States to obtain EPA approval of a 15 percent ''rate of progress'' plan (RFP plan) for the Louisville area (section 182(b)(1)). Although the States submitted such a plan, the commenter notes that EPA has not approved the plan. The commenter asserts that, on this basis, the SIP does not meet all requirements under section 110 and part D.

Response 2D: The General Preamble provides EPA's interpretation of certain section 172(c) requirements, including the following interpretation regarding RFP requirements: ''The requirements for RFP will not apply in evaluating a request for redesignation to attainment, since* * * air quality data* * * must show that the area has already attained. Showing that the state will make RFP towards attainment will have no meaning at that point.''

The May 10, 1995, Seitz memorandum, which sets forth EPA's attainment determination policy, provides a similar position on the RFP requirement. In this memo, EPA interprets the general provisions of subpart 1 of part D of title I (sections 171 and 172) and the more specific requirements of subpart 2 of part D of title I so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or section 172(c)(9) contingency measures, and the corresponding more specific SIP revisions identified in subpart 2, for so long as the subject area is monitoring attainment of the 1-hour ozone NAAQS. With regards to the specific requirement for RFP, whether dealing with the general RFP requirement of section 172(c)(2) or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas, including the 15 percent plan requirement of 182(b)(1), ''the stated purpose of RFP is to ensure attainment by the applicable attainment date. If an area has in fact attained the relevant NAAQS, the stated purpose of the RFP requirement will have been met, and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1), and 182(c)(2)(B) and (C).''

As noted by the commenter, both States had submitted 15 percent plans prior to submitting the redesignation request. EPA approved Indiana's 15 percent plan (62 FR 24815, May 7, 1997), and Indiana continues to implement and enforce all regulations associated with that submittal. EPA also proposed approval, in the form of a direct final rulemaking, of Kentucky's 15 percent plan and the regulations relied on to achieve those reductions (64 FR 49425, September 13, 1999), but subsequently withdrew the direct final rulemaking (64 FR 59644, November 3, 1999). In this final rulemaking, EPA is taking final action on our determination of attainment for the Louisville area, thereby removing the requirement for the 15 percent plan. Elsewhere in this FR, in a separate final rulemaking, EPA concludes that although no action on the 15 percent plan itself is required, the regulations submitted by Kentucky with its 15 percent plan provided permanent and enforceable reductions during the 1998 through 2000 time period, since they were implemented prior to 1998, and EPA approves regulations submitted by Kentucky as part of its 15 percent plan. That final action ensures that regulations implemented by Kentucky prior to attainment of the 1-hour ozone NAAQS are permanent and enforceable as part of the SIP, thereby fulfilling the requirements of section 107(d)(3)(iii), and the requirements for redesignation.

Comment 2E—New Source Review (NSR): The commenter points out that the CAA requires the SIP to include a preconstruction permit program for new major sources and modifications within the nonattainment area (42 U.S.C. 7410(a)(2)(C), 7502(c)(4)&(5), 7503, 7511a(a)(2)(C), and (b)(5)). The commenter contends that the States have not met this requirement, and that EPA has no express authority to waive this mandate.

Response 2E: Notwithstanding the current status of the Kentucky and Indiana SIPs, EPA has determined that areas being redesignated to attainment do not need to comply with the requirement that a part D NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the applicable NAAQS without part D NSR in effect. The rationale for this decision is described in a memorandum from Mary Nichols dated October 14, 1994. See also the discussion in the Grand Rapids, Michigan action (61 FR 31834, June 21, 1996). The States have demonstrated that the Louisville area will be able to maintain the 1-hour NAAQS without part D NSR in effect, and, therefore, need not have fully-approved part D NSR programs prior to approval of the redesignation request for the Louisville area. Kentucky's and Indiana's PSD requirements will be applicable and remain enforceable after the redesignation of the Louisville area (66 FR 33509–33510, June 22, 2001). See also the discussion in the final redesignation rulemaking for the Cincinnati-Hamilton area (65 FR 37890–37891, June 19, 2000).

In any event, the Kentucky and the Indiana SIPs were reviewed to ensure that they satisfied all CAA requirements to include a fully-approved part D NSR program. Section 172(c)(5) mandates that SIPs require permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. Section 182(b)(5) requires all major new sources or modifications in a moderate nonattainment area to achieve offsetting reductions of VOCs at a ratio of at least 1.15 to 1.0. For Kentucky, these requirements were completed through previously-published final rulemaking actions, and a final rulemaking action signed on September 18, 2001, to approve revisions to Kentucky's NSR program that were proposed for approval on June 21, 2001, (66 FR 33216). Indiana's part D NSR program was approved in October 1994.

Comment 2F—Conformity: The commenter contends that the SIP does not include conformity procedures as required by the CAA, and that EPA has no authority to waive this requirement. Since the CAA allows redesignation to attainment only where EPA has fully approved the implementation plan and only where the state has met all requirements applicable to the area

under section 110 and part D, the commenter contends that the area should not be redesignated.

Response 2F: Kentucky and Indiana have met the statutory requirement for submitting approvable general conformity procedures. EPA approved the Indiana general conformity rules effective on March 16, 1998, (63 FR 2146, January 14, 1998). EPA approved the Kentucky general conformity rules effective on September 25, 1998, (63 FR 40044, July 27, 1998).

In addition to general conformity, section 176(c) provides that state conformity revisions must be consistent with Federal transportation conformity regulations that the CAA requires EPA to promulgate. The Federal transportation conformity regulations were finalized on November 24, 1993, amended on August 7, 1995, and amended again on August 15, 1997 (40 CFR parts 51 and 93 Transportation Conformity Rule Amendments: Flexibility and Streamlining). On March 2, 1999, a court decision (*Environmental Defense Fund* v. *EPA*, 167 F.3d 641 (D.C. Cir. 1999)) rescinded several sections of the Federal transportation conformity rule, requiring EPA to revise those sections of the Federal rule. Kentucky submitted transportation conformity rules on November 23, 1994, and updated this submittal with revised rules on December 19, 1997. Indiana submitted transportation conformity rules on January 23, 1997, and updated this submittal with revised rules on April 19, 2001. The revised rules were adopted by Indiana in 1998 in response to the August 1997 changes to the Federal regulations. EPA has not acted on the submittals from either State, as they do not address later Federal transportation conformity regulation amendments. Once EPA has completed revisions to the Federal rule to reflect the 1999 court decision, both States will need to revise their regulations to address the changes.

EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment, since such areas would be subject to a Section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. EPA has explained its rationale and applied this interpretation in numerous redesignation actions. See redesignations for: Tampa, Florida (60 FR 52748, December 7, 1995); Jacksonville, Florida (60 FR 41, January 3, 1995); Miami, Florida (60 FR 10325, February 24, 1995); Grand Rapids, Michigan (61 FR 31835, June 21, 1996); and Cleveland-Akron-Lorain, Ohio (61 FR 20458, May 7, 1996). The U.S. Court of Appeals for the Sixth Circuit recently upheld this interpretation in *Wall* v. *EPA*, No. 00–4010, Slip Op. at 21–24 (6th Cir. September 11, 2001). The Court upheld EPA's view that failure to submit a revision that meets part D transportation conformity requirements is not a basis to deny a redesignation request. Consequently, EPA may approve Kentucky's and Indiana's 1-hour ozone redesignation requests notwithstanding the lack of fully approved conformity SIPs.

Comment 2G— NO_X SIP Call: The commenter contends that under 42 U.S.C. 7410(a)(2)(D)(i) the SIP must include provisions to prohibit emissions that will contribute significantly to nonattainment in, or interfere with maintenance by, any other state. The commenter asserts that EPA has specifically determined that emissions from the States Kentucky and Indiana contribute significantly to ozone nonattainment in downwind states, and issued a SIP Call to require additional NO_X controls in each State's SIP to address this problem. The commenter contends that this indicates that each State's SIP does not fully meet all of the requirements under section 110. The commenter believes that EPA cannot find the SIP Call requirement inapplicable for the purposes of redesignation.

Response 2G: EPA believes that submissions under the NO_X SIP call should not be considered applicable requirements for purposes of evaluating a redesignation request. Nevertheless, Indiana adopted the NO_X SIP Call rules on June 6, 2001, and submitted them for parallel processing on March 20, 2001, with a final submittal on August 20, 2001. EPA signed a final FR approving Indiana's rules on September 27, 2001. Therefore, Indiana has met the NO_X the SIP Call submission requirements.

Kentucky submitted regulations for parallel processing on February 20, 2001. EPA is currently awaiting supplemental information before determining if the Kentucky NO_X SIP Call submittal is approvable. However, the requirement to submit complete SIP revisions under the NO_X SIP call continues to apply to the area after redesignation to attainment. Therefore, Kentucky remains obligated to ensure its submittal is complete and approvable even after redesignation, and would risk sanctions for failure to do so.

The NO_X SIP Call requirements are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular area's designation and classification are the requirements that are the relevant measures to evaluate in reviewing a redesignation request. The NO_X SIP call submittal requirements continue to apply to the States regardless of the designation of any one particular area in these States. The NO_X SIP Call submissions are required to reduce emissions affecting downwind areas, not to address air quality in the designated Louisville ozone nonattainment area.

Thus, we do not agree that the NO_X SIP Call submission requirement should be construed to be an applicable requirement for purposes of redesignation. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing redesignation policies regarding conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176, October 10, 1996; and 62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, 62741, December 7, l995).

Comment 2H—Serious area requirements: One commenter stated that because the Louisville area failed to attain by its applicable attainment date of November 15, 1996, or the extended attainment date of November 15, 1997 (64 FR 27734, May 21, 1999), the Louisville area must be reclassified to ''serious'' and must meet all of the requirements for serious areas prior to redesignation.

Response 2H: Prior to the proposed determination of attainment (66 FR 27483, May 17, 2001), EPA approved a one 1-year extension of the Louisville area's attainment date (62 FR 55173, October 23, 1997) making its new attainment date November 15, 1997. On

May 21, 1999, (64 FR 27734), EPA proposed to find that the Louisville area failed to attain the 1-hour ozone NAAQS by its extended attainment date of November 17, 1997. Alternatively, EPA proposed in this same notice to extend the Louisville area's attainment date, provided Kentucky and Indiana submit SIPs pursuant to EPA's notice of proposed interpretation entitled, ''Extension of Attainment Dates for Downwind Transport Areas'' (64 FR 14441, March 25, 1999) by November 15, 1999. Provided the States met the extension policy criteria and EPA proposed to approve the States' submittals, EPA would then be able to propose a specific extended attainment date in that same notice. Kentucky and Indiana submitted attainment demonstration SIPs by the November 15, 1999, deadline, and were in the process of finalizing these submittals in the fall of 2000. At this same time, preliminary monitoring data for the 2000 ozone season indicated that the Louisville area was attaining the 1-hour ozone NAAQS for the 1998 to 2000 three-year period. This attainment status was confirmed when Kentucky and Indiana provided early certification of their 2000 ozone season monitoring data as complete, accurate, quality-assured in accordance with 40 CFR part 58, and recorded in AIRS on January 16, 2001, and January 11, 2001, respectively. Thus, EPA was in the process of reviewing the requests to extend the Louisville area's attainment date when the area, in fact, attained the 1-hour ozone NAAQS. Since the Louisville area has attained the 1-hour ozone NAAQS and submitted an approvable maintenance plan, the additional requirements for a ''serious'' area are not needed.

Comment 2I— NO_X RACT: EPA proposed to approve various source-specific NO_X RACT orders from Kentucky as part of the SIP (66 FR 33505, June 22, 2001). The commenter notes that EPA's longstanding definition of RACT is ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' (44 FR 53762, September 17, 1979). The commenter contends that the material in the proposed rulemaking action (66 FR 33505, June 22, 2001) does not demonstrate that the proposed emission limits are in fact RACT. The commenter contends that to determine RACT for these sources, EPA must at least examine NO_X control technologies in use throughout the nation and elsewhere, select one or more technologies as RACT for each category, and document why any more effective technologies are not technically and/or economically feasible. That EPA has failed to provide such analysis here. (The commenter also claims to identify several specific deficiencies with respect to individual sources and categories. These are described and responded to as subparts of this comment).

Response 2I: On November 12, 1999, and May 23, 2001, Kentucky submitted Board Orders approved by APCBJC for the 11 major NO_X sources located in the Louisville area. A Board Order is a regulatory instrument adopted by an air pollution control board which specifies air pollution control limits or requirements for a specific source or company. EPA reviewed each Board Order at both the prehearing and formal submittal stage for adequacy in meeting the requirements of NO_X RACT as defined in the November 25, 1992, Nitrogen Oxides Supplement to the General Preamble; CAA Amendments of 1990 Implementation of title I (57 FR 55625) (NO_X Supplement). The original November 12, 1999, submittal included Board Orders for 10 sources, but EPA concluded that only two of these Board Orders satisfied RACT. Following extensive consultation between APCDJC and EPA, Kentucky submitted revised Board Orders for the remaining eight sources, and for one additional major NO_X source, all of which EPA determined to satisfy RACT.

Comment 2Ia—Louisville Gas and Electric (LG&E) emission limits: EPA proposes to approve emission limits ranging from 0.47 to 0.52 pounds NO_X per million British thermal unit (lb/mmBtu) for LG&E electric generating units. The commenter contends that EPA does not explain why most of these limits are so much higher than the Ozone Transport Commission (OTC) phase II limit, which is the less stringent of 0.2 lb/mmBtu or a 65 percent reduction. The commenter claims that EPA estimates that the phase II reductions will be achieved at a cost of $1,600 per ton—a level that EPA has determined to be reasonably achievable. The commenter contends that in the absence of an adequate explanation or analysis of this discrepancy, EPA cannot determine that the proposed limits constitute RACT.

Response 2Ia: NO_X RACT for each of the sources located in the Louisville area, including LG&E's Cane Run and Mill Creek Generating Stations, was determined based on EPA's interpretation of what constitutes RACT as presented in the NO_X Supplement. The OTC is comprised of several northeastern states, and the programs and emission limits established by OTC for purpose of controlling NO_X emissions in the northeast are applicable only to those states.

The NO_X Supplement considers RACT for utilities to be ''the most effective level of combustion modification reasonably available to an individual unit. This implies low-NO_X burners. * * *'' EPA determined that, in the majority of cases, such controls result in an overall level of control equivalent to maximum allowable NO_X emission rates of 0.45 and 0.50 lb/mmBtu, respectively, for tangentially-fired and wall-fired coal-burning electric utility boilers, with compliance based upon a 30-day rolling average emission rate. EPA further determined that ''the actual NO_X emission reduction that can be achieved on a specific boiler depends on a number of site-specific factors * * *''

The initial Board Orders for these two facilities, submitted November 12, 1999, addressed EPA's prehearing concern that compliance with the established emission limits must be determined based on a 30-day rolling average emission rate. However, EPA commented that Kentucky increased the emission limits over the presumptive RACT limit provided in the NO_X Supplement, making them unapprovable absent further justification. Specifically, the November 12, 1999 Board Orders included emission limits of 0.49 lb/mmBtu for the tangentially-fired units (Mill Creek boilers 1 and 2 and Cane Run boiler 6) and 0.55 lb/mmBtu for the wall-fired units (Mill Creek boilers 3 and 4 and Cane Run boilers 4 and 5) located at these facilities. To support why these two sources could not meet presumptive RACT levels, Kentucky provided documentation showing that the selected acid rain controls for compliance with title 4 requirements—low-NO_X burners—were installed on these boilers and operated as designed on a regular basis. Kentucky further demonstrated, using Continuous Emission Monitoring data from the sources, that reasonable emission limits for these boilers, based on a 30-day rolling average compliance period and appropriate operation of the installed controls, were 0.47 lb/mmBtu for the three tangentially-fired units and 0.52 lb/mmBtu for the four wall-fired units. On May 23, 2001, Kentucky submitted revised Board Orders for the LG&E Cane Run and Mill Creek facilities that specify emission limits of 0.47 for three tangentially-fired coal-burning utility

boilers and 0.52 for four bottom wall-fired coal-burning utility boilers.

EPA therefore determined that Kentucky has required a RACT level of control for these facilities by installing the most effective, reasonably available controls, documenting the actual NO_X emission reduction achieved through appropriate operation of those controls, and requiring the corresponding emission limits in the final Board Orders for these facilities. The unit-specific nature of these requirements also assures a greater level of control than could be achieved through an ''overall [facility-wide] level of control,'' which the NO_X Supplement uses to establish presumptive RACT limits.

Comment 2Ib—Setting emission limits for some sources: For several source categories, EPA proposes to approve limits on capacity factors, rather than actual emission limits. The commenter contends that the notice does not explain why these constitute RACT, when other states have set numeric NO_X RACT emission limits for the same or similar source categories. See EPA's October 17, 1995, Summary of NO_X RACT Rules (available at *www.epa.gov/ttn/caaa/t1pgm.htm*). The commenter further contends that the proposal conflicts with EPA's NO_X RACT guidance, which indicates that EPA expects that NO_X RACT for sources other than electric utility boilers to be set at levels at least comparable to RACT guidance levels for electric utility boilers (57 *FR* 55620, November 25, 1992).

Response 2Ib: Capacity factors that limit the operation of coal- and gas-fired boilers at facilities to less than 10 percent of total capacity were included in the Board Orders for five facilities in lieu of emission limits. However, all of the boilers subject to capacity limits are back-up or emergency units that are operated on a very infrequent basis. In fact, most of these units were not operated during the 2000 and/or 2001 ozone seasons. Thus, total ozone season emissions from the capacity-limited units in recent years have been so low that additional controls or extensive monitoring are clearly not cost-effective and therefore not justified. The Board Orders do establish emission limits for all primary boilers in use at these facilities that satisfy RACT. Taken together, these different approaches for addressing emissions from primary and back-up boilers ensure that the emissions from these five facilities comply with RACT. The five Board Orders also require these facilities to record the amount, type and heat content of fuel combusted each day for each boiler subject to a 10 percent capacity limit; the capacity factor for each of these boilers must also be calculated and recorded monthly. Finally, the facilities must submit a semi-annual report documenting all deviations from NO_X RACT Plan requirements. These comprehensive usage and reporting requirements ensure that emissions from the subject boilers for all five facilities will continue to represent RACT. In summary, due to limited operating hours, the costs to control these units would be very high for a small amount of emission reductions.

For three of the five facilities, the boilers subject to 10 percent capacity factors are gas-fired. Low usage rates, combined with the clean-burning, inherently lower-emitting nature of these gas-fired boilers (0.20 lb/mmBtu or less) ensure that total emissions from these units will be minimal. The Board Order for one of these facilities—Oxy Vinyls—establishes a 10 percent capacity factor for one gas-fired boiler that serves as a back-up unit for the two primary coal-fired boilers. In actuality, this gas-fired boiler was not operated during the 1999 or 2000 ozone seasons. However, even if operated at 10 percent capacity, total potential NO_X emissions for this unit would be significantly lower than could be achieved by establishing a RACT emission limit for the unit, assuming operation at full capacity. In addition, emissions from the two primary coal-fired boilers effectively dwarf emissions from the capacity-limited gas boiler by comparison. Installation of controls on the latter unit would be non-cost effective and impracticable. The second facility—Ford Louisville Assembly Plant—has three gas-fired boilers subject to a 10 percent capacity factor. Two of these boilers were not operated in 2000 or 2001. The third was operated for a short time in October of one year for testing purposes. The third facility—Rohm and Haas—has one primary gas-fired boiler, and one back-up gas-fired boiler subject to a 10 percent capacity factor. Emissions from the latter could potentially comprise a greater portion of this facility's total emissions. However, the Rohm & Haas Board Order also requires this boiler to meet a 0.20 lb/mmBtu emissions limit in the event that it is unable to comply with the 10 percent capacity limit. This boiler was operated at less than three percent capacity in 2000.

The Board Order for the fourth facility, GE Appliances, establishes a 10 percent capacity factor for each of five secondary backup coal-fired boilers. The primary energy source for the facility is a clean-burning methane gas boiler, and the secondary energy source is a gas-fired boiler subject to an emissions limit of 0.2 lb/mmBtu. During the 2000 ozone season, four of the coal-fired boilers were not used and the fifth had a usage rate equivalent to two percent of its total capacity. During the 2001 ozone season, none of these five boilers were operated. In addition to the above-mentioned recordkeeping and reporting requirements that all five facilities must meet, the GE Appliances Board Order requires this facility to conduct a thorough maintenance or ''tune-up'' of each of the five coal-fired boilers prior to the start of the ozone season. It also requires even more extensive maintenance on one of these five boilers—to be identified by May 1 of each year as the primary backup among these five boilers. The required semi-annual report submitted by GE Appliances must document all maintenance activities performed on these boilers to verify that the pre-season ''tune-up'' was completed and that the boilers continued to be well-maintained on an ongoing basis.

The Board Order for the fifth facility, the Louisville Medical Center Steam Plant, establishes a 10 percent capacity factor for each of two coal-fired boilers that are designated as third-level backup for the primary boilers at the source. The Board Order establishes emission limits that satisfy RACT for the primary, and first- and second-level backup boilers in use at the facility. During the 2000 ozone season, the two coal-fired boilers subject to 10 percent capacity limits were not operated.

Comment 2Ic—Texas Gas Transmission delayed compliance dates: The commenter points out that EPA proposes to approve delayed compliance dates for various emission limits applicable to Texas Gas Transmission. Some of these dates are during 2002, and one is during 2004. The commenter contends that EPA cannot approve NO_X RACT with such delayed compliance dates. The CAA required adoption and implementation of NO_X RACT in Louisville long ago, and EPA has no authority to approve orders that allow for delayed compliance.

Response 2Ic: Based on review of the November 12, 1999, submittal, EPA noted that the turbine lacked controls and identified several types of controls, including dry low NO_X controls, that appeared to be viable RACT choices. Absent adequate justification, EPA required the facility to install controls on this unit. Texas Gas agreed to install dry low NO_X controls on the turbine in 2004. Installation could not be done in 2001–2002, because the facility will be

installing RACT controls on the Internal Combustion Engines (ICEs) during that timeframe, and requires that either the ICEs or the turbine be operational at all times. Following installation of these controls, this facility will have fulfilled the CAA requirement to implement NO_X RACT.

Comment 3—Showing that air quality improvement is due to permanent and enforceable reductions: The commenter asserts that neither the States nor EPA have shown that air quality improvements are due to permanent and enforceable emission reductions, as required by 42 U.S.C. 7407(d)(3)(E)(iii). The commenter asserts that although States have adopted measures that have produced some emission reductions, EPA has not demonstrated that these reductions are responsible for the area's improved air quality or the absence of violations. The commenter holds that the only way to reliably make such a showing is through photochemical grid modeling. The commenter further asserts that given the complex chemistry and meteorology of ozone formation, the combination of NO_X and VOC emission reductions that might be attributable to the cited measures could just as easily lead to increases in ozone concentrations. The commenter contends that the lack of violations in 1998–2000 could be due to weather patterns or changes in transport of ozone precursors. The commenter further contends that the States did not offer other technically sound analysis showing that air quality improvements are due to permanent and enforceable emission reductions.

Response 3—Our policy does not specify that photochemical grid modeling is required for all ozone nonattainment areas to demonstrate that permanent and enforceable emission reductions have produced improvements in air quality. See the September 4, 1992, Calcagni memorandum; the General Preamble; ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993; and ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

We have found that reductions in ozone precursor (VOC and NO_X) emissions (emission inventory approach) have brought many areas across the country into attainment. Reductions in ozone precursor emissions similar to the reductions that have taken place in the Louisville area have been confirmed in photochemical grid modeling to reduce ambient ozone concentrations. EPA has approved many ozone redesignations showing decreases in ozone precursor emissions resulting in attainment of the 1-hour ozone NAAQS. See redesignations for Charleston, West Virginia (59 FR 30326, June 13, 1994; and 59 FR 45985, Sept. 6, 1994); Greenbrier County, West Virginia (60 FR 39857, Aug. 4, 1995); Parkersburg, West Virginia (59 FR 29977, June 10, 1994; and 59 FR 45978, Sept. 6, 1994); Jacksonville/Duval County, Florida (60 FR 41, January 3, 1995); Miami/Southeast, Florida (60 FR 10325, February 24, 1995); Tampa, Florida (60 FR 62748, December 7, 1995); Lexington, Kentucky (60 FR 47089, September 11, 1995); Greensboro, North Carolina (58 FR 47391, September 9,1993); Indianapolis, Indiana (59 FR 35044, July 8, 1994; and 59 FR 54391, October 31, 1994); South Bend-Elkhart, Indiana (59 FR 35044, July 8, 1994); Evansville/Vanderburgh County, Indiana (62 FR 12137, March 14, 1997, and 62 FR 64725, December 9, 1997); Canton, Youngstown-Warren, Ohio (61 FR 3319, January 31, 1996); Cleveland-Akron-Lorain, Ohio (60 FR 31433, June 15, 1995, and 61 FR 20458, May 7, 1996), Clinton County, Ohio (60 FR 22337, May 5, 1995, and 61 FR 11560, March 21, 1996); Columbus, Ohio (61 FR 3591, February 1, 1996); Kewaunee, Manitowoc, and Sheboygan Counties, Wisconsin (61 FR 29508, June 11, 1996; and 61 FR 43668, August 26,1996); Walworth County, Wisconsin (61 FR 28541, June 5, 1996, and 61 FR 43668, August 26, 1996); Pointe Coupee Parish, Louisiana (61 FR 37833, July 22, 1996, and 62 FR 648, January 6, 1997); and Monterey Bay, California (62 FR 2597, January 7, 1997). Most of the areas that have been redesignated to attainment for the 1-hour ozone NAAQS have continued to attain the standard. Areas that are not maintaining the 1-hour ozone NAAQS are implementing maintenance plans designed to bring them back into attainment. The U.S. Court of Appeals for the Sixth Circuit recently upheld EPA's emissions inventory approach for maintenance plans as a basis for approval of those plans in *Wall* v. *EPA,* supra at 17–19.

Between 1990 and 1999, VOC emissions in the Louisville nonattainment area have decreased area-wide by more than 112 tons per day. These emissions reductions are due to a number of permanent and enforceable regulatory programs, including the Federal Motor Vehicle Emissions Control Program, fleet turnover of automobiles, implementation of Stage II vapor recovery program, implementation of VOC RACT, lower Reid vapor pressure gasoline, restrictions on open burning, regulations covering landfill emissions, and ceased operation and improved technology at facilities in the Louisville area. Kentucky also instituted regulations regarding rule effectiveness and mandated the use of reformulated gasoline in the nonattainment area. Additional reductions in Indiana resulted from regulations for VOC storage tanks, shipbuilding/ship repair, wood furniture coating, automobile refinishing, and the implementation of an improved vehicle Inspection and Maintenance (I/M) program and a ridesharing program. Since the 1999 attainment year, the States have increased the rule effectiveness of Stage I vapor control and have implemented additional Federal regulations on such emission sources as architectural coatings, traffic paints, auto-body refinishing, and commercial/consumer products rules.

It is a technically sound and acceptable analysis to show that air quality improvements are due to permanent and enforceable emission reductions by demonstrating a decline in ozone levels which corresponds to the implementation of the enforceable reductions. An analysis of the ozone values in the Louisville area shows that ambient ozone concentrations dropped after this combination of ozone precursor reductions occurred. Ozone air quality monitoring data shows that the design value [1] changed from 0.149 ppm during the 1987–1989 time period to 0.123 ppm during the 1998–2000 time period. The decline in ozone concentrations indicates that the reduction in ozone precursor emissions in the area has contributed to improved air quality and helped bring about attainment of the 1-hour ozone NAAQS. The Louisville area's decrease in ozone levels is consistent with what other areas have experienced.

While the complex chemistry and meteorology of ozone formation is a factor, the combination of NO_X and VOC emission reductions in the Louisville area have lead to decreases in ozone concentrations, not increases. The commenter has not provided data

[1] The design value is typically the fourth highest ozone concentration recorded at a monitor over a three-year period. This value is calculated for each monitor and the highest value is the design value for the area.

showing that similar decreases in ozone precursor emissions have led to higher levels of ozone elsewhere. Nor did the commenter supply evidence to support the conclusion that the absence of violations during 1998–2000 was due to weather patterns or changes in transport of ozone precursors. Climatological data for the Louisville area from the National Oceanic and Atmospheric Administration [2] (*http://www.cdc.noaa.gov/USclimate/USclimdivs.html*) shows that during the 1998–2000 ozone seasons, local weather conditions were, in fact, more favorable for high ozone concentrations than low concentrations. This data is summarized in Tables 2 and 3. The fact that weather conditions and transport may have a substantial effect on ozone concentrations, both in terms of increasing ozone and decreasing ozone, cannot be controlled. We use a three-year averaging period to account for the year-to-year difference in weather conditions. In the Louisville area, the fact that the preliminary ozone data for 2001 continues to demonstrate attainment of the 1-hour ozone NAAQS increases our confidence that meteorology has not been the controlling factor in the area's attainment.

Table 2 shows the ranking (percentile) for each year of the average temperatures over the April—October period (ozone season) for the listed years compared to the long term average (1895 to 1999). A rank or value of 100 represents the highest temperature percentile and is given to the hottest year. Correspondingly, rank of one represents the lowest temperature percentile and is given to the coolest year. Table 3 shows the standard deviation for the average temperature anomaly (in degrees Fahrenheit) over recent three-year ozone seasons compared to a contemporary long-term average of temperature (1971–2000). In this table, warmer periods are indicated by larger positive values. If favorable weather conditions had been a large factor in Louisville's attainment of the standard, then one would have expected the attainment period to have been cooler than the previous nonattainment period (1997–1999). Instead, during the attainment period of 1998–2000, average temperatures were above the long term average (+1.24) from Table 2. Table 2 also shows that the three attainment years (1998–2000) were relatively warm, ranked in the 82th, 79nd, and 49st percentiles respectively. The temperature rankings and anomalies indicate that the ozone seasons with violations were less conducive to ozone formation based on temperature than the attainment period of 1998–2000 with no violations.

TABLE 2.—TEMPERATURE PERCENTILES (RANKING) FOR THE OZONE SEASONS

Year	Temperature percentiles (ranking) for Louisville, Kentucky
1990	19
1991	92
1992	5
1993	30
1994	29
1995	67
1996	23
1997	5
1998	82
1999	79
2000	49

TABLE 3.—COMPOSITE TEMPERATURE ANOMALIES [1] FOR APRIL—OCTOBER VERSUS 1971–2000 AVERAGE

Three year period of April–October data [2]	Temperature anomaly for Louisville, KY
1992–1994	−0.72
1993–1995	0.22
1994–1996	0.10
1995–1997	−0.50
1996–1998	−0.23
1997–1999	0.45
1998–2000	1.24

[2] The standard deviation for temperature anomaly in degrees Fahrenheit.

The above data shows that the weather conditions in the 1998–2000 attainment years were not unusually favorable towards lower levels of ozone, and that the area has attained the 1-hour ozone NAAQS despite this warmer than average weather. The combination of this analysis of the meteorological conditions in conjunction with the existence of adopted emission controls demonstrates that the improvement in air quality is due to permanent and enforceable emission reductions. In light of this information, EPA believes that photochemical grid modeling is not necessary to support this conclusion, nor is it required by the CAA or guidance.

Comment 4A—Maintenance demonstration using adequate methods: One commenter stated that the attainment inventory approach was inadequate, and that modeling shows continued nonattainment through 2007 and beyond. The specific details of the commenter's remarks and EPA's replies are addressed below in the comments and responses identified as 4Aa, 4Ab, and 4Ac.

Comment 4Aa—Demonstration of maintenance: The commenter asserts that the plan does not demonstrate maintenance as required by the CAA, and that EPA has proposed to find maintenance on the presumption that the area will always be in attainment if emissions remain at or below estimated 1999 levels. The commenter contends that since the area violated the NAAQS in the 1997–99 period, holding emissions to 1999 levels will not assure attainment. The commenter further contends that EPA regulation and guidance explicitly require modeled maintenance demonstrations in multi-state ozone nonattainment areas like Louisville, where modeling was required for the attainment demonstration (see 40 CFR 51.112; 65 FR 6711, rejecting use of rollback analysis for making attainment and nonattainment predictions; and the September 4, 1992, Calcagni memorandum). The commenter insists that until EPA approves such a modeling demonstration, it cannot approve the maintenance plan.

Response 4Aa: In evaluating Kentucky's and Indiana's maintenance plans, EPA determined that the Louisville area's ability to demonstrate attainment for the 1998–2000 time period indicates that the attainment year (1999) level of emissions is adequate to keep the area in attainment (maintenance) for at least the next 10 years. Pursuant to EPA policy, states may demonstrate maintenance by preparing an attainment emissions inventory corresponding to the period during which the area monitored attainment and showing that future emissions will stay below the attainment emissions inventory. (See September 4, 1992, Calcagni memorandum). The Louisville area emissions are indeed projected to remain below the 1999 level for the next 10 years. Holding emissions at or below the level of attainment is, in EPA's view, ''adequate to reasonably assure continued maintenance of the 1-hour ozone NAAQS.'' Thus, under EPA's interpretation, the air quality will be maintained by keeping emissions below the attainment emissions level, continuing to monitor ozone levels, and having maintenance plan contingency measures available. As noted above, in response to comment 3, the U.S. Court of Appeals for the Sixth Circuit recently upheld EPA's emissions inventory

[2] The weather data for Louisville used to develop Tables 2 and 3 was derived from the average of the two weather zones covering Louisville (Kentucky zones 2 and 3)

approach to evaluating maintenance plans in *Wall* v. *EPA*, supra at 17–19.

According to the September 4, 1992, Calcagni memorandum, ''many areas are required to submit modeled attainment demonstrations to show that proposed reductions in emissions will be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstrations should be based upon the same level of modeling. In areas where no such modeling was required, the State should be able to rely on the attainment inventory approach.'' This guidance does not, as the commenter suggests, require an area such as the Louisville area to submit modeled attainment demonstrations when the States have already produced actual quality-assured data showing attainment. Therefore, the maintenance demonstration need not be based on modeling. As provided for by the September 4, 1992, Calcagni memorandum, ''[a] State may generally demonstrate maintenance of the NAAQS by *either* showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.'' Kentucky and Indiana are not required to submit a modeled attainment demonstration to support their redesignation request, since EPA has concluded that this requirement is not applicable so long as the area actually attained the 1-hour ozone NAAQS. Therefore, EPA has determined that an attainment demonstration that includes photochemical grid modeling is not needed to show that the area has attained the 1-hour ozone NAAQS. Since the States were not required to submit a modeled attainment demonstration under EPA's established interpretation of the statute and its longstanding policy, the States need not submit a modeled maintenance demonstration. EPA finds that the States can rely on the attainment inventory approach as was done here.

In addition, citing 40 CFR 51.112, the commenter contends that EPA's regulations require modeling to show that a maintenance plan is adequate. Section 51.112 provides in relevant part, that ''[e]ach plan must demonstrate that the measures, rules and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements.'' Both the language and the context of this regulation indicate that it applies to attainment demonstrations, and not to stand alone maintenance plans submitted under CAA section 175A. There is no reference in the regulation to modeling requirements applicable to a section 175A plan revision for the sole purpose of providing maintenance and not attainment.

Moreover, even if the regulation could be construed as applying such a requirement, by its own terms, the regulation provides authority for EPA to modify requirements through notice and comment rulemaking. The rulemaking proposing redesignation of the Louisville area (66 FR 33505, June 22, 2001) addresses the attainment inventory approach in the maintenance plan, requests comments, and concludes that a modeled demonstration is not required to demonstrate maintenance under the statute. Many of the ozone areas for which EPA has approved ozone redesignations have used an emissions inventory approach to demonstrate maintenance. Indeed, the majority of areas have continued to maintain the 1-hour ozone NAAQS using that approach. There are ozone monitors located in the Louisville area to ensure that the area's air quality remains below the level set by the one-hour ozone NAAQS. Additionally, areas that are not maintaining the 1-hour ozone NAAQS have contingency measures in a maintenance plan to bring them back into attainment. See redesignations listed above in Response 3.

Comment 4Ab—Tier 2/Gasoline Sulfur Ozone Modeling Analysis: The commenter asserts that a modeling analysis set forth in EPA's Tier 2/Gasoline Sulfur Ozone Modeling Analysis, contradicts the premise that the Louisville area's maintenance plan is adequate to maintain the 1-hour ozone NAAQS for the required 10 year period. Specifically, the commenter contends that the Louisville area was included in the Tier 2 modeling analysis as among those that are certain or highly likely to require additional emission reductions in order to attain and maintain the 1-hour ozone NAAQS.

Response 4Ab: In the Tier 2 rulemaking, EPA used a regional ozone modeling system to predict ozone levels in many cities as part of an analytical process to characterize the risk that there would be nonattainment in a large and geographically broad number of areas. The Tier 2 modeling involved many approximations and assumptions because it was conducted for a very large region. While ozone predictions and the characterization of the risk of nonattainment in individual areas was a step toward reaching a conclusion about risks across the group of areas that characterization was not a finding by EPA of violations for any specific area. In addition, EPA's decision to approve the Louisville maintenance plan is based on more recent air quality data than was taken into account in the Tier 2 rulemaking. The Tier 2 rulemaking reflected only air quality data through 1998; it did not reflect the additional two years of air quality data in which the Louisville area attained the 1-hour ozone NAAQS. This is clear from the Tier 2 notice (65 FR 6709, February 10, 2000) which indicated that Louisville was included on a list of areas ''that have current violations of the 1-hour NAAQS.'' (See also the discussion of this issue in the final redesignation rulemaking for the Cincinnati-Hamilton area 65 FR 37882–37883, June 19, 2000).

The Louisville area is not now nor was it in violation of the 1-hour ozone NAAQS at the time it was proposed to be redesignated. In fact, the preliminary air quality data for the Louisville area for 2001 indicates continued attainment. In addition, the emission inventory projections in the maintenance plans show that total NO_X and VOC emissions decline between 1999 and 2012. When the air quality data is combined with a downward trend in total emissions, there is an even stronger basis for not relying completely on the Tier 2 ozone modeling. Even so the Tier 2 reductions are the type of additional reductions that will help ensure maintenance for the next 10 years. The U.S. Court of Appeals for the Sixth Circuit recently upheld EPA's decision to treat Tier 2 findings as inapplicable to an evaluation of an area's maintenance plan in a redesignation action (see *Wall* v. *EPA*, supra at 19–20).

Even if there is some risk of lapse, that would not preclude the redesignation of the Louisville area. In drafting the CAA, Congress did not presume that an area will always be in attainment (62 FR 650). In fact, Congress specifically contemplated that future violations may occur and therefore required that EPA fully approve a maintenance plan and contingency measures for an area consistent with the requirements of section 175A of the CAA before that area can be redesignated to attainment (See 42 U.S.C. 7407(d)(3)(E)(iv)). If the area monitors a violation, then the contingency measures required by section 175A to be included in the maintenance plan would be triggered to bring the area back into attainment. Clearly, the CAA and Congress anticipated that areas redesignated to attainment may violate the NAAQS in the future, and Congress ensured in the CAA that control measures to remedy

the violation are available if such violations occur.

Comment 4Ac—Correlation of emission levels with ozone levels: The commenter asserts that EPA cannot assume that emission levels correlate with ozone levels in a linear or consistent fashion. Because the Charlestown and New Albany monitors violated the 1-hour NAAQS through 1999 and recorded more exceedances in 1997–98 than in 1995–96, even though emissions were declining, the commenter concludes that the States' attainment inventory approach is not a reliable predictor of future attainment.

Response 4Ac: We believe that the monitoring data confirms that the 1999 level of emissions is adequate to keep the area in attainment. Table 4 summarizes the number of estimated exceedances at each monitor in the area from 1995 through 2000. It is considered a violation of the 1-hour ozone NAAQS [3] if the average expected exceedances over a three year period total more than 1.0 at any one monitor (See 40 CFR 50.9 and Appendix H).

During 1999 and 2000 exceedances of the 1-hour ozone standard were measured at only one of the Louisville area monitors. The Buckner monitor in Oldham County, Kentucky had 1.2 exceedances in 1999. Therefore, over the three-year averaging period from 1998 through 2000, there were exceedances but no violations of the 1-hour ozone NAAQS.

TABLE 4.—LOUISVILLE AREA 1-HOUR OZONE NAAQS ESTIMATED EXCEEDANCES FROM 1995 TO 2000

Year	Indiana sites		Kentucky sites				
	Charlestown, Clark County	New Albany, Floyd County	Shepherdsville, Bullitt County	Bates, Jefferson County	Watson, Jefferson County	WLKY–TV Jefferson County	Buckner, Oldham County
1995	2.1	1.0	0.0	1.0	1.0	0.0	0.0
1996	0.0	1.0	0.0	0.0	1.0	1.1	0.0
1997	3.1	2.0	1.2	1.0	0.0	0.0	2.1
1998	[1] 3.1	2.0	0.0	1.2	1.2	1.1	1.1
1999	0.0	0.0	0.0	0.0	0.0	0.0	1.2
2000	0.0	0.0	0.0	0.0	0.0	0.0	0.0

[1] See Response 1 for explanation of the derivation of this value.

Several factors which cannot be controlled have an effect on ozone formation, most notably meteorology and the presence of transported ozone or transported ozone precursors. EPA addresses meteorological variations by using long term averaging (EPA's 3-year ozone averaging period) and evaluating the effectiveness of a local control strategy during ozone-conducive years. As Response 3 described, the local control strategy for Louisville has been effective during warmer than average years. See Tables 2 and 3. See also the discussion of this issue in the final redesignation rulemaking for the Cincinnati-Hamilton area (65 FR 37886–37887, June 19, 2000).

The commenter states that ''[b]oth the Charlestown and New Albany monitors violated the 1-hour NAAQS through 1999, and both recorded more exceedances in 1997–98 than in 1995–96.'' In order to test the commenter's contention that temperature (weather) not emission reductions brought about the lower ozone concentrations in the Louisville area, we ranked the average ozone-season temperatures for the years the commenter referenced. The percentile table (Table 2) compares each year's average temperature to the average temperature during the period 1895–2000, ranks the years from coolest to warmest. Table 2 (see Response 3) shows that the rankings of 1997–1998 are 5 and 86 respectively, and the rankings of 1999–2000 to be 82 and 51 respectively. It also lists the rankings for the years of 1995–1996 as 69 and 24 respectively.

If weather is the sole or most significant influence on ozone levels, then the period with a lower temperature ranking should have a lower number of ozone exceedances The year 1997 was cooler but had more exceedances than 1995 or 1996. During the period 1998–1999, with the two highest temperature rankings between 1995 and 2000, there were fewer exceedances than in the 1996–1997 or 1997–1998 periods. Given that ozone exceedances did not occur more frequently in apparently ozone-conducive high-temperature years (1998–1999), it seems reasonable to conclude that the improvement in air quality that occurred during this timeframe in the Louisville area is due to permanent and enforceable emission reductions. See also the discussion of this issue in the final redesignation rulemaking for the Cincinnati-Hamilton area (65 FR 37886, June 19, 2000). Based on its analyses, EPA continues to believe that reductions in ozone precursors do lead to measurable ozone decreases, and therefore, the attainment inventory approach used by the States is an appropriate predictor of future attainment. *Wall* v. *EPA*, supra at 17–19.

Comment 4B—Understatement of future emissions: The commenter contends that even if the emissions inventory approach was otherwise defensible here, Kentucky has failed to demonstrate that emission reductions projected for future years will in fact be achieved. The Kentucky appears to rely in part on reductions claimed in their 15 percent rate of progress plans, but EPA has never determined that the plans actually demonstrate the claimed emission reductions. The commenter insists that the reductions claimed from various 15 percent plan measures, as well as from other measures, are not creditable. Specifically, the commenter claims that Kentucky's Regulation 1.18 (Rule Effectiveness) does not require any specified minimum level of emission reduction, and that because the content of each rule effectiveness plan is determined solely by the source, these plans provide no assurance of any emission reductions at all. The commenter also claims that emission reductions resulting from Regulation 6.43 (VOC Reduction Requirements) are not creditable, because Kentucky raised questions about the legality of adopting this regulation, and the reductions claimed are also dependent on the adequacy of the APCDJC's emissions trading program, which EPA has not approved.

[3] Estimated exceedances take into account actual monitored exceedances and account for days where there is missing data or the data was invalidated (See Response 1).

Response 4B: EPA is publishing elsewhere in this FR its final rulemaking action approving regulations contained in Kentucky's 15 percent plan. EPA hereby incorporates the rationale and responses of that rulemaking by reference. As EPA explains in that rulemaking, EPA's final attainment determination renders EPA approval of Kentucky's 15 per cent plan unnecessary, since that requirement is no longer applicable. Thus no specific credits are being approved as part of the 15 percent plan. Notwithstanding this circumstance, EPA has taken final action to approve the control measures contained in the plan, and these measures will continue to be implemented after redesignation. Therefore, all reductions by these control measures are permanent and enforceable and will continue to be achieved after redesignation. Indiana's 15 percent plan was approved on May 7, 1997 (62 FR 24815).

Comment 4C—Lack of resource and enforcement commitments: A commenter contends that the maintenance plan is also not approvable because it lacks enforcement programs and commitments of legal authority and resources to implement all of the measures, as required by the CAA (42 U.S.C. 7410(a)(2)(E)). The commenter claims that EPA simply assumes that the various measures relied on for continued and future emission reductions will continue to be implemented. See also 40 CFR 51.111, 51.280, 57 FR 13498, 13564 (1992).

Response 4C: The States have committed to select and implement the maintenance plan contingency measures within 18 months of a violation of the 1-hour ozone NAAQS. The commenter provided no evidence that the maintenance plan fails to satisfy section 110(a)(2)(E). The CAA does not require a separate level of enforcement for a maintenance plan as a prerequisite to redesignation. The enforcement program approved for, and applicable to, the SIP as a whole also applies to the maintenance plan. The U.S. Court of Appeals for the Sixth Circuit recently upheld EPA's approval of a maintenance plan without requiring a separate commitment of resources and authority (see *Wall* v. *EPA*, supra at 17–19).

EPA approved the Kentucky ozone SIP on January 25, 1980, (45 FR 6092) and the Indiana ozone SIP on January 18, 1983, (48 FR 2124), as meeting all of the requirements of section 110, which included section 110(a)(2)(F), the predecessor of current section 110(a)(2)(E). EPA has consistently interpreted section 107(d)(3) as allowing EPA to rely on prior approvals of SIP provisions when reviewing redesignation requests. The September 4, 1992, Calcagni memorandum describes procedures that EPA regions should use to evaluate requests to redesignate areas to attainment status. The memo states: ''An area cannot be redesignated if a required element of its plan is the subject of a disapproval.* * * However, this does not mean that earlier issues with regard to the SIP will be reopened. Regions should not reconsider those things that have already been approved and for which the Clean Air Act Amendments did not alter what is required.'' EPA does not need to reconsider the issue of whether the Kentucky or Indiana SIPs met section 110(a)(2)(E) requirements prior to redesignation. *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984 (6th Cir. 1998).

Even if violations subsequently occur, this does not conclusively establish that state enforcement is so inadequate as to make the state enforcement program deficient under the CAA. EPA has not made such a finding, and even if an area is redesignated, EPA retains authority to make a finding of failure to implement under section 173(b) of the CAA or to require a SIP revision under section 110(a)(2)(H) if it concludes that state implementation and enforcement is deficient. The state would thus remain subject to EPA authority to improve its enforcement even after the area is redesignated. For purposes of redesignation, the area has a fully approved SIP.

Comment 4D—Lack of accurate estimate of Tier II benefit: The commenter contends that there is no accurate estimate of Tier 2 benefits. Since EPA has recognized that better data will be available after the issuance of MOBILE6, the commenter believes that, EPA cannot allow the state to claim credit in its future year emissions projections for a specific level of Tier 2 reductions. The commenter asserts that without the Tier 2 reductions claimed, it does not appear that future year VOC emissions will be lower than 1999 emissions, and therefore, EPA cannot approve the maintenance demonstration.

Response 4D: EPA requires that maintenance plans reflect expected actual emission rates (see September 4, 1992, Calcagni memorandum). Hence, once rules are finalized and enforceable, they need be considered when preparing maintenance plans and establishing MVEBs. The MVEBs represent the emissions budgets for motor vehicles and are closely related to the emission reductions from the Tier 2 program. EPA requires that 1-hour ozone maintenance plans contain MVEBs for ozone precursors. In order to find MVEBs in plans adequate, EPA requires that the MVEBs be consistent with the control measures in the submitted maintenance plan (40 CFR 93.118(e)(4)(v)). EPA believes that once a regulation is finalized and we know that the reductions will occur, it is best professional practice, and thereby required by EPA guidance, to account for those reductions in plan development. The final Tier 2 low sulfur rulemaking was published on February 10, 2000, (65 FR 6697). In this case, the maintenance plans, and the MVEBs, contained in these plans, need to reflect the reductions achieved by the Tier 2 rulemaking.

EPA first estimated emission reductions from Tier 2 for serious and severe 1-hour ozone attainment demonstration areas in a memorandum, ''1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking,'' from Lydia N. Wegman, Director, Air Quality Standards Division of the Office of Air Quality Planning and Standards and Merrylin Zaw-Mon, Director, Fuels and Energy Division of the (then) Office of Mobile Sources to the Air Directors of EPA Regions 1–6, on November 8, 1999. This memorandum was the result of a detailed analysis to determine the best way to estimate the reductions from Tier 2 given the fact that MOBILE6 had not yet been released. The purpose of the memorandum was to advise the EPA Regional offices of the relationship between 1-hour ozone attainment demonstrations and the emissions reductions that will be achieved by the Tier 2 rule and to provide emissions data related to that rule. A copy of this memorandum and the associated spreadsheet is available on the EPA web site at *http://www.epa.gov/ttncaaa1/t1/meta/m10433.html.*

Subsequently, in April 2000, the Office of Transportation and Air Quality (OTAQ) issued an information sheet so that other areas could use the emission reduction methodology that was used to determine the reductions for the serious and severe ozone areas. That information sheet is titled, ''MOBILE5 Information Sheet #8—Tier 2 Benefits Using MOBILE5'' and is also available on the OTAQ website at *http://www.epa.gov/oms/m5.htm.*

In order to derive these estimates, OTAQ developed a special version of MOBILE called ''Modified MOBILE5b/Version2,'' for the Tier 2 rulemaking. Full documentation of the methods used to develop the estimates for VOC and NO_X Tier 2 emission reductions are

available in the Tier 2 Docket. To briefly summarize here, highway vehicle emissions were first estimated using MOBILE5b with input files that described specific conditions (I/M program, temperatures, fuel parameters, and registration distribution). The resulting emission factors were then multiplied by correction factors in order to simulate emission factors that would result from proposed changes in MOBILE to be incorporated in MOBILE6. Correction factors were developed for both a base case (without Tier 2 control) and a Tier 2 control case. Because the factors used were based on default national MOBILE inputs and for the reasons described above, we do recognize that the results should be viewed as interim approximations which may change when MOBILE6 becomes available.

The differences in grams per mile shown in the tables (see ''MOBILE5 Information Sheet #8—Tier 2 Benefits Using MOBILE5'' April 2000) can be multiplied by the appropriate local vehicle miles traveled (VMT) to develop estimates of Tier 2 reductions in any area in any year starting in 2004. These Tier 2 reductions would then be subtracted from the total on-highway mobile emissions that were calculated using MOBILE5a or MOBILE5b and existing MOBILE information sheets.

EPA understands and acknowledges the limitations of this information and the potential inaccuracies introduced by the use of national defaults and differing baselines. We also recognize the need, consistent with our guidance, to be able to estimate reductions from this program now, since it is a final rule that we know will provide emission reductions within the scope of the 20 year transportation plans, as well as 10 year maintenance plans. Recognizing that this is an interim approach, EPA has required both Kentucky and Indiana to update the MVEBs in their maintenance plans within two years after the release of MOBILE6 and furthermore, any new conformity analysis in the Louisville area can not be found to conform during the second year until budgets based on MOBILE6 calculations are in place.

The modeling process is constantly improving and EPA looks forward to the release of MOBILE6 as an improved MOBILE modeling tool that will fully incorporate the Tier 2 reductions. Until that time, EPA has established this interim approach so that state air quality planning initiatives can continue to make progress toward clean air goals. Furthermore, recognizing the limitations of this approach, EPA has required and the States have committed to use MOBILE6 to develop new MVEBs.

Comment 4E—Mobile source budget: The commenter points out that, given the VOC MVEB safety margin originally proposed by the States in their submittals, the area does not in fact show that 2012 emissions of VOCs will be less than 1999 emissions. The commenter contends that EPA cannot allow the state to revise the maintenance plan (MVEB safety margin) to correct the deficiency in the amendments to the submittal without providing another public notice and comment opportunity prior to approval of the redesignation request and the maintenance plan.

Response 4E: In the FR proposing approval of the redesignation requests, EPA specified the changes that the States intended to make to their VOC MVEB and proposed approval of their plans only if those plans were amended to incorporate the changes. After receiving the submittals, EPA had pointed out this error in the MVEB safety margin to the States. To remedy this issue, Kentucky submitted a letter on May 17, 2001, and Indiana submitted a letter on May 29, 2001, indicating their intent to revise the maintenance plans so that the amended documents would include an approvable VOC MVEB of 48.17 tons/day, 2.76 tons/day less than the MVEB included in the original submittal. Based on the States' letters, EPA was able to specify the exact VOC MVEB of 48.17 tons/day that the States were planning to adopt in their maintenance plans. Our proposed approval demonstrated how this revised VOC MVEB would affect the maintenance plan and that the revised 2012 VOC emission projections were less than the 1999 attainment year emissions. The proposal also stated that we could only take final approval action on the maintenance plans if they were in fact revised to include the 48.17 tons/day VOC MVEB consistent with an approvable maintenance plan.

As noted by the commenter, it is very important that there should be an opportunity for public notice and comment on all significant aspects of a plan. Each revised VOC MVEB was subjected to public hearing with opportunity for public comment. Kentucky's hearing was held on May 16, 2001, and Indiana's was held July 30, 2001. Neither State received any public comments regarding the revised VOC MVEB. Since there has been public notice with comment periods on this VOC MVEB at both the state and federal level, and no public comment has been received on the technical merits of the MVEB itself, EPA does not believe an additional public comment period is necessary.

Comment 5—Contingency plan: Two commenters contend that the contingency measures contained in the maintenance plans submitted by the States do not adequately address the CAA requirement to include measures that ''assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area.'' 42 U.S.C. § 7505a(d). The first commenter claims that EPA does not explicitly address this requirement in the proposed rulemaking: ''Nowhere has EPA proposed to find that the maintenance contingency plan for Louisville 'assures' prompt correction of future violations. Nor is there anything in the record to support such a finding.'' The commenter further contends that the contingency measures do not meet the requirements of EPA guidance (see September 4, 1992, Calcagni memorandum), to ''clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State.''(Note: Responses to the detailed comments for this item are addressed below as Responses 5A–5F).

Comment 5A—Need for clearly-defined contingency measures: Regarding the requirement in EPA guidance to ''clearly identify the measures to be adopted,'' both commenters contend that the measures identified in Kentucky's and Indiana's plans must be more clearly defined. The first commenter notes that contingency measures in both maintenance plans have yet to be adopted, and consist solely of ''lists of largely undefined categories of measures * * *[or] other as-yet unidentified measures * * *.'' The commenter further contends that the subject maintenance plans ''[provide no] procedure for quantifying the reductions needed to correct ambient violations, or any estimate of the potential emission reduction benefit from the listed measures, it provides no basis for concluding that these measures, if ever adopted, would assure correction of any violations.'' The second commenter argues for the importance of having ''a more specific plan to require additional reductions from stationary sources and other sources that can be [readily] implemented by Board Order'', based on ''the difficult history of District efforts to secure across-the-board reductions as part of the 15 percent plan.''

The first commenter claims that more specificity is needed for the Kentucky measures pointing out that ''the Kentucky list includes 'more restrictive

new source review requirements' and 'more rigorous vehicle emissions testing program', without giving any indication of how much 'more restrictive' or 'more stringent' the state has in mind.'' The second commenter states that the contingency measures to require ''implementation of a program to require additional emission reductions at stationary sources for specific types of processes or an across-the-board reduction for the larger stationary sources'' and ''more restrictive new source review requirements'' should be better defined prior to approval of the plan.

In providing more specific arguments of the need for clearly-defined contingency measures in Indiana's maintenance plan, the first commenter notes that the list of contingency measures includes ''such items as 'broader' geographic applicability of existing programs, and application of RACT to 'smaller' sources, without giving any definition to these vague terms.''

Response 5A: EPA believes that Kentucky's and Indiana's maintenance plans, and the contingency measures contained in those plans, are consistent with the structure and intent of the CAA requirements and EPA guidance, and provide adequate assurances of adequate public health benefits. The description of the contingency measures contained in the maintenance plans satisfies the CAA requirement to assure prompt correction of any monitored violations. As stated in the September 4, 1992, Calcagni memorandum, ''For purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered.'' As the commenter notes, the guidance later states that the measures to be adopted should be clearly identified. EPA believes that the measures are adequately identified, and that the goal of returning the area to attainment as expediently as possible may be most effectively achieved by reviewing and refining the precise levels and scope of the contingency measures at the time they are required to be put into effect. Each of the contingency measures now contained in the maintenance plans will clearly achieve emission reductions and contribute to reattainment of the 1-hour NAAQS in the event of a violation. Newer control programs that would be more effective or advantageous for the area may also be developed after the area is redesignated to attainment. Selecting and adjusting the stringency of the measures that will most effectively bring the area back into attainment may best be performed at the time of response to a violation.

As noted by the commenter, and as the above excerpt from the guidance on contingency measures goes on to say, ''* * * the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered.'' Kentucky's maintenance plan satisfies this requirement by establishing a clear schedule to ensure expeditious adoption of clearly defined contingency measures in the event of a violation. First, in the event of a monitored exceedance or if periodic emission inventory updates reveal a greater than 10 percent increase in ozone precursor emissions, Kentucky and APCDJC will identify and evaluate existing control measures, and assess, using available data and technical analyses, the amount of emission reductions needed to ensure that repeated exceedances of the 1-hour ozone NAAQS or further emissions increases do not occur. In the event of an actual violation, they must adopt, within nine months, ''one or more * * *contingency measures to reattain the standard.'' The maintenance plan allows Kentucky the freedom to select the appropriate emission control strategy from a number of emission control measures (including not only one of the contingency measures listed in the plan, but also additional contingency measures if new, more advantageous control programs are developed for the area), but it must still demonstrate to the EPA that the emission controls will be adequate to prevent future violations of the ozone NAAQS. This demonstration process will likely be expedited by considering the results of the evaluation completed to address the exceedances that preceded the violation; that evaluation should provide the agencies with the basis for identifying, at the time, which of these control measures would be most effectively used to achieve the needed reductions and restore the area to attainment. In summary, the schedule presented by the maintenance plan ensures the adoption of contingency measures within nine months of a violation. The inclusion of somewhat broad, but still clearly identified, categories of contingency measures in the maintenance plan, provides Kentucky with flexibility to select the most effective measure(s) available, while ensuring compliance with the contingency measures requirement. Kentucky must implement such measure(s) within 18 months following the confirmation of a 1-hour ozone NAAQS violation in accordance with 175A(b). EPA believes that these are sufficient to assure that the Commonwealth will promptly correct any violation of the standard which occurs after the redesignation of the area.

Indiana's maintenance plan also provides for expeditious action to address future ozone increases. If an ozone exceedance is monitored, or if the level of VOC or NO_X for the entire Louisville area increases above the 1999 baseline, Indiana would study the situation and choose appropriate control measures from those listed in its contingency plan. Some of the measures identified in Indiana's list of contingency measures are clearly defined and could be readily adopted and implemented by the State. The full scope of some other measures in Indiana's plan has not been specifically prescribed, but this allows the State to determine an appropriate level of control to address future ozone exceedances effectively and economically. The State would adopt and implement these control measures as expeditiously as possible, and in no case later than 18 months after Indiana's contingency plan is triggered. If there is a monitored violation of the 1-hour ozone NAAQS in the Louisville area (more than 1.0 expected exceedances over a 3-year period), Indiana has committed to choose, adopt, and implement suitable control measures within 18 months.

Finally, the requirement to adopt any control measures needed to attain the NAAQS as part of the SIP gives the public assurance that these measures will be carried out, if necessary, through federal enforcement or citizen suit. The CAA places the burden on the state to demonstrate that its plan, at all times, provides for attainment and maintenance of the NAAQS, through federally enforceable emission reductions sufficient to avoid violations of the NAAQS. The CAA also provides protections to the public in the event that state plans are not fully and successfully implemented to achieve the scheduled emission reductions and air quality improvements. These protections include federally imposed nonimplementation sanctions and opportunities for citizens to sue to compel implementation.

Comment 5B—Need for prompt implementation schedule: Regarding the requirement in EPA guidance to ''clearly

identify * * * a schedule and procedure for adoption and implementation,'' the second commenter contends that the schedule for implementation of contingency measures in the event of a monitored violation, as contained in Kentucky's maintenance plan, fails to ''assure * * * prompt correct[ion of] any violation''. This schedule allows Kentucky to take up to nine months to adopt, and another nine months to implement, regulatory contingency measures in the event of a monitored violation of the 1-hour ozone NAAQS, which, the commenter contends, is not an assurance of prompt correction of the violation.

Response 5B: EPA believes that the schedule requiring adoption of contingency measures within nine months of a confirmed violation, followed by implementation of the associated regulatory programs within 18 months of a confirmed violation, constitutes prompt, responsive implementation. While in some instances, an identified contingency measure may be adopted and implemented in less than 18 months, more often, a number of complicating factors lengthen the time to complete these actions. For example, in the case of stationary source controls, development of the necessary regulation or source-specific SIP revision specifying additional controls may occur quickly. However, even using emergency rulemaking procedures, the adoption process may take several months. For many types of controls, nine months to install and ensure proper operation of those controls is an ambitious schedule. In the case of many transportation control measures, as noted by one of the commenters, obtaining the necessary budgets or acquiring the necessary property for such measures may entail consultation with numerous local county or city governments or transportation management agencies. Thus, implementation of these measures may proceed quickly following adoption of these measures, but adoption of these measures within nine months from the date of violation is a very expeditious schedule. Overall EPA deems the schedule to comply with the requirements of 175A(d).

Comment 5C—Authority to implement: The second commenter contends that the Kentucky and APCDJC air pollution control agencies lack the legal ability to promptly implement contingency measures identified in the plan, making those measures ''insufficient under Section 175A(d).'' The commenter contends that the agencies cannot assure prompt implementation of measures requiring ''local county or city (or soon, merged city-county) government budgetary or regulatory action.'' Therefore, ''[f]or each of the proposed contingency measures, the state and local air pollution district should be required to explain whether the agency has the authority to implement the contingency measure, and whether that measure would be implemented by Board Order or by regulation.''

The commenter specifically requests additional explanation of the agencies' authority to implement several types of measures. The commenter notes that ''new construction of pedestrian and non-motorized vehicles would require several activities beyond the control of state and local air pollution control agencies including budgeting for construction using funds not available to the air pollution district,* * * which would have to be allocated by local or state government, and [would also require] dedication or acquisition of areas for such construction.'' The commenter also notes that ''the state and local agencies should be required to assess and document whether they have the legal authority to adopt trip-reduction ordinances, to restrict road access to HOVs [high occupancy vehicle lanes], to limit parking and vehicle use in areas of emission concentration, and to broaden emission testing programs.'' No challenge is made to Indiana's authority to promptly implement contingency measures.

Response 5C: Chapters 224.10–100(30) and 77.190 of the Kentucky revised Statutes provide Kentucky and APCDJC with broad authority to enact orders, rules and regulations to reduce air pollution. Other subchapters of KRS 77 give APCDJC the power to ''* * * take by grant, purchase, gift, devise, or lease * * * real or personal property of every kind within or without the district necessary to the full exercise of its powers.'' (KRS 77.060) and to establish an ''air quality trust fund to be used for conducting and funding air quality research and development projects * * * to assist in implementing the policies and purposes of this chapter.'' (KRS 77.127).

Certain control measures that may be applied under diverse circumstances, or implemented on a voluntary basis, may not lend themselves to the development and adoption of specific regulations, but will probably require the development of formal implementation and/or reporting procedures. In such instances, Kentucky and the APCDJC may take an active role in promoting the use of such procedures. In addition, it should be noted that this process may be community-based, with local residents and industries taking the lead rather than Kentucky.

Kentucky recognizes that the budgeting of funds for the construction of certain types of vehicles and roadway improvements requires the approval of various state and local transportation agencies. However, since conformity will continue to apply to the Louisville area following redesignation, Kentucky must continue to work with these agencies to ensure that conformity analyses continue to be conducted to ensure that short- and long-term transportation plans provide for emission levels within the MVEBs provided in the SIP. Kentucky also continues to work with these agencies to improve the consultation process by establishing and/or refining further consultation procedures that will facilitate and streamline the process of making future conformity determinations for all areas, including the Louisville area. Overall EPA finds that there is adequate authority to implement within the meaning of 175A(d).

Comment 5D—Need for measures to prevent violation: Both commenters contend that the Kentucky maintenance plan contains inadequate provisions to respond to exceedances, and/or anticipated violations. They contend that Kentucky's maintenance plan is insufficient, as it only commits to evaluate the list of control measures in the event of recorded exceedances or unexpected growth (i.e. greater than 10 percent growth in ozone precursor emissions, based on the periodic inventories). They are concerned that the plan offers no assurance that Kentucky will adopt additional controls to prevent a future violation, even where analyses show that such a violation is likely. The first commenter contends that ''the lack of commitment [to ever actually adopt additional controls to address anticipated violations] renders the plan inadequate under the Act and EPA policy. EPA guidance explicitly requires the maintenance plan to 'contain any additional measures as necessary to ensure that the standard will not be violated'.'' (57 FR 13563). The guidance further requires that ''Any future measures must be implemented before any violations might be anticipated, based on tracking of the emission inventory.'' Id. The state's plan here meets none of these requirements.'' The second commenter further states that ''any exceedances of the 1-hour standard should be considered as violations triggering the implementation of contingency measures.''

Response 5D: In the event of a monitored exceedance or if periodic emission inventory updates reveal a greater than 10 percent increase in ozone precursor emissions, the maintenance plan requires Kentucky to initiate a study to determine if additional emission controls are needed to prevent a future 1-hour ozone NAAQS violation. EPA views these commitments to be adequate and enforceable. This approach is consistent with the September 4, 1992, Calcagni memorandum, which states that the maintenance plan should ''identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented. The indicators would allow the State to take early action to address potential violations of the NAAQS before they occur.'' Kentucky's maintenance plan addresses this requirement by identifying two occurrences that trigger a study ''to evaluate existing control measures to see if any further emission reduction measures should be implemented at that time.'' This commitment allows Kentucky to take early action. It does require Kentucky to fully evaluate the current air quality status and control status of the area, and determine if, and what level of, action should be implemented to prevent further air quality deterioration. If Kentucky concludes from this evaluation that a violation is likely, and further controls are needed to avoid such occurrence, the maintenance plan indicates that action will be initiated ''at that time.'' The evaluation, in effect, allows Kentucky to pro-actively identify and implement controls deemed necessary to avoid an actual violation. Should any action taken be insufficient to prevent a violation, Kentucky is clearly aware of their obligation to implement controls within 18 months of that violation. Indiana has made similar commitments to implement controls expeditiously to address ozone exceedances and avoid violations of the 1-hour ozone NAAQS.

Comment 5E—Commitment to implement all existing SIP measures: The first commenter contends that Kentucky's and Indiana's contingency plan does not contain the commitment mandated by the CAA that the state will implement all ozone-control measures in the SIP prior to redesignation (42 U.S.C. 7505a(d)). Regardless of whether the state is currently implementing all required SIP measures, the foregoing commitment is crucial to ensuring that the contingency plan will remain adequate in the future if the state stops implementing pre-redesignation SIP measures. EPA does not have the discretion to approve the maintenance plan without this mandatory commitment.

Response 5E: 42 U.S.C. 7505(d) (section 175A(d)) requires that ''[s]uch provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area.'' There are no unimplemented measures in the Kentucky SIP to which any commitments under section 175A(d) could apply. There is no need for the Commonwealth to commit to further implementation in light of the fact that they are continuing to implement all measures contained in their SIP. Since the section 175A(d) requirement to implement all measures is being satisfied, there is no requirement for an additional commitment.

Kentucky's redesignation request includes the following statement: ''The DAQ, APCD, and EPA have instituted programs that will remain enforceable and are hereby submitted as a plan to maintain air quality which meets the 1-hour ozone standard for the Kentucky portion of the Louisville 1-hour ozone attainment area. Sources are prohibited from reducing emissions controls following the redesignation of the area unless such a relaxation is first approved by the EPA as a revision to the Kentucky SIP.'' This is a clear statement of the requirement that the regulatory programs (adopted by both the Kentucky Division of Air Quality (DAQ), and the APCDJC; as well as, EPA's Federal measures relative to control of ozone levels) which constitute the regulatory scheme for reduction of ozone precursors instituted to attain the 1-hour ozone NAAQS in the Kentucky portion of the Louisville area, having been implemented will remain enforceable. It is clear that Kentucky has stated that it prohibits sources from reducing emission controls after redesignation unless EPA approves any change via a SIP revision. Such a revision would have to meet the requirements of 110(l) which requires that the revision could not interfere with ''* * * any applicable requirement concerning attainment * * *'' EPA considers that under these circumstances, the requirements of 42 U.S.C. 7505(d) are satisfied.

Similarly, in its maintenance plan, Indiana stated that it intends to maintain its current control measures after redesignation. Indiana has committed that any changes to its rules or emission limits applicable to VOC and/or NOX sources, as required for maintenance of the ozone standard in Clark and Floyd Counties, will be submitted to EPA for approval as a SIP revision. Indiana further stated that through the Indiana Department of Environmental Management's Office of Air Quality and its Office of Enforcement it has the necessary resources to actively enforce any violations of its rules or permit provisions. After redesignation, it intends to continue enforcing all rules that relate to the emissions of ozone precursors in Clark and Floyd counties. Thus Indiana also satisfies the requirements of section 175A(d).

Comment 5F—Adequate demonstration of maintenance: The second commenter voices concern over the accuracy of the Kentucky maintenance plan's demonstration that the area's attainment status will be maintained for at least the next 10 years, ''due in large part to the increases in mobile source emissions traceable to both increases in vehicle miles traveled and to lower fuel efficiency among the ''SUV'' [Sport Utility Vehicles] and light duty truck classes of vehicles that populate Louisville's highways'.

Response 5F: The redesignation request submitted by Kentucky addresses the issue of ''SUVs'' as follows: ''In 2000–2001, responding to advice by EPA, the District undertook to update the fleet characterization data to support redesignation to attainment status. The primary concern was that market research had shown a significant shift from passenger automobiles toward sport utility vehicles (SUVs) over the 1990's decade. It was prudent to reflect the shift toward larger, higher-emitting vehicles in the MOBILE modeling for Jefferson County. In response, the District produced updated tables based on 1999 Vehicle Emission Testing operations data, Federal Highway Administration VMT mix data for Indiana and Kentucky, and draft MOBILE6 mileage accumulation rates. A spreadsheet (RDIST99Q.WK1) was developed to construct the necessary tables from raw data in a transparent manner, and to fill in certain gaps in the data. The spreadsheet reconciled unavailable Heavy Duty Vehicle (HDV) count and usage data with overall VMT mix and reasonable assumptions about local daily VMT. Following local peer review of this spreadsheet, the updated tables were implemented into District MOBILE modeling.

As expected, the net effect of the updated fleet tables was a significant increase in all emission factors over prior estimates. This reflected both the

move toward SUVs and a significantly higher, more accurate estimate of the local contribution of HDVs, particularly interstate transport vehicles.''

It is clear from the discussion above that Kentucky and the APCDJC did address the issue of increases in emissions from SUVs and light trucks in the modeling of the mobile source emissions. They found as the commenter had suggested that there was a significant increase in all emission factors over prior estimates. However, the commenter's ''concern over the accuracy of the maintenance plan's demonstration that the area's attainment status will be maintained for at least the next ten years' is unfounded. The increased emissions were accounted for and the States have made a commitment to revise the mobile modeling using MOBILE6 when appropriate.

EPA, in proposing to approve Kentucky's and Indiana's requests to redesignate the Louisville area to attainment for the 1-hour ozone NAAQS, required both States to revise their maintenance plans to include an enforceable commitment to revise the MVEBs using MOBILE6 (once it becomes available) and to revise the VOC MVEB so that the area's 2012 projected emissions do not exceed the 1999 attainment year emissions. Both States met these requirements by submitting enforceable commitment to revise the MVEBs using MOBILE6 and a revised MVEB that does not exceed the 1999 attainment year emissions.

Comment 6: One commenter expressed concern over the possible implementation of more restrictions, in reference to the list of contingency measures at 66 FR 33516, on individuals or personal vehicles. This commenter also expressed the opinion that the listed contingency measures were oppressive, ''designed to punish an ordinary citizen.'' In addition, the commenter objects to the statement ''Kentucky [also] reserves the right to implement other contingency.'' (sic) [The complete statement is ''Kentucky also reserves the right to implement other contingency measures if new control programs should be developed and deemed more advantageous for the area.''] The commenter's objection is on the basis that this is an open ended ''political ploy to do something secret that is not on the list.'' The commenter was concerned that ''something secret'' might include higher ''gas prices.'' The commenter questioned how the process of instituting contingency measures could be allowed without public involvement and requested that this not be allowed.

Response 6: There are contingency measures listed at 66 FR 33516 which if implemented in the event of a triggering mechanism or violation of the 1-hour ozone NAAQS may impact in some limited manner the operation or use of private vehicles. The implementation of the contingency measures must follow applicable public notice and public hearing procedures during which the public is invited and encouraged to make comments or bring forth information which would influence the decision under consideration. If contingency measures are required to be implemented, they would be for the purpose of protecting the public health and environment of the citizens in the Louisville area and only implemented after following CAA procedures.

Neither the CAA nor the regulatory requirements adopted by the elected officials in the Louisville area are ''designed to punish an ordinary citizen.'' They were and are required by law to be adopted or amended in a public forum requiring public notice and a public hearing process allowing for citizen input. Just as the items on the list of contingency measures have, or will have to, undergo the public adoption process, any ''other contingency'' measures will also have to meet the same requirements. All regulations adopted for submittal to meet federal requirements and SIP revisions submitted to EPA for approval must contain proof of public notice and a public hearing before they are considered complete. The process for adoption of contingency measures in response to federal requirements must be done in a manner which allows for public participation or they will not be approved at the federal level.

III. What Actions Are We Taking?

We are determining that the Louisville area has attained the 1-hour ozone NAAQS. The Louisville area includes the Kentucky Counties of Bullitt, Jefferson, Oldham; and the Indiana Counties of Clark, and Floyd. On the basis of this determination, EPA is also determining that SIP revisions to address certain requirements of part D of title I of the CAA need not be submitted, since they would no longer be considered applicable requirements under section 107(d)(3)(E) for so long as the area continues to attain the 1-hour ozone NAAQS. These requirements include RFP (see the general requirements of section 172(c)(2) and the more specific requirement of section 182(b)(1) for a plan that reduces VOC emissions by 15 percent), attainment demonstration requirements (see the general requirement of section 172(c)(1)) and the specific requirement of section 182(j) for a multi-state attainment demonstration) and contingency measures (see the general requirement of section 172(c)(9)).

We are approving Kentucky's redesignation request and redesignating the Kentucky portion of the Louisville nonattainment area to attainment for the 1-hour ozone NAAQS. We are also approving as revisions to the Kentucky SIP, the maintenance plan and associated MVEBs for the Kentucky portion of the Louisville nonattainment area that were submitted by Kentucky with its redesignation request. In this final rule, we are notifying the public that we believe the MVEBs for VOC and NO_X in the Kentucky portion of the Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan. We are approving Indiana's redesignation request and redesignating the Indiana portion of the Louisville nonattainment area to attainment for the 1-hour ozone NAAQS. We are also approving as revisions to the Indiana SIP, the maintenance plan and associated MVEBs for the Indiana portion of the Louisville nonattainment area that were submitted by Indiana with its redesignation request. In this final rule, we are notifying the public that we believe the MVEBs for VOC and NO_X in the Indiana portion of the Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan. We are also approving 11 Board Orders to control NO_X emissions consistent with RACT requirements from major NO_X sources in Jefferson County, Kentucky.

Any challenge to EPA's actions regarding the redesignation of one portion of the Louisville area shall not be deemed to affect the validity of the redesignation of the other portion. The Commonwealth of Kentucky and the State of Indiana have satisfied all of the necessary requirements of the CAA relative to these actions.

IV. Why Are We Taking These Actions?

We are making a determination that the area has attained the 1-hour ozone NAAQS. EPA is basing this determination upon three years of complete, quality-assured, ambient air monitoring data for the 1998–2000 ozone seasons that demonstrate that the 1-hour ozone NAAQS has been attained in the entire Louisville area, and preliminary data for the 2001 ozone season that shows continuing attainment. Regarding the need to

address the requirements of part D of title I of the CAA, EPA interprets the general provisions of subpart 1 of part D of title I (sections 171 and 172) and the more specific attainment demonstration and related provisions of subpart 2 (section 182) to not require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures for areas where the monitoring data show that the area is attaining the 1-hour ozone NAAQS (See *Sierra Club* vs *EPA, 99 F.3d 1551 (10th Cir. 1996)).* This rationale is described in the May 10, 1995, Seitz memorandum. EPA has previously applied this interpretation in a number of areas, including Salt Lake and Davis Counties, Utah (60 FR 36723, July 18, 1995); Grand Rapids, Michigan (61 FR 31831, June 21, 1996); Cleveland-Akron-Lorrain (61 FR 20458, May 7, 1996); and Cincinnati, Ohio (65 FR 37879, June 19, 2000). All previously-approved SIP revisions are not affected by this action and must continue to be implemented and enforced. This includes Indiana's 15 percent plan approved on May 7, 1997, (62 FR 24815).

We are redesignating the Kentucky and Indiana portions of the Louisville area because the area has attained three years of ambient air quality monitoring data demonstrating that the 1-hour ozone NAAQS has been attained, and both the Kentucky and Indiana portions of the area have satisfied the other criteria for redesignation. We are approving Kentucky's and Indiana's maintenance plans, including the MVEBs, that were submitted with the State's redesignation requests as revisions to the Kentucky and Indiana SIPs, because these plans meet the requirements of section 175A and 107(d). We are also notifying the public that we believe the MVEBs for VOC and NO_X for the Kentucky and Indiana Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plans, because in addition to meeting the requirements of section 175A and 107(d), adequate opportunity for public comment on these MVEBs was provided through the adequacy process (posted April 13, 2001) and in the NPR (66 FR 33505, June 22, 2001). In the NPR, EPA explained that we could not approve the originally-submitted VOC MVEB unless the States revised this MVEB, by adjusting the safety margin, so that the MVEB would not exceed attainment year VOC emissions. The States corrected the VOC MVEB accordingly in July 9, 2001 and August 24, 2001 supplements to their original redesignation requests.

Finally, we are approving 11 Board Orders relating to control of NO_X sources in Jefferson County, Kentucky submitted by Kentucky on November 12, 1999, and May 23, 2001, because they satisfy the NO_X RACT requirements of 182(f) of the CAA.

V. What Are the Effects of These Actions?

These actions determine that the Louisville area has attained the 1-hour ozone NAAQS and that the requirements of sections 172(c)(1) and 182(j) concerning submission of an ozone attainment demonstration, the requirements of sections 172(c)(2) and 182(b)(1) concerning submission of a 15 percent VOC emission reduction plan, and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment are not applicable to the Louisville area. However, all controls previously approved for the area by EPA must continue to be implemented. Kentucky and Indiana must continue to operate an appropriate ozone air quality monitoring network, in accordance with 40 CFR part 58, to verify the ozone attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance.

The redesignation changes the official designation of the Kentucky Counties of Bullitt, Jefferson, Oldham, and the Indiana Counties of Clark, and Floyd from nonattainment to attainment for the 1-hour ozone NAAQS. It also approves as a SIP revision and puts into place plans for maintaining the 1-hour ozone NAAQS for the next 10 years. These maintenance plans include contingency measures to correct any future violations of the 1-hour ozone NAAQS. These maintenance plans establish MVEBs for the Louisville area for the purposes of transportation conformity. These MVEB are now 48.17 tons per summer day VOC and 92.93 tons per summer day NO_X for the year 2012. Finally, this action also approves 11 Board Orders for sources of NO_X in Jefferson County, Kentucky.

VI. Administrative Requirements

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. This action also redesignates an area to attainment, an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. 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 (Public Law 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 action also redesignates an area to attainment. The redesignation merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. 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. Additionally, redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. 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. section 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 *FR*. A major rule cannot take effect until 60 days after it is published in the *FR*. This action is not a ''major rule'' as defined by 5 U.S.C. section 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 24, 2001. 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

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: October 3, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Dated: October 3, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (x) to read as follows:

§ 52.777 Control strategy: photochemical oxidants (hydrocarbons).

* * * * *

(x) The request submitted by Indiana on April 11, 2001 and supplemented on August 24, 2001, to redesignate the Indiana portion of the Louisville moderate interstate ozone nonattainment area from nonattainment to attainment was approved on October 23, 2001. The motor vehicle emissions budgets for VOC and NO_X in the Indiana portion of the Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan. The 1-hour ozone standard maintenance plan motor vehicle emission budgets for the entire interstate Louisville area for the purposes of transportation conformity are now 48.17 tons per summer day of VOC and 92.93 tons per summer day of NO_X for the year 2012.

Subpart S—Kentucky

3. Section 52.920 is amended:

a. By adding new entries to the end of the table in paragraph (d).

b. By adding a new entry in numerical order to the table in paragraph (e). The additions read as follows:

§ 52.920 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	Federal Register Notice
*	*	*	*	*	*	*
Board Order American Synthetic Rubber Company.	NO_X RACT Plan 12/20/00.	01/01/01	10/23/01	66 FR 53684
Board Order E. I. du Pont de Nemours & Company.	NO_X RACT Plan 02/21/01.	03/01/01	10/23/01	66 FR 53684
Board Order Ford Louisville Assembly Plant	NO_X RACT Plan 11/08/99.	01/01/00	10/23/01	66 FR 53684
Board Order General Electric Company	NO_X RACT Plan 01/17/01.	03/01/01	10/23/01	66 FR 53684
Board Order Kosmos Cement Company	NO_X RACT Plan 11/15/00.	01/01/01	10/23/01	66 FR 53684
Board Order Louisville Gas and Electric Company, Cane Run Generating Station.	NO_X RACT Plan 10/18/00.	01/01/01	10/23/01	66 FR 53684
Board Order Louisville Gas and Electric Company, Mill Creek Generating Station.	NO_X RACT Plan 10/18/00.	01/01/01	10/23/01	66 FR 53684

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS—Continued

Name of source	Permit number	State effective date	EPA approval date	Federal Register Notice
Board Order Louisville Medical Center Steam Plant.	NO_X RACT Plan 2/21/01.	04/01/01	10/23/01	66 FR 53685
Board Order Oxy Vinyls, LP	NO_X RACT Plan 12/20/00.	01/01/01	10/23/01	66 FR 53685
Board Order Rohm and Haas Company	NO_X RACT Plan 12/20/00.	01/01/01	10/23/01	66 FR 53685
Board Order Texas Gas Transmission	NO_X RACT Plan 11/08/99.	01/01/00	10/23/01	66 FR 53685

(e) * * *

EPA-APPROVED KENTUCKY NONREGULATORY PROVISIONS

Appendix	Title/subject	State effective date	EPA approval date	Federal Register notice
*	*	*	*	*
23	Louisville Ozone Maintenance Plan	10/23/01	66 FR 53685	
*	*	*	*	*

4. Section 52.930 is amended by adding paragraph (k) to read as follows:

§ 52.930 Control strategy: Ozone.

* * * * *

(k) The redesignation request submitted by the Commonwealth of Kentucky, on March 30, 2001, and supplemented on July 9, 2001, for the Kentucky portion of the Louisville moderate interstate ozone nonattainment area from nonattainment to attainment was approved on October 23, 2001. The motor vehicle emissions budgets for VOC and NO_X in the Kentucky portion of the Louisville moderate interstate maintenance plan are adequate for conformity purposes and approvable as part of the maintenance plan. The 1-hour ozone standard maintenance plan motor vehicle emission budgets for the entire interstate Louisville area for the purposes of transportation conformity are now 48.17 tons per summer day of VOC and 92.93 tons per summer day of NO_X for the year 2012.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 81.315 is amended by revising the entry for the ''Louisville Area'' in the Indiana-Ozone (1-Hour Standard) table to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
*	*	*	*	*
Louisville Area:				
Clark County	10/23/01	Attainment		
Floyd County	10/23/01	Attainment		
*	*	*	*	*

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

3. Section 81.318 is amended by revising the entry for the ''Louisville Area'' in the Kentucky-Ozone (1-Hour Standard) table to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Louisville Area:				
Bullitt County	10/23/01	Attainment		
Jefferson County	10/23/01	Attainment		
Oldham County	10/23/01	Attainment		
* * *	*	*	*	*

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

[FR Doc. 01–25894 Filed 10–22–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–75–1; KY–97–1–200109, FRL–7082–8]

Approval and Promulgation of Implementation Plans Kentucky: Approval of Revisions to Kentucky State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 13, 1999, EPA published a direct final rule approving and an accompanying notice of proposed rulemaking proposing to approve the 15 percent Rate-of-Progress Plan (15 percent plan) for the Louisville moderate 1-hour ozone nonattainment area which was submitted on November 12, 1993, and amended on April 5, 1994, and June 30, 1997. As stated in the **Federal Register** document, if adverse or critical comments were received by October 13, 1999, the effective date would be delayed and timely notice would be published in the **Federal Register**. Due to receipt of adverse comments within the comment period, EPA withdrew the direct final rule on November 3, 1999, in order to address all public comments received.

This action addresses the adverse comments related to the approvability of the emission reduction measures and grants final approval to the rule revisions and the 1990 Base Line Emissions Inventory. No comments were received relating to the 1990 Base Line Emissions inventory.

EFFECTIVE DATE: This rule will be effective November 23, 2001.

ADDRESSES: Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, Division of Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Air Pollution Control District of Jefferson County, 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Scott Martin of the EPA Region 4 staff at (404) 562–9036. martin.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 13, 1999, EPA published a direct final rule (64 FR 49404) approving and an accompanying notice of proposed rulemaking (64 FR 49425) proposing to approve the 15 percent plan for the Louisville moderate 1-hour ozone nonattainment area which was submitted on November 12, 1993, and amended on April 5, 1994, and June 30, 1997. This submittal was required by Section 182(b)(1)(A) of the Clean Air Act, as amended in 1990 (CAA) in order to demonstrate reasonable further progress (RFP) in attaining the National Ambient Air Quality Standard (NAAQS) for ozone. As stated in the **Federal Register** document, if adverse or critical comments were received by October 13, 1999, the effective date would be delayed and timely notice would be published in the **Federal Register**. Due to receipt of adverse comments within the comment period, EPA withdrew the direct final rule on November 3, 1999, (64 FR 59644) in order to address all public comments received in a subsequent final rule.

In a separate action, EPA is finalizing it's proposal (66 FR 27483) to determine that the Louisville moderate ozone nonattainment area has attained the public health-based 1-hour ozone NAAQS. The Louisville area includes the Kentucky Counties of Jefferson, Bullitt and Oldham and the Indiana Counties of Clark and Floyd. This determination is based on three years of complete, quality-assured, ambient air monitoring data for the 1998 to 2000 ozone seasons that demonstrate that the area has attained the ozone NAAQS. On the basis of this determination, EPA is also determining that State implementation plan (SIP) submissions for certain RFP and attainment demonstration requirements, along with certain other related requirements, of part D of title 1 of the CAA are no longer required for the Louisville area. All previously approved SIP revisions must continue to be implemented and enforced and are not affected by this action.

EPA's final action on the determination of attainment eliminates the need for approval of the 15 percent plan and therefore no further action will be taken on the demonstration that this reduction was achieved. However, the control measures contained in the 15 percent plan have been implemented prior to attainment of the 1-hour ozone NAAQS. This action addresses comments related to the approvability of the control measures and grants final approval to the rule revisions and the 1990 Base Line Emissions Inventory, although no action is taken on the 15 percent demonstration itself since it is no longer required.

II. Analysis of State's Submittal

The comment and response is summarized below:

Comment 1

Regulation 1.18: Rule Effectiveness

Jefferson County is claiming 6.37 tons per day in volatile organic compound (VOC) reductions from its ''Rule Effectiveness'' program. This program requires sources to develop and

implement a ''rule effectiveness improvement plan.'' There is no minimum level of effort or improvement required under the rule, no standard for judging whether a particular plan is adequate or inadequate, and no requirement that the County actually review and approve or disapprove the plan. Nor does the County explain how it developed the 6.37 ton per day estimate of VOC reductions from this program. Further, although the rule requires plans to be implemented by November 15, 1996, there is no evidence in the record that this in fact occurred.

Under these circumstances, the County's Rule Effectiveness program is neither approvable nor creditable. Because the rule does not require any specified level of emission reduction, and the content of each rule effectiveness plan is determined solely by the source, there is no assurance of any emission reductions at all. The Clean Air Act (the Act) and EPA guidance do not allow approval or crediting of undefined, hypothetical SIP measures. EPA can approve and credit only clearly defined, real, permanent, and enforceable measures. 57 FR 13498, 13509 (1992). In fact, EPA guidance explicitly requires that any benefits claimed from rule effectiveness improvement must be documented at a minimum by conducting a post-implementation source specific emissions study. EPA, *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of Progress Plans,* at 45 (EPA–452/R–93–002, March 1993) (hereinafter, ''15 percent guidance''). Only where such studies have documented additional emission reductions due to rule effectiveness measures can EPA grant credit for such measures toward the required 15 percent rate of progress. For all the foregoing reasons, the County's rule effectiveness program cannot be credited with any emission reductions.

Response

Regulation 1.18, Rule Effectiveness, states that all sources subject to this regulation shall complete and return, by the date specified, a questionnaire supplied by the District that will determine the current procedures that impact rule effectiveness evaluation, including but not limited to: employee training, maintenance procedures, monitoring procedures, and record keeping methods. Sources were required to submit a detailed rule effectiveness implementation plan to the District. These plans were implemented as expeditiously as practicable but no later than November 15, 1996, as required by the District's rule. The District has submitted the rule effectiveness plans to EPA, and they are available for inspection at the Region 4 offices.

The above referenced EPA guidance states that rule effectiveness improvements must reflect real emissions reductions resulting from specific implementation program improvements. However, the guidance does not require a specified level of emission reductions be established in rule effectiveness improvement plans. Additionally, as stated above, the final action on the determination of attainment for the Louisville area eliminates the need for the approval of the 15 percent plan and the specific level of emission reduction credits. Therefore, EPA is granting approval to Regulation 1.18.

Comment 2

Regulation 6.43: VOC Emission Reduction Requirements

The County claims 3.56 tons per day in reductions from regulation 6.43. During the County's process for adopting this rule, the Commonwealth raised questions about the legality of adopting source specific emission limits by rule. The County responded by offering assurances that it would obtain written commitments from each source not to challenge the legality of the rule on this basis. The record does not indicate whether these written commitments were ever obtained from all affected sources. Given the legal doubts raised by the Commonwealth, EPA cannot credit emission reductions from any source that has not signed such a commitment.

Response

According to the December 13, 1996, Air Pollution Control District Comment and Response Document relating to Regulation 6.43, the following comment was made by Mr. John Hornback, Director, Kentucky Division for Air Quality: ''The regulation, as proposed, specifically identifies each company by name and sets the required emission, equipment, and operational requirements for that company. The regulation states that the listed companies have voluntarily agreed to the requirements of the regulation. This regulation, as written, would probably constitute special legislation in violation of Sections 59 and 60 of the Commonwealth's Constitution. The Division recommends that the regulation be rewritten and promulgated without the specific listing of company names and their individual emission reduction limits.'' The following response was given: ''The District disagrees. The District does not believe that this regulation constitutes special legislation. The category of stationary sources to which this regulation applies is all of the stationary sources who volunteered to be regulated pursuant to this regulation. Each stationary source is treated equally in that each is required to meet the requirements for which they have voluntarily agreed. The District will ask the Air Pollution Control Board (Board) to adopt the proposed changes.''

The revisions were adopted by the Board on December 18, 1996. Based on responses from the District, and the Board's action, EPA believes that the District has the authority to adopt and implement these regulations without need for additional commitments from regulated entities and that the regulations are therefore creditable as SIP measures. Additionally, as stated above, the final action on the determination of attainment for the Louisville area will eliminate the need for the approval of the 15 percent plan and the specific level of emission reduction credits. Therefore, EPA is granting approval to Regulation 6.43.

Comment 3

Regulation 6.43: VOC Emission Reduction Requirements

Because the emission limits set by rule 6.43 can be met by emissions trading, the reductions claimed from the rule 6.43 are dependent on the adequacy of the County's emissions trading program. Accordingly, we question how EPA can propose to credit all of the claimed reductions from the rule when the County's trading program has not been approved by EPA, and when the Agency has specifically stated that the program does not meet EPA guidance 64 FR 49406.

Response

The June 30, 1997, SIP submittal contains three different versions of Regulation 6.43 adopted September 21, 1994, December 18, 1996, and May 21, 1997. The September 1994 and December 1996 versions contained section 5: Compliance Plan and Schedule. This section did allow the affected sources to meet the emission reduction requirements by utilizing the emissions trading program in Regulation 2.12: Emission Trading. However, the May 1997 version deletes section 5: Compliance Plan and Schedule. Therefore, sources cannot meet the emission reduction requirements through an emissions trading program. Thus, EPA concludes that this regulation is approvable.

Comment 4

Audit Privilege and Immunity Law

EPA seeks to discount the impact of Kentucky's audit privilege and immunity (API) law by asserting that it does not impact on federal enforcement. In order to be approvable, however, the plan must be enforceable by the state as well as the federal government. 42 U.S.C. 7410(a)(2)(A), (C), (E). Among other things, the state must adopt enforceable emission limits, adopt a program for enforcement of the plan, and provide assurances that it will have adequate authority to carry out the plan (and is not prohibited by any provision of state law from doing so). An API law that hampers state and local enforcement is flatly contrary to these requirements of the Act. EPA has previously identified Kentucky's law as an impediment to approval of state programs under the CAA, and must address this matter squarely prior to final approval of the submitted plan. Further, EPA cannot credit any emission reductions claimed under the plan for sources that can evade enforcement action via the state API law.

Response

On December 6, 2000, EPA issued a notice of deficiency (NOD) to Kentucky (65 FR 76230). This NOD was based upon EPA's finding that the Commonwealth's audit privilege and immunity law, KRS 224.01–040, unduly restricted Kentucky's ability to adequately administer and enforce the criminal enforcement, civil penalty and public access provisions of its title V program, which was previously granted interim approval status. In response, the Kentucky General Assembly amended KRS 224.01–040 to address these deficiencies. This amendment was signed by the Governor on March 19, 2001 and became effective on June 16, 2001. EPA reviewed the amendments and concluded that, as of the effective date, all issues identified in the NOD were resolved.

Approval of Supporting Regulations

EPA is granting final approval to the following regulations:

Regulation 1.18 Rule Effectiveness, adopted September 21, 1994.

Regulation 6.40 Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control), amended August 9, 1993.

Regulation 6.43 Volatile Organic Compound Reduction Requirements, adopted May 21, 1997.

Regulation 6.44 Standards of Performance for Existing Commercial Motor Vehicles and Mobile Equipment Refinishing Operations, adopted February 2, 1994.

Regulation 6.45 Standards of Performance for Existing Solid Waste Landfills, adopted February 2, 1994.

Regulation 7.79 Standards of Performance for New Commercial Motor Vehicle and Mobile Equipment Refinishing Operations, adopted February 2, 1994.

Regulation 8.03 Commuter Vehicle Testing Requirements, amended September 15, 1993.

Please see the **Federal Register** document published on September 13, 1999, (64 FR 49404) for further discussion of the rule revisions.

Withdrawn Regulations

Regulation 1.16 Standards for Volatile Organic Compound Content of Architectural and Industrial Maintenance Coatings and Modification of Alternate Fuels Vehicle Conversion Program was withdrawn on February 25, 2000.

Regulation 2.12 Emissions Trading (including Banking and Bubble Rules) was withdrawn on May 10, 2001.

1990 Base Line Emissions Inventory

In this action, the EPA is approving the 1990 base line emissions inventory for the Louisville area. Detailed information on the emissions calculations can be obtained at the Region 4 office. The following table is a summary of the base line emissions inventory.

LOUISVILLE 1990 BASE LINE EMISSIONS INVENTORY

[tons/day]

Source type	VOC	NO_X	CO
Point	83.75	147.87	10.14
Area	38.69	4.5	28.04
Mobile	92.81	40.49	541.22
Nonroad	12.68	16.58	54.61
Biogenic	20.9	N/A	N/A
Total	248.83	209.44	634.01

The EPA is approving this inventory as satisfying the requirements of section 182(a)(1) of the CAA.

III. Final Action

EPA is granting final approval of the Louisville 1990 Base Line Emissions Inventory and the aforementioned rule revisions because they are consistent with the requirements of the CAA and EPA policy.

Also included in this submittal were revisions to Regulation 1.02 Definitions; Regulation 1.04 Performance Tests; Regulation 1.06 Source Self Monitoring and Reporting; Regulation 1.07 Emissions During Shutdowns, Malfunctions, and Emergencies; Regulation 1.08 Administrative Procedures; Regulation 2.02 Air Pollution Regulation; Regulation 2.03 Permit Requirements—Non-Title V Operating Permits and Construction/Demolition Permits; Regulation 2.07 Public Notification; Regulation 2.08 Emission Fees, Permit Fees, and Permit Renewal Procedures; Regulation 5.14 Hazardous Air Pollutants; and Regulation 6.42 VOC and nitrogen oxide reasonably available control technology (NO_X RACT). Action on these regulations will be taken in a separate notice.

IV. Administrative Requirements

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 (Public Law 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 Clean Air Act. 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 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 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. section 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. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 24, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 3, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. Section 52.920 is amended by revising the entry for 8.03 and by adding new entries in numerical order to the last table in paragraph (c) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
	Reg 1 General Administrative Procedures			
	* * *	*	*	
1.18	Rule Effectiveness	11/23/01	66 FR 53689	9/21/94
	* * *	*	*	
	Reg 6 Standards of Performance for Existing Affected Facilities			
	* * *	*	*	
6.43	Volatile Organic Compound Reduction Requirements	11/23/01	66 FR 53689	5/21/97
	* * *	*	*	
6.45	Standards of Performance for Existing Solid Waste Landfills	11/23/01	66 FR 53689	2/2/94

EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
*	* *	*	*	
Reg 7 Standards of Performance for New Affected Facilities				
*	* *	*	*	
7.79	Standards of Performance for New Commercial Motor Vehicles and Mobile Equipment Refinishing Operations.	11/23/01	66 FR 53690	2/2/94
*	* *	*	*	
Reg 8 Mobile Source Emission Control				
*	* *	*	*	
Requirements 8.03.	Commuter Vehicle Testing	11/23/01	66 FR 53690	2/2/94
*	* *	*	*	

* * * * *

[FR Doc. 01–25895 Filed 10–22–01; 8:45 am]

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