

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).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Reporting recordkeeping requirements.

*40 CFR Part 60*

Environmental protection, Air pollution control.

Dated: April 18, 1997.

**Jack W. McGraw,**  
*Acting Regional Administrator.*

Chapter I, title 40 of the Code of Federal Regulations 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 TT—Utah**

2. Section 52.2320 is amended by adding paragraph (c)(37) to read as follows:

**§ 52.2320 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(37) On November 20, 1996, the Governor of Utah submitted a revision to the Utah State Implementation Plan. The submittal included a new Utah regulation which incorporates by reference the Federal new source performance standards in 40 CFR part 60, as in effect on March 12, 1996.

(i) Incorporation by reference.

(A) Utah Air Conservation Regulations, R307–18–1. “Standards of Performance for New Stationary Sources (NSPS),” effective September 9, 1996, printed October 19, 1996.

**PART 60—[AMENDED]**

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, and 7602.

**Subpart A—General Provisions**

2. In § 60.4(c), the table for “Delegation Status of New Source Performance Standards [(NSPS) for Region VIII]” is amended by adding to the end of the table an entry for “WWW—Municipal Solid Waste Landfills” to read as follows:

**§ 60.4 Address.**

\* \* \* \* \*

(c) \* \* \*

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS [(NSPS) for Region VIII]

	SUB-PART	CO	MT <sup>1</sup>	ND <sup>1</sup>	SD <sup>1</sup>	UT <sup>1</sup>	WY
WWW Municipal Solid Waste Landfills .....	*			*		*	(*)

<sup>1</sup> Indicates approval of New Source Performance Standards as part of the State Implementation Plan (SIP).  
(\* ) Indicates approval of State regulations.

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BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[PA036-4060; FRL-5819-8]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation, Maintenance Plan, and Emissions Inventories for Reading; Ozone Redesignations Policy Change**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a redesignation request for the Reading, Pennsylvania ozone nonattainment area, and State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The revisions consist of a maintenance plan and 1990 base year inventories for the Reading area (Berks County, Pennsylvania). In addition, for the

purposes of redesignation, EPA is proposing to approve Pennsylvania’s legislative authority to adopt and implement a vehicle inspection and maintenance program. These actions are being taken under sections 107 and 110 of the Clean Air Act. Furthermore, EPA is changing its policy on redesignation requirements for ozone nonattainment areas in the Ozone Transport Region (OTR). The policy change makes redesignation requirements for areas in the OTR consistent with requirements for areas outside the OTR by interpreting meeting the requirements under section 184 of the Clean Air Act as not being a prerequisite for the purpose of redesignation. The policy does not affect obligations required under other sections of the Act.

**EFFECTIVE DATE:** This final rule is effective on June 6, 1997.

**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; the

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Maria A. Pino, (215) 566-2181, at the EPA Region III office address listed above, or via e-mail at pino.maria@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

**SUPPLEMENTARY INFORMATION:** On October 10, 1996 (61 FR 53174), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of the redesignation request, maintenance plan, and 1990 volatile organic compound (VOC), oxides of nitrogen (NO<sub>x</sub>), and carbon monoxide (CO) base year inventories for the Reading area, contingent upon Pennsylvania’s correction of all deficiencies contained in the maintenance plan and

inventories. In that same **Federal Register** document, EPA also proposed, in the alternative, to disapprove the redesignation request, maintenance plan, and base year inventories for the Reading area, if Pennsylvania does not correct the deficiencies. In addition, for the purposes of redesignation, EPA proposed approval of Pennsylvania's legislative authority to adopt and implement a vehicle inspection and maintenance program. Finally, EPA proposed a change in its policy on redesignation requirements for ozone nonattainment areas in the OTR.

Public comments were received on the Notice of proposed rulemaking (NPR), and are addressed below in the **Response to Comments** section of this document.

**Background**

Pennsylvania formally requested that EPA redesignate the Reading area on November 12, 1993. Pennsylvania submitted the maintenance plan and 1990 VOC, NO<sub>x</sub>, and CO base year inventories for the Reading ozone nonattainment area as formal SIP revisions on November 12, 1993. Pennsylvania amended the maintenance plan on January 13, 1994 and May 12, 1995. Most recently, Pennsylvania submitted a revised maintenance plan and revised inventories on January 28, 1997.

On October 10, 1996, EPA published a proposed approval of the redesignation request, maintenance plan, and inventories, contingent upon Pennsylvania correcting deficiencies identified in its submittals (61 FR 53174). On January 28, 1997, Pennsylvania submitted a maintenance plan and 1990 base year inventories for the Reading area, which completely supersede the previous submittals and address the requirements of EPA's proposed approval.

As stated in EPA's proposed approval of the Reading area redesignation request, maintenance plan, and 1990 base year inventories (61 FR 53174), in order to correct the deficiencies that exist in the redesignation request, maintenance plan, and 1990 base year emission inventories, Pennsylvania was required to submit the following to EPA by February 3, 1997:

(1) Adequate technical support to justify the projected emission inventories (2007 and 2004), including

growth factors (not surrogates), sample calculations for point, area, and mobile sources, and mobile source emissions modeling sample runs;

(2) Technical support to justify the 1990 base year emission inventories submitted in the redesignation request. This support must include sample calculations for point, area, and mobile sources, a list of all point sources, and mobile source emissions modeling;

(3) Complete and approvable reasonably available control technology (RACT) SIP revisions for all applicable sources (all VOC and NO<sub>x</sub> sources with the potential to emit 100 tons per year (TPY) or more in the Reading area);

(4) A declaration that all required RACTs have been submitted; and

(5) SIP revisions to the Reading area maintenance plan so that it provides adequate contingency measures. The plan must contain a list of measures to be adopted and a schedule and procedures for adoption and implementation. The plan must also identify specific triggers used to determine when the contingency measures need to be implemented and a schedule for implementation of the contingencies in the event that they are implemented. The list of contingency measures must include a basic vehicle inspection and maintenance (I/M) program, in the event that enhanced I/M requirement under section 184 is not implemented. The plan must contain a schedule for implementation of a basic I/M program that complies with 40 CFR 51.372(c)(4). This schedule will be triggered when Pennsylvania chooses to implement basic I/M as a contingency measure.

**EPA's Evaluation of Pennsylvania's January 28, 1997 SIP Submittal**

EPA has determined that Pennsylvania's January 28, 1997 SIP submittal has adequately addressed the five requirements listed above, and thereby corrected all deficiencies that previously existed in Pennsylvania's maintenance plan and 1990 VOC, NO<sub>x</sub>, and CO inventories for the Reading ozone nonattainment area. A brief description of how Pennsylvania's submittal addresses the five requirements is provided below.

*(1) Projected Emission Inventories*

Pennsylvania's January 28, 1997 revision to the maintenance plan for the

Reading area includes adequate technical support to justify the projected emission inventories (2007 and 2004), including growth factors (not surrogates), sample calculations for point, area, and mobile sources, and mobile source emissions modeling sample runs.

*(2) 1990 Base Year Emission Inventories*

Pennsylvania's revised maintenance plan for the Reading area contains adequate technical support to justify the 1990 base year emission inventories for the Reading area. The support materials include sample calculations for point, area, and mobile sources, a list of all point sources, and mobile source emissions modeling.

Pennsylvania developed an attainment emissions inventory, for the year 1992, to identify the level of emissions sufficient to achieve the ozone standard. The revised maintenance plan contains comprehensive inventories for the 1990 base year, as well as the years 1992, 2004 and 2007, prepared according to EPA guidance for ozone precursors, VOCs, NO<sub>x</sub>, and CO emissions to demonstrate attainment and maintenance. The inventories include area, stationary, non-road mobile and mobile sources. The 1992 inventory is considered representative of attainment conditions because the standard was not violated during 1992, and because that year was one of the three years upon which the attainment demonstration was based. The plan includes a demonstration that emissions will remain below the 1992 attainment year levels for a 10 year period (2007) and provides an interim-year inventory, as required by EPA guidance, for the year 2004. Pennsylvania has demonstrated that emissions for ozone precursors through the year 2007 will remain below the 1992 attainment year levels because of permanent and enforceable measures, while allowing for growth in population and vehicle miles traveled (VMT).

The following table summarizes the average peak ozone season weekday VOC, NO<sub>x</sub>, and CO emissions for the major anthropogenic source categories for the 1990 base year inventory, the 1992 attainment year inventory, and the projected 2004 and 2007 inventories for the Reading area.

	Emissions (tons per day)	1990	1992	2004	2007
<b>VOCs</b>					
Point sources .....		12.41	12.01	11.73	12.03
Area sources .....		25.96	25.13	21.47	20.96

Emissions (tons per day)	1990	1992	2004	2007
Mobile sources .....	25.29	22.59	19.36	19.00
Total .....	63.66	59.73	52.56	51.99
<b>NO<sub>x</sub></b>				
Point sources .....	25.60	25.20	21.65	22.40
Area sources .....	2.63	2.65	2.78	2.82
Mobile sources .....	29.54	28.78	25.57	25.43
Total .....	57.77	56.63	50.00	50.65
<b>CO</b>				
Point sources .....	9.12	8.55	7.83	7.71
Area sources .....	2.65	2.66	2.74	2.76
Mobile sources .....	252.74	225.22	165.52	166.20
Total .....	264.51	236.43	176.09	176.67

(3) RACT

Pennsylvania has submitted RACT SIP revisions for all major sources subject to RACT in the Reading area. At the time of EPA's proposed approval, on October 10, 1996, EPA had identified four sources for which Pennsylvania was required to submit RACT SIPs. Subsequently, EPA identified a fifth source as being subject to RACT. However, Pennsylvania's revision to the Reading area maintenance plan indicates that two of these sources are

subject to federally enforceable state operating permit conditions that limit their potential emissions to less than 100 tons per year NO<sub>x</sub>. Therefore, EPA considers these sources to be no longer subject to RACT.

On March 20, 1997, Pennsylvania withdrew the NO<sub>x</sub> portion of its RACT SIP revision for Lucent Technologies (AT&T)—Reading. This source is subject to federally enforceable state operating permit conditions that limit its potential emissions to less than 100 tons per year NO<sub>x</sub>. Therefore, EPA considers this

source to be subject to VOC RACT, but not NO<sub>x</sub> RACT.

Pennsylvania submitted RACT SIP revisions for the newly identified source on January 21, 1997. Pennsylvania submitted RACT SIP revisions for the remaining two RACT sources on January 28, 1997.

Furthermore, as shown in the following tables, EPA has approved all RACT SIPs for the Reading area. Thus, Pennsylvania has fulfilled its moderate area RACT obligation under section 182 for the Reading area.

SOURCE	Pennsylvania submittal date	EPA approval signature	EPA approval publication
<b>VOC RACT</b>			
W.R. Grace and Co.—FORMPAC Div .....	9/20/95	4/19/96	5/16/96 62 FR 24706
Glidden Co.—Reading .....	6/10/96	4/1/97	4/18/97
Garden State Tanning, Inc.—Fleetwood .....	8/1/95	4/1/97	4/18/97
Brentwood Industries, Inc.—Reading .....	5/2/96	3/31/97	4/18/97
Metropolitan Edison Co. (MetEd)—Titus .....	3/27/95	3/31/97	4/18/97
Lucent Technologies (AT&T)—Reading .....	8/1/95	4/1/97	4/18/97
Morgan Corp.—Morgantown .....	11/15/95	3/31/97	4/18/97
Quaker Maid (Schrock Cabinet Group) .....	5/2/96	3/31/97	4/18/97
North American Fluoropolymers Co. ....	3/21/96	3/31/97	4/18/97
Maier's Bakery—Reading .....	11/15/95	3/31/97	4/18/97
<b>NO<sub>x</sub> RACT</b>			
Metropolitan Edison Co (MetEd)—Titus .....	3/27/95	3/31/97	4/18/97
Allentown Cement Co, Inc.—Evansville .....	11/15/95	3/31/97	4/18/97
Texas Eastern Transmission Corp.—Bechtelsville .....	1/28/97	3/31/97	4/18/97
Texas Eastern Transmission Corp.—Bernville .....	2/3/97	3/31/97	4/18/97
Carpenter Technology Corp.—Reading .....	1/21/97	3/31/97	4/18/97
Carpenter Technology Corp.—Reading .....	1/21/97	3/31/97	4/18/97

(4) RACT Declaration

In the cover letter for Pennsylvania's January 28, 1997 submittal, which transmitted amendments to its

maintenance plan and 1990 base year inventories for the Reading area. Pennsylvania stated that all required RACTs for the Reading area "will be submitted by February 3, 1997." In fact,

all required RACT SIPs were submitted to EPA as SIP revisions by January 28, 1997.

*(5) Contingency Measures*

Pennsylvania has revised the maintenance plan for the Reading area to include appropriate triggers for its contingency measures. When the contingency plan is triggered, Pennsylvania has committed to adopt within one year, or as expeditiously as practicable, one or more contingency measures. The contingency measures will be triggered if the area experiences a violation of the ozone standard. In addition, Pennsylvania will develop a periodic inventory every 3 years. If a periodic inventory exceeds the attainment year inventory (1992) by 10 percent or more, Pennsylvania will evaluate the control measures to see if any contingency measure should be implemented. Finally, a contingency measure can be triggered if the Reading area experiences an exceedance of the ozone standard.

Pennsylvania's revised maintenance plan for the Reading area includes, as a contingency measure, the low enhanced I/M program that Pennsylvania submitted to EPA on March 22, 1996. Pennsylvania submitted this low enhanced program under the November 28, 1995 National Highway System Designation Act (NHSDA). EPA's final conditional interim approval of the Pennsylvania's I/M program was published in the **Federal Register** on January 28, 1997 (62 FR 4004). Pennsylvania estimates that this program will result in a VOC emission reduction of 1.5 tons per day and a NO<sub>x</sub> emission reduction of 0.2 tons per day in the Reading area. It should be noted that, although it has been listed as a contingency measure, Pennsylvania intends to fully implement this low enhanced program by November 15, 1999. EPA considers the *actual* implementation of low enhanced I/M in the Reading area to be environmentally better than a contingency measure that *may* be implemented, if the contingency plan is triggered.

Pennsylvania's revised maintenance plan for the Reading area includes, as a second contingency measure, improved rule effectiveness. In the contingency plan, Pennsylvania has included a list of rule effectiveness matrix activities that Pennsylvania intends to implement to achieve enhance rule compliance, and a schedule for implementation of these activities. Facilities that fall under the Standard Industrial Classification (SIC) codes 26, 27, 30, 31, 34, and 51 will be effected by this contingency measure, should it be triggered. Pennsylvania estimates that this measure, if triggered, would result in a VOC emission

reduction of 1.05 tons per day in the Reading area.

Other specific provisions of the maintenance plan and 1990 base year inventories, and the rationale for EPA's action are explained in the NPR and the technical support documents that EPA prepared for this action, and will not be restated here.

**Response to Comments**

EPA received four comment letters on its proposed approval and proposed disapproval of the Reading area redesignation request, maintenance plan, and 1990 base year inventories. Comments were received from (1) The Berks County Planning Commission (BCPC), (2) The Berks County Board of Commissioners (BCBC) and Berks County Industrial Development Authority (BCIDA), (3) The Pennsylvania Chemical Industry Council (PCIC), and (4) The Clean Air Council (CAC).

*Comment #1*

BCPC, BCBC, BCIDA, and PCIC support EPA's proposed approval and state that the Commonwealth is in the process of meeting all applicable redesignation criteria for the Reading area. They also assert that the fact that the Reading area has met the ozone standard since 1991 should be the overriding consideration for EPA. BCPC, BCBC, and BCIDA contend that the remaining four redesignation criteria under section 107(d)(3)(E) of the Clean Air Act (the Act) are "secondary requirements." They go on to claim that delaying the redesignation of the Reading area "will prohibit economic growth and development in the Berks County Region."

**EPA Response**

Under section 107(d)(3)(E) of the Act, all five of the following criteria must be met for an ozone nonattainment area to be redesignated to attainment:

1. The area must meet the ozone NAAQS.
2. The area must meet applicable requirements of section 110 and Part D of the Act.
3. The area must have a fully approved SIP under section 110(k) of the Act.
4. The area must show that its experienced improvement in air quality is due to permanent and enforceable measures.
5. The area must have a fully approved maintenance plan under section 175A of the Act, including contingency measures.

The second, third, fourth, and fifth criteria are as important as the first.

These four criteria are needed to assure that any improvement in air quality is due to permanent and enforceable measures, and not year-to-year fluctuations in emissions and/or meteorological conditions. They also ensure that the improvement in air quality will be maintained, and any future violations of the ozone standard will be addressed as expeditiously as possible. EPA cannot approve a redesignation request unless all five criteria are met. As stated above, EPA believes that the Reading area has now met all five criteria. Therefore, EPA is approving the Commonwealth's redesignation request and maintenance plan for the Reading area.

*Comment #2*

BCPC, BCBC, and BCIDA support EPA's proposed policy change that would make redesignation requirements for areas in the OTR consistent with requirements for areas outside the OTR by interpreting meeting the requirements under section 184 of the Act as not being a prerequisite for the purpose of redesignation.

**EPA Response**

EPA agrees with this comment, for the reasons stated in its proposal and in the further responses to comments set forth below. In addition, EPA notes that, at this time, Pennsylvania has made submissions addressing all of its section 184 requirements for the Reading area, and has received or is awaiting their approval by EPA.

As an alternative ground for approving the Reading area redesignation request, EPA has concluded that, even if the section 184 requirements were somehow deemed "applicable" requirements for purposes of section 107(d)(3)(E), EPA is empowered to create a de minimis exception for them. Because the Reading area does not rely upon them to demonstrate attainment and maintenance, and because these requirements remain in effect after redesignation, EPA has determined that requiring full approval of them prior to redesignation would be of trivial environmental significance. Under *Alabama Power v. Costle*, 636 F.2d 323, 360-61 (D.C. Cir. 1979), EPA may establish de minimis exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no value environmentally. Here, EPA finds that there is little or no benefit to insisting that the section 184 requirements be met prior to redesignation, since they remain in force regardless of the area's

redesignation status, and are unrelated to it.

EPA notes, moreover, that the Reading area has already fulfilled most of its obligations under section 184. It has satisfied the RACT requirements. Only two limited aspects of Reading's section 184 requirements are subject to further undertakings: an element of its new source review (NSR) program, and, certain conditions related to its low enhanced I/M program. With respect to I/M, Pennsylvania has obtained final conditional interim approval of its low enhanced I/M program. With respect to NSR, on April 22, 1997, the Regional Administrator of EPA, Region III signed a proposed limited approval of Pennsylvania's February 4, 1994 NSR submittal. EPA has proposed to grant limited approval of this SIP revision because it strengthens the current SIP's NSR requirements, and because it limits the use of prior shutdown credits in a manner that is consistent with EPA's NSR reform rulemaking, which was proposed for approval in the July 23, 1996 **Federal Register**. See 61 FR 38249. This NSR reform rulemaking proposes to lift the current prohibition on the use of prior shutdown credits. The Pennsylvania SIP revision limits, but does not prohibit the use of prior shutdown credits. Current NSR program requirements prohibit the use of prior shutdown credits. However, it is important to note that Pennsylvania's existing NSR SIP rule also does not prohibit the use of prior shutdown credits, and that the Pennsylvania SIP revision is generally consistent with EPA's proposed NSR reform rulemaking. Therefore, EPA has proposed limited approval of this SIP revision based upon the fact that it strengthens the existing SIP's NSR requirements, and upon its conformance with EPA's proposed NSR reform rulemaking. When EPA promulgates the NSR reform rule, it will assess Pennsylvania's SIP for conformance with that promulgated version.

#### *Comment #3*

CAC asserts that EPA's proposed policy change that would interpret meeting the requirements under section 184 of the Act as not being a prerequisite for the purpose of redesignation "would flatly contravene section 107(d)(3)(E)," which requires an area to meet all applicable section 110 and part D requirements before it can be eligible for redesignation. CAC further claims that "EPA lacks discretion to pick and choose among those requirements, imposing some and dispensing with others." CAC maintains that "EPA's proposed policy

contravenes the Act and must not be adopted," and goes on to state that even if the Commonwealth corrects all the deficiencies listed in EPA's proposed approval of the Reading redesignation request, EPA must still deny the redesignation request, "because the Reading area lacks several SIP elements required by Part D and § 110, including those mandated by §§ 184, 172(c)(9), 182(b)(1)(A)(I), and 176(c)."

#### *EPA Response*

As stated in EPA's proposal for this policy change, EPA believes it is reasonable and appropriate to interpret the section 184 requirements as not being applicable requirements for purposes of evaluating a redesignation request, because the requirement to submit these SIP revisions continues to apply to areas in the OTR after redesignation to attainment, and because these control measures are region-wide requirements and do not apply to the Reading area by virtue of the area's nonattainment designation.

With respect to its conclusion that section 184 requirements are inapplicable for purposes of evaluating a redesignation request, EPA has construed applicable requirements as being those that must be satisfied prior to redesignation because they will not remain in force after redesignation, and whose purpose is related to assuring attainment and maintenance of the NAAQS in the area seeking redesignation. EPA has in the past interpreted "applicable requirements" in light of the purposes of the redesignation requirement. The requirements that are applicable for purposes of redesignation are those whose purpose is to assure attainment and maintenance of the NAAQS for the area being redesignated. Section 184 measures are region-wide requirements that do not apply to the Reading area by virtue of its designation. Their purpose is to reduce regional emissions in the OTR, not to assure attainment and maintenance in the area being redesignated.

In addition, the section 184 requirements remain applicable after redesignation, constituting the extra measures that all areas in the OTR, both attainment and nonattainment, must implement to reduce the possibility of transport to areas outside of the area being redesignated. EPA has determined that areas in the OTR, such as the Reading area, may be redesignated whether or not they have met the section 184 requirements at the time of redesignation, since they remain obligated to satisfy them without regard to their designation. Here, the Reading

area has met all applicable requirements for redesignation for areas not in the OTR. For areas in the OTR, section 184 requirements will remain in effect after redesignation, and thus redesignation will not have operated to relieve the Reading area of the obligation to meet them. For that reason, and for the reasons set forth in its proposal EPA has determined that the section 184 requirements are not applicable requirements for the purpose of redesignation.

The rationale for this interpretation is in part analogous to that relied upon and unchallenged with respect to conformity requirements and oxyfuels. See Cleveland Notice of Final Rulemaking 61 FR 20467-20468 (May 7, 1996) and Tampa, Notice of Final Rulemaking, 60 FR 62748, 62741 (December 7, 1995). Because redesignation will not allow these requirements to be evaded, it does not undermine their enforcement or the goals of redesignation.

Moreover, as EPA has set forth above, in its response to Comment #2, even if the section 184 requirements were interpreted to be applicable, EPA is empowered to create an exception to these requirements based upon an analysis that shows that they are of de minimis value as a prerequisite to redesignation. This constitutes a separate and independent ground for concluding that the Reading area is entitled to approval of its request for redesignation.

In reaching its conclusions, EPA is not "picking and choosing" among requirements, but making principled interpretations of what constitutes an applicable requirement or valid exception to a requirement, based upon a reading of the statute.

With respect to EPA's reliance on the determination of attainment in finding that the Reading area has met the requirements for redesignation, the grounds for EPA's interpretation of section 182(b)(1)(A)(I) and 172(c)(9) interpretations were set forth in EPA's May 10, 1995 policy and in the **Federal Register** notices approving the redesignation request of Cleveland, Ohio 61 FR 20458 (May 7, 1996) and Salt Lake City, Utah. The policy was upheld in *Sierra Club v. EPA*, No. 95-9541 (10th Cir. 1996).

#### *Comment #4*

CAC challenges EPA's rationale for its proposed redesignation policy change. In EPA's proposal, the Agency stated that the State remains obligated to adopt section 184 requirements even after redesignation, and would risk sanctions for failure to do so. CAC claims that the

threat of sanctions has not improved the timeliness or quality of SIP revisions submitted by states in the OTR, including Pennsylvania, and that "EPA has seldom followed through" on its threat to impose sanctions in these areas.

#### EPA Response

EPA contends that a state's obligation under the Act to submit all section 184 requirements, established in the Act to address long-range transport of ozone and ozone precursors, coupled with the threat of sanctions for non-submittal or inadequate submittal, is sufficient to ensure that states will fulfill all requirements, even after an area has been redesignated. This is evidenced in the Reading area, where Pennsylvania is in the process of addressing all applicable section 184 requirements that have due dates prior to Pennsylvania's formal redesignation request for the Reading area.

The argument that redesignation provides the incentive for fulfilling these requirements, while the threat of sanctions is not enough of a disincentive, is not persuasive. First, the purpose of redesignation is not to enforce any particular set of requirements, but rather to assure attainment and maintenance of the NAAQS for the area being redesignated. Second, to the extent that, as a side-effect, redesignation provides an ancillary incentive to meet requirements, that incentive is proportionately reduced where an area remains obligated to meet these requirements. As we have noted, the Reading area remains obligated to fulfill the section 184 requirements after redesignation or faces the threat of sanctions or a SIP call.

The commenter has not shown that obtaining approval for redesignation would result in areas shirking their section 184 responsibilities. As set forth above, Pennsylvania has demonstrated that it does not take these requirements lightly. Pennsylvania has submitted its NSR rules, which have received a limited approval from EPA, pending final issuance of EPA's proposed revision of its NSR rules. Pennsylvania has also received conditional interim approval for its enhanced I/M program. Pennsylvania has made its section 184 submissions for areas in the commonwealth designated attainment, as well as those seeking redesignation, thereby demonstrating its willingness to comply with these requirements even in the absence of any incentive to redesignate. Under these circumstances, disapproving the redesignation request would yield no discernible

environmental benefit. Any such benefit would be dependent upon the speculation that denial of redesignation might somehow secure compliance with requirements that have already been substantially completed, and which are enforceable by other means.

**Reasonably Available Control Technology (RACT):** As stated above, Pennsylvania has fulfilled its moderate area RACT obligation under section 182 for the Reading area by submitting complete and approvable RACT SIPs for all sources of VOC and NO<sub>x</sub> with the potential to emit 100 tons per year (TPY) or greater in the area. EPA has approved all of these RACT submittals. Under section 184, Pennsylvania is also obligated to submit RACT SIP revisions for all VOC sources with the potential to emit between 50 and 100 TPY. Only one such source exists in the Reading area, Birchcraft Industries, Inc. This source had the potential to emit 79.2 TPY VOC. However, this source is subject to federally enforceable state operating permit conditions that limit its potential emissions to less than 50 TPY VOC. EPA SIP approved this limit on May 16, 1996 (62 FR 24706). Therefore, EPA considers this source to be no longer subject to RACT. Thus, Pennsylvania has fulfilled its OTR RACT obligation under section 184.

**Vehicle Inspection and Maintenance (I/M):** On March 22, 1996, Pennsylvania submitted a low enhanced I/M program under the November 28, 1995 NHSDA. EPA's final conditional interim approval of the Pennsylvania's I/M program was published in the January 28, 1997 **Federal Register** (62 FR 4004). Pennsylvania intends to fully implement this low enhanced program by November 15, 1999.

**New Source Review (NSR):** On February 4, 1994, Pennsylvania submitted its final NSR regulations to EPA. EPA determined that the submittal was complete on February 28, 1994. On April 22, 1997, EPA's proposed limited approval of Pennsylvania's NSR submittal was signed by the Regional Administrator.

#### Comment #5

CAC contends that EPA's proposed policy change "ignores the rationale offered in the General Preamble" to Title I of the Clean Air Act, which states that an area must meet the applicable requirements of sections 182, 184, and 185 in order to be redesignated (57 FR 13564, April 16, 1992). The General Preamble goes on to say that "contingency measures of the maintenance plan will require, at a minimum, that the measures in place

just before redesignation be implemented if future violations occur."

#### EPA Response

As stated in EPA's proposal for this redesignation policy change, EPA is not waiving the section 184 OTR requirements. These requirements remain in place, even after redesignation to attainment. Therefore, unlike contingency measures that would only be adopted if triggered, redesignated areas in the OTR continue to be obligated to fulfill these OTR requirements, regardless of attainment designation or maintenance of the standard. Furthermore, EPA's proposed approval of the Reading area's redesignation request and maintenance plan required Pennsylvania to include I/M as a contingency measure. As stated above, not only did Pennsylvania include I/M in its contingency plan for the Reading area, but it also intends to fully implement its low enhanced program I/M by 1999.

The commenter's assertion that the new policy "ignores the rationale offered in the General Preamble" that it is "particularly important" to meet the section 182, 184 and 185 requirements prior to redesignation does not withstand scrutiny, since that rationale is not applicable to the circumstances presented by the Reading redesignation. The General Preamble stated that it would be important to meet these requirements so that they would be in place and therefore required to be included in the maintenance plan as contingency measures "if future violations occur". But this rationale has no bearing on the situation of an OTR state such as Pennsylvania, where the section 184 requirements will remain fully applicable, and where they will not be relegated to the role of contingency measures after redesignation. Thus the justification in the General Preamble and cited by the commenters for requiring the section 184 measures to be in place prior to redesignation is simply inapposite with respect to the Reading area.

#### Comment #6

CAC charges that EPA's proposed redesignation policy change "works at cross-purposes with efforts to control long-range transport problems, the very problem that underlies the OTR and the requirements applicable there."

#### EPA Response

As stated in EPA's proposal of this policy change, EPA is not waiving the section 184 requirement, established in the Act to address long-range transport of ozone and ozone precursors. Even

after redesignation to attainment, a state's obligation to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR.

EPA's new policy is not at "cross-purposes" with efforts to control transport. As stated above, there is no indication that allowing compliance with the section 184 requirements after redesignation would result in frustrating the satisfaction of those requirements. In the case of the Reading area, Pennsylvania has made its submissions with respect to RACT, NSR, and I/M. These programs have received either full, conditional, or limited approval. Moreover, the section 184 requirements are extrinsic to an area's status for designation purposes. Assurance of compliance with the section 184 requirements is to be achieved not through the redesignation process, but by the sanctions provisions provided by the Act.

#### Comment #7

CAC argues that "EPA's new policy tries to have it both ways." CAC claims that EPA previously "asserted that requirements specifically pegged to an area's attainment status or to reasonable further progress need not be met as a prerequisite to redesignation." This refers to EPA's policy memorandum dated May 10, 1995, from John Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Division Directors, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard." In that memorandum, EPA stated that it is reasonable to interpret provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require certain SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard. CAC goes on to argue that EPA's rationale for its proposed redesignation policy change, which "contends that because the § 184 requirements are not pegged to attainment, they too are not prerequisites to redesignation," contradicts the Agency's previous position.

#### EPA Response

EPA's May 10, 1995 policy memorandum interprets an area's obligation to submit SIP revisions for RFP, attainment demonstrations, and other related provisions as not applicable, if an ozone nonattainment

area subject to those requirements is monitoring attainment of the ozone standard. The Act's RFP and attainment demonstrations requirements are intended to move an area towards attainment of the ozone standard. If an area is already attaining the standard, EPA believes that it is reasonable to suspend these requirements for as long as an area attains the standard. This view was upheld by the United States Court of Appeals for the Tenth Circuit in *Sierra Club v. EPA*, No. 95-9541 (10th Cir. 1996). EPA maintains that its new redesignation policy does not conflict with its May 10, 1995 policy. EPA's new redesignation policy relates to OTR requirements under section 184 of the Act, which are not related to RFP or an area's ability to demonstrate attainment of the standard. These OTR requirements are intended to reduce regional emissions in the OTR. Moreover, as stated above, EPA is not waiving these requirements. All areas in the OTR, regardless of attainment status, are obligated to fulfill these requirements.

The May 10, 1995 determination of attainment policy dealt with a completely different set of issues not comparable to those addressed by section 184. EPA's rationale for finding the provisions of sections 182 and 172(c) not applicable was different from, but not inconsistent with, its rationale for finding the section 184 provisions inapplicable. In its May 10 policy, EPA interpreted as inapplicable certain statutory provisions—RFP, attainment demonstration, and section 172(c) contingency measures—whose requirements served no useful function once an area was attaining the standard, and whose purpose was achieved prior to redesignation. This rationale does not exclude independent justifications for interpreting other provisions of the Act as inapplicable. The grounds for finding section 184 requirements inapplicable is that these requirements remain in place even after redesignation, and thus redesignation will not preclude them from being enforced. This justification, although different from the May 10 policy, is not in conflict with it.

Even if EPA were not to rely on its new policy of interpreting section 184 requirements as inapplicable for purposes of evaluating redesignation requests, EPA's authority to create a *de minimis* exception to requirements provides a sufficient independent alternative ground for finding that these requirements have been met for purposes of redesignation.

Since the Reading area has demonstrated attainment and maintenance without the section 184

measures, and since these requirements will remain in place, EPA believes that there are grounds for making a finding that requiring satisfaction of these requirements prior to redesignation yields only insignificant environmental benefits. Indeed, EPA concludes that its existing policy with respect to NSR in the context of redesignation warrants a finding that the Reading area qualifies for a *de minimis* exception to the NSR requirement.

*NSR*: In a memorandum of Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled *Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment*, EPA set forth its policy not to insist on a fully-approved NSR program as a prerequisite to redesignation as an exercise of the Agency's general authority to establish *de minimis* exceptions to statutory requirements. See *Alabama Power Co. v. Costle*, 636 F.2d 323, 360-61 (D.C. Cir. 1979). Under *Alabama Power*, EPA has the authority to establish *de minimis* exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no value environmentally. In the Mary Nichols memorandum of October 14, 1994, EPA concluded that, although the NSR provisions of section 110 and Part D appear to be applicable requirements that would have to be met prior to redesignation, EPA may establish a *de minimis* exception to the requirement where no significant environmental value exists. EPA determined that where maintenance is demonstrated without reliance on NSR reductions, and where a prevention of significant deterioration (PSD) program will replace it, there is little or no environmental benefit from requiring full approval of NSR prior to redesignation, and thus a *de minimis* exception is justified. See Nichols memorandum. See also Cleveland final rulemaking notice (FRN), 61 FR 20469-20470 (May 7, 1996). Here, similarly, Pennsylvania has demonstrated that there is no need for part D NSR during the maintenance period to provide for continued maintenance of the NAAQS. To satisfy the requirements of section 184, Pennsylvania has submitted a revision to its Part D NSR program, which is awaiting EPA approval. EPA has concluded that these circumstances warrant a further application and elaboration upon the *de minimis* exception set forth in the October 14 memorandum. In accordance with that policy, EPA has determined that, for an area outside the OTR, there need not be a fully approved part D NSR program

prior to redesignation where it is not required for maintenance and where it will be replaced by a PSD program. EPA believes that the reasons underlying this *de minimis* exception apply with equal or greater force to the Reading area, which has shown that NSR is not required for maintenance but where Part D NSR obligations, rather than PSD, will continue to apply after redesignation. Thus, EPA concludes that the Mary Nichols memorandum and the principles on which it is founded warrant an extension of the *de minimis* exception to the NSR requirement imposed by section 184. This *de minimis* exception provides a separate and independent ground for concluding that the Reading area has met the requirements for redesignation with respect to NSR.

*I/M:* With respect to the I/M program, legislative authority for basic I/M is sufficient to meet the I/M redesignation rule. Apart from that, section 184 requires enhanced I/M, but it does not have to be approved prior to redesignation, since redesignation will not operate to relieve the Reading area of the requirement. The Reading area has in fact received conditional approval of its enhanced I/M program, and the area will start implementing the program by November, 1999.

#### Comment #8

CAC claims that EPA cannot support its proposed policy change by "citing other instances where the Agency has failed to comply with the Act. *Kokechik Fisherman's Association v. Secretary of Commerce*, 838 F.2d 795, 802-03 (D.C. Cir. 1988) ('[l]ast administrative practice that is inconsistent with the purpose of an act of Congress cannot provide an exception')." CAC asserts that EPA cannot support its proposal by citing the Agency's previous actions concerning conformity and oxygenated fuels.

#### EPA Response

EPA maintains that its previous actions that determined conformity and oxygenated fuels as not being applicable requirements for purposes of evaluating redesignation requests comply with the Act. Furthermore, those actions were the subjects of prior rulemaking, which EPA promulgated after notice and comment. The period for review of those actions has passed.

#### Final Action

Because Pennsylvania has corrected all deficiencies that were previously identified in the redesignation request and maintenance plan for the Reading area, EPA has determined that the

Commonwealth's submittals satisfy the Clean Air Act's five criteria for redesignation. EPA is approving Pennsylvania's redesignation request for the area, submitted on November 12, 1993, and the ten-year ozone maintenance plan for the Reading area, which Pennsylvania submitted on January 28, 1997. EPA is also approving the 1990 base year VOC, NO<sub>x</sub>, and CO inventories for the Reading ozone nonattainment area, which were submitted on January 28, 1997, because Pennsylvania has corrected all deficiencies that were previously identified in those inventories. In addition, for purposes of satisfying the I/M redesignation rule of January 1995, EPA is approving Pennsylvania's legislative authority to adopt and implement an I/M program. Finally, EPA is changing its policy on redesignation requirements for ozone nonattainment areas in the OTR. The policy change makes redesignation requirements for areas in the OTR consistent with requirements for areas outside the OTR by interpreting requirements under section 184 of the Clean Air Act as not being applicable for the purpose of redesignation.

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.

### III. 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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the Commonwealth of Pennsylvania is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies 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).

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. EPA certifies that the approval of the redesignation request 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 approves pre-existing requirements under Commonwealth of Pennsylvania 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, approving Pennsylvania's redesignation request and maintenance plan for the Reading area, must be filed in the United States Court of Appeals for the appropriate circuit by July 7, 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).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference.

Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

*40 CFR Part 81*

Air pollution control, National parks, Wilderness areas.

Dated: April 22, 1997.

**Stanley L. Laskowski,**

*Acting Regional Administrator, Region III.*

Chapter I, title 40 of the Code of Federal Regulations 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 NN—Pennsylvania**

2. Section 52.2020 is amended by adding paragraph (c)(123) to read as follows:

**§ 52.2020 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(123) The ten-year ozone maintenance plan for the Reading, Pennsylvania area (Berks County) submitted by the Pennsylvania Department of Environmental Protection on January 28, 1997:

(i) Incorporation by reference.

(A) Letter of January 28, 1997 from the Pennsylvania Department of Environmental Protection transmitting the ten-year ozone maintenance plan and 1990 base year emission inventories for the Reading area.

(B) The ten-year ozone maintenance plan for the Reading area, including emission projections, control measures

to maintain attainment and contingency measures, adopted on February 3, 1997.

(ii) Additional material.

(A) Remainder of January 28, 1997 Commonwealth submittal pertaining to the maintenance plan for the Reading area.

3. Section 52.2036 is amended by adding paragraph (e) to read as follows:

**§ 52.2036 1990 Base year emission inventory.**

\* \* \* \* \*

(e) EPA approves as a revision to the Pennsylvania State Implementation Plan (SIP) the 1990 base year emission inventories for the Reading, Pennsylvania area (Berks County) submitted by the Secretary of the Environment, on January 28, 1997. This submittal consists of the 1990 base year point, area, non-road mobile, biogenic and on-road mobile source emission inventories in the area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NO<sub>x</sub>).

\* \* \* \* \*

**PART 81—[AMENDED]**

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

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

**Subpart C—Section 107 Attainment Status Designations**

5. In § 81.339 the ozone table is amended by revising the entry for the Reading area, Berks County to read as follows:

**§ 81.339 Pennsylvania.**

\* \* \* \* \*

PENNSYLVANIA—OZONE

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * *	* * *	* * *	* * *	* * *
Reading Area Berks County .....	June 23, 1997 .....	Unclassifiable/Attainment.		
* * *	* * *	* * *	* * *	* * *

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

\* \* \* \* \*

[FR Doc. 97-11910 Filed 5-6-97; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 Part CFR 180****[OPP-300480; FRL-5713-5]****RIN 2070-AB78****Aminoethoxyvinylglycine; Pesticide Tolerances****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final Rule.

**SUMMARY:** This document establishes time-limited tolerances for residues of the plant regulator aminoethoxyvinylglycine in or on the food commodities apples and pears. The tolerances expire on and will be revoked by EPA on April 1, 2001. Abbott Laboratories submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of 1996 requesting the tolerances. This regulation sets the permissible levels of this plant regulator on apples and pears.

**EFFECTIVE DATE:** This regulation becomes effective May 7, 1997. Objections and hearing requests must be filed by July 7, 1997.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number [OPP-300480], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburg, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically to the OPP by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of

objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300480]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VII of this document.

**FOR FURTHER INFORMATION CONTACT:** By mail: Denise Greenway, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 5-W57, CS #1, 2800 Crystal Drive, Arlington, VA 22202, (703) 308-8263; e-mail:

greenway.denise@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 20, 1997 (62 FR 7778), EPA issued a notice pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition by Abbott Laboratories, 1401 Sheridan Road, North Chicago, IL 60064-4000. The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. The petition requested that 40 CFR part 180 be amended by adding tolerances for residues of aminoethoxyvinylglycine, in or on the following food commodities: apples at 0.08 part per million (ppm), and pears at 0.08 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

**I. Toxicological Profile**

1. A battery of acute toxicity studies placing technical aminoethoxyvinylglycine in Toxicity Categories III and IV.

2. A 13-week feeding study in rats at dietary intakes of 0, 0.45, 1.9 and 9.2 milligrams per kilogram per day (mg/kg/

day) (males) and 0, 0.55, 2.2, and 9.4 mg/kg/day (females) with a no-observed-effect-level (NOEL) of 9.2 mg/kg/day for male rats and 2.2 mg/kg/day for female rats. The lowest-observed-effect-level (LOEL) was established at 9.4 mg/kg/day (the highest dose tested in females) based on reduced body weight gain, food consumption and food efficiency; increased severity and incidence of reversible kidney and liver effects; and discoloration of the liver.

3. A developmental toxicity study in rats at 0, 0.4, 1.77, and 8.06 mg/kg/day. The maternal LOEL is 8.06 mg/kg/day (the highest dose tested) based on decreased defecation, body weight gain, and food consumption; and the presence of red material around the nose. The developmental LOEL is also 8.06 mg/kg/day based on decreased mean fetal body weight and increases (within historical ranges) in two developmental skeletal variants (reduced ossification of the sternbrae and vertebral arches). The NOEL for maternal and developmental toxicity was established at 1.77 mg/kg/day.

4. A 21-day repeated dose dermal toxicity study in rats at 0, 100, 500, and 1,000 mg/kg/day. The NOEL is 1,000 mg/kg/day; a LOEL was not determined.

5. An immunotoxicity study in rats at 0, 1.25, 2.5, 5 and 15 mg/kg/day with a NOEL of 5 mg/kg/day based on the decreased primary antibody (IgM) response to sheep red blood cells; decreased absolute and relative thymus weights; decreased body weight, food consumption and food efficiency at the high-dose level. The LOEL is 15 mg/kg/day. The study did not fully meet the requirements outlined in the Pesticide Assessment Guidelines Subdivision M OPPTS Series 152-18. However, because a NOEL and LOEL were determined, and found to be consistent with those from other repeat-dose studies, the study need not be repeated.

6. An acceptable Ames study for inducing reverse mutation in *Salmonella* strains of bacteria exposed with or without activation at doses up to 5,000 micrograms per plate. The study showed negative results.

7. An acceptable study for inducing micronuclei in bone marrow cells of rats treated up to the maximum dose tested of 6,200 mg/kg. The study showed negative results.

8. A mutagenicity study with mouse lymphoma cells with or without activation to doses up to 5,000 micrograms/mL. Aminoethoxyvinylglycine is not mutagenic or cytotoxic when tested against mouse lymphoma cells strain L5178Y at a concentration of 5,000 micrograms/mL.