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.

II. 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. Today's determination does not create any new requirements, but suspends the indicated requirements. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

III. 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 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 does not create any new requirements, but suspends the indicated requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

IV. 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).

V. 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 August 12, 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Administrator's decision to issue a determination that the Richmond area has attained the NAAQS for ozone and that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act are not applicable to this area as long as this area continues to attain the ozone NAAQS will be based on whether it meets the requirements of section 110(a)(2) (A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: June 5, 1997.

W. Michael McCabe,

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. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2428 is added to read as follows:

§ 52.2428 Control Strategy: Carbon monoxide and ozone.

Determination—EPA has determined that, as of July 28, 1997, the Richmond ozone nonattainment area, which consists of the counties of Charles City, Chesterfield, Hanover and Henrico, and of the cities of Richmond, Colonial Heights and Hopewell, has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to this area for so long as the Richmond ozone nonattainment area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Richmond ozone nonattainment area, these determinations shall no longer apply.

[FR Doc. 97–15567 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5831–9]

Final Rule Making Findings of Failure To Submit Required State Implementation Plan: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action in making a finding, pursuant to sections 179(a)(1) and 110(k) of the Clean Air Act (CAA or Act), as amended in 1990 (Pub. L. No. 101–549, November 15, 1990), 42 U.S.C. 7509(a)(1) and 7410, for the state of Oregon. The EPA has determined that Oregon has failed to submit a state implementation plan (SIP) for particulate matter less than or equal to 10 microns (PM–10) as required under the provisions in the Act for the Medford-Ashland nonattainment area. This rule addresses the requirement under section 189(a)(2)(A) of the Act that each state shall submit the SIP required under section 189(a)(1) within one year of the date of the enactment of the Clean Air Act Amendments of 1990 (i.e., by November 15, 1991) for areas designated nonattainment for PM–10 under section 107(d)(4). Other provisions required under section 189(a)(1)(A) were due at a later date (i.e., provisions relating to new source review).

This action triggers the 18-month time clock for mandatory application of sanctions in the Medford-Ashland PM–10 nonattainment area under the Act. This action is consistent with the CAA mechanism for assuring SIP submission.

EFFECTIVE DATE: June 13, 1997.

ADDRESSES: Copies of the state's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101; EPA Oregon Operations Office, 811 SW Sixth Avenue, Third Floor, Portland, Oregon 97204; and the Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6510.

SUPPLEMENTARY INFORMATION:

I. Background

A. SIP Elements Due November 15, 1991

The area within the Medford-Ashland, Oregon, Air Quality Maintenance Area was designated nonattainment for PM–10 and classified as moderate under Sections 107(d)(4)(B) and 188(a) of the CAA, upon enactment of the Clean Air Act Amendments (CAAA) of 1990.[1] See 56 FR 56694 (November 6, 1991) and 40 CFR 81.338.

The air quality planning requirements for moderate PM–10 nonattainment areas are set out in Subparts 1 and 4 of Title I of the Act.[2] EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). The General Preamble provides a detailed discussion of EPA's interpretation of the Title I requirements.

Those states containing initial moderate PM–10 nonattainment areas (those areas designated nonattainment under Section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that Reasonably Available Control Measures (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of Reasonably Available Control Technology) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate Reasonable Further Progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See Sections 172(c), 188, and 189 of the Act.

States with initial moderate PM–10 nonattainment areas were required to: (1) submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see Section 189(a)); and (2) submit contingency measures by November 15, 1993, which were to become effective without further action by the state or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline (see Section 172(c)(9) and 57 FR 13543–13544). Oregon has made submittals in response to both of the above described requirements. EPA intends to address the submittal containing the new source review permit program in a separate action.

B. State Withdrawal of November 15, 1991, SIP

On November 15, 1991, to address the CAAA of 1990, Oregon submitted a PM–10 nonattainment area SIP for the Medford-Ashland PM–10 nonattainment area. EPA determined the submittal to be complete on April 10, 1992. However, because of various problems with the submittal that EPA and the state were working to resolve, EPA had, to date, not taken formal action on the nonattainment area attainment plan.

On January 6, 1997, EPA received a notification from the Oregon Department of Environmental Quality (ODEQ) that it was withdrawing the Medford-Ashland PM–10 SIP. The state requested that the attainment plan be withdrawn effective immediately.

As indicated in its January 6, 1997, letter, ODEQ intends to re-submit a revised attainment plan, a complete maintenance plan, and a request to redesignate the area to attainment by March 1998. EPA notes that significant improvement has been made in air quality in the Medford-Ashland PM–10 nonattainment area. Based on current air quality data, the area has attained the annual and 24-hour PM–10 NAAQS at the area's ambient monitoring sites. However, the area lacks a technical demonstration indicating attainment of the NAAQS throughout the airshed as required under the CAA.

C. Finding of Failure To Submit

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 section 179(a)(1) of the CAA, 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.

Due to the withdrawal by the state of the Medford-Ashland PM–10 attainment plan, the statutory requirement to submit such a plan for the area is no longer satisfied. Therefore, EPA finds that the state of Oregon has failed to make a SIP submission for the Medford-Ashland PM–10 nonattainment area as required pursuant to section 189(a)(2)(A) of the CAA.

If the state does not correct this deficiency, i.e., by submitting a complete plan as required by the Act, within 18 months of the effective date of today's rulemaking, pursuant to section 179(a) of the CAA and 40 CFR 52.31, the offset sanction identified in section 179(b) of the CAA will be applied in the Medford-Ashland PM–10 nonattainment area. If the state still has not made a complete submission 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31. In addition, section 110(c) of the Act provides that EPA promulgate a federal implementation plan (FIP) no later than two years after a finding under section 179(a) if prior to that time the EPA has not approved the submission correcting the deficiency.

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 the state has made a

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (''the Act''). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. Sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally, and Subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or may conflict. EPA has attempted to clarify the relationship among these provisions in the ''General Preamble'' and, as appropriate, in today's notice and supporting information.

complete submittal as to each of the SIP elements for which these findings are made. In addition, EPA will not promulgate a FIP if the state makes the required SIP submittal and EPA takes final action to approve the submittal within two years of EPA's finding.

II. Final Action

A. Rule

Today, EPA is making a finding of failure to submit an attainment plan for the Medford-Ashland, Oregon, PM–10 nonattainment area. Specifically, EPA is making a finding that Oregon has not submitted a plan satisfying the requirement under section 189(a)(2)(A) of the Act. This section requires that each state submit a plan that includes certain provisions required under section 189(a)(1) within one year of the date of enactment of the Clean Air Act Amendments of 1990 (i.e., by November 15, 1991) for areas designated nonattainment for PM–10 under section 107(d)(4). Other provisions required under section 189(a)(1)(A) were due at a later date (i.e., provisions relating to new source review). See section 189(a)(2)(A).

B. Effective Date Under the Administrative Procedures Act

The Administrative Procedures Act (APA) applies to this rulemaking action. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect sooner than 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 a SIP submission that is already overdue. On February 11, 1997, EPA notified the state that EPA was considering the action it is taking today. Consequently, the state has been on notice for some time that today's action was pending. In addition, today's action simply starts a ''clock'' that will not result in sanctions against the state for 18 months, and that the state may ''turn off'' through the submission of a complete SIP submittal. These reasons support establishing an effective date that is earlier than 30 days after the date of publication. Therefore, today's action will be effective June 13, 1997.

C. Notice-and-Comment Under the Administrative Procedures Act

This rule is a final agency action, but 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 nonsubstantive 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 resources 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).

III. Administrative Requirements

A. Executive Order 12866

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

B. 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 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 today's action is not a Federal mandate. The various CAA provisions discussed in this rule require the state to submit SIPs. This rule merely provides a finding that the state did not meet those requirements. This rule does not, by itself, require any particular action by the 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.

C. 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 of any proposed or final rule 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.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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. 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 August 12, 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 may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2), 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter.

Dated: May 8, 1997.

Chuck Clarke,

Regional Administrator.

[FR Doc. 97–15566 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5839–2]

RIN 2060–AH07

National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).