

because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by June 18, 2001.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814-2178, at the EPA Region III address above, or by e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION: On November 17, 2000, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to its SIP to address the requirements of the NO_x SIP Call Phase I. The revision consists of the adoption of Regulation No. 39—Nitrogen Oxides Budget Trading Program. For further information, please see the information provided in the direct final action, with the same title, that is located in the “Rules and Regulations” section of this **Federal Register** publication.

Dated: May 8, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY-200108; IN121-1; FRL-6982-2]

Determination of Attainment of Ozone Standard by Louisville, Kentucky and Indiana, Area and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that the Louisville moderate ozone nonattainment area (Louisville area) has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). The Louisville area includes Jefferson County and portions of Bullitt and Oldham Counties, Kentucky, and Clark and Floyd Counties, Indiana. This proposed determination is based on three years of complete, quality-assured, ambient air monitoring data for the 1998 to 2000 ozone seasons that demonstrate that the area has attained the 1-hour ozone NAAQS. On the basis of this determination, EPA is also proposing to determine that State Implementation Plan (SIP) submissions for certain reasonable further progress (RFP) and attainment demonstration requirements, along with certain other related requirements of part D of Title 1 of the Clean Air Act (CAA) are no longer required for the Louisville area for so long as the area continues to attain the 1-hour ozone NAAQS. All previously-approved SIP revisions must continue to be implemented and enforced and are not affected by this action.

DATES: Written comments on EPA's proposed action must be received on or before June 18, 2001.

ADDRESSES: All comments should be addressed to: Allison Humphris, Environmental Scientist, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia, 30303. J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the air quality data and EPA's analysis are available at the following addresses for inspection during normal business hours: United States Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Planning

Section, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. United States Environmental Protection Agency, Region 5, Air Programs Branch (AR-18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

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I. Determination of Attainment

A. What Action is EPA Proposing to Take?

The EPA is proposing to determine that the Louisville area has attained the 1-hour ozone NAAQS. The Louisville area includes Jefferson County and portions of Bullitt and Oldham Counties, Kentucky, and Clark and Floyd Counties, Indiana. On the basis of this determination, EPA is also determining that certain requirements of part D of Title I of the CAA do not apply to the Louisville area. SIP submittals based on these requirements are no longer required so long as the Louisville area continues to attain the NAAQS. These requirements include RFP (see the general requirement of section 172(c)(2) and the more specific requirement of section 182(b)(1) for a plan that reduces volatile organic compound (VOC) emissions by 15%), attainment demonstration (see the general requirement of section 172(c)(1) and the specific requirement of section 182(j) for a multi-state attainment demonstration) and contingency measures (see the general requirement of section 172(c)(9)). Making these sections inapplicable to the area means that the States are not required to

submit future SIP revisions related to the sections cited above regarding attaining the NAAQS. Furthermore, EPA would not be required to act on the planning SIPs that have been submitted and not yet approved. However, all previously-approved SIP revisions must continue to be implemented and enforced and are not affected by this action. In addition EPA will continue to process any submittals that have not yet been approved and revise the SIP to incorporate State- and locally-adopted rules and other legally-enforceable requirements which have helped the area come into attainment prior to the effective date for this rule. This will ensure that the rules the area has depended on for attainment are permanent and enforceable as part of the SIP.

B. Why is EPA Taking This Action?

The EPA proposes to make this determination for the Louisville area because complete, quality-assured, ambient air monitoring data for the 1998

to 2000 ozone seasons demonstrate that the 1-hour ozone NAAQS has been attained in the entire Louisville area. For ozone, an area may be considered attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and appendix H, based on three complete, consecutive calendar years of quality-assured ambient monitoring data. A violation of the 1-hour ozone NAAQS occurs when the annual average number of expected exceedances at a monitoring site is greater than 1.0 per year, using conventional rounding techniques.

The calculation for expected exceedances in a three-year period is computed by averaging the three estimated exceedances (one for each of the three years) during this period. The calculation for the estimated exceedances takes into account not only the number of exceedances during a given ozone season, but also completeness of data, and days in the ozone season that can be assumed to be

less than the level of the standard. An example calculation of estimated exceedances at the Charlestown monitor is given in section C. A daily exceedance occurs when the maximum hourly ozone concentration during a given day is greater than 0.12 parts per million (ppm), using conventional rounding techniques. Monitoring data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Aerometric Information Retrieval System (AIRS). The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

The Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) and the Indiana Department of Environmental Management (IDEM) submitted quality-assured ozone monitoring data to EPA for the 1998 to 2000 ozone monitoring seasons. Table 1 below summarizes these air quality data.

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

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

During the 1998 to 2000 time period, the Charlestown monitor recorded a total of 3 exceedances, with all 3 exceedances occurring during 1998. Remaining monitors recorded 2 or fewer exceedances for this same time period. Calculation of the estimated exceedances for 1998 for the Charlestown monitor, in accordance with 40 CFR part 50, appendix H, yields 3.1 estimated exceedances for 1998. Due to no exceedance occurring at the

Charlestown monitor in 1999 or 2000, the total estimated exceedances for the years of 1998 through 2000 is also 3.1, or 1.0 average expected exceedance per year. This indicates that the monitoring site with the most exceedances is attaining the 1-hour ozone NAAQS. As a result, the Louisville area is currently meeting the air quality requirement for this determination of attainment of the 1-hour ozone NAAQS.

C. How was the Number of Estimated Exceedances at the Charlestown Monitor Determined?

During the 1998 to 2000 time period, the Charlestown monitor was determined to have a total of 3.1 estimated exceedances. This value was determined in accordance with 40 CFR 50.9 and appendix H, as follows: $e = v + [(v/n) * (N-n-z)]$ where:

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

The current version of the AIRS database calculates the Charlestown monitor as having 3.2 estimated exceedances during the 1998 ozone season, based on the availability of valid AIRS data for 172 out of 183 ozone season days. However, EPA has determined, in accordance with 40 CFR part 50, appendix H, that for three days during the 1998 ozone monitoring season for which no air quality data was available, it is highly unlikely that the ozone NAAQS was exceeded, and air quality can be assumed to have been below the ozone NAAQS. Part 50, appendix H states, in part, that: "Some allowance should also be made for days for which valid daily maximum hourly values were not obtained but which would quite likely have been below the standard." It then suggests a criterion that "may be used" for ozone. Since appendix H lists only a permissible, but not exclusive method for determining when a missing value may be assumed to have been below the standard, it leaves room for Agency discretion to define alternative conditions for making such a determination. For two days early in the 1998 ozone monitoring season (April 3–4, 1998), this conclusion is based on records of valid daily maxima well below the standard for the remaining 6 Louisville area monitors and overwhelming meteorological evidence that conditions were not highly conducive to ozone formation. In addition, no exceedances have ever been recorded at this monitoring site in early April. For a third day (August 1, 1998), this conclusion is based on records of valid daily maxima below the 75 percent level of the standard for the Charlestown monitor for the days immediately preceding and following this date. Calculation of the estimated exceedances for the Charlestown monitor using the above equation, and assuming that the ozone standard was not exceeded for 175 out of 183 ozone season days yields a total of 3.1 estimated exceedances for the 1998 ozone season. Since no exceedance was recorded for 1999 or 2000, the average

number of expected exceedances for this monitor are 1.0 per year for the three-year period of 1998 through 2000, using conventional rounding techniques.

D. What Would Be the Effect of This Action?

The EPA believes it is reasonable to interpret that the Clean Air Act provisions regarding RFP and attainment demonstrations, along with certain other related provisions, do not require certain SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., has three consecutive years of complete, quality-assured, air quality monitoring data) without those provisions being implemented. Specifically, the requirements of sections 172(c)(1) and 182(j) concerning submission of an ozone attainment demonstration, the requirements of sections 172(c)(2) and 182(b)(1) concerning submission of a 15% VOC emission reduction plan, and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment will not be applicable to the Louisville area. EPA intends, however, to approve the regulations that were submitted by the Commonwealth with its 15% plan, since these regulations were adopted by the Commonwealth or the Air Pollution Control District of Jefferson County prior to 1998 and provided permanent and enforceable reductions for the Louisville area during the 1998 to 2000 ozone seasons. Likewise, previously-approved SIP revisions must continue to be implemented and enforced and are not affected by this action.

The above determinations are contingent upon continued monitoring and continued attainment and maintenance of the 1-hour ozone NAAQS in the Louisville area. If a violation of the 1-hour ozone NAAQS is monitored in any of the five counties, EPA will initiate rulemaking action to reinstate these requirements in the **Federal Register**. A violation in any of the five counties would mean that the entire area would thereafter have to

address the above-cited requirements, since the basis for the determination that they do not apply would no longer exist.

E. What Is the Background for this Action?

Subpart 2 of part D of Title I of the CAA contains various air quality planning and SIP submission requirements for 1-hour ozone nonattainment areas. EPA interprets the general provisions of subpart 1 of part D of Title I (sections 171 and 172) and the more specific attainment demonstration and related provisions of subpart 2 (section 182) to not require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures for areas where the monitoring data show that the area is attaining the 1-hour ozone standard (See *Sierra Club vs EPA*, 99 F.3d 1551 (10th Cir. 1996)). This rationale is described in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," dated May 10, 1995. EPA has previously applied this interpretation in a number of areas, including Cincinnati (65 FR 37879 (June 19, 2000)), Grand Rapids (61 FR 31831 (June 21, 1996)), Cleveland (61 FR 20458 (May 7, 1996)), and Salt Lake City (60 FR 36723 (July 18, 1995)).

First, with respect to RFP, section 171(1) states that, for purposes of part D of Title I, RFP "means such annual incremental reductions in the emissions of the relevant air pollutant as are required by this part or may be reasonably required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone

nonattainment areas (such as the 15% plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date. If an area has, in fact, attained the standard without implementing RFP, the stated purpose of the RFP requirement will have already been fulfilled, and EPA does not believe that the area need submit SIP revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

EPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of title I of the Clean Air Act Amendments of 1990 (57 FR 13498, April 6, 1992), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the state will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR 13564).

Second, with respect to attainment demonstration requirements, an analogous rationale can be applied. Section 182(b)(1) requires that the plan provide for "such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA." If an area has in fact monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I. As stated in the Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached" (57 FR 13564). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Finally, similar reasoning applies to the contingency measure requirements of section 172(c)(9) of the CAA. EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the standard

since those "contingency measures are directed at ensuring RFP and attainment by the applicable date" (57 FR 13564). EPA has exercised this policy most recently in approvals for the Cincinnati, Ohio, and Muskegon, Michigan, areas (65 FR 37879 and 65 FR 52651).

EPA emphasizes that the lack of a requirement to submit the SIP revisions discussed above exists for only so long as an area designated nonattainment continues to attain the standard. If EPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. EPA would notify the state of that determination and would also provide notice to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the above-mentioned SIP submittals amounts to no more than a determination that new submittals are no longer required for the Louisville area for so long as the area continues to attain the standard.

The state must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the 1-hour ozone NAAQS must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in AIRS.

The determination that is being made with this **Federal Register** document is not equivalent to redesignation of this area to attainment. Attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated, the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and the requirement that the area have a fully approved SIP meeting all of the applicable requirements under section 110 and part D and a fully approved maintenance plan.

The determinations made in this document do not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as

photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, any other states with respect to the NAAQS (see section 110(a)(2)(D)). The EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the CAA to require such emission reductions if necessary and appropriate to deal with transport situations.

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

The official record for this proposed rule is located at the addresses in the **ADDRESSES** section at the beginning of this document. The addresses for sending comments are also provided in the **ADDRESSES** section at the beginning of this document. Public comments are solicited on EPA's proposed rulemaking action. Public comments received by June 18, 2001 will be considered in the development of EPA's final rulemaking action.

II. What Administrative Requirements did EPA Consider?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to determine that air quality meets federal requirements and imposes no additional requirements. 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 determine that air quality meets federal requirements and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255,

August 10, 1999), because it determines that air quality meets federal requirements, 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 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards, but air quality considerations governed by federal regulations. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing

this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: April 20, 2001.

Dated: May 8, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Norman Neidergang,

Acting Regional Administrator, Region 5.

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