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**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this 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.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this 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 (32)(e), of the Instruction, from further environmental documentation. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

■ For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

■ 1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.465, paragraph (c) is revised to read as follows:

**§ 117.465 Bayou Lafourche.**

\* \* \* \* \*

(c) The draw of the State Route LA 654 bridge, mile 53.2 at Clotilda, shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

\* \* \* \* \*

Dated: September 3, 2004.

**R.F. Duncan,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 04–20863 Filed 9–15–04; 8:45 am]

**BILLING CODE 4910–15–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R04–OAR–2004–KY–0001–200423; FRL–7813–9]

**Approval and Promulgation of Implementation Plans Kentucky: 1-Hour Ozone Maintenance Plan Update for Lexington Area**

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

**ACTION:** Final rule.

**SUMMARY:** Today’s action consists of three distinct but related final rulemakings briefly characterized here and further discussed in the supplementary information section of this rule. First, EPA is finalizing approval of the Lexington portion of a revision to the state implementation plan (SIP) of the Commonwealth of Kentucky submitted on February 19, 2004 in draft form, and in final form on August 24, 2004. The 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, and also provides revised 2004 motor vehicle emission budgets (MVEBs) and establishes 2015 MVEBs. The Lexington Maintenance Area is composed of Fayette County, Kentucky and Scott County, Kentucky. Secondly, through this action, EPA is providing notification of its determination that the Lexington portion of the Commonwealth’s SIP revision satisfies the requirements of the Clean Air Act (CAA) for the 10-year update to the 1-hour ozone maintenance plan for the Lexington Maintenance Area. Thirdly, through this action, EPA is providing information on the status of its transportation conformity adequacy determination for the new MVEBs for the year 2015 that are contained in the 10-year update to the 1-hour ozone maintenance plan for the Lexington Maintenance Area.

**DATES:** This rule will be effective October 18, 2004.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) ID No. R04–OAR–2004–KY–0001. All documents in the docket are listed in the RME index at <http://docket.epa.gov/rmepub/>, once in the system, select “quick search,” then key in the appropriate RME Docket identification number. 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 contact 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:**

- I. Today's Action
- II. Background
- III. Analysis of the Submittal
- IV. Final Action
- V. Statutory and Executive Order Reviews

**I. Today's Action**

In this final rulemaking, EPA is approving revisions to the Lexington portion of the Commonwealth of Kentucky's SIP revision submitted on August 24, 2004. EPA is approving the Lexington portion of Kentucky's SIP revision because it satisfies the requirements of the CAA for the 10-year update to the 1-hour ozone maintenance plan for the Lexington Maintenance Area. In a previous action on April 23, 2004 (69 FR 21983), EPA proposed approval of these revisions to the Lexington 1-Hour Ozone Maintenance Plan contingent upon Kentucky addressing EPA's clarifying comments in the final SIP submittal. The public comment period closed on May 24, 2004. No adverse comments were received in response to the proposed rule. Additionally, Kentucky has adequately addressed EPA's requested clarifications. Upon final approval of

the 10-year update to the Lexington 1-Hour Ozone Maintenance Plan, the revised 2004 MVEBs and the newly established 2015 MVEBs must be used to determine transportation conformity. Also in this final action, EPA is correcting an error in the April 23, 2004, proposed rule on page 69 FR 21985. In Table 1, the safety margin value for the year 2012 is corrected to read, "4.49" rather than "4.94."

**II. Background**

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. These five 1-hour ozone maintenance plan updates addressed the 1-hour ozone maintenance areas for Lexington, Edmonson, Owensboro, Paducah, and the Kentucky portion of the Huntington-Ashland area. Specific to the Lexington maintenance area, the proposed revision provides an update to the Lexington 1-Hour Ozone Maintenance Plan for the next 10 years, *i.e.*, 2005 through 2015. This 10-year update for the Lexington Maintenance Area includes updated MVEBs for the year 2004 and establishes new MVEBs for the year 2015. The Commonwealth held a public hearing on these draft maintenance plan revisions on March 31, 2004. On August 24, 2004, the Commonwealth submitted to EPA a SIP revision providing the final 10-year updates for the 1-hour ozone maintenance plans of the Lexington, Edmonson, and Kentucky portion of the Huntington-Ashland Areas.

**III. Analysis of the Submittal**

The Commonwealth's August 24, 2004, final SIP revision includes a second 10-year maintenance plan for the Lexington maintenance area that indicates continued maintenance of the 1-hour ozone standard through 2015. In this submittal, Kentucky opted to use 1990 as the comparison year to demonstrate continued maintenance. While use of the 1990 emission inventory appears to demonstrate continued maintenance for the 1-hour ozone standard with regard to the volatile organic compound (VOC) precursor inventory, the use of the 1990 emission inventory does not appear to demonstrate continued maintenance for the 1-hour ozone standard with regard to the nitrogen oxide (NO<sub>x</sub>) precursor inventory because the total NO<sub>x</sub> emissions levels in 2000, 2004, and 2005 are higher than those in 1990. However, the revision includes new ozone precursor emission inventory for

2000 for Fayette and Scott counties which reflects updated emission controls applicable for the area.

In the September 4, 1992, EPA guidance document, entitled, "Procedures for Processing Requests to Redesignate Areas to Attainment," EPA encourages the use of updated emission inventories to verify continued attainment. As the Commonwealth mentions in its submittal, the 2000 emission inventories are updated, and are being provided as a part of the August 24, 2004, final SIP revision. This area was attainment for the 1-hour ozone standard in 2000, so EPA believes that these emission inventories also indicate attainment for the area, and can be used for comparison purposes for demonstrating continued maintenance in the projected years of 2004, 2005, 2009, 2012, and 2015. The level of the projected emissions for all the projected years for both the NO<sub>x</sub> and VOC precursors is below the level of emissions for these precursors in 2000. Therefore, EPA believes that this is a sufficient demonstration of continued maintenance for the 1-hour ozone standard for the Lexington area. Furthermore, this area is currently attainment for the more stringent 8-hour ozone standard. This rationale is consistent with the September 4, 1992, EPA Guidance memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment."

The Commonwealth's August 24, 2004, final SIP revision also updates the MVEBs for the Lexington maintenance area for 2004, and establishes new MVEBs for 2015. Because EPA did not provide a separate notice regarding the adequacy of the 2015 MVEBs, EPA is taking the opportunity through this rulemaking to announce that it has determined that the 2015 MVEBs are adequate for use to determine transportation conformity. For more information on Lexington's Maintenance Plan revisions and EPA's detailed analysis of these revisions, please see the proposed rule published on April 23, 2004, at 69 FR 21983.

As part of this final approval, EPA is approving both the revisions to the 2004 MVEBs and the newly-established 2015 MVEBs for the Lexington Maintenance Area. Upon EPA approval of the revised 2004 and new 2015 MVEBs in this final rulemaking, the Lexington maintenance area must use the revised MVEBs for future transportation conformity determinations effective the date of publication of EPA's final approval of the MVEBs in the **Federal Register**.

#### IV. Final Action

EPA is approving Kentucky's August 24, 2004, SIP revision pertaining to the Lexington maintenance area's 10-year update for its 1-hour ozone maintenance plan, and providing notice that it has determined the 2015 VOC and NO<sub>x</sub> MVEBs to be adequate under the requirements of 40 CFR 93.118(e)(4). Additionally, through this action, EPA is approving the revised 2004 MVEBs and the newly-established 2015 MVEBs for the Lexington area. The revised 2004 MVEBs are 18.14 tons per day (tpd) for VOC and 27.36 tpd for NO<sub>x</sub>; the 2015 MVEBs are 10.59 tpd for VOC and 13.27 tpd for NO<sub>x</sub>. EPA is approving the aforementioned changes to Kentucky's SIP because they are consistent with Agency policy and guidance and meet all of the requirements of section 110 of the Clean Air Act. Also in this final action, EPA is correcting an error in the April 23, 2004, proposed rule on page 69 FR 21985. In Table 1, the safety margin value for the year 2012 is corrected to read, "4.49" rather than "4.94."

#### V. Statutory and Executive Order Reviews

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. 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 action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 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 approves 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 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 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

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

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

Dated: September 8, 2004.

A. Stanley Meiburg,  
Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

#### Subpart S—Kentucky

■ 2. Section 52.920(e), is amended by revising the entry for "Lexington Maintenance Plan" to read as follows:

#### § 52.920 Identification of plan.

(e) \* \* \*

EPA APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
* Lexington Maintenance Plan .....	* Fayette County, Scott County.	* 08/24/04	* 09/16/04, [Insert Federal Register citation].	* 
* 	* 	* 	* 	* 

[FR Doc. 04-20893 Filed 9-15-04; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[RME Docket Number R08-OAR-2004-CO-0001; FRL-7813-3]

**Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Denver Revised Carbon Monoxide Maintenance Plan**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Colorado. On October 15, 2003, the Governor of Colorado submitted a revised maintenance plan for the Denver-Boulder metropolitan (hereafter, Denver) carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan also contained a revised transportation conformity budget for the year 2013. In this action, EPA is approving the Denver CO revised maintenance plan and revised transportation conformity budget. This action is being taken under section 110 of the Clean Air Act.

**DATES:** This rule is effective on November 15, 2004 without further notice, unless EPA receives adverse comment by October 18, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by RME Docket Number R08-OAR-2004-CO-0001, by one of the following methods:

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

- *Agency Web site:* <http://docket.epa.gov/rmepub/index.jsp>. Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- *E-mail:* [long.richard@epa.gov](mailto:long.richard@epa.gov) and [russ.tim@epa.gov](mailto:russ.tim@epa.gov).
- *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- *Mail:* Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466.

- *Hand Delivery:* Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to RME Docket Number R08-OAR-2004-CO-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available at <http://docket.epa.gov/rmepub/index.jsp>, 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 EDOCKET, [regulations.gov](http://regulations.gov), or e-mail. EPA's Regional Materials in EDOCKET and [federal.regulations.gov](http://federal.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 EDOCKET 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. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the Regional Materials in EDOCKET index at <http://docket.epa.gov/rmepub/index.jsp>. 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 publically available only in hard copy form. Publicly available docket materials are available either electronically in Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Tim Russ, Air and Radiation Program, Environmental Protection Agency