

Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. 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)).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA's final action will relieve requirements otherwise imposed under the Clean Air Act and, hence does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

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

Environmental protection, Air pollution control, Ozone.

Dated: August 17, 1995.

**Valdas V. Adamkus,**  
*Regional Administrator.*

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 7401-7671q.

**Subpart YY—Wisconsin**

2. Section 52.2585 is amended by adding paragraph (h) to read as follows:

**§ 52.2585 Control strategy: Ozone.**

\* \* \* \* \*

(h) Approval—On November 15, 1993, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to a plan for forecasting VMT in the severe ozone nonattainment area of southeastern Wisconsin and demonstrated that Transportation Control Measures would not be necessary to meet the 15 percent Rate-of-Progress milestone.

[FR Doc. 95-22144 Filed 9-8-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Parts 52 and 81**

[KY-069-3-6904a; FRL-5277-2]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Commonwealth of Kentucky**

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

**ACTION:** Direct final rule.

**SUMMARY:** On November 13, 1992, the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet), submitted a maintenance plan and a request to redesignate the Lexington, Owensboro, Paducah, and Edmonson County areas from nonattainment to attainment for ozone (O<sub>3</sub>). Under the Clean Air Act (CAA), designations can be changed if sufficient data are available to warrant such changes and the redesignation request satisfies the criteria set forth in the CAA. In this action, EPA is approving the redesignation to attainment of the Lexington area (Fayette and Scott counties) and the associated maintenance plan because it meets the maintenance plan and redesignation requirements. EPA has approved the requests to redesignate to attainment and maintenance plans for the Owensboro, Edmonson County and Paducah areas. In this action, EPA is also approving the 1990 base year inventory for the Lexington marginal O<sub>3</sub> nonattainment area.

**DATES:** This final rule is effective November 13, 1995 unless adverse or critical comments are received by October 11, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for

public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460  
Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE., Atlanta, GA 30365

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, KY 40601.

**FOR FURTHER INFORMATION CONTACT:** Scott Southwick of the EPA Region 4 Air Programs Branch at (404) 347-3555 extension 4207 and at the above address. Reference file KY-69-3-6904.

**SUPPLEMENTARY INFORMATION:** On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. (Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q). Under section 107(d)(1), in conjunction with the Governor of Kentucky, EPA designated the Lexington area as nonattainment because the area violated the O<sub>3</sub> standard during the period from 1987 through 1989 (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.318).

The Lexington marginal O<sub>3</sub> nonattainment area (nonattainment area) more recently has ambient monitoring data that show no violations of the O<sub>3</sub> National Ambient Air Quality Standards (NAAQS), during the period from 1989 through 1991. In addition, there have been no violations reported for the 1992, 1993, or 1994 O<sub>3</sub> seasons. Therefore, in an effort to comply with the amended CAA and to ensure continued attainment of the NAAQS, on November 13, 1992, the Cabinet submitted for parallel processing an O<sub>3</sub> maintenance SIP for the nonattainment area and requested redesignation of the nonattainment area to attainment with respect to the O<sub>3</sub> NAAQS and EPA found the request complete. On November 24, 1992, the Cabinet submitted the Marginal Ozone Nonattainment Areas Projection Inventory 1990-2004 as an amendment to the SIP. On January 15, 1993, July 16, 1993, February 28, 1994, August 29, 1994, and June 14, 1995, the Cabinet submitted revisions addressing public and/or EPA comments on the

redesignation request, maintenance plan, and projection inventory.

On May 7, 1993, Region 4 determined that the information received from the Cabinet constituted a complete redesignation request under the general completeness criteria of 40 CFR 51, appendix V, sections 2.1 and 2.2. However, for purposes of determining what requirements are applicable for redesignation purposes, EPA believes it is necessary to identify when the Cabinet first submitted a redesignation request that meets the completeness criteria. EPA noted in a previous policy memorandum that parallel processing requests for submittals under the amended CAA, including redesignation submittals, would not be determined complete. See "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines," Memorandum from John Calcagni to Air Programs Division Directors, Regions I-X, dated October 28, 1992 (Memorandum). The rationale for this conclusion was that the parallel processing exception to the completeness criteria (40 CFR Part 51, appendix V, section 2.3) was not intended to extend statutory due dates for mandatory submittals. (See Memorandum at 3-4). However, since requests for redesignation are not mandatory submittals under the CAA, EPA believed it appropriate to change its policy with respect to redesignation submittals to conform to the existing completeness criteria (58 FR 38108 (July 15, 1993)). Therefore, EPA believes, the parallel processing exception to the completeness criteria may be applied to redesignation request submittals, at least until such time as the EPA decides to revise that exception. The Cabinet submitted a redesignation request and a maintenance plan on November 13, 1992. When the maintenance plan became state effective on June 14, 1995, the Commonwealth of Kentucky no longer needed parallel processing for the redesignation request and maintenance plan.

The Kentucky redesignation request for the nonattainment areas meets the five requirements of section 107(d)(3)(E) for redesignation to attainment. The following is a brief description of how the Commonwealth of Kentucky has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

### **1. The Area Must Have Attained the O<sub>3</sub> NAAQS**

The Cabinet's request is based on an analysis of quality assured ambient air quality monitoring data which is relevant to the maintenance plan and to the redesignation request. Ambient air quality monitoring data for calendar year 1989 through calendar year 1991 show an expected exceedance rate of less than 1.0 per year of the O<sub>3</sub> NAAQS in the marginal nonattainment area. (See 40 CFR 50.9 and appendix H.) In addition, there were no violations reported for the 1992, 1993, and 1994 O<sub>3</sub> seasons and there have been no violations to date in 1995. Because the nonattainment area has complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the area has met the first statutory criterion of attainment of the O<sub>3</sub> NAAQS. The Commonwealth of Kentucky has committed to continue monitoring the nonattainment area in accordance with 40 CFR 58.

### **2. The Area Has Met All Applicable Requirements Under Section 110, and Part D of the Act**

On January 25, 1980, August 7, 1981, November 24, 1981, November 30, 1981, and March 30, 1983, EPA fully approved Kentucky's SIP as meeting the requirements of section 110(a)(2) and part D of the 1977 CAA (45 FR 6092, 46 FR 40188, 46 FR 57486, 46 FR 58080, and 48 FR 13168). The approved control strategy did not result in attainment of NAAQS for O<sub>3</sub>. Additionally, the amended CAA revised section 182(a)(2)(A), 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA reviewed the Kentucky SIP to ensure that it contains all measures due under the amended CAA prior to or at the time the Commonwealth of Kentucky submitted its redesignation request.

#### *A. Section 110 Requirements*

Although section 110 was amended by the CAA of 1990, the Kentucky SIP for the marginal nonattainment area meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements.

#### *B. Part D Requirements*

Before the nonattainment area may be redesignated to attainment, it must have

fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for O<sub>3</sub> nonattainment areas classified under table 1 of section 181(a). The Lexington nonattainment area was classified as marginal (See 56 FR 56694, codified at 40 CFR 81.318). The Commonwealth of Kentucky submitted their request for redesignation of the marginal nonattainment area prior to November 15, 1992. Therefore, in order to be redesignated to attainment, the Commonwealth of Kentucky must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176, but is not required to meet the applicable requirements of subpart 2 of part D, which became due on or after November 15, 1992.

#### *B1. Subpart 1 of Part D*

Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than three years after an area has been designated to nonattainment. EPA has not determined that these requirements were applicable to O<sub>3</sub> nonattainment areas on or before November 13, 1992, the date that the Commonwealth of Kentucky submitted a complete redesignation request for the marginal nonattainment area. Therefore, the Commonwealth of Kentucky was not required to meet these requirements for purposes of redesignation. The Lexington area currently has a fully approvable New Source Review (NSR) program which was last revised on June 23, 1994 (59 FR 32343). Upon redesignation of the area to attainment, the Prevention of Significant Deterioration (PSD) provisions contained in part C of title I are applicable. On January 25, 1978; September 1, 1989; November 6, 1989; November 13, 1989; November 28, 1989; February 7, 1990; and June 23, 1994, the EPA approved revisions to the Commonwealth of Kentucky's PSD program (43 FR 3360, 54 FR 36307, 54 FR 46613, 54 FR 47211, 54 FR 48887, 55 FR 4169 and 59 FR 32343).

Section 176(c) of the CAA requires states to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable state SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed,

funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by states must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the state revisions to be submitted by November 15, 1992, one year after the date for promulgation of final EPA conformity regulations which were due November 15, 1991. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed states that its conformity regulations would establish a submittal date [see 57 FR 13498, 13557 (April 16, 1992)].

The EPA promulgated final transportation conformity regulations on November 24, 1993, (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that states adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the Commonwealth of Kentucky is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Kentucky is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the Commonwealth requested redesignation of the Lexington area prior to the deadline for these submittals, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

On February 24, 1994, the Commonwealth of Kentucky revised their maintenance plan to commit to revise the SIP by November 25, 1994, to be consistent with the final Federal regulations on conformity. In addition, the Division for Air Quality and the Kentucky Transportation Cabinet are cooperating in adopting regulations consistent with the final conformity regulation.

B2. Subpart 2 of Part D

The CAA was amended on November 15, 1990, Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.

EPA was required to classify O<sub>3</sub> nonattainment areas according to the severity of their problem. On November 6, 1991 (56 FR 56694), the Lexington area was designated as marginal O<sub>3</sub> nonattainment. Because this area is marginal, the area must meet section 182(a) of the CAA. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 182. Below is a summary of how the area has meet the requirements of these sections.

(1) Emissions Inventory

The CAA required an inventory of all actual emissions from all sources as described in section 172(c)(3) by November 15, 1992. On November 13, 1992, the Cabinet submitted an emission inventory on the Lexington area. This emission inventory is being approved in this notice.

(2) Reasonably Available Control Technology (RACT)

The CAA also amended section 182(a)(2)(A), in which Congress statutorily adopted the requirement that O<sub>3</sub> nonattainment areas fix their deficient Reasonably Available Control Technology (RACT) rules for O<sub>3</sub>. Areas designated nonattainment before amendment of the CAA and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT Fix-ups requirement. The Lexington area was not designated nonattainment prior to 1990 and was classified as marginal O<sub>3</sub> nonattainment pursuant to the 1990 CAA. Therefore, this area is not subject to the RACT fix-up requirement. However, Kentucky chose to apply RACT on all major sources which commenced on or after the effective date of a particular RACT rule. Kentucky submitted VOC RACT SIP revisions through the Cabinet to EPA on February 12, 1992; October 20, 1992; February 17, 1993; and March 4, 1993. Action was taken December 12, 1993, to approve the SIP revision submitted on February 12, 1992. Action was taken June 23, 1994, to approve the SIP revisions submitted on October 20, 1992, February 17, 1993, and March 4, 1993.

(3) Emissions Statements

The CAA required that the SIP be revised by November 15, 1992, to require stationary sources of oxides of nitrogen (NO<sub>x</sub>) and VOCs to provide the State with a statement showing actual emissions each year. This request to redesignate was submitted prior to the November 15, 1992, emissions statement deadline. Therefore, the

emissions statement program is not a requirement for the Lexington area.

(4) New Source Review (NSR)

The CAA required all classified nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions of VOCs compounds will not result from any new or major source modifications and a general offset rule. A SIP revision incorporating these requirements was due November 15, 1992. This request to redesignate was submitted prior to the November 15, 1992, NSR deadline. Therefore, the NSR program is not a requirement for the Lexington area.

**3. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA**

Based on the approval of provisions under the pre-amended CAA and EPA's prior approval of SIP revisions under the amended CAA, EPA has determined that Kentucky has a fully approved O<sub>3</sub> SIP under section 110(k) for the marginal nonattainment areas, which also meets the applicable requirements of section 110 and part D as discussed above.

**4. The Air Quality Improvement Must Be Permanent and Enforceable**

Several control measures have come into place since the nonattainment area violated the O<sub>3</sub> NAAQS. Of these control measures, the reduction of fuel volatility from 11.4 psi to 8.6 psi, as measured by the Reid Vapor Pressure (RVP), and fleet turnover produced the most significant decreases in VOC emissions. The table below summarizes total emissions for VOCs. The difference between 1988 and 1990 are actual permanent and enforceable emission reductions which are responsible for the recent air quality improvement in the areas. The VOC emissions in the base year are not artificially low due to local economic downturn.

REDUCTIONS IN VOC EMISSIONS FROM 1988 TO 1990

MSA	VOCs (tpd)		
	1988	1990	1990-1988
Lexington .....	86.31	63.79	22.52

**5. The Area Must Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA**

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan

must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

In this notice, EPA is approving the Commonwealth of Kentucky's maintenance plan for the Lexington

marginal nonattainment area because EPA finds that the Commonwealth of Kentucky's submittal meets the requirements of section 175A.

*A. Emissions Inventory—Base Year Inventory*

On November 13, 1992, the Commonwealth of Kentucky submitted comprehensive inventories of VOC, NO<sub>x</sub>, and CO emissions for the Lexington marginal nonattainment area. The inventories included biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory is considered representative of attainment conditions because the O<sub>3</sub> NAAQS was not violated during 1990.

The Commonwealth of Kentucky submittal contains the detailed inventory data and summaries by county and source category. This comprehensive base year emissions inventory was submitted in the SIP Air Pollutant Inventory Management System (SAMS) format. Finally, this inventory was prepared in accordance with EPA guidance. A summary of the base year and projected maintenance year inventories for the Lexington area is included in this notice for VOCs and NO<sub>x</sub>. The CO and the biogenic VOC values are shown below and are a part of the 1990 base year emission inventory. This notice is approving the base year inventory.

CO EMISSION INVENTORY SUMMARY FOR 1990  
[Tons per day]

	Point	Area	Mobile	Non-road	Total
Lexington .....	0.0	3.52	265.19	57.40	326.11

BIOGENIC EMISSION INVENTORY SUMMARY FOR 1990  
[Tons per day]

	Biogenic
Lexington 1990 Emissions .....	24.1

*B. Demonstration of Maintenance—Projected Inventories*

Below, totals for VOC and NO<sub>x</sub> emissions were projected from the 1990 base year out to 2004. These projected inventories were prepared in accordance with EPA guidance. As indicated in the following tables, increases in VOC and NO<sub>x</sub> emissions are projected in the Lexington nonattainment area.

LEXINGTON VOC EMISSION INVENTORY SUMMARY  
[Tons per day]

	1990	1993	1996	1999	2002	2004
Point .....	12.39	12.63	17.77	17.21	16.85	16.68
Area .....	14.36	14.53	14.71	14.88	15.06	15.18
Nonroad .....	11.06	11.21	11.36	11.51	11.66	11.77
Mobile .....	25.98	24.86	24.38	24.69	25.13	26.03
Total .....	63.79	63.23	68.22	68.29	68.70	69.66

LEXINGTON NO<sub>x</sub> Emission Inventory Summary  
[Tons per day]

	1990	1993	1996	1999	2002	2004
Point .....	1.98	2.01	2.03	2.05	2.07	2.09
Area .....	0.34	0.34	0.35	0.35	0.36	0.36
Nonroad .....	8.16	8.27	8.39	8.50	8.62	8.70
Mobile .....	22.06	21.23	20.98	20.95	20.85	21.71
Total .....	32.54	31.85	31.75	31.85	31.90	32.86

VOC AND NO<sub>x</sub> PROJECTED EMISSIONS CHANGES

	VOCs	NO <sub>x</sub>
Lexington .....	9.20%	0.98%

Because there were increases in VOC and NO<sub>x</sub> emissions, Kentucky was required to model to demonstrate maintenance of the O<sub>3</sub> standard despite emissions growth. The Empirical Kinetics Modeling Approach (EKMA) was the model used. EKMA models Nonmethane Organic Compounds (NMOC) and NMOC data were available in 1989. For this reason, the model was run using meteorological data from June 23, June 26, and July 18, 1989. These days correspond to the highest ozone monitor readings for which on-site NMOC were available. The EKMA modeling projected O<sub>3</sub> values of 0.106 parts per million (ppm) for June 23, 1989, .116 ppm for July 26, 1989, and .064 ppm for July 18, 1995.

The modeling indicated that the future mix of emissions produced ozone levels below the federal O<sub>3</sub> standard. Thus, the analysis indicated that the Lexington area should continue to maintain the standard throughout the maintenance period.

C. Verification of Continued Attainment

Continued attainment of the O<sub>3</sub> NAAQS in the marginal nonattainment areas depends, in part, on the Commonwealth of Kentucky's efforts toward tracking indicators of continued attainment during the maintenance period. The Commonwealth of Kentucky's contingency plan is triggered by two indicators, the emissions inventory for interim years exceeding the baseline emission inventory by more than 10% or an air quality violation. As stated in the maintenance plan, the Cabinet will be developing these emissions inventories every three years beginning in 1996. These periodic inventories will help to verify continued attainment.

D. Contingency Plan

The level of VOC and NO<sub>x</sub> emissions in the nonattainment area will largely determine its ability to stay in compliance with the O<sub>3</sub> NAAQS in the future. Despite the Commonwealth's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, the Commonwealth of Kentucky has provided contingency measures with a schedule for implementation in the event of a future O<sub>3</sub> air quality problem. The plan

contains a contingency to implement RACT on existing major sources in the area where the violation occurred within ninety (90) days. RACT was not required for this nonattainment area because it was designated as a marginal nonattainment area pursuant to the CAA. EPA finds that the contingency measures provided in the Commonwealth of Kentucky's submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the Commonwealth of Kentucky has agreed to submit a revised maintenance SIP eight years after the marginal nonattainment areas redesignate to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

EPA is approving Lexington's O<sub>3</sub> maintenance plan because it meets the requirements of section 175A. The EPA is redesignating the Lexington nonattainment area to attainment for O<sub>3</sub> because the Commonwealth of Kentucky has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. In addition, EPA is approving the 1990 base year emission inventory for the Lexington nonattainment area. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The O<sub>3</sub> SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the O<sub>3</sub> NAAQS. This final redesignation should not be interpreted as authorizing the Commonwealth of Kentucky to delete, alter, or rescind any of the VOC or NO<sub>x</sub> emission limitations and restrictions contained in the approved O<sub>3</sub> SIP. Changes to O<sub>3</sub> SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995 unless, by October 11, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 13, 1995.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the Act, 42 U.S.C. 7607 (b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit

enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

**Unfunded Mandates**

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 107 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State,

local, or tribal governments in the aggregate or to the private sector.

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

*40 CFR Part 81*

Air pollution control.

Dated: August 8, 1995.

**R.F. McGhee,**

*Acting Regional Administrator.*

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. 7401-7671q.

**Subpart S—Kentucky**

2. Section 52.920 is amended by adding paragraph (c)(76) to read as follows:

**§ 52.920 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(76) The maintenance plan and for the Lexington area which include Fayette and Scott Counties submitted by the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet on November 13, 1992, November 24, 1992, March 10, 1993, July 16, 1993, March 3, 1994, and August 29, 1994, September 28, 1994 and June 14, 1995, as part of the Kentucky SIP. The 1990 Baseline Emission Inventory for the Lexington area which include Fayette and Scott Counties.

(i) Incorporation by reference.

(A) Commonwealth of Kentucky Attainment Demonstration and Ten Year Maintenance Plan for all areas designated Marginal Nonattainment for Ozone. The effective date is January 15, 1993.

(B) Table 6-6 Biogenic Emissions Fayette County, Kentucky. The effective date is January 15, 1993.

(C) Table 6-7 Biogenic Emissions, Scott, Kentucky. The effective date is January 15, 1993.

(ii) Other material.

(A) February 28, 1994, letter from John E. Hornback, Director, Division for Air Quality to Mr. Doug Neeley, Chief, Air Programs Branch.

(B) October 4, 1994, letter from Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet to John H. Hankinson, Regional Administrator, U.S. EPA Region 4.

(C) January 15, 1993, letter from Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet to Patrick M. Tobin, Acting Regional Administrator, U.S. EPA Region 4.

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**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42.U.S.C. 7401-7671q.

2. In section 81.318, the ozone table is amended by removing the Lexington-Fayette Area and its entries in the first alphabetical listing and by adding in alphabetical order entries for "Fayette County" and "Scott County" to the second listing of counties to read as follows:

**§ 81.318 Kentucky.**

\* \* \* \* \*

KENTUCKY-OZONE

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Rest of state		Unclassifiable/Attainment		
* Fayette County .....	* November 13, 1995.	*	*	*
* Scott County .....	* November 13, 1995.	*	*	*
* 	* 	*	*	*

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95-22156 Filed 9-8-95; 8:45 am]  
BILLING CODE 6560-50-P

#### 40 CFR Part 60

[AD-FRL-5287-7]

### Standards of Performance for New Stationary Sources Appendix A—Reference Methods; Amendments to Method 24 for the Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes procedures for the determination of volatile matter content, density, volume solids, and water content for non thin film ultraviolet radiation-cured coatings. Method 24 refers to the American Society for Testing and Materials (ASTM) procedures for the determination of volatile matter content, density, volume solids, weight solids, and water content of surface coatings. This ASTM method excluded ultraviolet radiation-cured coatings which was not EPA's intent. Therefore, EPA is revising Method 24 to apply to non thin film ultraviolet radiation-cured coatings.

**EFFECTIVE DATE:** September 11, 1995.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of September 11, 1995.

**ADDRESSES:** *Docket.* Docket No. A-94-37, containing material relevant to this rulemaking, is available for public inspection and copying between 8:30 a.m. and Noon, and 1:30 and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Room M1500, First Floor, Waterside Mall, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Candace Sorrell at (919) 541-1064, Source Characterization Group A (MD-19), Emissions, Monitoring, and Analysis Division, US Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

#### SUPPLEMENTARY INFORMATION:

##### I. The Rulemaking

Method 24 was intended to be used for measuring volatile organic compounds content of all coatings that are intended for either ambient or baking film foundation. When Method 24 was published in 1980 it referenced

the American Society for Testing and Materials (ASTM) Method D 2369-81, which the Environmental Protection Agency believed would apply to all coatings. However, that method was not applicable to ultraviolet (UV) radiation-cured coatings and this amendment to Method 24 will incorporate ASTM Method D 5403-93, which does contain those procedures.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulation, nor does it change any emission standard. Rather, the rulemaking would simply amend an existing test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

##### II. Public Participation

The opportunity to hold a public hearing on February 8, 1995 at 10 a.m. was present in the proposal notice, but no one desired to make an oral presentation. The public comment period was from January 9, 1995 to March 7, 1995.

##### III. Significant Comments and Changes to the Proposed Rulemaking

Seven comment letters were received from the proposal rulemaking. The major comments and responses are summarized in this preamble.

Three comments believe that ASTM D 5403-93 is not applicable to thin film UV cured coatings and inks. They noted that to meet the minimum sample size requirement of 0.2 grams, at the coatings recommended thickness, the substrate would be too large to weigh on normal laboratory balances. They requested that the method be modified to state this limitation.

The EPA agrees that the method should be modified to state that ASTM D 5403-93 is not applicable to thin film UV cured coatings and inks. For this method a thin film UV cured coating or ink is one which will not allow the tester to apply at least 0.2 g of coating to the substrate at the supplier recommended film thickness. Revisions have been made to add the equation used to determine if ASTM D 5403-93 is applicable. The revisions also include the requirement of a minimum size substrate before a coating can be classified thin film for this method.

One commenter requested that the cure test at 50 percent exposure and the oven drying portion of ASTM D 5403-93 be deleted from the proposed Method 24 amendments for UV cured coatings. The commenter believes that these steps should be deleted because they expose the cured coatings to conditions to

which they would not normally be exposed and over estimate potential emissions.

The EPA does not agree with the commenter's argument that these steps over estimate potential emissions. The purpose of the cure test is to ensure that the coating is properly cured before being placed in the oven. If the coating is not properly cured before being placed in the oven, the emissions will be biased high. The purpose of placing the cured coating in the oven is to determine the VOC emissions that will be emitted over time. Even after a coating is cured under normal procedures, VOC are released during the life time of the coating.

Two commenters were concerned that EPA looks at this modification to Method 24 as a complete "fix it" for the test method. They both noted section 1.4 of ASTM D 5403-93 which states that the method may not be applicable to radiation curable materials wherein the volatile material is water.

The EPA is not trying to imply that this modification makes Method 24 perfect. The EPA recognizes the limitations of ASTM D 5403-93 as stated in Section 1 of the method and also its limitations with respect to thin film radiation cured coating as previously discussed in this preamble. However, Method 24 is the best method currently available for determining the VOC content of coatings and inks. The EPA is always investigating new ways to improve its current test methods including Method 24.

##### IV. Administrative Requirements

###### A. Docket

The docket is an organized and complete file for all information submitted or otherwise considered by EPA in the development of this proposed rulemaking. The principle purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials).

[Section 307(d)(7)(A)].

###### B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant