August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 2002. 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 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 6, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, 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 F—California

2. Section 52.220 is amended by adding paragraph (c)(286) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(286) March 14, 2001.

(i) Incorporation by reference.

(A) South Coast AQMD.

(*1*) Rule 109 amended on August 18, 2000, Rule 481 amended on November 17, 2000, Rule 1107 amended on November 17, 2000, Rule 1141.1 amended on November 17, 2000, Rule 1141.2 amended on November 17, 2000, and Rule 1162 amended on November 17, 2000.

* * * * *

[FR Doc. 02–3190 Filed 2–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[KY–116; KY–119–200214a; FRL–7141–9]

Approval and Promulgation of Implementation Plans Reinstatement of Redesignation of Area for Air Quality Planning Purposes; Kentucky Portion of the Cincinnati-Hamilton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Cincinnati-Hamilton moderate 1-hour ozone nonattainment area (Cincinnati-Hamilton area) includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. In a **Federal Register** notice published June 19, 2000, the Cincinnati-Hamilton area was redesignated to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS) effective July 5, 2000. On September 11, 2001, the United States Court of Appeals for the 6th Circuit vacated EPA's redesignation of the Cincinnati-Hamilton area, after concluding that EPA erred in one respect that pertained solely to the Ohio portion of the area. *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001). Therefore, in response to the Court's findings, this rulemaking action reinstates EPA's redesignation to attainment for the 1-hour ozone NAAQS for the Kentucky portion of the Cincinnati-Hamilton area, to become effective as of the effective date of the original redesignation action. EPA is addressing the remand relating to the Ohio portion of the Cincinnati-Hamilton area in a separate rulemaking action.

DATES: This direct final rule is effective April 15, 2002, without further notice, unless EPA receives adverse comment by March 14, 2002. If adverse comment is received, EPA 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: All comments should be addressed to: Raymond Gregory, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the Cabinet's original redesignation request, the Court's ruling and other information are available for inspection during normal business hours at the following locations: U.S. Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Development Section, 61 Forsyth Street, SW, Atlanta, Georgia 30303; Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. Persons wishing to examine these documents should make an appointment at least 24 hours before the visiting day and reference file KY–116.

FOR FURTHER INFORMATION CONTACT: Raymond Gregory, Environmental Scientist, Regulatory Development Section, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303, (404) 562–9116, (*gregory.ray@epa.gov*).

SUPPLEMENTARY INFORMATION:

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I. What Action Are We Taking?

In this direct final rulemaking, EPA is reinstating the redesignation to attainment for the Kentucky portion of the Cincinnati-Hamilton area for the 1-hour ozone NAAQS. The Cincinnati-Hamilton area, which includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton; was redesignated to attainment for the 1-hour ozone NAAQS (65 FR 37879, June 19, 2000), effective July 5, 2000.

EPA is taking this action in response to the Court decision in *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) which vacated EPA's redesignation of the Cincinnati-Hamilton area to attainment and remanded to EPA for further proceedings consistent with the Court's opinion. The Court in *Wall* v. *EPA* considered a number of challenges to EPA's redesignation action, but upheld EPA's redesignation action in all respects with regard to the Kentucky portion of the Cincinnati-Hamilton area. The Court also concluded that EPA erred only on one element that pertained solely to the Ohio portion of the Cincinnati-Hamilton area. EPA is addressing the remand relating to the Ohio portion of the Cincinnati-Hamilton area in a separate rulemaking action.

II. What Is the Background for This Action?

Under section 107(d) of the Clean Air Act (CAA) as amended in 1977, all counties in the Cincinnati-Hamilton area were designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 6, 1991 (56 FR 56694), pursuant to section 107(d)(4)(A) of the CAA as amended in 1990, the Ohio Counties of Butler, Clermont, Hamilton, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton were designated as the Cincinnati-Hamilton moderate ozone nonattainment area, due to monitored violations of the 1-hour ozone NAAQS that occurred during the 1987–1989 time frame.

For the 1996–1998 ozone seasons, Kentucky and Ohio recorded three years of complete, quality-assured, ambient air monitoring data for the Cincinnati-Hamilton area that demonstrated attainment with the 1-hour ozone NAAQS, making the area eligible for redesignation. Quality-assured ozone monitoring data for the 1999 and 2000 ozone seasons, and preliminary ozone monitoring data for the 2001 ozone season, show that the area continues to attain the 1-hour ozone NAAQS.

The Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet (Cabinet) and the State of Ohio Environmental Protection Agency (OEPA) submitted separate requests to redesignate the Kentucky and Ohio portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 1-hour ozone NAAQS. On October 28, 1999, the Cabinet submitted a prehearing redesignation request and requested that EPA parallel process this submittal. The Cabinet submitted the final redesignation request, including public hearing results, on December 13, 1999. On July 2, 1999, EPA received a proposed redesignation request from OEPA. OEPA submitted additional supporting information on August 16, 1999, and completed the submittal by providing public hearing results on December 22, 1999.

On January 24, 2000 (65 FR 3630) EPA proposed approval of the above requests. This rulemaking also proposed to determine that the Cincinnati-Hamilton area attained the 1-hour ozone NAAQS by its extended attainment date, and proposed to approve an exemption for the area from nitrogen oxides requirements as provided for in section 182(f) of the CAA. After taking and considering comments, EPA issued a final rulemaking (65 FR 37879, June 19, 2000), effective July 5, 2000, determining that the Cincinnati-Hamilton area had attained the 1-hour ozone NAAQS. This rulemaking also approved the Cabinet's and OEPA's redesignation requests, including their plans for maintaining the 1-hour ozone NAAQS.

On August 17, 2000, two Ohio residents and the Ohio chapter of the Sierra Club petitioned the Court for review of EPA's redesignation of the Cincinnati-Hamilton area. The petitioners urged the Court to find that EPA erred in a number of respects, but the Court upheld EPA's actions with respect to all requirements for redesignation that relate to Kentucky. The Court also rejected all of the petitioners' challenges with respect to the Ohio portion of the Cincinnati-Hamilton area, with the sole exception of EPA's finding that it could approve Ohio's redesignation request before Ohio had fully adopted all of the Reasonably Available Control Technology (RACT) rules of part D, subpart 2. Specifically, the Court rejected challenges to, and upheld EPA's approvals of, the Kentucky and Ohio maintenance plans and EPA's conclusions with respect to transportation conformity requirements. The Court concluded that EPA exceeded its discretion by determining that Ohio did not need to fully adopt all of the RACT rules of part D, subpart 2 before being redesignated. The Court vacated ''EPA's action in redesignating Cincinnati-Hamilton area to attainment status for ground level ozone'' and ''remanded for further proceedings consistent with this opinion.''

III. Why Are We Taking This Action?

In response to the Court's vacatur and remand, EPA believes that it is consistent with the Court's opinion to reinstate the redesignation of the Kentucky portion of the Cincinnati-Hamilton area, to become effective as of the original effective date of this redesignation action. The grounds for reinstatement are as follows: (1) EPA has issued a final redesignation action for the Kentucky portion of the area, after notice and comment rulemaking; (2) the Court, after reviewing EPA's actions, has upheld EPA's determination of attainment for the entire Cincinnati-Hamilton area (both the Ohio and Kentucky portions), EPA's approval of the maintenance plans for both the Kentucky and Ohio portions of the area, and EPA's action approving Kentucky's request for redesignation of the Kentucky portion of the Cincinnati-Hamilton area. Thus, both EPA and the Court concur that Kentucky has fully met the requirements for redesignation of the Kentucky portion of the Cincinnati-Hamilton area, the entire area was determined to be in attainment for the 1-hour ozone NAAQS, and both portions of the area have fully-approved maintenance plans that have withstood challenges after judicial review. The Court left intact all of EPA's determinations with respect to attainment and maintenance for the entire area, as well as all the remaining requirements for redesignation of the Kentucky portion of the Cincinnati-Hamilton area.

The CAA expressly provides for designation and redesignation of portions of nonattainment areas. See, for example section 107(3)(D): ''The Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or *portion thereof* within the State * * *.'' Similarly, section 107(d)(3)(E) provides that: ''The Administrator may not promulgate a redesignation of a nonattainment area (*or portion thereof*) to attainment unless—* * *.''

EPA has in the past approved redesignation requests for a portion of an area in a multi-state nonattainment area that had attained the standard. See, for example, the June 29, 1995, redesignation of the Huntington, West Virginia, portion of the Huntington-Ashland, Kentucky, ozone nonattainment area to attainment and approval of that area's maintenance plan (60 FR 33748).

Under these circumstances, EPA has the authority to redesignate the Kentucky portion of the area, independent of whether Ohio has met all the requirements for a fully approved State Implementation Plan (SIP) for the Ohio portion of the area.

IV. What Is the Effect of This Action?

When it takes effect, the reinstatement of EPA's redesignation for the Kentucky portion of the Cincinnati-Hamilton area will be effective as of the original effective date of EPA's June 19, 2000, redesignation action. Thus, the official designation of the Kentucky Counties of Boone, Campbell, and Kenton, as identified in 40 CFR 81.318 will continue to read attainment as of July 5, 2000. This direct final rulemaking has no impact on the official designation of the Ohio Counties of Butler, Warren, Clermont, and Hamilton. The attainment status of the Ohio portion of the Cincinnati-Hamilton area is being addressed in a separate rulemaking action.

Other EPA actions taken in the June 19, 2000, redesignation rulemaking for the Cincinnati-Hamilton area and upheld by the Court are unaffected by today's rulemaking. EPA's approvals of Kentucky's and Ohio's maintenance plans have remained in place, since the Court upheld our approval of these plans. Similarly, EPA's determination of attainment for the area has remained in place. Thus the requirements of section 172(c)(1), 182(b)(1) and 182(j) concerning the submission of the ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures for reasonable further progress or attainment continue to remain inapplicable to the area. Since the NO_X exemption was not affected by the Court's ruling, the area also remains exempt from section 182(f) NO_X requirements for moderate ozone nonattainment areas.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely reinstates a previous redesignation to attainment, an action that affects the attainment status of a geographical area. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on sources, including small entities. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rulemaking does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely reinstates a previous action redesignating an area to attainment—an action which affects the attainment status of a geographical area. It does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements. Nor does it alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this action. This action also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. The current action merely reinstates a previous action that was taken based on review of a Kentucky SIP submittal that satisfied all CAA provisions. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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 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. section 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 April 15, 2002. 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: January 22, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–3357 Filed 2–11–02; 8:45 am]

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