

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

| State citation | Title/subject | State effective date | EPA approval date | Additional explanation |
|--|---|-----------------------------|-----------------------|---|
| Section 755 | Federal Transient Emissions Test: Equipment. | 7/22/94 | 6/11/99, 64 FR 31498. | |
| Section 756 | Federal Transient Emissions Test: Quality Assurance Procedures. | 7/22/94 | 6/11/99, 64 FR 31498. | |
| Chapter 11 Motor Vehicle Offenses and Penalties | | | | |
| Section 1101 | Offenses Related to Title, Registration, and Identification Tags. | 6/30/72; Recodified 4/1/81. | 6/11/99, 64 FR 31498. | |
| Section 1103 | Offenses Related to Inspection Stickers. | 6/30/72; Recodified 4/1/81. | 6/11/99, 64 FR 31498. | |
| Section 1104 | False Statements, Alterations, Forgery, and Dishonored Checks. | 11/29/91 | 6/11/99, 64 FR 31498. | |
| Section 1110 | Penalties for Violations | 11/29/91 | 6/11/99, 64 FR 31498. | |
| Chapter 26 Civil Fines for Moving and Non-Moving Violations | | | | |
| Section 2600.1 | Infraction: Inspection, Registration Certificate, Tags. | 8/31/90 | 6/11/99, 64 FR 31498. | |
| Chapter 99 Definitions | | | | |
| Section 9901 | Definitions | 10/17/97 | 6/11/99, 64 FR 31498 | Definition of "Emission Recall Notice". |

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[FR Doc. E9-5866 Filed 3-18-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[EPA-R03-OAR-2007-0176; FRL-8777-3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Greene County 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Maintenance Plan and 2002 Base-Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Greene County ozone nonattainment area (Greene County Area) be redesignated as attainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS). EPA is approving the ozone redesignation request for the Greene County Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a

maintenance plan for the Greene County Area that provides for continued attainment of the 1997 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is approving the 8-hour maintenance plan. PADEP also submitted a 2002 base year inventory for the Greene County Area, which EPA is approving. In addition, EPA is approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Greene County Area maintenance plan for purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request, the maintenance plan, and the 2002 base year emissions inventory as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA or the Act).

DATES: *Effective Date:* This final rule is effective on April 20, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2007-0176. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (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 through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environment Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Melissa Linden, (215) 814-2096, or by e-mail at linden.melissa@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2008 (73 FR 40813), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania's redesignation request and maintenance plan SIP revisions for the Greene County Area that provide for continued attainment of the 1997 8-hour ozone NAAQS for at least 10 years after redesignation. The NPR also proposed approval of a 2002 base year emissions inventory for the Greene County Area. The formal SIP revisions were submitted by PADEP on January 25, 2007, with one significant change

submitted on May 23, 2008 explaining a new methodology used to project future emissions of nitrogen oxides (NO_x) from electric generating units (EGUs). Other specific requirements of Pennsylvania's redesignation request and maintenance plan SIP revisions, and the rationale for EPA's proposed actions, are explained in the NPR and will not be restated here. No public comments were received on the NPR.

The holdings in two lawsuits potentially impact this redesignation action. As we explain below, we believe neither lawsuit precludes the redesignation of the Greene County Area.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's Phase 1 Implementation Rule for the 1997 8-Hour Ozone Standard. (69 FR 23591, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist. v. EPA*, Docket No. 04-1201, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the Act as 8-hour nonattainment areas, the 8-hour attainment dates, and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8, 2007 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8, 2007 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for the 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain NAAQS. In addition, the June 8, 2007 decision clarified that

the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of the 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified the 1-hour conformity determinations are not required for anti-backsliding purposes.

For the reasons set forth in the proposal, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in the light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

The second lawsuit relates to EPA's Clean Air Interstate Rule (CAIR). On July 11, 2008, the D.C. Circuit ruled on various challenges to EPA's CAIR, and issued an order vacating CAIR in its entirety. 531 F.3d 896 (D.C. Cir. 2008). This order did not become final before December 23, 2008, when the Court granted partial rehearing as to the remedy set forth in its July 11 decision and issued an opinion remanding CAIR to EPA without vacating. During the pendency of the remand, CAIR will remain in place. *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008). The Court stated, however, in its December 23, 2008 opinion that EPA was still under an obligation to remedy what the Court characterized as "flaws" with CAIR, though the Court declined to impose a deadline for EPA to finalize that remedy.

EPA believes that the maintenance plan for Greene County demonstrates that the NAAQS will be maintained for at least 120 months (ten years), and through 10 ozone seasons, as required by section 175A(a) of the Act, 42 U.S.C. 7505a(a), whether or not CAIR and its specific, associated emissions reductions from a subset of point sources (electric generating units), continue in effect. Ten years of maintenance of the NAAQS is demonstrated in Table 5 (and its associated explanatory material) of the NPR, (73 FR at 40821). As the NPR indicates, emissions from area and non-road sources in Greene County are projected to have an overall decline from 2004 through the end of the 2018

ozone season. Thus, even if point source projected emissions were to remain steady or even minimally increase during this same time frame, the 1997 ozone NAAQS will be maintained in Greene County. However, point source measures currently in place, such as the NO_x SIP call, allow EPA to conclude that NO_x emissions from point source in Greene County are more likely to decline than increase or hold steady through the end of the 2018 ozone season. Thus, even if EPA could comply with the D.C. Circuit's CAIR opinions through a new or revised program that did not achieve the same (or any) level of the NO_x reductions of the current CAIR program in Greene County, the projected emissions in the maintenance plan indicate that Greene County will continue to maintain the 1997 8-hour ozone NAAQS throughout the duration of the 120 month (from the effective date of this redesignation) and ten ozone season (beginning of ozone season 2009 through end of ozone season 2018) maintenance period. EPA may therefore approve the redesignation request.

II. Final Action

EPA is approving the Commonwealth of Pennsylvania's redesignation request, maintenance plan, 2002 base-year inventory, and MVEBs SIP revisions submitted on January 25, 2007, because they satisfy the requirements of the CAA. EPA is also approving the significant change of a new methodology that projects future emissions of NO_x from EGUs, submitted on May 23, 2008 as a revision to the Pennsylvania SIP. The final approval of this redesignation request will change the designation of the Greene County Area from nonattainment to attainment for the 1997 8-hour ozone standard.

In this final rulemaking, EPA is notifying the public that we have found that the MVEBs for NO_x and volatile organic compounds (VOC) in the Greene County Area for the 1997 8-hour ozone maintenance plan are adequate and approved for conformity purposes. As a result of our finding, the Greene County Area must use the MVEBs from the submitted 8-hour ozone maintenance plan for future conformity determinations. The adequate and approved MVEBs for the Greene County Area are provided in the following table:

TABLE 1—GREENE COUNTY MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER SUMMER DAY (TPSD)

| Year | VOC | NO _x |
|------------|-----|-----------------|
| 2009 | 1.6 | 2.6 |

TABLE 1—GREENE COUNTY MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER SUMMER DAY (TPSD)—Continued

| Year | VOC | NO _x |
|------------|-----|-----------------|
| 2018 | 1.0 | 1.3 |

The Greene County Area is subject to the CAA's requirement for the basic nonattainment areas until and unless it is redesignated to attainment.

III. Statutory and Executive Order Reviews

A. General 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. 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 final 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). Because this action affects the status of a geographical area, does not impose any new requirements on sources, or allows the state to avoid adopting or implementing other requirements, 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 approves a state rule implementing a Federal requirement, 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 approves a state rule implementing a Federal standard.

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. Redesignation is an action that affects the status of a geographical area and 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.*).

B. Submission to Congress and the Comptroller General

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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. 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 18, 2009*. 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, approving the redesignation of the Greene County Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year emission inventory, and the MVEBs identified in the maintenance plan, 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: February 11, 2009.

James W. Newsom,

Acting Regional Administrator, Region III.

■ 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 NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry at the end of the table to read as follows:

§ 52.2020 Identification of plan.

| | | | | |
|-----|---|---|---|---|
| * | * | * | * | * |
| (e) | * | * | * | * |
| (1) | * | * | * | * |

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|---|----------------------------|--------------------------|--|------------------------|
| 8-Hour Ozone Maintenance Plan and 2002 Base Year Emissions Inventory. | Greene County | 01/25/07, 05/23/08 | March 19, 2009 [Insert page number where the document begins]. | |

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PART 81—[AMENDED]

■ 3. The authority citation for Part 81 continues to read as follows:

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

■ 4. In § 81.339, the table entitled “Pennsylvania-Ozone (8-Hour Standard)” is amended by revising the

entry for the Greene County, PA: Greene County, to read as follows:

§ 81.339 Pennsylvania
* * * * *

PENNSYLVANIA—OZONE
[8-Hour Standard]

| Designated area | Designation ^a | | Category/classification | |
|--------------------------------------|--------------------------|-------------|-------------------------|------|
| | Date ¹ | Type | Date ¹ | Type |
| Greene County, PA: Greene County. | April 20, 2009 | Attainment. | | |

^a Includes Indian County located in each county or area, except otherwise noted.
¹ This date is June 15, 2004, unless otherwise noted.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81
[EPA-R03-OAR-2007-0624; FRL-8777-4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Clearfield/Indiana 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Maintenance Plan and 2002 Base-Year Inventory

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Clearfield and Indiana Counties ozone nonattainment area (Clearfield/Indiana Area) be redesignated as attainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS). EPA is approving the ozone redesignation request for the Clearfield/Indiana Area.

In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for the Clearfield/Indiana Area that provides for continued attainment of the 1997 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is approving the 8-hour maintenance plan. PADEP also submitted a 2002 base year inventory for the Clearfield/Indiana Area, which EPA is approving. In addition, EPA is approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Clearfield/Indiana Area maintenance plan for purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request, the maintenance plan, and the 2002 base year emissions inventory as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA or the Act).

EFFECTIVE DATE: This final rule is effective on April 20, 2009.
ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2007-0624. All documents in the docket are listed in the www.regulations.gov Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (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 through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environment Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814-2036, or by e-mail at becoat.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 23, 2008 (73 FR 43731), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania’s redesignation request and maintenance plan SIP revisions for the Clearfield/Indiana Area that provide for continued attainment of the 1997 8-hour ozone NAAQS for at least 10 years