

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OR 56-7271; FRL-5884-4]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes: State of Oregon

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is redesignating the Portland, Oregon nonattainment area to attainment for the carbon monoxide (CO) national ambient air quality standard (NAAQS) 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 Oregon Department of Environmental Quality's (DEQ's) request because it meets the redesignation requirements set forth in the CAA. As part of this action, EPA is approving two related State Implementation Plan (SIP) revisions: the 1990 base year emissions inventory, as meeting the requirements of section 187(a)(1) of the CAA; and the 1991 attainment year emissions inventory, as meeting the periodic

inventory requirements of section 187(a)(5) of the CAA.

DATES: This rule is effective as of October 2, 1997.

ADDRESSES: Copies of Oregon's redesignation request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101; and the Oregon Department of Environmental Quality, 811 SW 6th Avenue, Portland, Oregon 97204-1390, telephone (503) 229-5696.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW, Washington, D.C. 20460, as well as the above addresses.

FOR FURTHER INFORMATION CONTACT: William M. Hedgebeth, Office of Air Quality (OAQ-107), EPA, Seattle, Washington, (206) 553-7369.

SUPPLEMENTARY INFORMATION:

I. Background

On March 15, 1991, the Governor of Oregon recommended that the Portland portion of the Portland-Vancouver Air Quality Maintenance Area be designated as nonattainment for CO as required by section 107(d)(1)(A) of the 1990 Clean Air Act Amendments (CAAA) (Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671(q)). The area was designated nonattainment and classified

as "moderate" with a design value less than or equal to 12.7 parts per million (ppm) under the provisions outlined in sections 186 and 187 of the CAA. (See 56 FR 56694, November 6, 1991, codified at 40 C.F.R. § 81.338). 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 Portland area had a design value of 9.8 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 Portland area has ambient monitoring data showing attainment of the CO National Ambient Air Quality Standard (NAAQS) since 1989. On August 30, 1996, Oregon submitted a CO redesignation request and a CO Maintenance Plan for the Portland area. Oregon submitted evidence that public hearings were held on May 22, 1996, in Portland, Oregon, and on May 23, 1996, in Tigard, Oregon.

Oregon provided monitoring, modeling, and emissions data to support its redesignation request. The 1991 CO attainment emissions inventory totals in tons per day are: Point Sources: 57.97; Area Sources: 205.50; On-road Mobile Sources: 906.11; and Non-road Mobile Sources: 67.55; Total Sources: 1237.13 tons per day. The emission budget established through the year 2007 is as follows:

PORTLAND CO TRANSPORTATION EMISSION BUDGETS
[Thousand pounds per winter day]

Year	1991	1995	1997	2001	2003	2007
CO NONATTAINMENT AREA = METRO BOUNDARY						
Budget	1812	1217	1076	875	825	775
CCTMP Sub-Area						
Budget	191	123	107	84	78	70
82nd Avenue Corridor Sub-Area						
Budget	12	7	6	5	4	4

Oregon relied, in part, on the existence of an approved Inspection and Maintenance (I/M) program to attain the CO NAAQS, and has implemented an enhanced I/M program which will help maintain the NAAQS during the ten-year maintenance period. Oregon also relied on an oxygenated fuel program to ensure attainment of the NAAQS, although it is important to note that the CO NAAQS was attained in Portland prior to the implementation of the

oxygenated fuel program in 1992. The oxygenated fuel program remains part of the maintenance plan during the first ten-year maintenance period.

A number of other measures have been implemented that have also helped improve air quality in the Portland CO nonattainment area. The primary permanent federal measure which has contributed to this improvement for CO has been the Federal Motor Vehicle Control Program which has established

emission standards for new motor vehicles. Additional measures implemented by Oregon, Metro, and the City of Portland which have contributed to the improvement in CO are: major New Source Review Program (lowest achievable emission rate and offsets); improved public transit; carpool matching program and carpool parking program in downtown Portland; traffic flow improvements (ramp metering, computerized signalization, on-street

parking limits); City of Portland bicycle parking program; Downtown Portland Air Quality Plan (1980 Updated Downtown Parking and Circulation Policy); and the Downtown Portland Parking Offset Program.

It should also be noted that improvements in the air quality in the Portland metropolitan area were also acknowledged by EPA when it redesignated the Portland-Vancouver ozone nonattainment area to attainment on May 19, 1997 (See 62 FR 27204).

The Portland area initially attained the NAAQS for CO in 1990 with monitored attainment continuing throughout the 1994–1995 CO season. This was accomplished in spite of rapid population growth in the Portland area since 1991. In addition, Oregon evaluated Portland area meteorological patterns over the 1985–1994 period and concluded that the recent compliance with the CO standards was not attributable to favorable meteorology.

II. Response To Comments

No comments were received on the June 9, 1997, Notice of Proposed Rulemaking in this matter.

III. Final Action

EPA is approving the Portland CO Maintenance Plan and Oregon's request to redesignate the Portland area to attainment of the CO standard because Oregon's submittal meets the requirements of section 107(d)(3)(E) of the CAA. This approval revises the SIP for the Portland area and assures that the CO standard will be maintained through the year 2007. Because EPA is approving the Maintenance Plan and because the area meets CAA requirements for redesignation to attainment, the Portland area will be designated as attaining the CO NAAQS. EPA is also approving Oregon's 1990 base year emissions inventory as meeting the requirements of section 187(a)(1) of the CAA and is approving Oregon's 1991 attainment year emissions inventory as meeting the periodic inventory requirements of section 187(a)(5) of the CAA.

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

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 Regional 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 Clean Air Act 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 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 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 November 3, 1997. 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

Environmental protection, Air pollution control.

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

Dated: August 11, 1997.
Chuck Findley,
Acting Regional Administrator.

PART 52—[AMENDED]

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

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

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(122) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(122) On August 30, 1996, the Director of the Oregon Department of Environmental Quality submitted to the Regional Administrator of EPA a revision to the Carbon Monoxide State Implementation Plan for the Portland area containing a Maintenance Plan that demonstrated continued attainment of the NAAQS for carbon monoxide through the year 2007.

(i) Incorporation by reference.

(A) Letter dated August 30, 1996, from Oregon to EPA requesting the redesignation of the Portland carbon monoxide nonattainment area to attainment and submitting the Maintenance Plan; Revision to the State Implementation Plan: Carbon Monoxide Maintenance Plan and Redesignation

Request for the Portland Metro Area, adopted July 12, 1996.

(B) Letter dated April 17, 1997, from Oregon to EPA submitting replacement pages to the Maintenance Plan and appendices.

(ii) Additional material.

(A) Appendices to the Maintenance Plan and Redesignation Request for Portland (Metro) Area—State Implementation Plan Revision for Carbon Monoxide, dated July 12, 1996: Appendix D2–1 (Volume 3), CO Air Monitoring Network; Appendix D2–2 (Volume 3), Meteorological Analysis; Appendix D2–3 (Volume 3), Review of Bag Study Results Which Demonstrates The DEQ Network of Sites Records Higher CO Concentrations Than Screened Intersections; Appendix D2–4 (Volume 3), Emission Inventory and Forecast Portland (Metro) Area (Carbon Monoxide); Appendix D2–4–1 (Volume 3), Base Year (1990) Emission Inventory Portland (Metro) Area (Carbon Monoxide); Appendix D2–4–2 (Volume 3), Attainment Year (1991) Emission Inventory Portland (Metro) Area (Carbon Monoxide); Appendix D2–4–3 (Volume 3), Regional Emission Forecast Portland (Metro) Area; Appendix D2–4–4 (Volume 3), Subregional Emission Inventories and Forecast Portland (Metro) Area (Carbon Monoxide); Appendix D2–4–5 (Volume 3), Metro Model Assumptions, Link-Based Emissions Calculation Methodology, and Travel Demand Forecasting Model Summary; Appendix D2–5 (Volume 3), Conformity Process; Appendix D2–6 (Volume 3), Historical and Projected

Population and Households; Appendix D2–7 (Volume 3), Metro Council Resolution Concerning Portland CO Maintenance Plan, Emission Budgets, and Contingency Plan; Appendix D2–8 (Volume 3), CCTMP Zoning Codes Incorporated Into the Portland Carbon Monoxide Maintenance Plan; Appendix D2–9 (Volume 3), Motor Vehicle Inspection Program Changes; Appendix D2–10 (Volume 3), Land-Use Measures and TCM Substitution; Appendix D2–11 (Volume 3), New Source Review Program Changes; Appendix D2–12 (Volume 3), Rollforward Analysis; Appendix D2–13 (Volume 3), CCTMP Zoning Codes Used as Supporting Documentation in the Portland Carbon Monoxide Maintenance Plan; Appendix D2–14 (Volume 3), Miscellaneous Oregon Administrative Rule Amendments—Supporting Rules, OAR Chapter 340, Section 340–020–0047 (State of Oregon Clean Air Act Implementation Plan); and Sections 340–031–0520 and 340–031–0530 (Maintenance Area Designation).

PART 81—[AMENDED]

* * * * *

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.338, the table for “Oregon-Carbon Monoxide” is amended by revising the entry for the Portland area to read as follows:

§ 81.338 Oregon.

* * * * *

OREGON-CARBON MONOXIDE

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * * * *				
Portland Area:				
Portland Metro Service District Boundary:				
Clackamas County (part)		Attainment		
Multnomah County (part)		Attainment		
Washington County (part)		Attainment		
* * * * *				

¹ This date is November 15, 1990, unless otherwise noted.

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 [FR Doc. 97-23227 Filed 8-29-97; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-5884-9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice of partial deletion of the Unit Structure Property from the Koppers Company, Inc., superfund site, Morrisville, Wake County, North Carolina, from the national priorities list.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces the deletion of the Unit Structure Property portion of the Koppers Company, Inc. Superfund Site from the National Priorities List (NPL), (Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)). EPA and the State of North Carolina Department of Environment, Health and Natural Resources have determined that the Unit Structure Property poses no significant threat to public health or the environment and, therefore, under the

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remedial measures are not appropriate. This deletion does not preclude future action under Superfund.
EFFECTIVE DATE: September 1, 1997.

FOR FURTHER INFORMATION CONTACT: Please contact Beverly T. Hudson, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, North Site Management Branch, 61 Forsyth Street, S.W., Atlanta, Georgia 30303-3014, (404) 562-8816 or 1-800-435-9233.

SUPPLEMENTARY INFORMATION: The Site affected by this partial deletion from the NPL is: Koppers Company, Inc. Superfund Site, Wake County, Morrisville, North Carolina.

A Notice of Intent to Delete for this Site was published on June 23, 1997 at 62 FR 33787. The closing date for comments on the Notice of Intent to Delete was July 23, 1997. EPA received no written comments, and only one by telephone which supported the partial deletion action.

EPA identifies sites that appear to present a significant risk to the public health, welfare and the environment and it maintains the NPL as the list of those sites. Any site or portion thereof deleted from the NPL remains eligible for Fund-financed remedial actions in the future. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL

does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 14, 1997.

A. Stanley Meiburg,

Deputy Regional Administrator, U.S. EPA, Region 4.

For reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by revising the entry for Koppers Co., Inc. (Morrisville Plant), Morrisville, North Carolina to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes
NC	Koppers Co., Inc. (Morrisville Plant)	Morrisville	P

P = Sites with partial deletion(s).

[FR Doc. 97-23093 Filed 8-29-97; 8:45 am]
 BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR No. 89-552; FCC 97-225]

Use of the 220-222 MHz Band by the Private Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Fourth Report and Order*, the Commission repeals the "40-mile rule" for all nationwide and non-nationwide Phase I 220 MHz Service licensees. The 40-mile rule provides that no Phase I 220 MHz licensee may be authorized to operate a station in a particular service category within 40 miles of an existing system authorized to that licensee in the same category unless "the licensee can demonstrate that the additional system is justified on the basis of its communications requirements." This action is needed because the 40-mile rule no longer serves its original purpose and repeal of

the rule is expected to promote competition among all commercial mobile radio service providers.

EFFECTIVE DATE: October 2, 1997.

FOR FURTHER INFORMATION CONTACT: Eli Johnson, 202-418-1310.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Fourth Report and Order* in PR Docket No. 89-552, FCC 97-225, adopted June 23, 1997, and released August 25, 1997. The complete text of the *Fourth Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the