

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 81****[EPA-R03-OAR-2006-0692; FRL-8314-1]****Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the Weirton, WV Portion of the Steubenville-Weirton, OH-WV 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is approving a redesignation request and a State Implementation Plan (SIP) revision submitted by the State of West Virginia. The West Virginia Department of Environmental Protection (WVDEP) is requesting that the Brooke and Hancock County, West Virginia (Weirton) portion of the Steubenville-Weirton, OH-WV area (herein referred to as the "Area") be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). In conjunction with its redesignation request, the State submitted a SIP revision consisting of a maintenance plan for Weirton that provides for continued attainment of the 8-hour ozone NAAQS for the next 12 years, until 2018. EPA is also approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Weirton 8-hour ozone maintenance plan for purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request and the maintenance plan revision to the West Virginia SIP in accordance with the requirements of the CAA.

DATES: *Effective Date:* This final rule is effective on June 13, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2006-0692. 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 West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, WV 25304.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814-2156, or by e-mail at caprio.amy@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On October 2, 2006 (71 FR 57905), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. The NPR proposed approval of West Virginia's redesignation request and a SIP revision that establishes a maintenance plan for Weirton that sets forth how Weirton will maintain attainment of the 8-hour ozone NAAQS for the next 12 years. The formal SIP revision was submitted by the WVDEP on August 3, 2006. Other specific requirements of West Virginia's redesignation request SIP revision for the maintenance plan and the rationales for EPA's proposed actions are explained in the NPR and will not be restated here. On October 19, 2006, EPA received a comment, from the West Virginia Division of Highways, in support of its October 2, 2006 NPR. Also, on October 28, 2006, EPA received adverse comments on the said October 2, 2006 NPR. A summary of the comments submitted and EPA's responses are provided in Section II of this document. However, errata were found on page 57912 of the NPR. On page 57912 (Table 4), an error occurred in EPA's calculation of the 2018 Ohio NO_x point sources. The correct 2018 Ohio NO_x point source should read 46.4 tons per day (tpd) instead of 41.0 tpd. This error adversely affects the total NO_x point sources and the 2018 Ohio total NO_x emissions. The correct total NO_x point sources should read 52.0 tpd instead of 46.6 tpd. Lastly, the 2018 Ohio total NO_x emissions should read 55.3 tpd instead of 49.9 tpd. It should be noted that these errata do not affect the attainment of the 8-hour ozone standard or the demonstration of maintenance in the Area.

II. Summary of Public Comments and EPA Responses

Comment: The commenter stated that on behalf of the West Virginia Division of Highways, they would like to go on record as supporting the redesignation

of Weirton from nonattainment to attainment.

Response: EPA acknowledges the comment of support for our final action.

Comment: The commenter notes that although there are no electrical generating units (EGUs) in the Weirton portion of the Area, "significant" NO_x emissions reductions are expected from 2002–2018 at two EGU's located in Steubenville. The commenter requests specific information on the controls at these plants and measures making these emissions reductions enforceable.

Response: The Redesignation of Jefferson County, Ohio to Attainment of the 8-Hour Ozone Standard, 72 FR 711 (January 8, 2007) notes that Ohio's EGU NO_x emissions control rules stemming from EPA's NO_x SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_x SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR) May 12, 2005 (70 FR 25162), to be implemented beyond 2006, will further lower NO_x emissions in upwind areas, resulting in decreased ozone and ozone precursor transport into Jefferson County and the Steubenville-Weirton Area. This will also support maintenance of the ozone standard in this Area, which particularly benefits from the NO_x SIP Call and CAIR. These two regulations focus on utility emissions in the Eastern United States and impose a permanent cap on overall emissions from affected sources. This cap is likely to minimize growth of this very important component of emissions in the Area.

The emission projections for Jefferson County and the Steubenville-Weirton Area as a whole, coupled with the expected impacts of the States' EGU NO_x rules and CAIR, lead to the conclusion that the Area should maintain the 8-hour ozone NAAQS throughout the required 10-year maintenance period and through 2018. The projected decreases in local VOC and local and regional NO_x emissions indicate that peak ozone levels in the Area may actually further decline during the maintenance period.

Based on the comparison of the projected emissions and the attainment year emissions, we conclude that the West Virginia Department of Environmental Protection (WVDEP) and the Ohio EPA have successfully demonstrated that the 8-hour ozone standard should be maintained throughout the Area.

In addition, in this action EPA is approving the Maintenance Plan for Weirton and in a separate action has proposed approval of the Maintenance Plan for the Jefferson County

(Steubenville) portion of the Area. Collectively, the Ohio and West Virginia Maintenance Plans demonstrate why those states believe that the Area will continue to maintain the 8-hour ozone standard for at least 10 years from the date of redesignation. Furthermore, the Contingency Plans, which are components of the Maintenance Plans, set forth the steps that the States will undertake to preserve attainment of the 8-hour ozone standard if air quality indicators show that the air quality of the Area has declined to the point when contingency measures to reverse that deterioration of air quality should begin being implemented. Therefore, continued maintenance of the 8-hour ozone standard will be assured independent of whether or not enforceable reductions are currently called for at the two Jefferson County EGUs. In short, if projected reductions from the Jefferson County EGUs do not occur, and if the measures from the NO_x SIP call, CAIR and other ozone control measures that are currently implemented or will be implemented in the near future, fail to maintain the 8-hour ozone standard in the Area, the States of West Virginia and Ohio nevertheless will have, with the Contingency Plan provisions of their Maintenance Plans, a SIP-approved process for assuring that air quality in Steubenville-Weirton Area will continue to maintain the 8-hour ozone standard.

Comment: The commenter states that the Weirton redesignation is based on 2002–2004 air quality data, and should instead be based on the most recent three years of air quality data, 2004–2006.

Response: EPA disagrees that the 2006 data was available as a basis for redesignating Weirton to attainment, and also disagrees with the comment that the redesignation cannot be based on the quality assured 2002–2004 air quality data. EPA may redesignate an area to attainment of the 8-hour ozone NAAQS if three years of quality assured data indicate that the area has attained the standard and the most recent quality assured air quality data indicates that the area is still attaining the standard at the time of the redesignation. EPA has determined that Weirton has attained compliance with the 8-hour ozone NAAQS subsequent to the calendar year 2004 ozone season (April–October) based on three years (2002–2004) of quality assured data. It is also worth noting that while our determination that the Area has attained the standard is based on the 2002–2004 data, the 2005 calendar year quality assured data and the newly available quality assured data

from 2006, indicate that the Area continues to attain the standard. The 2005 and 2006 data supports our conclusion in the NPR on October 2, 2006 (71 FR 57905) that emissions reductions in the Area can be contributed to permanent and enforceable measures throughout the Area and that air quality monitoring data indicate that the Area continues to attain the 8-hour ozone NAAQS.¹

Comment: The commenter asks why the monitoring site in Jefferson County, Ohio was moved at the end of 2003, where the new site is in relation to the old one, and an explanation as to the acceptability of combining the data from the two sites.

Response: The monitoring site in Jefferson County was relocated to a site 1/3 mile from the original site after 2003 because Ohio EPA lost site access to the original site. The new site was approved by EPA Region 5 and meets all siting criteria described in 40 CFR 58 Appendix E. The original and final sites are sufficiently close together and removed from sources of ozone precursors such that the two sites represent the same air quality. Therefore, the data from the two sites can be combined when calculating the three-year average ozone concentration. See Redesignation of Jefferson County, Ohio to Attainment of the 8-Hour Ozone Standard, 72 FR 711 (January 8, 2007).

Comment: The commenter asserts that cold and wet summers, rather than enforceable emissions reductions are a significant cause of improvement of air quality in Weirton, although the commenter also asserts based on the number of days exceeding 84 ppb 2005 that the air quality is actually not improving.

Response: In accordance with Appendix I to 40 CFR Part 50, compliance with the 8-hour ozone NAAQS is met at an ambient air monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm; it is not based on the number of days which exceed the 8-hour ozone standard. Additionally, EPA uses the three-year averaging period to minimize year to year variations in the summer

¹ The fourth highest 8-hour ozone monitoring values at the Hancock County, West Virginia (Weirton) monitor for 2006 were 0.085 ppm, 0.079 ppm, 0.079 ppm, and 0.077 ppm. The fourth highest 8-hour ozone monitoring values at the Jefferson County, Ohio (Steubenville) monitor for 2006 were 0.089, 0.083, 0.080 ppm, and 0.080 ppm. Thus the design values at both Area monitors for monitoring years 2004–2006 are still showing attainment of the 8-hour NAAQS with a value of 0.075 ppm at the Weirton monitor and 0.078 ppm at the Steubenville monitor.

(i.e., ozone season) weather. See Redesignation of Pittsburgh, Pennsylvania, 66 FR 53094, 53100 (October 19, 2001). Therefore, the number of days exceeding 84 ppb are not relevant to a determination of whether an area (or portion thereof), has attained the 8-hour ozone NAAQS. Information relative to long term trends of West Virginia summer temperatures and rainfall-based data was obtained from the National Oceanic and Atmospheric Administration's (NOAA) National Climate Data Center (please see attached). Based on EPA's review, this information shows that the summers 2000 through 2006 experienced year to year variations in average summer temperature and rainfall typical of the summer seasons in the State of West Virginia. Thus the improvement in air quality is not due to unusually cold and wet summers. Rather, the improvement in air quality is due to the implementation of permanent and enforceable measures as explained in the NPR. The permanent and enforceable measures listed in the Weirton NPR include the National Low Emissions Vehicle (NLEV), motor vehicle fleet turnover with new vehicles meeting the Tier 2 standards, and the Clean Diesel Program. These federal vehicle programs along with the NO_x SIP Call resulted in a 3.0 tons per year (tpy) decrease in VOC emissions and a 37.2 tpy decrease in NO_x emissions throughout the Steubenville-Weirton Area between 2002 and 2004. Therefore, EPA believes that the improvement in 8-hour ozone air quality is a result of identifiable, permanent and enforceable reductions in ozone precursor emissions, not unusually cold and wet summers.

Comment: The commenter requests 2006 monitoring data for the Weirton Area.

Response: Preliminary (not quality assured) data is publicly available at the following Web sites: <http://www.epa.gov/air/data/> and/or <http://www.airnow.gov>. See also, footnote 1.

Additionally, the United States Court of Appeals for the District of Columbia Circuit recently vacated EPA's April 30, 2004 "Final Rule to Implement the 8-Hour Ozone National Ambient Standard" (the Phase 1 implementation rule). *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (D.C. Cir. 2007). EPA issued a supplemental proposed rulemaking that set forth its views on the potential effect of the Court's ruling on this and other proposed redesignation actions. 72 FR 13452 (March 22, 2007). EPA proposed to find that the Court's ruling does not alter any requirements relevant to the

proposed redesignations that would prevent EPA from finalizing these redesignations, for the reasons fully explained in the supplemental notice. EPA provided a 15-day review and comment period on this supplemental proposed rulemaking. The public comment period closed on April 6, 2007. EPA received six comments, all supporting EPA's supplemental proposed rulemaking, and supporting redesignation of the affected areas. EPA recognizes the support provided in these comments as well, but again, we do not believe any specific response to comments is necessary with respect to these comments. In addition, several of these comments included additional rationale for proceeding with these proposed redesignations. EPA had not requested comment on any additional rationale, does not believe any additional rationale is necessary, and similarly does not believe any specific response to these comments is necessary, and thus has not provided any.

III. Final Action

EPA is approving the State of West Virginia's August 3, 2006 redesignation request and maintenance plan because the requirements for approval have been satisfied. EPA has evaluated West Virginia's redesignation request, submitted on August 3, 2006, and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that Weirton has attained the 8-hour ozone standard. The final approval of this redesignation request will change the designation of the Weirton, West Virginia portion of the Area from nonattainment to attainment for the 8-hour ozone standard. EPA is approving the associated maintenance plan for Weirton, submitted on August 3, 2006, as a revision to the West Virginia SIP. EPA is approving the maintenance plan for Weirton because it meets the requirements of section 175A.

EPA is also approving the MVEBs submitted by West Virginia in conjunction with its redesignation request. In this final rulemaking, EPA is notifying the public that we have found that the MVEBs for NO_x and VOCs in the Weirton 8-hour ozone maintenance plan are adequate and approved for conformity purposes. As a result of our finding, Brooke and Hancock Counties must use the MVEBs from the submitted 8-hour ozone maintenance plan for future conformity determinations. The adequate and approved MVEBs are provided in the following table:

ADEQUATE AND APPROVED MOTOR VEHICLE EMISSIONS BUDGETS (MVEBs) IN TONS PER DAY (TPD)

Budget year	NO _x	VOC
2009	2.8	2.0
2018	1.2	1.0

Weirton is subject to the CAA's requirements for basic ozone nonattainment areas until and unless it is redesignated to attainment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final 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 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 Clean Air Act 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 final 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 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), nor will it 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), because it affects the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This final rule also is not subject to Executive Order 13045 (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 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. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

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 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 July 13, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, to approve the redesignation request, maintenance plan and adequacy determination for MVEBs for Weirton, 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, Ozone, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

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

Dated: May 4, 2007.

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 XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding an entry for the 8-Hour Ozone Maintenance Plan, Steubenville-Weirton, OH-WV Area at the end of the table to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
	* * * *	*	* *	
8-Hour Ozone Maintenance Plan for the Steubenville-Weirton, OH-WV Area.	Brooke and Hancock Counties	08/03/06	05/14/07 [Insert page number where the document begins].	

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 § 81.349 the table entitled "West Virginia—Ozone (8-Hour Standard)" is amended by revising the entry for the

Steubenville-Weirton, OH-WV Area to read as follows:

§ 81.349 West Virginia

* * * * *

WEST VIRGINIA—OZONE (8-HOUR STANDARD)

Designated area	Designation ^a		Category/Classification	
	Date ¹	Type	Date ¹	Type
	* * * *	*	* *	
Steubenville-Weirton, OH-WV Area				
Brooke County	05/14/07	Attainment.		
Hancock County	05/14/07	Attainment.		
	* * * *	*	* *	

^a Includes Indian country located in each county or area except otherwise noted.

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

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