

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R04-OAR-2006-0584-200701-; FRL-8306-4]

#### Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Kentucky: Redesignation of the Kentucky Portion of the Louisville 8-Hour Ozone Nonattainment Area to Attainment for Ozone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On September 29, 2006, the Commonwealth of Kentucky (Kentucky), through the Kentucky Division for Air Quality (KDAQ), submitted a request to redesignate the Kentucky portion of the bi-State Louisville 8-hour ozone nonattainment area to attainment for the 8-hour National Ambient Air Quality Standard (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Kentucky portion of the bi-State Louisville area. The Kentucky portion of the bi-State Louisville 8-hour ozone nonattainment area (hereafter referred to as the "Kentucky Bi-State Louisville Area") is comprised of three Kentucky Counties—Bullitt, Jefferson and Oldham. The Indiana portion of the bi-State Louisville 8-hour ozone nonattainment area is comprised of two Indiana Counties—Clark and Floyd. In this action, EPA is proposing to approve Kentucky's 8-hour ozone redesignation request for the Kentucky Bi-State Louisville Area. Additionally, EPA is proposing to approve the 8-hour ozone maintenance plan for the Kentucky Bi-State Louisville Area, including the regional motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs). This proposed approval of Kentucky's redesignation request is based upon EPA's determination that Kentucky has demonstrated that the Kentucky Bi-State Louisville Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire (both the Kentucky and Indiana portions) Bi-State Louisville 8-hour ozone nonattainment area has attained the 8-hour ozone standard. In July and September 2006, Indiana submitted a redesignation request and maintenance plan for the Indiana portion of this 8-hour ozone area. EPA is taking action on that

redesignation request and maintenance plan in a separate action. In this action, EPA is also notifying the public that EPA is reviewing the 2003 and 2020 regional MVEBs for NO<sub>x</sub> and VOCs submitted by Kentucky as part of its maintenance plan, for adequacy. These regional MVEBs are identical to those contained in the Indiana submittal for the bi-State area. During the comment period for this proposal, the public may also comment on the adequacy of the proposed regional MVEBs.

**DATES:** Comments must be received on or before May 29, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2006-0584, by one of the following methods:

(a) *www.regulations.gov*: Follow the on-line instructions for submitting comments.

(b) *E-mail*: [LeSane.Heidi@epa.gov](mailto:LeSane.Heidi@epa.gov).

(c) *Fax*: 404-562-9019.

(d) *Mail*: EPA-R04-OAR-2006-0584 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

(e) *Hand Delivery or Courier*: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R04-OAR-2006-0584, EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail

address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9074. Mrs. LeSane can also be reached via electronic mail at [LeSane.Heidi@epa.gov](mailto:LeSane.Heidi@epa.gov).

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### I. What Proposed Actions Is EPA Taking?

EPA is proposing to take three related actions, which are summarized below and described in greater detail throughout the notice of proposed rulemaking: (1) To redesignate the Kentucky Bi-State Louisville Area to attainment for the 8-hour ozone NAAQS; (2) to approve Kentucky's 8-hour ozone maintenance plan, including the associated MVEBs; and (3) to notify the public that EPA is reviewing regional MVEBs for adequacy.

First, EPA is proposing to determine that the Kentucky Bi-State Louisville Area has attained the 8-hour ozone standard, and has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. The entire bi-State Louisville 8-hour ozone nonattainment area is comprised of three Kentucky Counties—Bullitt, Jefferson, and Oldham, and two Indiana Counties—Clark and Floyd. Today's proposal addresses only the Kentucky portion of the bi-State Louisville 8-hour ozone area. EPA will take action on the redesignation request and maintenance plan for the Indiana portion of this area in a separate action. EPA is now proposing to approve a request to change the legal designation of Bullitt, Jefferson, and Oldham Counties in Kentucky from nonattainment to attainment for the 8-hour ozone NAAQS.

Second, EPA is proposing to approve Kentucky's 8-hour ozone maintenance plan for the Kentucky Bi-State Louisville Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Kentucky Bi-State Louisville Area in attainment for the 8-hour ozone NAAQS through 2020. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes 2003 and 2020 regional MVEBs for NO<sub>x</sub> and VOCs. Therefore, EPA is proposing to approve the 2003 and 2020 regional MVEBs that are included as part of Kentucky's maintenance plan. These regional MVEBs apply to both the Kentucky and Indiana portions of this bi-State 8-hour ozone area.

Third, EPA is notifying the public in today's notice of proposed rulemaking that EPA is reviewing the 2003 and 2020 regional MVEBs for NO<sub>x</sub> and VOCs, as provided in the Kentucky submittal, for adequacy pursuant to 40 CFR 93.118(f)(2). The public may comment at this time on whether the proposed MVEBs meet the adequacy criteria found in EPA's conformity regulations, 40 CFR 93.118(e).

Today's notice of proposed rulemaking is in response to Kentucky's September 29, 2006, SIP submittal which supersedes Kentucky's June 7, 2006, submittal that included a request for parallel processing. The September 29, 2006, submittal requested redesignation of the Kentucky bi-State Louisville Area, and included a SIP revision addressing the specific issues summarized above, and the necessary elements for redesignation described in section 107(d)(3)(E).

### II. What Is the Background for EPA's Proposed Actions?

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO<sub>x</sub> and VOCs react in the presence of sunlight to form ground-level ozone. NO<sub>x</sub> and VOCs are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). (See, 69 FR 23857 (April 30, 2004) for further information). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, "*Comparisons with the Primary and Secondary Ozone Standards*" states:

"The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone

concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm."

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The entire bi-State Louisville 8-hour ozone nonattainment area was designated using 2001–2003 ambient air quality data. The **Federal Register** document making these designations was signed on April 15, 2004, and published on April 30, 2004 (69 FR 23857). The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which covers areas that EPA refers to as "basic" nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which covers areas that EPA refers to as "classified" nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other 8-hour ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA's Phase 1 8-hour ozone implementation rule (69 FR 23857) (Phase 1 Rule), signed on April 15, 2004 and published on April 30, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour ambient air quality design values.

Various aspects of EPA's Phase 1 8-hour ozone implementation rule were challenged in court and on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. *South Coast Air Quality Management Dist. (SCAQMD) v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). The D.C. Circuit Court held that certain

provisions of EPA's Phase I Rule were inconsistent with the requirements of the CAA. The Court rejected EPA's reasons for implementing the 8-hour standard in nonattainment areas under subpart 1 in lieu of subpart 2 of title I, part D of the CAA. The Court also held that EPA improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of EPA's regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) CAA section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain conformity requirements for certain types of Federal actions. The D.C. Circuit Court upheld EPA's authority to revoke the 1-hour standard provided that there were adequate anti-backsliding provisions in place.

This section sets forth EPA's views on the potential effect of the Court's ruling on this redesignation action. For the reasons described throughout this notice of proposed rulemaking, EPA does not believe that the D.C. Circuit Court's ruling alters any requirements relevant to the redesignation of the Kentucky Bi-State Louisville Area so as to preclude redesignation, and does not prevent EPA from proposing to finalize, or finalizing, the Louisville redesignation. EPA believes that the Court's decision, as it currently stands or as it may be modified based upon the petitions for rehearing that have been filed, imposes no impediment to moving forward with redesignation of the Kentucky Bi-State Louisville Area to attainment, because redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

The Kentucky Bi-State Louisville Area was originally designated as moderate nonattainment for the 1-hour ozone standard in November 6, 1991 (56 FR 56694). The Area was redesignated as attainment for the 1-hour ozone standard on October 23, 2001 (66 FR 53665). On April 30, 2004, EPA designated the Kentucky Bi-State Louisville Area as a "basic" 8-hour ozone nonattainment area. (69 FR 23857).

The D.C. Circuit Court's decision in 2006 also addressed the 8-hour ozone classification scheme. The Court rejected EPA's reasons for classifying

areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that the Kentucky Bi-State Louisville area could, as a result of the remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, this does not mean that redesignation cannot go forward now. EPA's position is based upon: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time that the request is submitted; and (2) consideration of the inequity of retroactively applying any requirements that might be applied in the future.

In September 2006, when Kentucky submitted its final redesignation request, the Kentucky Bi-State Louisville Area was classified under subpart 1 of the CAA, and was obligated to meet only the subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. See, "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; see also, Michael Shapiro Memorandum, "SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993; and 60 FR 12459, 12465-66 (March 7, 1995)(redesignation of Detroit-Ann Arbor). See, *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See also, 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit Court recognized the general inequity in retroactive rulemakings in *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002), in which the D.C. Circuit Court upheld a district court's refusal to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. In *Sierra Club*,

the D.C. Circuit Court stated, "[a]lthough EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly, with regard to Kentucky's redesignation request, it would be unfair to penalize Kentucky by retroactively applying to it for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request, and that are not currently in effect, but that might be in effect as a result of the D.C. Circuit Court's remand.

With respect to the requirements under the 1-hour standard ozone standard, the Kentucky Bi-State Louisville Area was originally designated as moderate nonattainment for the 1-hour ozone standard in November 6, 1991 (56 FR 56694). The Area was redesignated as attainment for the 1-hour ozone standard on October 23, 2001 (66 FR 53665). Therefore, the Kentucky Bi-State Louisville Area was designated to attainment of the 1-hour ozone standard prior to its nonattainment designation for the 8-hour ozone standard. As a result, it is considered to be a 1-hour attainment area subject to a CAA section 175A maintenance plan for the 1-hour standard. The D.C. Circuit Court's ruling does not impact redesignation requests for these types of areas for two main reasons.

First, there are no conformity requirements relevant for the Louisville redesignation request, such as a transportation conformity SIP.<sup>1</sup> It is EPA's longstanding policy position that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because State conformity rules are still required after redesignation, and Federal conformity rules apply where State rules have not been approved. See, 40 CFR 51.390; see also, *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding EPA's interpretation).

<sup>1</sup> CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emissions budgets that are established in control strategy SIPs and maintenance plans.

See also, 60 FR 62748 (Dec. 7, 1995) (redesignation of Tampa, Florida).

Second, with regard to the three other anti-backsliding provisions for the 1-hour standard that the D.C. Circuit Court found were not properly retained, the Kentucky Bi-State Louisville Area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to this area because it was redesignated to attainment of the 1-hour standard. As a result, the decision in *SCAQMD* should not alter any requirements that would preclude EPA from finalizing the redesignation of Kentucky Bi-State Louisville Area to attainment for the 8-hour ozone standard.

As noted earlier, in 2005, the ambient ozone data for the Kentucky Bi-State Louisville Area indicated no further violations of the 8-hour ozone NAAQS, using data from the 3-year period of 2003–2005 to demonstrate attainment. As a result, on September 29, 2006, Kentucky requested redesignation of the Kentucky Bi-State Louisville Area to attainment for the 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (March 1st until October 31st) of 2003–2005, indicating that the 8-hour ozone NAAQS has been achieved for the entire Bi-State Louisville area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

### III. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA 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 175A; and, (5) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

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. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "Calcagni Memorandum");
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. "Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. "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," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. "Part D New Source Review (Part D NSR) Requirements for Areas

Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

### IV. Why Is EPA Proposing These Actions?

On September 29, 2006, Kentucky requested redesignation of the Kentucky Bi-State Louisville Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA's evaluation indicates that Kentucky has demonstrated that the Kentucky Bi-State Louisville Area has attained the 8-hour ozone standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA. EPA is also notifying the public of its review of the adequacy of the proposed regional MVEBs, which is relevant to the requested redesignation.

### V. What Is the Effect of EPA's Proposed Actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the three issues being proposed for approval today. Approval of Kentucky's redesignation request would change the official designation of Bullitt, Jefferson, and Oldham Counties in Kentucky for the 8-hour ozone NAAQS found at 40 CFR part 81. Approval of Kentucky's request would also incorporate into the Kentucky SIP, a plan for maintaining the 8-hour ozone NAAQS in the Kentucky Bi-State Louisville Area through 2020. The maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS. The maintenance plan also establishes regional MVEBs of 40.97 tons per day (tpd) for VOC and 95.51 tpd for NO<sub>x</sub> for the year 2003, and MVEBs of 22.92 tpd for VOC and 29.46 tpd for NO<sub>x</sub> for the year 2020. Approval of Kentucky's maintenance plan would also result in approval of the regional MVEBs. Additionally, EPA is notifying the public that it is reviewing the adequacy of the proposed regional MVEBs pursuant to 40 CFR 93.118(f)(2).

### VI. What Is EPA's Analysis of the Request?

EPA is proposing to make the determination that the Kentucky Bi-State Louisville Area has attained the 8-

hour ozone NAAQS, and that all other redesignation criteria have been met. The basis for EPA's determination is discussed in greater detail below.

*(1) The Kentucky Bi-State Louisville Area Has Attained the 8-Hour Ozone NAAQS*

EPA is proposing to determine that the Kentucky Bi-State Louisville Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and

Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and

recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed ozone monitoring data from ambient ozone monitoring stations in the bi-State Louisville area for the ozone season from 2003–2005. This data has been quality assured and is recorded in AQS. The fourth high averages for 2003, 2004 and 2005, and the 3-year average of these values (i.e., design value), are summarized in Table 1 below.

TABLE 1.—ANNUAL 4TH MAX HIGH AND DESIGN VALUE FOR 8-HOUR OZONE FOR BI-STATE LOUISVILLE AREA [parts per million, ppm]

Monitor	County	2003	2004	2005	Design value
Charleston, IN .....	Clark .....	0.090	0.074	0.080	0.081
New Albany, IN .....	Floyd .....	0.086	0.071	0.080	0.079
WLKY, KY .....	Jefferson .....	0.073	0.068	0.074	0.071
Watson, KY .....	Jefferson .....	0.075	0.070	0.085	0.076
Bates, KY .....	Jefferson .....	0.072	0.070	0.079	0.073
Shepherdsville, KY .....	Bullitt .....	0.072	0.068	0.080	0.073
Buckner, KY .....	Oldham .....	0.082	0.076	0.089	0.082

As discussed above, the design value for an area is the highest design value recorded at any monitor in the area. Therefore, the design value for the Kentucky Louisville Bi-State Area is 0.082 ppm, which meets the 8-hour ozone NAAQS. Additionally, preliminary air quality data from the 2006 monitoring season indicates that the Kentucky Louisville Bi-State Area is continuing to attain the 8-hour ozone standard. As is discussed in more detail below, KDAQ has indicated a commitment to continue monitoring in the Kentucky Bi-State Louisville Area in accordance with 40 CFR part 58. The data submitted by Kentucky provides an adequate demonstration that the Kentucky Bi-State Louisville Area has attained the 8-hour ozone NAAQS.

*(2) Kentucky Has a Fully Approved SIP Under Section 110(k) for the Three Affected Counties and (5) Has Met All Applicable Requirements Under Section 110 and Part D of the CAA*

Below is a summary of how these two criteria were met.

EPA has determined that Kentucky has met all applicable SIP requirements for Bullitt, Jefferson and Oldham Counties under section 110 of the CAA (general SIP requirements). EPA has also determined that the Kentucky SIP satisfies the criterion that it meets applicable SIP requirements under part D of title I of the CAA (requirements specific to subpart 1 basic 8-hour ozone

nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the Area and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

*a. Bullitt, Jefferson and Oldham Counties in Kentucky Have Met All Applicable Requirements Under Section 110 and Part D of the CAA*

The September 4, 1992, Calcagni Memorandum (“Procedures for Processing Requests to Redesignate Areas to Attainment,” September 4, 1992) describes EPA’s interpretation of section 107(d)(3)(E). Consistent with this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also, Michael Shapiro Memorandum (“SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992,” September 17, 1993), and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan).

Applicable requirements of the CAA that come due subsequent to the area’s submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See, section 175A(c) of the CAA; *Sierra Club*, 375 F.3d 537 (7th Cir. 2004); see also, 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

*General SIP requirements.* Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, techniques, or provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the State after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit

programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address the transport of air pollutants (NO<sub>x</sub> SIP Call, Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that States have not submitted SIPs under section 110(a)(1) to meet the interstate transport requirements of section 110(a)(2)(D)(i). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State. Thus, we do not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See, Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also, the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no part D requirements for the 8-hour standard became due prior to submission of the redesignation request. Therefore, as discussed earlier, for purposes of redesignation, they are not considered applicable requirements. Nonetheless, EPA notes that it has previously approved provisions into the Kentucky SIP addressing section 110 elements under the 1-hour ozone NAAQS (47 FR 30059, July 12, 1982). EPA believes that the section 110 SIP approved for the 1-hour ozone NAAQS is also sufficient to meet the requirements under the 8-hour ozone NAAQS (as well as satisfying the issues raised by the D.C. Circuit Court in the *SCAQMD* case).

*Part D requirements.* EPA has also determined that the Kentucky SIP meets applicable SIP requirements under part D of the CAA since no requirements became due prior to the submission of the area's redesignation request. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Subpart 2 is not applicable to the Kentucky Bi-State Louisville Area.

*Part D, subpart 1 applicable SIP requirements.* For purposes of evaluating Kentucky's redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). No requirements applicable for purposes of redesignation under part D became due prior to the submission of the redesignation request, and therefore none are applicable to the area for purposes of redesignation. For example, the requirements for an attainment demonstration that meets the requirements of section 172(c)(1) are not yet applicable, nor are the requirements for Reasonably Achievable Control Technology (RACT) and Reasonably Available Control Measures (RACM) (section 172(c)(1)), reasonable further progress (RFP) (section 172(c)(2)), or contingency measures (section 172(c)(9)).

In addition to the fact that no part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request, and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and NSR requirements as not requiring approval prior to EPA final action approving the redesignation.

*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 of the United States Code (U.S.C.) and the Federal Transit Act (“transportation conformity”) as well as to all other Federally supported or funded projects (“general conformity”). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. See, *Wall*, 265 F.3d 426 (upholding this interpretation). See also, 60 FR 62748 (Dec. 7, 1995, Tampa, Florida).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a Memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment.” Kentucky has demonstrated that the area will be able to maintain the standard without a part D NSR program in effect, and therefore, Kentucky need not have a fully approved part D NSR program prior to approval of the redesignation request. EPA most recently approved Kentucky's NSR program (including a nonattainment NSR and PSD program) into the Kentucky SIP on July 11, 2006 (71 FR 38990). Kentucky's PSD program

will become effective in the Kentucky Bi-State Louisville Area upon final redesignation to attainment. See, rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the Kentucky Bi-State Louisville Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. The Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Kentucky SIP for Bullitt, Jefferson and Oldham Counties in Kentucky under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall*, 265 F.3d 426; plus any additional measures it may approve in conjunction with a redesignation action. See, 68 FR 25426 (May 12, 2003), and citations contained therein. Following the passage of the CAA of 1970 by the U.S. Congress, Kentucky adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in the Bullitt, Jefferson and Oldham Counties in the Kentucky Bi-State Louisville Area (66 FR 53665, October 23, 2001).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area’s nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation.

*(3) The Air Quality Improvement in the Kentucky Bi-State Louisville Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions*

EPA believes that Kentucky has demonstrated that the observed air quality improvement in the area is due

to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. EPA has determined that the implementation of the following permanent and enforceable emissions controls, that occurred from 2002–2005, have reduced local NO<sub>x</sub> and VOC emissions and brought the area into attainment:

**2002–2005 EMISSION REDUCTION PROGRAMS**

<b>Highway Mobile Source Reductions</b>
Federal Motor Vehicle Control Programs (FMVCP). Tier 2 Vehicle Emissions and Fuel Standards Heavy Duty Engine, Vehicle and Fuel Standards.
<b>Point Source Emissions Reductions.</b>
Reasonably Available Control Measures (RACM). Maximum Available Control Technology (MACT).
<b>Area Source Reductions.</b>
Open burning regulations for former 1-hour ozone area.
<b>Additional Reductions</b>
NO <sub>x</sub> SIP Call Reductions

Notably, no credit specific emission reduction is being claimed in the SIP for the NO<sub>x</sub> SIP call reductions although this program has resulted in measurable emissions reductions.

Kentucky has demonstrated that the implementation of permanent and enforceable emissions controls have reduced local VOC and NO<sub>x</sub> emissions. Most of the reductions are attributable to Federal programs such as EPA’s Tier 2/Low Sulfur Gasoline program and other national clean fuel programs that began implementation in 2004. Additionally, Kentucky has indicated in its September 2006 SIP submittal that the Kentucky Bi-State Louisville Area has benefited from emissions reductions that have been achieved, and will continue to be achieved, through the implementation of the NO<sub>x</sub> SIP Call, beginning in 2002. Kentucky has further demonstrated that year-to-year meteorological changes and trends are not the likely source of the overall, long-term improvements in ozone levels. In addition, the following non-highway mobile source reduction programs were implemented during the 2002–2004 period: small spark-ignition engines,

large-spark ignition engines, locomotives and land-base diesel engines. EPA believes that permanent and enforceable emissions reductions, in and surrounding the nonattainment area, are the cause of long-term improvements in ozone levels, and are the cause of the Kentucky Bi-State Louisville Area achieving attainment of the 8-hour ozone standard.

*(4) The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA*

In its request to redesignate Bullitt, Jefferson and Oldham Counties in Kentucky to attainment, KDAQ submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the Kentucky Bi-State Louisville Area for at least 10 years after the effective date of redesignation to attainment.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, Kentucky must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, Kentucky’s maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

b. Attainment Emissions Inventory

In coordination with Indiana, Kentucky selected 2003 as “the

attainment year” for the Kentucky Bi-State Louisville Area for the purposes of demonstrating attainment of the 8-hour ozone NAAQS. This attainment inventory identifies the level of emissions in the area which is necessary to attain the 8-hour ozone standard. The 2003 VOC and NO<sub>x</sub> emissions (as well as the emissions for other years) for Bullitt, Jefferson and Oldham Counties in Kentucky were developed consistent with EPA guidance, and are summarized in the table in the following subsection.

c. Maintenance Demonstration

The September 29, 2006, SIP submittal includes a maintenance plan

for the Kentucky Bi-State Louisville Area. This demonstration:

(i) Shows compliance with and maintenance of the 8-hour ozone standard by assuring that current and future emissions of VOC and NO<sub>x</sub> will remain at or below attainment year 2003 emissions levels. The year 2003 was chosen as the attainment year because it is one of the most recent three years (*i.e.*, 2003, 2004, and 2005) for which the Kentucky Bi-State Louisville Area has clean air quality data for the 8-hour ozone standard.

(ii) Uses 2003 as the attainment year and includes actual emissions for 2003 and 2005, and future emission inventory

projections for 2008, 2011, 2014, 2017, and 2020.

(iii) Identifies an “out year” at least 10 years after the time necessary for EPA to review and approve the maintenance plan. In accordance with 40 CFR part 93, regional MVEBs for NO<sub>x</sub> and VOCs were established for the last year of the maintenance plan (in addition to 2003).

(iv) Provides the following actual and projected emissions inventories for the Kentucky portion of the bi-State Louisville nonattainment area. *See*, Tables 2 and 3. For informational purposes, a summary of the actual and projected emissions inventories for the entire bi-State area are also provided. *See*, Tables 4 and 5.

TABLE 2.—ACTUAL AND PROJECTED VOC EMISSIONS FOR BULLITT, JEFFERSON AND OLDHAM COUNTIES  
[Tons per day]

Categories	2003	2005	2008	2011	2014	2017	2020
<b>Point</b>							
Bullitt .....	8.10	8.21	8.39	8.58	8.77	8.95	9.16
Jefferson .....	23.63	23.62	23.55	23.33	23.15	22.96	22.74
Oldham .....	0.72	0.73	0.75	0.76	0.78	0.79	0.81
Point Subtotal .....	32.45	32.56	32.69	32.67	32.70	32.70	32.71
<b>Area</b>							
Bullitt .....	3.34	3.43	3.60	3.75	3.92	4.09	4.26
Jefferson .....	17.33	17.41	17.51	17.59	17.67	17.76	17.85
Oldham .....	2.46	2.55	2.70	2.82	3.01	3.16	3.32
Area Subtotal .....	23.13	23.39	23.81	24.16	24.60	25.01	25.43
<b>Mobile*</b>							
Bullitt .....	3.74	3.43	2.87	2.52	2.30	2.18	2.05
Jefferson .....	25.34	23.04	19.22	15.49	12.24	10.52	9.52
Oldham .....	2.29	2.16	1.79	1.56	1.45	1.40	1.34
Mobile Subtotal .....	31.37	28.63	23.88	19.57	15.99	14.10	12.91
<b>Nonroad</b>							
Bullitt .....	1.77	1.91	1.91	1.82	1.69	1.49	1.36
Jefferson .....	14.31	13.14	11.50	10.62	10.41	10.45	10.64
Oldham .....	1.54	1.38	1.18	1.08	1.06	1.06	1.08
Nonroad Total .....	17.62	16.43	14.59	13.52	13.16	13.00	13.08
Total .....	104.57	101.01	94.97	89.92	86.45	84.81	84.13

TABLE 3.—ACTUAL AND PROJECTED NO<sub>x</sub> EMISSIONS FOR BULLITT, JEFFERSON AND OLDHAM COUNTIES  
[Tons per day]

Categories	2003	2005	2008	2011	2014	2017	2020
<b>Point</b>							
Bullitt .....	0.60	0.61	0.64	0.65	0.68	0.71	0.72
Jefferson .....	74.48	53.95	53.63	50.91	51.76	51.24	46.49
Oldham .....	0.09	0.09	0.09	0.10	0.10	0.10	0.10
Point Subtotal .....	75.47	54.65	54.36	51.66	52.54	52.05	47.31
<b>Area</b>							
Bullitt .....	0.11	0.11	0.12	0.12	0.13	0.13	0.14
Jefferson .....	0.75	0.76	0.76	0.76	0.76	0.76	0.76
Oldham .....	0.07	0.07	0.07	0.08	0.09	0.09	0.09
Area Subtotal .....	0.93	0.94	0.95	0.96	0.98	0.98	0.99
<b>Mobile*</b>							
Bullitt .....	7.52	7.23	5.99	4.83	3.84	3.17	2.73
Jefferson .....	63.29	54.96	41.55	29.62	19.76	13.87	11.02

TABLE 3.—ACTUAL AND PROJECTED NO<sub>x</sub> EMISSIONS FOR BULLITT, JEFFERSON AND OLDHAM COUNTIES—Continued  
[Tons per day]

Categories	2003	2005	2008	2011	2014	2017	2020
Oldham .....	4.43	4.36	3.58	2.88	2.34	1.96	1.72
Mobile Subtotal .....	75.24	66.55	51.12	37.33	25.94	19.00	15.47
<b>Nonroad</b>							
Bullitt .....	1.81	1.78	1.70	1.60	1.47	1.35	1.27
Jefferson .....	31.94	31.11	29.36	27.37	25.26	23.44	22.17
Oldham .....	1.63	1.59	1.49	1.37	1.22	1.07	0.95
Nonroad Total .....	35.38	34.48	32.55	30.34	27.95	25.86	24.39
Total .....	187.02	156.62	138.98	120.29	107.41	97.89	88.16

TABLE 4.—ATTAINMENT YEAR AND END-YEAR VOC EMISSIONS FOR BI-STATE LOUISVILLE 8-HOUR OZONE AREA

	[Tons per day] *	
	2003	2020
Kentucky .....	104.57	84.13
Indiana .....	29.26	** 27.91
Total .....	133.83	112.04
Safety Margin ...	n/a	21.79

\* Emissions inventories, as provided by Kentucky, for this table and Table 2 may be slightly different due to rounding conventions.

\*\* This total reflects the VOC emissions for Indiana as submitted in the Indiana SIP and is an update to the total of 27.65 as provided in the Kentucky submittal.

TABLE 5.—ATTAINMENT YEAR AND END-YEAR NO<sub>x</sub> EMISSIONS FOR BI-STATE LOUISVILLE 8-HOUR OZONE AREA

	[Tons per day] *	
	2003	2020
Kentucky .....	187.02	88.16
Indiana .....	51.77	** 38.10
Total .....	238.79	126.26
Safety Margin ...	n/a	112.53

\* Emissions inventories, as provided by Kentucky, for this table and Table 3 may be slightly different due to rounding conventions.

\*\* This total reflects the NO<sub>x</sub> emissions for Indiana as submitted in the Indiana SIP and is an update to the total of 38.11 as provided in the Kentucky submittal.

A safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance area. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Kentucky and Indiana have collectively decided to allocate a portion of the available safety margin to the regional

2020 MVEBs for VOC and NO<sub>x</sub>. This allocation and the remaining available safety margin for this bi-State area are discussed further in section VII of this rulemaking.

d. Monitoring Network

There are currently seven monitors measuring ozone in the entire bi-State Louisville 8-hour ozone area—two in Indiana and five in Kentucky. KDAQ has committed in the maintenance plan to continue operation of the Kentucky monitors in compliance with 40 CFR part 58, and has addressed the requirement for monitoring. Indiana has provided a similar commitment for the monitors in Clark and Floyd Counties.

e. Verification of Continued Attainment

Kentucky has the legal authority to enforce and implement the requirements of the ozone maintenance plan for the Kentucky Bi-State Louisville Area. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Kentucky will track the progress of the maintenance plan by performing future reviews of actual emissions for the area using the latest emissions factors, models and methodologies. For these periodic inventories 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 emissions. Following the redesignation of the area, sources are prohibited from reducing emission controls already in place when attainment is achieved unless EPA approves a SIP revision consistent with section 110 of the CAA.

Kentucky and EPA have instituted the following programs that will remain enforceable and are included as part of Kentucky's September 2006 SIP

submittal, to maintain air quality which meets the NAAQS for the 8-hour ozone standard.

- All new major VOC or NO<sub>x</sub> sources locating in Kentucky shall, as a minimum, apply control procedures that are reasonable, available, and practical;

- All major modifications to existing major VOC or NO<sub>x</sub> sources are subject to RACT requirements as well as the best available control technology (BACT) requirement of the KDAQ and Louisville Metro Air Pollution Control District (LMAPCD) PSD regulations;

- All new affected facilities with the potential to emit more than 5 tons per year of VOC are required to comply with the Jefferson County Air Pollution Control Commission Regulation Number 7 regarding emissions of VOCs;

- Continuation of the rule effectiveness programs to enhance inspection of stationary sources to ensure emission control equipment is functioning properly and compliance is maintained (Jefferson County);

- Stage I vapor recovery in former 1-hour maintenance portions of Bullitt and Oldham counties;

- Stage II vapor recovery (Jefferson County);

- Federal Motor Vehicle Control Standards;

- Louisville Metro Air Pollution Control District (LMAPCD) Amended Board Order with the Kosmos Cement Company to comply with an allowed emission rate for the cement kiln that is more stringent than the previous Kentucky SIP NO<sub>x</sub> RACT limit;

- Reformulated Gasoline Phase II in effect in Jefferson County and the former 1-Hour Maintenance portions of Bullitt and Oldham counties since January 1, 2000;

- Transportation conformity requirements;

- PSD requirements;

- Federal controls on certain nonroad engines (e.g. diesel and other Federal requirements, industrial diesel equipment, locomotives) after 2000;

- Federal controls on the VOC content for architectural and maintenance paints, auto body shops and consumer products;
- The Kentucky open burning rule to further limit types of burning in the former 1-hour Maintenance portions of Bullitt and Oldham Counties.

In addition to these measures, Kentucky explains in its submittal that further reductions will be achieved through the continued implementation of new Federal regulations to further control the emissions of hazardous air pollutants that are VOCs (40 CFR part 63—NESHAPS).

#### f. Contingency Plan

The contingency plan provisions of the maintenance plan are designed to promptly correct a violation of the NAAQS that occurs after redesignation to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that a State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the State. A State should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a State will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d). This requirement is met because all SIP measures are retained for maintenance. Kentucky's submittal satisfies all the contingency plan requirements described in section 175A of the CAA.

In its September 29, 2006, SIP submittal, Kentucky affirms that a combination of all programs already instituted by Kentucky and EPA have resulted in cleaner air in the Kentucky Bi-State Louisville Area and the anticipated future benefits from these programs are expected to result in continued maintenance of the 8-hour ozone NAAQS in this area. Sources are prohibited from terminating emissions controls following the redesignation of the Kentucky Bi-State Louisville Area unless EPA approves a SIP revision consistent with section 110 of the CAA. The contingency plan includes tracking and triggering mechanisms to determine when contingency measures are needed and a process of developing and adopting appropriate control measures.

The triggers of the contingency plan are (1) If a measured design value of the fourth highest maximum at any monitor within the maintenance area in a single ozone season is .087 ppm or greater, or (2) if periodic emission inventory updates reveal excessive or unanticipated growth greater than 10 percent in ozone precursor emissions. If either of these two triggers are met, Kentucky will evaluate existing control measures to determine if any further emission reduction measures should be implemented at that time. If there is a measured violation of the 8-hour ozone NAAQS in the Kentucky Bi-State Louisville Area, Kentucky, or as appropriate, LMAPCD, commits to consider for adoption one or more of the following measures within nine months. All regulatory programs adopted will be implemented within 18 months from a measured violation.

- A program to require additional emission reductions on stationary sources;
- A program to enhance inspection of stationary sources to ensure emission control equipment is functioning properly;
  - Fuel programs<sup>2</sup> including incentives for alternative fuels;
  - Restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;
  - Trip-reduction ordinances;
  - Employer-based transportation management plans, including incentives;
  - Programs to limit or restrict vehicle use in downtown areas, or other areas of emission concentration particularly during periods of peak use;
  - 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; and
  - LMAPCD vehicle inspection/maintenance (I/M) program.

The following milestones are applicable to all contingency measures and are calculated from the date upon which Kentucky is notified of a violation of the 8-hour ozone NAAQS:

<sup>2</sup> Generally, states are preempted from adopting fuel controls pursuant to section 211(c)(4)(A) of the CAA unless EPA grants a fuel waiver in accordance with section 211(c)(4)(C) of the CAA. Specifically, section 211(c)(4)(A) of the CAA states that: "Except as otherwise provided in [the CAA], no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine \* \* \*". Thus, any SIP-approved fuel program can only be approved if a section 211(c)(4)(C) waiver is granted.

- Proposal of draft regulations and promulgation of final regulations—3 months;
- Issuance of final specifications and procedures—3 months;
- Issuance of final request for proposals (if applicable)—4 months; and
- Licensing or certifications of stations and inspectors—17 months.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Kentucky for Bullitt, Jefferson and Oldham Counties therefore meets the requirements of section 175A of the CAA and is approvable.

#### VII. What Are the Proposed Regional MVEBs for the Bi-State Louisville 8-Hour Ozone Area?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (e.g., reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans establish MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB is established for the last year of the maintenance plan. A State may adopt MVEBs for other years as well. Additionally, in coordination with cooperating States in a multi-State area, such States may adopt regional MVEBs that include another State. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. See, 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and revise the MVEB. In addition to MVEBs for the last year of the maintenance plan, a State may adopt MVEBs for other years as well.

Kentucky and Indiana developed regional MVEBs for NO<sub>x</sub> and VOCs. Kentucky used the year 2020, the last year of its maintenance plan, and an additional year, 2003. Kentucky's maintenance plan being proposed for approval today includes the regional MVEBs for NO<sub>x</sub> and VOCs developed jointly by Kentucky and Indiana. EPA is

now proposing to approve the regional MVEBs.

Kentucky's September 29, 2006, SIP submittal included a maintenance plan with regional MVEBs for NO<sub>x</sub> and VOCs for the entire bi-State Louisville 8-hour ozone area for the years 2003 and 2020. As part of its rulemaking process, Kentucky presented the regional MVEBs (for 2020) for public comment on the State level, however, the additional 2003 year was not included in that public comment process. The 2003 mobile emissions projections (the partial basis of the 2003 MVEBs) were, however, included in Kentucky's June 7, 2006, initial SIP submittal that was the subject of public comment. At that time, the public had an opportunity to comment on those projections. In its final submittal in September 2006, Kentucky included the 2003 MVEBs, and addressed the inclusion of the 2003 MVEBs in a response to comments on its June 7, 2006, submittal. MVEBs are mandatory for the last year of most maintenance plans (2020 for this area), and optional for other years (such as 2003 for this Area).

Kentucky's inclusion of 2003 MVEBs in its final submittal was made to provide consistency between the Kentucky and Indiana submittals for the regional MVEBs years provided for this entire bi-State area. Indiana included the 2003 MVEBs in its request for redesignation of the 8-hour ozone standard and its maintenance plan SIP revision. The interstate-Louisville transportation and air quality partners were consulted on the development of the MVEBs for 2003 and 2020, and are in agreement with the establishment of MVEBs for 2003 and 2020 for the entire bi-State Louisville 8-hour ozone area. In the present circumstance, EPA believes that the public had adequate notice and opportunity to comment on Kentucky's use of the years 2003 and 2020 for the regional MVEBs. The regional MVEBs for the entire bi-State Louisville 8-hour ozone area are defined in the table below.

TABLE 6.—LOUISVILLE KY-IN 8-HOUR OZONE REGIONAL MOTOR VEHICLE EMISSIONS BUDGETS

	[Tons per day]	
	2003	2020
VOC .....	40.97	22.92
NO <sub>x</sub> .....	95.51	29.46

Kentucky and Indiana have jointly chosen to allocate a portion of the available safety margin to the 2020 MVEBs. This allocation is 6.03 tpd for VOC and 9.84 tpd for NO<sub>x</sub>. The 2020

regional MVEBs are derived as follows for VOC: (16.89 tpd for total mobile emissions) + (6.03 tpd from available safety margin) = 22.92 tpd; and for NO<sub>x</sub>: (19.62 tpd for total mobile emissions) + (9.84 tpd from available safety margin) = 29.46 tpd. Thus, the remaining safety margin for the Kentucky Bi-State Louisville Area is 15.76 tpd for VOC and 102.69 tpd for NO<sub>x</sub>.

Through this rulemaking, EPA is proposing to approve the 2003 and 2020 regional MVEBs for NO<sub>x</sub> and VOCs for the bi-State Louisville 8-hour ozone area because EPA has determined that the Area maintains the 8-hour ozone standard with emissions at the levels of the budgets. Once the new MVEBs are approved or found adequate (whichever is done first), they must be used for future transportation conformity determinations. As is discussed in greater detail below, EPA is also notifying the public of EPA's review of the adequacy of the proposed 2003 and 2020 MVEBs for the Kentucky Bi-State Louisville Area pursuant to 40 CFR 93.118(f)(2).

**VIII. What Is the Status of EPA's Adequacy Determination for the MVEBs for the Bi-State Louisville 8-Hour Ozone Area?**

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (*i.e.*, be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not "conform," most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA can make the MVEBs available for use for transportation conformity finding these MVEBs "adequate" for use in

determining transportation conformity through EPA's Adequacy Process. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by State and Federal agencies in determining whether proposed transportation projects "conform" to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining "adequacy" of an MVEB are set out in 40 CFR 93.118(e). In accordance with the adequacy evaluation process outlined in 40 CFR 93.118(f)(2), EPA has the option of using a proposed rule to notify the public that EPA is reviewing MVEBs for adequacy. Today, EPA is making such a notification that it is reviewing the regional MVEBs included as part of Kentucky's 8-hour ozone maintenance plan, for adequacy. The public has 30 days in which to comment on the adequacy of the regional MVEBs.

If EPA affirmatively finds the MVEBs adequate prior to approval of the maintenance plan and redesignation request, the applicable budgets for the purposes of conducting transportation conformity for the required regional emissions analysis years that involve the year 2020 or beyond, will be the 2020 MVEBs for the bi-State Louisville area. For required analysis years prior to 2020, the applicable budgets would be the 2003 MVEBs. The new regional 2003 and 2020 MVEBs will be available on the effective the date of EPA's adequacy finding, or the date of publication of the final rulemaking in which the MVEBs are approved into the SIP in the **Federal Register**, whichever is done first.

**IX. Proposed Actions on the Redesignation Request and the Maintenance Plan SIP Revision Including Proposed Approval of the 2003 and 2020 MVEBs**

Today, EPA is proposing to determine that the Kentucky Bi-State Louisville Area has met the criteria for redesignation from nonattainment to attainment for the 8-hour ozone NAAQS. Further, EPA is proposing to approve Kentucky's redesignation request for the Kentucky Bi-State Louisville Area. After evaluating Kentucky's SIP submittal requesting redesignation, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the bi-State Louisville area has attained the 8-hour ozone standard.

EPA is also proposing to approve the September 29, 2006, SIP revision

containing Kentucky's 8-hour ozone maintenance plan for the Kentucky Bi-State Louisville Area. The maintenance plan includes regional MVEBs for 2003 and 2020, among other requirements.

Further, as part of today's action, EPA is providing notice that it is reviewing the adequacy of the regional MVEBs in accordance with 40 CFR 93.118(f)(2). Within 24 months from the effective date of EPA's adequacy finding for the MVEBs, or the date of publication of the final rule for this action, whichever is done first, the transportation partners will need to demonstrate conformity to these new MVEBs pursuant to 40 CFR 93.104(e) as effectively amended by new section 172(c)(2)(E) of the CAA as added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005.

#### X. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Redesignation of an area to attainment under section 107(d)(3)(e) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allow a State to avoid adopting or implementing other requirements and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the Commonwealth to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

##### 40 CFR Part 81

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

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

Dated: April 18, 2007.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 94

[EPA-HQ-OAR-2007-0120; FRL-8306-6]

RIN 2060-A026

### Change in Deadline for Rulemaking To Address the Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed Rule.

**SUMMARY:** A January 2003 final rule established the first U.S. emission standards for new compression-ignition Category 3 marine engines, those with a displacement at or above 30 liters per cylinder displacement. It also established a deadline of April 27, 2007 for EPA to promulgate a new tier of emission standards for these engines as determined appropriate under Clean Air Act (CAA) section 213(a). This rulemaking schedule was intended to allow EPA time to consider the state of technology that may permit deeper emission reductions and the status of international action for more stringent standards. Since 2003, we have continued to gain a greater understanding of the technical issues described in the final rule and to assess the continuing efforts of manufacturers to apply advanced emission control technologies to these very large engines, through ongoing discussions with various stakeholders. In addition, we have continued to work with and through the International Maritime Organization (IMO) toward more stringent international emission standards that would apply to all new marine diesel engines on ships engaged in international transportation. IMO is an important forum for EPA to gather new information and data regarding emission control technologies, costs, and other information on Category 3 engines and vessels. IMO is also important because the majority of ships