

PART 81—[AMENDED]

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

entry for the Lancaster, PA Area to read as follows:

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

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

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—OZONE
[8-Hour Standard]

Designated area	Designation ^a		Category/classification	
	Date ¹	Type	Date ¹	Type
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Lancaster, PA: Lancaster County	07/06/07	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-2006-0862; FRL-8333-7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Tioga County Ozone Nonattainment Area to Attainment and Approval of the Area’s 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 Tioga County ozone nonattainment area (Tioga Area) be redesignated as attainment for the 8-hour ozone ambient air quality standard (NAAQS). EPA is approving the ozone redesignation request for Tioga Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for Tioga Area that provides for continued attainment of the 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 Tioga 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 Tioga

Area maintenance plan for purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request, and 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).

DATES: *Effective Date:* This final rule is effective on July 6, 2007 pursuant to the authority of 5 U.S.C. 553(d)(1).

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2006-0862. 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: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 8, 2007 (72 FR 26046), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania’s redesignation request, a SIP revision that establishes a maintenance plan for the Tioga Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation, and a 2002 base year emissions inventory. The formal SIP revisions were submitted by PADEP on September 28, 2006 and supplemented on November 14, 2006. Other specific requirements of Pennsylvania’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. No public comments were received on the NPR.

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA’s Phase 1 Implementation Rule for the 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 DC 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 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 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain four 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; (3) measures to be implemented pursuant to section 1729(c)(9) or 182(c)(9) of the Act, on the contingency of an area not taking reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8 decision clarified that the Court's reference to conformity requirements 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.

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 Act and longstanding policies regarding redesignation requests.

II. Final Action

EPA is approving the Commonwealth of Pennsylvania's redesignation request, maintenance plan, and the 2002 base year emissions inventory because the requirements for approval have been satisfied. EPA has evaluated Pennsylvania's redesignation request that was submitted on September 28, 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 the Tioga Area has attained the 8-hour ozone standard. The final approval of this redesignation request will change

the designation of the Tioga Area from nonattainment to attainment for the 8-hour ozone standard. EPA is approving the maintenance plan for the Tioga Area submitted on September 28, 2006 as a revision to the Pennsylvania SIP. EPA is also approving the MVEBs submitted by PADEP in conjunction with its redesignation request. In addition, EPA is approving the 2002 base year emissions inventory submitted by PADEP on September 28, 2006 and supplemented on November 14, 2006 as a revision to the Pennsylvania SIP. In this final rulemaking, EPA is notifying the public that we have found that the MVEBs for NO_x and VOCs in the Tioga Area for the 8-hour ozone maintenance plan are adequate and approved for conformity purposes. As a result of our finding, the Tioga Area 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 IN TONS PER DAY (TPD)

Budget year	NO _x	VOC
2009	3.4	2.2
2018	1.6	1.3

The Tioga 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. 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 approves a state rule implementing a Federal requirement, 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 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. 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 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 September 4, 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, approving the redesignation of the Tioga 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: June 25, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 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 NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for the 8-hour Ozone Maintenance Plan and the 2002 Base Year Emissions Inventory for Tioga County, Pennsylvania 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.	Tioga County	09/28/06, 11/14/06	07/06/07 [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 § 81.339, the table entitled "Pennsylvania—Ozone (8-Hour Standard)" is amended by revising the

entry for the Tioga Co., PA, Tioga County to read as follows:

§ 81.339 Pennsylvania.

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PENNSYLVANIA—OZONE
[8-Hour Standard]

Designated area	Designation ^a		Category/classification	
	Date ¹	Type	Date ¹	Type
*	*	*	*	*
Tioga Co., PA: Tioga County	07/06/07	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

[EPA-R03-OAR-2006-0919; FRL-8335-1]

40 CFR Part 81**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation of the Hampton Roads Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base-Year Inventory; Correction****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; correcting amendment.**SUMMARY:** This document corrects an error in the rule language of a final rule pertaining to EPA's approval of the Hampton Roads Area maintenance plan and 2002 base-year inventory submitted by the Commonwealth of Virginia.**DATES:** *Effective Date:* July 6, 2007.**FOR FURTHER INFORMATION CONTACT:** Amy Caprio, (215) 814-2156 or by e-mail at caprio.amy@epa.gov.**SUPPLEMENTARY INFORMATION:**

Throughout this document wherever "we" or "our" are used we mean EPA. On June 1, 2007, (72 FR 30490), we published a final rulemaking action announcing our approval of the Hampton Roads Area maintenance plan and 2002 base-year inventory. In that document, we inadvertently omitted Gloucester County on the list of Hampton Roads Cities and Counties in which the Mobile Vehicle Emission Budgets (MVEBs) are applicable. We also inadvertently omitted York County in the Virginia table for the 8-Hour ozone standard published at 40 CFR 81.347. The intent of the rule was to approve the maintenance plan and 2002 base-year inventory for the Hampton Roads Area. This action corrects the erroneous preamble language and rule.

In rule document FRL-8320-9 published in the **Federal Register** on June 1, 2007 (72 FR 30490), on page 30490 in the third column, the revised rule language is corrected to read "As a result of our finding, the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, and the Counties of Isle of Wight, James City, Gloucester, and York, Virginia must use the MVEBs from the submitted 8-hour ozone maintenance plan for future conformity determinations."

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews:

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore 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)). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 et seq.), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This 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.

This technical correction action does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this 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, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) 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. This rule does not impose an information collection burden under 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of June 1, 2007. 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 correction to the MVEB applicability and the section 40 CFR 81.347 table for Virginia is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 81

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