

encompassing all waters within 500 yards of the USCGC CONIFER. Entry into this nonobligatory exclusionary area by any mariner constitutes a risk to navigational safety and a risk to the marine mammal being released, and it may prevent the release of "JJ" the gray whale. It may also constitute a factor to be considered in determining whether a person has operated a vessel in a negligent manner in violation of 46 USC § 2302, or has engaged in activities in violation of the MMPA and its implementing regulations.

(b) *Effective Dates.* This regulation becomes effective at 1:00 p.m. (PST) on March 23, 1998, and continues until 6:00 p.m. (PST) on March 30, 1998, unless canceled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

Dated: March 16, 1998.

**J.A. Watson,**

*Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.*

[FR Doc. 98-7911 Filed 3-25-98; 8:45 am]

BILLING CODE 4910-15-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[OH107a; KY101-9809a; FRL-5985-9]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is extending the attainment date for the Cincinnati-Hamilton interstate moderate ozone nonattainment area from November 15, 1997 to November 15, 1998. This extension is based in part on monitored air quality readings for the national ambient air quality standard (NAAQS) for ozone during 1997. Accordingly, EPA is revising the table in the Code of Federal Regulations concerning ozone attainment dates in this area. In this action, EPA is approving the States' request through "direct final" rulemaking; the rationale for this approval is set forth below. Elsewhere in this **Federal Register**, EPA is proposing approval and soliciting comment on this action; should EPA receive such comment, it will publish an action informing the public that this

rule did not take effect; otherwise no further rulemaking will occur on this SIP revision request.

**DATES:** This final rule is effective May 26, 1998 unless substantive written adverse comments not previously addressed by the State or EPA are received by April 27, 1998. If the effective date is delayed, timely notification will be published in the **Federal Register**.

**ADDRESSES:** Written comments may be mailed to Joseph M. LeVasseur at the EPA Region 4 address listed below or to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), Region 5 at the address listed below. Copies of the material submitted by the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) may be examined during normal business hours at the following locations: Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303-3104.

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Copies of the materials submitted by the Ohio Environmental Protection Agency (OEPA) may be examined during normal business hours at the following locations:

Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

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

**FOR FURTHER INFORMATION CONTACT:** Joseph M. LeVasseur at the EPA Region 4 address listed above or Randolph O. Cano at the Region 5 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 14, 1997, OEPA 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 January 7, 1998 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), was November 15, 1996. On November 17, 1997 (62 FR 61241, and see 63 FR 6664) EPA extended the attainment date to November 15, 1997. The submittals request that the attainment date be extended to November 15, 1998.

#### CAA Requirements and EPA Actions Concerning Designation and Classification

Section 107(d)(4) of the CAA requires the States and EPA 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, EPA 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); 59 FR 18967 (April 21, 1994).

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 EPA 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, EPA determines attainment status on the basis of the average number of expected 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 upwards.

However, CAA section 181(a)(5) provides an exemption from these bump up requirements. Under this exemption, EPA 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 1 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 national ambient air quality standard 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.

EPA 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 EPA-approved SIP for the area have been complied with, and,

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

On November 17, 1997 (62 FR 61241), EPA granted the Ohio and Kentucky requests to extend the attainment date for the Cincinnati-Hamilton Interstate moderate ozone nonattainment area from November 15, 1996 to November 15, 1997. The November 17, 1997 approval was based in part on monitored air quality readings for the national air quality standard for 1996.

Ohio's second ozone attainment date extension was supported by monitored air quality readings during 1997.

A review of the actual ambient air quality ozone data from the EPA 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 1995 to 1997. At one of these monitors, Middletown OH, the number of expected exceedances was 2.0 for 1995,

1.0 for 1996 and 1.0 for 1997. 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 the three year period. Thus the area did not meet the November 15, 1997 attainment date.

Kentucky provided no discussion of monitoring data in its January 7, 1998 request. However, in its November 14, 1997 request, Ohio indicated that Ohio and Kentucky had satisfied the compliance date extension criteria in as much as no monitors in the Cincinnati-Hamilton area monitored more than one exceedance each during 1997. The 1997 monitoring data has been quality controlled and quality assured as has been the data for 1995 and 1996. These data have been summarized in Table 1. The monitoring data for the Oxford, Ohio site located in Butler County is not provided in the list. Currently, quality assured data is not available for this site for 1997.

An examination of the data indicate that three of the ten monitors, currently in operation, recorded one exceedance each during 1997. EPA has determined that the requirements for a second one-year extension of the attainment date have been fulfilled as follows:

TABLE 1.—CINCINNATI-HAMILTON MONITORED EXCEEDANCES AND VIOLATION 1995–97

	Kentucky							
	Boone County		Campbell County		Kenton County			
1995 .....	0	0	0	0	0	0	0	1.0
1996 .....	0	0	1.0	0	0	0	0	1.0
1997 .....	0	0	0	0	0	0	0	0

  

	Ohio							
	Butler County		Hamilton County			Warren County		
	Hamilton	Middletown	Grooms Rd	Ripple Rd	Cincinnati	Lebanon	Cook Rd	Clermont Co
1995 .....	1.0	2.0	0	1.0	1.0	2.0	( <sup>1</sup> )	1.0
1996 .....	0	1.0	0	0	0	0	( <sup>1</sup> )	0
1997 .....	0	1.0	1.0	0	0	( <sup>1</sup> )	1.0	0

<sup>1</sup> No data is available for this site during this year.

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

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

(3) A review of actual ozone ambient air quality data for the Cincinnati-Hamilton Interstate area indicates that the area has monitored no more than one exceedance of the NAAQS at any monitor during 1997.

Therefore, EPA approves the Ohio and Kentucky second one-year 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 EPA'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 EPA's approval of Ohio's attainment date extension request.

**EPA Action**

EPA is approving the second one-year attainment date extension requests for the Cincinnati-Hamilton moderate

ozone nonattainment area from November 15, 1997 to November 15, 1998 without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve this part 52 and part 81 action should written adverse or critical comments be filed.

This rule will become effective without further notice unless EPA receives relevant adverse written comment on the parallel proposed rule (published in the proposed rules section of this **Federal Register**) by April 27, 1998. Should EPA receive such comments, it will publish a final rule informing the public that this rule did not take effect. Any party interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 26, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP 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 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

##### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA 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, EPA 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. EPA 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 signed

into law on March 22, 1995, EPA 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, EPA 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 EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA 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 EPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the CAA. The EPA 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

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 rule 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 the publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 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 May 26, 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: February 27, 1998.

##### A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Dated: March 16, 1998.

##### David A. Ullrich,

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 *et seq.*

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

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

\* \* \* \* \*

(f) Kentucky's January 7, 1998, 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, 1998.

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

**§ 52.1885 Control strategy: Ozone.**

\* \* \* \* \*

(cc) Ohio's November 14, 1997, 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, 1998.

**PART 81—[AMENDED]**

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

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

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, 1998.

\* \* \* \* \*

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, 1998.

\* \* \* \* \*

[FR Doc. 98-7760 Filed 3-25-98; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 85**

[FRL-5986-2]

RIN 2060-AH45

**Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Additional Update of Post-Rebuild Emission Levels in 1998**

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends regulations governing EPA's Urban Bus Retrofit/Rebuild Program to provide for the revision of post-rebuild particulate levels based on equipment certified by July 1, 1998. This amendment allows equipment manufacturers additional time to certify equipment capable of influencing compliance under Option 2 (the fleet averaging option) of the program. This amendment provides assurance that the two compliance options of the program remain equivalent, and that urban buses utilize the best retrofit technology reasonably achievable as Congress required. In addition, the amendment provides

assurance that urban areas realize the full PM benefits of this program.

**DATES:** This final rule is effective April 27, 1998.

**ADDRESSES:** Materials relevant to this amendment are contained in Public Docket No. A-91-28 at the address listed below. This docket is located in room M-1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Dockets may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by EPA for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** William Rutledge, Engine Programs and