

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

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Motor vehicle pollution, Hydrocarbons, Nitrogen oxides, Ozone, Volatile organic compounds.

##### 40 CFR Part 81

Environmental protection, Air pollution control, National Parks, Wilderness Areas.

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

Dated: May 30, 1996.

Valdas V. Adamkus,

*Regional Administrator.*

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#### 40 CFR Parts 52 and 81

[WA52-7125; FRL-5513-2]

#### Approval and Promulgation of Maintenance Plan and Designation of Areas for Air Quality Planning Purposes for Carbon Monoxide; State of Washington

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing its intent to redesignate the Seattle-Tacoma-Everett nonattainment area to attainment for the carbon monoxide (CO) air quality standard and to approve a maintenance plan that will insure that the area remains in attainment. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is proposing to approve the Seattle-Tacoma-Everett redesignation as meeting the requirements set forth in the CAA.

**DATES:** Comments must be postmarked on or before July 11, 1996.

**ADDRESSES:** Written comments should be addressed to: Montel Livingston, SIP Manager, EPA, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's redesignation request and other information supporting this proposed action are available for public review during normal business hours at the addresses listed below: 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:** Christi Lee, EPA Region 10 Washington Operation's Office, at (360) 753-9079.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In a March 15, 1991, letter to the EPA Region 10 Administrator, the Governor of Washington recommended the Seattle-Tacoma-Everett area, including the western portions of King, Pierce, and Snohomish Counties, be designated as nonattainment for CO as required by section 107(d)(1)(A) of the 1990 Clean Air Act Amendments (CAA) (Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q). The area, which includes lands within the Puyallup Reservation, Tulalip Reservation and Muckleshoot Reservation, was designated nonattainment and classified as "moderate" under the provisions outlined in sections 186 and 187 of the CAA. (See 56 FR 56694 (Nov. 6, 1991), codified at 40 CFR part 81, § 81.348.) Because the Seattle-Tacoma-Everett area had a design value of 14.8 ppm (based on 1987 data), it was classified as "moderate > 12.7 ppm" (moderate plus).

The CAA established an attainment date of December 31, 1995, for all moderate CO areas. The Seattle-Tacoma-Everett area has ambient monitoring data showing attainment of the CO National Ambient Air Quality Standards (NAAQS), since 1991. Therefore, in an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on March 6, 1996, the Washington State Department of Ecology (WDOE) submitted a CO redesignation request and a maintenance plan for the Seattle-Tacoma-Everett nonattainment area. The WDOE submitted evidence that public hearings were held on October 26, 1995 in Seattle at the office of the Puget Sound Air Pollution Control Agency.

On April 8, 1996, EPA Region 10 determined that the information received from the WDOE constituted a complete redesignation request under the general completeness criteria of 40 CFR part 51, appendix V, §§ 2.1 and 2.2.

##### II. Evaluation Criteria

Section 107(d)(3)(E) of the CAA lists specific requirements that an area must meet in order to be redesignated from nonattainment to attainment. They are:

1. The area must have attained the applicable NAAQS;
2. The area must have a fully approved SIP under section 110(k) of the CAA

and the area must have met all relevant requirements under section 110 and Part D of the CAA.

3. The air quality improvement must be permanent and enforceable;
4. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.

##### III. Review of State Submittal

EPA proposes to find that the Washington redesignation request for the Seattle-Tacoma-Everett area meets the requirements of section 107(d)(3)(E), noted above. EPA also proposes to find that information and requirements provided in the WDOE redesignation request and maintenance plan for the Seattle-Tacoma-Everett nonattainment area demonstrate that the 107(d)(3)(E) requirements have been met for the affected tribal lands which include portions of the Tulalip Reservation, the Puyallup Reservation and the Muckleshoot Reservation. The Agency has not determined whether it is bound to follow the formal requirements of section 107(d)(3)(E) when taking such redesignation actions for tribal lands. The action to redesignate to attainment these tribal lands is being proposed today without answering that question because information submitted by WDOE satisfies each required element for redesignation.

The following is a brief description of how each of the 107(d)(3)(E) requirements are met. A Technical Support Document, on file at the EPA Region 10 office, contains a more detailed analysis of this redesignation proposal.

##### 1. Attainment of the CO NAAQS

To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard per year over at least two consecutive years. The redesignation is based on air quality data that showed that the CO standard was not violated in 1993 and 1994. These data were collected by WDOE in accordance with 40 CFR 50.8, following EPA guidance on quality assurance and quality control and are in the EPA Aerometric Information and Retrieval System (AIRS). Since the Seattle-Tacoma-Everett area has complete quality-assured monitoring data showing attainment of the standard over two consecutive years (1993 and 1994), and has not violated the standard since that time, the area has met the first statutory criterion for attainment of the CO NAAQS. The WDOE has committed to continue monitoring in this area in accordance with 40 CFR part 58.

## 2. Fully Approved SIP That Meets Applicable Requirements of Section 110 and Part D of the CAA

Section 107(d)(3)(E)(ii) of the CAA states that EPA may not approve redesignation of a nonattainment area to attainment unless EPA has fully approved all of the SIP requirements that were due under the 1990 CAA. The 1990 CAA required that nonattainment areas achieve specific new requirements depending on the severity of the nonattainment classification. As noted earlier, Seattle-Tacoma-Everett was classified as a moderate CO nonattainment area with a design value greater than 12.7 ppm. Therefore, the 1990 CAA requirements for the Seattle-Tacoma-Everett nonattainment area include the preparation of a 1990 emission inventory with periodic updates, adoption of an oxygenated fuels program, the development of contingency measures, adoption of an enhanced inspection and maintenance program, a forecast of vehicle miles traveled, development of conformity procedures, and the establishment of a permit program for new or modified major stationary sources.

For the purposes of evaluating the request for redesignation to attainment, EPA has approved all but three elements of the WDOE CO SIP. Specifically, the three elements of the WDOE CO SIP that have not been fully approved by EPA are the 1990 base year emission inventory, the inspection and maintenance program and the attainment demonstration. EPA is reviewing the SIP revisions for each of these three requirements, which have been submitted by the WDOE. Final approval of the Seattle-Tacoma-Everett CO area redesignation request is contingent on final action by EPA to approve these three elements.

### A. Conformity

Under section 176(c) of the CAA, states were required to submit revisions to their SIPs that include criteria and procedures to ensure that Federal actions conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as all other Federal actions ("general conformity"). Congress provided for the State revisions to be submitted one year after the date of promulgation of final EPA conformity regulations. EPA promulgated final transportation conformity regulations on November 24,

1993 (58 FR 62188) and final general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that the States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to 40 CFR § 51.396 of the transportation conformity rule, the WDOE was required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, pursuant to 40 CFR § 51.851 of the general conformity rule, the WDOE was required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. The WDOE submitted its transportation conformity SIP revision to EPA on December 1, 1995. This SIP has not been fully approved by EPA. The WDOE has not submitted its general conformity SIP revision.

Although this redesignation request was submitted to EPA after the due dates for the SIP revisions for transportation conformity (58 FR 62188) and general conformity (58 FR 63214) rules, EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, the federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment, and must implement conformity under Federal rules if State

rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

Therefore, EPA has modified its national policy regarding the interpretation of the provisions of section 107(d)(3)(E) concerning the applicable requirements for purposes of reviewing a carbon monoxide redesignation request. (See 61 FR 2918, January 30, 1996). Under this policy, for the reasons just discussed, EPA believes that the CO redesignation request for the Seattle-Tacoma-Everett area may be approved notwithstanding the lack of submitted and approved state transportation and general conformity rules.

### B. Periodic Emission Inventory

Under Part D of the CAA a 1993 CO periodic emission inventory is required to be submitted to EPA for approval into the Washington SIP. Ecology submitted a 1993 emission inventory as an element of the maintenance plan for purposes of meeting the attainment emission inventory requirement of section 175A. EPA is accepting and proposing to approve the 1993 emission inventory as satisfying both the Part D and section 175A requirements.

### 3. Improvement in Air Quality Due to Permanent and Enforceable Measures

EPA approved the WDOE's CO SIP under the 1990 CAA. Emission reductions achieved through the implementation of control measures contained in that SIP are enforceable. These measures were: an enhanced inspection and maintenance program, the Federal Motor Vehicle Control Program, and an oxygenated fuels program. As discussed above, the Seattle-Tacoma-Everett area initially attained the NAAQS in 1991 (prior to implementation of the oxygenated fuels program) with monitored attainment through the 1995-1996 CO season. This indicates that the improvements are due to the permanent and enforceable measures contained in the 1990 CO SIP and did not rely on the oxygenated fuels program.

The WDOE has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to local economic downturn or unusual or extreme occurrences in the weather patterns. EPA finds that the combination of certain existing EPA-approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient

CO levels that have allowed the area to attain the NAAQS.

4. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. In this notice, EPA is proposing to approve the WDOE's

maintenance plan for the Seattle-Tacoma-Everett area because EPA finds that it meets the requirements of section 175A.

A. Attainment Emission Inventory

The WDOE submitted comprehensive inventories of CO emissions from point, area, stationary and mobile sources using 1993 as the attainment year for calculations to demonstrate that the CO standard will be maintained in the Seattle-Tacoma-Everett area. Since air monitoring recorded attainment in 1993, 1993 is an acceptable year for the attainment inventory. The 1993 emission inventory summaries by source category are in Table 1 and detailed inventory data is contained in the docket maintained by EPA.

Although the 1993 inventory can be considered representative of attainment conditions because the NAAQS was not violated during 1993, the WDOE established CO emissions for the

attainment year, 1993, as well as five forecast years out to the year 2010 (1995, 1998, 2005, 2007 and 2010) in their redesignation request. The future emission estimates are based on forecast assumptions about growth of the regional economy and vehicle miles traveled. The assumptions for the annual VMT growth rate and the annual employment growth rate were calculated using the State Highway Performance Monitor System, regional VMT data and the Central Puget Sound Regional Econometric Model respectively. Stationary and mobile source inventories were compiled following EPA guidance. Mobile source emission estimates were prepared following the approach recommended by EPA. The WDOE used the Highway Performance Monitor System and regional transportation system network data to estimate vehicle miles traveled and used the MOBILE 5.1 emission model for CO emissions estimates.

TABLE 1.—1993 CO ATTAINMENT YEAR EMISSIONS INVENTORY FOR THE SEATTLE-TACOMA-EVERETT NONATTAINMENT AREA (TONS PER WINTER DAY)

Year	Area	Nonroad	Mobile	Point	Total
1993 .....	316	214	1497	61	2088

SEATTLE-TACOMA-EVERETT NONATTAINMENT AREA CO EMISSIONS INVENTORY PROJECTIONS (TONS PER WINTER DAY)

Year	Area	Nonroad	Mobile	Point	Total
1995 .....	317	211	1290	61	1879
1998 .....	317	221	1458	61	2057
2001 .....	318	218	1317	61	1914
2005 .....	319	198	1262	61	1840
2007 .....	320	195	1259	61	1835
2010 .....	321	198	1253	61	1833

B. Demonstration of Maintenance: Projected Inventories

Total CO emissions were projected from the 1993 attainment year out to 2010. These projected inventories were prepared in accordance with EPA guidance. The projections show that calculated CO emissions, assuming no oxygenated fuels program, are not expected to exceed the level of the 1993 attainment year inventory during this time period. The WDOE will discontinue implementation of the Oxygenated Fuel program in the Seattle-Tacoma-Everett Consolidated Metropolitan Statistical Area (CMSA) once approval of the CO maintenance plan becomes effective. Therefore, it is anticipated that the Seattle-Tacoma-Everett area will maintain the CO standard without the oxygenated fuels program, and this program would not need to be implemented following

redesignation, except as a contingency measure.

C. Verification of Continued Attainment

Verification of continued attainment of the CO NAAQS in the Seattle-Tacoma-Everett area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The WDOE has also committed to perform comprehensive reviews of the CO maintenance plan commencing in the year 2000 and occurring again at four year intervals in 2004 and 2008. The plan elements to be reviewed at each of these times include VMT and socioeconomic forecasts; emission inventory projections and control strategy implementation effectiveness. The results of the plan review in 2008 will be used as the basis for developing a CO maintenance plan for the next maintenance planning period.

In addition, the WDOE has committed to pursuing amendments to the maintenance plan if substantive changes are required as a result of the above reviews.

D. Contingency Plan

Section 175A(d) of the CAA requires that all control measures contained in the SIP prior to redesignation be retained as contingency measures in the CO maintenance plan. Since the oxygenated fuels program was a control measure contained in the SIP prior to redesignation, the WDOE SIP retains oxygenated fuels as the contingency measure in the maintenance plan. The plan contains a triggering mechanism to determine when the contingency measure is needed. In the event of a future CO violation, implementation of the oxygenated fuels program will be triggered. This contingency measure would require all gasoline blended for

sale in the Puget Sound CO nonattainment area during the winter months to contain an average oxygenate content of at least 2.7 percent by weight. Program requirements would be identical to those incorporated into the current oxygenated gasoline program (Chapter 173-492, Washington Administrative Code, Motor Fuel Specifications for Oxygenated Gasoline, adopted October 6, 1992 and PSAPCA Regulation II, Section 2.09, Oxygenated Gasoline, adopted October 14, 1993).

This contingency measure will be triggered in the event of a quality-assured violation of the NAAQS for CO at any one of the permanent monitoring sites in the nonattainment area. Thus, this triggering will occur when any one monitoring site records two 8-hour average CO concentrations that equal or exceed 9.5 ppm in a single calendar year.

The oxygenated fuels program will be fully implemented no later than the next full winter season following the date when the trigger was activated. Implementation will continue throughout the balance of the CO maintenance period, or until such time that a reassessment of the ambient CO monitoring data establishes that the contingency measure is no longer necessary.

As mentioned above, the WDOE has chosen to convert its oxygenated fuels requirement in the Seattle-Tacoma-Everett CMSA to a contingency measure in its maintenance plan upon redesignation. EPA is approving the WDOE's contingency measure for the Seattle-Tacoma-Everett area.

#### E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. That revised SIP will provide for maintenance for an additional ten years.

#### Conclusion

EPA proposes to approve the Seattle-Tacoma-Everett, Washington CO maintenance plan and request for redesignation to attainment because WDOE has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation.

In addition, EPA, after notification of and consultation with the affected tribal governments, proposes to redesignate to attainment those areas in the Seattle-Tacoma-Everett CO nonattainment area that are located within the Tulalip Reservation, the Puyallup Reservation and the Muckleshoot Reservation. The

Agency believes that the redesignation requirements are effectively satisfied here based on information provided by WDOE and requirements contained in the WDOE SIP and maintenance plan.

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rule making procedure by submitting written comments to the person and address listed in the ADDRESSES section at the beginning of this notice.

#### 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 proposed 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.

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.

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 2214-2224), 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.

#### 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, National parks, and Wilderness areas.

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

Dated: May 22, 1996.

Jane S. Moore,

Acting Regional Administrator.

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

[Docket No. FEMA-7182]

### Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.