relation to relevant statutory and regulatory 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.

Interim approvals of SIP submittals under section 110 and subchapter I, part D, of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a 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).

If the interim approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

C. Unfunded Mandates Act

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 on by the rule.

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

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 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 5 U.S.C. 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 July 18, 1997.

Filing a petition for reconsideration by the Administrator of this final rule to conditionally approve the Alaska I/M SIP, on an interim basis, 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) of the Administrative Procedures Act).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 2, 1997.

Charles Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 97–13038 Filed 5–16–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 104–4059; FRL–5826–3]

Phase I Finding of Failure to Submit Required State Implementation Plans for the Philadelphia Ozone Nonattainment Area; Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action in making a finding, under the Clean Air Act (ACT), that Pennsylvania failed to make a complete ozone nonattainment submittal required for the Philadelphia nonattainment area under the Act. Under certain provisions of the Act, as implemented consistent with a memorandum issued by EPA Assistant Administrator Mary D. Nichols, on March 2, 1995, Pennsylvania was required to submit SIP measures providing for certain percentage reductions in emissions of ozone precursors, termed ''rate-of-progress'' reductions; as well as SIP commitments to submit SIP measures providing for the remaining required rate-of-progress reductions and any additional emission reductions needed for attainment of the ozone ambient air quality standard in Philadelphia. This action triggers the 18 month time clock for mandatory application of sanctions in Pennsylvania under the Act. This action is consistent with the CAA mechanism for assuring SIP submittals.

EFFECTIVE DATE: This final rule is effective as of May 7, 1997.

FOR FURTHER INFORMATION CONTACT: General questions concerning this document should be addressed to Marcia Spink, Associate Director, Air Programs (3AT00), Air, Toxics and Radiation Division, U.S. EPA Region III,

841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 566–2104.

SUPPLEMENTARY INFORMATION:

I. Background

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the ozone national ambient air quality standard (NAAQS). Pub. L. 101–549, 104 Stat.2399, codified at 42 U.S.C., 7401–7671q (1991). The Amendments divide ozone nonattainment areas into, in general, five classifications based on air quality design value; and establish specific requirements, including new attainment dates, for each classification. CAA sections 107(d)(1)(C) and 181.

The 1990 Amendments required states containing the highest classified ozone nonattainment areas—those classified as serious, severe, or extreme—to submit SIPs providing for periodic reductions in ozone precursors of a rate of 9% averaged over every three-year period, beginning after 1996 and ending with the area's attainment date. CAA sections 182(c)(2)(B). This SIP submission may be referred to as the Rate-of-Progress, or ROP, SIP. The 1990 Amendments further required these states to submit a demonstration of attainment (including air quality modeling) for the nonattainment area, as well as SIP measures containing any additional reductions that may be necessary to attain by the attainment date. CAA sections 182(c)(2)(A). This SIP submission is referred to as the Attainment Demonstration. These CAA provisions established November 15, 1994 as the required date for these SIP submittals.

Notwithstanding significant efforts, the states generally were not able to meet this November 15, 1994 deadline for the required SIP submissions.

On March 2, 1995, EPA Assistant Administrator Mary D. Nichols sent a memorandum to EPA Regional Administrators (the March 2, 1995 memorandum, or Memorandum) recognizing the efforts made by states and the remaining difficulties in making the ROP and Attainment Demonstration SIP submittals. The March 2, 1995 memorandum recognized that, in general, many states have been unable to complete these SIP requirements within the deadlines prescribed by the Act due to circumstances beyond their control. These states were hampered by unavoidable delays in developing the underlying technical information needed for the required SIP submittals. The Memorandum recognized that development of the necessary technical information, as well as the control measures necessary to achieve the large level of reductions likely to be required, is particularly difficult for many states affected by ozone transport.

Accordingly, as an administrative remedial matter, the March 2, 1995 memorandum indicated that EPA would establish new timeframes for SIP submittals. The Memorandum called for states seeking to avail themselves of the new policy to submit, by May 1995, a letter committing to the new timeframes.

The Memorandum further indicated that EPA would divide the required SIP submittals into two phases. The Phase I submittals generally consisted of: (i) SIP measures providing for ROP reductions due by the end of 1999 (the first 9% of ROP reductions); (ii) a SIP commitment (sometimes referred to as an enforceable commitment) to submit any remaining required ROP reductions on a specified schedule after 1996 (with submission no later than the end of 1999); and (iii) a SIP commitment to submit the Attainment Demonstration by mid-1997 (with submission by no later than the end of 1999 of any additional rules needed to attain). The Memorandum indicated that EPA would establish the end of 1995 as the due date for the Phase I submittals. States could have proposed a schedule for making submissions in 1996 if necessary due to administrative scheduling imperatives (such as the schedule for legislative sessions).

The Phase II submittals were due at specified times after 1996, and primarily consisted of the remaining ROP SIP measures, the Attainment Demonstration and required additional rules, and any regional controls necessary for attainment by all areas in the region.

By a letter dated May 2, 1996, EPA informed Pennsylvania that it was important that it complete the Phase I submittals as soon as possible, and requested that it provide EPA with a schedule for completing these submittals. This letter cautioned that EPA would, within the near future, evaluate the Commonwealth's schedule; and that if EPA considered the schedule insufficiently expeditious, EPA would consider beginning the process under CAA section 179(a)(1), described below, of sanctioning Pennsylvania for failing to make the required submittals.

The EPA regional offices and state officials discussed the states' progress, and the states developed schedules for completing the Phase I requirements. Although EPA recognizes the continued progress states are making in developing the required SIPs, EPA believes that in most cases, the schedules presented by the states are not sufficiently expeditious for the states to be considered in substantial compliance with the Phase I deadlines.

The 1990 Amendments establish specific consequences if EPA finds that a state has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provision. Section 179(a) sets forth four findings that form the basis for application of a sanction. The first finding, that a state has failed to submit a plan or one or more elements of a plan required under the CAA, is the finding relevant to this rulemaking.

II. Final Action

EPA is finding that Pennsylvania has failed to make the required SIP submissions for the Pennsylvania portion of the Philadelphia severe ozone nonattainment area. The required SIP element that Pennsylvania has failed to submit is the enforceable SIP commitment to adopt any additional rules needed to complete the requirements for ROP reductions after 1999, and until the attainment date.

If Pennsylvania does not make the required complete submittal within 18 months of the effective date of today's rulemaking, pursuant to CAA section 179(b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in Pennsylvania portion of the Philadelphia nonattainment area. If Pennsylvania has still not made a complete submission 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the Pennsylvania portion of the Philadelphia nonattainment area, in accordance with 40 CFR 52.31. In addition, CAA section 110(c) provides that EPA promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a).

The 18 month clock will stop and the sanctions will not take effect, if, within, 18 months after the date of the finding, EPA finds that Pennsylvania has made a complete submittal as to each of the SIP elements for which these finding are made. In addition, EPA will not promulgate a FIP if the Pennsylvania makes the required SIP submittal and EPA takes final action to approve the submittal within 2 years of EPA's finding.

At the same time as the signing of this document, the EPA Regional Administrator for Region III is sending a letter to Pennsylvania describing the status of the Commonwealth's effort and this finding in more detail. This letter, and the enclosure, is included in the

docket to this rulemaking. EPA's finding for Pennsylvania is consistent with those findings made for 10 other states and the District of Columbia, described in the July 10, 1996 **Federal Register** (61 FR 36292).

III. Administrative Requirements

A. Rule

EPA is making a finding of Pennsylvania's failure to submit, for the Pennsylvania portion of the Philadelphia ozone nonattainment area, the enforceable commitment to adopt additional rules needed to complete the requirements for ROP reductions after 1999 and until the attainment date.

B. Effective Date Under the Administrative Procedures Act

EPA has issued this action as a rulemaking because EPA has treated this type of action as rulemaking in the past. However, EPA believes that it would have the authority to issue this action as an informal adjudication, and is considering which administrative process—rulemaking or informal adjudication—is appropriate for future actions of this kind. Because EPA is issuing this action as a rulemaking, the Administrative Procedures Act (APA) applies.

Today's action is effective as of May 7, 1997. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. Today's action concerns SIP submissions that are already overdue; and EPA previously cautioned Pennsylvania that the SIP submissions were overdue and that EPA was considering the action it is taking today. In addition, today's action simply starts a ''clock'' that will not result in sanctions against Pennsylvania for 18 months, and that Pennsylvania may ''turn off'' through the submission of the complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice and Comment Under the Administrative Procedures Act

This document is a final agency action, but it is not subject to the notice and comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit and findings of incompleteness regarding SIP submissions or elements of SIP submission requirements, Congress did not intend such findings to be subject to notice and comment rulemaking. However, to the extent such findings are subject to notice and comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a non-substantive finding of failure to submit elements of SIP submissions required by the Clean Air Act. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency sources from the critical substantive review of complete SIPs. See 58 FR 51270, 51272, n.17 (Oct. 1, 1993); 59 FR 39832, 39853 (Aug. 4, 1994).

D. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

E. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'' or UMRA), signed into law on March 22, 1995, EPA undertakes various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector; or to state, local or tribal governments in the aggregate.

In addition, under the Unfunded Mandates Act, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed, under section 203 of the UMRA, a small government agency plan.

EPA has determined that today's action is not a Federal mandate. The various CAA provisions discussed in this notice require the states to submit SIPs. This document merely provides a finding that the states have not met those requirements. This document does not, by itself, require any particular action by any state, local or tribal government; or by the private sector. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice and comment rulemaking requirements. Because this action is exempt from such requirements, as described above, it is not subject to the RFA.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the APA, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted, by the effective date of this rule, 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. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2), as amended. As noted above, EPA is issuing this action as rulemaking. There is a question as to whether this action is a rule of ''particular applicability'', under 5 U.S.C. 804(3)(A) of APA as amended by SBREFA—and thus exempt from the congressional submission requirements—because this rule applies only to Pennsylvania. In this case, EPA has decided to err on the side of submitting this rule to Congress, but will continue to consider this issue of the scope of the exemption for rules of ''particular applicability.''

H. Paperwork Reduction Act

This rule does not contain any information collection requirements that require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to Pennsylvania's finding of failure to submit the required SIP elements under the March 2, 1995 phased approach, must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 1997.

Dated: May 7, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

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