INDIANA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
Boone County		Attainment.		
Hamilton County		Attainment.		
Hancock County		Attainment.		
Hendricks County		Attainment.		
Johnson County		Attainment.		
Madison County		Attainment.		
Marion County		Attainment.		
Morgan County		Attainment.		
Shelby County		Attainment.		
* * * * *			*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[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–2007–0344; FRL–8484–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Mercer County Portion of the Youngstown-Warren-Sharon, OH–PA 8-Hour 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 Mercer County portion of the Youngstown-Warren-Sharon, OH–PA 8-hour ozone nonattainment area (''Youngstown Area'' or ''Area'') be redesignated as attainment for the 8-hour ozone ambient air quality standard (NAAQS). The Area is comprised of Mercer County, Pennsylvania and Trumbull, Mahoning, and Columbiana Counties, Ohio. EPA is approving the ozone redesignation request for Mercer County. In a separate rulemaking action (72 FR 32190, June 12, 2007) EPA approved the ozone redesignation request for Trumbull, Mahoning, and Columbiana Counties, Ohio. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for Mercer County 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 Mercer County which EPA is approving. In addition, EPA is approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Mercer County 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 November 19, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0344. 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, PA 17105.

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

SUPPLEMENTARY INFORMATION:

I. Background

On July 27, 2007 (72 FR 41246), 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 Mercer County 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 March 27, 2007. 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 23951, 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 CAA 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 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 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 that NAAQS.

In addition the June 8 decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour MVEBs until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 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 light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

In its proposal, EPA proposed to find that the area had satisfied the requirements under the 1-hour standard whether the 1-hour standard was deemed to be reinstated or whether the Court's decision on the petition for rehearing were modified to require something less than compliance with all applicable 1-hour requirements. Because EPA proposed to find that the area satisfied the requirements under either scenario, EPA is proceeding to finalize the redesignation and to conclude that the area met the requirements under the 1-hour standard applicable for purposes of redesignation under the 8-hour standard. These include the provisions of EPA's anti-backsliding rules, as well as the additional anti-backsliding provisions identified by the Court in its rulings. In its June 8, 2007 decision the Court limited its vacatur so as to uphold those provisions of the anti-backsliding requirements that were not successfully challenged. Therefore, EPA finds that the area has met the anti-backsliding requirements, *see* 40 CFR 51.900 *et seq.*; 70 FR 30592, 30604 (May 26, 2005) which apply by virtue of the area's classification for the 1-hour ozone NAAQS, as well as the four additional anti-backsliding provisions identified by the Court, or that such requirements are not applicable for purposes of redesignation. In addition, with respect to the requirement for transportation conformity under the 1-hour standard, the Court in its June 8 decision clarified that for those areas with 1-hour MVEBs, anti-backsliding requires only that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must continue to comply with the applicable requirements of EPA's conformity regulations at 40 CFR Part 93. The court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

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 March 27, 2007 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 Mercer County has attained the 8-hour ozone standard. The final approval of this redesignation request will change the designation of Mercer County from nonattainment to attainment for the 8-hour ozone standard. EPA is approving the maintenance plan for Mercer County submitted on March 27, 2007 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 March 27, 2007 as a revision to the Pennsylvania SIP. In this final rulemaking, EPA is notifying the public that we have found that the MVEBs for volatile organic compounds (VOC) and nitrogen oxides (NO_X) in Mercer County for the 8-hour ozone maintenance plan are adequate and approved for conformity purposes.[1] As a result of our finding, Mercer County 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 SUMMER DAY (TPSD)

Budget year	VOC	NO_X
2009	4.2	11.2
2018	2.6	4.9

Mercer County 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

[1] EPA found the MVEBs for Trumbull, Mahoning, and Columbiana Counties, Ohio adequate in a Notice of Adequacy on April 18, 2007 (72 FR 19491).

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 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. 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 December 18, 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 Mercer County 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: October 10, 2007.

William T. Wisniewski,

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 to 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.	Mercer County	03/27/07	10/19/07 [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 Youngstown-Warren-Sharon, OH–PA: Mercer 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

PENNSYLVANIA—OZONE (8-HOUR STANDARD)—Continued

Designated Area	Designation[a]		Category/Classification	
	Date [1]	Type	Date [1]	Type
* *	*	* *	*	*
Youngstown-Warren-Sharon, OH–PA Area:				
Mercer County	11/19/07	Attainment		
* *	*	* *	*	*

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

* * * * *

[FR Doc. E7–20567 Filed 10–18–07; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[Docket No. FRA–2006–26174; Notice No. 2]

RIN 2130–AB83

Locomotive Safety Standards; Sanders

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is revising the existing requirements related to sanders on locomotives. This rule modifies the existing regulations by permitting additional flexibility in the use of locomotives with inoperative sanders. The rule provides railroads the ability to better utilize their locomotive fleets while ensuring that locomotives are equipped with operative sanders in situations where they provide the most benefit from a safety and operational perspective. The rule also makes the regulations related to operative sanders more consistent with existing Canadian standards related to the devices.

DATES: This final rule is effective December 18, 2007; petitions for reconsideration must be received on or before December 18, 2007. Petitions received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: *Petitions for reconsideration:* Any petitions for reconsideration related to Docket No. FRA–2006–24838, may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.
- *Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: George Scerbo, Office of Safety Assurance and Compliance, Motive Power & Equipment Division, RRS–14, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6247), or Michael Masci, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6037).

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

FRA has broad statutory authority to regulate railroad safety. The Locomotive Inspection Act (formerly 45 U.S.C. 22–34, now 49 U.S.C. 20701–20703) was enacted in 1911. It prohibits the use of unsafe locomotives and authorizes FRA to issue standards for locomotive maintenance and testing. In order to further FRA's ability to respond effectively to contemporary safety problems and hazards as they arise in the railroad industry, Congress enacted the Federal Railroad Safety Act of 1970 (Safety Act) (formerly 45 U.S.C. 421, 431 *et seq.*, now found primarily in chapter 201 of Title 49). The Safety Act grants the Secretary of Transportation rulemaking authority over all areas of railroad safety (49 U.S.C. 20103(a)) and confers powers necessary to detect and penalize violations of any rail safety law. This authority was subsequently delegated to the FRA Administrator (49 CFR 1.49) (Until July 5, 1994, the Federal railroad safety statutes existed as separate acts found primarily in title 45 of the United States Code. On that date, all of the acts were repealed, and their provisions were recodified into title 49).

Pursuant to its general statutory rulemaking authority, FRA promulgates and enforces rules as part of a comprehensive regulatory program to address the safety of railroad track, signal systems, communications, rolling stock, operating practices, passenger train emergency preparedness, alcohol and drug testing, locomotive engineer certification, and workplace safety. In the area of locomotive safety, FRA has issued regulations, found at 49 CFR part 229 (''part 229''), addressing topics such as inspections and tests, safety requirements for brake, draft, suspension, and electrical systems, and cabs and cab equipment. All references to parts and sections in this document shall be to parts and sections located in Title 49 of the Code of Federal Regulations. FRA continually reviews its regulations and revises them as needed to keep up with emerging technology.

On July 12, 2004, the Association of American Railroads (AAR), on behalf of itself and its member railroads, petitioned the FRA to delete the requirement as contained in 49 CFR 229.131. The petition and supporting documentation asserted that contrary to