

United States Postal Service Customs Declaration and Dispatch Note		No. _____	
Sender's Name and Address (<i>Nom et adresse de l'expéditeur</i>)		Addressee's Name and Address (<i>Nom et adresse du destinataire</i>)	
List of Contents (<i>Désignation du contenu</i>) Please Print		Qty.	Value (<i>Valeur</i>)
Insured No. V-		Insured Amount US \$	SDR Insured Value US \$
Check One: <input type="checkbox"/> Commercial Sample (<i>Echantillon commercial</i>)		<input type="checkbox"/> Documents	<input type="checkbox"/> Gift (<i>Cadeau</i>)
<input type="checkbox"/> Merchandise		Postage US \$	
Gross Weight lb oz		Sender's Signature and Date (<i>Signature de l'expéditeur et date</i>)	
Sender's Instructions in Case of Nondelivery (<i>Instructions de l'expéditeur en cas de non-livraison</i>) <input type="checkbox"/> Return to Sender (<i>Renvoyer à l'origine</i>) NOTE: Item subject to return charges at sender's expense. <input type="checkbox"/> Abandon (<i>Abandonner</i>) <input type="checkbox"/> Redirect to Address Below (<i>Réexpédier à</i>)		I certify that the particulars given in the customs declaration are correct and that this item does not contain any dangerous article prohibited by postal regulations.	
PS Form 2976-A , May 1996 CP 72 (<i>Old C2/CP3/CP2</i>)		Copy 4 - Post Office	

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[AK10-1-7022a; FRL-5287-5]

Approval and Promulgation of Implementation Plans: Alaska**AGENCY:** Environmental Protection Agency.**ACTION:** Direct final rule.

SUMMARY: The Clean Air Act (CAA) requires the states to promulgate conformity rules to ensure that Federal actions conform to the appropriate State Implementation Plan (SIP). Conformity to a SIP is defined in the CAA, as amended in 1990, as meaning conformity to a SIP's purpose of eliminating or reducing the severity and number of violations of the National ambient air quality standards (NAAQS) and achieving expeditious attainment of such standards. The Federal agency responsible for the action is required to determine if its actions conform to the applicable SIP. Environmental Protection Agency (EPA) approves most of Alaska's General conformity rules and Transportation conformity rules received on December 9, 1994 from the Alaska Department of Environmental Conservation (ADEC) and is taking no action on the remaining small portion of the submittal.

DATES: This final rule is effective on November 27, 1995 unless adverse or critical comments are received by October 27, 1995. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air & Radiation Branch (AT-082), EPA, AK10-1-7022, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT-082), Seattle, Washington 98101, and Alaska Department of Environmental Conservation, 410 Willoughby, suite 105, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Kelly Huynh, Air & Radiation Branch (AT-082), EPA, Seattle, Washington 98101, (206) 553-1059.

SUPPLEMENTARY INFORMATION:**I. Background**

The CAA section 176(c), as amended (42 U.S.C. 7401 *et seq.*), requires states to submit to EPA revisions to their implementation plans establishing transportation and general conformity criteria and procedures. EPA regulation requires the states to submit SIP revisions by November 25, 1994 and November 30, 1994. These conformity rules are to ensure that all Federal actions conform to the appropriate SIP developed pursuant to section 110 and part D of the CAA. Conformity to a SIP is defined in the CAA, as amended in 1990, as meaning conformity to a SIP's purpose of eliminating or reducing the severity and number of violations of the National ambient air quality standards (NAAQS) and achieving expeditious attainment of such standards, and that such activities will not:

1. Cause or contribute to any new violation of any standard in any area;
2. Increase the frequency or severity of any existing violation of any standard in any area; or
3. Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA ties conformity to attainment and maintenance of the NAAQS. Thus, Federal actions must not adversely affect the timely attainment and maintenance of the NAAQS or emission reduction progress plans leading to attainment. The Federal agency responsible for the action is required to determine if its actions conform to the applicable SIP. The Alaska conformity approved portions establish the criteria and procedures governing the determination of conformity for all Federal actions in the state of Alaska, including Federal highway and transit actions ("transportation conformity"). Although EPA has concluded that the conformity requirements apply in all areas, including attainment areas, EPA must first complete notice and comment rulemaking on the appropriate criteria and procedures for conformity determinations in attainment areas before requesting the state equivalent submittal. Therefore, the criteria and procedures established in this rule apply only in areas that are nonattainment or maintenance with respect to any of the criteria pollutants under the CAA: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), particulate matter (PM₁₀), and sulfur dioxide (SO₂). The rule covers direct and indirect emissions of criteria

pollutants or their precursors that are reasonably foreseeable and caused by a Federal action.

The Alaska submittal containing both the general and transportation conformity regulations is generally consistent with the CAA requirements. This was accomplished largely through the incorporation by reference of the Federal regulations as well as changes to nonattainment plans to include the conformity requirements. The portion of Alaska's submittal that is not being acted on is in direct consequence to a revision of the Federal regulation. Alaska's regulations establish procedural requirements including interagency consultation procedures. They also require the responsible agency to make their conformity determinations available for public review. Notice of draft and final conformity determinations must be provided directly to air quality regulatory agencies and to the public by publication in a local newspaper. The conformity determination examines the impacts of the direct and indirect emissions from the Federal action. The regulations require the Federal action to also meet any applicable SIP requirements and emission milestones. Each Federal agency must determine that any actions covered by the rule conform to the applicable SIP before the action is taken.

Specifically, Articles 5 through 9 are being acted on as part of the Alaska SIP as well as changes to Volume II: Analysis of Problems, Control Action of the State Air Quality Control Plan. The explanations of these approved articles are summarized as follows unless no action is specifically indicated:

Article 5, 18 AAC 50.620 was amended to include December 1, 1994 as the latest date in which the Alaska SIP was amended.

Article 6 of 18 AAC 50 was amended as Reserved.

Article 7-Conformity, included many changes to sections as follows. Section 700-Purpose, explains that the following sections are written to comply with 40 CFR part 51, subparts T and W, and that if Federal money is used for a project within a nonattainment or maintenance area that it will not hinder attainment of the National ambient air quality standards in that area.

Section 705-Coverage of 18 AAC 50.700-18 AAC 50.735, applies to transportation plans, programs or projects within the nonattainment or maintenance area, and all other federally-funded projects or activities. This section defines "responsible agency".

Section 710—Transportation Conformity: Incorporation By Reference of Federal Regulations. Most of this section is being approved as it incorporates most of the Federal regulations directly from 40 CFR part 51. The following sections of 40 CFR part 51 are incorporated by reference and are being approved: § 51.392 (except the term “regionally significant project” which is defined elsewhere in the Alaska state regulation), §§ 51.394, 51.398, 51.400, 51.404, 51.406, 51.408, 51.410, 51.412, 51.414, 51.416, 51.418, 51.420, 51.422, 51.424, 51.426, 51.428, 51.430, 51.432, 51.434, 51.436, 51.438, 51.440, 51.442, 51.444, 51.446, 51.450, 51.452, 51.454, 51.456, 51.458, 51.460, 51.462. However, EPA is taking no action at this time on 18 AAC 50.710(27). This portion of the regulation incorporates by reference Federal regulation 40 CFR 51.448, Transition from the interim period to the control strategy period, as amended through December 1, 1994. Soon after this time EPA began work to amend 40 CFR 51.448 and published the amended section on August 7, 1995. Because a portion of the Alaska regulation 18 AAC 50.710 adopted a section of the Federal regulation which has subsequently been significantly revised, EPA is taking no action on paragraph (27) of the state rule at this time. Alaska has indicated that it will revise 18 AAC 50.710(27) in a future SIP submittal.

Section 715—Transportation Conformity: Interagency Consultation Procedures. This section establishes procedures for consultation (Federal, State, and local), resolution of conflicts, including referral to the governor when necessary, and procedures for public review and comment. The regulation addresses the consultation procedure elements identified under 40 CFR 50.402.

Section 720—Transportation Conformity: Public Involvement. This section requires a public involvement process to provide opportunity for public review and comment of the public review draft before the agency issues a final conformity determination. This section also establishes public hearing or meeting requirements.

Section 725—General Conformity: Incorporation by Reference of Federal Regulations. This section incorporates the entire Federal general conformity program into the regulation except § 51.857 (Frequency of conformity determinations) and § 51.860 (Mitigation of air quality impacts) which are included in sections 730 and 735 of the state submittal.

Section 730—General Conformity: Mitigation of Air Quality Impacts. The

regulation content is consistent with that of 40 CFR 51.860, which requires that a commitment be made to conduct the air quality mitigation measures if the conformity decision is based on that amount of decreased air pollution.

Section 735—General conformity: Frequency of Conformity Determination. The regulation content is consistent with that of 40 CFR 51.857, which requires that if a Federal action is not commenced within five years and this has not been accounted for in the initial conformity determination that a new determination be conducted unless the activity is just following the natural project progression. If at any time the project increases its emissions a new conformity determination would need to be conducted.

18 AAC 50 was also amended to include Article 8 Reserved.

Article 9. General Provisions Section 900—Definitions, was amended to include two new definitions; “maintenance area” which refers to a previously designated nonattainment area that has been since designated as an attainment area and “regionally significant project” which is a transportation project that is on a facility serving regional transportation needs.

II. This Action

This action approves numerous sections of Chapter 50—Air Quality Control of the Alaska SIP. The approved sections include 18 AAC 50.620 of Article 5, Article 6—Reserved, Article 7—Conformity except section 710(27), Article 8—Reserved, and Article 9—General Provisions. EPA is taking no action on Article 7, Section 710(27). EPA also is approving certain portions of Volume II: Analysis of Problems; Control Actions, which include page III.A3–5, III.B.7–1, III.C.7–1, III.I–1 through III.I–6, III.J–1 through III.J–4.

III. 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. USEPA*, 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 EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 27, 1995 unless, by October 27, 1995 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 27, 1995.

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 November 27, 1995. 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)).

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

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: August 18, 1995.
Charles Findley,
Acting 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)(24) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(24) On December 5, 1994 the Alaska Department of Environmental Conservation sent EPA revisions for inclusion into Alaska's SIP that address transportation and general conformity regulations as required by EPA under the CAA.

(i) Incorporation by reference.

(A) December 5, 1994 letter from the Governor of Alaska to EPA, Region 10, submitting amendments addressing transportation and general conformity revisions to the SIP:

(1) Regulations to 18 AAC 50, Air Quality Control, including Article 5, Procedure and Administration, 18 AAC 620; Article 6, Reserved; Article 7, Conformity, 18 AAC 50.700-18 AAC 50.735; Article 8, Reserved; and Article 9, General Provisions, 18 AAC 50.900, all of which contain final edits (23 pages total) by the Alaska Department of Law, were filed by the Lieutenant Governor on December 5, 1994 and effective on January 4, 1995.

(2) Amendments to the Alaska State Air Quality Control Plan, "Volume II: Analysis of Problems, Control Actions," as revised on December 1, 1994, adopted by reference in 18 AAC 50.620, containing final edits by the Alaska Department of Law, all of which were certified by the Commissioner of Alaska to be the correct plan amendments, filed by the Alaska Lieutenant Governor on December 5, 1994 and effective on January 4, 1995.

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40 CFR Part 52

[VA21-1-5883a; FRL-5292-2]

Approval and Promulgation of Air Quality Implementation Plans; Virginia—VOC RACT Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to amendments to Virginia's major source volatile organic compound (VOC) reasonably available control technology (RACT) requirements applicable in the Richmond ozone nonattainment area and the Virginia portion of the Washington, DC ozone nonattainment area. The revision was submitted to comply with the RACT "Catch-up" provisions of the Clean Air Act Amendments of 1990 (The Amendments). The intended effect of this action is to approve the submitted amendments to Virginia's major source VOC RACT requirements because they strengthen Virginia's SIP. This action is being taken under section 110 of the Clean Air Act.

DATES: This final rule is effective November 27, 1995, unless notice is received on or before October 27, 1995, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs (3AT00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation & 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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Maria Pino, (215) 597-9337.

SUPPLEMENTARY INFORMATION: On November 6, 1992, the Virginia Department of Environmental Quality submitted a revision to its ozone SIP to comply with the RACT "Catch-up" provisions of the Clean Air Act (the