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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R04-OAR-2005-KY-0001-200521(f); FRL-8023-8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Christian County, KY, Portion of the Clarksville-Hopkinsville 8-Hour Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a May 20, 2005, final request to redesignate the Christian County, Kentucky, portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS), and a Kentucky State Implementation Plan (SIP) revision containing a 12-year maintenance plan for Christian County, Kentucky. EPA is also providing information on the status of the Agency's transportation conformity adequacy determination for the new motor vehicle emissions budgets (MVEBs) for the years 2004 and 2016 that are contained in the 12-year 8-hour ozone maintenance plan for Christian County, Kentucky. EPA is approving such MVEBs in this action. This final rule addresses comments made on EPA's proposed rulemaking previously published for this action.

DATES: This rule will be effective February 24, 2006.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2005-KY-0001. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in Regional Material in E-Docket 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: James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Mr. Hou can be reached via telephone number at (404) 562-8965 or electronic mail at hou.james@epa.gov.

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I. What Actions Is EPA Taking?

EPA is taking final action to change the legal designation of the Christian County, Kentucky, portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area from nonattainment to attainment for the 8-hour ozone NAAQS. The interstate Clarksville-Hopkinsville 8-hour ozone nonattainment area is composed of two counties (*i.e.*, Christian County, Kentucky, and Montgomery County, Tennessee). EPA is also approving Kentucky's 8-hour ozone maintenance plan for Christian County (such approval being one of the Clean Air Act (CAA) criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Clarksville-Hopkinsville area (of which Christian County is a part) in attainment for the 8-hour ozone NAAQS for the next 12 years. These approval actions are based on EPA's determination that the Commonwealth of Kentucky has demonstrated that Christian County, Kentucky, has met the criteria for redesignation to attainment specified in the CAA, and that the entire Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone standard. EPA's analyses for Christian County, Kentucky, and Montgomery County, Tennessee, are described in detail in the direct final rules published September 22, 2005, at 70 FR 55550 and 70 FR 55559, respectively.

EPA is also providing information on the status of the Agency's transportation conformity adequacy determination for the new MVEBs for the years 2004 and 2016 that are contained in the maintenance plan for Christian County, Kentucky. The maintenance plan establishes MVEBs for the years 2004 and 2016, respectively, of 3.83 tons per day (tpd) and 2.08 tpd for volatile organic compound (VOC) emissions, and 9.53 tpd and 3.83 tpd for nitrogen oxides (NO_x). Through this action, EPA is announcing that these MVEBs are adequate for the purposes of transportation conformity. During EPA's Adequacy public comment period which began on March 29, 2005, and closed on April 28, 2005, EPA did not receive any adverse comments related to the MVEBs. EPA is also approving these MVEBs in this action. Upon the publication of this final rulemaking in the **Federal Register**, these MVEBs must be used by the transportation partners in this area for future conformity determinations. Additionally, conformity to these new MVEBs must be demonstrated within 24 months of the effective date of this action, pursuant to section 6011(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users, which was signed into law on August 10, 2005.

Additionally, in this action, EPA is responding to the adverse comment received on the September 22, 2005, rulemaking proposing to approve the aforementioned revisions (70 FR 55613).

II. What Is the Background for the Actions?

In two separate actions published on September 22, 2005, EPA proposed to approve the redesignation of the Kentucky (70 FR 55613) and Tennessee (70 FR 55613) portions of the Clarksville-Hopkinsville 8-Hour Ozone Nonattainment Area to attainment. Also on that date, EPA published two companion direct final rules approving the redesignation to attainment of the Kentucky (70 FR 55550) and Tennessee (70 FR 55559) portions of the nonattainment area. The proposed and direct final rules stated that if EPA received adverse comment by October 24, 2005, the direct final rule would be withdrawn and would not take effect. EPA subsequently received an adverse comment regarding the redesignation of the Kentucky portion of the nonattainment area (*i.e.*, Christian County). In this action, EPA is addressing the comment and taking final action as described in section I and section IV.

III. Response to Comments

The following is a summary of the adverse comment received on the proposed rule published September 22, 2005, (70 FR 55613) and EPA's response to the comment.

Comment: The commenter asserts that the Kentucky Division for Air Quality (KDAQ) has permitted a new source of NO_x in Muhlenberg County, Kentucky, which borders Christian County. The commenter states that the source is permitted to emit well over 5,000 tons per year of NO_x. The commenter asserts that until KDAQ establishes that Christian County will be in attainment with the 8-hour ozone NAAQS with the additional NO_x emissions from this source through a reasonable worst case analysis of the source's NO_x emissions during any one-hour or eight-hour hour period, EPA should not redesignate Christian County to attainment.

Response: As detailed in Section III of the September 22, 2005, direct final rule (70 FR 55550), the CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the State containing such area has met all requirements applicable to the area under section 110 and part D. EPA has determined that all of the redesignation requirements are met for the Christian County area as described in the September 22, 2005, rulemaking (70 FR 55550).

KDAQ has demonstrated that ozone precursor emissions inside the Christian County nonattainment area will remain at or below attainment year levels in the future, which indicate the 8-hour ozone standard will be maintained. Furthermore, as for the impact of emissions outside of Christian County, the commenter has provided no analysis indicating that any such emissions would be likely to cause or contribute to violations in the future. Kentucky had performed a cumulative assessment of the impacts of current and proposed

Kentucky electric power generating facilities, and concluded that 8-hour ozone violations are not likely to occur as a consequence of these emissions. The Agency reviewed this report in response to the commenter's concerns. The report, "A Cumulative Assessment of the Environmental Impacts Caused by Kentucky Electric Generating Units," dated December 17, 2001, is included in the docket for this action. The report documents Kentucky's analysis of the environmental impacts of 34 existing power plants and 22 proposed new or expanded power plants, including the proposed new source in Muhlenberg County. Specific to air quality, the report provides information on the changes in ozone and fine particulates concentrations with the addition of these 56 proposed and existing power plants in Kentucky. The emissions modeled for the proposed new power plant in Muhlenberg County were: 507.4 tons per year (tpy) of VOCs and 6,030 tpy of NO_x. The impact assessment did not identify potential ozone attainment problems for Christian County, Kentucky, even though it considered far more sources than only the one mentioned by the commenter.

Furthermore, EPA notes that NO_x emissions from the proposed power plant in Muhlenberg County will be subject to the regional NO_x reduction programs of the NO_x SIP Call and, in the future, the Clean Air Interstate Rule (CAIR) (70 FR 25162 (May 12, 2005)). Since Kentucky is regulated by those programs, sources subject to them, including power plants, will remain subject to an overall NO_x emissions budget for the state that will not increase as a result of the possible new plant in Muhlenberg County. Consequently, that source would have to obtain NO_x allowances from other sources subject to the NO_x SIP Call and/or CAIR to emit NO_x and the sources in the Commonwealth of Kentucky would remain subject to the same overall NO_x budget.

The proposed new power plant in Muhlenberg County refers to the Thoroughbred Generating Station (TGS) project. This project is proposed to consist of two pulverized coal electric utility steam generating units with a nominal power generating capacity of 750 megawatts each and a nominal rated capacity heat input rate of 7,443 pounds per million British thermal units (lb/MMBtu) each. The NO_x and VOC emissions limits for the two pulverized coal combustion units are proposed to be as follows: 0.08 lb/MMBtu of NO_x each (equivalent to 5,216 tons per year for both units combined) and 0.0072 lb/MMBtu of VOCs each (equivalent to 235

tons per year for both units combined). The KDAQ has a merged air emissions permitting program in which a single permit serves as the prevention of significant deterioration construction permit and the title V operating permit. The merged permit was issued to Thoroughbred Generating Company, LLC (TGC) on October 11, 2002, with slight revisions on December 6, 2002, and February 17, 2005.

The permit issued to TGC was appealed through Kentucky's administrative appeals procedure. The Administrative Hearing Officer (AHO) issued a report with recommendations on August 9, 2005. The AHO recommended remanding portions of the permit to the KDAQ. The Secretary of the Kentucky Environmental and Public Protection Cabinet makes the final determination on the appeal. No determination has yet been made by the Secretary.

After KDAQ issued the original permit on October 11, 2002, EPA received a petition to object to the title V portion of the permit. EPA is awaiting the conclusion of the Kentucky permit appeal process before completing a response to the petition. Thus the permit appeal process for the source has not yet been concluded, and therefore the permit provisions remain subject to revision. Moreover, EPA believes that for the reasons set forth above that the TGS does not pose a potential problem for attainment or maintenance of the standard in the Clarksville-Hopkinsville area.

Should monitored violations of the 8-hour ozone NAAQS occur in Christian County, the contingency plan within the County's 8-hour ozone maintenance plan will be implemented to promptly correct the violations. In the contingency measures section, Kentucky details actions it will take if there are measured exceedances (i.e., an 8-hour average equal to or greater than 0.085 parts per million) of the 8-hour ozone standard, and reserves the right to implement other contingency measures than those listed for the County if deemed necessary.

IV. Final Action

EPA is taking final action to change the legal designation of the Christian County, Kentucky portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area from nonattainment to attainment for the 8-hour ozone NAAQS. Through this action, EPA is announcing that the new 2004 and 2016 MVEBs are adequate for transportation conformity purposes. EPA is also approving into the Kentucky SIP the 8-hour ozone maintenance plan for

Christian County, and the new MVEBs for the years 2004 and 2016, respectively, of 3.83 tpd and 2.08 tpd for VOC, and 9.53 tpd and 3.83 tpd for NO_x.

V. Statutory and Executive Order Reviews

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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. 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 rule approves pre-existing requirements under state law and 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 (Pub. L. 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 affects the status of a geographical area, does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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, and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

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 Commonwealth 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. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. 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. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 27, 2006. 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

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

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

Dated: January 13, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 40 CFR parts 52 and 81 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.*

Subpart S—Kentucky

■ 2. Section 52.920(e) is amended by adding a new entry at the end of the table for “8-Hour Ozone Maintenance Plan for the Christian County, Kentucky Area” to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
8-Hour Ozone Maintenance Plan for the Christian County, Kentucky area.	Christian County	05/20/2005	01/25/06 [Insert citation of publication]	

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 table entitled “Kentucky—Ozone (8-Hour Standard)” is amended by revising the entry for

“Clarksville-Hopkinsville, TN-KY: Christian County” to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—OZONE (8-HOUR STANDARD)

Designation	Designation ^a		Category/classification	
	Date ¹	Type	Date ¹	Type
Clarksville-Hopkinsville, TN-KY Area: Christian County	02/24/06	Attainment.		

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is June 15, 2004, unless otherwise noted.

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[FR Doc. 06–635 Filed 1–24–06; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–11; MB Docket No. 03–219; RM–10797, RM–11094]

Radio Broadcasting Services; Clemmons, NC, Iron Gate, VA and Statesville, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Mercury Broadcasting Company, Inc., licensee of Station WFMX (FM), Statesville, North Carolina, Channel 289C1 is substituted for Channel 289C at Statesville, reallocated from Statesville to Clemmons, North Carolina, as the community's first local transmission service, and the license for Station WFMX (FM) is modified to reflect the changes. To accommodate the counterproposal filed by Dick Broadcasting Company of Tennessee, licensee of Stations WKZL

(FM), Winston-Salem, North Carolina, and WKRR (FM), Asheboro, North Carolina, Channel 270A is allotted at Iron Gate, Virginia. Channel 289C1 is reallocated at Clemmons at a site 32 kilometers (19.9 miles) north of the community at coordinates 36–17–30 NL and 80–15–30 WL. Channel 270A is allotted at Iron Gate, Virginia with a site restriction of 1.5 kilometers (0.9 miles) northwest of the community at coordinates 37–48–14 NL and 79–48–23 WL.

DATES: Effective February 21, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 06–11, adopted January 4, 2006, and released January 6, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the

Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail qualexint@aol.com. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ 47 CFR part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Clemmons, Channel 289C1 and by removing Channel 289C at Statesville.

■ 3. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Iron Gate, Channel 270A.