Dated: May 2, 1996.

Chuck Clarke,

Regional Administrator.

Part 52, 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 MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (113) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(113) On April 14, 1995, the Oregon Department of Environmental Quality submitted a revision to its SIP for the State of Oregon to include the Transportation Conformity: OAR 340–20–710 through 340–20–1080.

(i) Incorporation by reference.

(A) April 14, 1995 letter from ODEQ director Lydia Taylor to EPA Regional Administrator Chuck Clarke submitting a revision to the Oregon SIP to include the Transportation Conformity: OAR 340–20–710 through 340–20–1080; Division 20, Air Pollution Control, Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, effective March 29, 1995.

[FR Doc. 96–12353 Filed 5–15–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[AK6–1–6587; FRL–5465–2]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision submitted by the State of Alaska on March 24, 1994 which implements an oxygenated gasoline program in the Municipality of Anchorage. This SIP revision satisfies certain Federal requirements for carbon monoxide (CO) nonattainment areas with a design value of 9.5 parts per million (ppm) or greater to implement an oxygenated gasoline program. Motor vehicles are significant contributors of CO emissions. An important measure for reducing these emissions is the use of cleaner burning oxygenated gasoline.

EFFECTIVE DATE: This final rule is effective on June 17, 1996.

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, 1200 Sixth Avenue, Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Ms. Montel Livingston, EPA, Office of Air Quality, Seattle, Washington, (206) 553–0180.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 211(m) of the Clean Air Act, as amended (the ''Act''), Alaska was required to submit a revised SIP under section 110 and part D of title I that includes an oxygenated gasoline program for its CO nonattainment areas (those areas with a design value of 9.5 ppm or greater). The CO standard is 9 ppm and was established based on criteria which allows for an adequate margin of safety to protect human health. The 9 ppm standard is intended to keep carboxyhemoglobin levels below 2.1% in order to protect the most sensitive members of the general population (i.e. individuals with heart disease and other physiological weaknesses).

Motor vehicles are significant contributors of CO emissions. An important measure for reducing these emissions is the use of cleaner burning oxygenated gasoline. Extra oxygen enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting which are more prevalent in the winter.

To comply with the Act, Alaska implemented an oxygenated gasoline program containing methyl tertiary butyl ether (MTBE) as the oxygenate in the early winter of 1992. Shortly thereafter, the State received numerous health and driveability complaints from the public regarding exposure to and use of MTBE blended gasoline. In December 1992 the Governor of Alaska temporarily suspended the oxygenated fuel program, and the suspension continued the following winter.

During this suspension, a series of studies began which examined issues including health and driveability at cold temperatures using oxygenated gasoline in climate fluctuations such as the Municipalities of Anchorage and Fairbanks experience. These studies were initiated in part by the Alaska Department of Environmental Conservation (ADEC) and in part by State health officials in Alaska who invited the Centers for Disease Control and Prevention and others to assist in investigation of possible health effects. Studies concluded that pumping the ethanol blend does not appear to increase the prevalence of acute adverse health effects or unusual exposures when compared to pumping regular gasoline. Data also showed there were no adverse driveability effects utilizing ethanol in Anchorage during the study period.

In response to the public's concerns about MTBE, Anchorage, through ADEC and the industry providers, agreed to implement an oxygenated fuel program using ethanol as the oxygenate rather than MTBE by diluting regular unleaded gasoline with ethanol to 10 percent ethanol by volume. This oxygenated fuel program began in Anchorage in January 1995 and lasted for about three months. This initial control period for Anchorage using an ethanol blend was successful with the general public and for air quality—there were no exceedances of the CO National Air Ambient Quality Standards (NAAQS) during that period. The program resumed again in the winter of 1995–96, November 1, 1995 through February 29, 1996.

The State of Alaska submitted the Oxygenated Gasoline Requirements (18 AAC 53.005–18 AAC 53.190) with amendments adopted through March 19, 1994, to EPA on March 24, 1994, as a revision to the Alaska SIP. EPA reviewed the submittal and concluded that the revision met the applicable requirements of the Act. In a direct final rule published October 24, 1995, EPA approved the revision to be effective on December 26, 1995, unless EPA received adverse or critical comments by November 24, 1995 (see 60 FR 54435). In the same Federal Register, EPA also published an accompanying proposed rule (see 60 FR 54465), explaining that if EPA received adverse comments on the direct final rule approving ADEC's submittal re the oxygenated gasoline program, then EPA would withdraw the direct final rule and would respond to all comments on the proposal in a subsequent final rule. The proposed action also indicated that anyone wishing to comment should do so by November 24, 1995.

EPA received an adverse comment on November 22, 1995, pertaining to its approval of Alaska's SIP submittal. The

direct final rule was withdrawn on December 14, 1995. See 60 FR 64135. EPA has thoroughly considered the comment to determine the appropriate action on the oxygenated gasoline program for Anchorage, Alaska and responds below in the ''Response to Comments.''

In conclusion, EPA is approving the oxygenated gasoline requirements submitted by the State of Alaska as described in the October 24, 1995 Federal Register notice at 60 FR 54436 and proposed in the October 24, 1995 Federal Register notice at 60 FR 54465.

II. Response to Comments

A. General Legal Authority

In objecting to several specific provisions in Alaska's regulations, the commenter raised issues regarding approval into a SIP of state provisions not required by section 211(m). EPA may approve into a SIP any lawful provision concerning control of a criteria pollutant that is submitted by a state and that otherwise meets the requirements of section 110. As a general matter, apart from the exceptions cited in section 116, the Clean Air Act (CAA) does not restrict a state's authority to impose air pollution controls in addition to those required under the Act. See CAA section 116. Section 211(m) establishes certain minimum requirements regarding oxygen content, but does not itself prohibit states from adopting additional requirements. While federal regulation of fuels under section 211(c)(1) preempts certain state regulations regarding fuels, where there is no federal ''control or prohibition applicable to [a] characteristic or component of a fuel or fuel additive,'' a state is not preempted from regulating such characteristic or component, such as oxygen content. See section 211(c)(4). Under EPA's current interpretation of section 211(c)(4), there is no federal requirement applicable to oxygen content in gasoline in the Anchorage area because the only federal regulation applicable to oxygen content is for reformulated gasoline, which is not required in the Anchorage area. Thus, EPA may approve as a SIP revision a requirement by Alaska that goes beyond the requirements of section 211(m) in regulating oxygen content.

B. Temporary Suspension of the Regulation's Applicability to Fairbanks

The commenter stated that the provisions of section 211(m) ''Oxygenated Fuels'' of the Federal 1990 Clean Air Act applies to both the Fairbanks and Anchorage CO nonattainment areas, that the former Governor unilaterally suspended the regulation's applicability to the Fairbanks' area, and there are no provisions in this regulation for this action.

As explained in the ''Background'' section of this rulemaking, there have been congressional actions in the past which did temporarily exempt Fairbanks and Anchorage from the oxygenated programs requirement while ongoing health and driveability studies were conducted. However, in this action today, EPA is determining that Alaska's current submittal of March 24, 1994, *Fuel Requirements for Motor Vehicles,* as applied to the Anchorage area, meets the requirements of 211(m) ''Oxygenated Fuels'' and is fully approvable for inclusion into the SIP. The fact that this submission does not encompass the Fairbanks area does not affect EPA's authority to approve it for Anchorage, and hence is not relevant to this rulemaking.

C. Oxygen Content

The commenter stated that fuel providers for Anchorage were under no regulation to meet a blend with an oxygen content of 3.5 percent, and this is correct. ADEC's regulation under *Fuel Requirements for Motor Vehicles, 18 AAC 53.020, Average Oxygen Content Standard,* submitted to EPA on March 24, 1994, states, ''All gasoline sold, offered for sale, distributed, or dispensed by a CAR or blender CAR for use in a control area during a control period must be oxygenated so that each blend of gasoline has an average oxygen content of not less than 2.7 percent by weight.'' EPA is approving this average oxygen content of not less than 2.7 percent by weight as meeting the requirements of 211(m) of the Act and is incorporating this revision into the federally enforceable SIP.

D. Legal Authority—Expansion of Control Area

The commenter stated there are provisions in ADEC's 18 AAC 53 *Fuel Requirements for Motor Vehicles* that go beyond the authority of Section 211(m), are unnecessary to satisfy the nonattainment plan provisions of the Act, or go beyond the authority granted to ADEC under State law, and therefore conflict with EPA's requirements that SIP amendments comply with applicable State laws.

For example, the commenter does not believe ADEC has the authority to expand the oxygenated gasoline program to areas other than the officially designated CO nonattainment area. The commenter stated it is not provided for in the Act and, therefore, is not required to be in the SIP, and should not be part of the SIP.

As discussed above, the CAA does not restrict Alaska's authority to regulate oxygen content in gasoline beyond what is required in section 211(m). In addition, EPA has determined that ADEC will satisfy certain requirements of the Act by including in this SIP revision contingency measures which provide for expansion of the control area. The Act (section 172(c)(9)) requires a State to undertake specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the (applicable) attainment date. ADEC has met this requirement by specifying a contingency measure for Anchorage which provides for expansion of its control area, if necessary. Expansion of the control area may help a nonattainment area come into attainment by ensuring that vehicles refueling outside the nonattainment area but driving inside the area are also controlling emissions through use of oxygenated gasoline. Oxygen-blended fuels have been shown to be a cost-effective method for reducing CO emissions.

Alaska has also used expansion of the oxygenated fuels control area as a contingency measure to satisfy another requirement of the Act. Because Anchorage is a nonattainment area with a design value above 12.7 ppm, the Act (section 187(a)(3)) further requires implementation of contingency measures if annual updates of the forecasted Vehicle Miles Travelled (VMT), or annual estimates of actual VMT, exceed the number predicted in the most recent prior forecast; or if the area fails to attain the NAAQS by the (applicable) attainment date. ADEC met this requirement through its VMT SIP revision, adopted on January 10, 1994, and approved by EPA on June 29, 1995 (60 FR 33727). The contingency measure contained in the VMT revision, and approved by EPA, is the expansion of the oxygenated fuels control area. This contingency measure became effective and federally enforceable on August 28, 1995.

E. Oxygen Content Averaging and Associated Provisions

The commenter stated the averaging provisions and associated requirements of ADEC's regulation are superfluous and can be replaced with a more straightforward per-gallon oxygen content provision. The commenter added that the provisions for averaging oxygen content method of compliance, oxygen credits and debits, and

minimum oxygen content are all unnecessary and should not be approved.

As described in the October 24, 1995 Federal Register notice at 60 54436, EPA has determined that ADEC met the requirements of 211(m) of the Act and was consistent with EPA guidance (57 FR 47769, October 20, 1992) by offering oxygen content averaging provisions as an option to fuel providers. Fuel providers need only use these provisions if they so choose. The commenter provides no legal or practical reason why EPA should not approve these optional provisions, which are intended only to give fuel providers greater compliance flexibility. Even if fuel providers are not currently using this approach, including these provisions allows for future flexibility in the program, which EPA finds is appropriate here.

F. State Authority

The commenter stated there are no provisions under Alaska State law authorizing ADEC to assess the ''CAR and Blender CAR Fees'' provided under 18 AAC 53.080. Therefore, the commenter stated the fees provisions do not belong in the SIP and are unnecessary to satisfy the requirements of the Act.

EPA has determined that ADEC has fee authority to collect fees to cover costs associated with permits, under AS 44.46.025. Revenues generated from industry enable the program to be self-sufficient in the future. EPA also notes that 18 AAC 53.080(c) requires ADEC to ''refund fees in excess of those required to cover the costs for implementing the requirements of this chapter.'' As an integral part of Alaska's oxygenated gasoline program, which the State has authority to implement, it is appropriate for EPA to approve these provisions into the SIP.

G. Reporting; Product Transfer Document/Attest Engagements

The commenter stated that 18 AAC 53.1000 ''Reporting; Product Transfer Document'' paragraph (b) requires a CAR or blender CAR to ''* * * have an attest engagement conducted in accordance with 18 AAC 53.170, ''Attest Engagements,'' and that neither of these provisions is necessary when compliance is demonstrated on a per-gallon basis. The commenter stated they were superfluous.

As repeated above and described in the October 24, 1995 Federal Register notice at 60 54436, EPA has determined that ADEC is following EPA guidance published on October 20, 1992, by offering these provisions as an option to fuel providers, and EPA finds this is an appropriate option to offer fuel providers in this instance.

H. State Authority—''Dispenser Labeling''

The commenter stated that ADEC's label saying ''Caution: This fuel may not be suitable for use in aircraft,'' goes beyond the authority granted by EPA in its labeling requirements. The commenter also questioned the State of Alaska's authority to require that the label on fuel dispensers contain this cautionary statement. In response, the State Attorney General's office has provided an opinion to EPA explaining the legal basis for this provision.

Specifically, the Attorney General opinion cites to Title 46, Chapter 3, entitled Environmental Conservation, which includes a declaration of policy stating that it is the State's policy to control air pollution to enhance the ''health, safety, and welfare'' of its citizens (emphasis added). See AS 46.03.010(a). The opinion also cites to AS 46.03.020(8), (9), and (10) which give ADEC the authority to advise and cooperate with local and other state agencies to carry out the pollution laws, to act as the official agency in all matters affecting the purposes of ADEC under federal laws, and to adopt regulations to effectuate the purposes of Chapter 3, including control of air pollution and ''other purposes as may be required for the implementation'' of Chapter 3's declaration of policy. In addition, AS 44.62.030 states that a regulation is effective if it is ''consistent with and reasonably necessary'' to the purposes of State law.

Given ADEC's broad statutory authorities, and the opinion of the Attorney General's office that these provisions give ADEC the authority to promulgate the labeling requirement regarding aviation use of oxygenated fuel, EPA is approving this requirement along with the State's other labelling requirements. A more detailed discussion of ADEC's authorities is contained in the State Attorney General's letter, included in the record for this rulemaking.

EPA has determined that ADEC has complied with EPA regulations and guidance for labeling requirements (57 FR 47770, October 20, 1992) and as described in the October 24, 1995 Federal Register notice. As EPA stated in the preamble to the labelling regulations, those regulations are not meant to restrict states from imposing additional information requirements, and there is no language in the regulations that would impose such a restriction (See 57 FR 47771).

I. Suspension of Requirements

The commenter stated that section 211(m) provides only that the oxygenated gasoline program be imposed in areas exceeding 9.5 ppm and are adversely affected by vehicular emissions. The commenter stated that 18 AAC 53.190, ''Suspension of Requirements'' provides that oxygenated gasoline may be reimposed, after the program has been suspended upon attainment, if the area exceeds an 8.5 ppm 8 hour average concentration of CO. The commenter concluded that section 211(m) does not authorize a federally-enforceable oxygenated gasoline program in an attainment area, as this provision of 18 AAC 53.190 would require; therefore, this provision should not be part of the SIP.

Section 211(m) does not require an oxygenated gasoline program in an area in attainment for CO, except as is necessary to maintain the standard. However, as discussed above, there is also no Federal restraint on Alaska imposing additional requirements on oxygen content beyond what is required under section 211(m).

Moreover, EPA has determined that ADEC is complying with the requirement under section 211(m)(6) of the Act that the program remain in effect ''to the extent such program is necessary'' to maintain the standard. The State has selected exceedance of 8.5 ppm in an 8 hour average as the trigger point for reimplementation of the program. EPA believes this is an appropriate trigger point. The CO NAAQS is 9 ppm; and pursuant to EPA guidance, values from 8.5 ppm and up are rounded up to 9. At 8.5 ppm, the area's air quality is considered to be just meeting the standard. The purpose of the trigger point is to protect the health and welfare of citizens by ensuring that the area maintains compliance with the CO standard. The trigger point chosen by Alaska provides for reimplementing oxygenated gasoline promptly upon a strong indication that the area is in danger of violation of the standard, rather than waiting for CO levels to violate the NAAQS before instituting measures to bring the area back into attainment.

III. Significance of Today's Action

EPA is approving this plan revision submitted to EPA by the State of Alaska on March 24, 1994 which implements an oxygenated gasoline program in the Municipality of Anchorage. This SIP revision was submitted by the State to satisfy certain Federal requirements for CO nonattainment areas with a design value of 9.5 ppm or greater to

implement an oxygenated gasoline program.

IV. Administrative Review

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 CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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 by the rule.

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

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

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.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 15, 1996. 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), 42 U.S.C. 7607(b)(2)).

List of subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the Implementation Plan for the State of Alaska was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: April 23, 1996.

Chuck Clarke,

Regional Administrator.

Part 52, 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 C—Alaska

2. Section 52.70 is amended by adding paragraph (c) (25) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(25) On March 24, 1994, ADEC submitted a revision to its SIP for the State of Alaska addressing the attainment and maintenance of the NAAQS for CO in the Anchorage CO nonattainment area.

(i) Incorporation by reference.

(A) March 24, 1994 letter from the Alaska Governor to the EPA Regional Administrator including as a revision to the SIP the State of Alaska, Department of Environmental Conservation, 18 AAC 53, ''Fuel Requirements for Motor Vehicles,'' (Article 1, 18 AAC 53.005—18 AAC 53.190 and Article 9, 18 AAC 53.990, with the exception of 18 AAC 53.010(c)(2)), filed March 24, 1994 and effective on April 23, 1994.

* * * * *

[FR Doc. 96–12352 Filed 5–15–96; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 70

[NJ001; FRL–5505–7]

Clean Air Act Final Interim Approval Of Operating Permit Program; New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating final interim approval of the operating permit program which the State of New Jersey had submitted in accordance with Title V of the Clean Air Act (the Act) and its implementing regulations codified at Part 70 of Title 40 of the Code of Federal Regulations (40 CFR Part 70). This approved interim program allows New Jersey to issue federally enforceable operating permits to all major stationary sources and to certain other sources for a period of two years, at which time it must be replaced by a fully approved program.

EFFECTIVE DATE: This interim program will be effective June 17, 1996.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval as well as the Technical Support Document are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 2, 290 Broadway, 21st Floor,