



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2016-0479; FRL-9960-82-Region 5]

**Air Plan Approval; Ohio; Redesignation of the Ohio Portion of
the Cincinnati-Hamilton, OH-IN-KY Area to Attainment of the 1997**

Annual Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is redesignating the Ohio portion of the Cincinnati-Hamilton, OH-IN-KY, nonattainment area (hereafter, "the Cincinnati-Hamilton area") to attainment for the 1997 fine particulate matter (PM_{2.5}) annual national ambient air quality standards (NAAQS or standard). The Ohio portion of the Cincinnati-Hamilton area includes Butler, Clermont, Hamilton, and Warren Counties. Because EPA has determined that the Cincinnati-Hamilton area is attaining the annual PM_{2.5} standard, EPA is redesignating the area to attainment and also approving several additional related actions. EPA is approving the Reasonably Available Control Measures (RACM)-Reasonably Available Control Technology (RACT) portion of Ohio's Cincinnati-Hamilton area attainment plan state implementation plan (SIP) revision as providing adequate RACM/RACT. EPA is also approving an update to the Ohio SIP, by

updating the state's approved plan for maintaining the 1997 annual PM_{2.5} NAAQS through 2027. EPA previously approved the base year emissions inventory for the Cincinnati-Hamilton area, and is approving Ohio's updated emission inventory which includes emission inventories for volatile organic compounds (VOCs) and ammonia. Ohio's approved maintenance plan submission includes a budget for the mobile source contribution of PM_{2.5} and nitrogen oxides (NO_x) to the Cincinnati-Hamilton area for transportation conformity purposes, which EPA is approving. EPA is taking these actions in accordance with the Clean Air Act (CAA) and EPA's implementation rule regarding the 1997 PM_{2.5} NAAQS.

DATES: This final rule is effective **[insert date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0479. All documents in the docket are listed on the 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 through www.regulations.gov or 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 Joseph Ko, Environmental Engineer, at (312) 886-7947 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Joseph Ko, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7947, ko.joseph@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. Background
- II. Response to Comments
- III. What Action is EPA Taking?
- IV. Statutory and Executive Order Reviews.

I. Background

On July 22, 2016, Ohio EPA submitted a request to EPA to redesignate the Cincinnati-Hamilton area to attainment for the 1997 PM_{2.5} annual standard, and to approve updates to the maintenance plan for the area. In a notice published on January 4, 2017 (82 FR 792), EPA proposed to redesignate the area and

approve several actions related to the redesignation (82 FR 792). Additional background and details regarding this final action can be found in the January 4, 2017, proposed rule.

II. Response to Comments

Comment: EPA received one comment on the proposed redesignation. The commenter supported EPA's proposal to redesignate the Ohio portion of the Cincinnati-Hamilton area.

Response: EPA agrees with the comment, and no changes were made to the final action based on this comment.

III. What Action is EPA Taking?

EPA is taking several actions related to redesignation of the Cincinnati-Hamilton area to attainment for the 1997 annual PM_{2.5} NAAQS.

EPA has previously approved Ohio's PM_{2.5} maintenance plan and motor vehicle emission budgets for the Cincinnati-Hamilton area. EPA has determined that this plan and budgets are still applicable.

EPA has previously approved the 2005 primary PM_{2.5}, NO_x, and SO₂ base year emissions inventory. EPA is approving Ohio's updated emissions inventory which includes emissions inventories for VOCs and ammonia from 2007. EPA has determined that Ohio meets the emissions inventory requirement under section 107(d)(3)(E)(iii).

EPA is approving the RACM/RACT portion of Ohio's prior

Cincinnati-Hamilton area attainment plan SIP revision as providing adequate RACM/RACT consistent with the provisions of 40 CFR 51.1010(b), because Ohio has demonstrated with a RACM/RACT analysis that no further control measures would advance the attainment date in the area.

In *The Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements* final rule (final PM_{2.5} SIP requirements rule), EPA revoked the 1997 primary annual PM_{2.5} NAAQS in areas that had always been attainment for that NAAQS, and in areas that had been designated as nonattainment but that were redesignated to attainment before October 24, 2016, the rule's effective date. (See 81 FR 58010, August 24, 2016.) EPA also finalized a provision that revokes the 1997 primary annual PM_{2.5} NAAQS in areas that are redesignated to attainment for that NAAQS after October 24, 2016, effective on the effective date of the redesignation of the area to attainment for that NAAQS. (See 40 CFR 50.13(d).)

EPA is redesignating the Ohio portion of the Cincinnati-Hamilton area to attainment for the 1997 annual PM_{2.5} NAAQS and approving the CAA section 175A maintenance plan for the 1997 primary annual PM_{2.5} NAAQS for the reasons described elsewhere in the January 4, 2017, proposed action.¹ The 1997 primary annual

¹ CAA section 175A(a) establishes the requirements that must be fulfilled by nonattainment areas in order to be redesignated to attainment. That section only requires that nonattainment areas for the *primary* standard submit a plan

PM_{2.5} NAAQS will be revoked in the area on the effective date of this redesignation. Beginning on that date, the area will no longer be subject to transportation or general conformity requirements for the 1997 annual PM_{2.5} NAAQS due to the revocation of the primary NAAQS. (See 81 FR 58125, August 24, 2016.) The area will be required to implement the CAA section 175A maintenance plan for the 1997 primary annual PM_{2.5} NAAQS and the PSD program for the 1997 annual PM_{2.5} NAAQS. Once approved, the maintenance plan could only be revised if the revision meets the requirements of CAA section 110(1) and, if applicable, CAA section 193. The area would not be required to submit a second 10-year maintenance plan for the 1997 primary annual PM_{2.5} NAAQS. (See 81 FR 58144, August 24, 2016.)

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an

addressing maintenance of the *primary* NAAQS in order to be redesignated to attainment; it does not require nonattainment areas for secondary NAAQS to submit maintenance plans in order to be redesignated to attainment. (See 42 U.S.C. 7505a(a).)

exemption or relieves a restriction,” and section 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.” The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today’s rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today’s rule relieves the state of planning requirements for this ozone nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) (3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Reviews.

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d) (3) (E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the

provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the

maintenance of ozone national ambient air quality standards in tribal lands.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule 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. This action

may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

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

Dated: March 20, 2017.

Robert A. Kaplan,
Acting Regional Administrator, Region 5.

40 CFR part 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart KK - Ohio

2. Section 52.1880 is amended by revising paragraph (q) (1) and by adding paragraph (v) to read as follows:

§ 52.1880 Control strategy: Particulate matter.

* * * * *

(q) * * *

(1) Ohio's 2005 NO_x, directly emitted PM_{2.5}, and SO₂ emissions inventory; and 2007 VOCs and ammonia emissions inventory, satisfy the emission inventory requirements of section 172(c) (3) for the Cincinnati-Hamilton area.

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(v) Approval - Ohio's RACM/RACT analysis that was submitted as part of their July 18, 2008, attainment demonstration satisfies the RACM/RACT requirements of section 172(c) (1) for the Cincinnati-Hamilton area.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

4. Section 81.336 is amended by revising the column headings under "Designation^a" for "Type" and "Date¹" and by revising the entry for Cincinnati-Hamilton, OH in the table entitled "Ohio-1997 Annual PM_{2.5} NAAQS" to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO-1997 ANNUAL PM_{2.5} NAAQS
[Primary and secondary]

Designated area	Designation ^a		Classification	
	Date ¹	Type	Date	Type
* * * * *	* * * * *			
Cincinnati-Hamilton, Ohio: Butler County Clermont County Hamilton County Warren County	[insert date of publication in the Federal Register]	Attainment		
* * * * *	* * * * *			

^aIncludes Indian Country located in each county or area, except as otherwise specified.

¹This date is 90 days after January 5, 2005, unless otherwise noted.

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