The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 18, 1995 unless, by August 18, 1995 adverse or critical comments are received.

If the EPA receives such comments, this action will be timely withdrawn by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 18, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

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 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 1995. 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), 42 U.S.C. 7607(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of the Federal Register on July 1, 1982.

Dated: June 23, 1995.

Chuck Clarke,

Regional Administrator.

Part 52, 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. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(111) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(111) The EPA approves a revision to the State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and other State Regulations), specifically a revision to Section 2.2—Legal Authority and a revision to Chapters 468 and 468A of the Oregon Revised Statutes (ORS).

(i) Incorporation by reference.

(A) On July 29, 1992 and August 30, 1994, ODEQ submitted to EPA a revision to Oregon Revised Statutes (ORS), Chapter 468 (1993 Edition), and Chapter 468A (1993 Edition), both of which were amended and adopted through August 1993 and in effect on November 4, 1993; and a revised Section 2.2—Legal Authority, including subsections 2.2.1 through 2.2.9, dated and revised July 29, 1992, the date of the official attached transmittal letter.

[FR Doc. 95–17670 Filed 7–18–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[PA63–1–7124; FRL–5259–6]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania: Determination of Attainment of Ozone Standard by the Pittsburgh-Beaver Valley and Reading Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined that the Pittsburgh-Beaver Valley and Reading ozone nonattainment areas have attained the National Ambient Air Quality standard (NAAQS) for ozone. This determination is based upon three years of ambient air monitoring data for the years 1992–94 that demonstrate that the ozone NAAQS has been attained in these areas. On the basis of this determination, EPA is also determining that certain reasonable further progress (RFP) and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act (CAA) are not applicable to these areas as long as these areas continue to attain the ozone NAAQS.

EFFECTIVE DATE: July 19, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Kathleen Henry, (215) 597–0545.

SUPPLEMENTARY INFORMATION: EPA published a Notice of Direct Final Rulemaking (DFR) on May 26, 1995 (60 FR 27893). In that rulemaking, EPA determined that the Pittsburgh-Beaver Valley and Reading ozone nonattainment areas have attained the ozone standard and that the requirements of section 182(b)(1) concerning the submission of a 15% RFP plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to these areas so long as the areas do not violate the ozone standard. In addition, EPA determined that the sanctions clocks started on January 18, 1994, for these areas for failure to submit the RFP requirements would be stopped since the deficiency on which they are based no longer exists.

At the same time that EPA published the direct final rule, a separate notice of proposed rulemaking (NPR) was published in the **Federal Register** (60 FR 27945) in the event that adverse or critical comments were filed which would require EPA to withdraw the direct final rule. EPA received adverse comments within 30 days of publication of the proposed rule and withdrew the direct final rule on June 13, 1995 (60 FR 31081).

The specific rationale and air quality analysis EPA used to determine that the Pittsburgh-Beaver Valley and Reading ozone nonattainment areas have attained the NAAQS for ozone and are not required to submit SIP revisions for RFP, attainment demonstration and related requirements are explained in the DFR and will not be restated here.

Response to Public Comment

Two letters were received supporting EPA's proposed action, and one adverse comment letter was received on the DFR. Following are the relevant comments that were submitted followed by EPA's response.

Comment #1 The Clean Air Council (CAC) commented that EPA's action disregards the requirements of section 107(d)(3)(E) of the Clean Air Act (CAA), which govern redesignations to attainment. According to the commenter, the EPA's action indicates that the Agency intends to allow nonattainment areas to be redesignated to attainment, regardless of air quality or legal requirements. The commenter argued that EPA's action essentially eliminates the requirement of section 107(d)(3)(E)(v), which is that, for an area to be redesignated to attainment, the State must have met all requirements applicable to the area under section 110 and part D of Title I of the CAA.

Response #1 The action proposed by EPA and finalized with this notice is not a redesignation and does not eliminate the requirements of section 107(d)(3)(E), which EPA believes must be met in order for areas, including Pittsburgh and Reading, to be redesignated to attainment. In sum, the action being taken with this notice does not relax the requirements applicable to the evaluation of the redesignation requests submitted for Pittsburgh and Reading on November 13, 1993.

The action being taken by EPA is a determination that the relevant areas have attained the ozone NAAQS and, on the basis of that determination, that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of part D of Title I of the CAA do not apply to the areas as long as the areas continue to attain the NAAQS. In order to be redesignated, EPA would need to approve requests for redesignation for these areas, which were submitted on November 13, 1993, by the Commonwealth of Pennsylvania. In order to be approved, a redesignation request must satisfy the criteria of section 107(d)(3)(E), including the requirement of section 107(d)(3)(E)(v) that the State have met all requirements applicable to the area under section 110 and part D.

EPA notes that it has previously interpreted section 107(d)(3)(E) to mean that the requirements applicable to a redesignation request are those that became applicable prior to or at the time of the submission of the request. *See* Memorandum dated September 4, 1992, from John Calcagni, Director, Air Quality Management Division to Regional Air Directors, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment''. (EPA has followed this interpretation in numerous redesignations. *See, e.g.,* 59 FR 35044 and 59 FR 54391 (Indiana), 59 FR 65719 (West Virginia), 59 FR 45978 (West Virginia)). In the case of the redesignation requests submitted for Pittsburgh and Reading on November 13, 1993, that means that EPA would not require a 15% RFP plan, attainment demonstration, or section 172(c)(9) contingency measures to be submitted and approved in order to determine that the applicable requirements have been met under section 107(d)(3)(E)(v) because SIP revisions to comply with those requirements were not due until November 15, 1993 (*see* sections 172(b) and 182(b)(1)(A)). EPA also notes that the determination being made in this notice does not eliminate the applicability of other requirements to the Pittsburgh and Reading areas, such as the RACT requirements of section 182(b)(2) or the requirements of section 184(b) that apply to areas within the Northeast Ozone Transport Region.

Furthermore, for another reason, even without the action being taken with this notice, the submission and approval of section 172(c)(9) contingency measures would not have been required in order for the November 13, 1993 redesignation requests to be approved in accordance with pre-existing EPA policy since EPA has also long interpreted section 172(c)(9) as not being applicable to areas attaining the NAAQS.

As stated in the DFR, the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498) states that, in the context of a discussion of the requirements applicable to redesignation requests, that the ''requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point'' (57 FR 13564). EPA restated this interpretation in a memorandum dated September 4, 1992, from John Calcagni, Director, Air Quality Management Division, to Regional Air Directors, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' which states that RFP requirements ''will not apply for redesignations because they only have meaning for areas not attaining the standard''.

Comment #2 The CAC stated that EPA's May 26, 1995 notice illegally waived the 15% plan and RFP requirements. According to the commenter, section 182(b) required moderate areas such as Reading and Pittsburgh to develop and submit 15% plans and the 15% plan requirement is not a *de minimis* requirement that can be waived. The commenter also stated that the most compelling reason for a 15% plan in Reading and Pittsburgh is the need to protect public health as both areas have experienced high levels of air pollution.

Response #2 As explained in the May 26, 1995 notice and the May 10,

1995 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Directors entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'', establishing the policy underlying that notice, EPA believes that it is reasonable to interpret the language of the pertinent statutory provisions so as not to require a submission of the 15% RFP plan from an area that is attaining the standard for so long as the area continues to attain the standard because the purpose of an RFP plan, as stated explicitly in section 171(1) of the CAA, is to ensure attainment by the applicable attainment date. Once an area has attained the standard, the stated purpose of the RFP requirement will have already been fulfilled. This interpretation is not based on EPA's *de minimis* authority (*see Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360–61 (D.C. Cir. 1979)), but on the language of the pertinent statutory provisions. In sum, the commenter has not provided any rationale to persuade EPA that its interpretation is not reasonable. With respect to air quality levels, this action is premised on the determination that both Pittsburgh and Reading have attained the ozone NAAQS, which is set at a level to protect public health, allowing an ample margin of safety. Both Pittsburgh and Reading attained the standard prior to the submission of the redesignation requests in November 1993 and continue to attain the standard as there have been no monitored violations of the standard since then.

Comment #3 The CAC also commented that Reading and Pittsburgh have no VOC control strategy and that to consider redesignating the areas without reformulated gasoline and enhanced inspection and maintenance is without basis in the law or common sense.

Response #3 As noted earlier, this action is not a redesignation. Whether the redesignation requests for Pittsburgh and Reading satisfy the requirements of section 107(d)(3)(E) is a matter for a separate proceeding regarding those requests. Furthermore, EPA notes that VOC controls have been adopted and are in place in both Reading and Pittsburgh, e.g., VOC RACT control measures.

Comment #4 The CAC stated that EPA itself pointed out that its action in determining that the Pittsburgh-Beaver Valley and Reading areas have attained the NAAQS and not requiring the submittal of a 15% RFP plan does not shield an area from future EPA action to require emission reductions where there is evidence showing that the subject area's emissions contribute to attainment/maintenance problems in other nonattainment areas. The commenter noted that EPA had determined in the January 24, 1995, ''Final Rule on Ozone Transport Commission; Low Emission Vehicle Program for the Northeast Ozone Transport Region'' (60 FR 4712) (OTC LEV Program) that ozone and emissions from western Pennsylvania contribute to the ozone problems in the Philadelphia nonattainment area and stated that it is inequitable to require a 15% RFP plan for Philadelphia but not for areas that contribute to Philadelphia's air quality problem.

Response #4 The issue concerning the applicability of RFP, attainment demonstration and related requirements must be considered independently from the issue of EPA's authority to impose requirements relative to intrastate transport of emissions. Today's rulemaking action only determines that the Pittsburgh-Beaver Valley and Reading areas have attained the NAAQS and states that the CAA does not require the submittal of a 15% RFP plan and other related requirements so long as the areas continue to attain the standard.

EPA has separate authority under sections 110(a)(2) (A) and (D) to require that SIPs include adequate provisions prohibiting sources in one area from contributing significantly to nonattainment or interfering with maintenance in any other area. However, a general finding of SIP inadequacy is not warranted at this time for two reasons. First, Pennsylvania is part of the Ozone Transport Region (OTR) and not requiring RFP and attainment demonstration SIP revisions does not relieve the Pittsburgh-Beaver Valley and Reading nonattainment areas from meeting the emission reduction requirements of section 184(b). This section requires States in the OTR to implement specific control measures in all areas of the OTR regardless of attainment status. These control measures are also the creditable emission reductions commonly used by States to meet the 15% RFP plan requirement. Consequently, these areas may in fact obtain the 15% reduction in VOC emissions called for by the 15% RFP plan requirement.

Furthermore, EPA determined in the OTC LEV Program Rule that emission reductions achieved by the OTC LEV program applied throughout the OTR are necessary to bring certain nonattainment areas in the OTR into attainment (including maintenance) of the ozone standard. In addition to the emission reductions from the OTC LEV program, emission reductions from other regional strategies, such as the OTC Memorandum of Understanding to adopt stringent controls on NOx emissions from stationary sources, which was signed by Pennsylvania, are anticipated. As EPA concluded in the OTC LEV Program Rule, however, the States in the OTR should be allowed the opportunity to address pollution transport in the attainment demonstrations that will be forthcoming from the nonattainment areas of the OTR before the Agency exercises its SIP-call authority more broadly to address non-LEV deficiencies. *See* 60 FR 4717–18 (Jan. 24, 1995).

Comment #5 The South Western Pennsylvania Growth Alliance (SWPGA) and Greater Pittsburgh Chamber of Commerce submitted comments supporting EPA's rulemaking. In addition, they submitted comments concerning issues relevant to the redesignation of the Pittsburgh-Beaver Valley area.

Response #5 EPA acknowledges these comments. However, as stated in the DFR, EPA is only determining that the Pittsburgh-Beaver Valley and Reading areas have attained the NAAQS and that the submittal of a 15% RFP plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures is not required by the CAA so long as the areas do not violate the ozone standard.

Final Action

EPA is making a final determination that the Pittsburgh-Beaver Valley and Reading ozone nonattainment areas have attained the ozone standard and continue to attain the standard at this time. As a consequence of this determination, the requirements of section 182(b)(1) concerning the submission of the 15% RFP plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the area so long as the area does not violate the ozone standard. Since these areas will not be required to submit 15% RFP plans or attainment demonstrations, these areas will not be in the control strategy period for conformity purposes for so long as the areas do not violate the standard. However, the Pittsburgh-Beaver Valley and Reading areas, which are already demonstrating conformity to a submitted maintenance plan pursuant to 40 CFR part 51, § 51.448(i), may continue to do so, or the Commonwealth may elect to withdraw

the applicability of the submitted maintenance plan budget for conformity purposes until the maintenance plan is approved. The applicability may be withdrawn through the submission of a letter from the Governor or his or her designee. If the applicability of the submitted maintenance plan budget is withdrawn for transportation conformity purposes, the build/no-build and less-than-1990 tests will apply until the maintenance plan is approved.

EPA emphasizes that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. When and if a violation of the ozone NAAQS is monitored in the Pittsburgh-Beaver Valley or Reading nonattainment areas (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determination that these areas have attained the NAAQS and that the RFP and attainment demonstration requirements of section 182(b)(1) do not presently apply, the sanctions clocks started by EPA on January 18, 1994, for failure to submit these requirements are hereby stopped since the deficiency for which the clock was started no longer exists.

EPA finds that there is good cause for this action to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of this action, which is a determination that certain Clean Air Act requirements do not apply for so long as the areas continue to attain the standard. 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.''

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but suspends the indicated requirements. Therefore, because this notice does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

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 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 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 today's final action 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 imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this final rule determining that the Pittsburgh-Beaver Valley and Reading ozone nonattainment areas have attained the NAAQS for ozone and that certain RFP and attainment demonstration requirements of sections 182(b)(1) and 172(c)(9) no longer apply must be filed in the United States Court of Appeals for the appropriate circuit by September 18, 1995. 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: June 10, 1995.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart NN of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2037 is amended by adding paragraph (b) to read as follows:

§ 52.2037 Control Strategy: Carbon monoxide and ozone (hydrocarbons).

* * * * *

(b)(1) Determination—EPA has determined that, as of July 19, 1995, the Pittsburgh-Beaver Valley ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to this area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Pittsburgh-Beaver Valley ozone nonattainment area, these determinations shall no longer apply.

(2) Determination—EPA has determined that, as of July 19, 1995, the Reading ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to this area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Reading ozone nonattainment area, these determinations shall no longer apply.

[FR Doc. 95–17669 Filed 7–18–95; 8:45 am]

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