

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[PA217-4232; FRL-7845-6]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to the 1-Hour Ozone Maintenance Plan for the Pittsburgh-Beaver Valley Area To Reflect the Use of MOBILE6**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision amends Pennsylvania's ten-year plan to maintain the 1-hour ozone national ambient air quality standard (NAAQS) in the Pittsburgh-Beaver Valley ozone maintenance area (the Pittsburgh area). The maintenance plan is being amended to revise the volatile organic compound (VOC) and nitrogen oxides (NO<sub>x</sub>) motor vehicle emission budgets (MVEBs) to reflect the use of MOBILE6. The intended effect of this action is to approve a SIP revision that will better enable the Commonwealth of Pennsylvania to maintain attainment of the 1-hour ozone NAAQS in the Pittsburgh area. This action is being taken in accordance with the requirements of the Clean Air Act.

**DATES:** *Effective Date:* This final rule is effective on January 10, 2005.

**ADDRESSES:** 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; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Larry Budney, (215) 814-2184, or by e-mail at [budney.larry@epa.gov](mailto:budney.larry@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On October 19, 2001 (66 FR 53094), EPA redesignated the Pittsburgh area to attainment for the 1-hour ozone NAAQS and approved the maintenance plan submitted by the Pennsylvania

Department of Environmental Protection (DEP) as a revision to the Pennsylvania SIP. The Pittsburgh area consists of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties. The approved maintenance plan demonstrates that the area will maintain the 1-hour ozone NAAQS for ten years from the date of its approval (*i.e.*, through 2011). The maintenance plan includes VOC and NO<sub>x</sub> emission inventories for all (point, area, highway and non-road mobile) source sectors for the years 1990, 1999, 2007 and 2011. The highway, or on-road, portion of the mobile inventories also constitute the MVEBs for each year. Those MVEBs are to be used when performing analyses of transportation plans, programs and projects to demonstrate conformity. The MVEBs in the maintenance plan approved on October 19, 2001 are based upon the MOBILE5 emissions model.

On April 22, 2004, the Pennsylvania Department of Environmental Protection (PADEP) submitted a formal revision to its SIP, amending the Pittsburgh area maintenance plan. On July 1, 2004 (69 FR 39854), EPA published a direct final rule approving that SIP revision and a companion proposed rule providing opportunity for public comment (69 FR 39892). A brief summary of Pennsylvania's April 22, 2004 SIP revision submittal is provided in Section II. A detailed description of Pennsylvania's submittal and EPA's rationale for its approval were provided in the July 1, 2004 direct final rule and will not be restated here. During the public comment period, EPA received adverse comments on its proposed approval of the SIP revision. The comments necessitated EPA's withdrawal of the direct final rule before its effective date. That withdrawal was published in the **Federal Register** on August 5, 2004 (69 FR 47366). A summary of the comments and EPA's response are provided in Section III.

**II. Summary of SIP Revision**

The April 22, 2004 SIP revision amends the Pittsburgh area's ten-year maintenance plan for the 1-hour ozone NAAQS. The maintenance plan is being amended to revise the highway mobile source emissions inventory and, therefore, the MVEBs to reflect the use of the MOBILE6 emissions model. The following table presents the revised MVEBs for the Pittsburgh area based upon MOBILE6. Emissions are presented in tons per Summer day:

	2004	2007	2011
VOC .....	74.03	60.42	45.68

	2004	2007	2011
NO <sub>x</sub> .....	140.63	110.37	77.09

**III. Summary of Comments Received and EPA Response**

EPA received timely adverse comments from one commenter, a private citizen from the State of New Jersey.

*Comments:* The commenter states that air pollution transported east from power plants and manufacturing facilities in Pennsylvania is detrimental to the health of citizens in New Jersey, New York and other states. The commenter further states that due to the impact of its transported air pollution and, specifically, power plant emissions on other states, Pennsylvania must be held to the highest standards. The commenter also questions whether the existing standards are high enough.

*EPA Response:* The comments regarding transported emissions from power plants and manufacturing facilities located in Pennsylvania to New Jersey, New York and other states, are not germane to EPA's approval of a revision to the Pittsburgh area maintenance plan to amend the onroad mobile emissions inventory and MVEBs to reflect the use of the updated MOBILE6 emissions model. Nor is the question as to whether the emission standards for power plants located in Pennsylvania are stringent enough germane to the approval of this SIP revision. This SIP revision only changes the mobile source emission inventories and budgets to reflect the current updated mobile source emissions estimation model. It makes no change to the emissions estimates or control measures applicable to stationary sources, including power plants and manufacturing facilities. The SIP as a whole, taking into account both the previously existing stationary source emissions and controls and the revised mobile source emissions and controls, continues to demonstrate maintenance for the required ten year period, as explained below. Thus, EPA concludes that control levels for both stationary sources and mobile sources in the Pittsburgh area are sufficient to demonstrate maintenance of the 1-hour standard in the area. In addition, the Pittsburgh area is in compliance with all applicable SIP-approved requirements relating to controls designed to prevent adverse impacts of transported pollution on downwind areas. In addition to reasonably available control technology requirements, the Commonwealth has adopted and is implementing additional "post RACT requirements" to reduce

seasonal NO<sub>x</sub> emissions in the form of a NO<sub>x</sub> cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the Ozone Transport Region. That regulation was approved as a SIP revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted 25 Pa Code Chapter 145 to satisfy Phase I of the NO<sub>x</sub> SIP call. That regulation was approved as a SIP revision on August 21, 2001 (66 FR 43795).

In evaluating the Commonwealth's SIP revision, EPA has confirmed that the use of the MOBILE6 model has been properly conducted by the PADEP, that the MVEBs have been clearly identified in the maintenance plan, and that the amended maintenance plan for the Pittsburgh area continues to demonstrate modeling to demonstrate maintenance of the 1-hour NAAQS for ozone through 2011. Therefore, EPA has determined that the amendments to the Pittsburgh area's maintenance plan for the 1-hour ozone NAAQS are approvable.

#### IV. Final Action

EPA is approving Pennsylvania's April 22, 2004 SIP revision to amend the Pittsburgh area's maintenance plan for the 1-hour ozone NAAQS to reflect the use of the updated MOBILE6 emissions model. The revised maintenance plan for the Pittsburgh-Beaver Valley area continues to demonstrate maintenance of the 1-hour NAAQS for ozone through 2011.

#### V. 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 February 8, 2005. 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 a revision to the Pittsburgh-Beaver Valley area's maintenance plan for the 1-hour ozone NAAQS 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 24, 2004.

**Donald S. Welsh,**

*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 NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(226) to read as follows:

#### § 52.2020 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(226) Revisions to Pennsylvania's 1-hour ozone maintenance plan for the Pittsburgh-Beaver Valley area to revise the highway mobile emissions and the motor vehicle emission budgets to reflect the use of MOBILE6. These revisions were submitted by the Commonwealth of Pennsylvania's Department of Environmental Protection on April 22, 2004.

(i) Incorporation by reference.

(A) Letter of April 22, 2004 from the Pennsylvania Department of Environmental Protection transmitting a revision to Pennsylvania's 1-hour ozone maintenance plan for the Pittsburgh-Beaver Valley area.

(B) Document entitled, "Revision to the State Implementation Plan for the Pittsburgh-Beaver Valley Area—Revised Highway Vehicle Emissions Budgets" dated April, 2004. The document revises the Pittsburgh-Beaver Valley 1-hour ozone maintenance plan, establishing revised motor vehicle emission budgets of 74.03 tons/day of volatile organic compounds (VOC) and 140.63 tons/day of nitrogen oxides (NO<sub>x</sub>) for 2004, 60.42 tons/day of VOC and 110.37 tons/day of NO<sub>x</sub> for 2007, and 45.68 tons/day of VOC and 77.09 tons/day of NO<sub>x</sub> for 2011.

(ii) Additional Material. Remainder of the Commonwealth's April 22, 2004 submittal pertaining to the revision listed in paragraph (c)(226)(i) of this section.

[FR Doc. 04-27167 Filed 12-9-04; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-2004-0392; FRL-7688-6]

**Multiple Chemicals; Extension of Tolerances for Emergency Exemptions**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

**DATES:** This regulation is effective December 10, 2004. Objections and requests for hearings must be received on or before February 8, 2005.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY**

**INFORMATION.** EPA has established a docket for this action under Docket ID number OPP-2004-0392. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 South Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** See the table in this unit for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

Pesticide/CFR cite	Contact person
Azoxystrobin; 40 CFR 180.507;	Libby Pemberton Sec-18-Mailbox @epamail.epa.gov (703) 308-9364
Cypermethrin; 40 CFR 180.418; Desmedipham; 180.353; Diuron; 40 CFR 180.106; Propiconazole; 40 CFR 180.434; Sodium chlorate 40 CFR 180.1020	
Myclobutanil; 180.443	Barbara Madden Sec-18-Mailbox @epamail.epa.gov (703) 305-6463
Sulfentrazone; 180.498	Andrew Ertman Sec-18-Mailbox @epamail.epa.gov (703) 308-9367

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

**II. Background and Statutory Findings**

EPA published final rules in the **Federal Register** for each chemical/commodity listed. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104-170) was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for this year's growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each chemical/commodity. In doing so, EPA considered the safety standard in section 408(b)(2) of the