

TABLE TWO

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2 (g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS NORFOLK .....	SSN 714 .....	0.41 .....	.....	.....	.....	.....	.....	.....	.....
USS CHICAGO .....	SSN 721 .....	0.41 .....	.....	.....	.....	.....	.....	.....	.....
USS KEY WEST .....	SSN 722 .....	0.41 .....	.....	.....	.....	.....	.....	.....	.....
USS HELENA .....	SSN 725 .....	0.41 .....	.....	.....	.....	.....	.....	.....	.....

\* \* \* \* \*

Approved: February 23, 2011.

**M. Robb Hyde,**

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Dated: March 1, 2011.

**D.J. Werner,**

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2010-0210; FRL-9277-2]

### Approval and Promulgation of Air Quality Implementation Plans; Indiana; Kentucky; Louisville Nonattainment Area; Determination of Attainment of the 1997 Annual Fine Particle Standard

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

**ACTION:** Final rule.

**SUMMARY:** EPA is determining that the bi-state Louisville (Indiana and Kentucky) fine particle (PM<sub>2.5</sub>) nonattainment area has attained the 1997 annual average PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 period showing that the area has monitored attainment of the annual PM<sub>2.5</sub> NAAQS. Preliminary data for 2010 available to date are consistent with continued attainment. As a result of this determination, the requirements for the area to submit an attainment demonstration and associated reasonably available control measures

(RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standards shall be suspended for so long as the area continues to attain the annual PM<sub>2.5</sub> NAAQS.

**DATES:** This final rule is effective on March 9, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2010-0210. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (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 through <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5 office, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604, or in Region 4 at the Environmental Protection Agency, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia. These facilities are open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886-6067 before visiting the Region 5 office or Joel Huey, Environmental Scientist, at (404) 562-9104 before visiting the Region 4 office.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J),

Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6067, [summerhays.john@epa.gov](mailto:summerhays.john@epa.gov). In Region 4, contact Joel Huey, Environmental Scientist, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960, (404) 562-9104, [huey.joel@epa.gov](mailto:huey.joel@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. What action is EPA taking?
- II. What is the background for this action?
- III. What did EPA propose?
- IV. What does the most recent monitoring data show?
- V. What is the effect of this action?
- VI. When is this action effective?
- VII. Statutory and Executive Order Reviews

#### I. What action is EPA taking?

EPA is determining that the Louisville PM<sub>2.5</sub> annual NAAQS nonattainment area (which includes Jefferson and Bullitt Counties in Kentucky and Clark and Floyd Counties and the Madison Township of Jefferson County in Indiana) has attained the 1997 annual PM<sub>2.5</sub> NAAQS. This determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 monitoring period that show that the area has monitored attainment of the 1997 annual PM<sub>2.5</sub> NAAQS. Preliminary data available for 2010 are consistent with continued attainment.

#### II. What is the background for this action?

On July 18, 1997 (62 FR 36852), EPA established an annual PM<sub>2.5</sub> NAAQS at 15.0 micrograms per cubic meter (µg/

m<sup>3</sup>) based on a three-year average of annual mean PM<sub>2.5</sub> concentrations. At that time, EPA also established a 24-hour standard of 65 µg/m<sup>3</sup> (today's action does not address the 24-hour standard). See 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 PM<sub>2.5</sub> NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Louisville area was designated nonattainment for the 1997 PM<sub>2.5</sub> NAAQS. See 40 CFR 81.315 (Indiana) and 40 CFR 81.318 (Kentucky).

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual PM<sub>2.5</sub> NAAQS at 15.0 µg/m<sup>3</sup> based on a three-year average of annual mean PM<sub>2.5</sub> concentrations, and promulgated a 24-hour standard of 35 µg/m<sup>3</sup> based on a three-year average of the 98th percentile of 24-hour concentrations. On November 13, 2009, EPA designated the Louisville area as attainment for the 2006 24-hour standard (74 FR 58688). In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Louisville area was designated as nonattainment for the annual standards but attainment for the 24-hour standards. Thus, today's action does not address attainment of either the 1997 or the 2006 24-hour standards.

In response to legal challenges of the annual standards promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded these standards to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual standards are essentially identical, attainment of the 1997 annual standards would also indicate attainment of the remanded 2006 annual standards.

On April 25, 2007 (72 FR 20664), EPA promulgated its PM<sub>2.5</sub> implementation rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 PM<sub>2.5</sub> standards. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the standards, as discussed below.

### III. What did EPA propose?

EPA proposed that the Louisville area (including portions in Indiana and Kentucky) has attained the 1997 PM<sub>2.5</sub> NAAQS. EPA published this proposed determination on September 14, 2010, at

75 FR 55725. Further details regarding the proposal are available in the proposed rule. EPA's proposed action provided a 30-day public comment period. We did not receive any comments.

### IV. What does the most recent monitoring data show?

EPA examined monitoring data for 2010 that are available to date in the EPA Air Quality System (AQS) database, but not yet certified. While these data are insufficient to represent full year average concentrations, all sites within the area average below 15.0 µg/m<sup>3</sup> and thus the available data suggest that this area continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS.

### V. What is the effect of this action?

On the basis of this review, EPA has determined that the Louisville area has attained the 1997 annual PM<sub>2.5</sub> NAAQS based on complete, quality-assured and certified 2007–2009 data. Data available for 2010 that are in the EPA AQS database but not yet certified suggest that the area continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS. As a result of this determination, under the provisions of EPA's PM<sub>2.5</sub> implementation rule (*see* 40 CFR 51.1004(c)), the requirements for Indiana and Kentucky to submit attainment demonstrations and associated RACM, RFP plans, contingency measures, and any other planning SIPs related to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS for the Louisville PM<sub>2.5</sub> nonattainment area are suspended for so long as the area continues to attain the 1997 annual PM<sub>2.5</sub> NAAQS. This suspension will continue until such time, if any, that EPA subsequently determines that the area has violated the 1997 annual PM<sub>2.5</sub> NAAQS.

If EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 annual PM<sub>2.5</sub> NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist for the pertinent area, and EPA would take action to withdraw the determination and direct the pertinent area to address the suspended requirements.

The determination that the air quality data show attainment of the 1997 annual PM<sub>2.5</sub> NAAQS is not equivalent to the redesignation of the area to attainment for the 1997 annual PM<sub>2.5</sub> NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this action does not involve approving maintenance plans for the area as

required under section 175A of the CAA, nor does it involve a determination that the area has met all requirements for a redesignation. The designation status of the area will remain nonattainment for the 1997 annual PM<sub>2.5</sub> NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment for that standard.

### VI. When is this action effective?

EPA finds that there is good cause for this determination to become effective on the date of publication of this action in the **Federal Register**, because a delayed effective date is unnecessary due to the nature of the action. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction,” and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” As noted above, this determination of attainment will result in a suspension of the requirements for the Louisville area to submit an attainment demonstration, a RFP plan, section 172(c)(9) contingency measures, and any other planning SIPs related to attainment of the 1997 annual PM<sub>2.5</sub> NAAQS for so long as the area continues to attain the PM<sub>2.5</sub> NAAQS. The suspension of these requirements is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, the suspension of the obligations of Indiana and Kentucky to make submissions for these requirements provides good cause to make this rule effective on the date of publication of this action in the **Federal Register**, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule suspends requirements rather than imposing obligations, affected parties, such as the Louisville area, do not need time to adjust and prepare before the rule takes effect.

### VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is not subject to

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action makes a determination based on air quality data and results in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule makes a determination based on air quality data, and results in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal applications 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), because it merely makes a determination based on air quality data and results in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks" (62 FR 19885, April 23, 1997) because it determines that air quality in the affected area is meeting Federal standards.

The requirements of 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures to otherwise satisfy the provisions of the CAA. This rule does not impose an information collection burden under the provisions of the Paper Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Under Executive Order 12898, EPA finds that this rule, pertaining to the determination of attainment of the fine particle standards for the Louisville (Indiana and Kentucky) area, involves determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there is no federally recognized Indian country located in the states, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rules in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These actions are not "major rules" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 2011. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of this action 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. These actions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 12, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

Dated: February 25, 2011.

**Gwendolyn Keyes Fleming,**

*Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart P—Indiana

■ 2. Section 52.776 is amended by adding paragraph (t) to read as follows:

##### § 52.776 Control strategy: Particulate matter.

\* \* \* \* \*

(t) *Determination of Attainment.* EPA has determined, as of March 9, 2011, that the Louisville, IN-KY PM<sub>2.5</sub> nonattainment area has attained the 1997 PM<sub>2.5</sub> NAAQS. These determinations, in accordance with 40 CFR 51.1004(c), suspend the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other plan elements related to attainment of the standards for as long as the area continues to meet the 1997 PM<sub>2.5</sub> NAAQS.

#### Subpart S—Kentucky

■ 3. Section 52.933 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

##### § 52.933 Control strategy: Sulfur oxides and particulate matter.

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(b) *Determination of Attainment.* EPA has determined, as of March 9, 2011, that the Louisville, IN-KY PM<sub>2.5</sub> nonattainment area has attained the 1997 PM<sub>2.5</sub> NAAQS. These determinations, in accordance with 40 CFR 51.1004(c), suspend the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other plan elements related to attainment of the standards for as long as the area continues to meet the 1997 PM<sub>2.5</sub> NAAQS.

[FR Doc. 2011-5214 Filed 3-8-11; 8:45 am]

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