

(iii)(A) Except as provided in paragraphs (a)(2) (i) and (ii) of this section, effective October 11, 1994, Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 211: Definitions and General Provisions, and Part 218: Organic Material Emission Standards and Limitations for the Chicago Area replace the requirements of this § 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry and Will County as the federally enforceable control measures in these counties.

(B) In accordance with § 218.101(b), the requirements of § 52.741 shall remain in effect and are enforceable after October 11, 1994, for the period from July 30, 1990, to October 11, 1994.

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**40 CFR Parts 52 and 81**

[WA53-7126 FRL-5637-3]

**Approval and Promulgation of Maintenance Plan for Air Quality Planning Purposes for the State of Washington: Carbon Monoxide**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is redesignating the Vancouver nonattainment area to attainment for the carbon monoxide (CO) air quality standard and approving a maintenance plan that will insure that

the area remains in attainment. Under the Clean Air Act (CAA) as amended in 1990, designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is approving the Washington Department of Ecology's request because it meets the redesignation requirements set forth in the CAA. In addition, EPA is approving a related State Implementation Plan (SIP) revision, the 1990 base year emission inventory for CO emissions, which includes emissions data for sources of CO in the Vancouver, Washington CO nonattainment area.

**EFFECTIVE DATE:** This rule is effective as of October 21, 1996.

**ADDRESSES:** Copies of the State's redesignation request and other information supporting this action are available during normal business hours at the following locations: EPA, Alaska-Washington Unit (OAQ-107), 1200 Sixth Avenue, Seattle, Washington, 98101, and the Washington State Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, Washington, 98504-7600.

**FOR FURTHER INFORMATION CONTACT:** William M. Hedgebeth, EPA Region 10, Office of Air Quality, at (206) 553-7369.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In a March 15, 1991, letter to the EPA Region 10 Administrator, the Governor of Washington recommended that the Vancouver portion of the Portland-Vancouver Air Quality Maintenance Area be designated as nonattainment for carbon monoxide (CO) as required by section 107(d)(1)(A) of the 1990 Clean Air Act Amendments (CAAA) (Public Law 101-549, 104 Stat. 2399, codified at

42 U.S.C. 7401-7671q). The area was designated nonattainment and classified as "moderate," with a design value less than or equal to 12.7 ppm under the provisions outlined in sections 186 and 187 of the CAA. (See 56 FR 56694 (Nov. 6, 1991), codified at 40 CFR § 81.348.) On September 29, 1995, EPA approved the separation of the Portland-Vancouver CO nonattainment area into two distinct nonattainment areas, effective November 28, 1995. Because the Vancouver area had a design value of 10 ppm (based on 1988-1989 data), the area was considered moderate. The CAA established an attainment date of December 31, 1995, for all moderate CO areas. The Vancouver area has ambient monitoring data showing attainment of the CO National Ambient Air Quality Standard (NAAQS) since 1992.

On March 19, 1996, the Washington State Department of Ecology (Washington) submitted a CO redesignation request and a request for approval of a CO maintenance plan for the Vancouver area. On July 29, 1996, EPA proposed to approve Washington's requested redesignation and maintenance plan. Washington has met all of the CAA requirements for redesignation pursuant to section 107(d)(3)(E). EPA has approved all SIP requirements for the Vancouver area that were due under the 1990 CAA.

Washington provided monitoring, modeling and emissions data to support its redesignation request. The 1992 CO attainment emissions inventory totals in tons per day are 76.43, 15.14, 164.3, and 67.84, respectively, for the area, non-road, mobile, and point sources. The emission budget established through the year 2006 is as follows:

**VANCOUVER CO EMISSION BUDGET**

[Pounds per winter day]

	1992	1995	1997	2001	2003	2006
Other sources .....	318,823	318,259	327,317	344,693	350,365	359,089
Mobile budget .....	328,606	300,000	300,000	270,000	270,000	260,000
Total .....	647,429	618,259	627,317	614,693	620,365	619,089

Washington relied on the existence of an approved Inspection and Maintenance (I/M) program as part of the maintenance demonstration. EPA approved the I/M program on September 25, 1996. Washington will discontinue implementation of the oxygenated fuel program in the Vancouver Consolidated Metropolitan Statistical Area (CMSA) once the CO maintenance plan is approved.

Washington will retain the oxygenated fuels program as a contingency measure as required under section 175A(d) of the CAA. The program will be reimplemented the next full winter season following the date of a quality assured violation of the CO National Ambient Air Quality Standards (NAAQS).

**II. Public Comment/EPA Response**

During the public comment period on EPA's proposed finding, the Agency received a number of comments from one commenter. No other comments were received. A discussion of those comments follows.

1. The commenter asserted that the Maintenance Demonstration developed by the Southwest Air Pollution Control Authority (SWAPCA) was a direct result

of oxygenated fuels, that without oxygenated fuels there would have been two violations in 1994 using SWAPCA's own modeling, and that by taking away oxygenated fuels, Vancouver is taking away the one enforceable control measure that assured maintenance.

Response: Under Title I of the CAA, Congress established a system of state and federal cooperativeness. EPA is required to establish the NAAQS, i.e., the level at which air quality is determined to be protective of human health. However, the states take the primary lead in determining the measures necessary to attain and maintain the NAAQS. These measures are incorporated into the SIP. The CAA requires EPA to approve a SIP submission that meets the requirements of the CAA. If the state fulfills its obligations in developing a SIP that meets the requirements of the CAA, EPA has no authority to supplement or revise that plan with a federal implementation plan.

Once a state has attained the NAAQS for a particular pollutant, such as CO, and the state can demonstrate that it has met the other requirements specified in section 107(d)(3)(E) of the CAA, including the requirement for a maintenance plan, the state can request redesignation to attainment for the area. The maintenance plan, which is submitted as a revision to the state's SIP, must demonstrate maintenance of the NAAQS for ten years following redesignation. The maintenance plan need not be based on continued implementation of all the measures in the SIP prior to redesignation, but must provide that if a violation of the standard occurs, "the State will implement all measures \* \* \* which were contained in the [SIP] for the area before redesignation as an attainment area." CAA section 175(d).

Washington submitted validated data that shows that the NAAQS for CO has been met. There has been no violation of this standard since 1991. Other SIP requirements have been met and the Vancouver area meets the statutory requirements for redesignation to attainment. The maintenance plan includes oxygenated fuel as an enforceable contingency measure in the event of a violation of the NAAQS. EPA is satisfied that Washington and SWAPCA have documented that the NAAQS can be met in the ten-year period covered by the maintenance plan without oxygenated fuel and that in the event the standard is violated, adequate contingency control measures are in place to address the violation.

2. The commenter asserted that "[u]sing SWAPCA's emission inventory,

projected attainment for ten years is not possible without oxyfuels. In 1994, there was an exceedance \* \* \* associated with an emission inventory of 611.525 [sic] lbs/day. Vancouver will not be permanently below this inventory until sometime in 1999 without oxy fuels."

Response: The commenter is correct that there was an exceedance of the CO standard in 1994, for which year SWAPCA identified total CO emissions of 611,525 pounds per year in the 1992 Emissions Inventory. However, there was no violation of the CO NAAQS during 1994, nor were there any exceedances or violations of the CO NAAQS during either 1992 or 1993, both of which years had higher total CO emissions (647,428 and 642,193 pounds per year, respectively) than 1994. EPA is satisfied that the ten-year maintenance plan adequately projects maintenance without oxygenated fuel and that, in the event exceedances or violations occur, adequate, enforceable control measures exist to address those occurrences.

3. The commenter asserted that "SWAPCA violated both the letter and the spirit of the public involvement process. a.) No oxygenate representative was asked to be on the advisory committee. The TAC however did have two members of the petroleum industry. This led to a one sided presentation of the issues and a general lack of facts to the entire committee. b.) Due to the substantive change in nature from eliminating oxy fuels in 1996-1997 as opposed to what was originally in the document to be 1997-97 SWAPCA needed to extend their public hearing giving an additional 30 day public notice. They did not. This is a direct violation of the public hearing law. WADOE understood this and extended their hearing on the subject but SWAPCA did not."

Response: EPA's requirement regarding the public hearing process that states must follow is stated in section 110(l) of the CAA. In summary, EPA requires that each revision of a SIP be adopted by the state after "reasonable notice and public hearing" of the proposed change(s). The criteria EPA uses to determine whether the "reasonable notice and public hearing" requirement has been met are identified at 40 C.F.R. Part 51, Appendix V. As indicated in the July 29, 1996, Notice of Proposed Rulemaking, Washington submitted evidence that two public hearings were held in Vancouver: one on December 19, 1995, by the Southwest Air Pollution Control Authority (SWAPCA) and the other on January 30, 1996, by Washington. In addition, Washington provided documentation

that adequate notice of both public hearings had been provided. EPA is satisfied that the public participation process employed by PSAPCA meets this requirement. Any additional public procedures are at the State's discretion. EPA also notes that the commenter had the opportunity to provide comments during Washington's public comment period and the record shows that he provided such comment.

4. The commenter wrote: "The board was given misleading guidance by SWAPCA staff on key issue relating the SIP and CO maintenance plan adoption. Staff suggested to the Board that the Board could apply for re designation with the use of oxy fuels. That the use of oxy fuels would preclude being redesignated. This is absolutely not true and the board needs to reconsider given the true facts."

Response: EPA interprets this comment as asserting that SWAPCA relied on incorrect advice that the oxygenated fuel program could not be continued if it were no longer needed to maintain the NAAQS. Although section 211(m) of the CAA prohibits the federal government from requiring oxygenated gasoline if it is not needed for maintenance of the CO NAAQS, EPA believes that this section does not prevent a State from imposing such a program under its own authority. The record clearly shows that SWAPCA and Washington decided to remove oxygenated gasoline because they believe that it is not needed for maintenance of the NAAQS. This is documented in the responses to public comment by both SWAPCA and Washington, and in the Maintenance Plan. It is also important to point out that oxygenated gasoline is being retained as a contingency measure in the maintenance plan, as required by the CAA.

EPA believes that, under the CAA, it is obligated to approve the maintenance plan and redesignation request submitted by a state if that request meets all of the requirements of the CAA. Under the CAA, the state takes the lead in developing a plan to attain and maintain the NAAQS. If the maintenance plan meets the requirements of the CAA, EPA must approve the plan under section 110(k)(3) of the CAA. Since Washington has submitted a maintenance plan that meets the requirements of section 175 of the CAA, EPA must approve the plan. Furthermore, Washington has demonstrated that the Vancouver area has met the redesignation criteria in section 107(d)(3)(E) of the CAA and, therefore, should be redesignated to attainment for CO. Since Washington

submitted a maintenance plan and redesignation request that comply with the CAA, and there is no issue as to whether Washington has the authority to implement the measures included in the submission, EPA has no authority to examine Washington's reasoning for selection of the measures in the maintenance plan.

None of the comments provided information that contradicts EPA's finding that the Vancouver area has met the criteria for redesignation to attainment. Delay in redesignation of the Vancouver area to attainment is unwarranted and would deny redesignation to an area that meets Clean Air Act requirements for such redesignation. Therefore, EPA is redesignating the Vancouver area to attainment of the CO standard.

### III. Rulemaking Action

EPA is approving the Vancouver CO Maintenance Plan and Washington's request to redesignate the Vancouver area to attainment of the CO standard because Washington's submittal meets the requirements of section 107(d)(3)(E) of the CAA. This approval will revise the SIP for the Vancouver area that will assure that the CO standard continues to be maintained through the year 2006. Because EPA is approving the maintenance plan and because the area meets CAA requirements for redesignation to attainment, the Vancouver area will be designated as attaining the CO NAAQS. EPA is also approving Washington's 1990 base year emission inventory for CO emissions in the Vancouver CO nonattainment area.

Pursuant to Section 553(d)(3) of the Administrative Procedures Act (APA), this final notice is effective upon the date of publication in the Federal Register. Section 553(d)(3) of the APA allows EPA to waive the requirement that a rule be published 30 days before the effective date if EPA determines there is "good cause" and publishes the grounds for such a finding with the rule. Under section 553(d)(3), EPA must balance the necessity for immediate federal enforceability of these SIP revisions against principles of fundamental fairness which require that all affected persons be afforded a reasonable time to prepare for the effective date of a new rule. *United States v. Gavrilovic*, 551 F.2d 1099, 1105 (8th Cir., 1977). The purpose of the requirement for a rule to be published 30 days before the effective date of the rule is to give all affected persons a reasonable time to prepare for the effective date of a new rule.

EPA is making this rule effective upon October 21, 1996 to provide as much

time as possible for State and local air authorities to notify fuel distributors that distribution plans can be modified in response to these changes. In addition, this approval imposes no new requirements on sources since the measures in the maintenance plan were previously approved as part of the SIP and the maintenance plan contains no new requirement for the area.

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.

### IV. 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 state 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 CAA 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. The Regional Administrator 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 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.

#### 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

circuit by December 20, 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).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

40 CFR Part 81

Air pollution control.

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

Dated: October 9, 1996.

Chuck Clarke,

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 WW—Washington**

2. Section 52.2470 is amended by adding paragraph (c)(68) to read as follows:

**§ 52.2470 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(68) On March 19, 1996, the Director of Washington State Department of Ecology (Washington) submitted to the Regional Administrator of EPA a revision to the Carbon Monoxide State Implementation Plan for the Vancouver area containing a maintenance plan that demonstrated continued attainment of the NAAQS for carbon monoxide through the year 2006 and also containing an oxygenated fuels program as a contingency measure to be implemented if the area violates the CO NAAQS.

(i) Incorporation by reference.

(A) Letter dated March 19, 1996 from Washington to EPA requesting the redesignation of the Vancouver carbon monoxide nonattainment area to attainment and submitting the maintenance plan; the "Supplement to the State Implementation Plan for Carbon Monoxide (CO) in Vancouver, WA—Redesignation Request for Vancouver, WA as Attainment for CO," dated December 19, 1995, and adopted on February 29, 1996.

(B) Letters dated January 22, 1993 and April 22, 1994 from Washington to EPA submitting a revision and replacement pages to the State Implementation Plan; enclosure dated November 1992 entitled "Portland-Vancouver Carbon Monoxide Non-attainment Area (Washington State

Portion), 1990 Base Year Emissions Inventory," together with the emission inventory replacement pages for carbon monoxide in Vancouver, dated December 1993.

(ii) Additional material.

(A) Appendices to the Vancouver Area Redesignation Request and Maintenance Plan for the National Ambient Carbon Monoxide Standard dated December 1995: Appendix A, Technical Analysis Protocol; Appendix B, Carbon Monoxide Air Quality Data Monitoring Network; Appendix C, Carbon Monoxide Saturation Study; Appendix D, Carbon Monoxide Air Quality Monitoring Data; Appendix E, Emission Inventory; Appendix F, Conformity Process; Appendix G, Historical and Projected Population, Employment and Households; Appendix H, Portland/Vancouver Carbon Monoxide Nonattainment Area Separation Documentation; Appendix I, Washington Department of Ecology Vancouver Carbon Monoxide Study; and Appendix J, Maintenance Planning Process.

**PART 81—[AMENDED]**

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

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

2. In § 81.348, the table for "Washington-Carbon Monoxide," is amended by revising the entry for the Vancouver Area to read as follows:

**§ 81.348 Washington.**

\* \* \* \* \*

WASHINGTON-CARBON MONOXIDE

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *	*	*	*	
Vancouver Area: Clark County (part) Air Quality Maintenance Area .....	*	Attainment	*	

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

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 64**

[Docket No. FEMA-7651]

**List of Communities Eligible for the Sale of Flood Insurance**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.