

contained in the maintenance plan for the horizon years 2015 and beyond adopted on July 30, 1996 and submitted by the Virginia Department of Environmental Quality on July 30, 1996.

**PART 81—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401-7671.

**Subpart C—Section 107 Attainment Status Designations**

4. In § 81.347 the “Virginia—Ozone” table is amended by revising the entry for “Richmond Area” to read as follows:

**§ 81.347 Virginia.**

\* \* \* \* \*

VIRGINIA—OZONE

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
Richmond Area:				
Charles City County (part).....	12/17/97	Attainment.		
Beginning at the intersection of State Route 156 and the Henrico/Charles City County Line, proceeding south along State Route 5/156 to the intersection with State Route 106/156, proceeding south along Route 106/156 to the intersection with the Prince George/Charles City County line, proceeding west along the Prince George/Charles City County line to the intersection with the Chesterfield/Charles City County line, proceeding north along the Chesterfield/Charles City County line to the intersection with the Henrico/Charles City County line, proceeding north along the Henrico/Charles City County line to State Route 156.				
Chesterfield County, Colonial Heights, Hanover County, Henrico County, Hopewell, Richmond.				
* * * * *				

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[OH107-3; KY94-9717a; FRL-5922-5]

**Clean Air Act Promulgation of Extension of Attainment Date for Ozone Nonattainment Area; Ohio; Kentucky**

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

**ACTION:** Final rule.

**SUMMARY:** On May 27, 1997, USEPA extended the attainment date for the Cincinnati-Hamilton interstate, moderate ozone nonattainment area from November 15, 1996 to November 15, 1997 utilizing “direct final rulemaking” procedures. On July 28, 1997, USEPA withdrew the direct final rule due to the receipt of adverse comments. In this action USEPA is responding to public comments received in response to the proposed rule and announcing that it is extending

the attainment date for the Cincinnati-Hamilton interstate moderate ozone nonattainment area from November 15, 1996 to November 15, 1997. This extension is based in part on monitored air quality readings for the national ambient air quality standard (NAAQS) for ozone during 1996. The USEPA is also revising the table in the Code of Federal Regulations concerning ozone attainment dates in this area.

**EFFECTIVE DATE:** This extension becomes effective December 17, 1997.

**ADDRESSES:** The Kentucky SIP revision is available for inspection at the following addresses:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303-3104.  
Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

The Ohio SIP revision is available for inspection at the following addresses:  
Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Ohio EPA, Division of Air Pollution Control, 1800 Watermark Drive, Columbus, OH 43215.

**FOR FURTHER INFORMATION CONTACT:** Joseph M. LeVasseur at the USEPA Region 4 address listed above or Randolph O. Cano at Region 5 at the address listed above. (It is recommended that you contact Joseph M. LeVasseur at (404) 562-9035 before visiting the Region 4 office.) (It is recommended that you contact Randolph O. Cano at (312) 886-6036 before visiting the Region 5 office.)

**SUPPLEMENTARY INFORMATION:**

**Request for Attainment Date Extension for the Cincinnati-Hamilton Metropolitan Moderate Ozone Nonattainment Area**

On November 7, 1996, the Ohio Environmental Protection Agency (Ohio EPA) requested a one-year attainment date extension for the Ohio portion of the Cincinnati-Hamilton moderate ozone nonattainment area which consists of Hamilton, Butler, Clermont and Warren Counties in Ohio. Similarly, on November 15, 1996, the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) requested

a one-year attainment date extension for the Kentucky portion of the Cincinnati-Hamilton moderate ozone nonattainment area which consists of Kenton, Boone and Campbell Counties. Since this area was classified as a moderate ozone nonattainment area, the statutory ozone attainment date, as prescribed by section 181(a) of the Clean Air Act (CAA), is November 15, 1996. The submittals requested that the attainment date be extended to November 15, 1997. On May 27, 1997 (62 FR 28634), USEPA extended the attainment date for the Cincinnati-Hamilton interstate, moderate ozone nonattainment area from November 15, 1996 to November 15, 1997 utilizing "direct final rulemaking" procedures. On July 28, 1997 (62 FR 40280), USEPA withdrew the direct final rule due to the receipt of adverse comments. In this action USEPA is responding to public comments received in response to the proposed rule and announcing that it is extending the attainment date for the Cincinnati-Hamilton interstate moderate ozone nonattainment area from November 15, 1996 to November 15, 1997. This extension is based in part on monitored air quality readings for the ozone national ambient air quality standard (NAAQS) during 1996.

**CAA Requirements and USEPA Actions Concerning Designation and Classification**

Section 107(d)(4) of the CAA requires the States and USEPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) requires that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality. In a series of **Federal Register** documents, USEPA completed this

process by designating and classifying all areas of the country for ozone. See, e.g., 56 FR 58694 (Nov. 6, 1991); 57 FR 56762 (Nov. 30, 1992).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the CAA. The Cincinnati-Hamilton ozone nonattainment area was designated nonattainment and classified moderate for ozone pursuant to 56 FR 58694 (Nov. 6, 1991). By this classification, its attainment date became November 15, 1996. A discussion of the attainment dates is found in 57 FR 13498 (April 16, 1992) (the General Preamble).

**CAA Requirements and USEPA Actions Concerning Meeting the Attainment Date**

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, USEPA determines attainment status on the basis of the expected number of exceedances of the NAAQS over the most recent three-year period. See General Preamble, 57 FR 13506. In the case of moderate ozone nonattainment areas, the three-year period is 1994-1996. CAA section 181(b)(2)(A) further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upward (bumped-up).

A review of the actual ambient air quality ozone data from the USEPA Aerometric Information Retrieval System (AIRS), shows that a number of air quality monitors located in the Cincinnati-Hamilton ozone nonattainment area recorded exceedances of the NAAQS for ozone during the three-year period from 1994 to 1996. At one of these monitors, Warren County, OH, the number of

expected exceedances was 2.0 per year, for 1994 and 1995. Because these exceedances averaged more than 1.0 over the three-year period, they constitute a violation of the ozone NAAQS for the Cincinnati-Hamilton area during this three-year period. Thus, the area did not meet the November 15, 1996 attainment date.

However, CAA section 181(a)(5) provides an exemption from these bump-up requirements. Under this exemption, USEPA may grant up to two, one-year extensions of the attainment date under specified conditions:

Upon application by any State, the Administrator may extend for one additional year (hereinafter referred to as the "Extension Year") the date specified in table 1 of paragraph (1) of this subsection if—

(A) The State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) No more than one exceedance of the NAAQS level for ozone has occurred in the area in the year preceding the Extension Year.

No more than two one-year extensions may be issued for a single nonattainment area.

The USEPA interprets this provision to authorize the granting of a one-year extension under the following minimum conditions:

(1) The State requests a one-year extension,

(2) All requirements and commitments in the USEPA-approved SIP for the area have been complied with, and

(3) The area has no more than one measured exceedance of the NAAQS at each monitor in the area during the year that includes the attainment date (or the subsequent year, if a second one-year extension is requested).

TABLE 1.—EXCEEDANCES OF THE OZONE AIR QUALITY STANDARD IN THE CINCINNATI-HAMILTON AREA 1994 TO 1996

Site	County/state	Year	Exceedances measured	Expected exceedances
Oxford <sup>1</sup> .....	Butler, OH .....	1994	0	0.0
Middletown .....	Butler, OH .....	1994	0	0.0
Middletown .....	Butler, OH .....	1995	2	2.0
Middletown .....	Butler, OH .....	1996	1	1.0
Hamilton .....	Butler, OH .....	1994	0	0.0
Hamilton .....	Butler, OH .....	1995	1	1.0
Hamilton .....	Butler, OH .....	1996	0	0.0
4430 SR 222 .....	Clermont, OH .....	1994	1	1.0
4430 SR 222 .....	Clermont, OH .....	1995	1	1.0
4430 SR 222 .....	Clermont, OH .....	1996	0	0.0
11590 Grooms Rd .....	Hamilton, OH .....	1994	0	0.0
11590 Grooms Rd .....	Hamilton, OH .....	1995	0	0.0
11590 Grooms Rd .....	Hamilton, OH .....	1996	0	0.0
6950 Ripple Rd .....	Hamilton, OH .....	1994	0	0.0
6950 Ripple Rd .....	Hamilton, OH .....	1995	1	1.0
6950 Ripple Rd .....	Hamilton, OH .....	1996	0	0.0

TABLE 1.—EXCEEDANCES OF THE OZONE AIR QUALITY STANDARD IN THE CINCINNATI-HAMILTON AREA 1994 TO 1996—  
Continued

Site	County/state	Year	Exceedances measured	Expected exceedances
Cincinnati	Hamilton, OH	1994	0	0.0
Cincinnati	Hamilton, OH	1995	1	1.0
Cincinnati	Hamilton, OH	1996	0	0.0
Lebanon	Warren, OH	1994	2	2.0
Lebanon	Warren, OH	1995	2	2.0
Lebanon	Warren, OH	1996	0	0.0
KY 338	Boone, KY	1994	0	0.0
KY 338	Boone, KY	1995	0	0.0
KY 338	Boone, KY	1996	0	0.0
Dayton	Campbell, KY	1994	0	0.0
Dayton	Campbell, KY	1995	0	0.0
Dayton	Campbell, KY	1996	1	1.0
Covington	Kenton, KY	1994	0	0.0
Covington	Kenton, KY	1995	1	1.0
Covington	Kenton, KY	1996	1	1.0

<sup>1</sup> This site was shutdown after 1994, so no data are available for 1995 and 1996.

In both extension requests Ohio and Kentucky indicated that they satisfied the attainment date extension criteria in as much as no monitors in the Cincinnati-Hamilton area monitored more than one exceedance each during 1996. The 1996 monitoring data has been quality controlled and quality assured, as has been the data for 1994 and 1995. These data are summarized in Table 1. An examination of the data indicates that three of the ten monitors recorded one exceedance each during 1996.

Both Ohio and Kentucky certified that they are implementing the ozone State Implementation Plans (SIPs) for the area. USEPA conducted a review of the ozone SIPs, as contained in 40 CFR part 52 and USEPA's electronic version of the SIP, and believes that the States are implementing the USEPA approved ozone SIPs. Additionally, USEPA has not made a finding of failure to implement the SIPs for the area. This supports the States' certification that the area is implementing its SIPs.

Ohio is implementing the requirements of the approved Ozone SIP. Regarding implementation of the vehicle inspection and maintenance (I/M) program, Ohio enacted legislation authorizing the I/M program and adopted regulations for the operation of the program. The USEPA approved the program on April 4, 1995 (see 60 FR 16989). The State of Ohio awarded a contract for program operations, and on January 2, 1996, Ohio began testing vehicles in the Cincinnati area. The enactment of legislation, adoption of regulations, and the capital investment in structures and equipment to perform testing meets the implementation test. While the Cincinnati program has been suspended due to program performance

problems, Ohio is in compliance with CAA implementation requirements. The Ohio Stage II vapor recovery program is being implemented in the Cincinnati area. The State is also collecting emissions statements from sources in the area. The State is implementing its SIP for conformity. Also, the area is implementing its approved SIP which includes a program for controlling volatile organic compound (VOC) emissions from stationary sources. This includes the Non-Control Technique Guideline Reasonably Available Control Technique requirements approved within the past several years for the following plants in the Ohio portion of the area: Steelcraft Manufacturing Co., Chevron USA Inc., International Paper Co., Morton Thiokol, Armco Steel Co., Formica Corp., PMC Specialties Group, Hilton Davis Co., Monsanto Co., and Proctor and Gamble.

Kentucky is implementing the requirements of its approved ozone SIP for the Cincinnati-Hamilton interstate area. The Kentucky portion of the area is implementing its program for controlling oxides of nitrogen (NO<sub>x</sub>) and VOC emissions from stationary sources.

**Proposed Rule and Responses to Comments**

The USEPA published a direct final rule to approve the attainment date extension request for the Cincinnati-Hamilton moderate ozone nonattainment area in the May 27, 1997 (62 FR 28634), **Federal Register**. This action was accompanied by a proposed rule (62 FR 28650). Because USEPA received comments adverse to this action, the direct final rule was withdrawn. The comments received are summarized below along with USEPA's responses. Copies of all comments have

been placed in the docket file and are available for public review.

*Comment 1:* Ohio has failed to comply with the CAA implementation requirements under sec. 181 (a)(5)(B): "no more than one exceedance of the NAAQS level for ozone has occurred in the area in the year preceding the Extension Year." The USEPA's proposal states that "a review of the ozone data for the area indicates the area has monitored no more than one exceedance of the NAAQS at any monitor during 1996." Section 181 (a)(5)(B) states that one exceedance be allowed in the area, not one exceedance be allowed per monitor.

*USEPA Response:* Appendix H to Part 50.9 of Title 40 of the *Code of Federal Regulations* provides for review of the data from each monitor individually as opposed to adding up all of the individual monitor exceedances across the region to determine whether or not the area meets the air quality test for an extension. This is consistent with the process that USEPA uses to evaluate whether or not an area attained the ozone standard by its attainment date. For instance in the Cincinnati/Northern Kentucky area, USEPA reviewed the monitoring data collected for 1994 through 1996 at each of the ten monitors in the seven county multi-state area to determine whether or not the area attained the ozone standard by November 15, 1996. This review showed that the Lebanon monitor located in Warren County was in violation of the ozone standard. This resulted in the entire multi-state area having failed to attain the ozone standard by 1996.

In determining whether or not to extend the attainment date from 1996 to 1997, USEPA reviewed the ozone

monitoring data for 1996 at each monitoring site in the area to see if any of the sites recorded more than one exceedance of the ozone standard during 1996 (see table 1). The results of this review showed that while three of the monitors recorded an exceedance during 1996, none of the monitors recorded more than one exceedance. The monitors' exceedances were not added up to see if they were more than one, which is consistent with how USEPA evaluates data to determine if an area attained the standard by 1996. Therefore, the Cincinnati/Northern Kentucky area meets the monitoring requirements for an extension to November 15, 1997.

*Comment 2:* A fourth exceedance in three years was monitored at the Middletown monitoring site. Therefore, the area is in violation of the NAAQS for ozone and now qualifies for serious nonattainment so it does not meet the requirements for an extension.

*USEPA Response:* The criteria in section 181(a)(5) of the CAA requires that in order for an area to be eligible for an extension not more than one exceedance of the NAAQS for ozone may be monitored in the year prior to the extension year. The year prior to the extension year, in this case, is 1996. The ambient air monitoring data for the area shows that not more than one exceedance occurred in 1996 at any monitoring site in the area (see table 1). Therefore, the area satisfies the air quality requirements for an extension. The preliminary air monitoring data for 1997 shows no indication that any monitor recorded more than one exceedance.

*Comment 3:* Section 181 (a)(5) states that an extension may be granted if "(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan." The State committed to an I/M program in their submitted SIP. The I/M program began, but was suspended on August 20, 1996, and is not expected to resume until at least after the 1997 ozone season. Additionally, the I/M program has not yet made a full cycle (a full cycle takes two years to complete). No program was implemented that would take the place of the 18 ton/day reduction which the I/M program was to provide.

*USEPA Response:* Ohio is implementing the I/M requirements of the SIP. The State of Ohio awarded a contract for program operations, and on January 2, 1996, Ohio began testing vehicles in the Cincinnati area. The enactment of legislation, adoption of regulations, and the capital investment in structures and equipment to perform testing meets the implementation test.

The State of Ohio has been working to resume automobile testing in the Cincinnati area. The program was suspended, due to program performance requirements. However, the State has been actively working to get the program back up and running in the area. It is reasonable to allow the State the opportunity to improve the performance of the program and to allow sufficient time to get the program operational again. It is expected that the program will be operational in January 1998.

*Comment 4:* The extension proposal states that Stage II vapor recovery program is fully implemented, however, according to the Hamilton County Department of Environmental Services approximately 225 warning letters are issued annually to facilities whose vapor recovery devices were delinquent upon inspection. Since the area only has about 500 facilities, it is likely not achieving the required reductions.

*USEPA Response:* Ohio has implemented the Stage II gasoline vapor control program in the Ohio portion of the Cincinnati ozone nonattainment area. Subsequent to the beginning of the program, inspections have been carried out by the local Department of Environmental Services (DOES). These inspections have uncovered a number of deficiencies at some of the facilities inspected prompting warning letters to facility owners. The warning letters represent a concerted effort on the part of the DOES to encourage full compliance with requirements of the Stage II program. The DOES sent 291 warning letters to gasoline dispensing facilities for a number of different deficiencies. The warning letters do not necessarily mean that the facility is not complying with all of the required elements of the Stage II rule. Of all of the letters sent, 143 letters were sent to stations because of recordkeeping deficiencies as opposed to a control equipment problem. Of the remaining 148 letters, there were 431 physical problems such as a leaking nozzle or damaged hoses, cited out of approximately 10,000 gasoline dispensing nozzles in the four Ohio counties. Some of the nozzles, for example, were cited for multiple defects. These deficiencies represent 4.3 percent or less of the nozzles having some type of problem. This indicates that for the vast majority of the facilities visited, the Stage II control equipment is operational and the stage II program is being adequately implemented in the area.

*Comment 5:* The interstate area continues to violate the standard while claiming its Transportation

Improvement Program (TIP) will meet the standards. The Ohio Indiana Kentucky Regional Planning Commission predicts that the area's TIP will conform, but fails to meet the standard each year. This is perhaps due to the use of outdated data and modeling (from the 1960's) for determining conformity with the TIP.

*USEPA Response:* The CAA requires the TIP to conform to the SIP. For the Cincinnati/Northern Kentucky area this means that the area must perform a build/no build analysis on its transportation plan to show that its volatile organic compound (VOC) and oxides of nitrogen emissions (NOx) will not increase if the transportation projects are built. Additionally as part of this conformity demonstration the emissions resulting from building projects outlined in the TIP must be shown not to exceed the emissions levels that are planned for in the SIP. For Cincinnati/Northern Kentucky this calls for comparing the projected TIP emissions to the emissions in the 15% rate of progress (ROP) plan submitted by the State of Ohio to USEPA. The ROP plan provides for an emissions reduction in VOC that the area is required to meet on its way toward achieving the NAAQS. This level of emissions will result in improved air quality, but not necessarily air quality that will attain the NAAQS. The current SIP does not provide for the reductions or a specific emissions level (attainment target) in order to reach attainment of the NAAQS. Until this level is set the TIP is only required to meet the Rate of Progress (ROP) emissions targets and the build/no build test. The State has been implementing its SIP for conformity in the Cincinnati area by ensuring that the TIP meets the ROP test. Therefore, the area satisfied the SIP implementation requirement for receiving an attainment date extension.

While the interstate area is in violation of the standard, it is eligible for an attainment date extension because it meets the air quality test of no more than one exceedance at each monitor in the area.

*Comment 6:* The proposed extension does not include any requirements that will bring the area into compliance. Therefore, it is not reasonable to expect that a one-year extension will improve the area's air quality.

*USEPA Response:* Section 181(a)(5) of the CAA authorizes the Administrator to provide a one-year extension of time to attain the ozone NAAQS upon State application as long as two requirements are met. The State must have complied with all requirements and commitments pertaining to the area in the applicable

implementation plan. No more than one exceedance of the NAAQS level may have occurred in the extension area in the year preceding the extension year. A second one-year extension may be granted if the requirements can be met the following year.

Congress likely intended the extension year as a period to evaluate the effectiveness of the control strategy prior to developing additional emission control measures. Over the course of the extension year, the Federal Motor Vehicle Emissions Control Program (FMVECP) will reduce mobile source emissions as older, more polluting motor vehicles were replaced by newer, less polluting motor vehicles. Providing an additional year for the FMVECP to operate will provide sufficient additional emission reductions bringing the area closer toward achieving attainment.

*Comment 7:* The scientific and medical evidence shows that levels of ozone in the area are unhealthy. The purpose of the CAA is to protect the environment and public health, and to prevent damage from air pollution. If the USEPA grants the area an extension, it would fail to enforce the CAA, and betray its mission to protect human health and the environment.

*USEPA Response:* As stated above, section 181(a)(5) authorizes the Administrator to grant a one-year extension of the ozone attainment date upon application by the State if the two conditions discussed above are met. In granting such an extension, the Administrator is clearly within the scope of authority granted him by the CAA. In as much as the extension is authorized by the CAA, it should be considered consistent with the goals and objectives of the CAA. The extension may allow the area to reach attainment without incurring the additional costs that would result from reclassification to a serious area.

*Comment 8:* The commenter states that an extension can only be granted upon state submittal of an approvable 15% plan. The areas current 15% plan is no longer valid because its I/M program has been suspended. The commenter requests further explanation of the suspension and a schedule for reimplementing the I/M program prior to any final action on the attainment date extension.

*USEPA Response:* In order to be granted an extension, the States are required to implement their SIPs for the Cincinnati/Northern Kentucky area. Neither Ohio nor Kentucky has 15% plans that are federally approved into the State Implementation Plans for the area. Therefore, the status of the 15%

plan is not relevant to the question of whether or not the States are implementing their SIP since it is not part of the federally approved SIP. In regards to the I/M program, which is a part of the federally approved SIP for Ohio, it is expected that the program will be operational in January 1998. The State is actively working to improve the performance of the program and to restart the I/M program.

*Comment 9:* Implementation of NO<sub>x</sub> Reasonably Available Control Technology (RACT) for major sources in the Ohio portion of the nonattainment area is over a year late. Concerns regarding this tardiness have been repeatedly expressed in letters addressed to USEPA. New York State Department of Environmental Conservation requests that pertinent NO<sub>x</sub> requirements of the CAA be addressed expeditiously through revisions to the Ohio SIP.

*USEPA Response:* USEPA responded to the letters from the State of New York in three letters dated October 10, 1996, October 30, 1996, and January 17, 1997. In USEPA's correspondence with the State of New York, USEPA stated that it would publish a proposed rule in the **Federal Register** to provide the community with an opportunity to comment on removing the Cincinnati area's monitoring-based NO<sub>x</sub> waiver and to comment on what "reasonable time" may be necessary to allow major stationary sources subject to the reasonably available control technology requirements to purchase install and operate the required controls.

Along with the USEPA's efforts in this regard, it should be noted that on October 10, 1997, USEPA Administrator Carol Browner signed a proposed rulemaking to require emissions reductions, including NO<sub>x</sub>, in Ohio and twenty-one other states in order to reduce the effects on attainment caused by the interstate transport of ozone, which is clearly the issue that New York in its correspondence sought to have the USEPA address. The proposal reiterates USEPA's view that ozone pollution is a regional as well as a local problem. As USEPA has pointed out to New York in its response letters, the State's concerns are more appropriately addressed through a process dealing with resolving the regional ozone pollution problem, particularly long-range transport. However, section 182(f), which authorizes the granting of NO<sub>x</sub> waivers, focuses only on the effects of reducing NO<sub>x</sub> in local nonattainment areas, like Cincinnati, while the provisions of section 110(a)(2)(D), the main statutory basis for the proposed action, are specifically intended to address the

kinds of interstate problems exemplified by long-range ozone transport. The USEPA notes that the requirements of the proposed "SIP call" action if finalized would apply both to areas with approved NO<sub>x</sub> waiver petitions and areas without such petitions. That is, any nonattainment area with NO<sub>x</sub> waiver petitions approved by USEPA in the past or in the future are not proposed to be exempt from that action.

*Comment 10:* A commenter stated that the area should not be granted an extension because of existing air pollution problems that cause adverse health effects. Emission controls should be more strict. The area should not be given more time to comply because it is not enforcing current rules, and is not doing anything to solve current air pollution problems.

*USEPA Response:* As stated above, the one-year extension is authorized by the CAA for areas that meet the extension requirements. This gives the area an additional year to realize the benefits of the controls that are currently in place and the effects FMVECP on reducing automobile emissions. The CAA allows areas that qualify for an extension to request an attainment date extension instead of being reclassified upward to serious and implementing more emission controls. The area is enforcing its current controls as described in the above responses.

#### **USEPA Final Action**

USEPA has determined that the requirements for a one-year extension of the attainment date have been fulfilled as follows:

(1) Ohio and Kentucky have formally submitted the attainment date extension requests.

(2) Ohio and Kentucky are implementing the USEPA-approved SIPs.

(3) A review of actual ozone ambient air quality data for the Cincinnati-Hamilton area indicates that the area has monitored no more than one exceedance of the NAAQS at any monitor during 1996. Therefore, USEPA is approving the attainment date extension requests for the Cincinnati-Hamilton moderate ozone nonattainment area from November 15, 1996 to November 15, 1997.

Therefore, USEPA approves the Ohio and Kentucky attainment date extension requests for the Cincinnati-Hamilton ozone nonattainment area. As a result, the Kentucky Control Strategy for Ozone which is codified at 40 CFR 52.930 and the Ohio Control Strategy for Ozone which is codified at 40 CFR 52.1885 are being amended to record these attainment date extensions. The chart in

40 CFR 81.318 entitled "Kentucky-Ozone" is being modified to reflect USEPA's approval of Kentucky's attainment date extension request. The chart in 40 CFR 81.336 entitled "Ohio-Ozone" is also being modified to reflect USEPA's approval of Ohio's attainment date extension request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

#### Administrative Requirements

##### A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

##### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Extension of an area's attainment date under the CAA does not impose any new requirements on small entities. Extension of an attainment date is an action that affects a geographical area and does not impose any regulatory requirements on sources. USEPA certifies that the approval of the attainment date extension will not affect a substantial number of small entities.

##### C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements.

Section 203 requires USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

##### D. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (Sections 3745.70—3745.73 of the Ohio Revised Code.) The USEPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the CAA. The USEPA will take appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio CAA program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, Federal approval for the CAA program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

##### E. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, USEPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in this **Federal Register**. This rule is not a "major rule" as defined by section 804(2).

##### F. Petitions for Judicial Review

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 January 16, 1998. Filing a

petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 to grant Ohio and Kentucky an extension to attain the ozone NAAQS in the Cincinnati-Hamilton ozone nonattainment area as defined in 40 CFR 81.318 and 40 CFR 81.336 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, Ozone.

##### 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 5, 1997.

##### A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Dated: November 6, 1997.

##### Gail C. Ginsberg,

Acting Regional Administrator, Region 5.

Parts 52 and 81 of 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. 7401–7671q.

#### Subpart S—Kentucky

2. Section 52.930 is amended by adding paragraph (d) to read as follows:

##### § 52.930 Control strategy: Ozone.

\* \* \* \* \*

(d) Kentucky's November 15, 1996, request for a one-year attainment date extension for the Kentucky portion of the Cincinnati-Hamilton metropolitan moderate ozone nonattainment area which consists of Kenton, Boone, and Campbell Counties is approved. The date for attaining the ozone standard in these counties is November 15, 1997.

#### Subpart KK—Ohio

3. Section 52.1885 is amended by adding paragraph (bb) to read as follows:

##### § 52.1885 Control strategy: Ozone.

\* \* \* \* \*

(bb) Ohio's November 7, 1996, request for a one-year attainment date extension

for the Ohio portion of the Cincinnati-Hamilton metropolitan moderate ozone nonattainment area which consists of Hamilton, Butler, Clermont and Warren Counties is approved. The date for attaining the ozone standard in these counties is November 15, 1997.

**PART 81—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401-7671q.

2. In § 81.318, the "Kentucky—Ozone" table is amended by revising the entry for the "Cincinnati-Hamilton Area" to read as follows:

**§ 81.318 Kentucky.**

\* \* \* \* \*

KENTUCKY—OZONE

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Cincinnati-Hamilton Area:				
Boone County .....		Nonattainment .....		Moderate. <sup>2</sup>
Campbell County .....		Nonattainment .....		Moderate. <sup>2</sup>
Kenton County .....		Nonattainment .....		Moderate. <sup>2</sup>
* * * * *				

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

<sup>2</sup> Attainment date extended to November 15, 1997.

\* \* \* \* \*  
3. In Section 81.336, the "Ohio—Ozone" table is amended by revising the

entry for the "Cincinnati-Hamilton Area" to read as follows:

**§ 81.336 Ohio.**

\* \* \* \* \*

OHIO—OZONE

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
Cincinnati-Hamilton Area:				
Butler County .....		Nonattainment .....		Moderate. <sup>2</sup>
Clermont County .....		Nonattainment .....		Moderate. <sup>2</sup>
Hamilton County .....		Nonattainment .....		Moderate. <sup>2</sup>
Warren County .....		Nonattainment .....		Moderate. <sup>2</sup>
* * * * *				

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

<sup>2</sup> Attainment date extended to November 15, 1997.

\* \* \* \* \*  
[FR Doc. 97-30136 Filed 11-14-97; 8:45 am]  
BILLING CODE 6560-50-P

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 65**

**Changes in Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

**EFFECTIVE DATES:** The effective dates for these modified base flood elevations are

indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The

Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt