

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,