



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R04-OAR-2022-0982; FRL-11119-02-R4]

Air Plan Approval and Air Quality Designation; KY; Redesignation of the Northern Kentucky Portion of the Cincinnati, OH-KY 2015 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 21, 2022, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet (Cabinet), Division of Air Quality (DAQ), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Northern Kentucky portion (hereinafter referred to as the “Northern Kentucky Area” or “Area”) of the Cincinnati, Ohio-Kentucky, 2015 8-hour ozone nonattainment area (hereinafter referred to as the “Cincinnati, OH-KY Area”) to attainment for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Area. The Cabinet submitted this request and SIP revision through a letter dated September 20, 2022, and supplemented it on November 22, 2022. EPA is approving the Commonwealth’s plan for maintaining attainment of the 2015 8-hour ozone standard in the Northern Kentucky Area, including the motor vehicle emission budgets (budgets) for nitrogen oxides (NO_x) and volatile organic compounds (VOCs) for the years of 2026 and 2035 for the Area, incorporating the maintenance plan into the SIP, and redesignating the Area to attainment for the 2015 8-hour ozone NAAQS. EPA previously approved the redesignation request and maintenance plan for the Ohio portion of the Cincinnati, OH-KY Area. Additionally, EPA finds the 2026 and 2035 budgets for the Area adequate for the purpose of transportation conformity.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE

FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2022-0982. All documents in the docket are listed on the 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 or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation 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: Evan Adams, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9009. Mr. Evan Adams can also be reached via electronic mail at adams.evan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of EPA's Final Actions

EPA is taking the following separate but related actions addressing the September 21, 2022, submittal: (1) approving Kentucky's plan for maintaining the 2015 ozone NAAQS (maintenance plan), including the associated budgets, in the Northern Kentucky Area and incorporating the plan into the SIP, and (2) redesignating the Northern Kentucky Area to attainment for the 2015 8-hour ozone NAAQS. EPA also finds the 2026 and 2035 budgets for the Area adequate for the purpose of transportation conformity. The Northern Kentucky Area is

composed of portions of Boone, Campbell, and Kenton Counties in Kentucky. The Cincinnati, OH-KY Area is composed of the Northern Kentucky Area and the counties of Butler, Clermont, Hamilton, and Warren in Ohio.

EPA is taking final action to approve Kentucky's maintenance plan for the Northern Kentucky Area as meeting the requirements of section 175A, such approval being one of the Clean Air Act (CAA or Act) criteria for redesignating a nonattainment area to attainment, and to incorporate it into the SIP. The maintenance plan is designed to keep the Area in attainment of the 2015 8-hour ozone NAAQS through 2035. The maintenance plan includes 2026 and 2035 budgets for NO_x and VOCs for the Northern Kentucky Area for transportation conformity purposes. EPA is approving these budgets and incorporating them into the SIP. EPA is also taking final action to redesignate the Northern Kentucky Area to attainment pursuant to section 107(d)(3) of the CAA.

EPA is also approving the budgets for the Northern Kentucky Area through EPA's adequacy process. The Adequacy comment period began on September 28, 2022, with EPA's posting of the availability of Kentucky's submission on EPA's Adequacy website (<https://www.epa.gov/state-and-local-transportation/state-implementation-plans-sip-submissions-currently-under-epa>). The Adequacy comment period for these budgets closed on October 28, 2022. No comments, adverse or otherwise, were received during the Adequacy comment period.

II. Background

Upon promulgation of a new or revised ozone NAAQS, section 107(d) of the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS (or that contributes to ambient air quality in a nearby area that is violating the NAAQS). As part of the designations process for the 2015 8-hour ozone NAAQS, EPA designated the Cincinnati, OH-KY Area as a "Marginal" ozone nonattainment area, effective August 3, 2018. *See* 83 FR 25776 (June 4, 2018). Subsequently, EPA proposed to determine that the Cincinnati, OH-KY Area had

failed to attain by its August 3, 2021, attainment date (based on 2018-2020 air quality monitoring data) and to reclassify the Cincinnati, OH-KY Area as a Moderate nonattainment area on April 13, 2022. Prior to finalizing the determination and reclassification, EPA redesignated the Ohio portion of the Cincinnati, OH-KY Area to attainment for the 2015 8-hour ozone NAAQS based on 2019-2021 air quality monitoring data. *See* 87 FR 35104 (June 9, 2022). EPA finalized the reclassification of the Kentucky portion of the Cincinnati, OH-KY Area as Moderate on October 7, 2022 (87 FR 60897). On September 21, 2022, Kentucky requested that EPA redesignate the Northern Kentucky Area to attainment for the 2015 8-hour ozone NAAQS and submitted a SIP revision containing the Commonwealth's plan for maintaining attainment of the 2015 8-hour ozone standard in the Area, including 2026 and 2035 budgets for NO_x and VOC for the Northern Kentucky Area.

In a notice of proposed rulemaking (NPRM) published on July 28, 2023 (88 FR 48772), EPA proposed to approve the maintenance plan, including the 2026 and 2035 budgets for NO_x and VOC, and incorporate the plan into the Kentucky SIP and to redesignate the Northern Kentucky Area to attainment for the 2015 8-hour ozone NAAQS. EPA proposed to redesignate the Area based, in part, on an attaining 2019-2021 design value of 0.070 ppm for the Cincinnati, OH-KY Area. EPA is finalizing the redesignation based on the area's attainment, including the 2020-2022 design value of 0.069 ppm for the Cincinnati, OH-KY Area.¹ Preliminary 2023 monitoring data also indicates continued attainment of the 2015 8-hour ozone NAAQS. In the NPRM, EPA notified the public of the status of the Agency's adequacy determination for the NO_x and VOC budgets for the Northern Kentucky Area. The details of Kentucky's submittal and the rationale for EPA's actions are further explained in the NPRM.

III. Response to Comments

¹ EPA reviewed complete, quality-assured, and certified ozone monitoring data from monitoring stations in the Cincinnati, OH-KY Area for the 2015 8-hour ozone NAAQS for 2020 through 2022 and has determined that the design values for each monitor in the Area are equal to or less than the standard of 0.070 ppm for that time period. Final air quality design values for all criteria pollutants, including ozone, are available at <https://www.epa.gov/air-trends/air-quality-design-values>.

Comments on the July 28, 2023, NPRM were due on or before August 28, 2023. EPA received one set of comments on the NPRM. The commenter concurs with the proposed rule, and EPA appreciates the commenter's support. EPA responds below to the commenter's general concerns regarding vehicle emissions, emissions modeling, and ozone.

Comment 1: The commenter cautions EPA against “relying on speculative emissions reductions from newer vehicles” and states that multiple real-world tests have found that emissions control devices on vehicles can make emissions worse. The commenter also questions the use of vehicular emissions modeling rather than real-world measurements as it relates to the CAA requirement that states submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_x emitted within the boundaries of an ozone nonattainment area, and urges EPA to use caution when relying on modeling to “report vehicular-emissions data/MVEBs rather than actual testing as models rely on vehicles complying with CFR standards which in some cases is not the case.”

Response 1: In order to redesignate a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS. *See* CAA section 107(d)(3)(E)(i). EPA is redesignating the Northern Kentucky Area to attainment based on complete, quality assured, and certified ozone monitoring data from monitoring stations in the Cincinnati, OH-KY Area which show that the most recent design values for each monitor in that area are equal to or less than the 2015 8-hour ozone NAAQS. EPA did not rely on modeling or speculative emission reductions to determine, pursuant to CAA section 107(d)(3)(E)(i), that the Cincinnati, OH-KY Area has attained this NAAQS.

The commenter's concern about the use of emissions modeling to meet the CAA requirement that states submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_x emitted within the boundaries of an ozone nonattainment area relates to the nonattainment inventory requirement at CAA section

172(c)(3).² CAA section 182(a)(1) requires states with marginal ozone nonattainment areas to submit emissions inventories that comply with section 172(c)(3), and all mobile source inventories developed for 2015 ozone NAAQS implementation should use the latest emissions models available at the time that the attainment plan inventory is developed.³ As discussed in the NPRM, EPA approved the section 182(a)(1) emissions inventory for the Area in an action published on September 30, 2022. *See* 87 FR 59320. Therefore, any comments regarding the use of mobile source modeling in the preparation of Kentucky's 182(a)(1) inventory are untimely and beyond the scope of this rulemaking.

On-road mobile source emissions were also used to develop the attainment inventory, maintenance demonstration, and budgets included in the maintenance plan and were derived from EPA's MOVES model, which utilizes, among other things, real-world vehicle emissions test data. MOVES is EPA's state-of-the-art model for estimating emissions from on-road mobile sources for SIP purposes and conformity determinations outside of California.⁴ Contrary to the commenter's suggestion that vehicle emissions modeling does not reflect their real-world emissions, MOVES3 is based on the analyses of millions of emission test results and considerable advances in EPA's understanding of vehicle emissions. Compared with the prior version of MOVES, MOVES3 incorporates newer regulations and significant newer data, including improvements to heavy-duty (HD) diesel running emission rates based on manufacturer in-use testing data from hundreds of HD trucks and updated light-duty vehicle emission rates for hydrocarbons, CO, and NO_x based on in-use testing data. *See* 86 FR 1106, 1107 (January 7, 2021). Consistent with the CAA, MOVES is routinely used to develop

² CAA Section 172(c)(3) states "Such [nonattainment] plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met."

³ *See, e.g.*, 83 FR 62998, 63022 (December 6, 2018) (citing the CAA section 172(c) requirement that nonattainment area emissions inventories be based on the most comprehensive, accurate and current information available).

⁴ EPA, Policy Guidance on the Use of MOVES3 for State Implementation Plan Development, Transportation Conformity, General Conformity, and Other Purposes, EPA-420-B-20-044 (November 2020) at p.2, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1010LXH.pdf>.

budgets⁵ as well as attainment inventories and maintenance demonstrations for CAA section 175A maintenance plans.⁶ Kentucky used MOVES3, i.e., the most recent version of MOVES available at the time that the Commonwealth developed its maintenance plan SIP revision, and to the extent that commenter is asserting this was improper, EPA does not agree for the reasons discussed above. EPA also notes that Kentucky's use of MOVES3 in development of this maintenance plan SIP revision was consistent with EPA's guidance.⁷

Finally, it is unclear how the commenter's concern that "multiple real-world tests have found that emissions control devices on vehicles can make emissions worse" relates to EPA's actions on the redesignation request and maintenance plan SIP revision. The impact of real-world vehicle emissions is already reflected in the ambient air quality data that EPA is using to redesignate the Area, and the MOVES modeling used to develop portions of the maintenance plan is based, in part, on post-control vehicle emissions.

Comment 2: The commenter states that there is no safe level of ozone and that "while the monitoring data may indicate attainment, the lungs and other organs of Northern Kentuckians will continue to suffer permanent (and multigenerational) health damage as a result of ozone pollution at any concentration."

Response 2: EPA agrees that ozone has many adverse health impacts, including reduced lung function and pulmonary inflammation, which may lead to emergency room visits and premature deaths. *See, e.g.*, 80 FR 65292, 65294 (October 26, 2015). However, the commenter does not explain how the concerns about the health impacts from ozone exposure should influence EPA's actions related to the redesignation of the Northern Kentucky Area.

⁵ *See, e.g.*, *id.* at p.8; 40 CFR 93.111.

⁶ *See, e.g.*, "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division (September 4, 1992) at pp.8-10 (stating that attainment inventories should be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas and discussing emissions inventory-based maintenance demonstrations), available at https://www.epa.gov/sites/default/files/2016-03/documents/calcagni_memo_-_procedures_for_processing_requests_to_redesignate_areas_to_attainment_090492.pdf; *infra* footnote 7.

⁷ *See*, EPA, Policy Guidance on the Use of MOVES3 for State Implementation Plan Development, Transportation Conformity, General Conformity, and Other Purposes, EPA-420-B-20-044 (November 2020) at pp.7-8, available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1010LXH.pdf>.

EPA's redesignation means that air quality in the Cincinnati, OH-KY Area meets the 2015 8-hour ozone NAAQS. The NAAQS are designed to provide the requisite protection of public health and welfare, under section 109(b) of the CAA, and the CAA requires EPA to review the standards periodically to determine whether changes are warranted, and to respond to requests from states seeking to redesignate areas that have attained the standard. EPA has determined that Kentucky has met the statutory criteria for redesignation of the Area from nonattainment to attainment and is therefore redesignating the Area for the 2015 8-hour ozone NAAQS. EPA notes that the Agency recently announced a new review of the ozone NAAQS to ensure that the NAAQS reflect the most current, relevant science and protect human health.⁸

IV. Final Actions

EPA is taking the following separate but related final actions. First, EPA is approving the maintenance plan for the Northern Kentucky Area, including the NO_x and VOC budgets for 2026 and 2035, and incorporating it into the Kentucky SIP. The maintenance plan demonstrates that the Area will continue to maintain the 2015 8-hour ozone NAAQS through 2035 and that the budgets meet all the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5). Second, EPA is approving Kentucky's redesignation request for the 2015 8-hour ozone NAAQS for the Northern Kentucky Area. Approval of the redesignation request changes the official designation of a portion of Boone, Campbell, and Kenton Counties in Kentucky in the Cincinnati, OH-KY Area for the 2015 8-hour ozone NAAQS from nonattainment to attainment, as found at 40 CFR part 81. EPA previously approved the redesignation request and maintenance plan for the Ohio portion of the Cincinnati, OH-KY Area. EPA is also approving the newly established NO_x and VOC budgets for the Northern Kentucky Area and finds the budgets adequate for the purpose of transportation conformity. Within 24 months from this final rule, the transportation partners for

⁸ See EPA's August 21, 2023, news release titled "EPA Initiates New Review of the Ozone National Ambient Air Quality Standards to Reflect the Latest Science," available at <https://www.epa.gov/newsreleases/epa-initiates-new-review-ozone-national-ambient-air-quality-standards-reflect-latest#:~:text=In%20October%202021%2C%20EPA%20announced,the%20CASAC%20in%20that%20review.>

the Northern Kentucky Area will need to demonstrate conformity to the new NO_x and VOC budgets pursuant to 40 CFR 93.104(e).

V. 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 these reasons, 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 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because they are not significant regulatory actions under section 3(f)(1) of Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by these actions present a disproportionate risk to children. These actions find that the area is attaining the NAAQS and approve a plan for maintaining the area's air quality.
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines EJ as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those

resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

Neither the Cabinet nor the Division evaluated EJ as part of its redesignation request or SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ as part of its actions on the redesignation request and SIP submittal. Consideration of EJ is not required as part of these actions, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

These actions are subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. These actions are 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 these actions 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. These actions 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: September 28, 2023.

Jeaneane Gettle,
Acting Regional Administrator,
Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 81 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. In § 52.920(e), amend the table by adding a new entry at the end of the table for “2015 8-hour Ozone Maintenance Plan for the Kentucky Portion of the Cincinnati, OH-KY Area” 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
***	*	*	*	*
2015 8-hour Ozone Maintenance Plan for the Kentucky Portion of the Cincinnati, OH-KY Area	Portions of Boone, Campbell, and Kenton Counties	9/21/2022	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	

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, amend the table entitled “Kentucky—2015 8-Hour Ozone NAAQS” by revising the entry for “Cincinnati, OH-KY,” to read as follows:

§ 81.318 Kentucky.

* * * * *

Kentucky - 2015 8-Hour Ozone NAAQS

[Primary and secondary]

Designated area ¹	Designation		Classification	
	Date ²	Type	Date ²	Type
Cincinnati, OH-KY	[Insert date 30 days after date of publication in the Federal Register]	Attainment		
Boone County (part): The entire county except for 2010 US Census Tracts 706.01 and 706.04.				
Campbell County (part): The entire county except for 2010 US Census Tracts 520.01 and 520.02.				
Kenton County (part): The entire county except for 2010 US Census Tracts 637.01 and 637.02.				
**	**	*	*	*

¹ Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

² This date is August 3, 2018, unless otherwise noted.

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