Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, or tribal governments in the aggregate.

EPA's final action does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act, upon the State. To the extent that the rules being approved by this action will impose any mandate upon the State, local, or tribal governments, or upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. For these reasons, EPA has determined that this final action does not include a 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and Recordkeeping requirements.

Dated: May 3, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, 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 S—North Carolina

2. Section 52.1770, is amended by adding paragraph (c)(80) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(80) Modifications to the existing basic I/M program in North Carolina submitted on July 19, 1993, January 17, 1992, and September 24, 1992. Addition of regulations .1001 through .1005 establishes the I/M program.

(i) Incorporation by reference.

(A) Regulation .1001 and .1003, effective on December 1, 1982.

(B) Regulation .1002 effective on July 1, 1994.

(C) Regulation .1004 effective on July 1, 1993.

(D) Regulation .1005 effective on April 1, 1991.

(E) Specification for the North Carolina Analyzer System adopted December 12, 1991.

(ii) Other material. None.

[FR Doc. 95–13462 Filed 6–1–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WA22–1–6362; FRL–5214–2]

Approval and Promulgation of State Implementation Plans: Washington Approval of Section 112(l) Authority; Operating Permits; Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part and disapproving in part, numerous revisions to the State of Washington Implementation Plan submitted to EPA by the Director of the Washington Department of Ecology (WDOE) on March 8, 1994. The revisions were submitted in accordance with the requirements of section 110 and part D of the Clean Air Act (hereinafter the Act). EPA is taking no action on a number of provisions which are unrelated to the purposes of the implementation plan. EPA is also approving certain WDOE rules under the authority of section 112(l) of the Act in order to recognize conditions and limitations established pursuant to these rules as Federally enforceable.

EFFECTIVE DATE: This action will be effective on June 2, 1995.

ADDRESSES: Copies of the State's request and other information supporting today's action are available for inspection during normal business hours at the following locations: EPA, Air & Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Washington, Department of Ecology, 4550 Third Avenue SE, Lacey, Washington 98504

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: David C. Bray, Permit Programs Manager, EPA, Air & Radiation Branch (AT–082), Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background

The Washington Department of Ecology (WDOE) amended its Part D NSR rules on August 20, 1993 and submitted them to EPA on March 8, 1994 as a revision to the Washington SIP. The WDOE also amended several other provisions of its current rules for air pollution sources and submitted them to EPA on March 8, 1994 as a revision to the Washington SIP. On September 29, 1994, the Director of the WDOE submitted an official application to obtain approval for Title V permitting authorities (with the exception of the Puget Sound Air Pollution Control Agency (PSAPCA) and the Southwest Air Pollution Control Agency (SWAPCA)) in the State of Washington to implement and enforce the statewide rules for ''Controls for New Sources of Toxic Air Pollutants'' (WAC 173–460) as an interim program to implement section 112(g) of the Act. The Director of the WDOE also submitted an official application on behalf of the PSAPCA and SWAPCA to obtain approval for those local agencies to implement and enforce their own rules (portions of PSAPCA Regulations I and III and SWAPCA Regulation 460) for new sources of toxic air pollutants as interim programs to implement section 112(g) of the Act.

On February 22, 1995 (60 FR 9802), EPA proposed to approve in part and disapprove in part, numerous revisions to the State of Washington Implementation Plan. EPA proposed to take no action on a number of provisions which are unrelated to the purposes of the implementation plan. EPA also proposed to approve certain WDOE rules, and certain rules of the Puget Sound Air Pollution Control Agency (PSAPCA) and Southwest Air Pollution Control Authority (SWAPCA), under the authority of section 112(l) of the Act, in order to recognize conditions and limitations established pursuant to these rules as Federally enforceable.

On May 8, 1995, WDOE officially withdrew its request for approval of the State and local agency rules submitted September 29, 1994 as an interim program for implementing section 112(g) of the Act. WDOE also withdrew two provisions of WAC 173–400 which were included in its March 8, 1994 SIP submittal.

II. Response to Comments

EPA received comments from Northwest Pulp & Paper Association, the American Forest & Paper Association, and the Washington Department of Ecology. With the exception of two comments from the WDOE supporting EPA's proposed approval of WAC 173–400–091, all of the comments pertained to rules which the WDOE has since withdrawn from its SIP and Section 112(l) submittal. Because the rules on which the adverse comments were submitted are no longer before EPA for consideration, the adverse comments are now moot.

III. This Action

On February 22, 1995 (60 FR 9802), EPA proposed to approve in part, disapprove in part, and take no action in part, on numerous revisions to Chapter 173–400 WAC ''General Regulations for Air Pollution Sources.'' With the exception of the two provisions which were withdrawn by WDOE on May 8, 1995, EPA today is taking final action on the proposed approvals and disapprovals.

Specifically, EPA is approving revisions to WAC 173–400–030 ''Definitions;'' WAC 173–400–040 ''General standards for maximum emissions'' (except for –040(1)(c) and (d); –040(2); –040(4); and the second paragraph of –040(6)); WAC 173–400–100 ''Registration;'' WAC 173–400–105 ''Records, monitoring, and reporting;'' WAC 173–400–110 ''New source review (NSR);'' WAC 173–400–171 ''Public involvement;'' WAC 173–400–230 ''Regulatory actions;'' and WAC 173–400–250 ''Appeals;'' and the addition of WAC 173–400–081 ''Startup and shutdown;'' WAC 173–400–091 ''Voluntary limits on emissions;'' WAC 173–400–107 ''Excess emissions;'' WAC 173–400–112 ''Requirements for new sources in nonattainment areas'' (except for –112(8)); and WAC 173–400–113 ''Requirements for new sources in attainment or unclassifiable areas'' (except for –113(5)).

EPA is disapproving WAC 173–400–040(1)(c) ''alternative time periods for opacity standards;'' WAC 173–400–040(1)(d) ''alternative opacity limits;'' the second paragraph of WAC 173–400–040(6) ''exemption from sulfur dioxide emission limit;'' the exception provision in WAC 173–400–050(3) ''alternative oxygen correction factor;'' WAC 173–400–120 ''Bubble rules;'' WAC 173–400–131 ''Issuance of emission reduction credits;'' WAC 173–400–136 ''Use of emission reduction credits;'' WAC 173–400–141 ''Prevention of significant deterioration (PSD);'' and WAC 173–400–180 ''Variance.''

EPA is taking no action on WAC 173–400–040(2) ''Fallout;'' WAC 173–400–040(4) ''Odors;'' WAC 173–400–070(7) ''Sulfuric acid plants;'' WAC 173–400–075 ''Emission standards for sources emitting hazardous air pollutants;'' and WAC 173–400–115 ''Standards of performance for new sources.'' Note that WAC 173–400–112(8), WAC 173–400–113(5), and WAC 173–400–114 were not submitted for inclusion in the Washington SIP. All other provisions of WAC 173–400 which are not mentioned above were previously approved by EPA on January 15, 1993 (58 FR 4578). See the February 22, 1995 **Federal Register** for a complete discussion of EPA's findings and rationale for its proposed approvals and disapprovals.

As was proposed in the February 22, 1995 **Federal Register**, after final EPA approval of WAC 173–400–091, ''regulatory orders'' issued pursuant to that rule, and terms and conditions contained therein, will be enforceable by the EPA and by citizens under section 304 of the Act regardless of whether such orders were issued prior to EPA approval of that section. However, such orders would have to have been issued after the effective date of WAC 173–400–091 (i.e., September 20, 1993) in accordance with all of the provisions set forth in that section. Sources could, after the effective date of this approval, rely on ''regulatory orders'' issued pursuant to WAC 173–400–091 as a means to limit their potential to emit criteria pollutants, pollutants regulated under the PSD provisions of the SIP, and hazardous air pollutants listed in section 112(b) of the Act in order to avoid requirements which would otherwise apply to ''major stationary sources.''

After the effective date of this approval, regulatory orders issued pursuant to WAC 173–400–091 will become part of the Washington SIP upon issuance by a permitting authority without further action by EPA. However, Section 110(h) requires EPA to assemble, maintain, and periodically publish each SIP. Furthermore, 40 CFR 51.104(e) and 51.326 require a State to submit to EPA all revisions to its SIP. Therefore, each regulatory issued pursuant to WAC 173–400–091 must be submitted to EPA for inclusion in the assembled SIP. While section 51.326 allows the submittal of such SIP revisions to occur on an annual basis, EPA strongly encourages permitting authorities to submit such revisions on a more routine basis (e.g., within 30 days of issuance) so that EPA and the public are aware of the major source status and current SIP provisions for affected sources.

IV. Effective Date

Pursuant to Section 553(d)(3) of the Administrative Procedures Act (APA), this final notice is effective June 2, 1995. 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. *Id*.

EPA has determined good cause exists to make this **Federal Register** notice effective upon publication. The rules made federally enforceable by this **Federal Register** notice have been enforceable as a matter of state law for more than a year. Moreover, the 30 day publication period would cause undue burdens to the public, affected industry and permitting authorities. Under Washington's Title V program, Title V sources must submit Title V applications by June 7, 1995. *See* WAC 173–401–500(3)(a). Many existing major stationary sources in Washington have applied for or have already received regulatory orders under WAC 173–400–091 to limit their potential to emit to less than the major source thresholds and are relying in good faith on these regulatory orders to exempt them from the requirements of the Title V operating permits program. If the federal enforceability of these SIP revisions is delayed for 30 days, these sources would be in violation of the requirement to submit Title V applications by June 7, 1995, solely because the regulatory orders that they have already been issued were not yet federally enforceable. The imposition of the 30 day delay in the effective date of these SIP revisions would therefore require sources to prepare and submit Title V applications that would not be required once this approval becomes effective in 30 days, require state and local permitting authorities to expend unnecessary resources for receiving, logging in and reviewing permit applications and possible enforcement

action for late submittals, and delay the federal enforceability of the voluntary emission reductions made by these sources.

Therefore, EPA has determined that good cause exists to make these SIP revisions immediately effective and that the principals of fundamental fairness are met because all known affected persons have been afforded a reasonable time to prepare for the effective date of these SIP revisions. Accordingly, pursuant to section 553(d)(3) of the APA, this approval of the Washington SIP is finally effective upon publication in the **Federal Register**.

V. Summary of Action

In summary, EPA is approving: WAC 173–400 as in effect on September 20, 1993, except for the following sections: –040(1)(c) and (d); –040(2); –040(4); the second paragraph of –040(6); the exception provision in –050(3); –070(7); –075; –112(8); –113(5); –114; –115; –120; –131; –136; –141; and –180.

EPA is disapproving: WAC 173–400–040(1)(c) and (d), the second paragraph of –040(6), the exception provision in –050(3), –120, –131, –136, –141, and –180.

EPA is taking no action on: WAC 173–400–040(2), –040(4), –070(7), –075, and –115. Note that WAC 173–400–112(8), WAC 173–400–113(5), and WAC 173–400–114 have not been submitted for inclusion in the Washington SIP.

EPA is also approving pursuant to the authority of section 112(l) of the Act: WAC 173–400–091 as in effect on September 20, 1993.

Administrative Review

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 OMB has exempted this regulatory action from E.O. 12866 review.

EPA's disapproval of the State request under section 110 and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not impose any new Federal 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.

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 today 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.

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 August 1, 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Dated: May 24, 1995.

Chuck Clarke,

Regional Administrator.

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.

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)(54) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(54) On March 8, 1994, the Director of WDOE submitted to the Regional Administrator of EPA numerous revisions to the State of Washington Implementation Plan which included updated new source review regulations and provisions for voluntary limits on a source's potential to emit. The revisions were submitted in accordance with the requirements of section 110 and Part D of the Clean Air Act (hereinafter the Act).

(i) Incorporation by reference.

(A) March 8, 1994 and May 8, 1995 letters from WDOE to EPA submitting requests for revisions to the Washington SIP consisting of an amended state regulation; Chapter 173–400 Washington Administrative Code General Regulations for Air Pollution Sources, adopted on August 20, 1993, in its entirety with the exception of the following sections: –040(1)(c) and (d); –040(2); –040(4); the second paragraph of –040(6); the exception provision in –050(3); –070(7); –075; –112(8); –113(5); –114; –115; –120; –131; –136; –141; and –180.

3. Subpart WW is further amended by adding a new § 52.2495 to read as follows:

§ 52.2495 Voluntary limits on potential to emit

Terms and conditions of regulatory orders issued pursuant to WAC 173–400–091 ''Voluntary limits on emissions'' and in accordance with the provisions of WAC 173–400–091, WAC 173–400–105 ''Records, monitoring, and

reporting,'' and WAC 173–400–171 ''Public involvement,'' shall be applicable requirements of the federally-approved Washington SIP and Section 112(l) program for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP and Section 112(l) program. Regulatory orders issued pursuant to WAC 173–400–091 are part of the Washington SIP and shall be submitted to EPA Region 10 in accordance with the requirements of §§ 51.104(e) and 51.326.

[FR Doc. 95–13516 Filed 6–1–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MI42–01–7027a; FRL–5213–3]

Determination of Attainment of Ozone Standard by Grand Rapids and Muskegon, Michigan; Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is determining, through direct final procedure, that the Grand Rapids (Kent and Ottawa Counties) and Muskegon (Muskegon County) ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon 3 years of complete, quality assured ambient air monitoring data for the years 1992–1994 that demonstrate that the ozone NAAQS has been attained in these areas. On the basis of this determination, USEPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of part D of Title 1 of the Clean Air Act are not applicable to the areas for so long as the areas continue to attain the ozone NAAQS. In the proposed rules section of this **Federal Register**, USEPA is proposing these determinations and soliciting public comment on them. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a subsequent final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. No additional opportunity for public comment will be provided. Unless this direct final rule is withdrawn no further rulemaking will occur on this action.

EFFECTIVE DATE: This action will be effective July 17, 1995 unless notice is received by July 3, 1995 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments can be mailed to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch, (AT–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the air quality data and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Madelin Rucker at (312) 886–0661 before visiting the Region 5 office).

FOR FURTHER INFORMATION CONTACT: Madelin Rucker, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–0661.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of part D of Title I of the Clean Air Act (Act) contains various air quality planning and state implementation plan (SIP) submission requirements for ozone nonattainment areas. USEPA believes it is reasonable to interpret provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality assured air quality monitoring data). As described below, USEPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995 from John Seitz to the Regional Air Division Directors, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the National Ambient Air Quality Standard,'' USEPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of part D of Title I, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and USEPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

USEPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, USEPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the ''requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.'' (57 FR at 13564.)[2]

[1] USEPA notes that paragraph (1) of subsection 182(b) is entitled ''PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS'' and that subparagraph (B) of paragraph 182(c)(2) is entitled ''REASONABLE FURTHER PROGRESS DEMONSTRATION,'' thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *See also* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the ''requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard'') (hereinafter referred to as ''September 1992 Calcagni memorandum'').