

appropriate circuit by May 26, 2009. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 12, 2009.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is 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 OO—Rhode Island

■ 2. Section 52.2089 is added to read as follows:

##### § 52.2089 Control strategy: carbon monoxide.

(a) Approval—On September 22, 2008, the Rhode Island Department of Environmental Management submitted a request to establish a limited maintenance plan for the Providence Rhode Island carbon monoxide attainment area for the remainder of the second ten-year maintenance plan. The State of Rhode Island has committed to year round carbon monoxide monitoring at the East Providence Photochemical Assessment Monitoring Station (PAMS) site; re-establishing downtown Providence CO monitoring if criteria specified in the Limited Maintenance

Plan are triggered; and, ensuring that project-level carbon monoxide evaluations of transportation projects in the maintenance area are conducted. The limited maintenance plan satisfies all applicable requirements of section 175A of the Clean Air Act. Approval of a limited maintenance plan is conditioned on maintaining levels of ambient carbon monoxide levels below the required limited maintenance plan 8-hour carbon monoxide design value criterion of 7.65 parts per million. If the Limited Maintenance Plan criterion is no longer satisfied, Rhode Island must develop a full maintenance plan to meet Clean Air Act requirements.

(b) [Reserved]

[FR Doc. E9-6643 Filed 3-24-09; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA-R04-OAR-2007-1186-200821(a); FRL-8781-5]

#### Approval and Promulgation of Air Quality Implementation Plans: Kentucky; Approval Section 110(a)(1) Maintenance Plans for the 1997 8-Hour Ozone Standard for the Huntington-Ashland Area, Lexington Area and Edmonson County

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Kentucky State Implementation Plan (SIP) concerning the maintenance plans addressing the 1997 8-hour ozone standard for the following areas: the Kentucky portion of the Huntington—Ashland Area (a portion of Greenup County); Lexington Area (Fayette and Scott Counties); and Edmonson County. These maintenance plans were submitted to EPA on May 27, 2008, by the Commonwealth of Kentucky and ensure the continued attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) through the year 2020. These plans meet the statutory and regulatory requirements, and are consistent with EPA's guidance. EPA is approving the revisions pursuant to section 110 of the Clean Air Act ("CAA" or "Act"). On March 12, 2008, EPA issued a revised ozone standard. The current action, however, is being taken to address requirements under the 1997 ozone standard. Requirements for the Huntington-Ashland, Lexington, and Edmonson County Areas under the 2008 standard will be addressed in the future.

**DATES:** This rule is effective on *May 26, 2009* without further notice, unless EPA receives adverse comment by *April 24, 2009*. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2007-1186, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

2. *E-mail:* Jane Spann at [spann.jane@epa.gov](mailto:spann.jane@epa.gov).

3. *Fax:* (404) 562-9019.

4. *Mail:* "EPA-R04-OAR-2007-1186," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier:* Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. "EPA-R04-OAR-2007-1186." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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 through [www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) website 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 [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically 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 in

the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI 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 in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning 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 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jane Spann or Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Jane Spann may be reached by phone at (404) 562-9029 or by electronic mail address [spann.jane@epa.gov](mailto:spann.jane@epa.gov). The telephone number for Zuri Farngalo is (404) 562-9152 and the electronic mail address is [farngalo.zuri@epa.gov](mailto:farngalo.zuri@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Background
- II. Analysis of the Commonwealth's Submittals
- III. Final Action
- IV. Statutory and Executive Order Reviews

#### I. Background

In accordance with the CAA, the Huntington-Ashland Area<sup>1</sup>, Lexington

<sup>1</sup> For the 1997 8-hour ozone standard Scott and Fayette Counties were previously in the Lexington

Area<sup>2</sup> and Edmonson County were designated as nonattainment for the 1-hour ozone NAAQS (effective January 6, 1992, 56 FR 56694).

On November 13, 1992, the Commonwealth of Kentucky submitted a request to redesignate the Lexington Area and Edmonson County to attainment for the 1-hour ozone standard. Subsequently, on November 12, 1993, the Commonwealth of Kentucky submitted a request to redesignate the Huntington-Ashland Area to attainment for the 1-hour ozone standard. At the same time as the redesignation requests, Kentucky submitted the required ozone monitoring data and maintenance plans to ensure that the Areas would remain in attainment for the 1-hour ozone standard for a period of 10 years, consistent with the CAA 175A(a). The maintenance plans submitted by Kentucky followed EPA guidance for limited maintenance areas, which was provided for the 1-hour ozone standard areas that have design values less than 85 percent of the applicable standard. In this case, the applicable standard was the 1-hour ozone standard of 0.12 parts per million (ppm).

EPA approved Kentucky's requests to redesignate the Huntington-Ashland Area (60 FR 33748), Lexington Area (60 FR 47089) and Edmonson County (59 FR 55053) to attainment for the 1-hour ozone standard. The maintenance plan for the Huntington-Ashland Area (a portion of Greenup County) was approved on June 29, 1995, with an effective date of June 29, 1995 (60 FR 33748). The maintenance plan for the Lexington Area was approved on September 11, 1995, with an effective date of November 13, 1995 (60 FR 47089). The 1-hour ozone maintenance plan for Edmonson County was approved on November 3, 1994, with an effective date of January 3, 1995 (59 FR 55053).

On April 30, 2004, EPA designated areas for the 1997 8-hour ozone NAAQS (69 FR 23858), and published the final Phase I Implementation Rule for the 1997 8-hour ozone NAAQS (69 FR 23951) (Phase I Rule). The Huntington-Ashland Area, Lexington Area, and Edmonson County were designated as

1-hour maintenance area but were individually designated attainment for the 1997 8-hour ozone standard.

<sup>2</sup> The 1-hour ozone nonattainment area for the Huntington-Ashland includes Boyd County and a portion of Greenup County in Kentucky. For the 1997 8-hour ozone standard, Boyd County in the Huntington-Ashland area was designated nonattainment, whereas the portion of Greenup County that was designated nonattainment for the 1-hour ozone standard was designated attainment for the 1997 8-hour ozone standard.

attainment for the 1997 8-hour ozone standard, effective June 15, 2004. The attainment areas consequently were required to submit 10-year maintenance plans under section 110(a)(1) of the CAA and the Phase I Rule. On May 20, 2005, EPA issued guidance providing information on how a state might fulfill the maintenance plan obligation established by the CAA and the Phase I Rule (Memorandum from Lydia N. Wegman to Air Division Directors, *Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of Clean Air Act*, May 20, 2005—hereafter referred to as "Wegman Memorandum"). On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit issued an opinion that vacated portions of EPA's Phase I Implementation Rule for the 1997 8-hour Ozone Standard. See *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). The Court vacated those portions of the Rule that provided for regulation of the 1997 8-hour ozone nonattainment areas designated under Subpart 1 in lieu of Subpart 2 (of part D of the CAA), among other portions. The Court's decision does not alter any requirements under the Phase I Rule for maintenance plans. Kentucky's May 27, 2008, proposed SIP revision satisfies the section 110(a)(1) CAA requirements for a plan that provides for implementation, maintenance, and enforcement of the 1997 8-hour ozone NAAQS in the Huntington-Ashland, Lexington, and Edmonson County Areas.

#### II. Analysis of the State's Submittals

On May 27, 2008, the Commonwealth of Kentucky submitted SIP revisions containing 1997 8-hour ozone maintenance plans for the portion of Greenup County in the Huntington-Ashland Area, the Lexington Area, and Edmonson County as required by section 110(a)(1) of the CAA and the provisions of EPA's Phase I Rule (see 40 CFR 51.905(a)(4)). The purpose of these maintenance plans are to ensure continued attainment and maintenance of the 1997 8-hour ozone NAAQS in the Huntington-Ashland Area, Lexington Area, and Edmonson County until 2020.

As required, these plans provide for continued attainment and maintenance of the 1997 8-hour ozone NAAQS in the area for 10 years from the effective date of the area's designation as attainment for the 1997 8-hour ozone NAAQS, and include components illustrating how each area will continue attainment of the 1997 8-hour ozone NAAQS and provides contingency measures. Each of

the section 110(a)(1) plan components is discussed below for each area.

a. Attainment Inventory. Kentucky developed comprehensive inventories of volatile organic compounds (VOC) and nitrogen oxide (NO<sub>x</sub>) emissions from area, stationary, and mobile sources using 2002 as the base year to demonstrate maintenance of the 1997 8-hour ozone NAAQS for the Huntington-Ashland Area, Lexington Area and Edmonson County. The year 2002 is an appropriate year for Kentucky to base attainment level emissions because states may select any one of the three years on which the 1997 8-hour attainment designation was based (2001, 2002, and 2003). The Commonwealth's submittals contain the detailed inventory data and summaries by source category. Using the 2002 inventory as a base year reflects one of the years used for calculating the air quality design values on which the 1997 8-hour ozone

designation decisions were based. 2002 also is one of the years in the 2002–2004 period used to establish baseline visibility levels for the regional haze program.

A further practical reason for selecting 2002 as the base year emission inventory is that section 110(a)(2)(B) of the CAA and the Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) require states to submit emissions inventories for all criteria pollutants and their precursors every three years, on a schedule that includes the emissions year 2002. The due date for the 2002 emissions inventory is established in the Rule as June 2004. In accordance with these requirements, Kentucky compiles a statewide emissions inventory for point sources on an annual basis. On-road mobile emissions of VOC and NO<sub>x</sub> were estimated using MOBILE 6.2 motor vehicle emissions factor computer

model. Non-road mobile emissions data were derived using the U.S. EPA's Non-Road Model.

In projecting data for the attainment year 2020 inventory, Kentucky used several methods to project data from the base year 2002 to the years 2005, 2008, 2011, 2014, 2017 and 2020. These projected inventories were developed using EPA-approved technologies and methodologies. Point source and non-point source projections were derived from the Emissions Growth Analysis System version 4.0 (EGAS 4.0). Non-road mobile projections were derived from EGAS 4.0, as well as from the National Mobile Inventory Model.

The following tables provide VOC and NO<sub>x</sub> emissions data for the 2002 base attainment year inventory, as well as projected VOC and NO<sub>x</sub> emission inventory data for 2005, 2008, 2011, 2014, 2017 and 2020.

TABLE 1—PARTIAL GREENUP COUNTY PORTION OF HUNTINGTON-ASHLAND AREA VOC AND NO<sub>x</sub> EMISSIONS INVENTORY

Emissions	2002	2005	2008	2011	2014	2017	2020
Total VOC (tons per day) .....	3.14	2.86	2.69	2.53	2.43	2.36	2.33
Total NO <sub>x</sub> (tons per day) .....	2.42	2.18	1.95	1.72	1.47	1.29	1.19

As shown in Table 1 above, the Kentucky portion of the Huntington-Ashland area is projected to decrease

total VOC and NO<sub>x</sub> emissions from the base year of 2002 to the maintenance year of 2020, thus demonstrating

continued attainment/maintenance of the 1997 8-hour ozone standard.

TABLE 2—LEXINGTON AREA (SCOTT AND FAYETTE COUNTIES)  
[VOC and NO<sub>x</sub> Emissions Inventory]

Emissions	2002	2005	2008	2011	2014	2017	2020
Total VOC (tons per day) .....	50.89	47.87	48.23	47.89	48.12	48.93	50.13
Total NO <sub>x</sub> (tons per day) .....	39.33	32.66	29.85	25.77	21.15	17.97	15.98

As shown in Table 2 above, the Lexington Area is projected to decrease total NO<sub>x</sub> emissions from the base year of 2002 to the maintenance year of 2020. Total VOC emissions steadily decrease

from the base year of 2002 through 2008, but are then projected to increase by 1.2 tons per day between the years 2017 to the maintenance year of 2020; however, year 2020 emissions are

projected as less than the baseline year emission level. Thus, it is demonstrated that the 1997 8-hour ozone standard will continue to be attainment/maintained.

TABLE 3—EDMONSON COUNTY VOC AND NO<sub>x</sub> EMISSIONS INVENTORY

Emissions	2002	2005	2008	2011	2014	2017	2020
Total VOC (tons per day) .....	2.72	2.86	2.89	2.80	2.63	2.40	2.24
Total NO <sub>x</sub> (tons per day) .....	1.34	1.17	1.09	0.95	0.80	0.68	0.61

As shown in Table 3 above, Edmonson County is projected to decrease total VOC and NO<sub>x</sub> emissions from the base year of 2002 to the maintenance year of 2020. VOC emissions increased slightly between the base year of 2002 and 2011; however, this small spike is not anticipated to affect maintenance. Total

VOC's are projected to decrease to levels below that of the base year by 2020, thus demonstrating continued maintenance of the 1997 8-hour ozone standard.

As shown in the tables above, Kentucky has demonstrated that the future year emissions will be less than the 2002 base attainment year's emissions for the 1997 8-hour ozone

NAAQS. The attainment inventories submitted by Kentucky for these areas are consistent with the criteria discussed in the Wegman Memorandum. EPA finds that the future emissions levels in 2005, 2008, 2011, 2014, 2017, and 2020 are expected to be similar to or less than the emissions levels in 2002. In the event that a future

8-hour ozone monitoring reading in these areas is found to violate the 1997 8-hour ozone standard, the contingency plan section of the maintenance plans includes measures that will be promptly implemented to ensure that each of these areas returns the maintenance of the 1997 8-hour ozone standard. Please see section (d) Contingency Plan, below, for additional information related to the contingency measures.

b. Maintenance Demonstration. The primary purpose of a maintenance plan is to demonstrate how an area will continue to remain in compliance with the 1997 8-hour ozone standard for the 10 year period following the effective date of designation as unclassifiable/attainment. The end projection year for the maintenance plans for the portion of Greenup County in the Huntington-Ashland Area, Lexington Area and Edmonson County was 2020. As discussed in section (a) Attainment Inventory above, Kentucky identified the level of ozone-forming emissions that were consistent with attainment of the NAAQS for ozone in 2002. Kentucky projected VOC and NO<sub>x</sub> emissions for the years 2005, 2008, 2011, 2014, 2017

and 2020 in the Huntington-Ashland Area, the Lexington Area and Edmonson County; and EPA finds that the future emissions levels in those years are expected to be similar or below the emissions levels in 2002.

Kentucky's SIP revisions also rely on a combination of several air quality measures that will provide for additional 8-hour ozone emissions reductions in the Huntington-Ashland Area, Lexington Area, and Edmonson County. These measures include the potential implementation of the following, among others: (1) Federal motor vehicle control program; (2) fleet turnover of automobiles; (3) federal reformulated gasoline; (4) tier 2 motor vehicle emissions and fuel standards; (5) heavy-duty gasoline and diesel highway vehicles standard; (6) large nonroad diesel engines rule; (7) nonroad spark ignition engines and recreational engines standard; (8) point source emission reductions; (9) reasonably available control measures (RACM); (10) maximum available control technology (MACT); (11) NO<sub>x</sub> SIP Call; (12) Clean Air Interstate Rule (CAIR)<sup>3</sup>; (13) several control programs to reduce area source

emissions from aerosol coatings, architectural and industrial maintenance coatings, and commercial/consumer products and (14) emissions standards for small and large spark-ignition engines, locomotives and land based diesel engines.

c. Ambient Air Quality Monitoring. The Table below shows design values for the Huntington-Ashland Area, Lexington Area and Edmonson County. The ambient ozone monitoring data was collected at sites that were selected with assistance from the EPA and are considered to be representative of the area of highest concentration.

With regard to the monitors, there is a monitor in Greenup County. The Lexington area has two monitors in Fayette County (Ironworks and Newton) and one in Scott County; however, the Scott County monitor was discontinued in 2002. Edmonson County has one monitor. There were no design values exceeding the 1997 0.08 ppm standard and it is anticipated that the monitors will remain at current locations, unless otherwise allowed to be removed in the consultation with the EPA and in accordance with the 40 CFR part 58.

TABLE 4—DESIGN VALUES FOR 8-HOUR OZONE (PPM)

Year	Huntington-Ashland Area	Lexington Area		Edmonson County
		Fayette County	Scott County	
2000–2002	0.083	0.078	0.071	0.084
2001–2003	0.083	0.076	0.069	0.080
2002–2004	0.078	0.071	0.067	0.077
2003–2005	0.076	0.069	*	0.073
2004–2006	0.076	0.059	*	0.072
2006–2007	0.078	0.067	*	0.076

\* Monitor discontinued in 2005.

Based on the Table above, each of the available design values identified is considered to be in attainment of the 1997 ozone NAAQS and demonstrates that the Kentucky areas subject to this action are expected to continue attainment of the 1997 ozone NAAQS. In the event that a design value at one of the Kentucky area monitoring sites exceeds the 1997 ozone standard of 84 parts per billion, the Contingency Plan included in the Kentucky's maintenance plan submittal includes contingency measures which will be promptly implemented in section (d) Contingency Plan, below.

d. Contingency Plan. The section 110(a)(1) maintenance plans include contingency provisions to promptly correct any violation of the 1997 ozone

NAAQS that occurs. The contingency indicator for the Huntington-Ashland Area, Lexington Area and Edmonson County, maintenance plans is based on updates to the emission inventories. The triggering mechanism for activation of contingency measures is a ten percent or greater increase in emissions of either VOC or NO<sub>x</sub> based on the 2002 emissions inventory. In these maintenance plans, if contingency measures are triggered, Kentucky is committing to implement the measures as expeditiously as practicable, but no longer than nine months following the trigger. Some of the contingency measures include: (1) Implementation of a program to require additional emissions reductions on stationary sources; (2) requirement of stage I vapor

recovery; (3) requirement of stage II vapor recovery; (4) further restrictions on open burning during summer ozone season; (5) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high-occupancy vehicles; (6) trip-reduction ordinances; (7) employer based transportation management plans, including incentives; (8) programs to limit or restrict vehicle use in downtown areas, or other areas of emissions concentration particularly during periods of peak use; and (9) programs for new construction and major reconstructions of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.

<sup>3</sup>Despite the legal status of CAIR as remanded, many facilities have already or are continuing with

plans to install emission controls that may benefit Kentucky areas.

These contingency measures and schedules for implementation satisfy EPA's guidance on the requirements of section 110(a)(1) of continued attainment. Continued attainment of the 1997 8-hour ozone NAAQS in the partial area of Greenup County in Huntington-Ashland Area, Lexington Area and Edmonson County will depend, in part, on the air quality measures discussed previously (see section II). In addition, Kentucky commits to verifying the 1997 8-hour ozone status in each maintenance plan through annual and periodic evaluations of the emissions inventories. In the annual evaluations, Kentucky will review VOC and NO<sub>x</sub> emission data from stationary point sources. During the periodic evaluations (every three years), Kentucky will update the emissions inventory for all emissions source categories, and compare the updated emissions inventory data to the projected 2005, 2008, 2011, 2014, 2017 and 2020 attainment emissions inventories to verify continued attainment of the 8-hour ozone standard.

### III. Final Action

Pursuant to section 110 of the Act, EPA is approving the maintenance plans addressing the 1997 8-hour ozone standard for a portion of Greenup County in the Huntington-Ashland Area, the Lexington Area, and Edmonson County, which were submitted by Kentucky on May 27, 2008, and ensure continued attainment of the 1997 8-hour ozone NAAQS through the year 2020. EPA has evaluated the Commonwealth's submittals and has determined that they meet the applicable requirements of the CAA and EPA regulations, and are consistent with EPA policy.

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial revision and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comment be filed. This rule will be effective on *May 26, 2009* without further notice unless the Agency receives adverse comment by *April 24, 2009*. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period

on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised this rule will be effective on *May 26, 2009* and no further action will be taken on the proposed rule.

### 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. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves Kentucky 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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).

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 May 26, 2009. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Intergovernmental relations, Incorporation by reference, Ozone, Nitrogen Dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 25, 2009.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*

■ 40 CFR part 52 is 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 S—Kentucky**

■ 2. Section 52.920(e), is amended by adding new entries at the end of the table for “Huntington-Ashland 8-Hour Ozone Section 110(a)(1) Maintenance Plan for the 1997 8-hour ozone standard”, “Lexington Section 110(a)(1) Maintenance Plan for the 1997 8-hour

ozone standard”, and “Edmonson County Section 110(a)(1) Maintenance Plan for the 1997 8-hour ozone standard” to read as follows:

**§ 52.920 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

**EPA—APPROVED KENTUCKY NON-REGULATORY PROVISIONS**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
Huntington—Ashland Section 110(a)(1) Maintenance Plan for the 1997 8–Hour Ozone Standard.	A portion of Greenup County.	5/27/2008	3/25/2008	[Insert citation of publication].
Lexington Section 110(a)(1) Maintenance Plan for the 1997 8–Hour Ozone Standard.	Fayette and Scott Counties.	5/27/2008	3/25/2008	[Insert citation of publication].
Edmonson County Section 110(a)(1) Maintenance Plan for 1997 8–Hour Ozone Standard.	Edmonson County .....	5/27/2008	3/25/2008	[Insert citation of publication].

[FR Doc. E9–6601 Filed 3–24–09; 8:45 am]  
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2009–0093; FRL–8779–8]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Volatile Organic Compound Reasonably Available Control Technology for Reynolds Consumer Products Company**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Commonwealth of Virginia’s State Implementation Plan (SIP). This revision pertains to a State operating permit containing terms and conditions for the control of emissions of volatile organic compounds (VOCs) from Reynolds Consumer Products Company located in Richmond, Virginia. The submittal is for the purpose of meeting the requirements for reasonably available control technology (RACT) in order to implement the maintenance plan for the Richmond 8-hour ozone maintenance area. EPA is approving the revision to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on May 26, 2009 without further notice, unless EPA

receives adverse written comment by April 24, 2009. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0093 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail:* fernandez.cristina@epa.gov.

C. *Mail:* EPA–R03–OAR–2009–0093, Cristina Fernandez, Chief, Air Quality Planning, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA–R03–OAR–2009–0093. 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 be automatically 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 in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI 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 in *http://www.regulations.gov* or in hard copy during normal business hours at the Air