



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2017-0389; FRL-9976-20-Region 4]**

**Air Plan Approval; KY: Removal of Reliance on**

**Reformulated Gasoline in the Kentucky Portion of the Cincinnati-Hamilton Area**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted on September 13, 2017, by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) in support of the Commonwealth's separate petition requesting that EPA remove the federal reformulated gasoline (RFG) requirements for Boone, Campbell, and Kenton counties in the Kentucky portion of the Cincinnati-Hamilton, Ohio-Kentucky-Indiana 2008 8-hr ozone maintenance area (hereinafter referred to as the "Northern Kentucky Area" or "Area"). The SIP revision revises the Commonwealth's maintenance plan emissions inventory and associated motor vehicle emissions budgets (MVEBs), for years 2020 and 2030, to remove reliance on emissions reductions from the federal RFG program requirements, a program that the Commonwealth voluntarily opted into in 1995. The SIP revision also includes a non-interference demonstration evaluating whether removing reliance on the RFG requirements in the Northern Kentucky Area would interfere with the requirements of the Clean Air Act (CAA or Act). EPA is approving this SIP revision and the

corresponding non-interference demonstration because EPA determined that the revision is consistent with the applicable provisions of the CAA. Please note that this final rule does not remove the federal RFG requirement. On April 18, 2017, Kentucky's Energy and Environment Cabinet submitted a separate petition to the EPA Administrator requesting to opt-out of the federal RFG program in the Northern Kentucky Area, and the Administrator will act on that petition in the near future.

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

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. No. EPA-R04-OAR-2017-0389 at <http://www.regulations.gov>. 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 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:** Dianna Myers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management

Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Myers can be reached via telephone at (404) 562-9207 or via electronic mail at Myers.Dianna@epa.gov.

## **SUPPLEMENTARY INFORMATION:**

### **I. What is the Background for this final action?**

The Northern Kentucky Area was included in the Cincinnati-Hamilton Area, which was originally designated as a moderate nonattainment area for the 1-hour ozone standard on November 6, 1991 (56 FR 56694). In 1995, Kentucky voluntarily opted into the RFG program under Phase I of a two-phase nationwide program to reduce the volatility of commercial gasoline during the summer ozone season. Kentucky elected to stay in the program under Phase II which was more stringent than Phase I.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This standard was more stringent than the 1-hour ozone standard. On June 19, 2000 (65 FR 37879), the Cincinnati-Hamilton 1-hour nonattainment Area was redesignated as attainment for the 1-hour ozone NAAQS, and was considered to be a maintenance area subject to a CAA section 175A maintenance plan for the 1-hour ozone NAAQS. On April 30, 2004, EPA designated the Cincinnati-Hamilton OH-KY-IN Area under subpart 1 as a “basic” 1997 8-hour ozone NAAQS nonattainment area (69 FR 23857).<sup>1</sup> On August 5, 2010 (75 FR 47218), the Kentucky portion of the Cincinnati-Hamilton 1997 8-hour ozone area was redesignated to attainment.

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<sup>1</sup> The 1997 8-hour ozone area included in its entirety Boone, Campbell, and Kenton Counties in Kentucky and Butler, Clermont, Clinton, Hamilton and Warren Counties in Ohio; and a portion of Dearborn County in Indiana.

On March 12, 2008, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 ppm to provide increased protection of public health and the environment. *See* 73 FR 16436 (March 27, 2008). The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but is set at a more protective level. Under EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15.

Effective July 20, 2012, EPA designated any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008-2010) of air monitoring data as a nonattainment area. *See* 77 FR 30088 (May 21, 2012). The Cincinnati-Hamilton, OH-KY-IN Area was designated as a marginal ozone nonattainment area. *See* 40 CFR 81.318. Areas that were designated as marginal nonattainment areas were required to attain the 2008 8-hour ozone NAAQS as expeditiously as possible but no later than July 20, 2015, based on 2012-2014 monitoring data. On May 4, 2016 (81 FR 26697), EPA published its determination that the Cincinnati-Hamilton, OH-KY-IN Area had attained the 2008 8-hour ozone NAAQS by the attainment deadline.

On August 26, 2016, Kentucky submitted a 2008 8-hour ozone redesignation request and maintenance plan for the Cincinnati-Hamilton Area, which EPA approved on July 5, 2017 (82 FR 30976).<sup>2</sup> With its redesignation request, Kentucky included a maintenance demonstration

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<sup>2</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. This action only pertains to the Kentucky portion of the maintenance area.

plan that estimated emissions through 2030 that modeled RFG because Kentucky previously opted into the RFG program.

In a September 13, 2017, SIP revision submittal, KDAQ updated the mobile (on-road and non-road) emissions inventory for the August 26, 2016, maintenance plan (including the MVEBs) to reflect Kentucky's petition (see below) to opt-out of the RFG requirements for Boone, Campbell, and Kenton counties in the Northern Kentucky Area. The updates were summarized in KDAQ's submittal. On April 18, 2017, Kentucky's Energy and Environment Cabinet submitted a petition to the EPA Administrator requesting to opt-out of the federal RFG program in the Northern Kentucky Area, and as stated above, the September 13, 2017, SIP revision was submitted in support of that petition (particularly the requirements of 40 CFR 80.72(b)(3) and (4)). Kentucky's opt-out petition will be acted on by the Administrator in a separate action, and if approved in that separate action, will establish the effective date of the opt-out. EPA's RFG regulations require that the opt-out cannot become effective less than 90 days from the effective date of this final action. EPA will also publish a notice in the Federal Register to notify the public of the approval and effective date of the opt-out (*See* 40 CFR 80.72(c)(7) and (d).)

In a notice of proposed rulemaking (NPRM) published on February 14, 2018 (83 FR 6496), EPA proposed to approve the September 13, 2017, SIP revision. The Agency did not receive any adverse comments on the NPRM.

## **II. Revised MVEBs**

EPA is approving the changes in the September 13, 2017, SIP revision which includes updating the 2008 maintenance plan 2020 and 2030 MVEBs. The same criteria used to develop

the MVEBs in the August 26, 2016, maintenance SIP are used for this SIP revision. The revised MVEBs for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) are outlined in Table 1 below.

**Table 1. MVEBs for the Kentucky Portion of Cincinnati-Hamilton, OH-KY-IN Area (tons per summer day)**

	2020		2030	
	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC
<b>On-Road Emissions</b>	<b>8.42</b>	<b>4.17</b>	<b>3.56</b>	<b>2.31</b>
<b>Safety Margin<sup>3</sup></b>	<b>0.61</b>	<b>0.19</b>	<b>1.63</b>	<b>.55</b>
<b>MVEBs with Safety Margin</b>	<b>9.03</b>	<b>4.36</b>	<b>5.19</b>	<b>2.86</b>

### III. Final Action

EPA is approving Kentucky's September 13, 2017, SIP revision seeking to revise the maintenance plan emissions inventory and associated MVEBs for years 2020 and 2030 to

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<sup>3</sup> The safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. KDAQ chose to allocate a total of 2.24 tpd to the available NO<sub>x</sub> safety margin and a total 0.74 tons per day of the available VOC safety margin. The transportation conformity rule provides for establishing safety margins for use in transportation conformity determinations. (*See* 40 CFR 93.124(a).)

remove reliance on emissions reductions from the federal RFG program requirements; a program that the Commonwealth voluntarily opted into in 1995. The SIP revision also includes a non-interference demonstration evaluating whether removing reliance on the RFG requirements in the Northern Kentucky Area would interfere with the requirements of the CAA. 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)(3). For analysis years 2020 through 2029, the new 2020 MVEBs will be used, and for analysis years 2030 and beyond, the new 2030 MVEBs will be used.

In accordance with 5 U.S.C. 553(d), EPA finds that there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary because this action approves a SIP revision and noninterference demonstration that serves as the basis of a subsequent action to relieve 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. This rule however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule will serve as a basis for a subsequent action to relieve the Area from certain CAA requirements. For these reasons, EPA

finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, 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. 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- 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).

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 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 in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 21, 2018.

Onis “Trey” Glenn, III,

Regional Administrator,

Region 4.

40 CFR part 52 is 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 an entry for “Removal of Reliance on Reformulated Gasoline in 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.**

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(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
*	**	*	**	*
Removal of Reliance on Reformulated Gasoline in the Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN Area	Boone, Campbell and Kenton Counties (Kentucky portion of the Cincinnati-Hamilton Area)	09/13/17	[Insert date of publication in <u>Federal Register</u> ], [Insert citation of publication]	

[FR Doc. 2018-06557 Filed: 3/30/2018 8:45 am; Publication Date: 4/2/2018]