



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

**[EPA-R05-OAR-2016-0135; FRL-9960-79-Region 5]**

**Air Plan Approval; Indiana; Redesignation of the Indiana portion  
of the Cincinnati, Ohio-Kentucky-Indiana Area to Attainment of  
the 2008 Ozone Standard**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is determining that the Cincinnati, Ohio-Kentucky-Indiana area is attaining the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard) and approving a request from the Indiana Department of Environmental Management (IDEM) to redesignate the Indiana portion of the Cincinnati area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). The Cincinnati area includes Lawrenceburg Township in Dearborn County, Indiana; Butler, Clermont, Clinton, Hamilton, and Warren Counties in Ohio; and, Boone, Campbell, and Kenton Counties in Kentucky. IDEM submitted this request on February 23, 2016, and supplemented that submittal with a revised emissions inventory on May 4, 2016. EPA is also approving, as a revision to the Indiana State Implementation Plan (SIP), the state's plan for

maintaining the 2008 ozone standard through 2030 in the Cincinnati area. Additionally, EPA finds adequate and is approving the states' 2020 and 2030 volatile organic compound (VOC) and oxides of nitrogen (NO<sub>x</sub>) Motor Vehicle Emission Budgets (MVEBs) for the Indiana and Ohio portion of the Cincinnati area. Finally, EPA is approving the 2011 base year emissions inventory submitted by IDEM as meeting the base year emissions inventory requirement of the CAA for the Indiana portion of the Cincinnati area.

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

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0135. All documents in the docket are listed on the [www.regulations.gov](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 through [www.regulations.gov](http://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 Eric Svingen, Environmental Engineer, at (312) 353-4489 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Eric Svingen, 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) 353-4489, [svingen.eric@epa.gov](mailto:svingen.eric@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 is being addressed in this document?
- II. What comments did we receive on the proposed rule?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

**I. What is being addressed in this document?**

This rule takes action on the submission from IDEM, dated February 23, 2016, and supplemented on May 4, 2016, requesting redesignation of the Indiana portion of the Cincinnati area to attainment for the 2008 ozone standard. The background for today's action is discussed in detail in EPA's proposal, dated December 27, 2016 (81 FR 95081). In that rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 2008 ozone NAAQS is attained in an area when the 3-year average of the

annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.075 parts per million (ppm), when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. (See 40 CFR 50.15 and appendix P to 40 CFR part 50.) Under the CAA, EPA may redesignate nonattainment areas to attainment if sufficient complete, quality-assured data are available to determine that the area has attained the standard and if it meets the other CAA redesignation requirements in section 107(d)(3)(E). The proposed rule at 81 FR 95081 provides a detailed discussion of how Indiana has met these CAA requirements.

As discussed in the proposal at 81 FR 95081, quality-assured and certified monitoring data for 2013-2015 and preliminary data for 2016 show that the Cincinnati area has attained and continues to attain the 2008 ozone standard. In the maintenance plan submitted for the area, Indiana has demonstrated that the ozone standard will be maintained in the area through 2030. Finally, Indiana and Ohio have adopted 2020 and 2030 VOC and NO<sub>x</sub> MVEBs for the Indiana and Ohio portion of the Cincinnati area that are supported by Indiana's maintenance demonstration.

On June 1, 2016, Indiana submitted a separate SIP revision to address emissions statements rules required by CAA section 182(a)(3)(B). EPA proposed approval of that June 1, 2016,

submission in a separate proposed rule also published on December 27, 2016 (81 FR 95080). As discussed in the redesignation proposal at 81 FR 95081, emissions statements rules must be SIP-approved on or before the date EPA completes final rulemaking approving redesignation requests. Today, in a separate rule, EPA is finalizing approval of the emissions statements rulemaking. That approval allows EPA to proceed with this redesignation approval.

## **II. What comments did we receive on the proposed rule?**

EPA provided a 30-day review and comment period for the December 27, 2016, proposed rule. The comment period ended on January 26, 2017. We received no comments on the proposed rule.

## **III. What action is EPA taking?**

EPA is determining that the Cincinnati nonattainment area is attaining the 2008 ozone standard, based on quality-assured and certified monitoring data for 2013-2015 and that the Indiana portion of this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus changing the legal designation of the Indiana portion of the Cincinnati area from nonattainment to attainment for the 2008 ozone standard. EPA is also approving, as a revision to the Indiana SIP, the state's maintenance plan for the area. The maintenance plan is designed to keep the Cincinnati area in attainment of the 2008 ozone NAAQS through 2030. Finally, EPA finds adequate and is

approving the newly-established 2020 and 2030 MVEBs for the Indiana and Ohio portion of the Cincinnati area.

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 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, the 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, Oxides of nitrogen, Ozone, Volatile organic compounds.

*40 CFR Part 81*

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 17, 2017.

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

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations 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.*

2. Section 52.777 is amended by adding paragraph (uu) to read as follows:

**§52.777 Control strategy: photochemical oxidants (hydrocarbons).**

\* \* \* \* \*

(uu) Approval – On February 23, 2016, the Indiana Department of Environmental Management submitted a request to redesignate the Indiana portion of the Cincinnati, OH-KY-IN area to attainment of the 2008 ozone NAAQS. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. The 2020 motor vehicle emissions budgets for the Indiana and Ohio portions of the Cincinnati, OH-KY-IN area are 30.02 tons per summer day (TPSD) for VOC and 30.79 TPSD for NO<sub>x</sub>. The 2030 motor vehicle emissions budgets for the Indiana and Ohio portions of the area are 18.22 TPSD for VOC and 16.22 TPSD for NO<sub>x</sub>.

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**PART 81-DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

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

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

2. In §81.315, the table entitled "Indiana-2008 8-Hour Ozone NAAQS (Primary and secondary)" is amended by revising the entry for "Cincinnati, OH-KY-IN:" to read as follows:

**§81.315 Indiana.**

\* \* \* \* \*

Indiana—2008 8-Hour Ozone NAAQS (Primary and secondary)

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *	* * * * *			
Cincinnati, OH-KY-IN: <sup>2</sup> Dearborn County (part) Lawrenceburg Township	<b>[insert date of publication in the Federal Register]</b>	Attainment		
* * * * *	* * * * *			

<sup>1</sup> This date is July 20, 2012, unless otherwise noted.

<sup>2</sup> Excludes Indian country located in each area, unless otherwise noted.

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