

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.*).

*B. Submission to Congress and the Comptroller General*

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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

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 19, 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 to approve Maryland's December 1, 2003 SIP revision pertaining to changes to Maryland's regulations for permitting of major sources of VOC and NO<sub>x</sub> emissions and for NO<sub>x</sub> RACT regulations 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 3, 2004.

**Donald S. Welsh,**  
*Regional Administrator, Region III.*

■ 40 CFR part 52 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 V—Maryland**

■ 2. Section 52.1070 is amended by adding paragraph (c)(191) to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(191) Revision to the Maryland Regulations pertaining to changes to control of fuel-burning equipment, stationary internal combustion engines and certain fuel-burning installations and to changes to requirements for major new sources and modifications submitted on December 1, 2003 by the Maryland Department of the Environment:

- (i) Incorporation by reference.
  - (A) Letter of December 1, 2003 from the Maryland Department of the Environment transmitting changes to control of fuel-burning equipment, stationary internal combustion engines and certain fuel-burning installations

and to changes to requirements for major new sources and modifications in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR).

(B) Revisions to COMAR 26.11.09.08A(1), pertaining to control of NO<sub>x</sub> emissions for major stationary sources adopted by the Secretary of the Environment on October 21, 2003, and effective on November 24, 2003.

- (1) Revision to COMAR 26.11.09.08A(1)(a).
- (2) Deletion of COMAR 26.11.09.08A(1)(b).
- (3) Renumbering of COMAR 26.11.09.08A(1)(c) to COMAR 26.11.09.08A(1)(b).

(C) Revisions to COMAR 26.11.17.01B(13) pertaining to requirements for major new sources and modifications adopted by the Secretary of the Environment on October 21, 2003, and effective on November 24, 2003.

- (1) Revisions to COMAR 26.11.17.01B(13)(a)(i) and (13)(a)(ii).
- (2) Deletion of COMAR 26.11.17.01B(13)(a)(iii).
- (3) Renumbering of COMAR 26.11.17.01B(13)(a)(iv) to 01B(13)(a)(iii), and 26.11.17.01B(13)(a)(v) to 01B(13)(a)(iv).

(D) Revisions to COMAR 26.11.17.03B pertaining to requirements for major new sources and modifications adopted by the Secretary of the Environment on October 21, 2003, and effective on November 24, 2003.

- (1) Revision to COMAR 26.11.17.03B(3)(a).
- (2) Deletion of COMAR 26.11.17.03B(3)(b).
- (3) Renumbering of COMAR 26.11.17.03B(3)(c) to 03B(3)(b), and 03B(3)(d) to 03B(3)(c).
- (ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(191)(i) of this section.

[FR Doc. 04-21063 Filed 9-17-04; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[KY 146, 148—200419; IN 121-4; FRL-7812-4]

**Approval and Promulgation of Implementation Plans; Kentucky and Indiana: Approval of Revisions to 1-Hour Ozone Maintenance Plan for Louisville Area**

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is finalizing approval of the June 27, 2003, and June 26, 2003, revisions to the State implementation plans (SIPs) of the Commonwealth of Kentucky and the State of Indiana to revise the 2012 motor vehicle emission budgets (MVEBs) using MOBILE6 for the Louisville 1-hour ozone maintenance area. The Louisville maintenance area includes Jefferson County, Kentucky and portions of Bullitt and Oldham Counties in Kentucky; and Clark and Floyd counties in Indiana.

**DATES:** This rule will be effective October 20, 2004.

**ADDRESSES:** Copies of Kentucky's submittal are available at the following address for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

Copies of Indiana's submittal are available at the following address for inspection during normal business hours: Environmental Protection Agency Region 5, Air Programs Branch, Air and Radiation Division, 77 W. Jackson Blvd., Chicago, Illinois 60604-3590.

The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:**

*Kentucky Submittal*—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).

*Indiana Submittal*—Patricia Morris, Air Programs Branch, U.S. Environmental Protection Agency Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Phone: (312) 353-8656. E-mail: [morris.patricia@epa.gov](mailto:morris.patricia@epa.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Today's Action
- II. Background
- III. Clarification
- IV. Final Action
- V. Statutory and Executive Order Reviews

**I. Today's Action**

In this final rulemaking, EPA is approving revisions to the Kentucky and Indiana SIPs submitted by the Commonwealth of Kentucky, through the Kentucky Department of Air Quality (KDAQ), on June 27, 2003, and submitted by the State of Indiana, through the Indiana Department of

Environmental Management (IDEM) on June 26, 2003. KDAQ made this submittal on behalf of the Louisville Metro Air Pollution Control District ("District"). The States' revisions update the 2012 MVEBs and projected mobile source emissions using MOBILE6 for the Kentucky and Indiana portions of the Louisville 1-hour ozone maintenance area.

In this action, EPA is approving Kentucky's and Indiana's MVEBs. In two rules published August 7, 2003 (68 FR 47059 and 68 FR 47060), EPA found these MVEBs adequate for transportation conformity purposes. The "Louisville transportation partners" are currently using these MVEBs to determine conformity. The Louisville transportation partners include the Atlanta and Chicago regional offices of EPA; the Kentucky and Indiana offices of the Federal Highway Administration; the Atlanta and Indianapolis offices of the Federal Transit Administration; the Kentucky Transportation Cabinet; the Indiana Department of Transportation; the Louisville Metro Air Pollution Control District; the Kentucky Department of Air Quality; the Indiana Department of Air Quality; and, the Kentuckiana Planning Development Agency.

**II. Background**

The primary purpose of the SIP revisions that are the subject of this action is to meet a commitment the District made in association with the ozone redesignation request and maintenance plans for the Louisville 1-hour ozone maintenance area that EPA approved on October 23, 2001 (66 FR 53665). As part of the ozone maintenance demonstration, the District committed to update the 2012 MVEBs associated with the maintenance demonstration for the Kentucky and Indiana portions of this area within two years of the release of the EPA MOBILE6 emission factor model. Briefly, a MVEB, in the context of a maintenance plan, is the projected emissions of mobile sources that support a demonstration that the area will continue to maintain the air quality standard for ten years into the future.

In the District's maintenance demonstration, EPA initially allowed the area to use interim emission projections to claim credit for emission reductions associated with EPA's Tier 2/ Low Sulfur fuel program through a MOBILE5-based MVEB, on the condition that the area make a commitment to revise the MOBILE5-based MVEB within two years of the release of the new MOBILE6 emissions model. EPA did this because of

uncertainties associated with the ability of MOBILE5 to quantify the benefits of the Tier 2/Low Sulfur fuel program. EPA officially released MOBILE6 for use on January 29, 2002, and the Kentucky and Indiana SIP revisions were developed to meet the original commitment noted above.

On January 5, 2004, EPA published a proposed rule (69 FR 302) to simultaneously approve the June 27, 2003, and June 26, 2003, revisions to the Kentucky and Indiana SIPs which include revised 2012 MVEBs using MOBILE6 for both the Kentucky and Indiana portions of the Louisville 1-hour ozone maintenance area. A detailed description of these revisions and EPA's rationale for approving them is provided in the January 5, 2004, proposal and will not be restated here. The public comment period ended February 4, 2004. No adverse comments were received on EPA's proposal. EPA did receive, however, a request to clarify a particular aspect of the rule, as discussed further below. The revised 2012 MVEBs for the total Louisville area are 47.28 tons per day (tpd) for volatile organic compounds (VOC) and 111.13 tpd for nitrogen oxides (NO<sub>x</sub>).

**III. Clarification**

During the 30-day comment period for the proposed action, EPA received a request to clarify whether EPA's proposed action on Indiana's and Kentucky's June 26, 2003, and June 27, 2003, SIP submittals removed the requirement for the Jefferson County inspection and maintenance program, known as the Vehicle Emissions Testing or "VET" Program, from the Kentucky SIP because no credit was taken for this program in the maintenance plan.

In developing the June 27, 2003, SIP revision, the District elected not to take credit for reductions from the VET Program in Jefferson County, Kentucky in Louisville's 1-Hour Ozone Maintenance Plan. (See proposed rule published January 5, 2004, column 1, at page number 69 FR 303.) 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. Nothing in the Clean Air Act would require the District to take credit for any program, even a mandatory one, that it does not need to demonstrate continued maintenance. In fact, Clean Air Act section 175A provides for transferring previously applicable programs in a SIP to the contingency measures portion of a maintenance plan; the exercise of this authority would require a revised SIP showing maintenance without the

mandatory measure. The relevant EPA policy concerning SIP revisions of this type is contained in a May 12, 2004, 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."

On September 22, 2003, Kentucky submitted a SIP revision to transfer the Jefferson County VET Program from a mandatory measure to a contingency measure in the SIP. This pending submittal is separate from and unrelated to the revised budgets in the Louisville 1-Hour Ozone Maintenance Plan, and will be addressed by EPA in the future in a separate action. EPA was not, and is not, in this rulemaking taking action on Kentucky's September 22, 2003, SIP revision to transfer the Jefferson County VET Program to a contingency measure in the SIP. Today's action only concerns approval of the revised MVEBs which do not contain emission reductions from the VET Program. Approval of the SIP revision to transfer the VET Program to the contingency portion of the SIP will require review of that SIP revision and determination that it complies with section 110(l) of the Act. That analysis has not yet been completed.

#### IV. Final Action

EPA is finalizing approval of the 2012 MVEBs for both the Kentucky and Indiana portions of the Louisville 1-hour ozone maintenance area. The revised 2012 MVEBs for the total Louisville area are 47.28 tpd for VOC and 111.13 tpd for NO<sub>x</sub>. EPA is approving the Kentucky and Indiana SIP revisions because they are consistent with section 110 of the Clean Air Act, as interpreted by Agency policy and guidance. Additionally, these SIP revisions meet the applicable requirements of the Transportation Conformity Rule.

#### 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 (Public Law 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 19, 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 2004.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

Dated: August 30, 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 P—Indiana

■ 2. Section 52.777 is amended by adding paragraph (z) to read as follows:

**§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).**

\* \* \* \* \*

(z) EPA is approving a revision to the Indiana SIP submitted by Indiana on June 26, 2003. The revision is for transportation conformity budgets for the Clark and Floyd portion of the Louisville area. The revised 2012 motor

vehicle emission budgets (MVEBs) for the total Louisville area are 47.28 tons per day (tpd) for volatile organic compounds (VOC) and 111.13 tpd for oxides of nitrogen.

**Subpart S—Kentucky**

■ 3. Section 52.920(e) is amended by removing the entry for “Louisville Ozone

Maintenance Plan” and adding a new entry in it’s place entitled, “Louisville 1–Hour Ozone 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 non-attainment area	State submittal date/effective date	EPA approval date	Explanations
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Louisville 1-Hour Ozone Maintenance Plan.	Jefferson County and portions of Bullitt and Oldham Counties.	06/27/03	9/20/04 [Insert page citation publication in <b>Federal Register</b> ].	
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

[FR Doc. 04–21062 Filed 9–17–04; 8:45 am]

BILLING CODE 6560–50–P