

this action must be filed in the United States Court of Appeals for the appropriate circuit by October 6, 2003. 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, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: July 25, 2003.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, 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 *et seq.*

#### Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(128) to read as follows:

#### § 52.1870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(128) On July 11, 2002, the Ohio Environmental Protection Agency submitted revisions to Chapter 3745–14–(1 through 11) of the Ohio Administrative Code (OAC), an oxides of nitrogen (NO<sub>x</sub>) budget trading program in Ohio, with a request that the Ohio State Implementation Plan be revised to include these NO<sub>x</sub> rules.

(i) Incorporation by reference.

(A) Ohio NO<sub>x</sub> rules: 3745–14–01, 3745–14–02, 3745–14–03, 3745–14–04, 3745–14–05, 3745–14–06, 3745–14–07, 3745–14–08, 3745–14–09, 3745–14–10, 3745–14–11 in the OAC all with an effective date of July 18, 2002.

(ii) On June 25, 2003, the Ohio Environmental Protection Agency submitted a letter committing to change the flow control date, in rule 3745–14–06(E)(6) from 2006 to 2005, within approximately 6 months of the effective date of the submittal date.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[PA206–4212a; FRL–7524–9]

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to Pittsburgh-Beaver Valley Area Ozone Maintenance Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Pennsylvania State Implementation Plan. The revisions consist of an amendment to the contingency measures portion of the maintenance plan for the Pittsburgh-Beaver Valley ozone maintenance area. EPA is approving these revisions to Pennsylvania SIP in accordance with the requirements of the Clean Air Act. **DATES:** This rule is effective on October 6, 2003, without further notice, unless EPA receives adverse written comment by September 4, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., Room B108, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Anderson, (215) 814–2173, or

by e-mail at [Anderson.Kathleen@epa.gov](mailto:Anderson.Kathleen@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On October 19, 2001, the Pittsburgh-Beaver Valley ozone nonattainment area was redesignated to attainment of the ozone National Ambient Air Quality Standard (NAAQS) [66 FR 53094]. Subsequent to the re-classification of the Pittsburgh area to attainment, the Sierra Club and the Group Against Smog and Pollution (GASP) filed suit against EPA's action in the U.S. Court of Appeals for the Third Circuit. On January 22, 2003, the U.S. Department of Justice signed an agreement with the litigants, represented by EarthJustice, which called for additions to the contingency measures portion of the Pittsburgh-Beaver Valley Ozone Maintenance Plan.

To address the conditions of the agreement, the Commonwealth amended the maintenance plan for the Pittsburgh area. Per the terms of the January 22, 2003 agreement, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP) on April 11, 2003, which identifies additional measures the Commonwealth would take in the event of exceedances of the one-hour ozone NAAQS.

##### II. Summary of SIP Revision

The revised Pittsburgh area maintenance plan identifies additional measures the Commonwealth would take in the event of exceedances of the one-hour ozone NAAQS. These additional measures include incorporating transportation control measures into the SIP if such measures offer a quantifiable ozone reduction benefit; increasing rule effectiveness of Stage II controls at gasoline stations; the convening of a stakeholder group to recommend additional measures; and proposing additional control measures to attain and maintain the ozone NAAQS in the area. The revised plan also includes a detailed schedule for identification and adoption of additional measures if warranted by ozone exceedances or violations.

##### III. Final Action

EPA is approving the revised Pittsburgh area maintenance plan submitted on April 11, 2003. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment as this revision is a result of an agreement reached among involved parties of the legal action. However, in the "Proposed

Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the revised Pittsburgh area maintenance plan, if adverse comments are filed. This rule will be effective on October 6, 2003, without further notice unless EPA receives adverse comment by September 4, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA206-4212 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov), attention PA206-4212. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through [Regulations.gov](http://Regulations.gov), EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are

included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of [Regulations.gov](http://www.regulations.gov) is an alternative method of submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

#### Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any

information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

#### IV. Statutory and Executive Order Reviews

##### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small

entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 6, 2003. 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 to approve revisions to the contingency measures for the Pittsburgh-Beaver Valley ozone maintenance plan 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, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: June 30, 2003.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

#### **PART 52—[AMENDED]**

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

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

#### **Subpart 2020—Pennsylvania**

■ 2. Section 52.2020 is amended by adding paragraph (c)(210) to read as follows:

##### **§ 52.2020 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(210) Revisions to the Pennsylvania Regulations which include amendments to the 2001 Pittsburgh-Beaver Valley ozone maintenance plan submitted on April 11, 2003 by the Pennsylvania

Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of April 11, 2003 from the Pennsylvania Department of Environmental Protection transmitting revisions to the Pittsburgh-Beaver Valley ozone maintenance plan.

(B) Amendments to the Pittsburgh-Beaver Valley ozone maintenance plan which add sections E-2 and E-3, effective April 2003.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(210)(i) of this section.

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[NC-97-200319(w); FRL-7539-8]

### **Approval and Promulgation of Implementation Plans for North Carolina: Withdrawal of Direct Final Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to adverse comment, EPA is withdrawing the direct final rule published June 6, 2003, (*see* 68 FR 33873) approving revisions to the North Carolina State Implementation Plan. The purpose of the revision to rule 15A NCAC 2D.0521 was to provide sources using continuous opacity monitors (COM) the same opportunity to comply with the visible emissions rule as sources that do not use COM devices. EPA stated in the direct final rule that if EPA received adverse comment by July 7, 2003, the rule would be withdrawn and not take effect. EPA subsequently received adverse comment. EPA will address the comment in a subsequent final action based upon the proposed action published on June 6, 2003 (*see* 68 FR 33898). EPA will not institute a second comment period on this action.

**DATES:** The direct final rule is withdrawn as of August 5, 2003.

#### **FOR FURTHER INFORMATION CONTACT:**

Rosymar De La Torre Colón, Air Planning Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Phone number: 404/562-8965; E-mail: [delatorre.rosymar@epa.gov](mailto:delatorre.rosymar@epa.gov).