

professionals, other than physicians, are able to prescribe medications as authorized by VA and to conduct the necessary medication reviews. We also proposed to amend the regulations to allow for VA health care professionals to issue prescriptions by electronic means in addition to ordering prescriptions by telephone. We have decided that we should reconsider issues raised in the proposal and intend to publish a new proposal with clarifications.

**FOR FURTHER INFORMATION CONTACT:** Thomas V. Holohan, M.D., FACP, Chief Patient Care Services Officer (11), Veterans Health Administration, 202-273-8474. (This is not a toll-free number.)

Approved: May 17, 1999.

**Togo D. West, Jr.,**

*Secretary of Veterans Affairs.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[KY-9917; IN92-1; FRL-6346-3]

#### Clean Air Act Reclassification or Extension of Attainment Date, Kentucky and Indiana; Louisville Nonattainment Area; Ozone

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to find that the Louisville moderate ozone nonattainment area (Louisville area) has failed to attain the one-hour ozone National Ambient Air Quality Standard (NAAQS) by its applicable attainment date. If EPA takes final action on this finding, the Louisville area would be reclassified as a serious nonattainment area. The Louisville area consists of Jefferson County and portions of Bullitt and Oldham Counties in Kentucky, and Clark and Floyd Counties in Indiana.

However, EPA is also proposing to extend the Louisville area's attainment date, if Kentucky and Indiana meet the criteria of EPA's July 16, 1998 attainment date extension policy. The extension policy provides that a nonattainment area, such as the Louisville area, may be eligible for an attainment date extension if it meets certain conditions. The extension policy applies where pollution from upwind areas interferes with the ability of a downwind area to demonstrate attainment with the one-hour ozone

standard by the dates prescribed in the CAA. Kentucky and Indiana are working together to comply with the conditions for receiving an extension. If Kentucky and Indiana make submittals in response to the extension policy, EPA will address the adequacy of those submittals in a subsequent supplemental proposal. If the submittals meet the criteria for an extension, the attainment date for the Louisville area will be extended, and the area will not be reclassified. EPA does not intend to take final action on reclassification of the Louisville area prior to allowing the area an opportunity to qualify for an attainment date extension under the extension policy.

**DATES:** Comments must be received on or before June 21, 1999.

**ADDRESSES:** All comments should be addressed to: Kay Prince, Section Chief, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, GA, 30303; or to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604.

Copies of the Louisville area monitored air quality data analyses, guidance on extension of attainment dates in downwind transport areas, state submittals requesting attainment date extension, and other relevant documents used in support of this proposal are available at the following addresses for inspection during normal business hours: U.S. Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, Atlanta, GA, 30303; U.S. Environmental Protection Agency, Region 5, Air Programs Branch, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, IL 60604; and the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Kay Prince, EPA Region 4, (404) 562-9026, Karla McCorkle, EPA Region 4, (404) 562-9043, or Jay Bortzer, EPA Region 5, (312) 886-1430.

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

- I. What action is being taken in this document?
- II. What are the National Ambient Air Quality Standards?
- III. What is the NAAQS for ozone?
- IV. What is the Louisville ozone nonattainment area?

- V. Why is EPA proposing to reclassify the Louisville area?
- VI. What is EPA's new policy regarding extension of attainment dates for downwind transport areas?
- VII. Is the Louisville area eligible for an attainment date extension under the extension policy?
- VIII. What progress has been made by Kentucky and Indiana to meet the extension policy so that an attainment date extension can be obtained?
- IX. What actions have Kentucky and Indiana taken to improve air quality in the Louisville area?
- X. If EPA finalizes its proposed rulemaking reclassifying the Louisville area, what would be the area's new classification?
- XI. If the Louisville area is reclassified to serious, when would it be required to attain the standard?
- XII. When will EPA make a final decision on whether to reclassify or grant an extension to the Louisville area?
- XIII. Administrative Requirements.

#### I. What Action Is Being Taken in This Document?

EPA is proposing to find that the Louisville area has failed to attain the one-hour ozone NAAQS by the November 15, 1996, attainment deadline prescribed under the CAA for moderate ozone nonattainment areas, or by the November 15, 1997 extended deadline granted to the Louisville area under Section 181 (a)(5) of the CAA. EPA's authority to make this finding is discussed under section 181(b)(2) of the CAA. Section 181(b)(2) explains EPA's responsibility to determine whether an area has attained the one-hour ozone standard, and its duty to reclassify the area if necessary. If EPA finalizes this finding, the Louisville area will be reclassified by operation of law from moderate nonattainment to serious nonattainment.

Alternatively, EPA is also proposing to extend the Louisville area's attainment date, provided that Kentucky and Indiana submit State Implementation Plans (SIPs) pursuant to EPA's July 16, 1998 policy, entitled "Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas" (Richard D. Wilson, Acting Assistant Administrator for Air and Radiation) by November 15, 1999. If the States meet the extension policy criteria and EPA proposes to approve the States' submittals, then a specific extended attainment date will be proposed in the same notice. EPA will take final action on the new attainment date at the time it takes final action on the attainment demonstration and the other necessary submittals. However, if Kentucky and Indiana fail to meet the criteria of the extension policy, EPA will finalize this proposed finding of

failure to attain, and the Louisville area will be reclassified to a serious ozone nonattainment area.

EPA believes that this approach is reasonable since it (1) ensures that the local control measures mandated by the CAA for moderate nonattainment areas, such as Volatile Organic Compound (VOC) and Nitrogen Oxides (NOx) Reasonably Available Control Technology (RACT), are achieved; (2) takes into consideration the transport of pollutants into the Louisville area which impair the ability of the area to meet the air quality standards; and (3) harmonizes the Louisville area attainment date with the schedule for

emissions reductions in upwind areas associated with the NOx SIP call.

**II. What Are the National Ambient Air Quality Standards?**

Since the CAA's inception in 1970, EPA has set NAAQS for six common air pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. For these common air pollutants there are two types of pollution limits referred to as the primary and secondary standard. The primary standard is based on health effects; and the secondary standard is based on environmental effects such as damage to property, plants, and

visibility. The CAA requires these standards be set at levels that protect public health and welfare with an adequate margin of safety. These standards allow the American people to assess whether or not the air quality in their communities is healthful. Also, the NAAQS present state and local governments with the air quality levels they must meet to achieve clean air.

**III. What Is the NAAQS for Ozone?**

The NAAQS for ozone is expressed in two forms which are referred to as the one-hour and eight-hour standards. Table 1 summarizes the ozone standards.

TABLE 1.—SUMMARY OF OZONE STANDARDS

Standard	Value (parts per million)	Type	Method of compliance
1-hour .....	0.12	Primary and secondary ...	Concentration of ozone monitored in ambient air must not exceed standard value, on average, more than one day per year over any 3-year period.
8-hour .....	0.08	Primary and secondary ...	The 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration measured at each monitor within an area must be equal to or below the standard value.

The one-hour ozone standard of 0.12 ppm has existed since 1979. The eight-hour ozone standard, which replaces the one-hour standard, was adopted by EPA on July 18, 1997 (62 FR 38856). However, the one-hour ozone standard continues to apply for existing nonattainment areas until such time as EPA determines that the area has attained the one-hour ozone standard (40 CFR 50.9(b)). The one-hour standard continues to apply to the Louisville area and it is the classification of the Louisville area relative to the one-hour ozone standard that is addressed in this document.

**IV. What Is the Louisville Ozone Nonattainment Area?**

The Louisville ozone nonattainment area is an interstate area which includes

counties in both Kentucky and Indiana as follows: Jefferson County and portions of Bullitt and Oldham Counties in Kentucky; and Clark and Floyd Counties in Indiana.

Under section 107(d)(1)(C) of the CAA, each area that EPA designated nonattainment for the one-hour ozone standard prior to enactment of the 1990 CAA amendments, such as the Louisville area, retained its nonattainment designation by operation of law upon enactment of the 1990 amendments. Under section 181(a) of the Act, each ozone nonattainment area was also classified by operation of law as "marginal," "moderate," "serious," "severe," or "extreme," depending on the severity of the area's air quality problem. The design value for a

nonattainment area, which characterizes the severity of the area's air quality problem, is represented by the highest design value at any individual ozone monitoring site. The design value of a monitoring site is the fourth highest one-hour daily maximum ozone value recorded in a given three-year period with complete monitoring data. Table 2 provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.138 and 0.160 ppm were classified as moderate, such as the Louisville area which had a design value of 0.149 ppm in 1989. These nonattainment designations and classifications were codified in 40 CFR part 81 (see 56 FR 56694, November 6, 1991).

TABLE 2.—OZONE NONATTAINMENT CLASSIFICATIONS

Area class	Design value (ppm)	Attainment date
Marginal .....	0.121 up to 0.138 .....	November 15, 1993.
Moderate .....	0.138 up to 0.160 .....	November 15, 1996.
Serious .....	0.160 up to 0.180 .....	November 15, 1999.
Severe .....	0.180 up to 0.280 .....	November 15, 2005.
Extreme .....	0.280 and above .....	November 15, 2010.

Under section 182(b)(1)(A) of the CAA, states containing areas that were classified as moderate nonattainment were required to submit SIPs to provide for certain controls, to show progress toward attainment, and to provide for attainment of the ozone standard no later than November 15, 1996. Moderate area SIP requirements are found primarily in section 182(b) of the CAA.

**V. Why Is EPA Proposing To Reclassify the Louisville Area?**

In regard to reclassification for failure to attain, section 181(b)(2)(A) of the Act provides that:

Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—

- (i) the next higher classification for the area, or
- (ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

Furthermore, section 181(b)(2)(B) of the CAA provides that:

The Administrator shall publish a notice in the **Federal Register**, no later than 6 months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

Table 3 lists the number of days when ambient ozone concentrations exceeded the one-hour ozone standard and the average number of expected exceedances at each monitoring site in the Louisville area for the period 1994–1996. The ozone design value for each monitor is also listed. Note that the average number of expected exceedances per year is not always equal to the average number of days with measured ozone above the standard. Expected exceedance calculations take missing data into account. If a monitor does not collect a complete set of valid data over its monitored period, fractional “expected exceedances” are added to account for ozone exceedances that, statistically, could have occurred during periods of missing data within high ozone episodes. The three year average number of expected exceedances is used

to determine attainment of the ozone standard. See 40 CFR 50.9(a). Table 3 shows that for 1994–1996, one monitoring site in the Louisville area averaged more than one exceedance day per year; therefore, the area did not attain the standard by November 15, 1996.

Section 181(a)(5) of the CAA states that an area may be eligible for up to two one-year extensions if “no more than one exceedance of the NAAQS level for ozone has occurred in the area in the year preceding the extension year.” On October 23, 1997, EPA determined that Louisville qualified for a one-year extension of the attainment date to November 15, 1997 (See 62 FR 55173). Table 4 shows the ozone data for 1995–1997. During this period, two monitoring sites in the Louisville area averaged more than one exceedance per year, and the area's design value was greater than the ozone standard. Because there were multiple exceedances at two monitors during the 1997 ozone season, the Louisville area was not eligible for a second one-year extension under Section 181(a)(5), and the states did not request an extension. Therefore, in this notice, pursuant to section 181(b)(2)(B) of the CAA, EPA proposes to find that the Louisville area did not attain the 1-hour standard by its applicable attainment date.

TABLE 3.—AIR QUALITY MONITORING DATA FOR THE LOUISVILLE NONATTAINMENT AREA (1994–1996)

Site	AIRS site ID	Number of days over standard (1994–1996)	Average number of expected exceedance days per year	Site design value (ppm)
Kentucky Sites (County):				
Buckner (Oldham) .....	21-185-0004	0	0	0.109
WLKY-TV (Jefferson) .....	21-111-1021	1	0.37	0.12
Watson (Jefferson) .....	21-111-0051	3	1	0.119
Brentlinger (Jefferson) .....	21-111-0027	1	0.33	0.109
Shepherdsville (Bullitt) .....	21-029-0006	0	0	0.115
Indiana Sites (County):				
Charlestown (Clark) .....	18-019-0003	5	<sup>a</sup> 1.67	0.132
New Albany (Floyd) <sup>b</sup> .....	18-043-1004	1	1	0.115

<sup>a</sup> Values over 1.05 represent a violation of the 1-hour ozone standard.

<sup>b</sup> This site became operational in 1995; the data recorded is for 1995–1996 only. The design value is calculated from two years of data rather than three years.

TABLE 4.—AIR QUALITY MONITORING DATA FOR THE LOUISVILLE NONATTAINMENT AREA (1995–1997)

Site	AIRS site ID	Number of days over standard (1995–1997)	Average number of expected exceedance days per year	Site design value (ppm)
Kentucky Sites (County):				
Buckner (Oldham) .....	21-185-0004	2	0.7	0.109
WLKY-TV (Jefferson) .....	21-111-1021	1	0.37	0.12
Watson (Jefferson) .....	21-111-0051	2	0.67	0.12
Brentlinger (Jefferson) .....	21-111-0027	2	0.67	0.111
Shepherdsville (Bullitt) .....	21-029-0006	1	0.4	0.116
Indiana Sites (County):				
Charlestown (Clark) .....	18-019-0003	5	<sup>a</sup> 1.73	0.125

TABLE 4.—AIR QUALITY MONITORING DATA FOR THE LOUISVILLE NONATTAINMENT AREA (1995–1997)—Continued

Site	AIRS site ID	Number of days over standard (1995–1997)	Average number of expected exceedance days per year	Site design value (ppm)
New Albany (Floyd) .....	18–043–1004	4	<sup>a</sup> 1.33	0.125

<sup>a</sup> Values over 1.05 represent a violation of the 1-hour ozone standard.

A complete listing of the ozone exceedances for each monitoring site, as well as EPA’s calculations of the design values, can be found in the docket file for this action.

Table 5 is provided to show expected exceedance days per year for 1995 through 1998. Due to measured ozone exceedances at one monitor, the Louisville area was again unable to attain the standard for the period 1996–1998.

TABLE 5.—AIR QUALITY MONITORING DATA FOR THE LOUISVILLE NONATTAINMENT AREA (1995–1998)

Site	AIRS site ID	Expected exceedance days				Site design value (ppm)	
		1995	1996	1997	1998	1995–1997	1996–1998
Kentucky Sites (County):							
Buckner (Oldham) .....	21–185–0004	0	0	2.1	1	0.109	0.12
WLKY-TV (Jefferson) .....	21–111–1021	0	1.1	0	1	0.12	0.121
Watson (Jefferson) .....	21–111–0051	1	1	0	1	0.12	0.121
Brentlinger (Jefferson) .....	21–111–0027	1	0	1	1	0.111	0.12
Shepherdsville (Bullitt) .....	21–029–0006	0	0	1.2	0	0.116	0.111
Indiana Sites (County):							
Charlestown (Clark) .....	18–019–0003	2.1	0	3.1	3.2	0.125	0.13
New Albany (Floyd) .....	18–043–1004	1	1	2	2	0.125	0.127

As discussed later in this document, because EPA has now interpreted the CAA to allow for an extension of the attainment date based on an understanding of transport data not available at the time of Louisville’s original attainment date and after the one year extended attainment date, EPA believes it is fair to allow Kentucky and Indiana an opportunity to qualify for this attainment date extension before EPA finalizes its finding of failure to attain and reclassifies the Louisville area to serious nonattainment.

This proposal details the following reasons which support EPA’s decision to proceed in this manner:

1. EPA has concluded that this is the best way of reconciling the CAA’s provisions with respect to ozone transport with the provisions governing graduated attainment dates and with the reclassification provisions. The CAA shows Congressional intent that transport be considered when the Agency acts to reclassify an area, and a reluctance to subject an area to greater controls than necessary to bring local sources into compliance.

2. The Louisville area has been shown to be affected by ozone transport from upwind areas.

3. The Louisville area is now monitoring air quality that, were the area being newly classified, would entitle it to the classification of a marginal nonattainment area. However,

if the Louisville area is reclassified to serious nonattainment, it will be required to impose emission control regulations which are normally demanded only for areas monitoring much higher levels of air pollution.

4. Kentucky and Indiana have committed to submit an attainment demonstration by November 1999, which includes all the local control measures required under the CAA for moderate nonattainment areas, demonstrating attainment by the date when upwind controls are expected to be implemented.

Furthermore, EPA’s proposal for an extension date is balanced by EPA’s action in moving forward with the process of reclassification in the event that the States do not meet the criteria for an extension.

**VI. What Is EPA’s New Policy Regarding Extension of Attainment Dates for Downwind Transport Areas?**

A number of areas in the country that have been classified as “moderate” or “serious” are affected by pollutants that have traveled downwind from other areas. For these downwind areas, transport of pollutants from upwind areas has interfered with their ability to meet the ozone standard by the dates prescribed by the CAA. As a result, many of these areas, such as the Louisville area, find themselves facing the prospect of being reclassified to a

higher classification (e.g., from “moderate” to “serious”) for failing to meet the ozone standard by the specified date.

For some time, EPA has recognized that pollutant transport can impair an area’s ability to meet air quality standards. As a result, in March 1995 a collaborative, Federal-state process to assess the ozone transport problem was begun. Through a two-year effort known as the Ozone Transport Assessment Group (OTAG), EPA worked in partnership with the 37 easternmost states and the District of Columbia, industry representatives, academia, and environmental groups to develop recommended strategies to address transport of ozone-forming pollutants across state boundaries.

On November 7, 1997, EPA acted on OTAG’s recommendations and issued a proposal (the proposed NO<sub>x</sub> SIP call, 62 FR 60318) requiring 22 states and the District of Columbia to submit state implementation plans addressing the regional transport of ozone. These state implementation plans, or SIPs, will decrease the transport of ozone across state boundaries in the eastern half of the United States by reducing emissions of NO<sub>x</sub> (a precursor to ozone formation). EPA took final action on the NO<sub>x</sub> SIP call on October 27, 1998 (63 FR 57356). EPA expects that the final NO<sub>x</sub> SIP call

will assist many areas in attaining the one-hour ozone standard.

On July 16, 1998, in consideration of these factors and the realization that many areas are unable to meet the CAA mandated attainment dates due to transport, EPA issued the extension policy. In this policy the attainment date for an area may be extended provided that the following criteria are met: (1) the area must be identified as a downwind area affected by transport from either an upwind area in the same state with a later attainment date or an upwind area in another state that significantly contributes to downwind nonattainment (by "affected by transport," EPA means an area whose air quality is affected by transport from an upwind area to a degree that affects the area's ability to attain); (2) an approvable attainment demonstration must be submitted with any necessary, adopted local measures and with an attainment date that shows that it will attain the one-hour standard no later than the date that the reductions are expected from upwind areas under the final NO<sub>x</sub> SIP call and/or the statutory attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind reductions; (3) the area has adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas; and (4) the area must provide that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

EPA contemplates that when it acts to approve such an area's attainment demonstration, it will, as necessary, extend that area's attainment date to a date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. The area would no longer be subject to reclassification for failure to attain by its original attainment date under section 181(b)(2).

#### **VII. Is the Louisville Area Eligible for an Attainment Date Extension Under the Extension Policy?**

EPA believes that the Louisville area is affected by upwind transport. In fact, according to the final NO<sub>x</sub> SIP call, the Louisville area is affected by transport of pollutants from upwind areas to an extent that the area's ability to meet the one-hour ozone standard is impaired. Therefore, EPA believes that the first of the transport criteria is satisfied. However, before the Louisville area can

qualify for an attainment date extension under the extension policy, the remainder of the criteria specified in the extension policy must be met.

In October 1998, EPA notified the Governors of Kentucky and Indiana of the availability of the extension policy. EPA also requested that, if they wished to demonstrate their eligibility for the extension policy, the Governors respond to EPA with a letter committing their respective States to meet the requirements necessary to qualify for an attainment date extension under the policy by November 15, 1999.

On December 3, 1998, Kentucky submitted a letter to EPA providing a commitment to meet the requirements of the extension policy. Similarly, on December 19, 1998, Indiana submitted a letter to EPA providing a commitment to meet the requirements of the extension policy. (EPA's letters notifying the Kentucky and Indiana Governors of the extension policy, and their respective responses, are included in the docket for this rulemaking.)

EPA's review of the Attainment Demonstration SIP for the Louisville area indicates that Kentucky and Indiana must submit the following in order to meet the requirements set forth in the extension policy:

1. A technical analysis establishing the influence of transport on ozone levels within the Louisville area. This requirement can be met by citing the analysis contained in EPA's aforementioned NO<sub>x</sub> SIP call;
2. Regulations or negative declarations addressing certain CAA requirements for the Indiana portion of the Louisville area including: (a) Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation; (b) SOCMI reactors; (c) Lithography; (d) Batch processes; (e) Industrial wastewater treatment; (f) Business plastics; (g) Cleanup solvents; and (h) Aerospace coatings;
3. Source specific reasonably available control technology (NO<sub>x</sub> RACT) measures for the Kentucky portion of the Louisville area; and
4. A revised attainment demonstration meeting the criteria set forth in the extension policy.

In addition, the States must submit SIP revisions addressing any other local control measures necessary for attainment. All measures must also be implemented in accordance with the time frames set forth in the extension policy.

#### **VIII. What Progress Has Been Made by Kentucky and Indiana To Meet the Extension Policy so That an Attainment Date Extension Can Be Obtained?**

Kentucky and Indiana have already done extensive work toward meeting the extension policy. Several major portions of the extension policy have already been satisfied, and Kentucky and Indiana have already made substantial progress toward compliance with the criteria for obtaining an attainment date extension.

Regarding the first item, EPA believes that Kentucky and Indiana can establish the influence of transport on ozone levels within the Louisville area by citing the analysis contained in EPA's NO<sub>x</sub> SIP call.

Regarding the second item, Indiana is reviewing the source inventory for Clark and Floyd Counties. Indiana has committed to either develop RACT regulations if those source categories exist in Clark and Floyd Counties, or make a formal declaration that no subject sources of the category exist in the two counties. Kentucky has already met the VOC RACT requirements.

Regarding the third item, the Air Pollution Control District of Jefferson County, Kentucky has developed and is currently adopting a NO<sub>x</sub> RACT regulation that requires Jefferson County area sources to submit source specific SIP revisions consistent with NO<sub>x</sub> RACT requirements. For the remaining part of the Louisville area which includes portions of Bullitt and Oldham Counties there are no existing major NO<sub>x</sub> emission sources, therefore the Commonwealth of Kentucky is not required to implement NO<sub>x</sub> RACT requirements for that area. Indiana has already met the NO<sub>x</sub> RACT requirements.

Regarding the fourth item, Kentucky and Indiana are currently working to develop an approvable attainment demonstration. They have initiated the steps leading to a final attainment demonstration and have committed to completing and submitting the attainment demonstration by November 15, 1999.

#### **IX. What Actions Have Kentucky and Indiana Taken To Improve Air Quality in the Louisville Area?**

Jefferson County, Kentucky, has implemented VOC emission reductions as part of its 15 percent rate-of-progress plan (15 percent plan). EPA is currently drafting rulemaking on this plan. The VOC controls Jefferson County has implemented include: (1) VOC emission reduction requirements and a rule effectiveness improvement plan for

sources subject to the requirements; (2) architectural and industrial maintenance coatings regulations; (3) transportation control measures including transit, rideshare, alternative fuels, and traffic signal improvements; (4) automobile refinishing emission control regulations; (5) Stage II vapor recovery and control regulation; (6) solid waste landfill regulations; (7) a basic plus vehicle inspection and maintenance (I/M) program which includes loaded idle testing, pressure testing requirements, and tampering inspections which apply to vehicles that regularly or routinely commute to Jefferson County; and (8) the use of the reformulated gasoline (RFG) program for off-road and on-road mobile sources.

Jefferson County has sought further reductions from the I/M program by including loaded mode testing and enhanced mechanic training. EPA recently approved Jefferson County's I/M program requirement for a check of the On Board Diagnostic (OBD) system on model-year 1996 and newer automobiles (refer to 64 FR 12798, March 15, 1999). Jefferson County has maintained an innovative approach to the local I/M program, also referred to as the Vehicle Emission Testing (VET) program, since its inception in 1984. The program continues to be effectively implemented and Jefferson County remains a national leader through, for example, implementation of a vehicle repair report card which evaluates the effectiveness of automobile repairs required under the I/M program. The program also remains on the forefront with the requirement for the evaluation of automobiles by a VET staff mechanic before an emission certification waiver request is granted. The I/M program is an important component of the emission reduction strategy in Jefferson County.

Jefferson County has adopted RACT regulations requiring additional emission reductions from bakery oven facilities, ferroalloy and calcium carbide production facilities, and volatile organic loading facilities. Jefferson County plans to submit these RACT regulations to EPA in the near future. To provide further emission reductions, Jefferson County is currently adopting a cold cleaning operations regulation.

The State of Indiana has also taken a number of actions to improve air quality in the Louisville area. Indiana has adopted and fully implemented the VOC emission reduction measures included in its 15 percent rate-of-progress plan (15 percent plan). EPA published final approval of Indiana's 15 percent plan in May 1997 (62 FR 24815).

Indiana's 15 percent plan limits VOC emissions from local operations such as volatile organic liquid storage tanks, automobile refinishing, municipal solid waste landfills, ship building and ship repair, and a local offset printing facility. The plan also includes an upgraded vehicle inspection and maintenance program, which uses a dynamometer to better identify polluting cars. Other measures in place include required use of Stage II gasoline vapor recovery systems at service stations, implementation of a gasoline with lower Reid Vapor Pressure (RVP); a ban on residential open burning, and a ridesharing program. Municipal solid waste landfills were required to install a gas collection and combustion system sooner than the federal time schedule. Indiana has also implemented RACT rules for sources of NO<sub>x</sub>.

To further improve air quality, Indiana has implemented additional measures including a rule establishing vapor pressure limits for solvents used in cold cleaning degreasing. Indiana has also established a local steering committee to assist in identifying additional emission reduction opportunities that will continue to improve and maintain air quality. The steering committee reflects broad representation including the public, industry, local government, health associations, and environmental groups.

#### **X. If EPA Finalizes Its Proposed Rulemaking Reclassifying the Louisville Area, What Would Be the Area's New Classification?**

Section 181(b)(2)(A) of the Act requires that, when an area is reclassified for failure to attain, its reclassification will be the higher of the next higher classification or the classification applicable to the area's ozone design value at the time the notice of reclassification is published in the **Federal Register**. The design value of the Louisville area at the time of the proposed finding of failure to attain is based on air quality monitoring data from 1996 through 1998. (Refer to Table 5 for 1996–1998 data.) The 1996–1998 design value is 0.130 ppm, as derived from the Charlestown, Indiana (Clark Co.) monitoring site, and the classification of "marginal" nonattainment would be applicable to that design value. By contrast, because the Louisville area is currently classified "moderate," the next higher classification for the area is "serious" nonattainment. Since "serious" is a higher nonattainment classification than "marginal" under the statutory scheme, the Louisville area would be reclassified

to serious nonattainment, if EPA finalizes its proposal to reclassify.

#### **XI. If the Louisville Area Is Reclassified to Serious, When Would It Be Required To Attain the Standard?**

Under section 181(a)(1) of the Act, the new attainment deadline for moderate ozone nonattainment areas reclassified to serious under section 181(b)(2) would be "as expeditious as practicable," but no later than the date applicable to the new classification, i.e., November 15, 1999. However, EPA does not expect to take final action on this proposed reclassification until after November 15, 1999. As stated previously, EPA is proposing to allow the states adequate time to demonstrate that an extension of the attainment date, instead of a reclassification, would be appropriate under the extension policy. As a practical matter, even if EPA were to reclassify the Louisville area immediately, there would likely be insufficient time for Kentucky and Indiana to submit new attainment demonstrations and actually attain the one-hour ozone standard by November 15 of this year. EPA believes that the practical impossibility of meeting the November 1999 statutory serious area attainment deadline requires EPA to establish a new attainment date for the area. EPA believes that it is appropriate to propose an alternative deadline for the Louisville area that is as expeditious as practicable. Therefore, in this document EPA is proposing options for extending the attainment date in the event that the area is reclassified to serious.

Section 182(i) states that the Administrator may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency for submission of the new requirements applicable to an area which has been reclassified. Where an attainment date has already passed or is otherwise impossible to meet, EPA believes that the Administrator may also adjust an attainment date to assure fair and equitable treatment consistent with the provisions in section 182(i), notwithstanding the parenthetical clause. EPA also notes another provision of the CAA in section 110(k)(5) pertaining to findings of SIP inadequacy that allows the Administrator to adjust attainment dates when such dates have passed. Although this latter provision is not directly applicable to a reclassification, EPA believes that the provision illustrates a recognition by Congress of the limited instances in which it becomes necessary to adjust attainment dates, particularly

where it is otherwise impossible to meet the statutory date.

One option is to construct a schedule consistent with recent reclassifications of other areas. EPA has recently reclassified other moderate ozone nonattainment areas, including Santa Barbara, California; Phoenix, Arizona; and Dallas-Fort Worth, Texas. The attainment date for these areas is November 15, 1999. EPA published the notice reclassifying the Dallas-Fort Worth area on February 18, 1998, thereby providing approximately 21 months for the area to attain the standard. EPA concluded that 21 months was an adequate period for a moderate attainment area to attain the standard where the CAA mandated attainment date for the new classification had not yet lapsed, but where there was less time remaining than the Act had contemplated. If EPA finalizes this proposed reclassification of the Louisville area, EPA could require the area to attain the standard on a similar time frame. Applying this approach to the Louisville area would result in setting a new attainment date 21 months from publication of the final reclassification notice.

Another option would be to set an attainment date that takes into account the impact of transport on the area, even if the area fails to fully meet the criteria for the attainment date extension policy. As stated previously, EPA believes that the Louisville area is affected by transported pollutants. This attainment date would coincide with the date set for upwind area reductions under the NO<sub>x</sub> SIP call, or May 2003. Although the Louisville area, if reclassified, would have to meet the requirements for a serious area, under this option it would not be held responsible for emission reductions necessary to compensate for transported pollution. This option would then be consistent with EPA's approach of allocating responsibility for pollution fairly among the states. EPA welcomes any comments on the options discussed above.

An area reclassified to serious is required to submit SIP revisions addressing the serious area requirements for the one-hour ozone standard in section 182(c). If the Louisville area is reclassified, EPA must also address the schedule by which Kentucky and Indiana are required to submit SIP revisions meeting the serious area requirements. One option is to require that the States submit SIP revisions containing all of the serious area requirements no later than one year after final action on the reclassification. This submission would include a new attainment demonstration and all

additional measures required by section 182(c) of the Act. The additional measures include, but are not limited to, the following: (1) Attainment and reasonable further progress demonstrations; (2) an enhanced vehicle I/M program; (3) a clean-fuel vehicle program; (4) a 50 ton-per-year major source threshold; (5) more stringent new source review requirements; (6) an enhanced monitoring program; and (7) contingency provisions. If the submission shows that the area can attain the standard sooner than the attainment date established in a final reclassification notice, EPA would adjust the attainment date to reflect the earlier date, consistent with the requirement in section 181(a)(1) that the standard be attained as expeditiously as practicable. EPA solicits comments on the appropriate schedule for submitting these SIP revisions.

#### **XII. When Will EPA Make a Final Decision on Whether To Reclassify or Grant an Extension to the Louisville Area?**

If Indiana and Kentucky submit the aforementioned air quality analyses and regulations to EPA by November 15, 1999, EPA will publish a supplemental proposal to address the approvability of the submittals. If EPA proposes and subsequently takes final action to approve the States' submittals, the Agency would finalize the attainment date extension for the Louisville area to an appropriate date, and not finalize the finding of failure to attain. However, if EPA proposes and subsequently takes final action to disapprove the States' submittals, the Agency would instead finalize the reclassification of the Louisville area to serious. If EPA finalizes the reclassification, Kentucky and Indiana would be required to submit SIPs that adopt the serious area requirements. A schedule for submitting the SIPs would be set at that time.

#### **XIII. Administrative Requirements**

##### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 entitled "Regulatory Planning and Review."

##### *B. Executive Order 12875*

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or

EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposal would not create a mandate on state, local, or tribal governments. It would not impose any enforceable duties on these entities. The SIP submission requirements are not judicially enforceable. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this proposal.

##### *C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposal is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not establish a further health or risk-based standard because it implements a previously promulgated health or safety-based standard.

##### *D. Executive Order 13084*

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal

governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposal would not significantly or uniquely affect tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposal.

#### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposal will not have a significant impact on a substantial number of small entities because a finding of failure to attain under section 181(b)(2) of the CAA, and the establishment of a SIP submittal schedule for the reclassified area, do not, in and of themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc. v. FEC.*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to requirements of the rule). Instead, this proposal proposes to make a determination and to establish a schedule for states to submit SIP revisions and does not propose to directly regulate any entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

#### *F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must, unless otherwise prohibited by law, prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to

state, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Sections 202 and 205 do not apply to today's action because the proposed determination that the Louisville area failed to reach attainment does not, in-and-of-itself, constitute a Federal mandate because it does not impose an enforceable duty on any entity. In addition, the CAA does not permit EPA to consider the types of analyses described in section 202, in determining whether an area has attained the ozone standard or qualifies for an extension. Finally, section 203 does not apply to today's proposal because the SIP submittal schedule would affect only the states of Kentucky and Indiana, which are not small governments.

#### **List of Subjects in 40 CFR Part 81**

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

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

Dated: May 4, 1999.

**John H. Hankinson, Jr.,**

*Regional Administrator, Region 4.*

Dated: May 12, 1999.

**Richard C. Karl,**

*Acting Regional Administrator, Region 5.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 144 and 146**

[FRL-6348-9]

### **Revisions to the Underground Injection Control Regulations for Class V Injection Wells—Notice**

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

**ACTION:** Notice of data availability and request for comment on related proposed rule.

**SUMMARY:** On July 29, 1998, EPA published the proposed Revisions to the Underground Injection Control Regulations for Class V Injection Wells in the **Federal Register** (63 FR 40586). The public comment on this proposal was open until November 30, 1998.

During and after the close of the public comment period, EPA became aware of data that might help make key decisions relating to the proposed Class V requirements and to refine the estimated economic burden of these requirements. The purpose of this notice is to: provide the public with this new data for review and comment; to seek public comment on how EPA intends to use this data in the Class V rule making effort; and, solicit public comment on issues resulting from this new data and the public comments already received on the Class V proposal.

**DATES:** EPA must receive public comment, in writing, on the notice of data availability by June 21, 1999.

**ADDRESSES:** Send written comments to the UIC Class V, W-98-05 Comment Clerk, Water Docket (MC-4101); U.S. Environmental Protection Agency; 401 M Street, SW, Washington, D.C. 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW., East Tower Basement, Washington, D.C. 20460. Comments may be submitted electronically to [ow-docket@epamail.epa.gov](mailto:ow-docket@epamail.epa.gov).

Please submit all references cited in your comments. Facsimiles (faxes) cannot be accepted. Send one original and three copies of your comments and enclosures (including any references). Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope.

With one exception, the documents referenced in this notice are available for review in the Water Docket at the above address. The proposed rule, supporting documentation and public comment are also available through the docket. For information on how to access docket materials, please call (202) 260-3027 between 9:00 a.m. and 3:30 p.m. Eastern Standard Time, Monday through Friday.

State Source Water Assessment Plans (SWAPs), which are discussed later in this notice, are available for review on the EPA, Office of Ground Water and Drinking Water Home Page [www.epa.gov/ogwdw](http://www.epa.gov/ogwdw). The SWAPs are also available for review at the U.S. Environmental Protection Agency; 401 M Street, SW., 1127 East Tower, Washington, D.C. 20460. To make an appointment to review the SWAPs, please contact Robyn Delehanty, Underground Injection Control Program, Office of Ground Water and Drinking Water (mailcode 4606), EPA, 401 M Street, SW, Washington, D.C., 20460. Phone: 202-260-1993. E-mail: [delehanty.robyn@epa.gov](mailto:delehanty.robyn@epa.gov).