



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

**[EPA-R04-OAR-2016-0601; FRL-9964-41-Region 4]**

**Air Plan Approval and Designation of Areas; KY; Redesignation of the Kentucky Portion of the Cincinnati-Hamilton 2008 8-Hour Ozone Nonattainment Area to Attainment**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On August 26, 2016, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Kentucky portion of the tri-state Cincinnati-Hamilton, Ohio-Kentucky-Indiana 2008 8-hour ozone nonattainment area (hereinafter referred to as the “Cincinnati-Hamilton, OH-KY-IN Area” or “Area”) to attainment for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) and to approve the portions of the State Implementation Plan (SIP) revision containing a maintenance plan and base year emissions inventory for the Area. EPA is taking final action to approve the Commonwealth’s base year emissions inventory for the Kentucky portion of the Area; to approve the Commonwealth’s plan for maintaining attainment of the 2008 8-hour ozone NAAQS in the Area, including motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) for the years 2020 and 2030 for the Kentucky portion of the Area; and to redesignate the Kentucky portion of the Area to attainment for the 2008 8-hour ozone NAAQS. Through separate actions, EPA has approved the redesignation requests and maintenance plans for both the Ohio and Indiana portions of the Area.

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

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2016-0601. 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 may not be publicly available, i.e., Confidential Business Information 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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation 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 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Richard Wong may be reached by phone at (404) 562-8726 or via electronic mail at [wong.richard@epa.gov](mailto:wong.richard@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. What is the Background for EPA's Proposed Actions?**

Effective July 20, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS that was promulgated on March 27, 2008. *See* 77 FR 30088 (May 21, 2012). The Cincinnati-Hamilton, OH-KY-IN Area was designated as nonattainment for the 2008 8-hour ozone NAAQS and classified as a marginal nonattainment area.<sup>1</sup> On May 4, 2016 (81 FR 26697), EPA issued a determination that the Area had attained the 2008 8-hour ozone NAAQS. On August 26, 2016, Kentucky requested that EPA redesignate the Area to attainment for the 2008 8-hour ozone NAAQS and submitted a SIP revision containing the Commonwealth's plan for maintaining attainment of the 2008 8-hour ozone standard in the Area through 2030, including 2020 and 2030 MVEBs for NO<sub>x</sub> and VOC for the Cincinnati-Hamilton, OH-KY-IN Area. In addition, the Commonwealth requested approval of the base year emissions inventory for the 2008 8-hour ozone NAAQS pursuant to CAA section 182(a)(1).

In a notice of proposed rulemaking (NPRM) published on May 1, 2017 (82 FR 20297), EPA proposed to approve the base year emissions inventory; to approve the maintenance plan, including the 2020 and 2030 MVEBs for NO<sub>x</sub> and VOC, and incorporate the plan into the Kentucky SIP; and to redesignate the Area to attainment for the 2008 8-hour ozone NAAQS. In that notice, EPA also notified the public of the status of the Agency's adequacy determination for the NO<sub>x</sub> and VOC MVEBs for the Cincinnati-Hamilton, OH-KY-IN Area. No adverse

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<sup>1</sup> The Cincinnati-Hamilton, OH-KY-IN Area is composed of portions of Boone, Campbell, and Kenton Counties in Kentucky; Butler, Clermont, Clinton, Hamilton, and Warren Counties in Ohio; and a portion of Dearborn County in Indiana.

comments were received on the May 1, 2017, proposed rulemaking. The details of Kentucky's submittal and the rationale for EPA's actions are further explained in the NPRM.

## **II. Final Action**

EPA is taking three separate, but related, final actions. First, EPA is approving the 2008 8-hour ozone NAAQS base year emissions inventory for the Cincinnati-Hamilton, OH-KY-IN Area as meeting the requirements of CAA section 182(a)(1) and incorporating it into the SIP. Approval of the base year emissions inventory is a prerequisite to redesignating an ozone nonattainment area to attainment.

Second, EPA is approving the maintenance plan for the Cincinnati-Hamilton, OH-KY-IN Area, including the NO<sub>x</sub> and VOC MVEBs for 2020 and 2030, as meeting the requirements of CAA section 175A and incorporating it into the Kentucky SIP. The maintenance plan demonstrates that the Area will continue to maintain the 2008 8-hour ozone NAAQS through 2030, and the MVEBs meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5).

Third, EPA is approving Kentucky's redesignation request for the 2008 8-hour ozone NAAQS for the Cincinnati-Hamilton, OH-KY-IN Area pursuant to CAA section 107(d)(3)(E). Approval of the redesignation request changes the official designation of the portions of Boone County, Campbell County, and Kenton County in the Cincinnati-Hamilton, OH-KY-IN Area for the 2008 8-hour ozone NAAQS from nonattainment to attainment, as found at 40 CFR part 81.

EPA is also notifying the public that EPA finds the newly-established NO<sub>x</sub> and VOC MVEBs for the Cincinnati-Hamilton, OH-KY-IN Area adequate for the purpose of transportation

conformity. Within 24 months from this final rule, the transportation partners will need to demonstrate conformity to the new NO<sub>x</sub> and VOC MVEBs pursuant to 40 CFR 93.104(e).

EPA has determined that these actions are effective immediately upon publication under the authority of 5 U.S.C. 553(d)(1) and (d)(3). 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. Section 553(d)(1) allows an effective date less than 30 days after publication if a substantive rule “relieves a restriction.” These actions qualify for the exception under section 553(d)(1) because they relieve the State of various requirements for the Area. Furthermore, section 553(d)(3) 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.” EPA finds good cause to make these actions effective immediately pursuant to section 553(d)(3) because they do not create any new regulatory requirements such that affected parties would need time to prepare before the actions take effect.

### **III. 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 Act and applicable federal regulations. *See* 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, these actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these actions:

- are not significant regulatory actions 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);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are 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.*);
- do 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);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- are 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
- will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

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), nor will it 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 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 from date of publication of this document 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**40 CFR Part 81**

Environmental protection, Air pollution control.

Dated: June 16, 2017.

V. Anne Heard,

Acting Regional Administrator,

Region 4.

40 CFR parts 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 S - Kentucky**

2. Section 52.920(e) is amended by adding new entries for “2008 8-hour ozone Maintenance Plan for the Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN Area” and “2008 8-hour ozone base year emissions inventory for the Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN Area” at the end of the table to read as follows:

**§52.920 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

**EPA-Approved Kentucky Non-Regulatory Provisions**

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
*	**	*	**	*

<p>2008 8-hour ozone Maintenance Plan for the Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN Area</p>	<p>Portions of Boone (2000 Census tracts: 702, 703.05, 703.06, 703.07, 703.08, 703.09, 704.01, 704.02, 705.01, 705.02, 706.01, 706.03, 706.04), Campbell (2000 Census tracts: 501, 502, 503, 504, 505, 506, 512, 513, 519.01, 519.03, 519.04, 520.01, 520.02, 521, 522, 523.01, 523.02, 524, 525, 526, 528, 529, 530, 531), and Kenton (2000 Census tracts: 603, 607, 609, 610, 611, 612, 613, 614, 616, 636.03, 636.04, 636.05, 636.06, 638, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655.01, 655.02, 656, 657, 658, 659, 668, 669, 670, 671) Counties, KY</p>	<p>8/26/2016</p>	<p>[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]</p>	
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2008 8-hour ozone base year emissions inventory for the Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN Area	Portions of Boone, Campbell and Kenton Counties in Kentucky	8/26/2016	[Insert date of publication in <u>Federal Register</u> ],[Insert citation of publication]	182(a)(1) base-year emissions inventory
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**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. In § 81.318, the table entitled “Kentucky-2008 8-Hour Ozone NAAQS (Primary and secondary)” is amended by revising the entries for “Cincinnati, OH-KY-IN” to read as follows:

**§ 81.318 Kentucky.**

\* \* \* \* \*

Kentucky-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>	[ <u>Insert date of publication in the Federal Register</u> ]	Attainment		
Boone County (part)		Attainment		
2000 Census tracts: 702, 703.05, 703.06, 703.07, 703.08, 703.09, 704.01, 704.02, 705.01, 705.02, 706.01, 706.03, 706.04				
Campbell County (part)		Attainment		

2000 Census tracts: 501, 502, 503, 504, 505, 506, 512, 513, 519.01, 519.03, 519.04, 520.01, 520.02, 521, 522, 523.01, 523.02, 524, 525, 526, 528, 529, 530, 531				
Kenton County (part)		Attainment		
2000 Census tracts: 603, 607, 609, 610, 611, 612, 613, 614, 616, 636.03, 636.04, 636.05, 636.06, 638, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655.01, 655.02, 656, 657, 658, 659, 668, 669, 670, 671				
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<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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[FR Doc. 2017-13994 Filed: 7/3/2017 8:45 am; Publication Date: 7/5/2017]