

that has not entered into any other contract, grant, cooperative agreement or "other transaction" agreement that provides for audit access by a government entity in the year prior to the date of the agreement.

(c) The head of the contracting activity (HCA) that is carrying out the agreement may waive the applicability of the Comptroller General access requirement if the HCA determines it would not be in the public interest to apply the requirement to the agreement. The waiver will be effective with respect to the agreement only if the HCA transmits a notification of the waiver to the Committees on Armed Services of the Senate and the House of Representatives, the Comptroller General, and the Director, Defense Procurement before entering into the agreement. The notification must include the rationale for the determination.

(d) The HCA must notify the Director, Defense Procurement of situations where there is evidence that the Comptroller General Access requirement caused companies to refuse to participate or otherwise restricted the Department's access to companies that typically do not do business with the Department.

(e) In no case will the requirement to examine records under the clause referenced in paragraph (a) of this section apply to an agreement where more than three years have passed after final payment is made by the government under such an agreement.

(f) The clause referenced in paragraph (a) of this section must provide for the following:

(1) The Comptroller General of the General of the United States, in the discretion of the Comptroller General, shall have access to and the right to examine records of any party to the agreement or any entity that participates in the performance of this agreement that directly pertain to, and involve transactions relating to, the agreement.

(2) Excepted from the Comptroller General Access requirement is any party to this agreement or any entity that participates in the performance of the agreement, or any subordinate element of such party or entity, that has not entered into any other contract, grant, cooperative agreement, or "other transaction" agreement that provides for audit access by a government entity in the year prior to the date of the agreement.

(3) This clause shall not be construed to require any party or entity, or any subordinate element of such party or entity, that participates in the performance of the agreement, to create

or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.

(4) The Comptroller General shall have access to the records described in this clause until three years after the date the final payment is made by the United States under this agreement.

(5) The recipient of the agreement shall flow down this provision to any entity that participates in the performance of the agreement.

Dated: May 24, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00-13521 Filed 6-2-00; 8:45 am]

BILLING CODE 5001-10-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 103-1b; FRL-6701-8]

Approval and Promulgation of Implementation Plans; Ohio Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving sulfur dioxide redesignation requests submitted by the State of Ohio on March 20, 2000, for Coshocton, Gallia, and Lorain Counties. This request was first submitted on October 26, 1995. Ohio subsequently provided supplemental material to EPA in a letter dated September 14, 1999. On March 20, 2000, Ohio submitted final requests to redesignate Coshocton, Gallia, and Lorain Counties to attainment of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO₂).

EPA is also approving the maintenance plans for Coshocton, Gallia, and Lorain Counties. The plans are intended to ensure maintenance of the NAAQS for at least 10 years, and were submitted with the redesignation requests.

In conjunction with these actions, EPA is approving state-adopted emission limits for the following facilities: in Coshocton County: Columbus and Southern Ohio Electric—Conesville Plant; in Gallia County: Ohio Valley Electric Company—Kyger Creek Plant and Ohio Power—Gavin Plant; and in Lorain County: CEI—Avon Lake Plant, Ohio Edison—Edgewater Plant, U.S. Steel—Lorain Plant, and B.F.

Goodrich Company—Lorain County Plant.

EPA is also approving other minor revisions in the state's rules for these three Counties.

On November 23, 1999, EPA received one comment on the proposal to redesignate Coshocton, Gallia, and Lorain Counties. American Electric Power (AEP) encouraged EPA to take final action to approve the redesignation.

DATES: This rule is effective on July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Phuong Nguyen at (312) 886-6701.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" is used we mean EPA.

This supplemental information section is organized as follows:

- I. General Information
 1. What action is EPA taking today?
 2. Why is EPA taking this action?
 3. What is the background for this action?
- II. How Does the Proposed Submittal Compare to the Final Submittal?
- III. Public Comments and EPA Response

What comments did EPA receive?
- IV. Background on Ohio Submittal
 1. What information did Ohio submit, and what were its requests?
 2. What guidance documents did EPA use in this rulemaking to evaluate Ohio's request?
- V. State Implementation Plan (SIP)
 1. How do state-adopted emission limits compare to the FIP limits?
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- VI. Maintenance Plan
 1. How does the maintenance plan apply in Coshocton, Gallia, and Lorain Counties?
 2. What are the maintenance plan reduction requirements?
- VII. Redesignation Evaluation
 1. What five criteria did EPA use to review the redesignation requests?
 2. Are these five criteria satisfied for Coshocton, Gallia, and Lorain Counties?
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 - A. Executive Order 12866
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 - E. Regulatory Flexibility
 - F. Unfunded Mandates
 - G. Submission To Congress and The Comptroller General
 - H. National Technology Transfer and Advancement Act
 - I. Petitions for Judicial Review

I. General Information

1. What Action Is EPA Taking Today?

In this action, EPA is approving SO₂ redesignation requests submitted by the State of Ohio for Coshocton, Gallia, and

Lorain Counties. EPA is also approving the maintenance plans for these counties. In addition, EPA is approving state-adopted emission limits for sources in these three counties. EPA plans separate action on rules 3745-18-03, 3745-18-04, 3745-18-15, and 3745-18-71, that Ohio submitted along with rule revisions for these three counties.

2. Why Is EPA Taking This Action?

EPA is taking this action because the redesignation requests meet the five criteria all redesignation requests must meet. The limits in the submittal are approvable because they are at least as stringent as the current set of federally enforceable limits. Coshocton, Gallia, and Lorain Counties have been designated as nonattainment areas for sulfur dioxide but now meet the sulfur dioxide NAAQS. The three counties have plans for keeping their sulfur dioxide levels within the health and welfare-based standards for the next 10 years and beyond. The plans require the three counties to consider impacts of future activities on air quality and to manage those activities.

3. What Is the Background for This Action?

EPA promulgated the applicable Federal Implementation Plan (FIP) in 1976. The FIP required significant emission reductions at specific facilities throughout the state to attain and maintain the NAAQS for SO₂.

On October 5, 1978, Coshocton, Gallia, and Lorain Counties (among others) were designated as nonattainment areas for the primary sulfur dioxide standards. The state adopted its own regulations in 1979, generally imposing limits similar to those promulgated in the FIP. The state submitted these regulations for EPA approval in 1980, including regulations for Coshocton, Gallia, and Lorain Counties.

The state then withdrew its submittal for selected sources. These sources are:

1. Coshocton County
 - Columbus and Southern Ohio Electric—Conesville plant
2. Gallia County
 - Ohio Valley Electric Company—Kyger Creek plant
 - Ohio Power—Gavin plant
3. Lorain County
 - Cleveland Electric Illuminating (CEI)—Avon Lake plant
 - Ohio Edison—Edgewater plant
 - U.S. Steel—Lorain plant
 - B.F. Goodrich Company

EPA approved this SIP regulation on January 27, 1981, for Coshocton, Gallia, and Lorain Counties (46 FR 8481)

except for the source limits withdrawn by the state. The federally promulgated FIP regulations, therefore, have remained in effect for the above sources.

On October 26, 1995, Governor George Voinovich requested that EPA redesignate to attainment all remaining SO₂ nonattainment areas within the State of Ohio, including Coshocton, Gallia, and Lorain Counties.

On May 28, 1996, EPA Administrator Browner sent a letter to Governor Voinovich informing him that the redesignation request depended on EPA approval of state-adopted rules, such that the plan for assuring attainment would rely on approved State Rules rather than federally promulgated rules.

On September 14, 1999, Ohio provided supplemental supporting material for redesignation requests for three SO₂ nonattainment areas (Coshocton, Gallia, and Lorain Counties) to EPA.

On October 28, 1999 (64 FR 58018), EPA proposed approval of the redesignation requests for Coshocton, Gallia, and Lorain Counties, the maintenance plans, and the state-adopted emission limits.

The public comment period on this proposed approval ended on November 29, 1999; and only one comment, which was favorable, was received.

II. How Does the Proposed Submittal Compare to the Final Submittal?

For Gallia County emission limits, both the proposed and the final submittals are identical.

For the Coshocton County emission limits, paragraph (B)(4) of the final submittal, applying to two diesels at Columbus Southern Power Company, Conesville, was deleted based on evidence from the company's title V application that these units no longer operate. The final submittal indicates only 3 units (B006, B009, and B010) are in operation, instead of 5 units indicated in the proposed submittal.

For the Lorain County emission limits, paragraph (C) of the final submittal, applying to the General Motors Corporation, Fisher Body Division, was removed because this facility has been shutdown for 15 years. For the Avon Lake Plant, the state had two options in 3745-18-53, (B)(1) and (B)(2) or (B)(3) and (B)(4), for setting the facility's boilers' emission limits. Since the source only implements the strategy inherent in (B)(1) and (2), the limits in (B)(3) and (B)(4) had become irrelevant and were removed from the final state rule.

III. Public Comments and EPA Response

What Comments Did EPA Receive?

On November 23, 1999, EPA received one letter commenting on the proposed rulemaking. This letter, from AEP, encouraged EPA to take final action to approve the request as proposed. EPA received no adverse comments on this proposed rulemaking, and for the reasons provided in the proposal, concludes that the adopted emission limits, maintenance plans, and redesignation request for these counties should be approved.

IV. Background on Ohio Submittal

1. What Information Did Ohio Submit, and What Were Its Requests?

In June 1999, Ohio e-mailed copies of proposed rule revisions for Coshocton, Gallia, and Lorain Counties to EPA. On September 14, 1999, Ohio submitted additional material requested by EPA to support the state's requests to redesignate these Counties to attainment with respect to SO₂. On March 20, 2000, Ohio submitted final rule revisions with its final request for redesignation of these Counties to attainment for SO₂. In addition, the state requested approval for the SO₂ maintenance plans for Coshocton, Gallia, and Lorain Counties.

2. What Guidance Documents Did EPA Use in This Rulemaking To Evaluate Ohio's Requests?

Guidance for review of these requests includes a September 28, 1994, memorandum from the Director, Air Quality Management Division, Office of Air Quality Planning and Standards, EPA, to the Director, Air and Radiation Division, Region 5, entitled, "Response to Request for Guidance on Issues with Ohio Sulfur Dioxide Federal Implementation Plan."

This memorandum sets forth three criteria to be met for the approval of state limits that are equivalent to existing FIP limits without new modeling. Under the first two criteria, there must be no known inadequacy in the original attainment demonstration. Under the third criterion, the state limits must reflect no relaxation of existing emission limits.

All three of these criteria are met by the state-promulgated SIP limits. Therefore, the revised limits, as adopted and submitted on March 20, 2000, are adequate to assure attainment without further modeling.

Another guidance document relevant to this rulemaking is an April 21, 1983, memorandum entitled "Section 107 Designation Policy Summary," from the

Director of EPA's Office of Air Quality Planning and Standards, which requires eight consecutive quarters of data showing SO₂ NAAQS attainment before an area can be redesignated. A county violates the NAAQS when its SO₂ level exceeds the NAAQS more than once in any year. Coshocton, Gallia, and Lorain Counties have eight consecutive quarters of data showing SO₂ NAAQS attainment. As discussed below, modeling-based evidence also indicates attainment of the SO₂ NAAQS.

Finally, a September 4, 1992 EPA policy memorandum on "Procedures for Processing Requests to Redesignate Areas to Attainment" was also relevant to this rulemaking. This memorandum explains that additional dispersion modeling is not required in support of an SO₂ redesignation request if an adequate modeled attainment demonstration was previously

submitted and approved as part of the implemented SIP, and no indication of an existing air quality deficiency exists. These conditions are met here.

V. State Implementation Plan (SIP)

1. How Do State-Adopted Emission Limits Compare to the FIP Limits?

For facilities that are currently subject to FIP limits, the final state-adopted emission limits are equivalent to the FIP limits. A few emission points at these facilities have State limits but no FIP limits; approval of these State limits obviously increase the stringency of the SIP.

In Gallia County, for facilities currently subject to FIP limits, the State rules impose the same limits on the same set of emission points as the FIP. In Lorain County, the state's rules include limits for soaking pit process

operations and seamless rotary furnace for USS/KOBE. In Coshocton County, the State's rules include limits for diesels and auxiliary boiler for Columbus Southern Power Company. Because these emission points are not currently subject to federally enforceable limits, these limits enhance the stringency of the State's plan.

The FIP limits at issue will become suspended upon approval of these submitted SIP limits, but would become applicable again if for any reason these SIP limits were rescinded in the future.

2. What Are the Sources and Emission Limits That Will Be Affected by EPA's Action?

The principal sources affected by this rulemaking are sources for which FIP limits are being superseded by limits in approved state rules. The table below lists these sources.

County names	State rules	Source names
Coshocton County	—OAC 3745-18-22 (B)	—Columbus and Southern Ohio Electric—Conesville.
Gallia County	—OAC 3745-18-33 (B)	—Ohio Valley Electric Company—Kyger Creek.
	—OAC 3745-18-33 (D)	—Ohio Power—Gavin.
Lorain County	—OAC 3745-18-53 (B)	—CEI—Avon Lake.
	—OAC 3745-18-53 (D)	—Ohio Edison—Edgewater Plant.
	—OAC 3745-18-53 (E)	—U.S. Steel
	—OAC 3745-18-53 (G)	—B.F. Goodrich.

This rulemaking also approves the removal of obsolete State limits that the State adopted in its final rulemaking.

VI. Maintenance Plan

1. How Does the Maintenance Plan Apply in Coshocton, Gallia, Lorain Counties?

Ohio's attainment plan for sulfur dioxide provides for attainment even with major sources emitting their maximum allowable emissions. Therefore, maintenance is provided by assuring that minor source impacts do not increase significantly. The principal minor sources are distant point sources and diesel vehicles.

2. What Are the Maintenance Plan Reduction Requirements?

Clean Air Act Title IV reductions and the required national conversion to low sulfur diesel fuel are the identified maintenance plan provisions for Coshocton, Gallia, and Lorain Counties.

VII. Redesignation Evaluation

1. What Five Criteria Did EPA Use To Review the Redesignation Requests?

Section 107(d)(3)(E) of the Clean Air Act (Act), as amended in 1990, establishes requirements to be met before an area may be redesignated from

nonattainment to attainment. The criteria used to review redesignation requests are derived from the Act. An area can be redesignated to attainment if the following five conditions are met:

- (A) The area has attained the applicable NAAQS.
- (B) The area has a fully approved SIP under section 110(k) of the Act.
- (C) The EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions.
- (D) The EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Act.
- (E) The state has met all requirements applicable to the area under section 110 and part D of the Act.

2. Are These Five Criteria Satisfied for Coshocton, Gallia, and Lorain Counties?

A. Demonstrated Attainment of the NAAQS

Relevant Agency guidance is provided in both the April 21, 1983, and September 4, 1992 guidance documents cited above. The April 21, 1983 memorandum explains that eight consecutive quarters of data showing SO₂ NAAQS attainment are required for redesignation. The September 4, 1992 guidance explains that the area must

have no more than one exceedance per year.

Ohio's September 14, 1999 submittal provides ambient monitoring data showing that Coshocton, Gallia, and Lorain Counties have met the NAAQS for the years 1994-1999.

Dispersion modeling is commonly used to demonstrate attainment of the SO₂ NAAQS. A modeling analysis was done in 1976 to show that, under all allowed operating scenarios, the emission limits in these three counties' SO₂ SIPs would lead to attainment and maintenance of the SO₂ standards. According to the September 4, 1992 memorandum, no further dispersion modeling is needed for the counties' redesignation. Ohio has provided evidence that sources in these counties are complying with these limits.

Based on this evidence, EPA concludes that emissions are sufficiently low to assure attainment throughout these areas currently designated nonattainment.

B. Fully Approved SIP

The SIP for the area at issue must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply.

EPA's guidance for implementing section 110 of the Act is discussed in

the General Preamble to Title I (44 FR 20372, April 14, 1979; and 57 FR 13498, April 16, 1992). The SO₂ SIP for Coshocton, Gallia, and Lorain Counties met the requirements of section 110 of the Act, and EPA approved the SIP on January 27, 1981, except that EPA did not take action for a limited set of sources.

State limits for the remaining set of specific sources in Coshocton, Gallia, and Lorain Counties are being approved in this rulemaking. For convenience, EPA is rulemaking on rules for entire affected Counties, and is approving additional minor revisions in these Counties.

C. Permanent and Enforceable Reductions in Emissions

Coshocton, Gallia, and Lorain Counties attained the SO₂ standards by implementing the SO₂ SIP controls. The reductions in emissions primarily come from converting some fuel-burning sources to lower sulfur content fuels, and to shutting down various types of sources. The use of lower-sulfur "cleaner" fuels is ensured by the facilities' air emission permits and federally enforceable SIP regulations.

D. Fully Approved Maintenance Plan

EPA has concluded that the combination of limitations on maximum allowable emissions from major point sources and implementation of programs that will yield reductions in minor source emissions will assure maintenance of the standards. EPA is approving the maintenance plan in today's action.

E. Part D and Other Section 110 Requirements

With today's approval of limits submitted on March 20, 2000, along with the approval of limits and attainment demonstrations published on January 27, 1981 (46 FR 8481), Ohio has met the relevant requirements.

VIII. Final Rulemaking Action

In summary, EPA is approving state-adopted emission limits for 7 sources in Coshocton, Gallia, and Lorain Counties, as well as approving minor revisions for other sources in these Counties. EPA is also approving the SO₂ maintenance plan for Coshocton, Gallia, and Lorain Counties as adequately ensuring that attainment will be maintained. Finally, EPA is approving redesignation requests from the State of Ohio which were submitted on October 26, 1995, September 14, 1999 and on March 20, 2000.

IX. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action

does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will 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, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. 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**. 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).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

I. 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 August 4, 2000. 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 enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: May 5, 2000.

Norman Niedergang,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40, Chapter I of the Code of Federal Regulations 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 KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(121) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(121) On March 20, 2000, the Ohio Environmental Protection Agency submitted rules to control sulfur dioxide emissions in Coshocton, Gallia and Lorain Counties.

(i) Incorporation by reference. Rules OAC 3745–18–22; OAC 3745–18–33; and OAC 3745–18–53. Adopted March 1, 2000; effective March 21, 2000.

3. Section 52.1881 is amended by revising paragraphs (a)(4) and (a)(8) and by adding paragraph (a)(14) to read as follows:

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

(a) * * *

(4) Approval-EPA approves the sulfur dioxide emission limits for the following counties: Adams County (except Dayton Power & Light-Stuart), Allen County (except Cairo Chemical), Ashland County, Ashtabula County, Athens County, Auglaize County, Belmont County, Brown County, Carroll County, Champaign County, Clark County, Clermont County, (except Cincinnati Gas & Electric-Beckjord), Clinton County, Columbiana County, Coshocton County, Crawford County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County, Geauga County, Greene County, Guernsey County, Hamilton County, Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lake County (except Painesville Municipal Plant boiler number 5), Lawrence County (except Allied Chemical-South Point), Licking County, Logan County, Lorain County, Lucas County (except Gulf Oil Company,

Coulton Chemical Company, Phillips Chemical Company and Sun Oil Company), Madison County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Morgan County, Montgomery County (except Bergstrom Paper, Miami Paper), Morrow County, Muskingum County, Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Pike County (except Portsmouth Gaseous Diffusion Plant), Portage County, Preble County, Putnam County, Richland County, Ross County (except Mead Corporation), Sandusky County (except Martin Marietta Chemicals), Scioto County, Seneca County, Shelby County, Trumbull County, Tuscarawas County, Union County, Van Wert County, Vinton County, Warren County, Washington County (except Shell Chemical), Wayne County, Williams County, Wood County (except Libbey-Owens-Ford Plants Nos.

4 and 8 and No. 6), and Wyandot County.
 * * * * *
 (8) No Action-EPA is neither approving nor disapproving the emission limitations for the following counties/sources pending further review: Adams County (Dayton Power & Light-Stuart), Allen County (Cairo Chemical), Butler County, Clermont County (Cincinnati Gas & Electric-Beckjord), Cuyahoga County, Franklin County, Lake County (Painesville Municipal Plant boiler number 5), Lawrence County (Allied Chemical-South Point), Lucas County (Gulf Oil Company, Coulton Chemical Company, Phillips Chemical Company and Sun Oil Company), Mahoning County, Montgomery County (Bergstrom Paper and Miami Paper), Pike County (Portsmouth Gaseous Diffusion Plant), Stark County, Washington County (Shell Chemical Company), and Wood County

(Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6).
 * * * * *

(14) On March 20, 2000, the Ohio Environmental Protection Agency submitted maintenance plans for Coshocton, Gallia and Lorain Counties.
 * * * * *

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. The table in § 81.336 entitled “Ohio—SO₂” is amended to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—SO₂

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Athens County .....	.....	.....	.....	X
Clermont County .....	.....	.....	.....	X
Columbiana County .....	.....	.....	.....	X
Coshocton County .....	.....	.....	.....	X
Cuyahoga County:				
The Cities of Bay Village, Westlake, North Olmsted, Olmsted Falls, Rock River, Fairview Park, Berea, Middleburg Heights, Strongsville, North Royalton, Broadview Heights, Brecksville and the Townships of Olmsted and Riveredge .....	.....	.....	.....	X
The remainder of Cuyahoga County	X	.....	.....	.....
Gallia County .....	.....	.....	.....	X
Greene County .....	.....	.....	.....	X
Hamilton County .....	.....	.....	.....	X
Jefferson County:				
The Cities of Steubenville and Mingo Junction, Townships of Steubenville, Island Creek, Cross Creek, Knox and Wells .....	.....	.....	.....	X
The remainder of Jefferson County .....	.....	.....	.....	X
Lake County:				
The Cities of Eastlake, Timberlake, Lakeline, Willoughby (north of U.S. 20) and Mentor (north of U.S. 20, west of S.R. 306) .....	.....	.....	.....	X
The remainder of Lake County .....	.....	.....	.....	X
Lorain County .....	.....	.....	.....	X
Lucas County:				
The area east of Route 23 and west of the eastern boundary of Oregon Township	X	.....	.....	.....
The remainder of Lucas County .....	.....	.....	.....	X
Mahoning County .....	.....	.....	.....	X
Montgomery County .....	.....	.....	.....	X
Morgan County:				
Center Township .....	.....	.....	.....	X
The remainder of Morgan County .....	.....	.....	.....	X
Summit County:				
Area bounded by the following lines—north—Interstate 76, east—Route 93, south—Vanderhoof Road, west—Summit County line	(1)	(1)	(1)	(1)
Area bounded by the following lines— north—Bath Road (48 east to Route 8, Route 8 north to Barlow Road, Barlow Road east to county line, east—Summit/Portage county line, south—Interstate 76 to Route 93, Route 93 south to Route 619, Route 619 east to county line, west—Summit/Medina county line .....	.....	.....	.....	2X
Entire area northwest of the following line: Route 80 east to Route 91, Route 91 north to the county line .....	.....	.....	.....	2X
The remainder of Summit County .....	.....	.....	.....	3X
Trumbull County .....	.....	.....	.....	3X

OHIO—SO₂—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Washington County:				
Waterford Township	X
The remainder of Washington County	X
All other counties in the State of Ohio	X

¹ This area remains undesignated at this time as a result of a court remand in *PPG Industries, Inc. v. Costle*, 630 F.2d 462 (6th Cir. 1980).
² This area was affected by the Sixth Circuit Court remand but has since been designated.
³ This area was not affected by the court remand in *PPG Industries, Inc. v. Costle* 630 F.2d 462 (6th Cir. 1980).

* * * * *
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

42 CFR Parts 1001, 1003, 1005 and 1006

RIN 0991-AA90

Health Care Programs: Fraud and Abuse; Revised OIG Civil Money Penalties Resulting From Public Law 104-191

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule; correction amendments.

SUMMARY: This document contains several corrections to the final regulations which were published in the *Federal Register* on Wednesday, April 26, 2000 (65 FR 24400). These regulations revised the OIG's civil money penalty (CMP) authorities in conjunction with new or revised provisions set forth in the Health Insurance Portability and Accountability Act of 1996, and codified a number of technical corrections to the regulations governing the OIG's sanction authorities. Inadvertent errors appeared in the text of the regulations concerning the knowledge standard in § 1003.102 (a)(6), and in § 1005.7 with respect to discovery. In addition, an incorrect cross-reference was cited in the definition for the term "preventive care," as set forth in part 1003. As a result, we are making corrections to 42 CFR 1003.101, 1003.102(a) and 1005.7 to assure the technical correctness of these regulations.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619-0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION: The HHS Office of Inspector General (OIG) issued final regulations on April 26, 2000 (65 FR 24400) that revised the OIG's CMP authorities, in conjunction with new and revised provisions set forth in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. Among other provisions, this final rulemaking codified new CMPs for excluded individuals retaining ownership or control interest in an entity; upcoding and claims for medically unnecessary services; offering inducements to beneficiaries; and false certification of eligibility for home health services. The rule also codified a number of technical corrections to the regulations governing OIG's sanction authorities. In that final rule, several inadvertent errors appeared in the regulations text and are now being corrected.

CMP Knowledge Standard—§ 1003.102(a)(6)

In the preamble discussion regarding revisions to § 1003.102(a)(6), addressing the submission of claims for services that are medically unnecessary, we indicated that this paragraph was being amended to include the "knows or should know" standard found in the statute and in the revision to § 1003.102(a)(1) to ensure that it is not the OIG's intent to subject providers to penalties for legitimate disagreements over the medical necessity of items and services or for honest mistakes or errors (65 FR 24403). As indicated in that discussion, while the knowledge standard in the statute requires that providers assume responsibility for appropriate billing of their services, the OIG intends to impose CMPs only after establishing that a provider knew that a billed item or service was not medically necessary, or that he or she deliberately ignored or recklessly disregarded such information. Accordingly, we indicated that we were revising § 1003.102(a)(6)

by adding the words "knows or should know" to have the paragraph read as: "An item or service that a person knows or should know is medically unnecessary, and which is part of a pattern of such claims." (emphasis added). This language was inadvertently omitted from the revised regulations text. In order to be consistent with the preamble discussion, we are correcting the omission that occurred in § 1003.102(a)(6).

Discovery—§ 1005.7

In summarizing the provisions of the final rule, we indicated that we were amending § 1005.7 to provide for motions to compel discovery once a request for production of documents has been received. The preamble stated that any objections to a request for the production of documents will have to be filed with the opposing party within 15 days of receiving the discovery request, and that the party seeking the production of documents may then file a motion to compel discovery within 15 days, unless a lengthier time frame is set by the administrative law judge (ALJ) (65 FR 24412-13). This discretion afforded to the ALJ to grant an extension was inadvertently omitted from the regulations text in § 1005.7(e). We are correcting this omission by redesignating existing paragraph (e)(3) in this section to read as (e)(4) and by adding a new paragraph (e)(3) to address the ALJ's discretion in extending the appropriate time frames

Preventive Care—§ 1003.101

In the definition for "preventive care" appearing in § 1003.101, the definition incorrectly cites § 1003.102(b)(13) as the applicable cross-reference. We are amending this definition to cite the correct cross-reference, which is to the term "remuneration" that is set forth in this same section.

Amendatory Language to § 1003.103(a) Introductory Text and § 1003.105(a)(1)(i)

We are amending the language in the introductory text for § 1003.103(a) and