

the Executive Order to include regulations that 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.”

This proposed rule does not have federalism implications. It will 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. This rule merely proposes to partially approve and partially disapprove state rules implementing a Federal standard, and to disapprove a redesignation request, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled Consultation and Coordination With Indian Tribal Governments (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective

and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it proposes to approve a state rule implementing a Federal program.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Oxides of nitrogen, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: September 2, 2010.

Stephen S. Tuber,

Acting Regional Administrator, Region 8.
[FR Doc. 2010–22848 Filed 9–13–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0210; FRL–9201–3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the bi-state Louisville (Indiana and Kentucky) fine particle (PM_{2.5}) nonattainment area has attained the 1997 annual average PM_{2.5} National Ambient Air Quality Standard (NAAQS). This proposed 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_{2.5} NAAQS. If EPA finalizes this proposed 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 standard shall be suspended for so long as the area continues to attain the annual PM_{2.5} NAAQS.

DATES: Comments must be received on or before October 14, 2010.

ADDRESSES: Submit your comments regarding the Indiana portion of the bi-state Louisville area, identified by Docket ID No. EPA–R05–OAR–2010–0210, by one of the following methods:

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

2. *E-mail:* bortzer.jay@epa.gov.

3. *Fax:* (312) 692–2054.

4. *Mail:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of

business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Submit your comments regarding the Kentucky portion of the bi-state Louisville area, identified by Docket ID No. EPA-R05-OAR-2010-0210, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail: benjamin.lynorae@epa.gov*.

3. *Fax: (404) 562-9040*.

4. *Mail: EPA-R05-OAR-2010-0210*, 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.

5. *Hand Delivery: Lynorae Benjamin*, 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 normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2010-0210. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://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 information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. 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.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Melissa M. Barnhart by phone at (312) 353-8641 or by e-mail at *barnhart.melissa@epa.gov* before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Melissa M. Barnhart, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8641, *barnhart.melissa@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*.

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. Does the Louisville area meet the annual PM_{2.5} standard?
 - A. Criteria
 - B. Louisville Area Air Quality
- IV. What is the effect of this action?
- V. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is proposing to determine that the Louisville PM_{2.5} annual standard nonattainment area (which consists of portions in both Indiana and Kentucky) has attained the 1997 annual PM_{2.5} NAAQS. The proposal 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_{2.5} NAAQS.

II. What is the background for this action?

On July 18, 1997 (62 FR 36852), EPA established an annual PM_{2.5} NAAQS at 15.0 micrograms per cubic meter (µg/m³) based on a three-year average of annual mean PM_{2.5} concentrations. At that time, EPA also established a 24-hour standard of 65 µg/m³ (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_{2.5} 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_{2.5} 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_{2.5} NAAQS at 15.0 µg/m³ based on a three-year average of annual mean PM_{2.5} concentrations, and promulgated a 24-hour standard of 35 µg/m³ 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 standard but attainment for the 24-hour standard. Thus, today's action does not address attainment of either the 1997 or the 2006 24-hour standard.

In response to legal challenges of the annual standard promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded this standard 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 standard would also indicate attainment of the remanded 2006 annual standard.

On April 25, 2007 (72 FR 20664), EPA promulgated its PM_{2.5} 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_{2.5} standards. This rule, at 40 CFR 51.1004(c),

specifies some of the regulatory consequences of attaining the standard, as discussed below.

III. Does the Louisville area meet the annual PM_{2.5} standard?

A. Criteria

Today's rulemaking assesses whether the Louisville PM_{2.5} nonattainment area is attaining the 1997 annual PM_{2.5} NAAQS. The Louisville nonattainment area includes certain counties in Indiana and in Kentucky. The Indiana portion of this area is defined at 40 CFR 81.315, and comprises Clark and Floyd Counties and a portion of Jefferson County (Madison Township). The

Kentucky portion of this area is defined at 40 CFR 81.318, and includes Bullitt and Jefferson Counties.

Under EPA regulations at 40 CFR 50.7, the annual primary and secondary PM_{2.5} standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 µg/m³ at all relevant monitoring sites in the subject area.

B. Louisville Area Air Quality

EPA has reviewed the ambient air monitoring data for the Louisville area in accordance with the provisions of 40 CFR part 50, Appendix N. All data considered have been quality-assured,

certified, and recorded in EPA's Air Quality System database. This review addresses air quality data collected in the three-year period from 2007 to 2009.

The following table provides the annual average concentrations averaged over 2007 to 2009 at all sites in the Louisville area with at least 75 percent complete data in each quarter for each of those three years, including sites in both Indiana and Kentucky. The highest three-year average annual concentration for 2007 to 2009 on this table is recorded at site 18-019-0006, recording a three-year average annual concentration of 14.6 µg/m³. All sites in the area have three-year average annual PM_{2.5} concentrations below 15.0 µg/m³.

| Site name | County | Site No. | Annual average concentration (µg/m ³) |
|-------------------------|---------------------|-------------|---|
| Jeffersonville | Clark, IN | 18-019-0006 | 14.6 |
| New Albany | Floyd, IN | 18-043-1004 | 13.1 |
| Shepherdsville | Bullitt, KY | 21-029-0006 | 13.0 |
| Wyandotte Park | Jefferson, KY | 21-111-0044 | 13.5 |
| 37th & Southern | Jefferson, KY | 21-111-0043 | 13.4 |
| Watson Elementary | Jefferson, KY | 21-111-0051 | 13.0 |

In addition to the sites listed in the table above, three sites, Barret Avenue, Cannons Lane, and Indiana Armory, did not operate for the entire three-year period from 2007 to 2009, either because the site ended operation before the end of that period or because the site began operation after the beginning of that period.

The first of these three sites, Barret Avenue (site number 21-111-0048), ended operation at the end of 2008.¹ Thus, the most recent three-year period of data for this site is 2006 to 2008. For this period, the Barret Avenue site monitored an average annual concentration of 14.1 µg/m³, reflecting attainment of the standard. The Barret Avenue site has not historically monitored the highest concentrations in the area. In addition, the other sites in the area, which have continued to operate, are currently attaining the standard and are showing decreased concentrations. Thus, EPA believes that the standard was and continues to be attained at this site.

More generally, EPA believes that the Louisville area has a sufficient network of sites collecting complete data showing attainment to conclude that the

Louisville area is now meeting the annual PM_{2.5} NAAQS.

Following discontinuation of the Barret Avenue site, two new sites began operation. The Indiana Armory site (site number 18-019-0008) began operation in the third quarter of 2008, and the Cannons Lane site (site number 21-111-0067) began operation at the beginning of 2009. These two sites started operation after 2007 and thus have not yet collected three years of data. Nevertheless, EPA examined the data at these sites to consider whether these data are consistent with the findings discussed above that were derived for sites with a complete three-year set of data for the 2007-2009 period.

An examination of data from these two sites (as well as an examination of data at the Barret Avenue site) is provided in a memorandum (available in the docket for this proposed rulemaking) dated June 22, 2010. The Indiana Armory site monitored an average concentration in the second half of 2008 of 13.4 µg/m³, and an annual average concentration in 2009 of 10.8 µg/m³. The Cannons Lane site for 2009 monitored an annual average concentration of 11.7 µg/m³. All of these values are below the standard.

Since few data are available for 2010, the 2007 to 2009 data represent the most recent available data for EPA to use in its assessment. On the basis of this review, EPA is proposing to determine

that the Louisville area has attained the 1997 annual PM_{2.5} NAAQS.

EPA is soliciting public comments on its proposal to determine that the Louisville area has attained the 1997 annual PM_{2.5} NAAQS.

IV. What is the effect of this action?

If this proposed determination is made final, the requirements for the Louisville PM_{2.5} nonattainment area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 annual PM_{2.5} NAAQS would be suspended for so long as the area continues to attain the PM_{2.5} NAAQS. See 40 CFR 51.1004(c). Notably, as described below, any such determination would not be equivalent to the redesignation of the area to attainment for the annual PM_{2.5} NAAQS.

If this proposed rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the annual PM_{2.5} NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Louisville nonattainment area, and the area would thereafter have to address the applicable requirements. See 40 CFR 51.1004(c).

Finalizing this proposed action would not constitute a redesignation of the area to attainment of the annual PM_{2.5}

¹ In letters dated November 4, 2008, and January 28, 2009, to the Louisville Metro Air Pollution Control District, EPA approved the District's request to terminate the operation of the Barret Avenue monitor for safety reasons, and to establish a new monitor starting operation January 1, 2009, at the Cannons Lane site, approximately 4 miles away.

NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this proposed action does not involve approving maintenance plans for the area as required under section 175A of the CAA, nor would it find that the area has met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation status of the Louisville area would remain nonattainment for the 1997 annual PM_{2.5} NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment and takes action to redesignate the area.

This action is only a proposed determination that the Louisville area has attained the 1997 annual PM_{2.5} NAAQS. Today's action does not address the 24-hour PM_{2.5} NAAQS.

If the Louisville area continues to monitor attainment of the annual PM_{2.5} NAAQS, the requirements for the Louisville area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the annual PM_{2.5} NAAQS will remain suspended.

V. 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 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 proposes to make a determination based on air quality data and would, if finalized, result 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 proposes to make a determination based on air quality data, and would, if finalized, result 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 proposed 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 proposed 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 proposes to make a determination based on air quality data and would, if finalized, result 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 proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks" (62 FR 19885, April 23, 1997) because it proposes to determine 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 proposed 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 standard for the bi-state Louisville (Indiana and Kentucky) area, involves proposed determinations 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.

List of Subjects in 40 CFR Part 52

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

Dated: August 9, 2010.

Susan Hedman,

Regional Administrator, Region 5.

Dated: August 27, 2010.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2010-22850 Filed 9-13-10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[EPA-HQ-OPPT-2009-0555; FRL-8428-8]

RIN 2070-AB79 and RIN 2070-AC76

Withdrawal of Proposed Rules; Discontinuing Rulemaking Efforts Listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules; withdrawals.

SUMMARY: EPA is withdrawing two proposed rules for which the Agency no longer intends to issue a final rule. This document identifies the proposed rules and explains the Agency's decision not to pursue a final rulemaking at this time. This withdrawal of these proposed rules does not preclude the Agency from initiating the same or similar rulemaking at a future date. It does, however, close out the entry for these proposed rules in the EPA Semi-Annual Regulatory Agenda, published as part of the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). Should the Agency decide at some future date to initiate the same or similar rulemaking, it will add an appropriate new entry to the EPA Semi-Annual Regulatory Agenda to reflect the initiation of the action.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2009-0555. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the docket index, some information is not publicly available, e.g., 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required