

PART 146—RULES AND REGULATIONS FOR HEALTH INSURANCE PORTABILITY AND RENEWABILITY FOR GROUP HEALTH PLANS

Paragraph 1. The authority citation for part 146 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791 and 2792 of the Public Health Service Act, 42 U.S.C. 300gg through 300gg-63, 300gg-91, 300gg-92 as amended by HIPAA (Public Law 104-191, 110 Stat. 1936), MHPA and NMHPA (Public Law 104-204, 110 Stat. 2935), and WHCRA (Public Law 105-277, 112 Stat. 2681-436), and section 102(c)(4) of HIPAA.

§ 146.121 [Amended]

Par. 2. Section 146.121 is amended by:

1. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in the heading to paragraph (i)(1).

2. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in paragraph (i)(1).

3. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in paragraph (i)(3)(ii)(A) introductory text.

4. Removing the date “March 9, 2001” and adding in its place “May 8, 2001” in paragraph (i)(3)(ii)(C) *Example 2* (ii).

Dated: February 20, 2001.

Michael McMullan,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: March 5, 2001.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 01-5895 Filed 3-8-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[UT-001-0022a, UT-001-0024a, UT-001-0025a, UT-001-0026a, UT-001-0027a, UT-001-0030a, UT-001-0031a; FRL-6888-9]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Ogden City Carbon Monoxide Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of Revisions to the Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On December 9, 1996, the Governor of Utah submitted a request to redesignate the Ogden City “moderate” carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The Governor also submitted a CO maintenance plan. In addition, on July 8, 1998, the Governor submitted revisions to Utah’s Rule R307-8 “Oxygenated Gasoline Program.” In this action, EPA is approving the Ogden City CO redesignation request, the maintenance plan, and the revisions to Rule R307-8.

DATES: This direct final rule is effective on May 8, 2001 without further notice, unless EPA receives adverse comments by April 9, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202-2466; and,

United States Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Utah Division of Air Quality, Department of Environmental Quality, 150 North 1950 West, P.O. Box 144820, Salt Lake City, Utah 84114-4820.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P-AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466; Telephone number: (303) 312-6479.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we,” “us,” or “our” are used we mean the Environmental Protection Agency.

I. What is the Purpose of this Action?

In this action, we are approving a change in the legal designation of the Ogden City area from nonattainment for CO to attainment, we’re approving the maintenance plan that is designed to

keep the area in attainment for CO for the next 10 years, and we’re also approving changes to the State’s Rule R307-8 addressing the oxygenated fuels program.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q). Under section 107(d)(1)(C) of the Clean Air Act (CAA), we designated the Ogden City area as nonattainment for CO because the area had been designated as nonattainment before November 15, 1990. We originally designated Ogden City as nonattainment for CO on March 3, 1978 (see 43 FR 8962) under the provisions of the 1977 CAA Amendments. This designation was reaffirmed by the 1990 CAA Amendments and Ogden City was classified as a “moderate” CO nonattainment area with a design value of less than or equal to 12.7 parts per million (ppm). See 56 FR 56694, November 6, 1991. Further information regarding this classification and the accompanying requirements are described in the “General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.” See 57 FR 13498, April 16, 1992.

Under the CAA, we can change designations if acceptable data are available and if certain other requirements are met. See CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

(i) The Administrator determines that the area has attained the national ambient air quality standard;

(ii) the Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before we can approve the redesignation request, we must decide that all applicable SIP elements have been fully approved. Approval of the

applicable SIP elements may occur simultaneously with final approval of the redesignation request. That's why we are also approving the revisions to Rule R307-8.

II. What is the State's Process to Submit These Materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

The Utah Air Quality Control Board (UAQB) held a public hearing June 25, 1996, for the Carbon Monoxide (CO) Redesignation Request and Maintenance Plan for Ogden City. The UAQB adopted the redesignation request and maintenance plan September 4, 1996. This SIP revision became State effective November 1, 1996, and was submitted by the Governor to us on December 9, 1996.

We have evaluated the Governor's submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under section 110(k)(1)(B) of the CAA, the Governor's December 6, 1996, submittal became complete on June 6, 1997.

For the Rule R307-8 revisions, UAQB held public hearings on March 16, 1998, and March 24, 1998. The UAQB adopted these changes on April 21, 1998, and they became State effective on April 22, 1998.

We have evaluated the Governor's submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under section 110(k)(1)(B) of the CAA, the Governor's July 8, 1998, submittal became complete on January 8, 1999.

III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's redesignation request and maintenance plan and believes that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). The following are descriptions of how the section 107(d)(3)(E) requirements are being addressed.

(a). Redesignation Criterion: The Area Must Have Attained The Carbon Monoxide (CO) NAAQS.

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS. As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. Attainment of the CO standard is not a momentary phenomenon based on short-term data. Instead, we consider an area to be in attainment if each of the CO ambient air quality monitors in the area doesn't have more than one exceedance of the CO standard over a one-year period. 40 CFR 50.8 and 40 CFR part 50, appendix C. If any monitor in the area's CO monitoring network records more than one exceedance of the CO standard during a one-year calendar period, then the area is in violation of the CO NAAQS. In addition, our interpretation of the CAA and EPA national policy¹ has been that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least a continuous two-year calendar period. In addition, the area must continue to show attainment through the date that we promulgate the redesignation in the **Federal Register**.

Utah's CO redesignation request for the Ogden City area is based on an analysis of quality assured ambient air quality monitoring data that are relevant to the redesignation request. As presented in section IX.C.8.c of the State's maintenance plan, ambient air quality monitoring data for calendar years 1991 through 1996 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year, per monitor, in the Ogden City nonattainment area. Due to a lease cancellation, the State was unable to collect monitoring data for the 1993/1994 winter season. However, EPA finds this lack of data for the 1993/1994 winter season to be unimportant because monitoring data show the area

had no exceedances of the CO standard from the fall of 1994 forward.

All of the data discussed above were collected and analyzed as required by EPA (see 40 CFR 50.8 and 40 CFR part 50, appendix C) and have been archived by the State in our Aerometric Information and Retrieval System (AIRS) national database. Further information on CO monitoring is presented in section IX.C.8.c of the maintenance plan and in the State's Technical Support Document (TSD). We have evaluated the ambient air quality data and have determined that the Ogden City area has not violated the CO standard and continues to demonstrate attainment. Therefore, the Ogden City area has met the first component for redesignation: demonstration of attainment of the CO NAAQS. We note too that the State of Utah has also committed, in section IX.C.8.c (5) of the maintenance plan, to continue the operation of the CO monitoring site in compliance with all applicable federal regulations and guidelines.

(b). Redesignation Criterion: The Area Must Have Met All Applicable Requirements Under Section 110 And Part D Of The CAA.

To be redesignated to attainment, section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. We interpret section 107(d)(3)(E)(v) to mean that for a redesignation to be approved by us, the State must meet all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

1. CAA Section 110 Requirements

On August 15, 1984, we approved revisions to Utah's SIP as meeting the requirements of section 110(a)(2) of the CAA (see 45 FR 32575). Although section 110 of the CAA was amended in 1990, most of the changes were not substantial. Thus, we have determined that the SIP revisions approved in 1984 continue to satisfy the requirements of section 110(a)(2). For further detail, please see 45 FR 32575. In addition, we have analyzed the SIP elements that we are approving as part of this action and we have determined they comply with the relevant requirements of section 110(a)(2).

2. Part D Requirements

The Ogden City area was originally designated as nonattainment for CO on

¹ Refer to EPA's September 4, 1992, John Calcagni policy memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment."

March 3, 1978 (see 43 FR 8962). On September 20, 1982, the Governor submitted to EPA revisions to the SIP, however, EPA could only partially approve this submittal as deficiencies were noted in the transportation control plan and there was a lack of legislative authority to adopt and enforce an I/M program. After rectifying these deficiencies, the Governor submitted a SIP revision on February 6, 1984, that was approved by EPA on August 15, 1984 (see 49 FR 32575). The 1984 SIP element's emission control plan was based on emission reductions from the Federal Motor Vehicle Control Program (FMVCP), Automobile Inspection and Maintenance Program (I/M), and transportation improvements. The anticipated date for attaining the 8-hour CO NAAQS was December 31, 1987.

Through a letter dated May 26, 1988, we notified the Governor of Utah that the Ogden City area did not attain the CO NAAQS by the end of 1987. This letter stated that Utah was to address deficiencies in the SIP and that the State would also have to address requirements in our forthcoming post-1987 policy for carbon monoxide.

EPA did not finalize its post-1987 policy for carbon monoxide because the Clean Air Act (CAA) was amended on November 15, 1990. Under section 186 of the CAA, Ogden City was designated nonattainment for CO, was classified as "moderate" with a design value of less than 12.7 parts per million (ppm), and was required to attain the CO NAAQS by December 31, 1995. See 56 FR 56694, November 6, 1991. Based on ambient air quality monitoring data, as described further in section III(a) above, the Ogden City area attained the CO NAAQS in 1992.

Before the Ogden City CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D of the CAA. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether the area is classified or nonclassifiable for CO.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176. Our General Preamble (see 57 FR 13498, April 16, 1992) provides EPA's interpretations of the CAA requirements for moderate CO areas with design values of less than 12.7 ppm.

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due November 15, 1992, for the Ogden City nonattainment area. As the Ogden

City CO redesignation request and maintenance plan were not submitted by the Governor until well after November 15, 1992 (actually, December 9, 1996), the General Preamble (see 57 FR 13529) provides that the applicable requirements of CAA section 172 were 172(c)(3) (emissions inventory), 172(c)(5) (new source review permitting program), and 172(c)(7) (the section 110(a)(2) air quality monitoring requirements). We interpret the requirements of sections 172(c)(1) (reasonable available control measures—RACM), 172(c)(2) (reasonable further progress—RFP), 172(c)(6) (other measures), and 172(c)(9) (contingency measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See EPA's September 4, 1992, John Calcagni memorandum entitled, "Procedures for Processing Requests to Redesignate Areas to Attainment", and the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13564, April 16, 1992). Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4) (identification of certain emissions increases) and 172(c)(8) (equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

Section 176 of the CAA contains requirements related to conformity. Although EPA's regulations (see 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

The applicable requirements of CAA section 172 are discussed below.

A. Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the Ogden City nonattainment area. As stated below for CAA section 187(a)(1), the Governor submitted a 1990 base year emissions inventory for Ogden City on July 11, 1994. We approved this 1990 base year CO emissions inventory on June 29, 1995 (see 60 FR 33745).

B. Section 172(c)(5) New Source Review (NSR)

The CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Utah has a fully-approved NSR program (60 FR 22277, May 5, 1995) that meets the requirements of CAA section 172(c)(5). The State also has a fully approved Prevention of Significant Deterioration (PSD) program (56 FR 29436, June 27, 1991) that will apply after the redesignation to attainment is approved by us.

C. Section 172(c)(7)—Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

According to our interpretations presented in the General Preamble (57 FR 13498), CO nonattainment areas are to meet the "applicable" air quality monitoring requirements of section 110(a)(2) of the CAA as explicitly set forth in sections 172(b) and (c) of the CAA. With respect to this requirement, the State indicates in section IX.C.8.c of the maintenance plan ("Carbon Monoxide Monitoring"), that ambient CO monitoring data have been properly collected and uploaded to EPA's Aerometric Information and Retrieval System (AIRS) for the Ogden City area. Air quality data through 1996 are included in section IX.C.8.c of the maintenance plan and in the State's TSD. We recently polled the AIRS database and verified that the State has also uploaded additional ambient CO data through 1999. The data in AIRS indicate that the Ogden City area has shown, and continues to show, attainment of the CO NAAQS. Information concerning CO monitoring in Utah is included in the Monitoring Network Review (MNR) prepared by the State and submitted to EPA. Our personnel have concurred with Utah's annual network reviews and have agreed that the Ogden City network remains adequate. Finally, in section IX.C.8.c(5) of the maintenance plan, the State commits to the continued operation of the existing CO monitor, according to all applicable Federal regulations and guidelines, even after the Ogden City area is redesignated to attainment for CO.

The new CAAA of 1990 requirements for moderate CO areas, such as Ogden City, required that the SIP be revised to include a 1990 base year emissions inventory (CAA section 187(a)(1)), corrections to existing motor vehicle

inspection and maintenance (I/M) programs (CAA section 187(a)(4)), periodic emission inventories (CAA section 187(a)(5)), and the implementation of an oxygenated fuels program (CAA section 211(m)(1)). How the State met these requirements and our approvals, are described as follows:

D. Section 187(a)(1)—1990 Base Year Emissions Inventory

The Governor submitted a 1990 base year emissions inventory for Ogden City on July 11, 1994. We approved this 1990 base year CO emissions inventory on June 29, 1995 (see 60 FR 33745).

E. Section 187(a)(4)—Corrections to the Ogden City Basic I/M Program

On November 13, 1993, the Governor submitted revisions to the Utah basic I/M program portion of its SIP which included the program in Ogden City. We approved these basic I/M program revisions on July 17, 1997 (see 62 FR 38213).

F. Section 187(a)(5)—Periodic Emissions Inventories

As the Governor did not submit a complete redesignation request and maintenance plan before September 30, 1995, a periodic emission inventory (for calendar year 1993) was required for Ogden City. On November 12, 1997, the Governor submitted a SIP revision for a 1993 periodic emission inventory for Ogden City. We approved this revision on April 14, 1998 (see 63 FR 18122).

G. Section 211(m)—Oxygenated Gasoline Program

Section 211(m) of the CAA required an oxygenated gasoline program in the Ogden City nonattainment area and surrounding Consolidated Metropolitan Statistical Area (CMSA). On May 19, 1994, the Governor submitted Utah's Oxygenated Gasoline Program, contained in Rule R307-8, effective December 16, 1993. We approved this SIP revision on November 8, 1994 (see 59 FR 55585). We are approving revisions to the Oxygenated Gasoline Program as part of this action. See section V below.

(c). Redesignation Criterion: The Area Must Have A Fully Approved SIP Under Section 110(k) Of The CAA.

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

As noted above, EPA previously approved (or sufficiently explained otherwise) SIP revisions based on the

pre-1990 CAA as well as SIP revisions required under the 1990 amendments to the CAA. In this action, we are approving revisions to Rule R307-8 "Oxygenated Gasoline Program" and the State's commitment to maintain an adequate monitoring network (contained in section IX.C.8.c of the maintenance plan.) Thus, we have fully approved the Ogden City CO SIP under section 110(k) of the CAA.

(d). Redesignation Criterion: The Area Must Show That The Improvement In Air Quality Is Due To Permanent And Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The CO emissions reductions for Ogden City, that are further described in sections IX.C.8.d "Verification of Air Quality Improvements" of the December 9, 1996, Ogden City maintenance plan, were achieved primarily through the Federal Motor Vehicle Control Program (FMVCP), and a Basic motor vehicle Inspection and Maintenance (I/M) program with improvements.

In general, the FMVCP provisions require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles ("fleet turnover"), emission reductions are realized for a particular area such as Ogden City. For example, EPA promulgated lower hydrocarbon (HC) and CO exhaust emission standards in 1991, known as Tier I standards for new motor vehicles (light-duty vehicles and light-duty trucks) in response to the 1990 CAA amendments. These Tier I emissions standards were phased in with 40% of the 1994 model year fleet, 80% of the 1995 model year fleet, and 100% of the 1996 model year fleet.

As stated in section IX.C.8.d of the maintenance plan, significant additional emission reductions were realized from Ogden City's basic I/M program. Utah's rule UACR R307-2-34 incorporates by reference Section X, part E of the Utah State Implementation Plan (Vehicle Inspection and Maintenance Program, Weber County) which contains a full description of the requirements for

Ogden City's I/M program. We note that further improvements to the Ogden City area's basic I/M program were implemented in July, 1994, to meet the requirements of EPA's November 5, 1992 (57 FR 52950) I/M rule and were approved by us into the SIP on July 17, 1997 (62 FR 38213).

We have evaluated the various State and Federal control measures, the original 1990 base year emission inventory (see 60 FR 33745, June 29, 1995), and the 1993 attainment year emission inventory (see 63 FR 18122, April 14, 1998), and have concluded that the improvement in air quality in the Ogden City nonattainment area has resulted from emission reductions that are permanent and enforceable.

(e). Redesignation Criterion: The Area Must Have A Fully Approved Maintenance Plan Under CAA Section 175A

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance 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 promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, we issued further maintenance plan interpretations in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992), "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental" (57 FR 18070, April 28, 1992), and the EPA guidance memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" from John Calcagni, Director, Air Quality Management Division, Office of Air Quality and Planning Standards, to Regional Air Division Directors, dated September 4, 1992. In this **Federal Register** action, EPA is approving the

maintenance plan for the Ogden City nonattainment area because we have determined, as detailed below, that the State's maintenance plan submittal meets the requirements of section 175A and is consistent with the documents referenced above. Our analysis of the pertinent maintenance plan requirements, with reference to the Governor's December 9, 1996, submittal, is provided as follows:

1. Emissions Inventories—Attainment Year and Projections

EPA's interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble and the September 4, 1992, policy memorandum

referenced above. Under our interpretations, areas seeking to redesignate to attainment for CO may demonstrate future maintenance of the CO NAAQS either by showing that future CO emissions will be equal to or less than the attainment year emissions or by providing a modeling demonstration. For the Ogden City area, the State selected the emissions inventory approach for demonstrating maintenance of the CO NAAQS.

The maintenance plan that the Governor submitted on December 9, 1996, included comprehensive inventories of CO emissions for the Ogden City area. These inventories include emissions from stationary point

sources, area sources, non-road mobile sources, and on-road mobile sources. The State selected 1992 as the year from which to develop the attainment year inventory and included interim-year projections out to 2007. More detailed descriptions of the 1992 attainment year inventory and the projected inventories are documented in the maintenance plan, sections IX.C.8.e and IX.C.8.f, and in the State's TSD. The State's submittal contains detailed emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures from the 1992 attainment year and the interim projected years are provided in Table III.—1 below.

TABLE III.—1—SUMMARY OF CO EMISSIONS IN TONS PER DAY FOR OGDEN CITY

	1992	1997	2000	2003	2007
Point Sources	N/D**	N/D	N/D	N/D	N/D
Area Sources	5.96	6.34	6.62	6.81	7.07
Non-Road Mobile Sources	0.93	1.09	1.13	1.18	1.24
On-Road Mobile Sources	63.93	46.52	42.26	37.67	36.71
Total	70.82	53.95	50.01	45.66	45.02

NOTE: N/D** = Negative Declaration; no point sources equal to or greater than 100 TPY.

2. Demonstration of Maintenance—Projected Inventories

As noted above, total CO emissions were projected by the State year-by-year from 1993 through 2007. These projected inventories were prepared in accordance with EPA guidance (further information is provided in section IX.C.8.f of the maintenance plan). EPA notes, however, that CAA section 175A(a) requires that the maintenance demonstration "... provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation." Therefore, based on this CAA provision, the maintenance demonstration now

needs to project emissions to at least 2010, not just 2007. To address this issue, EPA consulted with the State to identify the specific materials that were provided at the Ogden City CO redesignation public hearing and which were subsequently adopted by the Utah Air Quality Board (UAQB). In a letter dated February 19, 1998, from Ursula Trueman, Director, Utah Division of Air Quality, to Richard Long, Director, Air Program, EPA Region VIII, the State provided an excerpt from the Ogden City CO redesignation Technical Support Document (TSD) that provided additional projected CO daily emissions for all years from 1993 through 2017. As indicated in the State's February 19, 1998, letter, these additional projected

CO emissions were part of the TSD that was provided with the public hearing for the Ogden City CO redesignation and that was also adopted, along with the redesignation request and maintenance plan, by the UAQB. The projected inventories show that CO emissions are not estimated to exceed the 1992 attainment level during the time period 1993 through 2010 and, therefore, the Ogden City area has satisfactorily demonstrated maintenance. EPA has also extracted daily projected CO emissions for 2011 in the event that publication of this action in the **Federal Register** is delayed until early 2001. The additional projected CO daily emissions for 2008, 2009, 2010, and 2011 are provided in the Table III.—2 below:

TABLE III.—2—SUMMARY OF CO EMISSIONS IN TONS PER DAY FOR OGDEN CITY

	1992	2008	2009	2010	2011
Point Sources	N/D**	N/D	N/D	N/D	N/D
Area Sources	5.96	7.13	7.20	7.26	7.31
Non-Road Mobile Sources	0.93	1.26	1.28	1.29	1.31
On-Road Mobile Sources	63.93	37.52	38.17	38.80	39.46
Total	70.82	45.91	46.65	47.35	48.08

Note: N/D** = Negative Declaration; no point sources equal to or greater than 100 TPY.

3. Monitoring Network and Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Ogden City area

depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in two sections of the

maintenance plan. In section IX.C.8.c(5) of the maintenance plan, the State commits to continue the operation of the CO monitor in the Ogden City area

and to annually review this monitoring network and make changes as appropriate. Also, in section IX.C.8.i(1), the State commits to prepare a periodic emission inventory of CO emissions every three years after the maintenance plan is approved by EPA. With this action, we are approving these commitments as satisfying relevant requirements. Our approval renders the State's commitments federally enforceable.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures. As stated in section IX.C.8.h of the maintenance plan, the contingency measures for the Ogden City area will be initially triggered by an exceedance of the CO NAAQS. Upon a violation of the CO NAAQS, (i.e., the second non-overlapping 8-hour average ambient CO measurement that exceeds 9 ppm at a single monitoring site during one calendar year, or the second one-hour average ambient CO measurement that exceeds 35 ppm at a single monitoring site during one calendar year) the Director of the Utah Division of Air Quality (UDAQ) will provide written notification to the Weber-Morgan District Board of Health. Contingency measures will be implemented one year after such notification is given by the Director of UDAQ.

The potential contingency measures that are identified in section IX.C.8.h.(3) of the Ogden City maintenance plan include an Employer-Based Trip Reduction Program, Basic Inspection and Maintenance Program Improvement, and a 2.7 % Oxygenated Gasoline Program.² A more complete description of the triggering mechanism and these contingency measures can be

found in section IX.C.8.h of the maintenance plan.

Based on the above, we find that the contingency measures provided in the State's maintenance plan are sufficient and meet the requirements of section 175A(d) of the CAA.

5. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, Utah has committed to submit a revised maintenance plan SIP revision eight years after the approval of the redesignation. This provision for revising the maintenance plan is contained in section IX.C.8.i(4) of the Ogden City maintenance plan.

IV. EPA's Evaluation of the Transportation Conformity Requirements

Transportation Conformity—One key provision of EPA's conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budgets in the SIP (40 CFR 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment area. The rule's requirements and EPA's policy on emissions budgets are found in the preambles to the November 24, 1993, and August 15, 1997, transportation conformity rules (58 FR 62193–62196 and 62 FR 43780 *et seq.*) and in the sections of the rule referenced above.

The maintenance plan discusses the emissions budget in section IX, parts C.8.f (1) and (2). Section IX, part C.8.f.(1), page 143 states that “the Utah Air Quality Board established the conformity CO planning cap at 55 Tons CO/winter week day to the year 2017.” Section IX, part C.8.f.(2), page 144 states that “emission budgets for the respective source categories, including on-road mobile sources, for the years 1992 through 2007 have been taken from the projection inventories for those years and are presented in Table IX.C.42.” (With the exception of the 1992 attainment year budget, these budgets are all lower than 55 tons per day.) Later on this same page, the

maintenance plan states that “The CO projection of motor vehicle emissions in the maintenance plan establishes the motor vehicles emission budget beyond the attainment year to the horizon year 2017. Conformity CO planning cap = 55.00 Tons CO/winter week day.”

EPA was concerned that the maintenance plan was not clear as to whether the 55 ton budget or the budgets in Table IX.C.42 were intended to apply during the 1993–2007 period. We also note that the maintenance plan uses some of the “safety margin” in establishing the 55 ton per day emission budget. EPA defines the safety margin as the amount by which total emissions in any given year are less than the total emissions which provide for attainment of the CO standard. No safety margin calculations are documented in the maintenance plan, but it appears that the State has added some of the safety margin to the budgets listed in Table IX.C.42 to arrive at the final budget of 55 tons per day.

In a letter dated July 17, 2000, from Richard Long, Director, Air and Radiation Program, EPA Region VIII, to Ursula Kramer, Director, Division of Air Quality, Utah Department of Environmental Quality, we asked the State to clarify the applicability of the various budgets, provide calculations to address how the 55 ton per day budget was arrived at, show how the safety margin was calculated and how much was being used, and document the validity of the 55 ton per day budget when considered with emissions from other (non—mobile) emission categories.

The State responded to our request in a letter dated September 11, 2000, from Rick Sprott, Acting Director, Division of Air Quality, Utah Department of Environmental Quality to Richard Long, EPA that adequately addressed all our concerns regarding the mobile source conformity emission budgets.

Pursuant to the State's request, EPA is approving the mobile source emission budgets listed in Table IX.C.42, and as presented in Table IV–1 below, as the applicable emission budgets for the years 1993–2007. These budgets are based on the mobile source emission projections for those years, and do not include any safety margin.

² With this redesignation request, the State is seeking to remove the oxygenated Gasoline Program from the SIP as a control measure and make it a contingency measure. We are approving this change through our approval of the maintenance plan and the revisions to Utah Rule R307–8 because the area does not need the Oxygenated Gasoline Program to show maintenance of the CO NAAQS.

TABLE IV.—1

Year	1993	1994	1995	1996	1997	1998	1999	
Mobile Source Emissions in tons per day of CO	54.03	54.22	51.01	47.74	46.52	45.17	44.16	
Year	2000	2001	2002	2003	2004	2005	2006	2007
Mobile Source Emissions in tons per day of CO	42.26	39.97	39.21	37.67	36.47	35.92	36.14	36.71

EPA is also approving the 55 ton per day emission budget for the years 2008 and beyond. This budget is consistent with attainment and maintenance of the CO standard; that is, this budget, in combination with all other sources of emissions, results in total emissions lower than the attainment emissions inventory of 70.82 tons per day in each year from 2008 onward. The State has documented its use of the safety margin in developing this budget.

The State discusses the potential allocation of year-by-year emission credits in section (3), "Emissions Credit Allocation," on page 144, section IX, part C.8.f of the maintenance plan. Section (3) states that "The emissions credit, or any portion of the emissions credit may be allocated to any source category contributing to the inventory; i.e., area sources, non-road mobile sources, or on-road mobile sources. The allocation of emission credits shall be made by order of the Utah Air Quality Board and shall not be inconsistent with this plan."

This language is inconsistent with EPA's requirements for allocating the safety margin, and, thus, is not sufficient to allow for additional safety margin to be used for transportation conformity determinations, or for any of the safety margin to be used for other purposes. For example, EPA's longstanding interpretation is that the SIP itself must include some or all of the safety margin in the motor vehicle emissions budget before the safety margin may be used in transportation conformity determinations. See 58 FR 62195, November 24, 1993. Similarly, EPA has taken the position that conformity determinations may not trade emissions among SIP budgets for highway/transit versus other sources unless a SIP revision for the specific trade is submitted and approved by EPA or the SIP establishes appropriate mechanisms for such trading. *Id.* EPA's transportation conformity rule reflects these concepts at 40 CFR 93.124(a), (b), and (c).

The maintenance plan does not explicitly include the safety margin in the motor vehicle emission budget or any other budget (apart from

establishing the 2008 and beyond 55 ton per day motor vehicle budget, which uses some of the safety margin). Instead, the maintenance plan attempts to allow the Utah Air Quality Board to make an allocation of the safety margin to one or more of the budgets at some future date. This is not the explicit SIP allocation contemplated by EPA's conformity rule. Nor does this approach constitute an appropriate trading mechanism. Thus, under the language of the maintenance plan as it now stands, the remaining safety margin may not be used for conformity determinations or any other purpose. All conformity determinations must demonstrate conformity with the emission budgets in the maintenance plan as cited above. The State may seek EPA approval of a SIP revision to allocate some or all of the available safety margin for transportation conformity, general conformity, or other purposes.

Consistent with the foregoing, and to avoid confusion, EPA is taking no action on section IX, part C.8.f.(3) of the maintenance plan.

V. EPA's Evaluation of the Revisions to Rule R307-8, Oxygenated Gasoline Program

Utah's Rule R307-8 is entitled "Oxygenated Gasoline Program." In this action, we are approving Utah's July 8, 1998, revisions to R307-8, as adopted by the UAQB on April 21, 1998, and State effective on April 22, 1998, and note that these revisions supersede and replace the version of R307-8 that we approved on November 8, 1994 (see 59 FR 55585). We note that the Governor submitted several other revisions to R307-8 prior to July 8, 1998, that we never approved and that the Governor's July 8, 1998, submittal also supersedes and replaces these other revisions to R307-8. The revisions we are approving remove the Oxygenated Gasoline Program from the SIP as a control measure and instead make it a contingency measure. The area does not need the Oxygenated Gasoline Program to show maintenance, and thus, it may be removed from the SIP as a control measure.

VI. Final Action

In this action, EPA is approving the Ogden City carbon monoxide redesignation request, maintenance plan, and the revisions to Rule R307-8.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 8, 2001 without further notice unless the Agency receives adverse comments by April 9, 2001.

If EPA receives such comments, then we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 8, 2001 and no further action will be taken on the proposed rule.

Administrative Requirements

(a) Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

(b) Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of

the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

(c) Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

(d) Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

(e) Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies 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 small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a regulatory 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 sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation to attainment is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Therefore, I certify that the approval of the redesignation request will not affect a substantial number of small entities.

(f) Unfunded Mandates

Under sections 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 a redesignation to attainment and 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.

(g) Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United

States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 8, 2001 unless EPA receives adverse written comments by April 9, 2001.

(h) National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

(i) Petitions for Judicial 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 May 8, 2001. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: October 4, 2000.

William P. Yellowtail,
Regional Administrator, Region VIII.

Chapter I, title 40, parts 52 and 81 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 et seq.

Subpart TT—UTAH

2. Section 52.2320 is amended by adding paragraph (c)(45) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(45) Revisions to the Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide ("Carbon Monoxide Maintenance Provisions for Ogden City") as submitted by the Governor on December 9, 1996, excluding section IX, part C.8.f.(3) of the plan, "Emissions Credit Allocation," as EPA is not taking any action on that section of the plan. UACR R307-8; Oxygenated Gasoline Program as submitted by the Governor on July 8, 1998.

(i) Incorporation by reference.

(A) UACR R307-2-12, section IX, part C of the Utah State Implementation Plan (SIP), adopted by the Utah Air Quality Board on August 7, 1996, and September 4, 1996, effective November 1, 1996. EPA's incorporation by reference of UACR R307-2-12 only extends to the following Utah SIP provisions and excludes any other provisions that UACR R307-2-12 incorporates by reference:

Section IX, part C.8 (except for section IX, part C.8.f.(3)), "Carbon Monoxide Maintenance Provisions for Ogden City," adopted by Utah Air Quality Board on August 7, 1996, and September 4, 1996, effective November 1, 1996.

(B) UACR R307-8, Oxygenated Gasoline Program, as adopted by the Utah Air Quality Board on April 21, 1998, effective April 22, 1998.

(ii) Additional materials.

(A) February 19, 1998, letter from Ursula Trueman, Director, Utah Division of Air Quality, Department of Environmental Quality to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, entitled "DAQS-0188-98; Technical Support Documents—Ogden City and Salt Lake City CO Maintenance Plans." This letter confirmed that all the emission projections contained in the technical support documents for both the Salt Lake City and Ogden City redesignation requests were properly adopted by the Utah Air Quality Board in accordance with the Utah Air Quality Rules.

(B) July 17, 2000, letter from Richard Long, Director, Air and Radiation Program, EPA Region VIII, to Ursula Kramer, Director, Utah Division of Air Quality, Department of Environmental Quality, entitled "Federal Register Action for the Ogden City Carbon Monoxide (CO) Redesignation—Resolution of Issues with the Conformity Budgets."

(C) September 11, 2000, letter from Rick Sprott, Acting Director, Utah Division of Air Quality, Department of Environmental Quality, to Richard Long, Director, Air and Radiation Program, EPA Region VIII, entitled "DAQP-131-00; Ogden City Carbon Monoxide (CO) Redesignation—Resolution of Issues with the Conformity Budgets." This letter provided clarification regarding the transportation conformity budgets in section IX.C.8 of the Ogden City maintenance plan SIP revision.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401—et seq.

2. In § 81.345, the table entitled "Utah-Carbon Monoxide" is amended by revising the entry for "Ogden Area" to read as follows:

§ 81.345 Utah.

* * * * *

UTAH—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Ogden Area, Weber County (part), City of Ogden	May 8, 2001	Attainment ...		
* * * * *	* * * * *			

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

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[FR Doc. 01-5852 Filed 3-8-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 81**

[MN61-01-7286a; MN62-01-7287a; FRL-6901-1]

Approval and Promulgation of Implementation Plans; Minnesota Designation of Areas for Air Quality Planning Purposes; Minnesota**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: The Environmental Protection Agency is approving a State Implementation Plan (SIP) revision for Olmsted County, Minnesota, for the control of sulfur dioxide (SO₂) emissions in the city of Rochester. EPA is also approving a request to redesignate the Rochester nonattainment area to attainment of the SO₂ National Ambient Air Quality Standards (NAAQS). In conjunction with these actions, EPA is also approving the maintenance plan for the city of Rochester, Olmsted County nonattainment area, which was submitted to ensure that attainment of the NAAQS will be maintained. The SIP revision, redesignation request and maintenance plan were submitted by the Minnesota Pollution Control Agency (MPCA) on November 4, 1998, and are approvable because they satisfy the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this notice.

DATES: This action is effective on May 8, 2001 without further notice, unless EPA receives relevant adverse comments by April 9, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353-8328, before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT:

Christos Panos, Regulation Development Section, Air Programs Branch (AR-18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

- I. General Information
 - 1. What action is EPA taking today?
 - 2. Why is EPA taking this action?
- II. Background on Minnesota Submittal
 - 1. What is the background for this action?
 - 2. What information did Minnesota submit, and what were its requests?
 - 3. What is a "Title I Condition?"
- III. State Implementation Plan Approval
 - 1. What requirements do SO₂ nonattainment areas have to meet?
 - 2. How does the state's SIP revision meet the requirements of the Act?
- IV. Redesignation Evaluation
 - 1. What are the criteria used to review redesignation requests?
 - 2. How are these criteria satisfied for the city of Rochester?
- V. Maintenance Plan
 - What are the maintenance plan requirements?
- VI. Final Rulemaking Action
- VII. Administrative Requirements

I. General Information**1. What Action Is EPA Taking Today?**

In this action, EPA is approving into the Minnesota SO₂ SIP for the city of Rochester, Olmsted County, certain portions of the five permits and two permit amendments that MPCA submitted to EPA as a SIP revision. Specifically, EPA is only approving into the SIP those portions of the permits cited as "Title I condition: State Implementation Plan for SO₂." EPA is also approving the SO₂ redesignation request submitted by the State of Minnesota for Olmsted County to redesignate the Rochester SO₂ nonattainment area to attainment of the SO₂ NAAQS. Finally, EPA is approving the maintenance plan submitted for this area.

2. Why Is EPA Taking This Action?

EPA is taking this action because the state's submittal for the Rochester SO₂ nonattainment area is fully approvable. The SIP revision provides for attainment and maintenance of the SO₂ NAAQS and satisfies the requirements of part D of the Act applicable to SO₂ nonattainment areas. Further, EPA is approving the maintenance plan and redesignating the Rochester SO₂ nonattainment area to attainment because the state has met the redesignation and maintenance plan

requirements of the Act. A more detailed explanation of how the state's submittal meets these requirements is contained in EPA's July 28, 2000 Technical Support Document (TSD).

II. Background on Minnesota Submittal**1. What Is the Background for This Action?**

On March 3, 1978, at 43 FR 8962, EPA designated the city of Rochester as a primary SO₂ nonattainment area based on monitored violations of the primary SO₂ NAAQS in the area between 1975 and 1977. EPA approved an SO₂ SIP revision for the city of Rochester on April 8, 1981 (46 FR 20996), consisting of an SO₂ control plan and emission limitations contained in operating permits for Rochester Public Utilities—Silver Lake Plant, Rochester Public Utilities—Broadway Plant, Rochester State Hospital, and Associated Milk Producers.

On July 8, 1985 (50 FR 27892), EPA promulgated a Good Engineering Practice stack height rule that resulted in a July 31, 1986 revision and a subsequent July 31, 1989 modification to the Rochester SO₂ SIP. In these submittals the MPCA requested EPA approval of new permit conditions for the facilities previously included in the SO₂ SIP and redesignation of the city of Rochester to attainment for SO₂. Approval of the Part D plan for Olmsted County was delayed pending the passage of the 1990 Amendments to the Act. EPA determined, however, that the 1989 submittal did not supply sufficient information to allow EPA to consider redesignating the Rochester SO₂ area to attainment.

The state informed EPA in a letter dated February 24, 1992, that it was in the process of revising several SIP submittals and redesignation requests and was therefore withdrawing them from EPA review. This included the SO₂ SIP and redesignation requests for Rochester submitted in 1986 and 1989.

2. What Information Did Minnesota Submit, and What Were Its Requests?

The SIP revision submitted by MPCA on November 4, 1998, consists of five permits and two permit amendments issued to the following facilities: Rochester Public Utilities—Silver Lake Plant, Rochester Public Utilities—Cascade Creek Combustion Turbine, Associated Milk Producers, St. Mary's Hospital, Olmsted Waste-to-Energy Facility, Franklin Heating Station, and IBM. The Rochester Public Utilities—Broadway Plant, and the three boilers at the Rochester State Hospital that were part of the 1981 SIP, no longer exist.