

States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260-7548.

**FOR FURTHER INFORMATION CONTACT:**

Michael G. Leslie, Regulation Development Section (AT-18J), Air Toxics and Radiation Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353-6680.

**SUPPLEMENTARY INFORMATION:**

**I. Background Information**

Section 182(d)(1)(A) of the Act requires States that contain severe ozone nonattainment areas to adopt transportation control measures and transportation control strategies to offset growth in emissions from growth in VMT or number of vehicle trips and to attain reductions in motor vehicle emissions (in combination with other measures) as needed to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are set forth in 182(d)(1)(A) and discussed in the General Preamble to Title I of the Act (57 FR 13498 April 16, 1992).

As described in the proposal, section 182(d)(1)(A) sets forth three elements that must be met by a VMT Offset SIP. Under USEPA's alternative interpretation, the three required elements of section 182(d)(1)(A) are separable, and can be divided into three separate submissions that could be submitted on different dates. Section 179(a) of the Act, in establishing how USEPA would be required to apply mandatory sanctions if a State fails to submit a full SIP, also provides that the sanctions clock starts if a State fails to submit one or more SIP elements, as determined by the Administrator. The USEPA believes that this language provides USEPA the authority to determine that the different elements of the SIP submissions are separable. Moreover, given the continued timing problems addressed above, USEPA believes it is appropriate to allow States to separate the VMT Offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset growth in emissions; (2) the requirement

to comply with the 15 percent periodic reduction requirement of the Act; and (3) the requirement to comply with the post-1996 periodic reduction and attainment requirements of the Act.

**II. Final Rulemaking Action**

In this action, USEPA is approving the first element of the VMT offset SIP revision submitted by the State of Wisconsin. As noted in the January 10, 1995, proposal, the USEPA will not take final action on the second element until the State has submitted a complete 15 percent ROP plan. The third element of the Wisconsin VMT offset SIP will also be the subject of a future rulemaking.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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 any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA 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, USEPA may certify that the rule will not have a significant economic 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.

The SIP approvals under section 110 and subchapter I, part D, of the 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, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds.

*Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 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)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Ozone.

Dated: April 20, 1995.

**Valdas V. Adamkus**,  
*Regional Administrator.*

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

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

**Subpart YY—Wisconsin**

2. Section 52.2585 is amended by adding paragraph (g) to read as follows:

**§ 52.2585 Control strategy: Ozone.**

\* \* \* \* \*

(g) Approval—On November 15, 1993, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to a plan for forecasting VMT in the severe ozone nonattainment area of southeastern Wisconsin and demonstrated that Transportation Control Measures would not be necessary to offset growth in emissions.

[FR Doc. 95-11046 Filed 5-4-95; 8:45 am]

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**40 CFR Part 52**

[WA 32-1-6894a; FRL-5192-1]

**Approval and Promulgation of State Implementation Plan: Washington**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the State of Washington's contingency measure plan as a revision to Washington's State Implementation Plan (SIP) for carbon

monoxide (CO). EPA's action is based upon a revision request which was submitted by the state to satisfy the requirement of the Clean Air Act Amendments for the Puget Sound Carbon Monoxide Nonattainment Area.

**DATES:** This final rule is effective on July 5, 1995 unless by June 5, 1995 someone submits adverse or critical comments. 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, Docket WA 32-1-6894, 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 the Washington State Department of Ecology, P.O. Box 47600, Olympia, Washington, 98504-7600.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Cooper, Air & Radiation Branch (AT-082), EPA, Seattle, Washington 98101, (206) 553-6917.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

States containing CO nonattainment areas with design values of 12.7 ppm or more were required to submit, among other things, contingency measures to satisfy the provisions under section 172(c)(9) and 187(a)(3). These provisions require contingency measures to be implemented in the event that, among other things, an area fails to reach attainment by the applicable attainment date, December 31, 1995.

Contingency measures must be implemented within 12 months after the finding of failure to attain the CO NAAQS. Once triggered they must take effect without further action by the state or EPA. Therefore, all contingency measures must be adopted and enforceable prior to submittal to EPA.

The CAAA do not specify how many contingency measures are needed or the magnitude of emission reductions they must provide if an area fails to attain the CO NAAQS. The EPA believes that one appropriate choice of contingency measures would be to provide for the implementation of sufficient vehicle

miles traveled (VMT) reductions or emissions reductions to counteract the effect of one year's growth in VMT while the state revises its SIP to incorporate all of the new requirements of a serious CO area.

**II. This Action**

In this action, EPA is approving Washington's SIP revision submitted to EPA on December 6, 1994 for the Puget Sound Carbon Monoxide Nonattainment Area, because it meets the applicable requirements of the Act.

The state of Washington held a public hearing on July 7, 1994, at the Department of Ecology's Northwest Regional Office in Bellevue, Washington, to entertain public comment on the CO contingency measure SIP revision. Ecology submitted the plan to EPA on December 6, 1994 as a proposed revision to the SIP.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria delineated at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete on January 26, 1994 and a letter dated February 2, 1995 was forwarded to the Director indicating the completeness of the submittal.

*A. Analysis of State Submission*

Washington's CO contingency plan for Puget Sound consists of a two-tiered program relying upon separate trigger mechanisms. The first tier of the contingency measures is a public outreach and education program. The measure, if triggered, will provide information to the public about carbon monoxide problems and discourage individuals from using single-occupancy-vehicle (SOV) transit modes and encourage reduced transit use, particularly during bad air quality episodes. The implementing agencies would include the State Departments of Ecology and Transportation, the Puget Sound Air Pollution Control Agency (PSAPCA), the Puget Sound Regional Council, cities, counties, and local transit agencies. Implementation of the public outreach and information contingency measure will be triggered if there is a violation of the NAAQS prior to the attainment date of December 31, 1995. The measure is estimated to cost \$320,000 and to reduce emissions by .5 percent to 1 percent (of estimated 1995 CO emissions). This contingency measure is similar to the contingency measure for vehicle miles travelled forecasts (VMT), but is funded through a different mechanism. If the

contingency measures for both VMT and maintaining the NAAQS are activated simultaneously, the additional funds would be used to increase the number, variety, and frequency of direct outreach mechanisms such as press releases, busboard advertisements, etc.

Tier two of the contingency measures consists of increasing the minimum required winter gasoline oxygenate content from the federally required 2.7 percent to 3.1 percent. If triggered, this contingency measure would be implemented by the Puget Sound Air Pollution Control Agency and the fuel industry. The measure would be triggered if the Puget Sound area fails to attain the NAAQS by the attainment date and EPA Region 10 provides notification for implementation of the measure. Once triggered, gasoline suppliers will be required to increase the oxygenate percentage beginning the following winter season. To ensure that oxygenated gasoline with a minimum content of 3.1 percent or higher is used for the entire subsequent winter season, PSAPCA will notify suppliers no later than March 1st. In the meantime, PSAPCA will issue a written advisory to encourage gasoline suppliers to aim for an average minimum oxygenate content of 3.1 percent or higher for the remainder of the winter season in which the measure is triggered. Increasing the minimum oxygenate percentage is estimated to reduce emissions 4.6 percent to 9.4 percent (from estimated 1995 CO emissions).

The Washington State Department of Ecology chose a two-tiered contingency measure based on input received during the public review process. The rationale behind the separate triggers was to proactively implement the Tier 1 measure in the event that the region appeared to be "at risk" for failing to attain the federal standards, and the Tier 2 measure (which includes continuation of the Tier 1 measure) if the region subsequently failed to attain the federal standards.

Both contingency measures have committed funding. The public outreach and information program will be funded by delaying unobligated transportation projects in the regional Transportation Improvement Program (TIP), and diverting funding to the contingency measure. Gasoline consumers and the fuel industry would bear the cost of implementing the wintertime oxygenated fuel measure.

**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. U.S.E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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 July 5, 1995 unless, by June 5, 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 the separate 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 July 5, 1995.

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 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The 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 5, 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).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

**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: April 7, 1995.

**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 WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(52) to read as follows:

##### § 52.2470 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(52) On December 6, 1994, the Director of WDOE submitted to EPA a contingency measure SIP revision for the Puget Sound Carbon Monoxide Nonattainment Area to satisfy certain applicable requirements of the Act.

(i) Incorporation by reference.

(A) Letter dated November 30, 1994 from WDOE to EPA submitting the CO revision for the Puget Sound area and, "A Plan for Attaining and Maintaining National Ambient Air Quality Standards for the Puget Sound Carbon Monoxide Nonattainment Area," replacement pages 10-1 through 10-3, dated November 16, 1994, adopted November 29, 1994, and Attachment B of Addendum E, "Contingency Measure Plan Element for the Central Puget Sound Region Carbon Monoxide State Implementation Plan—Final Plan," pages 1-15, dated May 26, 1994, and adopted November 29, 1994.

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#### 40 CFR Part 52

[MS-19-1-6758a; FRL-5195-1]

### Mississippi: Revisions to Prevention of Significant Deterioration of Air Quality Regulations

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the State Implementation Plan (SIP) to include modifications of the state prevention of significant deterioration (PSD) of air quality regulation to update the adoption by reference in Regulation APC-S-5, of the amendments and revisions to the Federal regulations promulgated in 40 CFR 52.21 and 51.166 as of the date of adoption of this revision. This plan revision provides for inclusion of particulate matter increment requirements measured as PM<sub>10</sub> (particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers) and incorporation of revisions to the Guideline on Air Quality Models (including Supplement B) as promulgated by EPA in 40 CFR 51.166(l) and 40 CFR part 51, appendix W. This plan revision further provides for inclusion of amendments and revisions to definitions and any other sections of 40 CFR 52.21 and 51.166 as promulgated by EPA. The revision and associated regulation amendments were adopted on December 9, 1993, by the Mississippi Commission on Environmental Quality and became state effective on January 9, 1994.

**DATES:** This action will be effective July 5, 1995 unless adverse or critical comments are received by June 5, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.