

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—  
Continued

[As stated in § 63.9065, you must comply with the applicable General Provisions requirements according to the following]

Citation	Requirement	Applies to subpart NNNNN	Explanation
§ 63.10(c)	Additional recordkeeping requirements for sources with CMS.	Yes	Applies as modified by § 63.9005 (d).
§ 63.10(d)(1)	General reporting requirements	Yes	§ 63.9050 specifies additional reporting requirements.
§ 63.10(d)(2)	Performance test results	Yes	§ 63.9045(f) specifies submission date.
§ 63.10(d)(3)	Opacity or visible emissions observations	No	Subpart NNNNN does not specify opacity or visible emission standards.
§ 63.10(d)(4)	Progress reports for sources with compliance extensions.	Yes.	
§ 63.10(d)(5)	SSM reports	Yes.	
§ 63.10(e)(1)	Additional CMS reports—general	Yes	Applies as modified by § 63.9005(d).
§ 63.10(e)(2)(i)	Results of CMS performance evaluations	Yes	Applies as modified by § 63.9005(d).
§ 63.10(e)(2)	Results of COMS performance evaluations	No	Subpart NNNNN does not require the use of COMS.
§ 63.10(e)(3)	Excess emissions/CMS performance reports	Yes.	
§ 63.10(e)(4)	Continuous opacity monitoring system data reports	No	Subpart NNNNN does not require the use of COMS.
§ 63.10(f)	Recordkeeping/reporting waiver	Yes.	
§ 63.11	Control device requirements—applicability	No	Facilities subject to subpart NNNNN do not use flares as control devices.
§ 63.12	State authority and delegations	Yes	§ 63.9070 lists those sections of subparts NNNNN and A that are not delegated.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by reference	Yes	Subpart NNNNN does not incorporate any material by reference.
§ 63.15	Availability of information/confidentiality	Yes.	

[FR Doc. 06–3309 Filed 4–6–06; 8:45 am]  
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

[PA209–4302; FRL–8055–8]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Hazelwood SO<sub>2</sub> Nonattainment and the Monongahela River Valley Unclassifiable Areas to Attainment and Approval of the Maintenance Plan; Correction**

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

**ACTION:** Direct final rule; correction.

**SUMMARY:** On July 21, 2004 (69 FR 43522) EPA published a **Federal Register** notice redesignating the Hazelwood SO<sub>2</sub> Nonattainment Area and the Monongahela River Valley Unclassifiable Area to attainment of the sulfur dioxide (SO<sub>2</sub>) national ambient air quality standards (NAAQS). In the July 21, 2004 final rulemaking document, two areas were inadvertently omitted from the revised designated

area listing. This document corrects that error.

**DATES:** *Effective Date:* April 7, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ellen Wentworth, (215) 814–2034, or by e-mail at [wentworth.ellen@epa.gov](mailto:wentworth.ellen@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” or “our” are used we mean EPA. On July 21, 2004 (69 FR 43522), we published a final rulemaking announcing our approval of the redesignation of the Hazelwood SO<sub>2</sub> Nonattainment Area and the Monongahela River Valley Unclassifiable Area, located in the Allegheny Air Basin in Allegheny County to attainment of the NAAQS for SO<sub>2</sub> and approved a combined maintenance plan for both areas as a State Implementation Plan (SIP) revision. This action pertained to the redesignation of the Hazelwood and Monongahela River Valley areas (V.(B)(1) and V.(B)(2), respectively, of part 81, section 81.339, to attainment. This action was not intended to affect the area within a two-mile radius of the Bellevue monitor (V.(B)(3), or the remaining portions of the Allegheny County Air Basin (V.(B)(4). In the July 21, 2004 rulemaking document, these areas were inadvertently removed in the Pennsylvania SO<sub>2</sub> Table in part 81,

section 81.339. Therefore, this correction action restores the entries which were inadvertently removed.

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 is not economically significant.

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 April 7, 2006. 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 40 CFR 81.339 for Pennsylvania is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: March 30, 2006.

**Donald S. Welsh,**  
*Regional Administrator, Region III.*

■ 40 CFR part 81 is amended as follows:

**PART 81—[AMENDED]**

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

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

**Subpart C—Section 107 Attainment Status Designations**

■ 2. In § 81.339, the table for "Pennsylvania—SO<sub>2</sub>," is amended by revising the entry for the Allegheny County Air Basin to read as follows:

**§ 81.339 Pennsylvania.**

\* \* \* \* \*

**PENNSYLVANIA.—SO<sub>2</sub>**

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * *				
V. Southwest Pennsylvania Intrastate AQCR:				
* * * * *				
(B) Allegheny County Air Basin:				
(1) The areas within a two-mile radius of the Hazelwood monitor .....	.....	.....	.....	X
(2) That portion of Allegheny County within an eight-mile radius of the Duquesne Golf Association Club House in West Mifflin excluding the nonattainment area (#1) .....	.....	.....	.....	X
(3) The area within a two-mile radius of the Bellevue monitor .....	.....	.....	X	.....
(4) The remaining portions of the Allegheny County Air Basin .....	.....	.....	.....	X
* * * * *				

\* \* \* \* \*

[FR Doc. 06-3355 Filed 4-6-06; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA-2005-22093]

RIN 2127-AJ31

**Federal Motor Vehicle Safety Standards; Theft Protection**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** Our safety standard on theft protection specifies vehicle performance requirements intended to reduce the incidence of crashes resulting from theft and accidental rollaway of motor vehicles. As a result of technological advances in the area of theft protection, the terminology used in the regulatory text of the Standard has become outdated and confusing with respect to key-locking systems that employ electronic codes to lock and unlock the vehicle, and to enable engine activation. This final rule amends and reorganizes the regulatory text of the Standard so that it better correlates to modern theft protection technology and reflects the agency's interpretation of the existing requirements. The new language does not impose any new substantive requirements on vehicle manufacturers.

**DATES:** This rule becomes effective September 1, 2007. Early voluntary compliance is permitted.

**Petitions:** Petitions for reconsideration of the final rule must be received not later than May 22, 2006, and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 7th Street, SW., Room 5220, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For technical issues: Ms. Gayle Dalrymple, Office of Crash Avoidance Standards, NVS-123, NHTSA, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366-5559. E-Mail: [Gayle.Dalrymple@nhtsa.dot.gov](mailto:Gayle.Dalrymple@nhtsa.dot.gov).

For legal issues: Mr. George Feygin, Office of the Chief Counsel, NCC-112, NHTSA, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366-5834. E-Mail: [George.Feygin@nhtsa.dot.gov](mailto:George.Feygin@nhtsa.dot.gov).

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**I. Background**

FMVSS No. 114, Theft protection, specifies vehicle performance requirements intended to reduce the incidence of crashes resulting from theft and accidental rollaway of motor vehicles. The standard applies to all passenger cars, and to trucks and multipurpose passenger vehicles with a GVWR of 4536 kilograms (10,000 pounds) or less. The standard first became effective on January 1, 1970.<sup>1</sup> The purpose of the standard was to prevent crashes caused by unauthorized use of unattended motor vehicles. Thus, the standard sought to ensure that the vehicle could not be easily operated without the key, and that the vehicle operator would not forget to remove the key from the ignition system upon exiting the vehicle.

In response to the problem of accidental rollaway crashes resulting from children inadvertently moving the automatic transmission lever to a neutral position when a stationary vehicle is parked on a slope, NHTSA later amended FMVSS No. 114 to require that the automatic transmission lever be locked in the "park" position before the key can be removed from the ignition system.<sup>2</sup> Subsequently, NHTSA amended these new requirements to permit an override device that would enable the vehicle operator to remove the key without the transmission being locked in "park," and to move the transmission lever without using the key, under certain circumstances. The purpose of these override provisions was to address certain situations when it may be necessary to remove the key

without shifting the transmission lever because the vehicle has become disabled.<sup>3</sup>

While FMVSS No. 114 evolved to address not only theft protection, but also accidental rollaway prevention, the terminology used in the regulatory text has remained unchanged since its introduction more than 35 years ago. However, theft protection technology has advanced considerably during that time. As a result, certain provisions of the Standard have become increasingly ambiguous when applied to modern theft protection technology not contemplated by the Standard when it first went into effect.

For example, a number of vehicles now feature electronic systems. Typically, this involves a card or a similar device that is carried in an occupant's pocket or purse. The card carries an electronic code that acts as the key when it is transmitted to the vehicle's onboard locking system. The vehicle has a sensor that automatically unlocks the door and allows the vehicle operator to activate the engine, when it receives the code. The code-carrying device (i.e., card or otherwise) never has to leave the vehicle operator's pocket or purse and is not inserted into the ignition module.

In response to manufacturers' requests, NHTSA issued a series of interpretation letters explaining how the Standard applied to various key-locking systems that did not utilize conventional keys, but instead relied on electronic codes to lock and unlock the vehicle, and to enable engine activation.

**II. Recent Letters of Interpretation Regarding FMVSS No. 114**

As noted above, the agency has received several requests for legal interpretation of the requirements of FMVSS No. 114, as they apply to key-locking systems using various remote access devices. In response, the agency has stated that the electronic code transmitted from a remote device to the vehicle can be considered a "key" for the purposes of FMVSS No. 114.<sup>4</sup> We have also elaborated on how other provisions of the standard apply to electronic codes. For example, the agency stated that the narrow provisions related to electrical failure do not apply to electronically coded cards or other means used to enter an electronic key code into the locking system because those provisions were specifically crafted in the context of traditional

<sup>3</sup> See 56 FR 12464 (March 26, 1991).

<sup>4</sup> See <http://www.nhtsa.dot.gov/cars/rules/interps/files/GF001689.html> and <http://www.nhtsa.dot.gov/cars/rules/interps/files/7044.html>.

<sup>1</sup> See 33 FR 6471 (April 24, 1968).

<sup>2</sup> See 55 FR 21868, (May 30, 1990).