

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 81**

[OH 121-1c; FRL-6425-1]

**Approval and Promulgation of Implementations; Ohio Designation of Areas for Air Quality Planning Purposes; Ohio****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is approving emission limits for two sources in Lake County, Ohio and redesignating Lake and Jefferson Counties to attainment for SO<sub>2</sub>. EPA proposed this action on March 17, 1999 along with a direct final rule. On April 15, 1999, EPA received adverse comments from Weirton Steel Corporation (WSC), West Virginia, requesting that EPA not redesignate Jefferson County, Ohio to attainment for SO<sub>2</sub>. WSC commented that EPA's reliance on the modeling dating back to 1975 is misplaced and that more current modeling is needed in order to demonstrate compliance with the SO<sub>2</sub> NAAQS. WSC also commented that some sources located in Jefferson County, Ohio, are contributing significantly to the nonattainment problem in Hancock County, West Virginia, and are interfering with West Virginia's ability to maintain compliance with the SO<sub>2</sub> NAAQS.

EPA has reviewed WSC's comments, disagrees with the comments, and concludes that Jefferson County should be redesignated to attainment.

Also, because EPA's response to adverse comments for Jefferson County was to withdraw direct final action for Lake as well as Jefferson County, today's action reinstates approval of the Lake County emission limits and redesignation as well as the Jefferson County redesignation. If refined modeling evidence becomes available that indicates a need for tighter limits for Jefferson County, as WSC anticipates, then EPA will require Ohio to adopt the tighter limits as appropriate at that time.

**DATES:** This final rule is effective on September 29, 1999.

**ADDRESSES:** Copies of the revision request and the comments letter are available for inspection at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Phuong Nguyen at (312) 886-6701 before visiting the Region 5 office.)

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

**SUPPLEMENTARY INFORMATION:** This supplementary information section is organized as follows:

**I. GENERAL INFORMATION**

A. What action is EPA taking today?

**II. COMMENTS AND RESPONSES**

A. Who sent comments?

B. What were the comments and how does EPA respond?

1. Attainment of National Ambient Air Quality Standards (NAAQS)

2. 110(a)(2)(D)

**III. OTHER PROPOSED ACTION**

A. Why is EPA finalizing other proposed action?

**IV. CONCLUSION****V. ADMINISTRATIVE REQUIREMENTS**

A. Executive Order 12866

B. Executive Order 12875

C. Executive Order 13045

D. Executive Order 13084

E. Regulatory Flexibility Act

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:**

What action is EPA taking today? EPA is approving a State Implementation Plan (SIP) revision which replaces the federally promulgated limits by State promulgated limits for the two sources in Lake County. In addition, EPA is approving maintenance plans in Jefferson and Lake Counties, Ohio. Finally, EPA is redesignating Jefferson and Lake Counties, Ohio to attainment of NAAQS for sulfur dioxide (SO<sub>2</sub>).

EPA proposed this action and promulgated this action as a direct final rule on March 17, 1999. On April 15, 1999, we received objections to the Jefferson County action from Weirton Steel Corporation (WSC). We therefore withdrew our direct final approval, addressing Lake as well as Jefferson County. WSC's objections are discussed at length in the following section. We have concluded that WSC's comments do not warrant deferring or rejecting redesignation of Jefferson County. Therefore, EPA is taking final the action as proposed.

**II. Comments and Responses**

Who sent comments?

On April 15, 1999, we received adverse comments from WSC of Hancock County, West Virginia, objecting to the SO<sub>2</sub> redesignation for Jefferson County, Ohio. Hancock County, West Virginia, is adjacent to Jefferson County, and was designated nonattainment for SO<sub>2</sub> on December 21, 1993 (58 FR 67334). WSC is planning to

do new modeling using a refined model to determine its impact on SO<sub>2</sub> levels and the impact of nearby sources, some of which are located in Jefferson County, Ohio. WSC's comments thus reflect its interest in the impact that Jefferson County sources have on SO<sub>2</sub> concentrations in the WSC environs.

What were the comments and how does EPA respond?

WSC's letter included two comments on EPA's proposed rulemaking, recommending that EPA not redesignate Jefferson County based on uncertainty of attainment and failure to satisfy Clean Air Act section 110(a)(2)(D). The following sections describe these comments further and provide EPA's response.

**1. Attainment of National Ambient Air Quality Standards (NAAQS)**

EPA proposed to find Jefferson County attaining the SO<sub>2</sub> NAAQS on the basis of compliance of key sources with emission limits. These limits were set at levels shown to assure attainment by modeling conducted in 1975.

Consequently, we concluded that use of current emission rates in the approved (1975) modeling analysis would show the area to be attaining the standards.

WSC's first comment disagrees with using 1975 modeling for determining the attainment status of Jefferson County. WSC believes that new modeling is needed for this purpose. WSC is preparing a protocol to submit to the West Virginia Department of Environmental Protection (WVDEP) to model SO<sub>2</sub> sources around the Weirton area. This modeling will include most of the largest sources in Jefferson County. WSC recommended that EPA defer rulemaking on the Jefferson County redesignation request until the new modeling is available.

EPA recognizes that new modeling techniques have become available since 1975 and are recommended by the current modeling guidelines for new modeling analyses. On other hand, the 1975 modeling, which EPA approved on January 27, 1981, is the best currently available evidence as to Jefferson County's attainment situation. WSC provided no results from more current modeling to suggest that Jefferson County is violating the NAAQS, and WSC provided no basis or rationale to expect that new modeling would show violations. EPA customarily evaluates SO<sub>2</sub> redesignation requests based on available evidence rather than requiring updated modeling. In the absence of updated modeling showing violations, EPA continues to believe based on available evidence that Jefferson County is attaining the SO<sub>2</sub> NAAQS.

Implicit in WSC's comments is a view that modeling is necessary to assess whether the SO<sub>2</sub> NAAQS is being attained. Although the relative merits of modeling and monitoring data vary, EPA generally shares WSC's view. Consequently, if WSC prepares modeling meeting current modeling guidelines, EPA expects Ohio and West Virginia to work together to revise limits as necessary to assure attainment throughout the area. As appropriate, EPA will at that time reevaluate the attainment status of Jefferson County.

## 2. Section 110(a)(2)(D)

WSC's second comment is based on section 110(a)(2)(D) of the Clean Air Act. WSC claimed that some sources located in Jefferson County, Ohio, are contributing significantly to the nonattainment problem in Weirton and interfering with Hancock County, West Virginia's ability to maintain compliance with the SO<sub>2</sub> NAAQS. WSC believes that the results of its proposed modeling will demonstrate this significant contribution of Jefferson County sources to Hancock County nonattainment. WSC also commented that the previously conducted SO<sub>2</sub> modeling has shown that these large sources of SO<sub>2</sub> in Jefferson County are significant contributors to SO<sub>2</sub> nonattainment in and around the Weirton area.

When EPA approved Ohio's SIP, EPA made no determination that the SIP did not comply with the interstate transport provisions under the predecessor to section 110(a)(2)(D). As indicated in a memorandum from John Calcagni, Director of Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, EPA takes the position that when acting on a redesignation request that may implicate section 110(a)(2)(D), EPA may rely on prior approvals of the SIP, and EPA is not obligated to review whether, at the time EPA is approving the redesignation request, the State is in compliance with section 110(a)(2)(D). EPA most recently took this position in approving a request to redesignate the Cleveland-Akron-Lorain Ohio as attainment for ozone. The US Court of Appeals for the 6th Circuit upheld EPA's action against a challenge based on grounds similar to those presented by the commenter concerning today's action. *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.2d 984 (6th Cir. 1999).

In addition, it should be emphasized that WSC has not yet presented to EPA modeling that would substantiate WSC's position that Jefferson County sources are contributing significantly to

Hancock County nonattainment. Given the unanswered questions as to the respective impacts of Jefferson and Hancock County sources and their relative ease of control, EPA cannot conclude at this time that Jefferson County sources are contributing significantly to nonattainment in the Weirton area.

We understand that the efforts by WSC and West Virginia to satisfy nonattainment planning requirements for Hancock County, West Virginia, may supply much of the information that EPA would need before it could find a violation of section 110(a)(2)(D). WSC should provide to EPA the details of its modeling results, the percent impact of sources in Jefferson County vs. WSC and other sources, the sources' control strategy options, and the schedule by which WSC is expecting to come into compliance with applicable emission limits.

As planning for Hancock County proceeds, EPA expects Ohio and West Virginia to work together to assure that all relevant sources have limits sufficient to assure attainment throughout the Weirton area. EPA expects the modeling analysis to include a number of Ohio sources. Depending on the results of that modeling, EPA expects that the States will consider a variety of control strategy options, including options involving reduced emission limits at Ohio facilities. We expect that Ohio and West Virginia would then agree on a strategy and make any necessary rule revisions accordingly. Nevertheless, if WSC and West Virginia develop information that Ohio sources contribute significantly to nonattainment in Hancock County (including information that controls of these Ohio sources would be an equitable part of a Weirton area control strategy), and Ohio fails to adopt appropriate emission limits, then this information should be provided to EPA. If warranted EPA would consider requiring Ohio to submit a SIP revision to implement necessary controls, or West Virginia may submit a petition under section 126(b) seeking controls on the Jefferson County sources.

## III. Other Proposed Action

Why is EPA finalizing other proposed action?

On March 17, 1999, EPA approved the SIP revision request submitted by the State of Ohio, which replaced the federally promulgated limits by state promulgated limits for two sources (First Energy, Eastlake Plant and Ohio Rubber Company) in Lake County, Ohio. In addition we also approved the SO<sub>2</sub>

maintenance plan and the redesignation request for Lake and Jefferson Counties.

On May 10, 1999, we withdrew our direct final approval for both Lake and Jefferson Counties due to the adverse comments we had received from WSC on the Jefferson County redesignation. We received no adverse comments on the actions other than redesignation of Jefferson County. We continue to believe that the submitted State emission limits for the two Lake County sources are equivalent and suitable replacements for the current federally promulgated limits, that the maintenance plans for the two counties are adequate to assure continued attainment, and that Lake County has satisfied all the requirements in section 107(d)(3)(E) for redesignation. Therefore, EPA is finalizing these actions as proposed on March 17, 1999.

## IV. Conclusion

EPA has reviewed all of the comments submitted in response to the Jefferson County SO<sub>2</sub> redesignation. First, although WSC believes that new modeling meeting current modeling guidelines must be used to assess whether violations of the SO<sub>2</sub> air quality standards are occurring near some Ohio sources, EPA believes that it is appropriate to continue to rely on the existing modeling underlying the current approved Ohio limits, which suggests that the area is attaining the standard. Second, sources located in Jefferson County have not been shown to contribute significantly to a violation of the SO<sub>2</sub> NAAQS near Weirton Steel Corporation. Therefore, EPA has not concluded and cannot conclude that section 110(a)(2)(D) is violated, and instead must conclude that Ohio has satisfied the fifth prerequisite for redesignation by satisfying all requirements of section 110 including section 110(a)(2)(D). Consequently, EPA is redesignating Jefferson County to attainment.

EPA is also approving two SIP revisions in Lake County, approving maintenance plan for the two counties, and redesignating Lake County to attainment. Finally, the codification for this rulemaking corrects a longstanding omission in Title 40, § 52.1881(a)(8) by reinserting the sources in Ross and Sandusky Counties for which no action has been taken.

## V. Administrative Requirements

### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.)

12866, entitled "Regulatory Planning and Review."

#### B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

#### C. 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 E.O. 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 E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

#### D. Executive Order 13084

Under E.O. 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. If the mandate is unfunded, EPA must 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, E.O. 13084 requires EPA to develop an effective process permitting elected 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. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### E. Regulatory Flexibility Act

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 final 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 section 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 annual costs to State, local, or tribal governments in the aggregate; or to 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 annual 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 rule 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 October 29, 1999. 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).) (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**

Environmental protection, Air pollution control.

Dated: August 5, 1999.

**Francis X. Lyons,**

*Regional Administrator, Region 5.*

For the reasons stated in the preamble, 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.

2. Section 52.1870 is amended by adding paragraph (c)(118) to read as follows:

**§ 52.1870 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(118) On August 20, 1998, Ohio submitted material including State adopted limits for Lake County, and requested approval of limits for the

Ohio First Energy Eastlake Plant and the Ohio Rubber Company Plant.

(i) Incorporation by reference.

(A) Rule 3745-18-49 (G) and (H) of the Ohio Administrative Code, effective May 11, 1987.

3. Section 52.1881 is amended by revising paragraph (a)(4) and (a)(8) and adding paragraph (a)(13) to read as follows:

**§ 52.1881 Control strategy; Sulfur oxide (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 (except Columbus & Southern Ohio Electric—Conesville), Crawford County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County (except Ohio Valley Electric Company—Kyger Creek and Ohio Power—Gavin), 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 (except Ohio Edison—Edgewater, Cleveland Electric Illuminating—Avon Lake, U.S. Steel—Lorain, and B.F. Goodrich), Lucas County (except Gulf Oil Company, Coulton Chemical Company, and Phillips Chemical Company), Madison County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Morgan County, Montgomery County (except Bergstrom Paper and 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 on sources pending further review: Adams County (Dayton Power & Light—Stuart), Allen County (Cairo Chemical), Butler County, Clermont County (Cincinnati Gas & Electric—Beckjord), Coshocton County (Columbus & Southern Ohio Electric—Conesville), Cuyahoga County, Franklin County, Gallia County (Ohio Valley Electric Company—Kyger Creek, and Ohio Power—Gavin), Lake County (Painesville Municipal Plant boiler number 5), Lawrence County (Allied Chemical—South Point), Lorain County (Ohio Edison—Edgewater Plant, Cleveland Electric Illuminating—Avon Lake, U.S. Steel—Lorain, and B.F. Goodrich), Lucas County (Gulf Oil Company, Coulton Chemical Company, and Phillips Chemical Company), Mahoning County, Montgomery County (Bergstrom Paper and Miami Paper), Pike County (Portsmouth Gaseous Diffusion Plant), Ross County (Mead Corporation), Sandusky County (Martin Marietta Chemicals), Stark County, Washington County (Shell Chemical Company), and Wood County (Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6).

\* \* \* \* \*

(13) In a letter dated October 26, 1995, Ohio submitted a maintenance plan for sulfur dioxide in Lake and Jefferson Counties.

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**PART 81—[AMENDED]**

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

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

2. In § 81.336 the table entitled "Ohio SO<sub>2</sub>" is revised to read as follows:

**§ 81.336 Ohio.**

\* \* \* \* \*

OHIO—SO<sub>2</sub>

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 <sup>1</sup>	.....	.....	.....	.....
The remainder of Coshocton County .....	.....	.....	.....	X <sup>1</sup>
Cuyahoga County:	.....	.....	.....	.....
The Cities of Bay Village, Westlake, North Olmsted, Olmsted Falls, Rock River, Fairview Park, Berea, Middleburg Hts., Strongsville, North Royalton, Broadview Hts., Brecksville and the Townships of Olmsted and Riveredge .....	.....	.....	.....	X
The remainder of Cuyahoga County .....	X	.....	.....	.....
Gallia County:	.....	.....	.....	.....
Addison Township .....	.....	X <sup>1</sup>	.....	.....
The remainder of Gallia County .....	.....	.....	.....	X <sup>1</sup>
Greene County .....	.....	.....	.....	X
Hamilton County:	.....	.....	.....	.....
The City of Cincinnati bounded on the west by 175 and U.S. Route 127, and on the south by the Ohio and Little Miami Rivers; the Cities of Norwood, Fairfax, Silverton, Golf Manor, Amberly, Deer Park, Arlington Heights, Elwood Place, and St. Bernard .....	.....	.....	.....	X <sup>1</sup>
The remainder of Hamilton County .....	.....	.....	.....	X <sup>1</sup>
Jefferson County:	.....	.....	.....	.....
Cities of Steubenville & Mingo Junction, Townships of Steubenville, Island Creek, Cross Creek, Knox and Wells .....	.....	.....	.....	X
The remainder of Jefferson County .....	.....	.....	.....	X <sup>1</sup>
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:	.....	.....	.....	.....
Area bounded on the north by the Norfolk and Western Railroad Tracks, on the east by State Route 301 (Abbe Road), on the south by State Route 254, and on the west by Oberlin Road .....	X	.....	.....	.....
The remainder of Lorain County .....	.....	.....	.....	X
Lucas County:	.....	.....	.....	.....
The area east of Rte. 23 & west of eastern boundary of Oregon Township ..	X <sup>1</sup>	.....	.....	.....
The remainder of Lucas County .....	.....	.....	.....	X <sup>1</sup>
Mahoning County .....	.....	.....	.....	X
Montgomery County .....	.....	.....	.....	X
Morgan County:	.....	.....	.....	.....
Center Township .....	.....	.....	.....	X <sup>1</sup>
The remainder of Morgan County .....	.....	.....	.....	X <sup>1</sup>
Summit County:	.....	.....	.....	.....
Area bounded by the following lines—North—Interstate 76, East—Route 93, South—Vanderhoof Road, West—Summit County Line .....	.....	.....	.....	X
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 .....	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
Entire area northwest of the following line Route 80 east to Route 91, Route 91 north to the County line .....	.....	.....	.....	X <sup>3</sup>
The remainder of Summit County .....	.....	.....	.....	X <sup>4</sup>
Trumbull County .....	.....	.....	.....	X
Washington County .....	.....	.....	.....	X
Waterford Township .....	.....	.....	.....	X
The remainder of Washington County .....	.....	.....	.....	X
All other counties in the State of Ohio .....	.....	.....	.....	X <sup>1</sup>

<sup>1</sup> EPA designation replaces State designation.

<sup>2</sup> This area remains undesignated at this time as a result of a court remand in PPG Industries, Inc. vs. Costle, 630 F.2d 462 (6th Cir. 1980).

<sup>3</sup> This area was affected by the Sixth Circuit Court remand but has since been designated.

<sup>4</sup> The area was not affected by the court remand in PPG Industries, Inc. vs. Costle, 630 F.2d 462 (6th Cir. 1980).

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 BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

[CC Docket No. 94-158; FCC 99-171]

**Operator Services Providers and Call Aggregators.**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Commission's rules to specify a deadline to update inaccurate information posted on a public phone about the presubscribed provider of long-distance operator services at that location. The FCC acted in further implementation of the dual goals of the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"). Those are to protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls; and to ensure that consumers have the opportunity to make informed choices in making such calls. The FCC concluded that, consistent with its obligations to protect consumers pursuant to that Congressional mandate, it should specify deadlines by which aggregators must provide accurate information to consumers.

**DATES:** New § 64.703(c) contains information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for that section.

Written comments by the public on the information collections are due September 29, 1999.

OMB notification of action is due October 29, 1999.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, DC 20554.

Send a copy of any comments that concern information collection requirements for the new rule adopted in CC Docket No. 94-158 to the Office

of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Adrien Auger, 202-418-0960. For additional information concerning the information collections contained in this Report and Order contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** 1. The Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA), codified as Section 226 of the Communications Act of 1934, 47 U.S.C. 226, requires that call aggregators post, on or near a payphone or other aggregator location, the name, address, and toll-free telephone number of the presubscribed provider of long-distance operator services. The FCC implements the Section 226 requirements with its rules at 47 CFR 64.703 *et seq.* Both Section 226(c)(1)(A) of the Communications Act and § 64.703(b) of the Commission's rules require call aggregators to post, on or near a payphone, the name, address, and toll-free telephone number of the presubscribed long-distance provider of operator services. Neither Congress nor the FCC previously has specified a deadline by which to update any change in such information to consumers.

2. In 1995, the Commission sought comment whether it should specify a time by which aggregators must update information posted on or near payphones. 60 FR 8217, Feb. 13, 1995. In 1996, the Commission requested comment on a proposed 30-day deadline that the majority of those who had commented favored. 61 FR 15 020 Apr. 4, 1996.

3. The Commission has revised 47 CFR part 64, in a *Second Report and Order* released July 19, 1999, in CC Docket No. 94-158. The revised rule provides greater certainty to aggregators and presubscribed providers of operator services at aggregator locations with regard to their obligations under Section 226 of the Communications Act. The Commission's purpose in adopting the new rule is to protect consumers, ensure their opportunity to make informed choices when placing calls from public phones, enable them to choose a long-distance carrier of their choice, and thus

further greater price and service competition in the marketplace.

4. This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collections contained in this proceeding. This is a synopsis of the new information collection requirement. Section 64.703(c) requires that information that call aggregators must post on or near payphones, pursuant to Section 226 of the Communication Act of 1934, as amended, 47 U.S.C. 226, be updated as soon as practicable, but no later than 30 days from the time of a change of the presubscribed provider of operator services.

**Paperwork Reduction Act:** This Report and Order contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law No. 104-12. Written comments by the public on the information collections are due September 29, 1999. OMB notification of action is due October 29, 1999. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

**OMB Approval Number:** 3060-0653.

**Title:** Consumer Information Posting by Aggregators—§ 64.703(b) and (c).

**Form No.:** N/A.

**Type of Review:** Revised collection.

**Respondents:** Businesses or other for profit.

Section/Title	No. of responses	Est. time per response	Total annual burden
Sections 64.703(b) and (c) .....		56,200	.....
3.67 .....	206,566		