

### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National

Environmental Policy Act of 1969 (NEPA).

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. From August 1, 2004, to September 30, 2004, add temporary § 165.T08–024 to read as follows:

#### § 165.T08–024 Safety Zone; Lower Mississippi River Mile Marker 778.0 to 781.0, Osceola, AR.

(a) *Location.* The following area is a safety zone: all waters of the Lower Mississippi River from mile 778.0 to mile 781.0, extending the entire width of the channel.

(b) *Effective period.* This section is effective from 6 a.m. on August 1, 2004, until 6 p.m. on September 30, 2004.

(c) *Enforcement period.* This section will be enforced from 6 a.m. until 6 p.m. each day of the effective period. The Captain of the Port Memphis or a designated representative will inform the public through broadcast notice to mariners of any changes to the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone by vessels other than those contracted by the U.S. Army Corps of Engineers and operating in support of the bendway weir construction project is prohibited unless authorized by the Captain of the Port Memphis.

(2) During non-enforcement hours all vessels are permitted to transit through the safety zone without permission from the Captain of the Port Memphis or a designated representative.

(3) The Captain of the Port Memphis may permit vessels to navigate during

work hours if conditions allow for safe transit. A broadcast notice to mariners will be issued announcing those times when it is safe to transit.

(4) Persons or vessels requiring entry into or passage through the zone at times other than those specified in section (d)(2) and (d)(3) of this section must request permission from the Captain of the Port Memphis or a designated representative. The Captain of the Port Memphis may be contacted by telephone at (901) 544–3912, extension 2124. Coast Guard Group Lower Mississippi River may be contacted on VHF-FM Channel 13 or 16.

(5) All persons and vessels shall comply with the instructions of the Captain of the Port Memphis and designated representatives. Designated representatives include Coast Guard Group Lower Mississippi River.

Dated: April 6, 2004.

**D.C. Stallfort,**

*Commander, U.S. Coast Guard, Captain of the Port Memphis.*

[FR Doc. 04–9199 Filed 4–22–04; 8:45 am]

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[R04–OAR–2004–KY–0001–200415; FRL–7653–1]

#### Approval and Promulgation of Implementation Plans; KY: 1-Hour Ozone Maintenance Plan Update for Lexington Area

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve the Lexington portion of a draft revision to the state implementation plan (SIP) of the Commonwealth of Kentucky submitted on February 19, 2004. The draft SIP revision provides the 10-year update to the original 1-hour ozone maintenance plans for five 1-hour maintenance areas, including the Lexington Maintenance Area, which is composed of the Kentucky counties of Fayette and Scott. Kentucky has requested that EPA parallel process this draft SIP revision, for which the Commonwealth scheduled a public hearing on March 31, 2004. EPA is parallel processing the Lexington portion of this draft SIP revision and is proposing to approve the Lexington portion because it satisfies the requirement of the Clean Air Act (CAA) for the 10-year update to the 1-hour

ozone maintenance plan for the Lexington Maintenance Area. EPA's proposed approval of the Lexington Maintenance Area's second 10-year 1-hour ozone maintenance plan is contingent on Kentucky addressing EPA's clarifying comments in the final SIP submittal.

In addition, in this proposed rulemaking, EPA is providing information on the status of its transportation conformity adequacy determination for new motor vehicle emission budgets (MVEBs) for the year 2015 that are contained in the draft 10-year update to the 1-hour ozone maintenance plan for the Lexington Maintenance Area.

**DATES:** Written comments must be received on or before May 24, 2004.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04-OAR-2004-KY-0001, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *Agency Web site:* <http://docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. *E-mail:* [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov).

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

5. *Mail:* "R04-OAR-2004-KY-0001", 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.

6. *Hand Delivery or Courier.* Deliver your comments to: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, 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 RME ID No. R04-OAR-2004-KY-0001. EPA's policy is that all comments received will be included in the public docket without change and may be

made available online at <http://docket.epa.gov/rmepub>, 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 information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://regulations.gov), or e-mail. The EPA RME website and the federal [regulations.gov](http://regulations.gov) website are "anonymous access" systems, 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 RME or [regulations.gov](http://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.

*Docket:* All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub>. 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 RME 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:** Michele Notarianni, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency

Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Phone: (404) 562-9031. E-mail: [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov) or Lynorae Benjamin, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Phone: (404) 562-9040. E-mail: [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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##### I. What Is the Background for This Action?

The air quality maintenance plan is a requirement of the 1990 CAA for nonattainment areas that come into compliance with the national ambient air quality standard (NAAQS) to assure their continued maintenance of that standard. Eight years after redesignation to attainment, Section 175A(b) of the CAA requires the state to submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period (this is known as the second 10-year plan). This second 10-year plan updates the original 10-year 1-hour ozone maintenance plan for the next 10-year period.

EPA designated the Kentucky counties of Fayette and Scott of the Lexington Metropolitan Statistical Area as marginal nonattainment for the 1-hour ozone NAAQS on November 6, 1991, (56 FR 56694), effective on January 6, 1992. EPA approved the redesignation of Fayette and Scott Counties (i.e., Lexington Maintenance Area) to attainment for the 1-hour ozone standard, on September 11, 1995, (60 FR 47092), effective on November 13, 1995. In this same rulemaking, EPA also approved the Lexington Maintenance Area's plan for maintaining the 1-hour ozone NAAQS for the time period 1994 through 2004.

On February 19, 2004, Kentucky submitted to EPA a draft SIP revision for parallel processing to provide for the 10-year update to the original maintenance plans for five 1-hour ozone maintenance

areas as required by Section 175A(b) of the CAA. Specific to the Lexington Maintenance Area, the draft revision provides an update to the Lexington 1-Hour Ozone Maintenance Plan for the next 10 years, *i.e.*, 2005 through 2015. This draft 10-year update for the Lexington Maintenance Area includes updated MVEBs for the year 2004 and establishes new MVEBs for the year 2015. EPA is parallel processing the Lexington portion of Kentucky's draft SIP revision and is proposing approval of the Lexington Maintenance Area's 10-year update for its 1-hour ozone maintenance plan, including approval of the updated 2004 MVEBs and the newly-established 2015 MVEBs, because EPA has determined that the draft Plan

complies with the requirements of Section 175A of the CAA.

**II. What Is EPA's Analysis of the Lexington Maintenance Area's Second 10-Year Plan?**

The Commonwealth's draft SIP revision includes a second 10-year draft maintenance plan for the Lexington Maintenance Area that indicates continued maintenance of the 1-hour ozone standard through 2015. The draft revision also includes a new ozone precursor emission inventory for 2000 for Fayette and Scott Counties which reflects any emission controls applicable for the area, and projected emissions for 2004, 2005, 2009, 2012, and 2015. The draft revision updates the

MVEBs for the Lexington Maintenance Area for 2004, and establishes new MVEBs for 2015.

The emission reduction measures for ozone precursor emissions implemented in the Lexington Maintenance Area from 1990 through 2000, and those implemented after 2000 and projected to 2015, are accounted for in the 2000 emission inventory and projected emissions estimates for 2004–2015. The following two tables provide emissions data and projections, calculated using MOBILE6.2, for the ozone precursors, volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>). Italicized figures in Tables 1 and 2 highlight data comprising the 2004 and 2015 MVEBs presented in Table 3.

**TABLE 1.—LEXINGTON 1 HOUR OZONE MAINTENANCE AREA**  
[VOC Emissions (Tons Per Day)]  
[Year 2000 Emission Inventory and Projected VOC Emissions (2004–2015)]

County	Source category	2000	2004	2005	2009	2012	2015
Fayette .....	Point .....	1.21	1.30	1.33	1.35	1.37	1.47
	Area .....	10.91	11.48	11.62	12.22	12.58	13.08
	Highway .....	17.63	14.82	13.57	11.09	9.43	8.32
	Non-Hwy .....	5.19	4.46	4.18	3.45	3.32	3.35
	Total .....	34.94	32.06	30.70	28.11	26.70	26.22
Scott .....	Point .....	11.99	13.61	14.06	15.97	16.55	17.93
	Area .....	2.11	2.38	2.46	2.80	3.06	3.34
	Highway .....	3.99	3.32	3.06	2.71	2.45	2.27
	Non-Hwy .....	0.50	0.40	0.39	0.31	0.28	0.28
	Total .....	18.59	19.71	19.97	21.79	22.34	23.82
Maintenance Area Total .....		53.53	51.77	50.67	49.90	49.04	50.04
Safety Margin .....		N/A	1.76	2.86	3.63	4.94	3.49

**TABLE 2.—LEXINGTON 1-HOUR OZONE MAINTENANCE AREA**  
[NO<sub>x</sub> Emissions (Tons Per Day)]  
[Year 2000 Emission Inventory and Projected NO<sub>x</sub> Emissions (2004–2015)]

County	Source category	2000	2004	2005	2009	2012	2015
Fayette .....	Point .....	2.08	2.21	2.24	2.40	2.48	2.57
	Area .....	0.29	0.30	0.30	0.33	0.33	0.34
	Highway .....	23.26	20.80	19.84	15.87	12.47	9.73
	Non-Hwy .....	10.03	9.61	9.52	8.72	8.23	8.11
	County Total .....	35.66	32.92	31.90	27.32	23.51	20.75
Scott .....	Point .....	0.69	0.77	0.79	0.88	0.91	0.99
	Area .....	0.14	0.16	0.16	0.18	0.20	0.22
	Highway .....	7.50	6.56	6.33	5.40	4.40	3.54
	Non-Hwy .....	2.80	2.80	2.81	2.74	2.73	2.81
	County Total .....	11.13	10.29	10.09	9.20	8.24	7.56
Maintenance Area Total .....		46.79	43.21	41.99	36.52	31.75	28.31
Safety Margin .....		N/A	3.58	4.80	10.27	15.04	18.48

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 plan. The attainment level of emissions is the

level of emissions during one of the years in which the area met the NAAQS. The safety margin is for the entire

Lexington Area and is not sub-allocated by county. For example, the Lexington Area attained the 1-hour ozone NAAQS based on air quality data for the 1988–1990 time period. The Lexington Area originally used 1990 as its attainment year and as the base year for calculations to demonstrate maintenance. In this draft revision, the year 2000 is used as the new attainment level of emissions for the area. Because MOBILE6.2 was used to calculate the emission levels and projections for years 2000–2015, the 1990 emission levels calculated using MOBILE5 are not included in this document for comparison.

The emissions from point, area, nonroad, and mobile sources in 2000 equal 53.53 tons per day (tpd) of VOC

for the entire Lexington Area. Projected VOC emissions out to the year 2015 equal 50.04 tpd of VOC. The safety margin for VOCs is calculated to be the difference between these amounts or, in this case, 3.49 tpd of VOC for 2015. By this same method, 18.48 tpd (*i.e.*, 46.79 tpd less 28.31 tpd) is the safety margin for NO<sub>x</sub> for 2015. The emissions are projected to maintain the area’s air quality consistent with the NAAQS. The safety margin credit, or a portion thereof, can be allocated to the transportation sector. The total emission level must stay below the attainment level to be acceptable. The safety margin is the extra emissions that can be allocated as long as the total attainment level of emissions is maintained.

Maintenance plans and other control strategy SIPs create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area’s planned transportation system. In this draft revision, Kentucky used MOBILE6.2 to update the Lexington MVEBs for 2004, in addition to establishing MVEBs for VOC and NO<sub>x</sub> for the year 2015. In today’s action, EPA is proposing to approve both revisions to the 2004 MVEBs and the establishment of the 2015 MVEBs for the Lexington Maintenance Area. These MVEBs are listed in Table 3 and described below.

TABLE 3.—LEXINGTON 1-HOUR OZONE MAINTENANCE AREA  
[MVEBs (Tons Per Day)]

Lexington area	2004 VOC	2015 VOC	2004 NO <sub>x</sub>	2015 NO <sub>x</sub>
Fayette County .....	14.82	8.32	20.80	9.73
Scott County .....	3.32	2.27	6.56	3.54
MVEBs .....	18.14	10.59	27.36	13.27

The MVEBs presented in Table 3 are directly reflective of the combined onroad (or “highway”) emissions for Fayette and Scott Counties for VOC and NO<sub>x</sub>, which are presented in italicized text in Tables 1 and 2. These onroad emissions are included in Table 3 to show how the 2004 and 2015 MVEBs were derived and to demonstrate that none of the available safety margins for VOC and NO<sub>x</sub> were allocated to the MVEBs. Thus, the safety margins listed in Tables 1 and 2 represent the available safety margins.

**III. What Is EPA’s Proposed Action on the Lexington Maintenance Area’s Second 10-year Plan?**

EPA is proposing to approve Kentucky’s draft SIP revision pertaining to the Lexington Maintenance Area’s 10-year update for its 1-hour ozone maintenance plan. This revision was submitted by the Commonwealth, through the Kentucky Environmental and Public Protection Cabinet, on February 19, 2004, for parallel processing as part of a larger package which includes four other 1-hour ozone maintenance plan updates. Under the parallel processing procedure, the Regional Office works closely with the Commonwealth of Kentucky while the Commonwealth is developing new or revised regulations. The Commonwealth submits a copy of the proposed regulation or other revisions to EPA

before conducting its public hearing. EPA reviews this proposed state action, and prepares a notice of proposed rulemaking. EPA’s notice of proposed rulemaking is published in the **Federal Register** during the same time frame that the Commonwealth is holding its public hearing. The Commonwealth is conducting a public hearing on this proposed revision on March 31, 2004. The Commonwealth and EPA then provide for concurrent public comment periods on both the state action and the Federal action. After the Commonwealth submits the formal SIP revision request (including a response to all public comments raised during the Commonwealth’s public participation process, and the approved, amended Lexington 1-Hour Ozone Maintenance Plan), EPA will prepare a final rulemaking notice. If the Commonwealth’s formal SIP submittal contains changes which occur after EPA’s notice of proposed rulemaking, such changes must be described in EPA’s final rulemaking action. If the Commonwealth’s changes are significant, then EPA must decide whether it is appropriate to re-propose the Commonwealth’s action.

EPA’s proposed approval of the Lexington Maintenance Area’s second 10-year 1-hour ozone maintenance plan is contingent on Kentucky addressing EPA’s clarifying comments in the final SIP submittal. In particular, the safety

margin for the budget years of 2004 and 2015 must be clearly documented in the narrative portion of the submittal for both VOC and NO<sub>x</sub>. Additionally, comparisons of the 1990 emissions inventory based on MOBILE5 to 2000 inventory data and future year projections based on MOBILE6.2 must be corrected; data derived from these two versions of the MOBILE model cannot be compared for SIP purposes.

As part of this proposed approval, EPA is proposing to approve both the revisions to the 2004 MVEBs and the newly-established 2015 MVEBs for the Lexington Maintenance Area. Once EPA approves the revised 2004 and new 2015 MVEBs in a final rulemaking on this action, the Lexington Area must use the revised MVEBs for future transportation conformity determinations effective the date of publication of EPA’s approval of the MVEBs in the **Federal Register**. More information on transportation conformity is contained in section IV below.

**IV. What Is an Adequacy Determination and What Is the Status of EPA’s Adequacy Determination for the Lexington Maintenance Area’s New MVEB for the Year 2015?**

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 create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. The MVEBs serve 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 and revise MVEBs in the SIP.

Under Section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (e.g., 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. Under the transportation conformity rule, at 40 CFR part 93, projected emissions from transportation plans and programs must be equal to or less than the MVEBs for the area. If a transportation plan does not "conform," most 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.

Until a MVEB in a SIP submittal is approved by EPA, it cannot be used for transportation conformity purposes unless EPA makes an affirmative finding that the MVEBs contained therein are "adequate." Once EPA affirmatively finds the submitted MVEBs adequate for transportation conformity purposes, those MVEBs can be used by the State and Federal agencies in determining whether proposed transportation projects "conform" to the SIP even though EPA approval of the SIP revision containing those MVEBs has not yet been finalized. EPA's substantive criteria for determining "adequacy" of MVEBs in submitted SIPs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining "adequacy" of MVEBs in submitted SIPs consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs is set out in EPA's May 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This

guidance is incorporated into EPA's June 30, 2003, proposed rulemaking entitled "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (68 FR 38974). EPA follows this guidance in making its adequacy determinations.

EPA's "adequacy" processing guidance allows EPA to "parallel process" a MVEB adequacy review. Under parallel processing, as noted above, the Commonwealth submits a proposed SIP to EPA, and the Commonwealth and EPA then request public comment on the proposed SIP and the adequacy of the MVEBs included in the SIP at the same time. If no significant adverse comments are received at either the Commonwealth or Federal levels, EPA could then make an adequacy finding as soon as the state formally adopts the SIP and submits it to EPA, as long as no substantive changes to the SIP have occurred that would affect the adequacy of the MVEBs. However, if the formal maintenance plan submission changes in a way that affects the adequacy of the proposed MVEBs, the adequacy review process would start over; EPA would announce that it has a submitted SIP under adequacy review and reopen the public comment period.

The Lexington Maintenance Area's draft second 10-year maintenance plan submission contains new proposed VOC and NO<sub>x</sub> MVEBs for the year 2015. The availability of the draft SIP submission with these 2015 MVEBs was announced for public comment on EPA's adequacy Web page on February 24, 2004, at: <http://www.epa.gov/otaq/transp/conform/cursips.htm>. The EPA public comment period on adequacy of the 2015 MVEBs for the Lexington Area closed on March 25, 2004. Following a thorough review of all public comments received and an evaluation of whether the adequacy criteria have been met, EPA will make its adequacy determination. EPA intends to make its determination of the adequacy of the 2015 MVEBs for the Lexington Area for transportation conformity purposes in the final rulemaking on the Lexington Maintenance Area's second 10-year 1-hour ozone maintenance plan submittal.

If EPA approves both the 2004 and 2015 MVEBs, and finds the 2015 MVEBs adequate for transportation conformity purposes in the final rulemaking action, the revised and new MVEBs must be used for future transportation conformity determinations. The revised 2004 MVEBs and the new 2015 MVEBs, if approved, will be effective the date of publication of EPA's final rulemaking in the **Federal Register**. For transportation

plan analysis years that involve the year 2014 or before, the applicable budget for the purposes of conducting transportation conformity analyses will be the 2004 VOC (18.14 tpd) and NO<sub>x</sub> (27.36 tpd) MVEB for this maintenance area. For transportation plan analysis years that involve the year 2015 or beyond, the applicable budget for the purposes of conducting transportation conformity analyses will be the 2015 VOC (10.59 tpd) and NO<sub>x</sub> (13.27 tpd) MVEB for this maintenance area.

#### V. 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. 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 (Pub. L. 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 proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the

distribution of power and responsibilities established in the Clean Air Act. 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.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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.*).

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: April 14, 2004.

**A. Stanley Meiburg,**

*Acting, Regional Administrator, Region 4.*  
[FR Doc. 04-9285 Filed 4-22-04; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket No. FEMA-D-7586]

#### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response

Directorate, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:**

Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646-2903.

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new

buildings built after these elevations are made final, and for the contents in these buildings.

*National Environmental Policy Act.*

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

*Regulatory Classification.* This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 12612, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

*Executive Order 12778, Civil Justice Reform.* This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

#### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

#### PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

#### § 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows: