

# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

[EPA-R05-OAR-2006-0046; FRL-8312-8]

### Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of Belmont County to Attainment of the 8-Hour Ozone Standard

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

**ACTION:** Final rule.

**SUMMARY:** On June 20, 2006, the Ohio Environmental Protection Agency (Ohio EPA), submitted a request to redesignate Belmont County (the Ohio portion of the Wheeling, West Virginia-Ohio (WV-OH) bi-state ozone nonattainment area) to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). Additional information was also submitted on August 24, 2006 and December 4, 2006. In these submittals, Ohio EPA also requested EPA approval of an Ohio State Implementation Plan (SIP) revision containing a 12-year maintenance plan for the County. EPA is making a determination that the Wheeling (WV-OH) nonattainment area has attained the 8-hour ozone NAAQS. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2003–2005 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained. Quality assured monitoring data for 2006 shows that the area continues to attain the standard. EPA is approving, as a SIP revision, the State's maintenance plan for Belmont County. As a result, Ohio has satisfied the criteria for redesignation of Belmont County to attainment and EPA is approving the requested redesignation. Further, EPA is approving, for purposes of transportation conformity, the motor vehicle emission budgets (MVEBs) for the year 2018 that are contained in 8-hour ozone maintenance plan.

**DATES:** This final rule is effective on June 15, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2006-0046. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, 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](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steve Marquardt, Environmental Engineer, at (312) 353–3214 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Steve Marquardt, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3214, [marquardt.steve@epa.gov](mailto:marquardt.steve@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the following, whenever “we,” “us,” or “our” are used, we mean the United States Environmental Protection Agency.

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#### I. What Is the Background for This Rule?

The Clean Air Act (CAA) requires EPA to designate as nonattainment any area that is violating the 8-hour ozone NAAQS based on three consecutive years of air quality monitoring data. EPA designated Belmont County as part of the Wheeling WV–OH nonattainment area in a **Federal Register** notice published on April 30, 2004, (69 FR 23857). At the same time EPA classified the area as a subpart 1 8-hour ozone nonattainment area, based on air quality monitoring data from 2001–2003.

On June 20, 2006, Ohio EPA submitted a request for redesignation of Belmont County, Ohio to attainment for the 8-hour ozone standard. Additional supporting information was also submitted on August 24, 2006 and December 4, 2006. The redesignation request included three years of complete, quality-assured data for the period of 2003 through 2005, indicating the 8-hour NAAQS for ozone had been achieved. The data satisfy the CAA requirements for attainment 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. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the areas have attained the standard and the areas meet the other CAA redesignation requirements in section 107(d)(3)(E). The December 27, 2006, proposed rule (71 FR 77666) provides a discussion of how the State of Ohio met these requirements for the area.

#### II. What Comments Did We Receive on the Proposed Action?

EPA provided a 30-day review and comment period on the December 27, 2006, proposed rule. EPA received no comments.

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*, No. 04–1200, 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 these 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. The public comment period on this supplemental proposed rulemaking 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 and does not find that any specific response is necessary with respect to these supportive comments. Accordingly, EPA is proceeding with redesignation of these areas as proposed.

#### III. What Are Our Final Actions?

EPA is taking several related actions. EPA is making a determination that the Wheeling (WV-OH) nonattainment area has attained the 8-hour ozone standard. EPA is approving Ohio's maintenance plan SIP revision for Belmont County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed, in conjunction with the maintenance plan developed by West Virginia, to keep the Wheeling WV–OH area in attainment for ozone through 2018. Because Ohio has met these and

other prerequisites for redesignation, EPA is approving the State's request to change the legal designation of Belmont County from nonattainment to attainment for the 8-hour ozone NAAQS. In addition, and supported by and consistent with the ozone maintenance plan, EPA is approving the 2018 VOC and NO<sub>x</sub> MVEBs for transportation conformity purposes. The 2018 MVEBs for Belmont County, Ohio are 1.52 tons per day for volatile organic compounds (VOC) and 1.91 tons per day for oxides of nitrogen (NO<sub>x</sub>). West Virginia develops MVEBs for its portion of the area.

#### IV. Statutory and Executive Order Review

##### *Executive Order 12866: Regulatory Planning and Review*

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.

##### *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," 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).

##### *Regulatory Flexibility Act*

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 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 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.*).

##### *Unfunded Mandates Reform Act*

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 (Public Law 104-4).

##### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

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).

##### *Executive Order 13132: Federalism*

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). Redesignation is an action that merely affects the status of a geographical area, and does not impose any new requirements on sources, or allows a state to avoid adopting or implementing additional requirements, and does not alter the relationship or distribution of power and responsibilities established in the Clean Air Act.

##### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

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.

##### *National Technology Transfer Advancement Act*

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 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.

##### *Paperwork Reduction Act*

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.*).

##### *Congressional Review Act*

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 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 16, 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 may not be challenged later in proceedings to force its requirements. (See Section 307(b)(2).)

#### List of Subjects

##### *40 CFR Part 52*

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

##### *40 CFR Part 81*

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

Dated: May 2, 2007.

**Margaret Guerriero,**

*Acting Regional Administrator, Region 5.*

Parts 52 and 81, 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 KK—Ohio

■ 2. Section 52.1885 is amended by adding paragraph (ff)(2) to read as follows:

§ 52.1885 Control strategy: Ozone.  
\* \* \* \* \*

(ff) \* \* \*  
(2) Belmont County, as submitted on June 20, 2006, and supplemented on August 24, 2006, and December 4, 2006. The maintenance plan establishes 2018 motor vehicle emission budgets for Belmont County of 1.52 tons per day for volatile organic compounds and 1.91 tons per day for oxides of nitrogen.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

OHIO OZONE (8-HOUR STANDARD)

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

■ 2. Section 81.336 is amended by revising the entry for Wheeling, WV-OH: Belmont County in the table entitled “Ohio Ozone (8-Hour Standard)” to read as follows:

§ 81.336 Ohio.  
\* \* \* \* \*

Designated area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * *	*	*	*	*
Wheeling, WV–OH: Belmont County .....	6/15/2007	Attainment.		
* * *	*	*	*	*

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.  
<sup>1</sup> This date is June 15, 2004, unless otherwise noted.