

**40 CFR Part 81**

[PA034-4054a; FRL-5688-7]

**Pennsylvania Attainment Date Extension for the Pittsburgh-Beaver Valley Ozone Nonattainment Area; PA and VA Determination of Valid Air Quality Data****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is extending the attainment date for the Pittsburgh-Beaver Valley moderate ozone nonattainment area in Pennsylvania from November 15, 1996 to November 15, 1997. This extension is based in part on monitored air quality readings for the national ambient air quality standard (NAAQS) for ozone during 1996. Accordingly, EPA is updating the table in 40 CFR part 81 concerning attainment dates in the Commonwealth of Pennsylvania. EPA is also announcing its determination that air quality data collected during 1996 indicates attainment of the ozone NAAQS in the Reading, Pennsylvania and the Richmond, Virginia moderate ozone nonattainment areas by the November 15, 1996 deadline for moderate areas.

**DATES:** This extension becomes effective April 11, 1997 unless within March 27, 1997 adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. 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; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Marcia L. Spink at (215) 566-2104, or by e-mail at spink.marcia@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

Request for Attainment Date Extension for the Pittsburgh-Beaver Valley Area

On November 25, 1996, the Commonwealth of Pennsylvania requested a one-year attainment date extension for the Pittsburgh-Beaver Valley moderate ozone nonattainment area. This area, which consists of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties, is currently designated a moderate ozone nonattainment area. The statutory ozone attainment date, as prescribed by section 181(a) of the Clean Air Act as amended in 1990 ("the Act"), was November 15, 1996.

*CAA Requirements and EPA Actions Concerning Designation and Classification*

Section 107(d)(4) of the Act required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of Federal Register documents, EPA completed this process by designating and classifying all areas of the country for ozone. See, e.g., 56 FR 58694 (Nov. 6, 1991); 57 FR 56762 (Nov. 30, 1992); 59 FR 18967 (April 21, 1994).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. The Pittsburgh-Beaver Valley, Pennsylvania ozone nonattainment area was designated nonattainment and classified moderate for ozone pursuant to 56 FR 58694 (Nov. 6, 1991). By this classification, its attainment date became November 15, 1996. A discussion of the attainment dates is found in 57 FR 13498 (April 16, 1992) (the General Preamble).

*CAA Requirements and EPA Actions Concerning Meeting the Attainment Date*

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, EPA determines attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See General Preamble, 57 FR 13506. In the case of ozone moderate nonattainment areas, the three-year period is 1994-1996. CAA section

181(b)(2)(A) further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upwards.

However, CAA section 181(a)(5) provides an exemption from these bump up requirements. Under this exemption, EPA may grant up to two one-year extensions of the attainment date under specified conditions:

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the date specified in table 1 of paragraph (1) of this subsection if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

EPA interprets this provision to authorize the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension, (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with, and (3) the area has no more than one measured exceedance of the NAAQS during the year that includes the attainment date (or the subsequent year, if a second one-year extension is requested).

A review of the actual ambient air quality ozone data from the EPA Aerometric Information Retrieval System (AIRS), shows that six air quality monitors located in the Pittsburgh-Beaver Valley ozone nonattainment area recorded exceedances of the NAAQS for ozone during the three year period from 1994 to 1996. At three of these monitors, the number of expected exceedances was greater than 1.0 per year, and therefore constituted a violation of the ozone NAAQS.

However, in its November 25, 1996 request, the Commonwealth of Pennsylvania certified that the Pittsburgh-Beaver Valley area monitored no exceedances during 1996. The 1996 monitoring data has been quality controlled and quality assured. EPA has determined that the requirements for a one-year extension of the attainment date have been fulfilled as follows:

(1) Pennsylvania has formally submitted the attainment date extension request.

(2) Pennsylvania is currently implementing the EPA-approved SIP.

(3) Pennsylvania has certified that the area has monitored no exceedances during 1996.

Therefore, EPA approves Pennsylvania's attainment date extension request for the Pittsburgh-Beaver Valley ozone nonattainment area. As a result, the chart in 40 CFR 81.339 entitled "Pennsylvania—Ozone" is being modified to reflect EPA's approval of Pennsylvania's attainment date extension request.

#### Determination of Validated Air Quality Data for the Reading, PA and Richmond, VA Moderate Ozone Nonattainment Areas

EPA has determined that both Pennsylvania and Virginia have validated as accurate the 1994, 1995 and 1996 ozone air quality data indicating attainment of the ozone standard in the Reading, PA and Richmond, VA moderate ozone nonattainment areas. Therefore, EPA has determined that the Reading, Pennsylvania and Richmond, Virginia areas have met the November 15, 1996 attainment date for moderate areas specified in the Act. Although EPA has determined that the Reading, Pennsylvania and Richmond, Virginia areas have air quality data indicating that the NAAQS for ozone has been attained, today's action does not formally redesignate these areas to attainment. Any moderate area which has attained the ozone NAAQS will remain designated nonattainment and classified moderate until a formal redesignation request and maintenance plan is submitted and EPA fully approves it. Complying with specific ambient air quality standards is only the first step toward being officially redesignated to "attainment". "Attainment" is a legal term defined under the Act which determines whether an area is subject to certain emission control requirements proscribed by the Act. There are redesignation requests currently pending before EPA for both of these areas. EPA shall act upon those requests submitted by the Commonwealths of Pennsylvania and Virginia for their respective areas in separate rulemaking documents.

#### EPA Action

EPA is approving the attainment date extension for the Pittsburgh-Beaver Valley moderate ozone nonattainment area from November 15, 1996 to November 15, 1997 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, EPA is proposing to approve this part 81 action

should adverse or critical comments be filed. This action will be effective April 11, 1997 unless, by March 27, 1997 adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. 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 on April 11, 1997.

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

#### Administrative Requirements

##### A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

##### B. Regulatory Flexibility Act

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.

Extension of an area's attainment date under the CAA does not impose any new requirements on small entities. Extension of an attainment date is an action that affects a geographical area and does not impose any regulatory requirements on sources. EPA certifies

that the approval of the attainment date extension will not affect a substantial number of small entities.

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

##### D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2).

##### E. 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 April 28, 1997. 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 grant Pennsylvania an extension to attain the ozone NAAQS in the Pittsburgh/Beaver

Valley ozone nonattainment area as defined in 40 CFR 81.339 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 5, 1997.  
 W. Michael McCabe,  
*Regional Administrator, Region III.*  
 Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Authority: 42 U.S.C. 7401-7671q.

2. In § 81.339, the "Pennsylvania—Ozone" table is amended by revising the entry for "Pittsburgh-Beaver Valley Area" to read as follows:

**PART 81—[AMENDED]**

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

**§ 81.339 Pennsylvania.**

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**PENNSYLVANIA—OZONE**

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Pittsburgh-Beaver Valley Area:				
Allegheny County .....		Nonattainment		Moderate. <sup>2</sup>
Armstrong County .....		Nonattainment		Moderate. <sup>2</sup>
Beaver County .....		Nonattainment		Moderate. <sup>2</sup>
Butler County .....		Nonattainment		Moderate. <sup>2</sup>
Fayette County .....		Nonattainment		Moderate. <sup>2</sup>
Washington County .....		Nonattainment		Moderate. <sup>2</sup>
Westmoreland County .....		Nonattainment		Moderate. <sup>2</sup>

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.  
<sup>2</sup> Attainment date extended to 11/15/97.

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**FEDERAL EMERGENCY  
 MANAGEMENT AGENCY**

**44 CFR Part 61**  
**RIN 3067-AC54**

**National Flood Insurance Program;  
 Standard Flood Insurance Policy**

**AGENCY:** Federal Insurance Administration (FEMA).  
**ACTION:** Final rule.

**SUMMARY:** This rule amends the National Flood Insurance Program (NFIP) regulations to add coverage under the Standard Flood Insurance Policy to pay for the increased cost to rebuild or otherwise alter flood-damaged structures to conform with State or local floodplain management ordinances or laws consistent with the requirements and guidance of the NFIP.

**EFFECTIVE DATE:** June 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Charles M. Plaxico, Jr., Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646-3422.

**SUPPLEMENTARY INFORMATION:** On September 23, 1996, FEMA published in the Federal Register, 61 FR 49717, a proposed rule to amend the National

Flood Insurance Program (NFIP) regulations by adding coverage under the Standard Flood Insurance Policy (SFIP) for the increased cost, up to a maximum liability of \$15,000, to bring structures into compliance with State or community floodplain management laws or ordinances after flood losses. This coverage, which is referred to in the proposed rule as "increased cost of construction" coverage but hereinafter referred to in this final rule as "increased cost of compliance" coverage (ICC), is mandated by § 555 of Public Law 103-325 which requires the NFIP to "enable the purchase of insurance to cover the cost of compliance with land use and control measures established under section 1361 \* \* \*."

The following are the principal features of the September 23, 1996 proposed rule:

- (1) The limit for ICC coverage would be \$15,000.
- (2) Only flood-damaged structures would be eligible for the coverage.
- (3) Only those structures substantially or repetitively damaged by flood would be eligible for ICC coverage.
- (4) Only structures in areas of special flood hazard would be eligible for ICC payments.
- (5) ICC payments would be limited to the amount necessary to meet but not exceed the NFIP elevation requirements after flood damage. (This feature of the

proposed rule has been changed. See below.)  
 (6) Repetitive loss structures would be eligible for ICC payments when two conditions are met:

- (a) The community has adopted and is enforcing a cumulative substantial damage provision or repetitive loss provision in its floodplain management ordinance that requires action by the property owner; and
- (b) The structure has a history of flood claims under the NFIP that satisfies the statutory definition of repetitive loss structure.

During the comment period, sixteen (16) sets of comments were received by FEMA. In many cases, commenters shared similar views and recommendations on individual issues. The commenters' recommendations, concerns, and questions have been considered and, where appropriate, incorporated into this final rule.

**\$15,000 Maximum Benefit**

Five commenters objected to the maximum benefit of \$15,000 proposed in the rule for ICC coverage. The underlying concern is that \$15,000 will be insufficient to pay for the increased costs to elevate or floodproof a structure substantially or repetitively damaged by flood. For example, one commenter concluded, "the ICC's maximum coverage of \$15,000 is far below the \$35,000 average cost to elevate a