

US EPA ARCHIVE DOCUMENT

■ 3. Section 52.2037 is amended by adding paragraph (m) to read:

§ 52.2037 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(m) Determination—EPA has determined that, as of July 25, 2007, the Franklin County ozone nonattainment area has attained the 1-hour ozone standard and that the following requirements of section 172(c)(2) of the Clean Air Act do not apply to this area

for so long as the area does not monitor any violations of the 1-hour ozone standard of 40 CFR 50.9: the attainment demonstration and reasonably available control measure requirements of section 172(b)(1), the reasonable further progress requirement of section 172(b)(2), and the related contingency requirements of section 172(c)(9). If a violation of the 1-hour ozone NAAQS is monitored in the Franklin County 1-hour ozone nonattainment area, these determinations shall no longer apply.

PART 81—[AMENDED]

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

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

■ 5. In § 81.339, the table entitled “Pennsylvania-Ozone (8-Hour Standard)” is amended by revising the entry for the Franklin County, PA Area to read as follows:

§ 81.339 Pennsylvania

* * * * *

PENNSYLVANIA—OZONE (8-HOUR STANDARD)

Designated area	Designation ^a		Category/classification	
	Date ¹	Type	Date ¹	Type
* * * * *				
Franklin Co., PA:				
Franklin County	July 25, 2007	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. 07–3631 Filed 7–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0323; FRL–8445–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Harrisburg-Lebanon-Carlisle 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 Harrisburg-Lebanon-Carlisle ozone nonattainment area (“Harrisburg Area”) be redesignated as attainment for the 8-hour ozone ambient air quality standard (NAAQS). EPA is approving the ozone redesignation request for the Harrisburg Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for the Harrisburg 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 Harrisburg 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 Harrisburg 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).

EFFECTIVE DATE: This final rule is effective on July 25, 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–2007–0323. 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 Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

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

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 2007 (72 FR 30521), 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 Harrisburg 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 revision was submitted by PADEP on March 27, 2007. Other specific requirements of Pennsylvania’s redesignation request, the SIP revision for the maintenance plan, and the rationale for EPA’s proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

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 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 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 Act, 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 motor vehicle emissions budgets 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 the 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 Act 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 was 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 has 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 motor vehicle emissions budgets, 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 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 the Harrisburg Area has attained the 8-hour ozone standard. The final approval of this redesignation request will change the designation of the Harrisburg Area from nonattainment to attainment for the 8-hour ozone standard. EPA is approving the maintenance plan for the Harrisburg Area 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 as a revision to the Pennsylvania SIP submitted by PADEP on March 27, 2007. In this final rulemaking, EPA is notifying the public that we have found that the MVEBs for NO_x and VOCs in the Harrisburg Area for the 8-hour ozone maintenance plan are adequate and approved for conformity purposes. As a result of our finding, the Harrisburg 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:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN KILOGRAMS PER DAY (TONS PER DAY—ROUNDED)

Year	VOC	NO _x
Harrisburg Area Transportation Study (HATS)—Cumberland, Dauphin, and Perry Counties		
2009	23,014 (25.4)	41,917 (46.2)
2018	16,136 (17.8)	18,409 (20.3)

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN KILOGRAMS PER DAY (TONS PER DAY—ROUNDED)—Continued

Year	VOC	NO _x
Lebanon County MPO (LEBCO)		
2009	4,301 (4.7)	8,928 (9.8)
2018	2,512 (2.8)	3,684 (4.1)

*Note: Tons per day are informational only. Differences occur due to rounding.

The Harrisburg 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. 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 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). Because this action affects the status of a geographical area, does not impose any new requirements on sources, or

allows the state to avoid adopting or implementing other requirements, 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. 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 USC. 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 24, 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 Harrisburg Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base-year emissions 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

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

Dated: July 16, 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 2002 Base Year Emissions Inventory for the Harrisburg-Lebanon-Carlisle,

Pennsylvania Area 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.	Harrisburg-Lebanon-Carlisle, PA: Cumberland County, Dauphin County, Lebanon County, Perry County.	03/27/07	07/25/07	[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 Harrisburg-Lebanon-

Carlisle, Pennsylvania Area 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
Harrisburg-Lebanon-Carlisle PA: Cumberland County, Dauphin County, Lebanon County, Perry County.	07/25/07	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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[FR Doc. 07–3632 Filed 7–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 174**

[EPA–HQ–OPP–2006–0913; FRL–8134–3]

Bacillus thuringiensis Vip3Aa19 Protein in Cotton; Exemption from the Requirements of a Tolerance; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA issued a direct final rule in the **Federal Register** of April 25, 2007 (72 FR 20431), concerning plant-incorporated protectant tolerance exemptions. On May 9, 2007 EPA issued a final rule revising the tolerance exemption for *Bacillus thuringiensis*

Vip3Aa19 in cotton. This technical amendment is being issued to clarify the status and the wording of the tolerance exemption for *Bacillus thuringiensis* Vip3Aa19 in cotton.

DATES: This final rule is effective July 25, 2007.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0913. To access the electronic docket, go to <http://www.regulations.gov>, select “Advanced Search,” then “Docket Search.” Insert the docket ID number where indicated and select the “Submit” button. Follow the instructions on the www.regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in www.regulations.gov. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460–0001; telephone number: (703) 605–0515, e-mail address: reynolds.alan@epa.gov.

SUPPLEMENTARY INFORMATION: