

required for the calendar year in which the loan is approved. The Administrator can waive the requirement that an audit be performed in the year in which the loan is approved if operations of the applicant have not yet started.

(b) If a loan offer is accepted, the applicant will be required to submit quarterly financial and progress reports utilizing the Agency's electronic reporting system.

**§ 1738.64 Applicable laws.**

(a) Applicants are required to comply with certain regulations on nondiscrimination and equal employment opportunity. See RUS Bulletin 1790-1, "Nondiscrimination Among Beneficiaries of RUS Programs" and RUS Bulletin 20-15:320-15, "Equal Employment Opportunity in Construction Financed with RUS Loans"; 7 CFR parts 15 and 15b and 45 CFR part 90.

(b) Applicants are required to comply with all Federal, state and local laws, rules, regulations, ordinances, codes and orders.

**§§ 1738.65-1738.99 [Reserved]**

**§ 1738.100 OMB control number.**

The information collection requirements in this part are approved by the Office of Management Budget (OMB) and assigned OMB control number 0572-0130.

Dated: May 4, 2007.

**James M. Andrew,**

*Administrator, Rural Utilities Service.*

[FR Doc. E7-9021 Filed 5-10-07; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[EPA-R04-OAR-2006-0362-200702; FRL-8312-6]

**Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Kentucky: Redesignation of the Boyd County, Kentucky Portion of the Huntington-Ashland 8-Hour Ozone Nonattainment Area to Attainment for Ozone**

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

**ACTION:** Proposed rule.

**SUMMARY:** On September 29, 2006, the Commonwealth of Kentucky (Kentucky), through the Kentucky Division for Air Quality (KDAQ), submitted a request to redesignate the

Kentucky portion of the bi-state Huntington-Ashland 8-hour ozone nonattainment area to attainment for the 8-hour National Ambient Air Quality Standard (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Kentucky portion of the bi-state Huntington-Ashland area. The bi-state Huntington-Ashland 8-hour ozone nonattainment area is comprised of one county in Kentucky (Boyd County) and two counties in West Virginia (Cabell and Wayne counties). In this action, EPA is proposing to approve Kentucky's 8-hour ozone redesignation request for Boyd County, which is the Kentucky portion of the bi-state Huntington-Ashland 8-hour ozone nonattainment area. Additionally, EPA is proposing to approve the 8-hour ozone maintenance plan for Boyd County, Kentucky, including the state motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs). This proposed approval of Kentucky's redesignation request is based on EPA's determination that Kentucky has demonstrated that Boyd County, Kentucky has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire (both the Kentucky and West Virginia portions) Huntington-Ashland 8-hour ozone nonattainment area has attained the 8-hour ozone standard. On May 17, 2006, the State of West Virginia submitted a redesignation request and maintenance plan for the West Virginia portion (Cabell and Wayne counties) of this 8-hour ozone area. EPA has taken action on West Virginia's redesignation request and maintenance plan through a separate action. The final rulemaking approving the West Virginia submittal was published in the **Federal Register** on September 15, 2006. In this action, EPA is also providing the status of its transportation conformity adequacy determination for the new MVEBs for 2018 that are contained in the 8-hour ozone maintenance plan for Boyd County, Kentucky. MVEBs for Cabell and Wayne counties in West Virginia are included in the West Virginia submittal.

**DATES:** Comments must be received on or before June 11, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2006-0362, by one of the following methods:

(a) *www.regulations.gov*: Follow the on-line instructions for submitting comments.

(b) *E-mail: LeSane.Heidi@epa.gov*.

(c) *Fax: 404-562-9019*.

(d) *Mail: EPA-R04-OAR-2006-0362* 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.

(e) *Hand Delivery or Courier:* Heidi LeSane, 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. 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 Docket ID No. EPA-R04-OAR-2006-0362. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, 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 through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an "anonymous access" system, 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 *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. 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 *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Heidi LeSane, 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. The telephone number is (404) 562-9074. Mrs. LeSane can also be reached via electronic mail at *LeSane.Heidi@epa.gov*.

#### **SUPPLEMENTARY INFORMATION:**

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#### **I. What Proposed Actions Is EPA Taking?**

EPA is proposing to take three related actions, which are summarized below and described in greater detail throughout the notice of proposed rulemaking: (1) To redesignate Boyd County, Kentucky to attainment for the 8-hour ozone NAAQS; (2) to approve Kentucky's 8-hour ozone maintenance plan, including the associated MVEBs; and (3) to notify the public of the status of EPA's adequacy determination for the Boyd County MVEBs.

First, EPA is proposing to determine that the bi-state Huntington-Ashland 8-hour ozone nonattainment area has attained the 8-hour ozone standard, and that the Boyd County, Kentucky portion has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. The bi-state Huntington-Ashland 8-hour ozone area is comprised of one county in Kentucky (Boyd County) and two counties in West Virginia (Cabell and Wayne counties). Today's proposal addresses only the Kentucky portion of the bi-state Huntington-Ashland 8-hour ozone area. In a separate rulemaking, EPA approved the redesignation request and maintenance plan for the West Virginia portion of this 8-hour ozone area (see 71 FR 39618). EPA is now proposing to approve a request to change the legal designation of Boyd County, Kentucky from nonattainment to attainment for the 8-hour ozone NAAQS.

Second, EPA is also proposing to approve Kentucky's 8-hour ozone maintenance plan for Boyd County, Kentucky (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Huntington-Ashland area (of which Boyd County is a part) in attainment for the 8-hour ozone NAAQS through 2018. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes 2018 state MVEBs for NO<sub>x</sub> and VOCs. Therefore, EPA is proposing to approve the 2018 state MVEBs that are included as part of Kentucky's maintenance plan. These MVEBs apply only to Boyd County, Kentucky. MVEBs for Cabell and Wayne counties in West Virginia are included in the West Virginia submittal.

Third, EPA is announcing the status of EPA's Adequacy Process for the newly-established 2018 MVEBs for Boyd County, Kentucky. Through a separate action, MVEBs for West Virginia portion of this 8-hour ozone area were established (see 71 FR 39618). The Adequacy comment period for the Boyd County, Kentucky 2018 MVEBs began on June 21, 2006, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (<http://www.epa.gov/otaq/stateresources/transconf/currstips.htm>). The Adequacy comment period for these 2018 MVEBs closed on July 21, 2006. No requests for or adverse comments on this submittal were received during EPA's Adequacy comment period. Please see section VIII of this rulemaking for further explanation of this process, and for more details on the MVEBs.

Today's notice of proposed rulemaking is in response to Kentucky's September 29, 2006, SIP submittal which supersedes Kentucky's June 7, 2006, submittal that included a request for parallel processing. The September 29, 2006, submittal requested redesignation of Boyd County, Kentucky as part of the bi-state Huntington-Ashland Area, and included a SIP revision addressing the specific issues summarized above, and the necessary elements for redesignation described in section 107(d)(3)(E).

#### **II. What Is the Background for EPA's Proposed Actions?**

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO<sub>x</sub> and VOCs react in the presence of sunlight to form ground-level ozone. NO<sub>x</sub> and VOCs are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). (See, 69 FR 23857 (April 30, 2004) for further information.) Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, "Comparisons with the Primary and Secondary Ozone Standards" states:

The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone

concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The Huntington-Ashland 8-hour ozone nonattainment area was designated using 2001–2003 ambient air quality data. The **Federal Register** document making these designations was signed on April 15, 2004, and published on April 30, 2004 (69 FR 23857). The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as “basic” nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as “classified” nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other 8-hour ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA’s Phase 1 8-hour ozone implementation rule (69 FR 23857) (Phase 1 Rule), signed on April 15, 2004 and published on April 30, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour ambient air quality design values.

Various aspects of EPA’s Phase 1 8-hour ozone implementation rule were challenged in court and on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated EPA’s Phase 1 Implementation Rule for the 8-hour Ozone Standard. *South Coast Air Quality Management Dist. (SCAQMD) v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). The D.C. Circuit Court held that certain provisions of EPA’s Phase I Rule were inconsistent with the requirements of the CAA. The Court rejected EPA’s reasons for implementing the 8-hour standard in nonattainment areas under subpart 1 in lieu of subpart 2 of title I, part D of the CAA. The Court also held that EPA improperly failed to retain four measures required for 1-hour

nonattainment areas under the anti-backsliding provisions of EPA’s regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area’s 1-hour nonattainment classification; (2) CAA section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain conformity requirements for certain types of federal actions. The D.C. Circuit Court upheld EPA’s authority to revoke the 1-hour standard provided that there were adequate anti-backsliding provisions in place.

This section sets forth EPA’s views on the potential effect of the Court’s ruling on this redesignation action. For the reasons described throughout this notice of proposed rulemaking, EPA does not believe that the D.C. Circuit Court’s ruling alters any requirements relevant to the redesignation of the Kentucky portion of the Huntington-Ashland Area (Boyd County) so as to preclude redesignation, and does not prevent EPA from proposing to finalize, or finalizing, the Boyd County, Kentucky redesignation. EPA believes that the Court’s decision, as it currently stands or as it may be modified based upon the petitions for rehearing that have been filed, imposes no impediment to moving forward with redesignation of the Huntington-Ashland Area to attainment, because redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

The Huntington-Ashland Area was originally designated as moderate nonattainment for the 1-hour ozone standard on November 6, 1991 (56 FR 56694). The Area was redesignated as attainment for the 1-hour ozone standard on June 29, 1995 (60 FR 33748). On April 30, 2004, EPA designated the Huntington-Ashland Area (of which Boyd County is a part) as a “basic” 8-hour ozone nonattainment area. (69 FR 23857)

The D.C. Circuit Court’s decision in 2006 also addressed the 8-hour ozone classification scheme. The Court rejected EPA’s reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that the Huntington-Ashland Area could, as a result of the remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to

classify this area under subpart 2 might trigger additional future requirements for the area, this does not mean that redesignation cannot go forward now. EPA’s position is based upon: (1) EPA’s longstanding policy of evaluating requirements in accordance with the requirements due at the time that the request is submitted; and (2) consideration of the inequity of retroactively applying any requirements that might be applied in the future.

In September 2006, when Kentucky submitted its final redesignation request, the Huntington-Ashland Area was classified under subpart 1 of the CAA, and was obligated to meet only the subpart 1 requirements. Under EPA’s longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. See, “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; see also, Michael Shapiro Memorandum, “SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993; and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor). See, *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See also, 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit Court recognized the general inequity in retroactive rulemakings in *Sierra Club v. Whitman*, 285 F. 3d 63 (D.C. Cir. 2002), in which the D.C. Circuit Court upheld a district court’s refusal to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. In *Sierra Club*, the D.C. Circuit Court stated, “[a]lthough EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club’s proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the states, which would face fines and suits for not

implementing air pollution prevention plans in 1997, even though they were not on notice at the time.” *Id.* at 68. Similarly, with regard to Kentucky’s redesignation request, it would be unfair to penalize Kentucky by retroactively applying to it for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request, and that are not currently in effect, but that might be in effect as a result of the D.C. Circuit Court’s remand.

With respect to the requirements under the 1-hour standard ozone standard, Boyd County, Kentucky was originally designated as moderate nonattainment for the 1-hour ozone standard in November 6, 1991 (56 FR 56694). The Area was redesignated as attainment for the 1-hour ozone standard on June 29, 1995 (60 FR 33748). Therefore, Boyd County, Kentucky was designated to attainment of the 1-hour ozone standard prior to its nonattainment designation for the 8-hour ozone standard. As a result, it is considered to be a 1-hour attainment area subject to a CAA section 175A maintenance plan for the 1-hour standard. The D.C. Circuit Court’s ruling does not impact redesignation requests for these types of areas for two main reasons.

First, there are no conformity requirements relevant for the Huntington-Ashland redesignation request, such as a transportation conformity SIP.<sup>1</sup> It is EPA’s longstanding policy position that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation, and federal conformity rules apply where state rules have not been approved. See, 40 CFR 51.390; see also, *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding EPA’s interpretation). See also, 60 FR 62748 (Dec. 7, 1995) (redesignation of Tampa, Florida).

Second, with regard to the three other anti-backsliding provisions for the 1-hour standard that the D.C. Circuit Court found were not properly retained, Boyd County, Kentucky is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (pursuant to

section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to this area because it was redesignated to attainment of the 1-hour standard. As a result, the decision in *SCAQMD* should not alter any requirements that would preclude EPA from finalizing the Boyd County portion of the Huntington-Ashland area to attainment for the 8-hour ozone standard.

As noted earlier, in 2005, the ambient ozone data for the Huntington-Ashland nonattainment area indicated no further violations of the 8-hour ozone standard, using data from the 3-year period of 2003–2005 (with a 2003–2005 design value of 0.079 ppm), to demonstrate attainment. As a result, on September 29, 2006, Kentucky requested redesignation of Boyd County, Kentucky to attainment for the 8-hour ozone NAAQS. The redesignation request includes three years of complete, quality-assured ambient air quality data for the ozone seasons (March 1st until October 31st) of 2003–2005, indicating that the 8-hour ozone NAAQS has been achieved for the entire Huntington-Ashland area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

### III. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16,

1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. “Ozone and Carbon Monoxide Design Value Calculations,” Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;

2. “Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

3. “Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

4. “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the “Calcagni Memorandum”);

5. “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

6. “Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

7. “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

8. “Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,” Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

9. “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

10. “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

### IV. Why Is EPA Proposing These Actions?

On September 29, 2006, Kentucky requested redesignation of the Kentucky portion (Boyd County) of the bi-state Huntington-Ashland 8-hour ozone nonattainment area to attainment for the 8-hour ozone standard. EPA’s evaluation indicates that Kentucky has

<sup>1</sup> CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emissions budgets that are established in control strategy SIPs and maintenance plans.

demonstrated that Boyd County, Kentucky (as part of the Huntington-Ashland area) has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA. EPA is also announcing the status of its adequacy determination for the 2018 state MVEBs, which is relevant to the requested redesignation.

**V. What Is the Effect of EPA's Proposed Actions?**

EPA's proposed actions establish the basis upon which EPA may take final action on these issues being proposed for approval today. Approval of Kentucky's redesignation request would change the official designation of Boyd County, Kentucky for the 8-hour ozone NAAQS found at 40 CFR part 81. Approval of Kentucky's request would also incorporate into the Kentucky SIP, a plan for maintaining the 8-hour ozone NAAQS in the Huntington-Ashland Area through 2018. The maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS. The maintenance plan also establishes state MVEBs of 1.18 tons per day (tpd) for VOC and 1.30 tpd for NO<sub>x</sub> for the year 2018 for Boyd County, Kentucky. Approval of Kentucky's maintenance plan would

also result in approval of the state MVEBs. Additionally, EPA is announcing the status of its adequacy determination for the 2018 state MVEBs pursuant to 40 CFR 93.118(f)(1).

**VI. What Is EPA's Analysis of the Request?**

EPA is proposing to make the determination that the Boyd County portion of the Huntington-Ashland 8-hour ozone nonattainment area has attained the 8-hour ozone standard, and that all other redesignation criteria have been met for that portion of the Huntington-Ashland 8-hour ozone area. EPA has made this determination with regard to West Virginia meeting the other redesignation criteria through a separate rulemaking (see 71 FR 39618). Therefore, the entire Huntington-Ashland area has air quality monitoring data showing attainment of the 8-hour ozone NAAQS. The basis for EPA's determination for the Boyd County area is discussed in greater detail below.

*Criteria (1)—Boyd County Has Attained the 8-Hour Ozone NAAQS*

EPA is proposing to determine that the Boyd County portion of the Huntington-Ashland area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining

the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed ozone monitoring data from ambient ozone monitoring stations in the Huntington-Ashland area for the ozone season from 2003–2005. This data has been quality assured and is recorded in AQS. The fourth high averages for 2003, 2004 and 2005, and the 3-year average of these values (i.e., design value), are summarized in the following table:

TABLE 1.—ANNUAL 4TH MAX HIGH AND DESIGN VALUE FOR 8-HOUR OZONE FOR HUNTINGTON-ASHLAND AREA  
[Parts per million, ppm]

Year	Huntington (Cabell County)	Ashland (Boyd County)
2003	0.080	0.088
2004	0.066	0.068
2005	0.082	0.082
Design Value	0.076	0.079

As discussed above, the design value for an area is the highest design value recorded at any monitor in the area. Therefore, the design value for the Huntington-Ashland area is 0.079 ppm, which meets the standard as described above. Additionally, preliminary air quality data from the 2006 monitoring season indicates that the Huntington-Ashland Area is continuing to attain the 8-hour ozone standard. As discussed in more detail below, KDAQ has committed to continue monitoring in this area in accordance with 40 CFR part 58. The data submitted by Kentucky provides an adequate demonstration that Boyd County (as a part of the Huntington-Ashland area) has attained the 8-hour ozone NAAQS.

*Criteria (2)—Kentucky Has a Fully Approved SIP Under Section 110(k) for Boyd County and Criteria (5)—Kentucky Has Met All Applicable Requirements Under Section 110 and Part D of the CAA*

Below is a summary of how these two criteria were met.

EPA has determined that Kentucky has met all applicable SIP requirements for the Boyd County under section 110 of the CAA (general SIP requirements). EPA has also determined that the Kentucky SIP satisfies the criterion that it meets applicable SIP requirements under part D of title I of the CAA (requirements specific to subpart 1 basic 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements in

accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the area and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

**a. Boyd County, Kentucky Has Met All Applicable Requirements Under Section 110 and Part D of the CAA**

The September 4, 1992, Calcagni Memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E). Consistent with this interpretation, to qualify for redesignation, states

requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also, Michael Shapiro Memorandum (“SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992,” September 17, 1993), and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan). Applicable requirements of the CAA that come due subsequent to the area’s submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See, section 175A(c) of the CAA; *Sierra Club*, 375 F.3d 537 (7th Cir. 2004); see also, 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

*General SIP requirements:* Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants (NO<sub>x</sub> SIP Call, Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) to meet the interstate transport requirements of section 110(a)(2)(D)(i). However, the section

110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area’s designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area’s designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we do not believe that the CAA’s interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area’s attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area’s designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA’s existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See, Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also, the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the area’s nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no part D requirements for 8-hour standard became due prior to submission of the redesignation request. Therefore, as discussed above, for purposes of redesignation, they are both considered applicable requirements. Nonetheless, EPA notes that it has previously approved provisions into the Kentucky SIP addressing section 110 elements (See 47 FR 30059, July 12, 1982). EPA

believes that the section 110 SIP approved for the 1-hour ozone NAAQS is also sufficient to meet the requirements under the 8-hour ozone NAAQS (as well as satisfying the issue raised by the D.C. Circuit Court in the *SCAQMD* case).

*Part D requirements:* EPA has also determined that the Kentucky SIP meets applicable SIP requirements under part D of the CAA since no requirements became due prior to the submission of the area’s redesignation request. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area’s nonattainment classification. Subpart 2 is not applicable to the Boyd County, Kentucky area.

*Part D, subpart 1 applicable SIP requirements:* For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). No requirements applicable for purposes of redesignation under part D became due prior to the submission of the redesignation request, and therefore none are applicable to the area for purposes of redesignation. For example, the requirements for an attainment demonstration that meets the requirements of section 172(c)(1) are not yet applicable, nor are the requirements for Reasonably Achievable Control Technology (RACT) and Reasonably Available Control Measures (RACM) (section 172(c)(1)), reasonable further progress (RFP) (section 172(c)(2)), and contingency measures (section 172(c)(9)).

In addition to the fact that no part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and NSR requirements as not requiring approval prior to redesignation.

*Section 176 Conformity Requirements:* Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved

under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (“transportation conformity”) as well as to all other Federally supported or funded projects (“general conformity”). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See, *Wall*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also, 60 FR 62748 (Dec. 7, 1995, Tampa, Florida).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment.” Kentucky has demonstrated that the area will be able to maintain the standard without a part D NSR program in effect, and therefore, Kentucky need not have a fully approved part D NSR program prior to approval of the redesignation request. EPA most recently approved Kentucky’s NSR program (including a nonattainment NSR and PSD program) in the Kentucky SIP on July 11, 2006 (71 FR 38990). Kentucky’s PSD program will become effective in Boyd County, Kentucky upon redesignation to attainment. See, rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, Boyd County, Kentucky has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

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

EPA has fully approved the applicable Kentucky SIP for Boyd County under

section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall*, 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See, 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970 by the U.S. Congress, Kentucky adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in the Boyd County, Kentucky (60 FR 33748, June 29, 1995).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area’s nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation.

*Criteria (3)—The Air Quality Improvement in the Boyd County Portion of the Huntington-Ashland 8-hour Ozone Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions*

EPA believes that Kentucky has demonstrated that the observed air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. EPA has determined that the implementation of the following permanent and enforceable emissions controls, that occurred from 2001–2005, have reduced local NO<sub>x</sub> and VOC emissions and brought the area into attainment:

#### 2001–2005 EMISSION REDUCTION PROGRAMS

Highway Mobile Source Reductions:  
Federal Motor Vehicle Control Programs (FMVCP)  
Lower Reid Vapor Pressure  
Fleet Turnover of Automobiles

#### 2001–2005 EMISSION REDUCTION PROGRAMS—Continued

Tier 2 Vehicle Emissions and Fuel Standards  
Heavy Duty Engine and Vehicle Fuel Standards  
Point Source Emissions Reductions:  
Reasonably Available Control Measures (RACM)  
Maximum Available Control Technology (MACT)  
Non-Highway Mobile Source Reductions:  
Small Spark-Ignition engines  
Large Spark-Ignition engines  
Locomotives  
Land based diesel engines  
Additional Reductions:  
NO<sub>x</sub> SIP Call Reductions

Notably, no credit specific emission reduction is being claimed in the SIP for the NO<sub>x</sub> SIP Call reductions although this program has resulted in measurable emissions reductions.

Kentucky has demonstrated that the implementation of permanent and enforceable emissions controls have reduced local VOC and NO<sub>x</sub> emissions. Most of the reductions are attributable to Federal programs such as EPA’s Tier 2/Low Sulfur Gasoline program and other national clean fuel programs that began implementation in 2004. Additionally, Kentucky has indicated in its September 2006 submittal that the Huntington-Ashland area has benefited from emissions reductions that have been achieved and will continue to be achieved through the implementation of the NO<sub>x</sub> SIP Call, beginning in 2002. Kentucky has further demonstrated that year-to-year meteorological changes and trends are not the likely source of the overall, long-term improvements in ozone levels. In addition, the following non-highway mobile source reduction programs were implemented during the 2002–2004 period: Small spark-ignition engines, large-spark ignition engines, locomotives and land-base diesel engines. EPA believes that permanent and enforceable emissions reductions, in and surrounding the nonattainment area, are the cause of long-term improvements in ozone levels, and are the cause of the Huntington-Ashland Area achieving attainment of the ozone standard.

*Criteria (4)—The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA*

In its request to redesignate the Boyd County, Kentucky area (as part of the Huntington-Ashland 8-hour ozone nonattainment area) to attainment, KDAQ submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the Boyd County,

Kentucky area for at least 10 years after the effective date of redesignation to attainment.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, Kentucky must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five

requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, Kentucky's maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

b. Attainment Emissions Inventory

In coordination with West Virginia, Kentucky selected 2004 as "the attainment year" for Boyd County (as part of the Huntington-Ashland 8-hour ozone area) for the purposes of demonstrating attainment of the 8-hour ozone NAAQS. This attainment inventory identifies the level of emissions in the area which is sufficient to attain the 8-hour ozone standard. Kentucky began development of this attainment inventory by first developing a baseline emissions inventory for the Boyd County. The year 2002 was chosen as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2004, 2005, 2008, 2011, 2014, 2017, and 2018. Non-road mobile emissions were calculated using the most recent non-road model. On-road mobile source emissions were calculated using EPA's MOBILE6.2 emission factors model. The 2004 VOC and NO<sub>x</sub> emissions (as well

as the emissions for other years) for Boyd County, Kentucky were developed consistent with EPA guidance, and are summarized in the table in the following subsection.

c. Maintenance Demonstration

The September 29, 2006, final submittal includes a maintenance plan for the Boyd County area. This demonstration:

(i) Shows compliance and maintenance of the 8-hour ozone standard by providing information to support the demonstration that current and future emissions of VOC and NO<sub>x</sub> remain at or below attainment year 2004 emissions levels. The year 2004 was chosen as the attainment year because it is one of the most recent three years (i.e., 2003, 2004, and 2005) for which the Huntington-Ashland area has clean air quality data for the 8-hour ozone standard.

(ii) Uses 2004 as the attainment year and includes future emission inventory projections for the 2005, 2008, 2011, 2014, 2017 and 2018.

(iii) Identifies an "out year," at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, a MVEB was established for the last year of the maintenance plan (2018). See section VII below.

(iv) Provides the following actual and projected emissions inventories for the Boyd County portion of the Huntington-Ashland nonattainment area.

TABLE 2.—BOYD COUNTY VOC EMISSIONS

[Tons per day]\*

Source category	2004	2005	2008	2011	2014	2017	2018
Point .....	17.52	17.76	18.49	19.09	19.81	20.54	20.79
Area .....	2.97	2.97	2.97	2.97	2.97	2.97	2.97
Mobile** .....	2.50	2.28	1.91	1.63	1.38	1.23	1.18
Nonroad .....	0.71	0.68	0.61	0.56	0.55	0.56	0.56
Total .....	23.70	23.69	23.98	24.25	24.71	25.30	25.50

\* See further information in Section VI(4)(e) Verification of Continued Attainment.

\*\* Calculated using MOBILE 6.2.

TABLE 3.—BOYD COUNTY NO<sub>x</sub> EMISSIONS

[Tons per day]\*

Source category	2004	2005	2008	2011	2014	2017	2018
Point .....	16.17	16.35	16.90	17.37	17.92	18.48	18.68
Area .....	0.09	0.10	0.10	0.10	0.10	0.10	0.10
Mobile** .....	3.79	3.60	2.98	2.36	1.79	1.41	1.30
Nonroad .....	1.83	1.81	1.71	1.63	1.54	1.48	1.47
Total .....	21.89	21.86	21.69	21.46	21.35	21.47	21.55

\* See further information in Section VI(4)(e) Verification of Continued Attainment.

\*\* Calculated using MOBILE 6.2.

Although the Kentucky SIP submission provided VOC and NO<sub>x</sub> emissions for the attainment and future years for Boyd County, EPA considers

emissions from the entire Huntington-Ashland area for a demonstration of maintenance. Maintenance is demonstrated if the future year NO<sub>x</sub> and

VOC emission for the entire area remains at or below the level of the attainment year emissions. Both Kentucky and West Virginia chose 2004



for their "attainment year" for this area. While the VOC emissions for the Boyd County, Kentucky portion of the Huntington-Ashland area indicate a steady increase of emissions beyond the attainment year, it is important to note that this area is comprised of three counties for which emissions should be considered. EPA's review of VOC emissions for the entire area indicates that these emissions are 47.40 tpd in 2004, and 45.20 tpd in 2018, which is an overall downward trend in emissions for the area. Similarly, EPA's review of NO<sub>x</sub> emissions for the entire area also indicates an overall downward trend in emissions for the area, with a total of 59.29 tpd in 2004 and 48.55 tpd in 2018. Therefore, it is highly likely that maintenance of the 8-hour ozone standard will be maintained in the future for the Huntington-Ashland area.

#### d. Monitoring Network

There are currently two monitors measuring ozone in the Huntington-Ashland 8-hour ozone area (one in Cabell County, West Virginia and one in Boyd County, Kentucky). KDAQ has committed in the maintenance plan to continue operation of the monitor in Boyd County in compliance with 40 CFR part 58, and has addressed the requirement for monitoring. West Virginia has provided a similar commitment for the monitor in Cabell County, West Virginia.

#### e. Verification of Continued Attainment

Kentucky has the legal authority to enforce and implement the requirements of the ozone maintenance plan for the Boyd County, Kentucky area. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Kentucky will track the progress of the maintenance plan by performing future reviews of actual emissions for the area using the latest emissions factors, models and methodologies. For these periodic inventories Kentucky will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, Kentucky will re-project emissions. Following the redesignation of the area, sources are prohibited from reducing emission controls already in place when attainment is achieved unless EPA approves a SIP revision consistent with section 110 of the CAA.

Kentucky and EPA have instituted the following programs that will remain

enforceable and are included as part of Kentucky's September 2006 SIP submittal, to maintain air quality which meets the NAAQS for the 8-hour ozone standard.

- All new major VOC or NO<sub>x</sub> sources locating in Kentucky shall as a minimum apply control procedures that are reasonable, available, and practical;
- All major modifications to existing major VOC or NO<sub>x</sub> sources are subject to RACM requirements as well as the BACT requirement of the Kentucky Division of Air Quality PSD regulations;
- Federal Motor Control Standards apply in Kentucky;
- Transportation Conformity Requirements;
- PSD Requirements;
- Federal Controls on certain nonroad engines (e.g. diesel and other Federal requirements, industrial diesel equipment, locomotives) after 2000;
- Federal controls on the VOC content for Architectural and Maintenance Paints, Auto Body Shops and Consumer Products.

In addition to these measures, Kentucky explains that more controls are expected to occur in the Boyd County area which are not factored into the projected future year emissions analyses. For example, a major refinery, Marathon Ashland Oil Cattlesburg is undergoing a project entitled the Refinery Modernization Project, which involves new operational and emissions limitations. The proposed Refinery Modernization Project involves installation of new equipment and upgrading of existing equipment. The following emission reductions were expected to occur from the Ashland Project by 2006:

- PM 33 tons per year (decrease)
- PM<sub>10</sub> 33 tons per year (decrease)
- SO<sub>2</sub> 3,605 tons per year (decrease)
- NO<sub>x</sub> 730 tons per year (decrease)
- CO 4 tons per year (decrease)
- VOC 64 tons per year (decrease)

When these reductions are factored into future emission inventories, the totals for the emission inventories for Boyd County are expected to decrease.

#### f. Contingency Plan

The contingency plan provisions are designed to promptly correct any violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and

procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d). This requirement is met because all SIP measures are retained for maintenance. Kentucky's submittal satisfies all the contingency plan requirements described in section 175A of the CAA.

In the September 29, 2006, final submittal, Kentucky affirms that a combination of all programs instituted by Kentucky and EPA have resulted in cleaner air in the Huntington-Ashland area and the anticipated future benefits from these programs are expected to result in continued maintenance of the 8-hour ozone NAAQS in this area. Sources are prohibited from terminating emissions controls following the redesignation of Boyd County unless EPA approves a SIP revision consistent with section 110 of the CAA. The contingency plan includes tracking and triggering mechanisms to determine when contingency measures are needed and a process of developing and adopting appropriate control measures. The primary trigger is a measured violation of the 8-hour ozone NAAQS. If there is a measured violation of the 8-hour ozone NAAQS in Boyd County, Kentucky commits to develop regulations for at least one of the following control measures for submission to the EPA within nine months. All regulatory programs will be implemented within 18 months from a measured violation. Kentucky will consider one or more of the measures contained in the list of potential contingency measures below.

The secondary triggers in the contingency plan are (1) if a measured value of the fourth highest maximum is 0.087 ppm or greater at the Boyd County monitor in a single ozone season, or (2) if periodic emission inventory updates reveal excessive or unanticipated growth greater than 10 percent in ozone precursor emissions. If either of these two triggers are met, Kentucky will evaluate existing control measures to determine if any further emission reduction measures should be implemented at that time.

#### Potential Contingency Measures:

- Implementation of a program to require additional emission reductions on stationary source;

- Implementation of a program to enhance inspection of stationary sources to ensure emission control equipment is functioning properly;

- Open burning restrictions during ozone season;
- High-volume, low pressure spray guns and low VOC degreaser solvents;
- Implementation of incentives for alternative fuels programs;
- Restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;
- Trip-reduction ordinances;
- Employer-based transportation management plans including incentives;
- Programs to limit or restrict vehicle use in downtown areas, or other areas of emission concentration particularly during periods of peak use;
- Programs for new construction and major reconstructions of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Kentucky for Boyd County meets the requirements of section 175A of the CAA and is approvable.

#### VII. What Are the Proposed State MVEBs for Boyd County, Kentucky?

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (reasonable further progress SIPs and attainment demonstration SIPs etc.) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB is established for the last year of the maintenance plan. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. See, 40 CFR 93.101. 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 MVEB in the SIP and revise the MVEB.

Kentucky and West Virginia have elected to develop separate state MVEBs to cover their individual portions of the

Huntington-Ashland 8-hour ozone area. As required, Kentucky is only establishing state MVEBs for NO<sub>x</sub> and VOC for the last year of the maintenance plan (2018). EPA is now proposing to approve these state MVEBs. The state MVEBs for Boyd County, Kentucky are defined in the table below.

TABLE 4.—BOYD COUNTY 2018 MVEBs  
[Tons per day]

NO <sub>x</sub>	VOC
1.30	1.18

Through this rulemaking, EPA is proposing to approve the 2018 state MVEBs for NO<sub>x</sub> and VOCs for Boyd County, Kentucky because EPA has determined that the Huntington-Ashland area maintains the 8-hour ozone standard with emissions at the levels of the budgets. As mentioned above, these MVEBs will be separate state area budgets for Boyd County, Kentucky. West Virginia established MVEBs for the remainder of the Huntington-Ashland 8-hour ozone area (i.e., Cabell and Wayne counties) through the 8-hour ozone maintenance plan that was submitted with West Virginia's request for redesignation. Through a separate rulemaking, EPA found adequate and approved the MVEBs for the West Virginia portion of this 8-hour ozone area (see 71 FR 39618). Once the new state MVEBs for Boyd County, Kentucky (the subject of this rulemaking) are approved or found adequate (whichever is done first), they must be used for future transportation conformity determinations. As is discussed in greater detail below, EPA is also announcing the status of its adequacy determination for the proposed 2018 MVEBs for Boyd County, Kentucky pursuant to 40 CFR 93.118(f)(1).

#### VIII. What Is the Status of EPA's Adequacy Determination of the MVEBs for Boyd County, Kentucky?

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (i.e., 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 NAAQS. If a transportation plan does not "conform," most new 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. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein "adequate" for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and Federal agencies in determining whether proposed transportation projects "conform" to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining "adequacy" of an MVEB are set out in 40 CFR 93.118(e). The process for determining "adequacy" consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." 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.

Kentucky's maintenance plan submission contained new VOC and NO<sub>x</sub> MVEBs for Boyd County, Kentucky for the year 2018. The availability of the Kentucky SIP submission with the Boyd County MVEBs was announced for public comment on EPA's adequacy Web page on June 21, 2006 at: <http://www.epa.gov/otaq/stateresources/transconf/cursrips.htm>. The EPA public comment period on adequacy of the 2018 MVEBs for the Boyd County, Kentucky closed on July 21, 2006. EPA did not receive any adverse comments

regarding the MVEBs or requests for the submittal.

EPA's current intentions are to make its determination of the adequacy of the 2018 MVEBs for Boyd County, Kentucky for transportation conformity purposes in the final rulemaking on the redesignation of the Boyd County, Kentucky portion of the Huntington-Ashland 8-hour ozone area. If EPA finds the 2018 MVEBs adequate and approves the 2018 MVEBs in the final rulemaking action, the new MVEBs must be used for future transportation conformity determinations. The new 2018 MVEBs, if found adequate and approved in the final rulemaking, will be effective the date of publication of EPA's final rulemaking in the **Federal Register**. For required regional emissions analysis years that involve the year 2017 or before, the applicable budget for the purposes of conducting transportation conformity will be the MVEBs for Boyd County from the Huntington-Ashland 1-hour ozone maintenance plan. For required regional emissions analysis years that involve 2018 or beyond, the applicable budgets are defined in section VII of this rulemaking.

#### **IX. Proposed Actions on the Redesignation Request and the Maintenance Plan SIP Revision Including Proposed Approval of the 2018 MVEBs**

Today, EPA is proposing to determine that Boyd County, Kentucky has met the criteria for redesignation from nonattainment to attainment for the 8-hour ozone NAAQS. Further, EPA is proposing to approve Kentucky's redesignation for Boyd County, Kentucky (as a part of the Huntington-Ashland 8-hour ozone area). In a separate action, EPA approved the 8-hour ozone redesignation of the West Virginia portion of this area from nonattainment to attainment. See, 71 FR 54421 (September 15, 2006). After evaluating Kentucky's SIP submittal requesting redesignation, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the Boyd County portion of the Huntington-Ashland area has attained the 8-hour ozone standard.

EPA is also proposing to approve the September 29, 2006, SIP revision containing Kentucky's 8-hour ozone maintenance plan for Boyd County, Kentucky. The maintenance plan includes state MVEBs for 2018, among other requirements. EPA is proposing to approve the 2018 MVEBs for Boyd County because the maintenance plan

demonstrates that expected emissions for the area in 2018, including the 2018 MVEBs plus the estimated emissions for all other source categories, will continue to maintain the 8-hour ozone standard.

Further, as part of today's action, EPA is providing the status of its adequacy determination for the 2018 MVEBs for Boyd County in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy finding for the MVEBs, or the publication date for the final rule for this action, the transportation partners will need to demonstrate conformity to these new MVEBs pursuant to 40 CFR 93.104(e) as effectively amended by section 172(c)(2)(E) of the CAA as added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005.

#### **X. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. 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 new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

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. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects**

##### *40 CFR Part 52*

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

**40 CFR Part 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: May 3, 2007.

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

*Regional Administrator, Region 4.*

[FR Doc. E7-9130 Filed 5-10-07; 8:45 am]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 070427094-7094-01; I.D. 042407A]

**RIN 0648-AV50**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Allocation of Trips to Closed Area II Yellowtail Flounder Special Access Program**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), is proposing to allocate zero trips in the Closed Area (CA) II Yellowtail Flounder Special Access Program (SAP) during the 2007 fishing year (FY) (i.e., May 1, 2007, through April 30, 2008). The Regional Administrator has determined that the available catch of Georges Bank (GB) yellowtail flounder is insufficient to support a minimum level of fishing activity within the CA II Yellowtail Flounder SAP for FY 2007. The intent of this action is to help achieve optimum yield (OY) in the fishery by maximizing the utility of available GB yellowtail flounder TAC throughout FY 2007.

**DATES:** Comments must be received on or before 5 p.m., local time, May 29, 2007.

**ADDRESSES:** You may submit comments by any of the following methods:

- Written comments (paper, disk, or CD-ROM) should be sent to Patricia A. Kurkul, Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on CA II YT SAP."

- Comments also may be sent via facsimile (fax) to (978) 978-9135.

- E-mail: [YellowtailSAP@Noaa.gov](mailto:YellowtailSAP@Noaa.gov) Include in the subject line the following "Comments on CA II YT SAP."

- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Mark Grant, Fishery Management Specialist, phone: (978) 281-9218, fax: (978) 281-9135, e-mail: [Mark.Grant@noaa.gov](mailto:Mark.Grant@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The final rule implementing Framework Adjustment (FW) 40B (70 FR 31323; June 1, 2005), authorized the Regional Administrator to allocate the total number of trips into the CA II Yellowtail Flounder SAP based upon several criteria, including: GB yellowtail flounder total allowable catch (TAC) level, as established through the U.S./Canada Resource Sharing Understanding; and the amount of GB yellowtail flounder caught outside of the SAP. A formula was developed in FW 40B to assist the Regional Administrator in determining the appropriate number of trips for this SAP on a yearly basis. The formula is intended to allow the SAP to be adjusted for changing stock conditions to help achieve OY for GB yellowtail flounder.

FW 40B authorized the Regional Administrator to allocate zero trips to this SAP if the available GB yellowtail flounder catch (GB yellowtail flounder TAC projected catch of GB yellowtail flounder outside the SAP) is not sufficient to support 150 trips with a 15,000-lb (6,804-kg) trip limit (i.e., if the available GB yellowtail catch is less than 1,021 mt), as required. The proposed U.S./Canada GB yellowtail flounder TAC for 2007, as recommended by the Transboundary Management Guidance Committee and the Council, is 900 mt (72 FR 10967; March 12, 2007). During FY 2006, vessels fishing outside of the SAP landed over 1,500 mt of GB yellowtail flounder. Therefore, based on the proposed 900-mt U.S./Canada GB yellowtail flounder TAC, assuming similar fishing behavior in 2007, and using the criteria specified under § 648.85(b)(3)(vii) to determine the appropriate number of trips for FY 2007, the Regional Administrator has determined that there will be insufficient GB yellowtail flounder TAC to support the CA II Yellowtail Flounder SAP for FY 2007 (900 mt - 1,500 mt <1,020 mt). Therefore, a limit of zero trips is proposed for FY 2007.

**Classification**

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, I have determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

The SBA size standard for small commercial fishing entities is \$ 4.0 million in gross receipts. Individuals that would be impacted by this proposed action include all limited access NE multispecies DAS permit holders. All commercial fishing entities affected by this proposed rule would fall under the SBA size standard for small commercial fishing entities and there would be no disproportionate impacts between small and large entities. The proposed action would affect a substantial number of small entities, as approximately 66 percent of the vessels affected by this action (i.e., 100 out of 150) had participated in the CA II Yellowtail Flounder SAP when it was open during FY 2004. However, the proposed action will not significantly reduce profit for affected vessels.

The proposed allocation of zero trips into the SAP would help ensure that the GB yellowtail flounder TAC is available throughout the fishing year, minimizing the impacts of depressed prices that could otherwise be caused by temporary floods of yellowtail flounder on the market, and therefore would help avoid the premature closing of the Eastern U.S./Canada Area due to catching the available GB yellowtail flounder TAC. This would enable vessels greater opportunity to fully harvest the available GB cod and GB haddock TAC allocated to the Eastern U.S./Canada Area and to achieve the full economic benefit from the U.S./Canada Management Area by more efficiently using the small GB yellowtail flounder TAC. Analysis prepared for FW 40B indicates that flexibility for vessels to target species other than yellowtail flounder is seen as critical to maintaining the profitability of vessel operations within the U.S./Canada