ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

Approval and promulgation of implementation plans and designation of areas for air quality planning purposes; Ohio; Indiana; redesignation of the Ohio and Indiana portions of the Cincinnati-Hamilton area to attainment for ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the requests of Ohio and Indiana to redesignate the Ohio and Indiana portions of the Cincinnati-Hamilton, OH–KY–IN 8-hour ozone nonattainment area, “the Cincinnati-Hamilton area,” to attainment for that standard, because these requests meet the statutory requirements for redesignation under the Clean Air Act (CAA). The Ohio Environmental Protection Agency (Ohio EPA) and the Indiana Department of Environmental Management (IDEM) submitted these requests on December 14, 2009, and January 21, 2010, respectively. (EPA will address the Kentucky portion of the Cincinnati-Hamilton area in a separate rulemaking action.)

These approvals involve several related actions. EPA is making a determination under the CAA that the Cincinnati-Hamilton area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Cincinnati-Hamilton area includes Butler, Clermont, Clinton, Hamilton, and Warren Counties in Ohio, Lawrenceburg Township in Dearborn County, Indiana, and Boone, Campbell, and Kenton Counties in Kentucky. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2007–2009 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the entire Cincinnati-Hamilton area. EPA is also approving, as revisions to the Ohio and Indiana State Implementation Plans (SIPs), the States’ plans for maintaining the 8-hour ozone NAAQS through 2020 in the area.

I. What is the background for these actions?

The background for today’s actions is discussed in detail in EPA’s February 26, 2010, proposal (75 FR 8871). In that rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm. (See 69 FR 23857 (April 30, 2004) for further information.) 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).

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

EPA provided a 30-day review and comment period. The comment period closed on March 29, 2010. We received no comments on the proposed rule.

III. What action is EPA taking?

EPA is making a determination that the Cincinnati-Hamilton area has attained the 1997 8-hour ozone NAAQS. EPA is also approving the maintenance plan SIP revisions for the Ohio and Indiana portions of the Cincinnati-Hamilton area. EPA’s approval of the maintenance plans is based on the States’ demonstrations that the plans meet the requirements of section 175A of the CAA. After evaluating the redesignation requests submitted by Ohio and Indiana, EPA believes that the requests meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is approving the redesignation of the Ohio and Indiana portions of the Cincinnati-Hamilton area as follows:

Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>What is the background for these actions?</td>
</tr>
<tr>
<td>II.</td>
<td>What comments did we receive on the proposed rule?</td>
</tr>
<tr>
<td>III.</td>
<td>What action is EPA taking?</td>
</tr>
<tr>
<td>IV.</td>
<td>Statutory and Executive Order Reviews.</td>
</tr>
</tbody>
</table>
portion of the Cincinnati-Hamilton area and IDEM's 2002 base year emissions inventory for Dearborn County as meeting the requirements of section 172(c)(3) of the CAA. Finally, EPA finds adequate and is approving the States' 2015 and 2020 MVIEBs for Ohio and Indiana portions of the Cincinnati-Hamilton area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action 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 additional requirements beyond those imposed by state law and the CAA. For that reason, these actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action 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
- Do 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not 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 July 12, 2010. 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, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81
Environmental protection, Air pollution control, National parks, Wilderness areas.

Bharat Mathur,
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—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.777 is amended by adding paragraphs (nn) and (oo) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(nn) Approval—Indiana’s 2002 inventory satisfies the base year emissions inventory requirements of section 172(c)(3) of the Clean Air Act for the Indiana portion of the Cincinnati-Hamilton, OH–KY–IN area under the 1997 8-hour ozone standard.

(oo) Approval—On January 21, 2010, the Indiana Department of...
Environmental Management submitted a request to redesignate the Indiana portion of the Cincinnati-Hamilton, OH–KY–IN area to attainment of the 8-hour 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 2015 motor vehicle emissions budgets for the Ohio and Indiana portions of the Cincinnati-Hamilton, OH–KY–IN area are 31.73 tpd for VOC and 49.00 tpd for NO\textsubscript{X}. The 2020 motor vehicle emissions budgets for the Ohio and Indiana portions of the area are 28.82 tpd for VOC and 34.39 tpd for NO\textsubscript{X}.

Subpart KK—Ohio

3. Section 52.1885 is amended by adding paragraphs (ff)(10) and (hh)(3) to read as follows:

§52.1885 Control strategy: Ozone.

(ff) Approval—On December 14, 2009, the Ohio Environmental Protection Agency submitted a request to redesignate the Ohio portion of the Cincinnati-Hamilton, OH–KY–IN area to attainment of the 8-hour 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 2015 motor vehicle emissions budgets for the Ohio and Indiana portions of the Cincinnati-Hamilton, OH–KY–IN area are 31.73 tpd for VOC and 49.00 tpd for NO\textsubscript{X}. The 2020 motor vehicle emissions budgets for the Ohio and Indiana portions of the area are 28.82 tpd for VOC and 34.39 tpd for NO\textsubscript{X}.

(hh) Approval—Ohio’s 2005 inventory satisfies the base year emissions inventory requirements of section 172(c)(3) of the Clean Air Act for the Ohio portion of the Cincinnati-Hamilton, OH–KY–IN area under the 1997 8-hour ozone standard.

PART 81—[AMENDED]

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

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

5. Section 81.315 is amended by revising the entry for Cincinnati-Hamilton, OH–KY–IN in the table entitled “Indiana—Ozone (8-Hour Standard)” to read as follows:

§81.315 Indiana.

Ohio—Ozone

Designated area Designation a Classification

<table>
<thead>
<tr>
<th>Designated area</th>
<th>Designation</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cincinnati-Hamilton, OH–KY–IN:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dearborn County (part)</td>
<td>May 11, 2010</td>
<td>Attainment</td>
</tr>
</tbody>
</table>

a Includes Indian Country located in each county or area, except as otherwise specified.

1 This date is June 15, 2004, unless otherwise noted.

6. Section 81.336 is amended by revising the entry for Cincinnati-Hamilton, OH–KY–IN in the table entitled “Ohio—Ozone (8-Hour Standard)” to read as follows:

§81.336 Ohio.

Ohio—Ozone

Designated area Designation a Classification

<table>
<thead>
<tr>
<th>Designated area</th>
<th>Designation</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cincinnati-Hamilton, OH–KY–IN:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Butler County</td>
<td>May 11, 2010</td>
<td>Attainment</td>
</tr>
<tr>
<td>Clermont County</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clinton County</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hamilton County</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Warren County</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

a Includes Indian Country located in each county or area, except as otherwise specified.

1 This date is June 15, 2004, unless otherwise noted.
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

RIN 2060–AO71


AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is issuing a direct final rule to amend the diesel sulfur regulations to allow refiners, importers, distributors, and retailers of highway diesel fuel the option to use an alternative affirmative defense if the Agency finds highway diesel fuel samples above the specified sulfur standard at retail facilities. This alternative defense consists of a comprehensive program of quality assurance sampling and testing that would cover all participating companies that produce and/or distribute highway diesel fuel if certain other conditions are met. The sampling and testing program would be conducted pursuant to a survey plan approved by EPA that is designed to achieve the same objectives as the current regulatory quality assurance requirement. This rule also amends the gasoline benzene regulations to allow disqualified small refiners the same opportunities to generate gasoline benzene credits as that afforded to non-small refiners.

DATES: This rule is effective on July 12, 2010 without further notice, unless EPA receives adverse comment by June 10, 2010. If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that this rule, or the relevant provisions of this rule, will not take effect. The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of July 12, 2010.

Hearings: If EPA receives a request from a person wishing to speak at a public hearing by May 26, 2010, a public hearing will be held at a time and location to be announced in a subsequent Federal Register notice. To request to speak at a public hearing, send a request to the contact in FOR FURTHER INFORMATION CONTACT.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–1158, by one of the following methods:

- E-mail: a-and-r-docket@epa.gov.
- Fax: (202) 566–9744.

Hand Delivery: EPA Docket Center, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Air Docket ID No. EPA–HQ–OAR–2007–1158. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of box-sized information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–1158. 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 http://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 http://www.regulations.gov, your e-mail address will automatically be 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 unless you provide it in the body of your comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information unless you provide it in the body of your comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information unless you provide it in the body of your comment.

SUPPLEMENTARY INFORMATION:

Why is EPA using a direct final rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the “Proposed Rules” section of today’s Federal Register, we are publishing a separate document that will serve as the proposed rule to amend the diesel sulfur regulations and the gasoline benzene regulations if adverse comments are received on this direct final rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the ADDRESSES section of this document.

If EPA receives adverse comment on a distinct provision of this rulemaking, we will publish a timely withdrawal in the Federal Register indicating which provisions we are withdrawing. The provisions that are not withdrawn will become effective on the date set out above, notwithstanding adverse comment on any other provision. We will address all public comments in any subsequent final rule based on the proposed rule.