US EPA ARCHIVE DOCUMENT

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0956; FRL–8452–3]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of the Dayton-Springfield 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Ohio Environmental Protection Agency (Ohio EPA) submitted a request on November 6, 2006, and supplemented it on November 29, 2006, December 4, 2006, December 13, 2006, January 11, 2007, March 9, 2007, March 27, 2007, and May 31, 2007, for redesignation of the Dayton-Springfield, Ohio area (Clark, Greene, Miami, and Montgomery Counties) to attainment for the 8-hour ozone standard. On June 20, 2007, EPA proposed to approve this submission. EPA provided a 30-day review and comment period. The comment period closed on July 20, 2007. EPA received one comment in favor of redesignation from the Dayton area Regional Air Pollution Control Agency. Today, EPA is approving Ohio's request and the associated plan for continuing to attain the standard. As part of this action, EPA is making a determination that the Dayton-Springfield area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2004–2006 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. Preliminary 2007 air quality data show that the area continues to attain the 8-hour ozone standard. EPA is approving the maintenance plan for this area and is redesignating the area to attainment. Finally, EPA is approving, for purposes of transportation conformity, the motor vehicle emission budgets (MVEBs) for the years 2005 and 2018.

DATES: This final rule is effective on August 13, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0956. All documents in the docket are listed on the *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 *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 Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, 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) 886–1767, *dagostino.kathleen@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?
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I. What Is the Background for This Rule?

The background for today's action is discussed in detail in EPA's June 20, 2007, proposal (72 FR 33937). In that rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm. (See 69 FR 23857 (April 30, 2004) for further information). The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness, as determined in accordance with Appendix I of part 50.

Under the Clean Air Act (CAA), EPA may redesignate nonattainment areas to attainment if sufficient complete, quality-assured data are available to determine that the area has attained the standard and that it meets the other CAA redesignation requirements in section 107(d)(3)(E).

The Ohio EPA submitted a request on November 6, 2006 and supplemented it on November 29, 2006, December 4, 2006, December 13, 2006, January 11, 2007, March 9, 2007, March 27, 2007, and May 31, 2007, for redesignation of the Dayton-Springfield area (Clark, Greene, Miami, and Montgomery Counties) to attainment for the 8-hour ozone standard. The request included three years of complete, quality-assured data for the period of 2004 through 2006, indicating the 8-hour NAAQS for ozone had been achieved. The June 20, 2007 proposed rule provides a detailed discussion of how Ohio met this and other CAA requirements.

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 (DC 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 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 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; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, contingent on an area not making reasonable further progress toward

attainment of the 1-hour NAAQS, or for failure to attain that 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 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 light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

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 in their maintenance plans, 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.

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

EPA provided a 30-day review and comment period. The comment period closed on July 20, 2007. We received one comment in favor of redesignation from the Dayton area Regional Air Pollution Control Agency.

III. What Are Our Final Actions?

EPA is taking several related actions for the Dayton-Springfield area. First, EPA is making a determination that the Dayton-Springfield area has attained the 8-hour ozone standard. EPA is also approving the State's request to change the legal designation of the Dayton-Springfield area from nonattainment to attainment of the 8-hour ozone NAAQS. Further, EPA is approving Ohio's maintenance plan SIP revision for the Dayton-Springfield area (such approval being one of the CAA criteria for redesignation to attainment status). Finally, for the Dayton Springfield area, EPA is approving 2005 MVEBs of 29.19 tpd of Volatile Organic Compounds (VOC) and 63.88 tpd of Oxides of Nitrogen (NO_X) and 2018 MVEBs of 14.73 tpd of VOCs and 21.42 tpd of NO_X.

In accordance with 5 U.S.C. 553(d), EPA finds that there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3) which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the State of planning requirements for these 8-hour ozone nonattainment areas. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

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 is not economically significant.

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 October 12, 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: August 1, 2007.

Bharat Mathur,

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 1885—Ohio

■ 2. Section 52.1885 is amended by adding paragraph (ff)(7) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(ff) * * *

(7) The Dayton-Springfield area which includes Clark, Greene, Miami, and Montgomery Counties, as submitted on November 6, 2006, and supplemented on November 29, 2006, December 4, 2006, December 13, 2006, January 11, 2007, March 9, 2007, March 27, 2007, and May 31, 2007. The maintenance plan for this area establishes Motor Vehicle Emissions Budgets (MVEB) for 2005 and 2018. The 2005 MVEBs are 29.19 tpd of VOC and 63.88 tpd of NO_X. The 2018 MVEBs are 14.73 tpd of VOCs and 21.42 tpd of NO_X.

PART 81—[AMENDED]

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

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

■ 4. Section 81.336 is amended by revising the entry for Dayton-Springfield, Ohio area: Clark, Greene, Miami, and Montgomery Counties in the table entitled ''Ohio—Ozone (8-Hour Standard)'' to read as follows:

§ 81.336 Ohio.

OHIO—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Dayton-Springfield, OH:				
Clark County	August 13, 2007	Attainment.		
Greene County.				
Miami County.				
Montgomery County.				
* * *	*	*	*	*

[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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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA–2006–25772]

New Car Assessment Program (NCAP); Safety Labeling

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

ACTION: Final rule; technical amendments; response to petitions for reconsideration.

SUMMARY: A provision of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users requires new passenger vehicles to be labeled with safety rating information published by the National Highway Traffic Safety Administration under its New Car Assessment Program. NHTSA was required to issue regulations to ensure that the labeling requirements ''are implemented by September 1, 2007.'' In September 2006, we published a final rule to fulfill that mandate. We received petitions for reconsideration of the final rule. Today's document responds to those petitions and makes technical amendments clarifying certain details of the presentation of the information on the labels.

DATES: *Effective Date:* This final rule is effective October 12, 2007.

Compliance Date: This final rule applies to covered vehicles manufactured on or after September 1, 2007. Optional early compliance by vehicle manufacturers is permitted before that date.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than September 27, 2007.

ADDRESSES: Petitions for reconsideration of the final rule must refer to the docket number set forth above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. In addition, a copy of the petition should be submitted to: Docket Management, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues regarding the information in this document, please contact Mr. Nathaniel Beuse at (202) 366–1740. For legal issues, please contact Ms. Dorothy Nakama (202) 366–2992. Both of these individuals may be reached by mail at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Overview of SAFETEA–LU Labeling Provisions and September 2006 Final Rule

Section 10307 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [1] requires that each new passenger automobile that has been rated under the NHTSA's New Car Assessment Program (NCAP) must have those ratings displayed on a label on its new vehicle price sticker, known as the Monroney label.[2] SAFETEA–LU specifies detailed requirements for the label, including its content, size, location, and applicability, leaving the agency only limited discretion regarding the label.[3] It also required NHTSA (by delegation of authority from the Department of Transportation) to issue regulations to ensure that the new labeling requirements are implemented by September 1, 2007.

As required by SAFETEA-LU, on September 12, 2006 (71 FR 53572) (DOT Docket No. NHTSA–2006–25772) we published a final rule that provides that:

(1) New passenger automobiles manufactured on or after September 1, 2007 must display specified NCAP information on a safety rating label that is part of their Monroney label;

(2) The specified information must include a graphical depiction of the number of stars achieved by a vehicle for each safety test;

(3) Information describing the nature and meaning of the test data, and references to *www.safercar.gov* and NHTSA's toll-free hotline number for additional vehicle safety information, must be placed on the label;

(4) The label must be legible with a minimum length of 4½ inches and a minimum width of 3½ inches or 8 percent of the Monroney label, whichever is larger;

(5) Ratings must be placed on new vehicles manufactured 30 or more days after the manufacturer receives notification from NHTSA of NCAP ratings for those vehicles.

In its discretion, the agency decided to require that the label indicate the existence of safety concerns identified during NCAP testing, but not reflected in the resulting NCAP ratings. We required that the agency's toll-free hotline number appear on the label and adopted specifications for such matters as the wording, arrangement of some of the messages and the size of the font.

II. Petitions for Reconsideration and NHTSA's Response

In response to the September 12, 2006 final rule, we received a petition for reconsideration from the Recreation Vehicle Industry Association (RVIA), asking us to reconsider the inclusion of ''recreational vehicle'' in the definition of ''automobile.'' A joint petition signed by the National Automobile Dealers Association (NADA), the National Truck Equipment Association (NTEA) and the National Mobility Equipment Dealers Association (NMEDA) asked us to reconsider the requirement of an additional label for automobiles that are altered before first sale to the customer.

[1] P.L. 109–59 (August 10, 2005); 119 Stat. 1144.

[2] The Monroney label is required by the Automobile Information Disclosure Act (AIDA) Title 15, United States Code, Chapter 28, Sections 1231–1233. SAFETEA–LU amended AIDA to require that NCAP ratings be placed on each vehicle required to have a Monroney label.

[3] ''(g) if one or more safety ratings for such automobile have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program, information about safety ratings that—

''(1) includes a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating;

''(2) refers to frontal impact crash tests, side impact crash tests, and rollover resistance tests (whether or not such automobile has been assigned a safety rating for such tests);

''(3) contains information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including *http://www.safecar.gov*; and

''(4) is presented in a legible, visible, and prominent fashion and covers at least—

''(A) 8 percent of the total area of the label; or

''(B) an area with a minimum length of 4½ inches and a minimum height of 3½ inches; and

''(h) if an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect.''.