

the FAA proposes to amend 14 CFR part 39 as follows:

### **PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### **§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**Boeing:** Docket No. FAA-2004-19945; Directorate Identifier 2004-NM-22-AD. Comments Due Date.

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by February 17, 2005.

#### **Affected ADs**

(b) None.

#### **Applicability**

(c) This AD applies to Boeing Model 747-200B, 747-200C, 747-200F, 747-300, and 747SR series airplanes; certificated in any category; equipped with General Electric CF6-45 or -50 series engines.

#### **Unsafe Condition**

(d) This AD was prompted by reports of a gap at the interface of the lower portion of the side cowl and the aft flange of the thrust reverser. We are issuing this AD to prevent an excessive quantity of air from entering the fire zone that surrounds the engine, which, in the event of an engine fire, could result in an inability to control or extinguish the fire.

#### **Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### **Modification**

(f) Within 24 months after the effective date of this AD: Modify the side cowl assemblies on the engines by replacing existing wear plates with new extended wear plates and installing new stop fittings, by doing all actions according to the Accomplishment Instructions of Boeing Service Bulletin 747-71-2300, Revision 1, dated October 30, 2003. Any applicable corrective actions must be done before further flight.

#### **On Condition: Removal of Bulb Seals and Other Specified Actions**

(g) If bulb seals were installed on the trailing edge of the fan thrust reverser in accordance with Boeing Service Letter 747-SL-71-045: Concurrent with or before further flight after accomplishing paragraph (f) of this AD, remove the bulb seals, plug the open holes in the trailing edge of the fan thrust reverser, and adjust the cowl latches as applicable, in accordance with Boeing Service Letter 747-SL-71-045-C, dated April 10, 2003.

#### **Alternative Methods of Compliance (AMOCs)**

(h) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on December 20, 2004.

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04-28667 Filed 12-30-04; 8:45 am]

**BILLING CODE 4910-13-P**

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

**[R06-OAR-2004-TX-0003; FRL-7856-6]**

#### **Approval and Promulgation of Implementation Plans; Texas; Victoria County Maintenance Plan Update**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Texas Commission on Environmental Quality (TCEQ) on February 18, 2003, concerning the Victoria County 1-hour ozone maintenance area. This SIP revision satisfies the Clean Air Act requirement as amended in 1990 for the second 10-year update to the Victoria County 1-hour ozone maintenance area.

**DATES:** Written comments should be received on or before February 2, 2005.

**ADDRESSES:** Comments may be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202-2733. Comments may also be submitted electronically or through hand delivery/

courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

#### **FOR FURTHER INFORMATION CONTACT:**

Peggy Wade, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7247; fax number 214-665-7263; e-mail address [wade.peggy@epa.gov](mailto:wade.peggy@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal 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 rule, 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.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: December 17, 2004.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. 04-28701 Filed 12-30-04; 8:45 am]

**BILLING CODE 6560-50-P**

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

**[R04-OAR-2004-KY-0002-200424; FRL-7856-8]**

#### **Approval and Promulgation of Implementation Plans for Kentucky: Inspection and Maintenance Program Removal for Jefferson County, KY; Source-Specific Nitrogen Oxides Emission Rate for Kosmos Cement Kiln**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Jefferson County, Kentucky portion of the Kentucky State Implementation Plan (SIP) which requests removal of three regulations from the active portion of the Kentucky SIP related to the Jefferson County inspection and maintenance (I/M) program. Kentucky requested in a September 22, 2003, SIP revision that these I/M regulations be moved to the contingency measures section of the Kentucky portion of the Louisville 1-Hour Ozone Maintenance Plan. EPA is also proposing to approve a source-specific SIP revision amending the nitrogen oxides (NO<sub>x</sub>) emission rate for Kosmos Cement Company's cement kiln

as contained in a May 3, 2004, Board Order submitted on May 26, 2004, as a supplemental package to the September 2003 SIP revision.

**DATES:** Written comments must be received on or before February 2, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04-OAR-2004-KY-0002, 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-0002," 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-0002. 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://www.regulations.gov), or e-mail. The EPA RME Web site and the Federal [regulations.gov](http://www.regulations.gov) Web site 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://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**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).

**SUPPLEMENTARY INFORMATION:**

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**I. What Changes to the Kentucky SIP Were Submitted for EPA Approval?**

In response to a 2002 Kentucky Legislative action to terminate the Jefferson County I/M program effective November 1, 2003, the Commonwealth of Kentucky submitted a revision to the Jefferson County, Kentucky portion of the Kentucky SIP on September 22, 2003. This revision repeals three SIP-approved regulations representing the Jefferson County I/M program, also known as the Jefferson County Vehicle Emissions Testing (VET) Program. The regulations requested for repeal are: Regulation 8.01, "Mobile Source Emissions Control Requirements," Regulation 8.02, "Vehicle Emissions Testing Procedure," and Regulation 8.03, "Commuter Vehicle Testing Requirements."

Kentucky requested in the September 22, 2003, submittal that the three VET Program regulations be moved from the active control measures portion of the SIP to the contingency measures portion of the Kentucky portion of the Louisville 1-Hour Ozone Maintenance Plan, which is part of the Kentucky SIP. The Jefferson County VET Program is a basic I/M program that includes on-board diagnostics (*i.e.*, OBD) and results in emission reductions of NO<sub>x</sub>, volatile organic compounds (VOC), and carbon monoxide (CO). The VET Program began operation on January 2, 1984, to help meet nonattainment area requirements for the ozone and CO NAAQS effective at the time.

The Kentucky portion of the Louisville Metropolitan Statistical Area (MSA) is comprised of the Kentucky Counties of Bullitt, Oldham, and Jefferson. Presently, Jefferson County,

and portions of Bullitt and Oldham Counties, comprise the Kentucky portion of the Louisville 1-Hour Ozone Maintenance Area. This maintenance status means these counties were formerly designated nonattainment for the 1-hour ozone standard, are now attaining this standard, and have since been redesignated to attainment for the 1-hour ozone standard (October 23, 2001, 66 FR 53665). This area was previously classified as a moderate nonattainment area, thus the requirement for the I/M program. Jefferson County was redesignated to attainment for CO on April 16, 1990 (55 FR 14092). On April 30, 2004 (69 FR 23858), EPA designated Jefferson County, Kentucky nonattainment for the 8-hour ozone NAAQS, effective June 15, 2004. Currently, Jefferson County, Kentucky is violating the PM<sub>2.5</sub> NAAQS based on 2001–2003 air quality data. EPA identified Jefferson County as nonattainment for PM<sub>2.5</sub> on December 17, 2004.

As a supplemental package to the September 22, 2003, SIP revision, the Commonwealth of Kentucky submitted a February 20, 2004, proposed amendment to the Kentucky SIP in response to EPA's October 27, 2003, letter requesting further information. This proposed amendment identified for public comment potential emission reductions to compensate for the NO<sub>x</sub> and VOC emission increases resulting from removing the Jefferson County VET Program as an active control measure in the SIP. To demonstrate non-interference with applicable requirements of the Act, EPA believes that the potential, compensating emission reductions must be equivalent to or greater than those achieved with the VET Program. Concurrently, the Louisville Metro Air Pollution Control District (*i.e.*, "District") also submitted this same package to EPA to solicit EPA's comments during the public comment period. The public hearing was held on March 31, 2004. On May 26, 2004, the Commonwealth of Kentucky submitted the final version of the supplemental information to replace the February 20, 2004, proposal. The May 26, 2004, final supplemental package provides the selected option for acquiring compensating equivalent emissions reductions from the Kosmos Cement Company ("Kosmos") in Jefferson County and additional supporting documentation. To compensate for the closure of the VET Program, equivalent emissions are needed to replace an anticipated increase of 1.89 tons per summer day

(tpsd) of VOC and 1.68 tpsd of NO<sub>x</sub> in the year 2005.

## II. What Authorities Apply to Moving the Jefferson County I/M Program to a Contingency Measure in the Kentucky SIP?

Section 110(l) of the Clean Air Act (*i.e.*, "Act") states:

Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

The states' obligation to demonstrate attainment of each of the NAAQS is considered as "any applicable requirement(s) concerning attainment." A demonstration is necessary to show that this revision will not interfere with attainment or maintenance of the NAAQS, including the relatively new 8-hour ozone and PM<sub>2.5</sub> standards, or any other requirement of the Act.

With respect to the 1-hour ozone NAAQS, the Louisville area met the standard in 1999 and was redesignated to attainment for the 1-hour ozone standard on October 23, 2001 (66 FR 53665). As part of its redesignation, the area must have a plan to maintain the standard, called a "maintenance plan." Under section 175A(a) of the Act, emission reduction programs in a maintenance plan for a NAAQS must be continued unless a demonstration is made that the future, projected emissions for the area, without credit for reductions due to the emission reduction program being removed, remain at or below the baseline attainment level of emissions identified in the maintenance plan. If such a demonstration is made, that program is eligible for removal from the SIP. However, section 175A(d) of the Act requires that available contingency measures in the maintenance plan include all measures in the SIP for the area before that area was redesignated to attainment. Since the VET Program was in the SIP prior to redesignation to attainment for ozone, the VET Program must be listed in the contingency portion of the 1-hour ozone maintenance plan as required by section 175A(d). Because Jefferson County was redesignated to attainment for CO prior to the passage of the 1990 Clean Air Act Amendments, which created section 175A, the maintenance plan requirements described above do not apply to Jefferson County for CO.

The District was able to demonstrate continued maintenance of the 1-hour ozone standard for the requisite timeframe without taking credit for reductions from the Jefferson County VET Program, as summarized in Section III below. This demonstration of maintenance is further described in the rule proposing approval of revisions to the Louisville 1-Hour Maintenance Plan published January 5, 2004, column 1, at page number 69 FR 303.

In addition, provisions in EPA's I/M rule, set forth in 40 CFR section 51.372(c) under the heading "Redesignation requests," apply to the Jefferson County VET Program situation. These provisions were published January 5, 1995, at 60 FR 1735. The provisions indicate that certain areas seeking redesignation may submit only the authority for an I/M program rather than an implemented program in satisfaction of the applicable I/M requirements. Under these I/M rule provisions, a basic I/M area (*i.e.*, was required to adopt a basic I/M program) which has been redesignated to attainment for the 1-hour ozone NAAQS can convert the I/M program to a contingency measure as part of the area's 1-hour ozone maintenance plan, notwithstanding the new antibacksliding provisions in EPA's recent 8-hour ozone implementation rule. A basic I/M area which is designated nonattainment for the 8-hour ozone NAAQS, and which is not required to have an I/M program based on its 8-hour ozone designation, continues to have the option to move its I/M program to a contingency measure as long as the 8-hour nonattainment area can demonstrate that doing so will not interfere with its ability to comply with any NAAQS or any other applicable Clean Air Act requirement pursuant to section 110(l) of the Act. For further details on the application of 8-hour ozone anti-backsliding provisions to basic I/M programs in 1-hour ozone maintenance areas, please refer to the May 12, 2004, EPA Memorandum from Tom Helms, Group Leader, Ozone Policy and Strategies Group, Office of Air Quality Planning and Standards, and Leila H. Cook, Group Leader, State Measures and Conformity Group, Office of Transportation and Air Quality, to the Air Program Managers, the subject of which is "1-Hour Ozone Maintenance Plans Containing Basic I/M Programs." A copy of this memorandum may be obtained at <http://www.epa.gov/ttn/oarpg/t1pgm.html> or on RME, EPA's electronic public docket and comment system at <http://docket.epa.gov/rmepub/>. To view the memorandum

posted in the docket for this action in RME, please follow the instructions under number 2 of the **ADDRESSES** section of this document.

**III. What Is EPA's Analysis of Kentucky's Demonstration of No Interference With the 1-Hour Ozone and CO NAAQS?**

The September 22, 2003, Kentucky SIP revision seeking removal of the VET Program includes an evaluation for the 1-hour ozone and the CO NAAQS of the potential emission impacts associated with increased emissions that would result from removal of the Jefferson County VET Program as an active control measure in the SIP. For the 1-hour ozone NAAQS, the submittal provides VOC and NO<sub>x</sub> emission

inventory data for the Kentucky portion of the Louisville MSA (*i.e.*, Jefferson County and portions of Bullitt and Oldham Counties) for 1999, the year the area met the 1-hour ozone NAAQS, and projected emission inventories for 2002, 2005, 2008, and 2012. The projected mobile source emission inventories for 2005, 2008, and 2012 do not include emission reduction credits from either the operation of Jefferson County's VET Program after 2003, or the Indiana I/M Program after 2006. As shown in Tables 1 and 2 below, projected, total VOC and NO<sub>x</sub> emissions for 2002, 2005, 2008, and 2012 for the Kentucky portion of the Louisville 1-Hour Ozone Maintenance Area all fall below the emissions levels in 1999, when the area

met the 1-hour standard. These VOC and NO<sub>x</sub> emission totals include emissions from the point, area, mobile, and nonroad source categories. Thus, the area demonstrates continued maintenance of the 1-hour ozone NAAQS without the Jefferson County VET Program. These data and supporting documentation were also provided in the June 27, 2003, revision to the maintenance demonstration for the Kentucky portion of the Louisville 1-Hour Ozone Maintenance Plan. For additional information and EPA's rationale for approving this maintenance plan update, please refer to EPA's proposed approval of this revision published January 5, 2004 (69 FR 302).

**TABLE 1.—KENTUCKY PORTION OF THE LOUISVILLE 1-HOUR OZONE MAINTENANCE AREA TOTAL VOC EMISSIONS (IN TONS PER SUMMER DAY) WITHOUT EMISSION REDUCTION CREDITS FOR VET PROGRAM AFTER 2003 OR INDIANA I/M PROGRAM AFTER 2006**

County	1999	2002	2005	2008	2012
Jefferson .....	97.29	89.76	86.01	80.74	75.36
Bullitt portion .....	4.22	3.93	3.78	3.69	3.54
Oldham portion .....	3.58	3.28	3.13	3.03	2.91
Totals for KY portion of the area .....	105.09	96.97	92.92	87.46	81.81
1-Hour Ozone Maintenance Plan decrease from 1999 .....	.....	8.12	12.17	17.63	23.28

**TABLE 2.—KENTUCKY PORTION OF THE LOUISVILLE 1-HOUR OZONE MAINTENANCE AREA TOTAL NO<sub>x</sub> EMISSIONS (IN TONS PER SUMMER DAY) WITHOUT EMISSION REDUCTION CREDITS FOR VET PROGRAM AFTER 2003 OR INDIANA I/M PROGRAM AFTER 2006**

County	1999	2002	2005	2008	2012
Jefferson .....	217.71	188.24	123.21	109.23	92.82
Bullitt portion .....	3.87	3.83	3.59	3.20	2.65
Oldham portion .....	3.30	3.26	3.06	2.78	2.34
Totals for KY portion of the Area .....	224.88	195.33	129.86	115.21	97.81
1-Hour Ozone Maintenance Plan decrease from 1999 .....	.....	29.55	95.02	109.67	127.07

The September 22, 2003, submittal also demonstrates through "hot spot" modeling that Jefferson County continues to maintain the CO NAAQS without any credit for the VET Program. Table 3 below shows the results of hot

spot modeling using the CAL3QHC model for six, signalized intersections to determine air quality impacts from CO associated with traffic growth for 2008, 2012, and 2020. Using conservative assumptions to reflect worst case

conditions, the modeling results show continued maintenance of the CO NAAQS through 2020. The 8-hour CO NAAQS is nine parts per million (ppm).

**TABLE 3.—JEFFERSON COUNTY CO HOT SPOT MODELING**

Intersection	CO emissions (in ppm)		
	2008	2012	2020
Hurstbourne Parkway and Shelbyville Road .....	7.36	7.76	8.28
Hurstbourne Parkway and Taylorsville Road .....	6.20	6.32	6.50
Shelbyville Road and Bowling Boulevard .....	6.20	6.52	6.90
Shelbyville Road and Oxmoor Lane .....	6.94	7.10	7.32
Breckenridge Lane and Dutchmans Lane .....	6.32	6.44	6.64
Preston Highway and Outer Loop .....	7.84	8.00	8.24

As further support of the CO hot spot modeling, Kentucky's submittal provides CO emission level data for Jefferson County based on the use of MOBILE6 with the most recent roadway planning assumptions and the

assumption that the VET Program is not operating after November 1, 2003. The data in Table 4 below show a continuous decline in CO mobile source winter emissions from 1999 through 2020. Both the County CO hot spot data

and the mobile emission levels show that closure of the VET Program will not interfere with maintenance of the CO NAAQS.

TABLE 4.—JEFFERSON COUNTY CO MOBILE SOURCE WINTER EMISSIONS

CO emissions in tons per day (tpd)	1999	2008	2012	2020
Jefferson County CO Mobile Source Winter Emissions .....	664.66	497.34	453.89	404.12
Reduction from 1999 .....	.....	167.32	210.77	260.54

#### IV. What Is EPA's Analysis of Kentucky's Demonstration of Noninterference With the 8-Hour Ozone and Fine Particulate Matter NAAQS?

##### A. What Criteria Must Be Met?

On October 27, 2003, EPA sent a letter to Kentucky affirming that movement of the VET Program to a contingency measure would not interfere with the 1-hour ozone and CO NAAQS. The letter also requested additional information to show that removing the VET Program as an active control measure from the SIP would not interfere with the new 8-hour ozone and fine particulate matter standards. For these reasons, Kentucky submitted the supplemental information providing a demonstration that removal of the VET Program will not interfere with attainment of the 8-hour ozone and PM<sub>2.5</sub> NAAQS.

In a May 11, 2004, letter from EPA to Louisville's Assistant County Attorney, EPA provided its interpretation of section 110(l) of the Clean Air Act as guidance in relation to an area such as Jefferson County that does not yet have an attainment demonstration for the new 8-hour ozone and fine particulate matter NAAQS. The May 11, 2004, letter notes that a strict interpretation of the requirement in section 110(l) of the Act would allow EPA to approve a SIP revision removing a SIP requirement only after determining based on a completed attainment demonstration that it would not interfere with applicable requirements concerning attainment and reasonable further progress. However, EPA recognizes that prior to the time areas are required to submit attainment demonstrations for the new NAAQS, this strict interpretation could prevent any changes to SIP control measures. EPA does not believe this strict interpretation is necessary or appropriate.

Prior to the time that attainment demonstrations are due for the 8-hour ozone and PM<sub>2.5</sub> standards, it is unknown what suite of control measures are needed for a given area to attain these standards. During this

period, to demonstrate no interference with any applicable NAAQS or requirement of the Clean Air Act under section 110(l), EPA believes it is appropriate to allow states to substitute equivalent emission reductions to compensate for the control measure being moved from the active portion of the SIP to the contingency provisions, as long as actual emissions in the air are not increased. EPA concluded that preservation of the status quo air quality during the time new attainment demonstrations are being prepared will prevent interference with the states' obligations to develop timely attainment demonstrations. "Equivalent" emission reductions means reductions which are equal to or greater than those reductions achieved by the control measure to be removed from the active portion of the SIP. To show the compensating, emission reductions are equivalent, modeling or adequate justification must be provided. (See EPA memorandum from John Calcagni, Director, Air Quality Management Division, to the Air Directors in EPA Regions 1–10, September 4, 1992, pages 10 and 13.) As stated in the May 11, 2004, letter referenced earlier, the compensating, equivalent reductions must represent actual, new emission reductions achieved in a contemporaneous time frame to the termination of the existing SIP control measure, in order to preserve the status quo level of emissions in the air. In addition to being contemporaneous, the equivalent emissions reductions must also be permanent, enforceable, quantifiable, and surplus to be approved into the SIP.

Likewise, the achievement of equivalent emission reductions that meet the above criteria will satisfy any applicable requirements of section 193 of the Act, the General Savings Clause, which involves control requirements in effect prior to November 15, 1990.

##### B. What Is EPA's Analysis of Whether the Proposed Reductions Meet the Criteria of Permanent, Enforceable, Quantifiable, Surplus, Equivalent and Contemporaneous?

The May 26, 2004, supplemental package proposes for EPA approval compensating, equivalent emission reductions for the Jefferson County VET Program from the Kosmos Cement Company located in Jefferson County. The package provides an amended Board Order with Kosmos which reduces the Kosmos cement kiln's NO<sub>x</sub> emission rate currently in the Kentucky SIP from 6.6 down to 4.755 pounds per ton of clinker produced (pptcp) by the kiln, based upon a rolling 30-day average. The following is a description of how the emission reductions at Kosmos meet the six criteria of permanent, enforceable, quantifiable, surplus, contemporaneous, and equivalent.

1. *Permanent*: The emission reductions at Kosmos are made permanent through the lowering of the facility's permitted NO<sub>x</sub> emission rate from 6.6 to 4.755 pptcp, based upon a rolling 30-day average. This new emission rate of 4.755 pptcp NO<sub>x</sub> is reflected in the Louisville Metro Air Pollution Control Board Order signed and effective in the District May 3, 2004. A Board Order is a regulatory instrument adopted by an air pollution control board which specifies air pollution control limits or requirements for a specific source or company. Approval of the SIP revision will make this order a portion of the federally enforceable Kentucky SIP.

2. *Enforceable*: The NO<sub>x</sub> emission rate change for Kosmos is enforceable by the District through the May 3, 2004, Board Order and, upon final approval into the Kentucky SIP, will be enforceable by the EPA, as of the effective date of the final rulemaking.

3. *Surplus*: The NO<sub>x</sub> emission reductions at Kosmos, as reflected in the emission rate reduction to 4.755 pptcp of NO<sub>x</sub>, are surplus for two reasons. The

emission rate reduction is below what is already required in the Jefferson County portion of the Kentucky SIP, and the reduction is not from a Federal Control Measure that would occur without any State or local action. The new emission rate of 4.755 NO<sub>x</sub> pptcp is a reduction below the current, SIP-approved NO<sub>x</sub> emission rate requirement for Kosmos' cement kiln of 6.6 pptcp based upon a 30-day rolling average. This existing 6.6 pptcp rate was established to meet reasonably available control technology (RACT) requirements after the facility had made some modifications. EPA approved the 6.6 pptcp rate as a source-specific SIP revision to the Kentucky SIP on October 23, 2001 (66 FR 53665). Also, the current emission rate of 6.6 NO<sub>x</sub> pptcp for Kosmos' cement kiln matches the standard for cement kilns set forth in the Kentucky SIP regulation 401 KAR 51:170, "NO<sub>x</sub> requirements for cement kilns," that was established to meet EPA's NO<sub>x</sub> SIP Call requirements and was approved by EPA on April 11, 2002 (67 FR 17624). EPA's NO<sub>x</sub> SIP Call is a Federal Control Measure which establishes NO<sub>x</sub> reduction requirements for cement kilns beginning in 2004 as well as requirements for other source categories. EPA assumed an average 30 percent NO<sub>x</sub> reduction from cement kilns in states' NO<sub>x</sub> budgets. Kosmos' existing 6.6 pptcp limit reduces NO<sub>x</sub> by greater than 30 percent from projected 2007 baseline emissions. (See EPA's rule published April 11, 2002 at 67 FR 17624.) Thus, the new 4.755 pptcp rate will provide reductions above and beyond those assumed to meet the NO<sub>x</sub> SIP Call.

4. *Quantifiable:* The emission rate change for Kosmos meets the criterion for quantifiable as the net emissions decrease from the emission rate limit change may be calculated as follows.

The change in the NO<sub>x</sub> emission rate: 6.6 pptcp (current SIP rate) - 4.755 (proposed rate) = 1.845 pptcp. The operating rate of the cement kiln is 4700 tons of clinker produced per day. The reduction of NO<sub>x</sub> by changing the emission rate of Kosmos' cement kiln is: (1.845 pptcp) × (4700 tons of clinker produced per day) = 8672 pounds per day of NO<sub>x</sub>.

5. *Contemporaneous:* While "contemporaneous" is not explicitly defined in the Clean Air Act, a reasonable interpretation is to enact the compensating, equivalent emissions reductions in this case well within one year (prior to or following) the cessation of the substituted control measure. The emission reductions at Kosmos are contemporaneous to the closing of the VET Program, which ceased operating as of November 1, 2003. Kosmos made

changes in its operating procedures at the cement kiln beginning in March of 2003, which resulted in reductions of NO<sub>x</sub>. This change occurred eight months prior to the closing of the VET Program. The May 26, 2004, submittal documents that the operating procedure changes at Kosmos resulted in 30-day rolling averages ranging from 2.1 to 4.1 NO<sub>x</sub> pptcp during the April to December 2003 timeframe. Enacting the equivalent reductions at Kosmos prior to (rather than after) the cessation of the VET Program provides additional assurance that there is no net emissions increase to the air for any period of time. The District issued a May 3, 2004, Board Order making permanent and enforceable the lowered NO<sub>x</sub> emission rate of 4.755 pptcp.

6. *Equivalent:* To demonstrate that Kosmos' NO<sub>x</sub> emission reductions, as reflected in the facility's emission rate change from 6.6 to 4.755 NO<sub>x</sub> pptcp, provide the equivalent benefit of the emission reductions achieved by the VET Program, the District first identified what emissions reductions were achieved by the VET Program for a particular year. The VET Program reduces emissions of VOC, NO<sub>x</sub>, and CO. VOC and NO<sub>x</sub> are contributors ("precursors") to the formation of ground-level ozone and, to a lesser extent, fine particulate matter. Thus, to demonstrate equivalent emissions reductions for the 8-hour ozone and PM<sub>2.5</sub> NAAQS, VOC and NO<sub>x</sub> need to be considered, whereas CO reductions are not relevant for this demonstration.

#### a. Selection of the Year 2005 To Estimate Emission Increases From Closure of the VET Program

The District selected the year 2005 to calculate what the VOC and NO<sub>x</sub> emission increases will be without the VET Program because the District had already developed VOC and NO<sub>x</sub> emission projections data for that year for the Kentucky portion of the Louisville 1-Hour Ozone Maintenance Plan submitted to EPA on June 27, 2003. Although the VET Program ended as of November 1, 2003, the 2003 ozone season had already ended by that time. Thus, emission increases from the cessation of the VET Program would begin to affect ozone formation for the 2004 ozone season. Also, as described in detail in the next subsection below, the District demonstrated that the year 2005 provides the greatest number of VET Program emissions that need to be replaced. Thus, EPA believes that analyzing emissions for 2005 is representative of the 2004 period when emissions from the loss of the VET Program would first impact the area.

In addition to the reasons listed above, the EPA believes the year 2005 provides a conservative estimate of the amount of VET Program emissions which need to be compensated for several reasons. One reason is due to how the MOBILE model operates. The MOBILE model estimates emissions from vehicles on an annual basis. The model uses either January or July to estimate vehicle emissions. July would be selected as the month to predict vehicle emissions since July falls during the ozone season. When the model is run for 2005, the timeframe evaluated is from July 2004 to June 2005. During this timeframe, no vehicles were tested by the VET Program and thus, higher vehicle emissions are predicted. Running the MOBILE model for 2004 would cover July 2003 to June 2004, which would capture the emission benefits from vehicles tested during the July 1 to October 31, 2004, timeframe, prior to cessation of the program. Thus, 2004 vehicle emission MOBILE6 estimates would be slightly lower due to credit from the four months of the VET Program's operation from July 1 to October 31, 2004. The higher vehicle emission estimates mean greater compensating, equivalent reductions are needed to replace the VET Program.

Another reason that 2005 is a conservative estimate of the VET Program emissions which need to be replaced is that the VET Program ceased operation as of November 1, 2003, after the 2003 ozone season, which runs from March to October. Thus, the Program continued to provide emission reduction benefits for the 2003 ozone season. While the year 2004 could be used to show the increase in emissions from the VET Program, 2005 shows a greater increase in emissions due to cessation of the VET Program and thus, demands more compensating emissions. A likely cause for this increase is that the year 2004 still reflects residual emission reduction benefits due to changes to vehicles made within the past several years, depending on the type of repair done and the length of time since the repair was completed. These residual benefits are expected to taper off over time.

Further support for the use of 2005 as a more conservative choice to estimate VET Program reductions is that the vehicle miles traveled (VMT) in 2005 will be slightly higher than in 2004, which yields greater vehicle emissions when input into the MOBILE model without the VET Program in operation than if the emissions were calculated using 2004 VMT data. The MOBILE model is used to calculate the emissions from onroad mobile sources, e.g., cars

and trucks. Higher vehicle emissions predicted from the MOBILE model require greater compensating, equivalent emission reductions to replace the VET Program.

b. Methodology for Substituting NO<sub>x</sub> for VOC To Determine All “NO<sub>x</sub>-Equivalent” Needed To Replace the VET Program

Due to closure of the VET Program, mobile source emissions in the year 2005 are predicted to increase by 1.89 tpsd of VOC and 1.68 tpsd of NO<sub>x</sub>. To determine the number of VOC and NO<sub>x</sub> emissions needing to be replaced, the District converted all the VOC into NO<sub>x</sub> using a ratio developed in accordance with the August 5, 1994, EPA memorandum, “Clarification of Policy for Nitrogen Oxides (NO<sub>x</sub>) Substitution,” from John Seitz, Director, Office of Air Quality Planning and Standards. This memorandum pertains to EPA’s “NO<sub>x</sub> Substitution Guidance”

(December 1993). The guidance acknowledges that controlling only VOCs may not be the most effective approach in all areas for attaining the ozone standard and allows for substitution of NO<sub>x</sub> for VOC emission reductions, contingent upon approval by EPA. The 1994 memorandum further clarifies that NO<sub>x</sub> for VOC substitution is a viable approach prior to completing modeling to support an area’s attainment demonstration.

To determine the amount of NO<sub>x</sub> that will provide equivalent ozone reduction benefits as VOC, EPA’s NO<sub>x</sub> Substitution Guidance (December 1993) allows, on a percentage basis, substitution of NO<sub>x</sub> for VOC, that is a 1% reduction in VOC requires at least a 1% reduction of NO<sub>x</sub>. In the May 26, 2004, supplement, the District calculated NO<sub>x</sub>/VOC ratios for 2005, 2008, and 2012, because the District had emission inventory projections for these years. In contrast, the 2004 emission

levels used for the NO<sub>x</sub>/VOC ratio were developed by interpolating between the 2002 and 2005 emission inventory projections after subtraction of 2004 NO<sub>x</sub> reductions due to NO<sub>x</sub> SIP call requirements. To calculate the NO<sub>x</sub>/VOC ratio for a given year, the total NO<sub>x</sub> emissions are divided by the total VOC emissions from all source categories in Jefferson County for that year. For example, in 2004, the total emissions from Jefferson County sources are estimated at 95.62 tpsd VOC and 134.36 tpsd NO<sub>x</sub>. The District calculated that, on a percentage basis, the projected ratio of NO<sub>x</sub> to VOC emissions from all source categories in Jefferson County for 2004 is 1.41 using predicted 2004 total emissions (*i.e.*, 134.36 tpsd NO<sub>x</sub> divided by 95.62 tpsd VOC). This ratio means that reducing 1.41 tpsd of NO<sub>x</sub> is equivalent, in terms of ozone formation, to reducing 1.00 tpsd of VOC. Table 5 lists the ratios that the District calculated and provided to EPA.

TABLE 5.—NO<sub>x</sub>/VOC RATIOS

Emissions from all source categories in Jefferson County (tpsd)	2002	2004	2005	2008	2012
VOC .....	96.97	95.62	92.92	87.46	81.81
NO <sub>x</sub> .....	195.33	134.36	129.86	115.21	97.81
NO <sub>x</sub> /VOC .....	2.01	1.41	1.40	1.32	1.20

The District chose the 2004 NO<sub>x</sub>/VOC ratio to convert into NO<sub>x</sub> the projected 2005 VOC emission increases from closure of the VET Program because this provides the largest amount of emissions to substitute for the VET Program as compared to using NO<sub>x</sub>/VOC ratios for 2005, 2008, or 2012, with the respective emission projections for those years. Please refer to Table 6 below for a comparison of how the NO<sub>x</sub>/VOC ratios for years 2004, 2005, 2008, and 2012 as applied to these same years (with the exception of 2004) affect the amount of resulting NO<sub>x</sub>-equivalent to be replaced by converting all VOC reductions from the VET Program to NO<sub>x</sub>.

As shown in Table 6 below, to calculate the amount of emission reductions as NO<sub>x</sub> needed to substitute for the VET Program, the District multiplied the 2004 NO<sub>x</sub>/VOC ratio of

1.41 by the 2005 VOC emissions predicted to increase from closure of the VET Program, *i.e.*, 1.89 tpsd VOC, which totals 2.66 tpsd NO<sub>x</sub>. The 2.66 tpsd of NO<sub>x</sub> equivalent for VOC in 2005 is then added to the expected increase in 2005 of NO<sub>x</sub> emissions due to closure of the VET Program, *i.e.*, 1.68 tpsd of NO<sub>x</sub> in 2005, yielding the equivalent of 4.34 tpsd of NO<sub>x</sub>, or 8,671 pounds per summer day (ppsd), which needs to be compensated by an all-NO<sub>x</sub> control strategy substitution. As described earlier for the Quantifiable criterion, Kosmos’ NO<sub>x</sub> reductions remove 8,672 ppsd of NO<sub>x</sub> from the air. Therefore, based on this conservative equivalency analysis, the proposed NO<sub>x</sub> reductions from Kosmos are equivalent, in terms of reduced ozone formation benefits, to the VOC and NO<sub>x</sub> reductions from the VET Program.

EPA believes that substituting NO<sub>x</sub> reductions from Kosmos for both VOC and NO<sub>x</sub> reductions from the VET Program continues to provide equivalent, if not better, air quality protection for Jefferson County due to significant contributions of VOCs from biogenic sources. Since both VOC and NO<sub>x</sub> are needed under certain conditions to create ground-level ozone, and VOCs are abundant in areas with many trees and other vegetation such as in Kentucky, further reductions of NO<sub>x</sub> limit the ability for ozone to form in this area. In addition, VOC and NO<sub>x</sub>, the relevant pollutants controlled by the VET Program, are contributing precursors to the formation of PM<sub>2.5</sub> and thus, EPA concludes that these equivalent reductions also demonstrate non-interference with the PM<sub>2.5</sub> NAAQS.

TABLE 6.—TOTAL NO<sub>x</sub>-EQUIVALENT INCREASE FROM VET PROGRAM CLOSURE

	2005w/2004 NO <sub>x</sub> /VOC ratio	2005w/2005 NO <sub>x</sub> /VOC ratio	2008w/2008 NO <sub>x</sub> /VOC ratio	2012w/2012 NO <sub>x</sub> /VOC ratio
VOC increase (tpsd) .....	1.89	1.89	1.80	1.65
VOC increase (ppsd) .....	3,780	3,780	3,600	3,300
VOC as NO <sub>x</sub> (tpsd) .....	2.66	2.64	2.37	1.97
VOC as NO <sub>x</sub> (ppsd) .....	5,311	5,283	4,742	3,945
NO <sub>x</sub> increase (tpsd) .....	1.68	1.68	1.87	2.13
NO <sub>x</sub> increase (ppsd) .....	3,360	3,360	3,740	4,260

TABLE 6.—TOTAL NO<sub>x</sub>-EQUIVALENT INCREASE FROM VET PROGRAM CLOSURE—Continued

%	2005w/2004 NO <sub>x</sub> /VOC ratio	2005w/2005 NO <sub>x</sub> /VOC ratio	2008w/2008 NO <sub>x</sub> /VOC ratio	2012w/2012 NO <sub>x</sub> /VOC ratio
Total increase NO <sub>x</sub> + VOC as NO <sub>x</sub> (tpsd) .....	4.34	4.32	4.24	4.10
Total increase NO <sub>x</sub> + VOC as NO <sub>x</sub> (ppsd) .....	8,671	8,643	8,482	8,205

**V. What Is EPA’s Proposed Action?**

EPA is proposing to move Regulation 8.01, “Mobile Source Emissions Control Requirements,” Regulation 8.02, “Vehicle Emissions Testing Procedure,” and Regulation 8.03, “Commuter Vehicle Testing Requirements,” from the active control measure portion of the Jefferson County portion of the Kentucky SIP. These regulations will be moved to the contingency measures section of the Kentucky portion of the Louisville 1-Hour Ozone Maintenance Plan. EPA is also proposing to approve a source-specific SIP revision amending the NO<sub>x</sub> emission rate for Kosmos’ cement kiln as adopted into the May 3, 2004, Board Order with the Kosmos Cement Company.

**VI. 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.*).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 21, 2004.

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

*Regional Administrator, Region 4.*

[FR Doc. 04–28702 Filed 12–30–04; 8:45 am]

**BILLING CODE 6560–50–P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

[CG Docket No. 02–278; DA 04–3835]

**Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991**

**AGENCY:** Federal Communications Commission.

**ACTION:** Petition for declaratory ruling; comments requested.

**SUMMARY:** This document seeks comment on a *Petition for Declaratory Ruling* filed by the Consumer Bankers Association (CBA), asking the Commission to preempt certain sections of the Indiana Revised Statutes and Indiana Administrative Code as it relates to interstate telephone calls.

**DATES:** Comments are due on or before February 2, 2005, and reply comments are due on or before February 17, 2005.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See

**SUPPLEMENTARY INFORMATION** for further filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Kelli Farmer, Consumer Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–2512 (voice), *Kelli.Farmer@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s document, CG Docket No. 02–278, DA 04–3835, released December 7, 2004. On July 3, 2003, the Commission released a *Report and Order (2003 TCPA Order)*, 68 FR 44144, July 25, 2003. In the 2003 TCPA Order, the Commission stated its belief that any state regulation of interstate telemarketing calls that differed from our rules under section 227 almost certainly would conflict with and frustrate the federal scheme and would be preempted. The Commission will consider any alleged conflicts between state and federal