

amend this table without prior notice and comment.

**I. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. EPA’s compliance with these statutes and Executive Orders for the underlying rule is discussed in the August 23, 2004, **Federal Register** notice.

*Congressional Review Act*

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. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an

effective date of December 17, 2004. 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 action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 9**

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 4, 2004.

**Oscar Morales,**

*Director, Collection Strategies Division, Office of Information Collection.*

■ For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

**PART 9—[AMENDED]**

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1 the table is amended by adding the heading and entry below in numerical order to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

40 CFR citation	OMB Control No.
* * * * *	
<b>Concentrated Aquatic Animal Production Point Source Category</b>	
451.3 .....	2040–0258
451.11(d) .....	2040–0258
451.21(g) .....	2040–0258
* * * * *	

[FR Doc. 04–27663 Filed 12–16–04; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R04–OAR–2004–KY–0001–200425(a); FRL–7848–9]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** Today’s action consists of two distinct but related final rulemakings briefly characterized here and further discussed in the **SUPPLEMENTARY INFORMATION** section of this rule. First, EPA is approving revisions to the Edmonson County portion of the State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky, in draft form on February 19, 2004, and in final form on August 24, 2004. The August 24, 2004, SIP revision provides the 10-year update to the original 1-hour ozone maintenance plans for three 1-hour ozone maintenance areas, including the Edmonson County Maintenance Area, and also provides revised 2004 motor vehicle emission budgets (MVEBs) and establishes 2015 MVEBs. Through this action, EPA is providing notification of its determination that the Edmonson County portion of the Commonwealth’s SIP revision satisfies the requirement of the Clean Air Act (CAA) as amended in 1990 for the 10-year update for the 1-hour ozone maintenance plan for Edmonson County Maintenance Area. Secondly, 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 Edmonson County Area. In today’s action, EPA is only addressing the portion of the SIP revision for Edmonson County. EPA will take separate action to address the other portions of the SIP revision.

**DATES:** This direct final rule is effective February 15, 2005, without further notice, unless EPA receives adverse comment by January 18, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2004–

KY-0001, by one of the following methods:

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

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

3. E-mail: [delatorre.rosymar@epa.gov](mailto:delatorre.rosymar@epa.gov).

4. Fax: 404-562-9019.

5. Mail: "R04-OAR-2004-KY-0001," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

6. Hand Delivery or Courier: Deliver your comments to: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**Instructions:** Direct your comments to RME ID No. R04-OAR-2004-KY-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://regulations.gov), or e-mail. The EPA RME 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://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 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:** Rosymar De La Torre Colón, 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, (404) 562-8965, [delatorre.rosymar@epa.gov](mailto:delatorre.rosymar@epa.gov), or Lynorae Benjamin, Air Quality Modeling and Transportation 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, (404) 562-9040, [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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#### **I. General Information**

##### *A. How Can I Get Copies Of This Document and Other Related Information?*

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency, Commonwealth of Kentucky, Division of Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403.

#### **II. What Is the Background for This Action?**

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

EPA designated Edmonson County, Kentucky as marginal nonattainment for the 1-hour ozone NAAQS on November 6, 1991 (56 FR 56694), effective on January 6, 1992. EPA approved the redesignation of Edmonson County to attainment for the 1-hour ozone standard, on November 3, 1994 (60 FR 47092), effective on January 3, 1995. In this same rulemaking, EPA also approved the Edmonson County's plan for maintaining the 1-hour ozone NAAQS for the time period 1994 through 2004.

On February 19, 2004, Kentucky submitted to EPA a draft SIP revision for parallel processing to provide for the 10-year update to the original maintenance plans for five 1-hour ozone maintenance areas as required by section 175A(b) of the CAA. Specific to the Edmonson County Maintenance Area, the draft revision provided an update to the Edmonson County 1-Hour Ozone Maintenance plan for the next 10 years, *i.e.*, 2005 through 2015. This draft 10-year update for the Edmonson County

Maintenance Area included updated MVEBs for the year 2004 and established new MVEBs for the year 2015. While EPA did not have the opportunity to parallel process this draft submittal, EPA did begin the Adequacy Process for the newly-established 2015 MVEBs. The Adequacy comment period for the 2015 MVEBs began on February 24, 2004, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (at <http://www.epa.gov/otaq/transp/conform/adequacy.htm>). The Adequacy comment period for these MVEBs ended March 25, 2004. No requests for this submittal or adverse comments on this submittal were received during the Adequacy comment period. Please see the Adequacy Section of this rulemaking for further explanation on this process.

While EPA can initiate the Adequacy process with a draft submittal, EPA cannot conclude this process until a final submittal is received. On August 24, 2004, Kentucky submitted to EPA a final SIP revision for the 10-year update to the original maintenance plans for three 1-hour ozone maintenance areas as required by section 175A(b) of the CAA. This final submittal includes the updated MVEBs for the year 2004 and establishes new MVEBs for the year 2015.

**III. What Is EPA's Analysis of the Edmonson County Maintenance Area's Second 10-Year Plan?**

The Commonwealth's August 24, 2004, final SIP revision includes a

second 10-year maintenance plan for the Edmonson County Maintenance Area, and 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 is higher than those in 1990. However, the revision includes new ozone precursor emission inventory for 2000 for Edmonson County which reflect updated emission controls applicable for the area, and projected emissions for 2004, 2005, 2009, 2012, and 2015.

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 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 Edmonson County area. Furthermore, this area is currently in 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."

EPA is processing the Edmonson County portion of Kentucky's SIP revision and is approving the Edmonson County 10-year update for its 1-hour ozone maintenance plan, including approval of the updated 2004 MVEBs and the newly-established 2015 MVEBs, because EPA has determined that the Plan complies with the requirements of Section 175A of the CAA. The following two tables provide emissions data and projections calculated, using MOBILE6.2, for the ozone precursors, VOC and NO<sub>x</sub>. Italicized figures in Tables 1 and 2 highlight data comprising the 2004 and 2015 MVEBs, also presented in Table 3.

TABLE 1.—EDMONSON COUNTY 1-HOUR OZONE MAINTENANCE AREA VOC EMISSIONS (TONS PER DAY)  
[Year 1990, 2000 emission inventory and projected VOC emissions (2004–2015)]

County	1990	2000	2004	2005	2009	2012	2015
Point .....	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Area .....	0.74	0.89	0.93	0.94	0.98	1.02	1.05
Highway .....	1.57	0.73	0.60	0.55	0.45	0.38	0.33
Non-Hwy .....	0.45	0.27	0.26	0.25	0.23	0.23	0.23
Edmonson .....	2.76	1.89	1.79	1.74	1.66	1.63	1.61
Safety Margin .....	N/A	N/A	0.10	0.15	0.23	0.26	0.28

TABLE 2.—EDMONSON COUNTY 1-HOUR OZONE MAINTENANCE AREA NO<sub>x</sub> EMISSIONS (TONS PER DAY)  
[Year 1990, 2000 emission inventory and projected NO<sub>x</sub> emissions (2004–2015)]

County	1990	2000	2004	2005	2009	2012	2015
Point .....	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Area .....	0.04	0.06	0.06	0.06	0.06	0.07	0.07
Highway .....	1.08	1.09	0.95	0.91	0.72	0.56	0.43
Non-Hwy .....	0.37	0.52	0.48	0.48	0.43	0.40	0.38
Edmonson .....	1.49	1.67	1.49	1.45	1.21	1.03	0.88
Safety Margin .....	N/A	N/A	0.18	0.22	0.46	0.64	0.79

Under 40 CFR 93.101, the term *safety margin* is the difference between the attainment level (from all sources) and

the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the

level of emissions during one of the years in which the area met the air quality health standard.

The emissions from point, area, nonroad, and mobile sources in 2000 equal 1.89 tons per day (tpd) of VOC for Edmonson County. Projected VOC emissions out to the year 2015 equal 1.61 tpd of VOC. The available safety margin for VOC is calculated to be the difference between these amounts or, in this case, 0.28 tpd of VOC for 2015. By this same method, 0.79 tpd (*i.e.*, 1.67 tpd less 0.88 tpd) is the safety margin for NO<sub>x</sub> for 2015. The emissions are projected to maintain the area's air quality consistent with the NAAQS. The safety margin credit, or a portion thereof, can be allocated to the transportation sector. The total emission level must stay below the attainment level to be acceptable. The safety margin is the extra emissions that can be allocated as long as the total attainment level of emissions is maintained.

As mentioned previously, the Commonwealth's August 24, 2004, final SIP revision also updates the MVEBs for the Edmonson County 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. See section V of this rulemaking for more information on EPA's Adequacy Process and determination for this area.

#### IV. What Are the MVEBs for the Edmonson County Maintenance Area?

Maintenance plans and other control strategy SIPs create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (*e.g.*, be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. If a transportation

plan does not "conform," most projects that would expand the capacity of roadways cannot go forward.

Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

In this revision, Kentucky used MOBILE6.2 to update the Edmonson County MVEBs for 2004, in addition to establishing MVEBs for VOC and NO<sub>x</sub> for the year 2015. The MVEBs have been defined for 2004 and 2015 in the Commonwealth's submittal, and are presented in Table 3 below.

TABLE 3

	NO <sub>x</sub>	VOC
2004 .....	0.95	0.60
2015 .....	0.43	0.33

For the 2004 and 2015 MVEBs, the values for a given year are equal to the on-road mobile source projected level of emissions for that year (*i.e.*, none of the available safety margins for VOC and NO<sub>x</sub> were allocated to the MVEBs). The MVEBs are constrained in each of the budget years to assure that the total emissions (*i.e.*, all source categories) do not exceed the 2000 base year emissions. In no case are the projected total emissions from mobile sources for any year greater than the base year emissions totals for either VOC or NO<sub>x</sub>.

As part of this final approval, EPA is approving both the revisions to the 2004 MVEBs and the newly-established 2015 MVEBs for the Edmonson County Maintenance Area. Upon EPA approval of the revised 2004 and new 2015 MVEBs in this final rulemaking, the Edmonson maintenance area must use the revised and new MVEBs for future transportation conformity determinations, effective on the effective date of this direct final rulemaking.

#### V. What Is an Adequacy Determination and What Is the Status of EPA's Adequacy Determination for the Edmonson Maintenance Area's New MVEB for the Year 2015?

Until a MVEB in a SIP submittal is approved by EPA, it cannot be used for transportation conformity purposes unless EPA makes an affirmative finding that the MVEBs contained therein are "adequate." Once EPA affirmatively finds the submitted MVEBs adequate for transportation conformity purposes, those MVEBs can be used by State and Federal agencies in determining whether proposed transportation projects "conform" to the SIP even though EPA approval of the SIP revision

containing those MVEBs has not yet been finalized. EPA's substantive criteria for determining "adequacy" of MVEBs in submitted SIPs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining "adequacy" of MVEBs in submitted SIPs consists of three basic steps: public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs is set out in EPA's May 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This guidance is incorporated into EPA's June 30, 2003, proposed rulemaking entitled "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (68 FR 38974). Additionally, this guidance was finalized in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change" on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Edmonson County Maintenance Area's draft second 10-year maintenance plan submissions contained new proposed VOC and NO<sub>x</sub> MVEBs for the year 2015. The availability of the draft SIP submission with these 2015 MVEBs was announced for public comment on EPA's adequacy Web page on February 24, 2004, at: <http://www.epa.gov/otaq/transp/conform/cursips.htm>. The EPA public comment period on adequacy of the 2015 MVEBs for the Edmonson County Maintenance Area closed on March 25, 2004. EPA did not receive any adverse comments, and in this rulemaking, is making a determination that the adequacy criteria for the 2015 MVEB have been met. Additionally, EPA through this rulemaking is approving those MVEBs for use to determine transportation conformity.

#### VI. Final Action

EPA is approving Kentucky's August 24, 2004, SIP revision pertaining to the Edmonson County Maintenance Area's 10-year update for its 1-hour ozone maintenance plan, and is 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 Edmonson County area. The revised 2004 MVEBs are 0.60

tpd for VOC and 0.95 tpd for NO<sub>x</sub>; the 2015 MVEBs are 0.33 tpd for VOC and 0.43 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 the requirements of section 110 and section 175A of the Clean Air Act. As a result of today's SIP revision approval, the revised 2004 MVEBs and the newly established MVEB for 2015 must be used for future transportation conformity determinations effective on February 15, 2005. The MVEBs, based on the on-road mobile sources, are to be used by the local metropolitan planning organizations and transportation authorities to assure that transportation plans, programs, and projects are consistent with, and conform to, the long term maintenance of acceptable air quality in the Edmonson County area.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 15, 2005, without further notice unless the Agency receives adverse comments by January 18, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 15, 2005, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## VII. 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 February 15, 2005. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 29, 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 adding a new entry at the end of the table for "Edmonson Ozone 10 year

Maintenance Plan Update” 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
Edmonson Ozone 10 year Maintenance Plan Update.	Edmonson County .....	August 24, 2003 .....	December 17, 2004 [Insert Federal Register citation]	

[FR Doc. 04-27656 Filed 12-16-04; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R06-OAR-2004-TX-0002; FRL-7849-5]

**Approval and Promulgation of Implementation Plans; Texas; Memorandum of Agreement Between Texas Council on Environmental Quality and the North Central Texas Council of Governments Providing Emissions Offsets to Dallas Fort Worth International Airport**

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** On October 29, 2004 (69 FR 63066), EPA published a direct final rule approving incorporation of a Memorandum of Agreement between the Texas Commission on Environmental Quality and the North Central Texas Council of Governments into the Texas SIP. The direct final action was published without prior proposal because EPA anticipated no adverse comment. EPA stated in the direct final rule that if EPA received adverse comment by November 29, 2004, EPA would publish a timely withdrawal in the **Federal Register**. EPA subsequently received a timely adverse comment on the direct final rule. Therefore, EPA is withdrawing the direct final approval. EPA will address the comment in a subsequent final action based on the parallel proposal also published on October 29, 2004 (69 FR 63112). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published on October 29, 2004 (69 FR 63066), is withdrawn as of December 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Peggy Wade, telephone (214) 665-7247; e-mail address [wade.peggy@epa.gov](mailto:wade.peggy@epa.gov).

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

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 9, 2004.

**Lawrence E. Starfield,**  
*Acting Regional Administrator, Region 6.*

■ Accordingly, the revision to 40 CFR 52.2270 published in the **Federal Register** on October 29, 2004 (69 FR 63066), which was to become effective on December 28, 2004, is withdrawn.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 70**

[R07-OAR-2004-MO-0004; FRL-7850-3]

**Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Missouri State Implementation Plan (SIP) and Operating Permits Program. EPA is approving a revision to Missouri rule “Submission of Emission Data, Emission Fees, and Process Information.” This revision will ensure consistency between the state and the Federally-approved rules and ensure Federal enforceability of the state’s air program rule revision.

**DATES:** This direct final rule will be effective February 15, 2005, without further notice, unless EPA receives adverse comment by January 18, 2005. 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 Regional Material in EDocket (RME) ID Number R07-OAR-2004-MO-0004, 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: [daniels.leland@epa.gov](mailto:daniels.leland@epa.gov).

4. Mail: Leland Daniels, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. Hand Delivery or Courier: Deliver your comments to Leland Daniels at the above-listed address.

**Instructions:** Direct your comments to RME ID No. R07-OAR-2004-MO-0004. 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