

normal business hours at the following location:

Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Patricia Morris at (312) 353-8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8656.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" are used we mean EPA.

This Supplementary Information section is organized as follows:

What action is EPA taking today?

Where can I find more information about this proposal and the corresponding direct final rule?

What Action is EPA Taking Today?

In this action, we are proposing to approve a revision to the ozone maintenance plan for Cleveland/Akron/Lorain, Ohio. The revision will change the mobile source VOC emissions budget that is used for transportation conformity purposes. The revision will keep the total emissions for the area at or below the attainment level required by law. This action will allow State or local agencies to maintain air quality while providing for transportation growth.

Where Can I Find More Information About this Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 14, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[KY-126-200113; IN-121-2; FRL-7001-4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; KY and IN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 30, 2001, the Commonwealth of Kentucky's Natural Resources and Environmental Protection Cabinet submitted: a request to redesignate the Kentucky portion of the Louisville moderate ozone nonattainment area to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS), a plan to maintain the 1-hour ozone NAAQS for at least the next 10 years, and the regional motor vehicle emission budgets (MVEBs) for transportation conformity purposes. In addition, on November 12, 1999, and May 23, 2001, Kentucky submitted source-specific Board Orders adopted by the Air Pollution Control Board of Jefferson County to control sources of nitrogen oxides (NO_x) at eleven sources in Jefferson County, Kentucky. On April 11, 2001, the State of Indiana's Department of Environmental Management submitted: a request to redesignate the Indiana portion of the Louisville moderate ozone nonattainment area to attainment for the 1-hour ozone NAAQS, the regional MVEBs for transportation conformity purposes, and a plan to maintain the 1-hour ozone NAAQS for at least the next 10 years. The Louisville moderate ozone nonattainment area (Louisville area) includes Jefferson County and portions of Bullitt and Oldham Counties, Kentucky, and Clark and Floyd Counties, Indiana.

Since Kentucky and Indiana had not completed public participation requirements for the submittals of March 30, 2001 and April 11, 2001, they requested that the EPA parallel process the redesignation requests, maintenance plans, and associated regional MVEBs.

EPA is proposing to approve Kentucky's and Indiana's requests to redesignate the Louisville area to attainment for the 1-hour ozone NAAQS. In proposing to approve this request, the EPA is also proposing to approve the States' plans for maintaining the 1-hour ozone NAAQS through 2012, as revisions to the Kentucky and Indiana State Implementation Plans (SIPs). EPA is also proposing to approve the MVEBs for VOC and NO_x in the submitted maintenance plans for conformity purposes. Finally, the EPA is proposing to approve the source-specific Board Orders to control NO_x emissions from eleven sources in Jefferson County, Kentucky.

DATES: Comments on the EPA's proposed action must be received by July 23, 2001.

ADDRESSES: Written comments should be addressed to: Richard A. Schutt, Acting Chief, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303. J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of Kentucky's submittals, as well as other information, are available for inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day and reference files KY-126. U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Planning 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.

Copies of Indiana's submittals, as well as other information, are available for inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day and reference files IN-121-2. Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 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.

FOR FURTHER INFORMATION CONTACT:

Allison Humphris, Environmental Scientist, or Raymond Gregory, Environmental Engineer, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303, (404) 562-9030, (404) 562-9116, (Humphris.Allison@epa.gov) (Gregory.Ray@epa.gov). Ryan Bahr, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353-4366, (bahr.ryan@epa.gov).

SUPPLEMENTARY INFORMATION:

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III. Administrative Requirements

I. Determination of Attainment

On May 17, 2001, (66 FR 27483) EPA proposed to determine that the Louisville moderate ozone nonattainment area has attained the 1-hour ozone NAAQS. On the basis of this determination, EPA also proposed to determine that certain attainment demonstration requirements (section

172(c)(1)), along with certain other related requirements of part D of Title I of the Clean Air Act (CAA), specifically the section 172(c)(9) contingency measure requirement, the section 182(b)(1) attainment demonstration requirement, and the section 182(j) multi-state attainment demonstration requirement, are not applicable to the Louisville area, as long as it continues to attain the 1-hour ozone NAAQS. EPA did not propose to determine, however, that the regulations submitted by Kentucky with its 15 percent plan were inapplicable, since these regulations were adopted by Kentucky or the Air Pollution Control District of Jefferson County (APCDJC) prior to 1998 and provided permanent and enforceable reductions for the Louisville area during the 1998 to 2000

ozone seasons. EPA intends to approve these regulations in a separate action. Likewise, the May 17, 2001, **Federal Register** action also noted that previously-approved SIP revisions must continue to be implemented and enforced, and are not affected by this action.

EPA based this proposed determination upon three years of complete, quality-assured, ambient air monitoring data for the 1998, 1999, and 2000 ozone seasons that demonstrate that the 1-hour ozone NAAQS has been attained in the entire Louisville area. This data is summarized in Table 1. A complete discussion of the data and background that provides the basis for this proposed action can be found in the above-cited May 17, 2001, **Federal Register** action.

TABLE 1.—1-HOUR OZONE NAAQS EXCEEDANCES IN THE LOUISVILLE, KENTUCKY-INDIANA AREA FROM 1998 TO 2000

Site	County	Year	Exceedances measured	Expected exceedances
Charlestown	Clark, IN	1998	3	3.1
		1999	0	0.0
		2000	0	0.0
New Albany	Floyd, IN	1998	2	2.0
		1999	0	0.0
		2000	0	0.0
Bates	Jefferson, KY	1998	1	1.2
		1999	0	0.0
		2000	0	0.0
Buckner	Oldham, KY	1998	1	1.1
		1999	1	1.2
		2000	0	0.0
Sheperdsville	Bullitt, KY	1998	0	0.0
		1999	0	0.0
		2000	0	0.0
Watson	Jefferson, KY	1998	1	1.2
		1999	0	0.0
		2000	0	0.0
WLKY-TV	Jefferson, KY	1998	1	1.1
		1999	0	0.0
		2000	0	0.0

As indicated in the May 17, 2001, **Federal Register** action, the States must continue to operate appropriate air quality monitoring networks, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the 1-hour ozone NAAQS must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in the EPA's Aerometric Information Retrieval System (AIRS).

As further indicated in the May 17, 2001, **Federal Register** action, the proposed determination is not equivalent to redesignation of this area to attainment. Attainment of the ozone 1-hour ozone NAAQS is only one of the

criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated, the State must submit and receive full approval of a redesignation request for the area that satisfies all of the remaining criteria of section 107(d)(3)(E), including a demonstration that: the improvement in the area's air quality is due to permanent and enforceable reductions; the area has a fully approved SIP under 110(k); the State has met the applicable requirements under section 110 and part D; and the area has a fully-approved maintenance plan.

II. Redesignation Request

A. What Action is EPA Proposing to Take?

EPA is proposing to approve Kentucky's and Indiana's requests to redesignate the Louisville area to attainment for the 1-hour ozone NAAQS, provided both States 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. In proposing to approve these requests, EPA is also proposing to approve Kentucky's and Indiana's plans for maintaining the 1-hour ozone NAAQS through 2012, as revisions to the

Kentucky and Indiana SIPs. The EPA is also proposing to approve the MVEBs for VOC and NO_x in the submitted maintenance plan as adequate for conformity purposes. Final EPA approval of the maintenance plan, including the MVEBs, is contingent on Kentucky's and Indiana's final submittal of the above-cited revisions. Finally, the EPA is proposing to approve the source-specific Board Orders submitted by Kentucky to control NO_x emissions from eleven sources in Jefferson County, Kentucky, as fulfilling the remaining NO_x reasonably available control technology (RACT) requirements of section 182(f) of the CAA for the Kentucky portion of the Louisville area.

B. What Would be the Effect of the Redesignation?

The redesignation would change the official designation under 40 CFR 81.315 of the Louisville area, including the Kentucky Counties of Jefferson, Bullitt and Oldham, and the Indiana Counties of Clark and Floyd, from nonattainment to attainment for the 1-hour ozone NAAQS. It would also put into place plans for maintaining the 1-hour ozone NAAQS through 2012. These plans include contingency measures to remedy any future violations of the 1-hour ozone NAAQS. These plans also include the following MVEBs for 2012, which must be revised as indicated in Table 2, before the EPA can take final action to approve the MVEBs, the maintenance plans and redesignation requests.

TABLE 2.—PROPOSED 2012 MVEBS FOR LOUISVILLE NONATTAINMENT AREA

Pollutant	2012 MVEB as submitted by States (Tons/day)	2012 MVEB proposed for approval provided States revise their maintenance plan submittal (see analysis for more detail)
VOC	50.93	48.17
NO _x	92.93	92.93

C. What Is the Background for This Action?

Under section 107(d) of the 1977 CAA, EPA promulgated the ozone attainment status for each geographic area of the country. The Louisville area was designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 15, 1990, the CAA Amendments of 1990 were enacted. Under section 107(d)(4)(A), on

November 6, 1991 (56 FR 56694), the Kentucky Counties of Jefferson, Bullitt and Oldham, 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 NAAQS during the 1987–1989 time frame. On September 20, 1995, in response to a request by Kentucky, EPA published (60 FR 48653) corrections to the boundaries of the Louisville area for Bullitt and Oldham Counties to include additional sources which contributed to violation of the 1-hour ozone NAAQS.

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. These programs include stationary source RACT, vehicle inspection and maintenance (I/M) programs, mobile source conformity and other measures (See EPA's analysis for specific measures in section II.E., below). As a result of these programs, 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 seasons, thereby demonstrating that the area has attained the 1-hour ozone NAAQS. On March 30, 2001, Kentucky submitted: a request to redesignate the Kentucky portion of the Louisville area to attainment for the 1-hour ozone NAAQS, a plan to maintain the 1-hour ozone NAAQS through 2012, and the regional MVEBs for transportation conformity purposes. On November 12, 1999, and May 23, 2001, Kentucky submitted source-specific Board Orders specifying NO_x RACT requirements for eleven sources in Jefferson County, Kentucky. On April 11, 2001, Indiana submitted: a request to redesignate the Indiana portion of the Louisville area to attainment for the 1-hour ozone NAAQS, a plan to maintain the 1-hour NAAQS through 2012, and the regional MVEBs for transportation conformity purposes.

Both Kentucky and Indiana requested that EPA parallel process the submittals. Since Kentucky and Indiana had not completed public participation requirements at the time of submittal of the March 30, 2001, and April 11, 2001, redesignation requests, these submittals were considered to be drafts. Kentucky and Indiana therefore requested that the EPA parallel process the redesignation request, maintenance plans, and associated regional MVEBs. The parallel processing provision of 40 CFR part 51, appendix V, allows EPA to propose action on the draft revisions prior to submission of State-adopted SIP

revisions. At the time of final EPA action, the completed revisions must have been submitted to EPA.

D. What Are the Redesignation Review Criteria?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) The Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175(A); and, (5) The State containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994. (Nichols, October 1994)
2. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.
3. "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.
4. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act Deadlines," John Calcagni, Director, Air Quality Management

Division, October 28, 1992. (Calcagni, October 1992)

5. "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

6. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

7. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498), April 16, 1992.

E. What is the EPA's Analysis of the Request?

Criterion (1): The Area Must be Attaining the 1-hour Ozone NAAQS

For ozone, an area may be considered attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and Appendix H, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. A violation of the 1-hour ozone NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 per year at a monitoring site. A daily exceedance occurs when the maximum hourly ozone concentration during a given day is 0.125 parts per million (ppm) or higher. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in AIRS. The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA published a proposal on May 17, 2001 (66 FR 27483), to make a Determination of Attainment for the Louisville area. This determination is based on ozone air quality data for 1998, 1999, and 2000 which were quality-assured in accordance with 40 CFR part 58, and recorded in AIRS, and which showed attainment of the 1-hour ozone NAAQS in the Louisville area.

Criteria (2) and (5): The Area Must Have a Fully Approved SIP Under Section 110(k); and the Area Must Have met all Applicable Requirements Under Section 110 and Part D.

Before the Louisville area may be redesignated to attainment for ozone, Kentucky and Indiana must have fulfilled the applicable requirements of section 110 and part D. The Calcagni memorandum dated September 4, 1992, provides that States requesting that areas be redesignated to attainment have

to fully adopt rules and programs that come due prior to the submittal of a complete redesignation request. However, based on the Seitz memorandum (see "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standards," John Seitz, Director, Office of Air Quality Standards, May 10, 1995.), and the May 17, 2001 (66 FR 27483), proposed determination that the Louisville area has attained the 1-hour ozone NAAQS, SIP revisions to address some of these requirements need not be submitted for EPA to approve the request for redesignation of the Louisville area, 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 reasonable further progress (RFP) (see the general requirement 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 (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)).

Since these elements are no longer required, EPA will not need to act on the following: Indiana's Attainment Demonstration for the Indiana Portion of the Louisville Nonattainment Area submitted November 15, 1999; the 3 percent contingency requirement associated with Indiana's 15 percent Rate of Progress (ROP) requirements, submitted December 20, 1993; Kentucky's Attainment Demonstration for the Kentucky Portion of the Louisville Nonattainment Area submitted November 12, 1999; and the Kentucky 15 percent ROP planning SIP submitted on November 12, 1993, and amended on April 5, 1994, June 30, 1997, and March 21, 2000. A final redesignation action would permanently make these requirements no longer applicable. However, all previously-approved SIP revisions must continue to be implemented and enforced and are not affected by this action. In addition, EPA will continue to process any submittals that have not yet been approved and revise the SIP to incorporate State- and locally-adopted rules and other legally-enforceable requirements which have helped the area come into attainment prior to the effective date for this rule. This will

ensure that the rules the area has depended on for attainment are permanent and enforceable as part of the SIP.

If the area violates the 1-hour ozone NAAQS prior to final action on the redesignation request, however, not only would the requirements again become applicable, but the redesignation request could not be approved because the area would no longer meet the criterion of having attained the 1-hour NAAQS. (Seitz memorandum dated May 10, 1995)

Furthermore, requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request would continue to be applicable to the area until a redesignation is approved, but are not required as a prerequisite for redesignation (see section 175A(c)). If the redesignation were to be disapproved, the States remain obligated to fulfill those requirements.

Section 110 Requirements

General SIP elements are delineated in section 110(a)(2) of Title I, part A. These requirements include but are not limited to the following: submittal of a SIP that has been adopted by the State after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for part C, Prevention of Significant Deterioration (PSD); and part D, New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting; provisions for modeling; and provisions for public and local agency participation. For purposes of redesignation, the Kentucky and the Indiana SIPs were reviewed to ensure that all requirements under the amended CAA were satisfied through previously-approved SIP provisions or SIP revisions that are in the process of being reviewed or on which the EPA is in the process of taking action. The EPA must take final action on the required SIP revisions presently in the process of EPA review or action, before this redesignation can be approved.

The EPA is proposing to approve revisions submitted by Kentucky to address the NO_x RACT requirements of section 182(f) of the CAA for the Jefferson County portion of the Louisville area in this **Federal Register** action. These revisions are source-specific Board Orders that establish NO_x RACT requirements for eleven sources in Jefferson County, Kentucky.

In a future **Federal Register** action, the EPA intends to propose action on regulations submitted by Kentucky to address outstanding VOC RACT requirements of section 182(b)(2) of the CAA for a specific source category and a specific source. These regulations include a regulation to address sources, located in Jefferson County, subject to the EPA's Control Techniques Guideline (CTG) published May 1993 "Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry" (SOCMI) and source-specific requirements for a lithographic printing operation, Publisher's Printing, Inc., located in Bullitt County, Kentucky. EPA also intends to take final action on the underlying regulations that were a part of the Kentucky 15 percent plan and propose action on other miscellaneous revisions to update the Jefferson County portion of the Kentucky SIP.

Transport of Ozone Precursors to Downwind Areas

Modeling results utilizing the EPA's regional oxidant model indicate that ozone precursor emissions from various States west and southeast of the ozone transport region (OTR) in the Northeastern United States contribute to increases in ozone concentrations in the OTR. EPA issued a NO_x SIP Call on October 27, 1998 (63 FR 57356), requiring the District of Columbia and 22 States, including Indiana and Kentucky, to reduce their emissions of NO_x in order to reduce the transport of ozone and ozone precursors. EPA's initial NO_x SIP Call submittal date of September 1999, was stayed by the United States Court of Appeals for the District of Columbia Circuit Court. The Court lifted this stay on June 22, 2000, and established an October 30, 2000, date for the submittal of State SIPs to address the NO_x SIP Call requirements. Due to the length of Kentucky's regulation promulgation process, the Commonwealth of Kentucky was unable to meet this deadline, but submitted a NO_x SIP Call SIP for parallel processing on February 20, 2001. Similarly, while Indiana has been working on a rule in response to the NO_x SIP Call since July 1999, Indiana was unable to submit a SIP to meet the deadline; however, Indiana submitted a draft NO_x SIP and requested parallel processing on March 30, 2001.

The States are in the process of finalizing NO_x SIPs and intend to submit final, adopted NO_x SIPs by August 2001. However, given that affected States are not required to

implement the NO_x SIP Call until 2004 (i.e., well after the date on which Kentucky and Indiana submitted redesignation requests), the EPA believes that the requirement to submit a NO_x SIP cannot reasonably be considered a prerequisite for redesignation of the Louisville area. NO_x SIP Call controls have not yet been implemented in this area. The fact that Louisville is monitoring attainment of the 1-hour ozone standard, even though NO_x SIP Call controls have not been implemented, does not imply that NO_x SIP Call controls are not needed to allow other, downwind areas to attain the 1-hour ozone NAAQS. Furthermore, this analysis does not address to what extent the NO_x SIP Call controls may be needed to attain the new 8-hour ozone, promulgated July 18, 1997 (62 FR 38855), in any areas that may be designated nonattainment under that standard. Therefore, EPA believes that Kentucky and Indiana need not have final NO_x SIP Call regulations in place to qualify for redesignation.

EPA has determined that the Kentucky and Indiana SIPs for the Louisville 1-hour ozone nonattainment area satisfy all of the section 110 SIP requirements of the CAA.

Part D: General Provisions for Nonattainment Areas

Before the Louisville area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D of the CAA. Under part D, an area's classification determines the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under Table 1 of section 181(a). As described in the General Preamble for the Implementation of Title I, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501, April 16, 1992). The Louisville area was classified as moderate ozone nonattainment. Therefore, in order to be redesignated, Kentucky and Indiana must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, as well as the applicable requirements of subpart 2 of part D.

Section 172(c) Requirements

EPA has determined that the redesignation requests received from Kentucky and Indiana for the Louisville area have satisfied all of the relevant submittal requirements under section 172(c) necessary for the area to be redesignated to attainment. On May 17,

2001 (66 FR 27483), the EPA proposed to determine that certain CAA requirements were no longer needed because the area was attaining the ozone NAAQS. These included a SIP revision providing a 15 percent VOC emission reduction plan, an ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment to meet the requirements of section 172(c)(1), 172(c)(2), 182(b)(1) and 182(j). Kentucky has submitted an RFP plan. EPA intends to take final action on the underlying regulations that were submitted with the RFP plan before taking final action on this proposal, since emission reductions resulting from implementation of these regulations occurred during the 1998 through 2000 period. Indiana submitted an RFP plan on December 20, 1993, and supplemented the submittal on July 12, 1995, for Clark and Floyd Counties which the EPA approved on May 7, 1997 (62 FR 24815). Since new submittals of these elements would no longer be required if this action is finalized, a final approval action would mean that EPA would not require Indiana to submit the 3 percent contingency requirement associated with Indiana's 15 percent ROP requirements, submitted December 20, 1993, and July 12, 1995. Furthermore, since the area would be redesignated to attainment, the EPA approval of the Kentucky 15 percent ROP planning SIP, which was submitted on November 12, 1993, and amended on April 5, 1994, June 30, 1997, and March 21, 2000, would also no longer be required.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. Kentucky submitted, on November 12, 1993 (amended April 5, 1994, and June 30, 1997), an actual emission inventory under section 182(a)(1) for the Kentucky counties of Jefferson, Bullitt and Oldham. The EPA intends to take final action on this inventory in the same **Federal Register** that addresses the underlying regulations submitted with the RFP plan. Indiana submitted, on January 15, 1994, the 1990 base year inventory for the Indiana Counties of Clark and Floyd, and EPA approved the submittal on June 20, 1994 (59 FR 31544). EPA has determined that upon final approval of Kentucky's actual emission inventory, the requirement of 172(c)(3) for Kentucky and Indiana will be satisfied.

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. EPA has determined that areas being redesignated to attainment do not need to comply with the requirement that a 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 published on June 21, 1996 (61 FR 31834). 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 remain enforceable after the redesignation of the Louisville area.

Section 176 Conformity Requirements

Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. of the Federal Transit Act ("transportation conformity"), as well as to all other federally supported or funded projects ("general conformity"). Section 176 further provides that State conformity revisions must be consistent with federal conformity regulations that the CAA required the EPA to promulgate. The 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, the 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,

the EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. Consequently, the EPA may approve the ozone redesignation request for the Kentucky and Indiana portions of the Louisville area without a fully-approved conformity SIP. See Detroit, Michigan, carbon monoxide redesignation published on June 30, 1999 (64 FR 35017), Cleveland-Akron-Lorain ozone redesignation published on May 7, 1996 (61 FR 20458), and Tampa, Florida ozone redesignation published on December 7, 1995 (60 FR 62748).

Subpart 2 Section 182 Requirements

The Louisville area is classified moderate nonattainment; therefore, part D, subpart 2, section 182(b) requirements apply. In accordance with the September 17, 1993, EPA guidance memorandum, the requirements which came due prior to the submission of the request to redesignate the area must be fully approved into the SIP before or at the time of the request to redesignate the area to attainment. Those requirements are discussed below.

1990 Base Year Inventory

The 1990 base year emissions inventory, as required by sections 172(c)(3) and 182(b)(1)(B), was due on November 15, 1992. Kentucky submitted its 1990 base year emissions inventory on November 12, 1993, and submitted revisions on April 5, 1994, and June 30, 1997. The EPA is processing and intends to publish a final **Federal Register** action on this inventory before taking final action approving today's proposal. Indiana submitted its 1990 base year inventory on June 20, 1994 (59 FR 31544). The EPA approved this inventory, including the baseline for the Indiana portion of the Louisville area, on January 4, 1995 (60 FR 375). The EPA approved revisions to the 1990 base year inventory for the Indiana portion of the Louisville area as part of its May 7, 1997, approval of the 15 percent plan (62 FR 24815).

Periodic Emissions Inventory

Periodic inventories, as required by section 182(a)(3)(A), were due on November 15, 1995, and November 15, 1998, providing an estimate of emissions for 1993 and 1996, respectively. These inventories are not considered SIP requirements, and therefore they do not need to be approved into the SIP. Kentucky provided the EPA with periodic emissions for 1993 and 1996 on November 3, 1996, and November 13,

1998, respectively. Indiana also provided its estimates of periodic emissions for 1996 on February 18, 1999.

Emission Statements

The emission statement SIP, as required by section 182(a)(3)(B), was due on November 15, 1992. An emission statement SIP requires source owners to submit information annually to the State concerning actual emissions. Kentucky submitted its emission statement SIP on January 15, 1993, and supplemented the submittal on December 29, 1994, to satisfy the federal requirements. The EPA published approval of the Kentucky emission statement SIP on May 2, 1995 (60 FR 21445). Kentucky submitted the emission statement SIP for Jefferson County on March 4, 1993, to satisfy the same requirements. The EPA published approval of the Jefferson County emission statement SIP on June 23, 1994 (59 FR 32343). Indiana submitted its emission statement SIP on January 6, 1994, and the EPA approved it on June 10, 1994 (59 FR 29953).

15 Percent Plan

As discussed above, EPA believes it is reasonable to interpret certain provisions of the CAA, including section 182(b)(1)(A), as not being required if an area is monitoring attainment of the 1-hour ozone NAAQS (i.e., attainment of the 1-hour ozone NAAQS is demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). Since it has now attained the 1-hour ozone NAAQS, the 15 percent VOC emission reduction plan is one of these requirements that will not be applicable to the Louisville area. Indiana submitted the Clark and Floyd County 15 percent plan on December 20, 1993. EPA approved it as part of the SIP on May 7, 1997 (62 FR 24815). Kentucky submitted its 15 percent plan on November 12, 1993, and amended this plan on April 5, 1994, June 30, 1997, and March 21, 2000. For so long as the area continues to attain the 1-hour ozone NAAQS, however, EPA will not take action on the Kentucky submittals.

VOC RACT Requirements

SIP revisions requiring RACT for three classes of VOC sources are required under section 182(b)(2). The categories are: (1) all sources covered by a CTG document issued between November 15, 1990, and the date of attainment; (2) all sources covered by a CTG issued prior to November 15, 1990; and (3) all other major non-CTG stationary sources. The non-CTG rules were due by November 15, 1992, and

apply to the Kentucky and Indiana submittals.

Section 183 of the CAA required EPA to issue CTGs for 13 source categories by November 15, 1993. EPA published a CTG by this date for the following source categories: Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactors and Distillation, aerospace manufacturing coating operation, shipbuilding and ship repair coating operations, and wood furniture coating operation; however, EPA has not completed the CTGs for the remaining source categories. The CAA requires States to submit rules for sources covered by a post-enactment CTG in accordance with a schedule specified in a CTG document. EPA created a CTG document as appendix E to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990. (57 FR 18070, 18077, April 28, 1992). In appendix E, EPA interpreted the CAA to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG, based on the list of CTGs EPA expected to issue to meet the requirement in section 183. Appendix E states that if EPA fails to issue a CTG by November 15, 1993 (which it failed to do for 11 source categories), the responsibility shifts to the State to submit a non-CTG RACT rule or negative declaration for those sources by November 15, 1994.

EPA approved certain VOC RACT rules as part of the Kentucky SIP on January 25, 1980 (45 FR 6092), August 7, 1981 (46 FR 40188), February 7, 1990 (55 FR 4169), June 23, 1994, (59 FR 32344), and June 28, 1996 (61 FR 33674). EPA approved certain VOC RACT rules as part of the Jefferson County portion of the Kentucky SIP on January 25, 1980 (45 FR 6092), June 9, 1982 (47 FR 25010), January 11, 1984 (49 FR 1341), April 27, 1989 (54 FR 18103), and October 22, 1993 (58 FR 54516). EPA is processing and intends to take final action on certain revisions to Jefferson County VOC RACT rules prior to taking final action on today's proposal. For the Kentucky portion of the Louisville area, these actions fulfilled the RACT "fix up" and "catch up" requirements such that identified deficiencies in their pre-1990 RACT program were addressed, satisfying requirement (2) above that RACT be established for all sources covered by a CTG issued prior to November 15, 1990. EPA intends to propose action on a source-specific non-CTG RACT determination for Publisher's Printing, Inc., submitted by Kentucky on April 16, 2001, and supplemented on May 4,

2001. This RACT determination must receive final approval before today's action on this redesignation can be finally approved by the EPA. Final approval of this action will satisfy requirement (3) above for the Kentucky portion of the Louisville area.

To satisfy the requirement of (1) above, Kentucky submitted a negative declaration on December 14, 1999, for the CTG categories of aerospace, SOCMI reactor and distillation processes, shipbuilding, and wood furniture. The APCDJC submitted a negative declaration for Jefferson County for all four CTG categories on February 26, 2001. The APCDJC withdrew the negative declaration for the SOCMI category on May 1, 2001, and submitted a SOCMI regulation for parallel processing on May 10, 2001. Before the EPA can take final action on today's proposal, the APCDJC's SOCMI regulation must be approved by EPA.

Regarding the Indiana portion of the nonattainment area, EPA has likewise taken numerous actions since the 1990 CAA Amendments approving Indiana VOC RACT rules including March 6, 1992 (57 FR 8082), July 5, 1995 (60 FR 34857), and June 29, 1998 (63 FR 35141). For the Indiana portion of the Louisville area, these actions fulfilled the RACT "fix up" and "catch up" requirements such that identified deficiencies in their pre-1990 RACT program were addressed, satisfying requirement (2) above that RACT be established for all sources covered by a CTG issued prior to November 15, 1990. The July 5, 1995, action also approved a non-CTG RACT rule, partially fulfilling requirement (3) above. However, Indiana's non-CTG RACT rule exempted the 13 categories for which EPA had intended to develop CTGs (per section 183). Indiana subsequently submitted rules for four of these categories: autobody refinishing, shipbuilding, wood furniture, and volatile organic storage tanks. EPA approved these rules as revisions to the SIP on June 13, 1996 (61 FR 29965), October 30, 1996 (61 FR 55889), January 17, 1997 (62 FR 2593), and January 22, 1997 (62 FR 3216), respectively. For the remaining RACT categories, Indiana submitted negative declarations on November 8, 1999. On June 8, 2000 (65 FR 36346), EPA approved these negative declarations recognizing that, for the nine source categories identified, there were no sources with the potential to emit 100 tons or more of VOC on an annual basis.

As a result of these approved rules, rules on which EPA is in the process of taking action, and negative declarations, Kentucky and Indiana have addressed

all sources covered by a CTG since November 15, 1990 (Requirement 1 above), all sources covered by a CTG issued prior to November 15, 1990 (Requirement 2 above), and all other major non-CTG stationary sources (requirement 3 above), thus fully satisfying the VOC RACT requirements. Upon redesignation of the area, all new major VOC sources locating in the Louisville area, and all major modifications to existing major VOC sources in the Louisville area, will continue to be subject to the RACT requirements.

Stage II Vapor Recovery

Section 182(b)(3) requires States to submit Stage II vapor recovery rules no later than November 15, 1992. EPA originally approved Stage II requirements for Jefferson County, Kentucky, on March 6, 1996 (61 FR 8875). EPA is currently reviewing and intends to take action on minor revisions to Jefferson County's Stage II regulations prior to taking final action on today's proposal. Indiana submitted Stage II vapor recovery rules as a SIP revision on February 25, 1994. EPA approved those rules on April 28, 1994 (59 FR 21942). Indiana submitted amendments to its Stage II rules on April 6, 1999. EPA approved these amendments as revisions to the SIP on November 3, 1999 (64 FR 59642). The September 17, 1993, "Enforcement Guidance for Stage II Vehicle Refueling Control Programs," guidance memorandum states that once onboard vapor recovery regulations are promulgated, the Stage II regulations are no longer applicable for moderate ozone nonattainment areas. EPA promulgated onboard vapor recovery rules in February 1994. Therefore, under section 202(a)(6) of the CAA, Stage II would no longer be required. However, both Kentucky and Indiana have opted to include reductions in VOCs from the Stage II program as part of the submitted maintenance plan.

Vehicle I/M

EPA's final I/M regulations in 40 CFR part 85 require the States to submit a fully adopted I/M program by November 15, 1993. On September 11, 1998, Kentucky submitted its I/M program and the EPA approved the program rule on December 8, 1998 (63 FR 67586). Kentucky also submitted the Jefferson County I/M regulation for approval on November 12, 1993. EPA approved this regulation on July 28, 1995 (60 FR 38700). EPA has approved several additional revisions to the Jefferson County I/M program, including actions taken on January 5, 1999 (64 FR 415),

and March 15, 1999 (64 FR 12749); and is in the process of taking action on several additional minor revisions. Indiana submitted rules for its improved basic I/M program on September 28, 1995, and EPA published approval of the rules on March 19, 1996 (61 FR 11142).

NO_x Requirements

Section 182(f) establishes NO_x requirements for ozone nonattainment areas which require the same provisions for major stationary sources of NO_x as apply to major stationary sources of VOCs. One of the requirements for major sources of VOCs is RACT. Therefore, pursuant to section 182(f) of the CAA, RACT is a requirement for major sources of NO_x in an ozone nonattainment area.

On May 21, 1999, Kentucky submitted to EPA for approval APCDJC Regulation 6.42, Reasonably Available Control Technology Requirements for Major Volatile Organic Compound and Nitrogen Oxides-Emitting Facilities. EPA is reviewing and intends to take a separate action on Regulation 6.42 before taking final action on this proposal. Regulation 6.42 requires the establishment and implementation of RACT for the major stationary sources of NO_x in Jefferson County, Kentucky. For the 11 major sources of NO_x in Jefferson County, Regulation 6.42 has been implemented by means of Board Orders adopted by the Air Pollution Control Board of Jefferson County. 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. The following is a summary of the NO_x RACT requirements for each of the 11 Board Orders.

1. American Synthetic Rubber Company, LLC (ASRC): The Board Order submitted to the EPA on May 23, 2001, contains the following NO_x RACT requirements:

(a) The NO_x emissions from Boiler #1 and Boiler #2 are not to exceed 0.50 pound per million Btu of heat input, based upon a 30-day rolling average.

(b) The ASRC is required to have continuous emission monitoring system (CEMS) for measuring NO_x emissions from Boiler #1 and Boiler #2.

(c) The ASRC is required to maintain the records listed in 40 CFR 60.49b (g) for Boiler #1 and Boiler #2.

(d) The NO_x emissions from each of Boiler #3 and Boiler #4 are not to exceed 0.20 pound per million Btu of heat input. Neither boiler is to combust a fuel other than natural gas except that Boiler #4 may also combust No. 2 fuel oil.

(e) The ASRC is required to conduct a periodic performance test for NO_x for each of Boiler #3 and Boiler #4.

(f) The ASRC is required to keep a record identifying all deviations from the requirements of the NO_x RACT Plan and is required to submit to the APCDJC a written report of all deviations that occurred during the preceding semi-annual period.

2. E. I. du Pont de Nemours & Company (DuPont): The Board Order submitted on November 12, 1999, contains the following NO_x RACT requirements:

(a) The NO_x emissions from Boiler #4 and Boiler #5 are not to exceed 0.20 pound per million Btu of heat input, based upon a 30-day rolling average.

(b) DuPont is required to install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring NO_x emissions from each boiler.

(c) DuPont is required to maintain records listed in 40 CFR § 60.49b(g).

(d) DuPont is required to submit to the APCDJC excess emission reports for any excess emissions that occurred during the reporting period.

3. Ford Louisville Assembly Plant (Ford LAP): The Board Order originally submitted on November 12, 1999, amended and resubmitted on May 23, 2001, contains the following NO_x RACT requirements:

(a) The NO_x emissions from each of Boiler #4 and Boiler #5 are not to exceed 0.20 pound per million Btu of heat input.

(b) Ford LAP is required to conduct a periodic performance test for NO_x for each of Boiler #4 and Boiler #5.

(c) Ford LAP is required each year to perform and make a record of the following non-routine boiler maintenance activities for Boiler #4 and Boiler #5: inspect the fuel combustion system, adjust the system to minimize total emissions of NO_x and carbon monoxide (CO), minimize excess air and maximize boiler efficiency, and make any needed adjustments or repairs to improve boiler efficiency.

(d) Ford LAP was required to submit to the APCDJC a one-time written description of daily activities and procedures that may be conducted by the boiler operators to ensure optimum operating efficiency of Boiler #4 and Boiler #5.

(e) Ford LAP is required to ensure that Boiler #1, Boiler #2, and Boiler #3 comply with the following requirements: No boiler is to have a monthly capacity factor greater than 10.0 percent for any month during the period March 1 to October 31, and no

boiler is to combust a fuel other than natural gas, distillate oil, or residual oil.

(f) Ford LAP is required to make a record of the type and amount of fuel combusted during each day of operation of Boiler #1, Boiler #2, or Boiler #3 during the period March 1 to October 31.

(g) Ford LAP is required to keep a record identifying all deviations from the requirements of the NO_x RACT Plan and is required to submit to the APCDJC a written report of all deviations that occurred during the preceding semi-annual period as well as a summary of the non-routine boiler maintenance activities for Boiler #4 and Boiler #5.

4. General Electric Company (GE Appliances): The Board Order originally submitted on November 12, 1999, amended and resubmitted on May 23, 2001, contains the following NO_x RACT requirements:

(a) The NO_x emissions from each of Boiler #6 and Boiler #7 are not to exceed 0.20 pound per million Btu of heat input.

(b) If either of Boiler #6 or Boiler #7 has a seasonal capacity factor greater than 15.0 percent, then GE Appliances is required, prior to operating that boiler during any subsequent ozone control season, to conduct a performance test for NO_x for that boiler.

(c) Each boiler of the group Boiler #1, Boiler #2, Boiler #3, Boiler #4, and Boiler #5 shall comply with one of the following options: Option 1: The boiler shall not have a seasonal capacity factor greater than 10.0 percent, or Option 2: The NO_x emissions from the boiler are not to exceed 0.70 pound per million Btu of heat input. If one of these boilers has a seasonal capacity factor greater than 10.0 percent, then GE Appliances is required, prior to operating that boiler during any subsequent ozone control season, to conduct a performance test for NO_x.

(d) GE Appliances was required to submit to the APCDJC a written description of daily activities and procedures that may be conducted by the boiler operators to ensure optimum operating efficiency of the boilers used during the ozone control season.

(e) GE Appliances is required to make a record of the type, heat content, and amount of fuel combusted during each day of operation during the ozone control season of each boiler identified above. GE Appliances is required to keep a record identifying all deviations from the requirements of this NO_x RACT Plan and is required to submit to the APCDJC a written report of all deviations that occurred during the preceding semi-annual period as well as a summary of the non-routine boiler

maintenance activities for Boiler #6 and the designated primary backup boiler.

5. Kosmos Cement Company (Kosmos): The Board Order originally submitted on November 12, 1999, amended and resubmitted on May 23, 2001, contains the following NO_x RACT requirements:

(a) The NO_x emissions from the cement kiln shall not exceed 6.6 pounds per ton of clinker produced by the kiln, based upon a rolling 30-day average.

(b) Kosmos is required to install, calibrate, maintain, and operate a NO_x CEMS for the cement kiln. Kosmos is required to keep records and submit required CEMS reports.

(c) Kosmos is required to keep a record identifying all deviations from these requirements and is required to submit a written report of all deviations to the APCDJC.

6. Louisville Gas and Electric Company, Cane Run Generating Station (LG&E/CRGS): The Board Order originally submitted on November 12, 1999, amended and resubmitted on May 23, 2001, contains the following NO_x RACT requirements:

(a) The NO_x emissions from each utility boiler are required to be below the rate as specified in the following, based upon a rolling 30-day average: Unit 4, 0.52 lb/mmBtu of heat input; Unit 5, 0.52 lb/mmBtu of heat input; and Unit 6, 0.47 lb/mmBtu of heat input.

(b) LG&E/CRGS is required to install, maintain, and operate a NO_x CEMS for each utility boiler and is required to keep records and submit reports and other notifications as specified in the approved Board Order.

(c) The GT-11 turbine is not to be operated for more than 500 hours per calendar year. LG&E/CRGS is required to make a record of the hours of operation during each day of operation and submit a quarterly report summarizing the monthly and calendar-year-to-date hours of operation.

(d) LG&E/CRGS is required to keep a record identifying all deviations and submit to the APCDJC a written report of all deviations that occurred during the preceding calendar quarter.

7. Louisville Gas and Electric Company, Mill Creek Generating Station (LG&E/MCGS): The Board Order originally submitted on November 12, 1999, amended and resubmitted on May 23, 2001, contains the following NO_x RACT requirements:

(a) The NO_x emissions from each utility boiler are required to be below the rate as specified in the following, based upon a rolling 30-day average: Unit 1, 0.47 lb/mmBtu of heat input; Unit 2, 0.47 lb/mmBtu of heat input;

Unit 3, 0.52 lb/mmBtu of heat input; and Unit 4, 0.52 lb/mmBtu of heat input.

(b) LG&E/MCGS is required to install, maintain, and operate a NO_x CEMS for each utility boiler and shall keep records and submit reports and other notifications as specified in the approved Board Order.

(c) LG&E/MCGS is required to keep a record identifying all deviations and submit to the APCDJC a written report of all deviations that occurred during the preceding calendar quarter.

8. Louisville Medical Center Steam Plant (Medical Center): The Board Order submitted on November 12, 1999, amended and resubmitted on May 23, 2001, contains the following NO_x RACT requirements:

(a) The NO_x emissions from each of Boiler #2, Boiler #4, and Boiler #5 while natural gas is combusted in that boiler are not to exceed 0.20 pound per million Btu of heat input.

(b) The NO_x emissions from each of Boiler #4, Boiler #5, and Boiler #6 while coal is combusted in that boiler are not to exceed 0.50 pound per million Btu of heat input.

(c) The Medical Center is required to conduct a periodic performance test for NO_x for each of Boiler #2, Boiler #4, Boiler #5, and Boiler #6.

(d) The Medical Center is required annually to perform and make a record of non-routine boiler maintenance activities for Boiler #2, Boiler #4, Boiler #5, and Boiler #6. Also, the Medical Center was required to submit to the APCDJC a one-time written description of daily activities and procedures that may be conducted by the boiler operators to ensure optimum operating efficiency of Boiler #2, Boiler #4, Boiler #5, and Boiler #6.

(e) Neither Boiler #1 nor Boiler #3 is to have a seasonal capacity factor greater than 10.0 percent. Also, the Medical Center is required to make a record of the type and amount of fuel combusted during each day of operation of Boiler #1 or Boiler #3 during the period April 1 through October 31.

(f) The Medical Center is required to keep a record identifying all deviations from the requirements of these NO_x RACT requirements and is required to submit to the District a written report of all deviations.

9. Oxy Vinyls, LP (Oxy Vinyls): The Board Order originally submitted on November 12, 1999, amended and resubmitted on May 23, 2001, contains the following NO_x RACT requirements:

(a) The NO_x emissions from Boiler #4 are not to exceed 0.60 pound per million Btu of heat input.

(b) The NO_x emissions from Boiler #6 are not to exceed 0.70 pound per million Btu of heat input.

(c) Oxy Vinyls is required to conduct a periodic performance test for NO_x for each of Boiler #4 and Boiler #6.

(d) Oxy Vinyls is required to include in each related report to the APCDJC a summary of non-routine boiler maintenance activities for Boiler #4 and Boiler #6, and submit a one-time written description of daily activities and procedures conducted by the boiler operators to ensure optimum operating efficiency of Boiler #4 and Boiler #6.

(e) Boiler #1 is required to comply with the following requirements: Boiler #1 is not to have an annual capacity factor greater than 10.0 percent for any consecutive 12-month period, and Boiler #1 is not to combust a fuel other than natural gas, distillate oil, or residual oil.

(f) Oxy Vinyls is required to make a record of the type, heat content, and amount of fuel combusted during each day of operation of Boiler #1.

(g) The NO_x emissions from Boiler #5 are not to exceed 0.20 pound per million Btu of heat input. Oxy Vinyls is required to make a record of the type, heat content, and amount of fuel combusted during each day of operation of Boiler #5.

(h) Oxy Vinyls is required to keep a record identifying all deviations from the requirements of the NO_x RACT Plan and is required to submit to the APCDJC a written report of all deviations that occurred during the preceding semi-annual period.

10. Rohm and Haas Company (Rohm & Haas): The Board Order submitted on November 12, 1999, contains the following NO_x RACT requirements:

(a) When fossil fuel (natural gas or distillate fuel oil) alone is combusted, the NO_x emissions from Boiler No. 100 are not to exceed 0.20 pounds per million Btu of heat input, based upon a 30-day rolling average.

(b) When fossil fuel (natural gas or distillate fuel oil) and chemical by-product waste are simultaneously combusted in Boiler No. 100, NO_x emissions from the boiler are not to exceed 1.1 pounds per million Btu of heat input, based upon a 30-day rolling average.

(c) Rohm & Haas was required to install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring NO_x emissions from Boiler No. 100 and submit the performance evaluation of the CEMS for Boiler No. 100.

(d) Boiler No. 500 is required to either have an annual capacity factor not greater than 10.0 percent for any

consecutive 12-month period and keep a record of the type and amount of fuel combusted during each day of operation, or to not have the NO_x emissions exceed 0.20 pound per million Btu of heat input, based upon a 30-day rolling average.

(e) Rohm & Haas is required to submit excess emission reports to the APCDJC.

11. Texas Gas Transmission (Texas Gas): The Board Order submitted on November 12, 1999, amended and resubmitted on May 23, 2001, contains the following NO_x RACT requirements:

(a) The NO_x emissions from each of Internal Combustion (IC) Engines #1 through #9 are not to exceed 3 grams per brake-horsepower-hour (g/bhp-hr), according to the following schedule: four IC engines by no later than November 15, 2001, and the other five IC engines by no later than November 15, 2002. Until an individual IC engine is subject to the 3 g/bhp-hr NO_x emissions limit, Texas Gas is required to restrict the operation of that IC engine to less than or equal to 1350 brake horsepower during the time period of May 1 through September 30 each year.

(b) Until October 1, 2004, the NO_x emissions from Turbine T-1 are not to exceed 100 pounds per hour, and the exhaust temperature is not to exceed 1006 °F. On and after October 1, 2004, the NO_x emissions from Turbine T-1 is not to exceed 75 parts per million by volume on a dry gas basis (ppmv) corrected to 15 percent O₂. Additionally, Texas Gas is required to submit a construction permit application for Turbine T-1 by March 1, 2003, for Dry Low NO_x (DLN) controls and begin operation of DLN controls by October 1, 2004.

(c) The NO_x emissions from the Emergency Generator Engine are not to exceed 2.6 grams per brake horsepower-hour.

(d) Texas Gas is required to monitor and record the operational parameters for each IC engine, the Emergency Generator Engine, and Turbine T-1, and conduct NO_x performance tests as follows: annually one IC engine from the group of IC Engines #1 through #6 (alternating such that each IC engine in this group has been tested in a six-year period), annually one IC engine from the group of IC Engines #7 through #9 (alternating such that each IC engine in this group has been tested in a three-year period), and periodically, starting in 2005, Turbine T-1.

(e) Texas Gas is required to keep a record identifying all deviations from the requirements of the NO_x RACT Plan and is required to submit to the APCDJC a written report of all deviations that

occurred during the preceding semi-annual period.

The EPA is proposing today to approve the eleven Board Orders discussed above. These Board Orders are necessary to satisfy the requirements of section 182(f) for the Kentucky's portion of the Louisville area. Kentucky made a negative declaration in the redesignation request that there were no major sources of NO_x in the nonattainment portions of Bullitt and Oldham Counties.

Indiana submitted the required NO_x RACT rules on August 26, 1996. In addition, on April 30, 1997, Indiana submitted a negative declaration that there were no remaining major sources of NO_x in Clark and Floyd Counties. The EPA approved Indiana's NO_x revisions as meeting the requirements of section 182(f) for the Indiana portion of the Louisville area on June 3, 1997 (62 FR 30253).

Final action approving all items needed to satisfy the requirements identified above will enable Kentucky and Indiana to have a fully-approved SIP under section 110(k), and to meet met all applicable requirements under section 110 and part D.

Criterion (3): The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

The improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from the SIP, federal measures, and other State-adopted measures. VOC emissions in the Kentucky portion of the Louisville area were reduced by 4.93 tons per day between 1996 and 1999. Regulatory programs which contributed to these emission reductions include: rule effectiveness (APCDJC Regulation 1.18); stage II gasoline vapor recovery and control (APCDJC Regulation 6.40), VOC emission reduction (APCDJC Regulation 6.43), performance standards for existing solid waste landfills (APCDJC Regulation 6.45), an improved vehicle I/M program (APCDJC Regulations 8.01, 802, and 8.03), a ban on most types of open burning (401 KAR 63:005), federal rules for Architectural Coatings, Traffic Paints, Auto Body Refinishing, and Commercial/Consumer Products; Kentucky and APCDJC opt-in to the federally-enforceable reformulated gasoline program, federal rules establishing maximum allowable Reid Vapor Pressure, and the Federal Motor Vehicle Control Program (FMVCP).

In the Indiana portion of the nonattainment area, VOC emissions were reduced by 4.4 tons per day between 1996 and 1999. Regulatory

programs contributing to the reductions in emissions in the Indiana portion of the Louisville area include the volatile organic storage tanks rule (326 IAC 8-9), the shipbuilding and ship repair rule (326 IAC 8-12), the wood furniture coating rule (326 IAC 8-11), the automobile refinishing rule (326 IAC 8-10), the stage II gasoline vapor recovery rule (326 IAC 8-4-6), lower Reid Vapor Pressure gasoline rule (326 IAC 13-3), a ban on residential open burning (326 IAC 4-1), installation of gas collection and combustion equipment at municipal solid waste landfills (326 IAC 8-8), an improved vehicle I/M program (326 IAC 13-1), a ridesharing program and, the installation of thermal incinerators at a printing facility in Clark County. The 15 percent plan and all of the reductions in the above list have been approved into the SIP. Federal programs contributing to reductions include: the FMVCP, the federal architectural and industrial maintenance coatings rule, and VOC (326 IAC 8-7) and NO_x RACT (326 IAC 10-1) regulations.

Based on the listed programs, Kentucky and Indiana have shown that the improvement in air quality is based on permanent and enforceable reductions in emissions, thus meeting this requirement.

Criterion (4): The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan is a SIP revision that provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the required content of a maintenance plan. An ozone maintenance plan should address the following five areas: the attainment emissions inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The attainment emissions inventory identifies the emissions level in the area that is sufficient to attain the 1-hour ozone NAAQS, based on emissions during a three year period which had no monitored violations. Maintenance is demonstrated by showing that future emissions will not exceed the level established by the attainment inventory. Provisions for continued operation of an appropriate air quality monitoring network are to be included in the maintenance plan. The State must show how it will track and verify the progress

of the maintenance plan. Finally, the maintenance plan must include a list of potential contingency measures which ensure prompt correction of any violation of the 1-hour ozone NAAQS.

Kentucky and Indiana, in their submittals, included their 1999 emissions inventories as their attainment year inventories. Both Kentucky's and Indiana's maintenance plans provided emissions estimates from 1999 to 2012 for VOCs and NO_x, and indicate that these emissions in the Louisville area are projected to decrease from 1999 levels. Considering only the projected emissions, the results of this analysis show that the area is expected to maintain the air quality standard for at least 10 years into the future after redesignation. However, as shown in tables 7 and 8, Kentucky and Indiana also chose to include a safety margin, in addition to projected emissions, for both the VOC and NO_x MVEBs.

The transportation conformity regulations allow for a safety margin to be allocated to a MVEB to the extent that the projected emissions are less than the attainment year emissions. However, when the VOC safety margin calculated by the States is included in the 2012 projections in these draft plans, the 2012 projected VOC emissions will exceed the 1999

emissions by 2.76 tons/day. The total projected 2012 emissions, taking the safety margin into account, total 148.40 tons/day, or 2.76 tons/day more than the 1999 emissions. Therefore, the draft maintenance plans must be revised to control VOC emissions such that the 2012 projected inventories, including the safety margin being used for the VOC MVEB, are 2.76 tons/day less than shown in the draft maintenance plans. To remedy this issue, Indiana submitted a letter on May 29, 2001, and Kentucky submitted a letter on May 17, 2001, indicating their intent to revise the draft maintenance plans so that the final maintenance plans will include a VOC MVEB of 48.17 tons/day, 2.76 tons/day less than the MVEB included in the draft. For a more detailed discussion of the revision to the VOC MVEB, please see the following section on MVEBs. EPA is proposing to approve the maintenance plan as long as the final plan is revised so that the projected 2012 VOC emissions, including the VOC MVEB safety margin, do not exceed the 1999 attainment year emissions.

Table 3 and Table 4 provide the emissions summary for VOCs and NO_x for the Indiana portion and Table 5 and Table 6 provide the emission summary for VOCs and NO_x for the Kentucky

portion of the Louisville area. Table 7 and Table 8, respectively, provide the emissions summary for VOCs and NO_x for the entire Louisville area.

TABLE 3.—VOC EMISSIONS IN TONS PER SUMMER DAY FOR INDIANA COUNTIES (CLARK AND FLOYD)

	1999 attainment	2005 projected	2012 projected
Point	4.16	4.49	4.88
Area	17.67	17.11	18.12
Mobile	9.80	8.58	8.81
Non-Highway ...	7.36	7.70	8.09
Totals	38.99	37.88	39.90

TABLE 4.—NO_x EMISSIONS IN TONS PER SUMMER DAY FOR INDIANA COUNTIES (CLARK AND FLOYD)

	1999 attainment	2005 projected	2012 projected
Point	26.04	12.35	12.38
Area	8.39	8.78	9.23
Mobile	19.33	16.66	12.82
Non-Highway ...	6.25	6.46	6.71
Totals	60.01	44.25	41.15

TABLE 5.—VOC EMISSIONS IN TONS PER SUMMER DAY FOR KENTUCKY COUNTIES (JEFFERSON, AND NONATTAINMENT PORTIONS OF BULLITT AND OLDHAM)

	1999 attainment	2002 projected	2005 projected	2008 projected	2012 projected
Point	31.52	31.93	31.93	31.83	31.52
Area	18.94	19.10	19.27	19.47	19.64
Mobile	41.13	36.38	30.50	28.02	27.23
Non-Highway	15.07	15.12	15.15	15.20	15.22
Totals	106.66	102.53	96.85	94.52	93.61

TABLE 6.—NO_x EMISSIONS IN TONS PER SUMMER DAY FOR KENTUCKY COUNTIES (JEFFERSON, AND NONATTAINMENT PORTIONS OF BULLITT AND OLDHAM)

	1999 attainment	2002 projected	2005 projected	2008 projected	2012 projected
Point	116.86	99.08	46.37	47.78	47.99
Area	0.81	0.81	0.82	0.82	0.82
Mobile	73.60	67.70	59.22	52.64	44.19
Non-Highway	19.95	19.87	19.74	19.63	19.41
Totals	211.22	187.46	126.15	120.87	112.41

TABLE 7.—VOC EMISSIONS IN TONS PER SUMMER DAY FOR THE ENTIRE LOUISVILLE AREA

Total VOC (tons/day)	1999 attainment	2005 projected	2012 projected	2012 projected (including States' calculated 14.89 mobile source "safety margin")
Point	35.68	36.42	36.40	36.40
Area	36.61	36.38	37.76	37.76
Mobile	50.93	39.08	36.04	50.93

TABLE 7.—VOC EMISSIONS IN TONS PER SUMMER DAY FOR THE ENTIRE LOUISVILLE AREA—Continued

Total VOC (tons/day)	1999 attainment	2005 projected	2012 projected	2012 projected (including States' calculated 14.89 mobile source "safety margin")
Non-Highway	22.43	22.85	23.31	23.31
Totals	145.65	134.73	133.51	148.40

TABLE 8.—NO_x EMISSIONS IN TONS PER SUMMER DAY FOR THE ENTIRE LOUISVILLE AREA

Total NO _x (tons/day)	1999 attainment	2005 projected	2012 projected	2012 projected (including States' calculated 35.92 mobile source "safety margin")
Point	142.90	58.72	60.37	60.37
Area	9.20	9.60	10.05	10.05
Mobile	92.93	75.88	57.01	92.93
Non-Highway	26.20	26.20	26.12	26.12
Totals	271.23	170.40	¹ 153.56	¹ 189.48

¹ Slight differences due to rounding.

Kentucky and Indiana have addressed the maintenance plan requirements for monitoring and emissions inventories. Both have committed to continue the operation of the monitors in the area in accordance with 40 CFR Part 58. Kentucky and Indiana will accomplish verification of continued attainment by regularly updating the emissions inventory for the area.

The contingency plan for the Kentucky portion of the Louisville area contains four major components: a commitment to submit a revised plan eight years after redesignation, attainment tracking, triggers to start the implementation of the contingency measures, and contingency measures to be implemented in the event that a trigger is activated. Section 175A(b) of the CAA requires States to submit a revision of the SIP eight years after the original redesignation request is approved to provide for maintenance of the 1-hour ozone NAAQS for an additional ten years following the first ten-year period. Kentucky and Indiana have committed to submit the revision to the SIP eight years after redesignation of the Louisville area. Attainment tracking will include triennial reviews of actual emissions for the redesignated areas which will be performed using the latest emission factors, models, and methodologies. Kentucky will begin the triennial assessments in 2003 for calendar year 2002. At the time of this periodic inventory, Kentucky will review the assumptions made for the purpose of the maintenance demonstration concerning projected

growth of activity levels. If any of these assumptions appear to have changed substantially, Kentucky will re-project the emissions.

In the event of a monitored violation of the 1-hour ozone NAAQS in the Louisville area, Kentucky commits to adopt within nine months, and implement the regulatory programs within 18 months, one or more of the following contingency measures to re-attain the 1-hour ozone NAAQS:

1. A program to require additional emission reductions at stationary sources, either for specific types of processes or an across-the-board reduction for the larger stationary sources.
2. More restrictive new source review requirements.
3. A more rigorous vehicle emissions testing program or an increase the area subject to the current programs.
4. Restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high-occupancy vehicles.
5. Trip-reduction ordinances.
6. Employer-based transportation management plans, including incentives.
7. Programs to limit or restrict vehicle use in downtown areas, or other areas of emission concentration, particularly during periods of peak use.
8. Programs for new construction and major reconstructions of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.

Kentucky also reserves the right to implement other contingency measures

if new control programs should be developed and deemed more advantageous for the area. In addition, the occurrence of either of the following two events will trigger Kentucky to evaluate existing control measures to see if any further emission reduction measures should be implemented: (1) if exceedances of the 1-hour ozone NAAQS are measured in any portion of the Louisville area, or (2) if a periodic emission inventory update reveals excessive or unanticipated growth greater than 10 percent in ozone precursor emissions.

The contingency plan for the Indiana portion of the Louisville area contains four major components: a commitment to submit a revised plan eight years after redesignation, attainment tracking, triggers to start the implementation of the contingency measures, and contingency measures to be implemented in the event that a trigger is activated. Attainment tracking will include triennial reviews of actual emissions for the redesignated areas which will be performed using the latest emission factors, models, and methodologies. Indiana will begin the triennial assessments in 2003 for calendar year 2002. At the time of this periodic inventory, Indiana will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, then emissions will be re-projected.

Indiana used a two-tiered approach in its maintenance plan to determine the appropriate level of response to ensure

maintenance of the NAAQS. As specified in the submittal, a “Level Two” response is implemented in the event that an ozone monitor records an ozone concentration of 0.12 ppm or more, or the level of VOC or NO_x for the entire Louisville area increases above the 1999 baseline. In the case of one of these triggers, a Level Two response would consist of a study to determine whether the noted trends are likely to continue and, if so, the control measures necessary to reverse the trend. Implementation of these Level Two controls would take place as expeditiously as possible, and in no case later than 18 months after Indiana is aware of a trigger being exceeded. A Level One response is activated in the event of a monitored violation of the 1-hour ozone NAAQS in the Louisville area. With a violation, Indiana commits to implement measures within 18 months. Indiana will select contingency measures from the following list, or any other measure deemed appropriate and effective at that time:

1. Reformulated gasoline program.
2. Broader geographic applicability of existing measures.
3. Tightening of RACT on existing sources covered by EPA Control Techniques Guidelines issued in response to the CAA.
4. Application of RACT to smaller existing sources.
5. A fully-enhanced I/M program.
6. One or more transportation control measures sufficient to achieve at least 0.5 percent reduction in actual area-wide VOC emissions. Transportation measures will be selected from the following, based upon the factors listed above after consultation with affected local governments:

(a) Trip reduction programs, including, but not limited to, employer-based transportation management plans,

area-wide rideshare programs, work schedule changes, and telecommuting.

- (b) Transit improvements.
- (c) Traffic flow improvements.
- (d) Other heretofore “undiscovered” transportation measures not yet in widespread use.

7. Alternative fuels programs for fleet vehicle operations.

8. Controls on consumer products consistent with those adopted elsewhere in the United States.

9. VOC or NO_x emission offsets for new and modified major sources.

10. VOC or NO_x emission offsets for new and modified minor sources.

11. An increase in the ratio of emission offsets required for new sources.

12. VOC or NO_x controls on new minor sources (less than 100 tons).

Kentucky’s and Indiana’s submittals adequately address the five basic components which comprise a maintenance plan (attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan) and, therefore, satisfy the maintenance plan requirement.

Motor Vehicle Emission Budgets

In addition to meeting the criteria for redesignation, as a control strategy SIP, the maintenance plans must contain motor vehicle emissions budgets that, in conjunction with emissions from all other sources, are consistent with attainment and maintenance. Kentucky, Indiana, and APCDJC developed MVEBs for the maintenance plan year of 2012. The MVEBs are for both VOC and NO_x as precursors to ozone formation and would be applicable for the entire Louisville area upon the effective date of a final approval or a MVEB adequacy finding.

In order to develop the MVEBs, motor vehicle emissions were projected to 2012 using the MOBILE5b emission

factor model and associated modeling tools. The transportation conformity regulations also allow for a safety margin to be allocated to a MVEB to the extent that the total projected emissions are less than the total attainment year emissions. The States calculated draft safety margins for both NO_x and VOC using a slightly different methodology than indicated in the definition of a safety margin in the conformity rule. The States calculated the difference between the 1999 attainment year on-road mobile source inventory and the 2012 projected on-road mobile source emissions. This methodology produces an acceptable NO_x MVEB. However, as discussed above, the 2012 projected VOC emissions, including the draft VOC MVEB, exceed the 1999 attainment year VOC emissions. The States’ draft maintenance plan provides for a VOC MVEB of 50.93 tons/day (the 2012 projected motor vehicle emissions, 36.04 tons/day, plus a safety margin of 14.89 tons/day). Since this MVEB, along with the other emissions projected for 2012, would exceed the 1999 emissions, the maintenance plans must be revised prior to final submission. In response to this concern, Kentucky and Indiana submitted letters indicating their intent to revise the draft maintenance plans so that the final maintenance plans will include a VOC MVEB of 48.17 tons/day, 2.76 tons/day less than the MVEB included in the draft. This MVEB is comprised of the 2012 projected motor vehicle emissions, 36.04 tons/day, and a safety margin of 12.13 tons/day (2.76 tons/day less than the draft safety margin). Based on this change that the States intend to make in their final submittals, EPA is proposing to approve the maintenance plans and MVEBs as long as the final plan is revised to include a VOC MVEB of no more than 48.17 tons/day.

TABLE 9.—PROPOSED 2012 MVEB FOR THE LOUISVILLE NONATTAINMENT AREA

Pollutant	2012 projected emissions (tons/day)	State draft safety margin (tons/day)	State draft 2012 projected MVEB (tons/day)	Allowable safety margin (tons/day)	Allowable 2012 MVEB (tons/day)
VOC	36.04	14.89	50.93	12.13	48.17
NO _x	57.01	35.92	92.93	35.92	92.93

One of the control programs the States considered in developing their MVEBs is the Tier II emission standards for vehicles and the low sulfur gasoline (Tier II/Low Sulfur) reductions that will be implemented beginning in 2004. The Tier II/Low Sulfur standards were promulgated as federal rules February 10, 2000 (65 FR 6697). The rules require

more stringent emission limitations for vehicles on a grams per mile of NO_x basis. The rules also require that the sulfur levels in gasoline be significantly less than current levels.

The States estimated the reduction provided by the Tier II/Low Sulfur gasoline program by using “Information Sheet #8 Tier II Benefits Using MOBILE

5b”, an EPA-supplied information sheet, to adjust the MOBILE5b emission factors for 2012. This information sheet notes that users need to be aware of the serious limitations of the information in certain situations. The model used to derive the estimates of Tier II reductions incorporates changes proposed for MOBILE6 that are unrelated to the Tier

II program and, as a result, produces baseline emissions estimates that are different from those produced by MOBILE5. In the absence of MOBILE6, users will apply these reductions to baseline emissions calculated using versions of MOBILE5. As a result, the final inventories estimated using this method may be substantially different from what will be estimated once MOBILE6 becomes available.

For this reason, when this information sheet is used to estimate the reductions achieved by the Tier II/Low Sulfur program, EPA has required a commitment from affected areas that the MVEBs will be recalculated after the release of MOBILE6. This commitment is discussed in more detail in a November 8, 1999, memorandum entitled "1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking" from Lydia N. Wegman, Director, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards and Merrylin Zaw-Mon, Director, Fuels and Energy Division, Office of Mobile Sources to EPA Regions I—VI Air Directors. This memorandum requires areas that rely in whole or in part on the Tier II/Low Sulfur program emission reductions to help demonstrate attainment to commit to recalculate and resubmit MVEBs, as a formal SIP revision, within 1 year after the release of MOBILE6. Subsequently, in a July 28, 2000 **Federal Register** action (65 FR 46383), EPA proposed to provide 1-hour ozone nonattainment areas classified as serious and severe an option, under which States could commit to revise their MVEBs 2 years following the release of MOBILE6, provided that conformity is not determined without adequate MOBILE6 SIP MVEBs during the second year.

While this memorandum and **Federal Register** proposal specifically address attainment demonstrations for the 1-hour ozone nonattainment areas classified as serious and severe, EPA believes that the commitment is applicable to any area that has estimated the reductions from the Tier II/Low Sulfur program and is depending on those reductions for attainment or maintenance. Indiana and Kentucky did not include this commitment in their draft submittal but have submitted letters stating their intent to include, in their final documents, a commitment to revise their MVEBs 2 years following the release of MOBILE6, recognizing that conformity may not be determined without adequate MOBILE6 SIP MVEBs during the second year. EPA can only take final approval action on this redesignation request if the States make

this commitment in their final submittals. If this commitment is made, but either State fails to meet it, the EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under CAA section 179.

Indiana's and Kentucky's letters also indicate that they intend to revise the VOC MVEB, reducing the safety margin, so that the 2012 projected emission inventory is less than the 1999 attainment year. Provided the States appropriately revise the VOC MVEB and submit enforceable commitments to revise their MVEBs using MOBILE6, the EPA is proposing to approve their maintenance plans, redesignation requests and MVEBs.

EPA is also proposing to clarify what will occur if the EPA finalizes approval of these MVEBs based on the States' commitments to revise the budgets in the future. If this occurs, the approved SIP MVEBs will apply for conformity purposes only until the revised MVEBs have been submitted and the EPA has found the submitted MVEBs to be adequate for conformity purposes.

In other words, when the States fulfill their commitment to submit revised MVEBs, if the EPA finds those MVEBs to be adequate for conformity purposes, those revised MVEBs will apply for conformity purposes as soon as affirmative adequacy findings are effective. Provided these revised MVEBs are submitted as revisions to the maintenance plans' 2012 MVEBs, they would also replace the MVEBs in the approved maintenance plans at the time that the affirmative adequacy findings are effective.

Since the EPA is proposing to approve the MVEBs that were submitted with their redesignation request only because the States have committed to revise these MVEBs, EPA wants its approval of these MVEBs to last only until adequate revised MVEBs are submitted pursuant to the commitments. EPA believes the revised MVEBs should apply as soon as they are found adequate. EPA does not believe it is necessary to wait until they have been approved as revisions to the maintenance plan. This is because EPA knows now that if the revised MVEBs are found adequate, they will be more appropriate than the originally approved budgets for conformity purposes.

EPA also recognizes that an accurate estimate of the benefits of the Tier II/Low Sulfur program cannot be made until the MOBILE6 model is released. EPA is proposing to approve MVEBs based on interim approximations of Tier II/Low Sulfur benefits only because the States are committing to recalculate the MVEBs using MOBILE6 in a timely

fashion. According to this proposal, revised MVEBs could be used for conformity after the EPA has completed the adequacy review process, provided the submitted MVEBs are deemed adequate.

If revised MVEBs raise issues about the sufficiency of the maintenance demonstration, EPA will work with the States on a case-by-case basis. If the revised MVEBs show that MVEBs are lower than EPA is proposing to approve today, a reassessment of the maintenance plans must be done before the States can reallocate any of the emission reductions or assign them to an MVEB as a safety margin. In other words, the States must assess how their original maintenance plan is impacted by using MOBILE6 vs. MOBILE5 before they reallocate any apparent motor vehicle emission reductions resulting from the use of MOBILE6.

This **Federal Register** action does not propose any change to the existing transportation conformity rule or to the way it is normally implemented with respect to other submitted and approved SIPs, which do not contain commitments to revise the MVEBs.

F. Where Is the Public Record and Where Do I Send Comments?

The official record for this proposed rule has been established under SIP submittal numbers KY-126 and IN-121-2 and is located at the addresses in the **ADDRESSES** section at the beginning of this document. The addresses for sending comments are also provided in the **ADDRESSES** section at the beginning of this document.

Public comments are solicited on the EPA's proposed rulemaking action. Public comments received in writing by July 23, 2001 will be considered in the development of the EPA's final rulemaking action.

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. This action merely proposes to approve State law as meeting federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this proposed rule to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law,

it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This proposed rule also does 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), nor will it 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), because it merely proposes to approve a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, the 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), the EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for the 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk

and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401-7671q.

Dated: June 7, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Dated: June 14, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

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