

PART 52—[AMENDED]

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

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

Subpart YY—Wisconsin

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

§ 52.2585 Control strategy: Ozone.

* * * * *

(k) Approval—On December 15, 1995, and May 15, 1996, the Wisconsin Department of Natural Resources submitted requests to redesignate Walworth County and Sheboygan and Kewaunee Counties, respectively, from nonattainment to attainment for ozone. The State also submitted maintenance plans as required by section 175A of the Clean Air Act, 42 U.S.C. § 7505a. Elements of the section 175A maintenance plans include attainment emission inventories for NO_x and VOC, demonstrations of maintenance of the ozone NAAQS with projected emission

inventories to the year 2007 for NO_x and VOC, plans to verify continued attainment, and contingency plans. If a violation of the ozone NAAQS, determined to be caused by local sources is monitored, Wisconsin will implement one or more appropriate contingency measure(s) contained in the contingency plan. Once a violation of the ozone NAAQS is recorded, the State will notify EPA and review the data for quality assurance. A plan to analyze the violation, including an analysis of meteorological conditions, will be submitted within 60 days to EPA-Region 5 for approval. Within 14 months of the violation, Wisconsin will complete and public notice the analysis and submit it to EPA-Region 5 for review. If the analysis shows that local sources caused the violation, Wisconsin will implement the contingency measures within 24 months after the violation. The contingency measures to be implemented in Walworth County are Stage II vapor recovery and non-Control Technology Guideline (non-CTG)

Reasonably available control technology (RACT) limits. Contingency measures to be implemented in either Kewaunee or Sheboygan County are lower major source applicability thresholds for industrial sources and new gasoline standards which will lower VOC emissions. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(E) and 175A of the Act, respectively.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401-7871q.

2. In section 81.350, the ozone table is amended by revising the entries for Kewaunee County, Sheboygan County, and Walworth County to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—OZONE

Designated areas	Designation		Classification	
	Date ¹	Type	Date	Type
	* * * * *			
Kewaunee County Area Kewaunee County	[Insert Date of Publication]	Attainment.		
	* * * * *			
Sheboygan County Area Sheboygan County	[Insert Date of Publication]	Attainment.		
Walworth County Area Walworth County	[Insert Date of Publication]	Attainment.		
	* * * * *			

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

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40 CFR Part 63

[FRL-5551-9]

Interim Approval of Section 112(l) Delegated Authority; Washington

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final Interim Approval and Delegation.

SUMMARY: EPA is promulgating final interim approval of the state of Washington Department of Ecology (Ecology) request for delegation of authority to implement and enforce state-adopted hazardous air pollutant regulations which adopt by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) contained within 40 CFR Parts 61 and

63, as these regulations apply to sources that are required to obtain a federal operating permit under 40 CFR Part 70 (i.e., Part 70 sources). EPA is also promulgating interim approval of certain local air agency potential-to-emit limiting regulations which will now be recognized as federally enforceable. At Ecology's request, EPA is delaying approval of certain other state and local potential-to-emit limiting regulations.

These adopted regulations approved as part of this action will be implemented and enforced by both Ecology and/or the following local air authorities within the state of Washington: The Benton County Clean Air Authority (BCCAA); the Northwest Air Pollution Authority (NWAPA); the Olympic Air Pollution Control Authority (OAPCA); the Puget Sound Air Pollution Control Agency (PSAPCA); the Southwest Air Pollution Control Authority (SWAPCA); the

Spokane County Air Pollution Control Authority (SCAPCA); and the Yakima County Clean Air Authority (YCCAA); collectively referred to as "the Washington permitting authorities."

EFFECTIVE DATE: August 26, 1996.

FOR FURTHER INFORMATION CONTACT: Chris Hall, US EPA, OAQ-107, 1200 Sixth Avenue, Seattle, WA, 98101, (206) 553-1949.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the federal Clean Air Act (CAA) enables the EPA to approve state air toxic programs or rules to operate in place of the Federal air toxic program or rules. The Federal air toxic program implements the requirements found in section 112 of the CAA pertaining to the regulation of hazardous air pollutants. Approval of an air toxic program is granted by the EPA if the Agency finds that: (1) the State

program is "no less stringent" than the corresponding federal program or rule, (2) the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with federal guidance. Once approval is granted, the air toxic program can be implemented and enforced by State or local agencies, as well as EPA.

Implementation by local agencies is dependent upon appropriate subdelegation.

On January 5, 1995 (as supplemented on May 8, 1995, October 18, 1995, and January 9, 1996), the Washington permitting authorities submitted to EPA an application requesting delegation of authority to implement and enforce specific 40 CFR Part 61 and Part 63 NESHAP regulations adopted into Washington state and local law. On February 16, 1996, EPA proposed interim approval of this request for delegation and requested public comment on this action. See 61 FR 6184. As of the close of the 30 day public comment period (March 17, 1996), EPA had received comments from two parties, both of which were supportive of the proposed delegation. On June 13, 1996, Ecology requested that EPA withhold action on its request for approval of: WAC 173-400-110, -112, -113, and -114; NWAPA Regulation sections 300 through 303; OAPCA Regulation 1, Article 7; SCAPCA Regulation I, Article II and V; and, YCCAA Restated Regulation I, Sections 4.02 and 12.01, until further notice.

II. Response to Comments

Comments were received from both the Washington state Department of Ecology (C1) and the Southwest Air Pollution Control Authority (C2).

EPA's responds to the substantive comments contained in C1 and C2 as follows:

1. In C1 and C2, Ecology and SWAPCA clarified that the Washington permitting authorities were not only requesting delegation for existing NESHAP regulations which have already been adopted into state and local law, but were also requesting approval of their mechanism for receiving delegation of future NESHAP regulations which the state and locals adopt into state and local law unchanged.

2. In C1 and C2, Ecology and SWAPCA clarified that sources in Washington state are either subject to an operating permit fee or a source registration fee, but not both. EPA acknowledges this correction and no further response is necessary.

3. In C2, SWAPCA gave notice that it had changed its regulatory numbering of one

specific local regulation to coincide with the numbering in the state regulation. SWAPCA 400-090 "Voluntary Limits on Emissions" has been changed to SWAPCA 400-091 as of September 21, 1995.

4. In C1, Ecology expressed the concern that in the proposed rulemaking EPA raised invalid concerns regarding the adequacy of the Washington permitting authorities' resources for implementing and enforcing the delegated NESHAP regulations.

In response to comment No. 1, EPA agrees that approval of the mechanism for future delegations proposed by the Washington permitting authorities will greatly streamline future delegation of those federal NESHAP regulations that are adopted into state and local law unchanged. Therefore, EPA grants interim approval of this adoption-by-reference mechanism for the Washington permitting authorities. In this respect, the Washington permitting authorities will only need to send a letter of request to EPA for those future NESHAP regulations which the state or local agencies have adopted by reference. EPA will respond to this request by sending a letter back to the state or local air agency delegating the NESHAP standards requested. No further formal response from the state or local agency will be necessary, and if no negative response is received within 10 days, the delegation becomes final. A notice of the delegation will be published in the Federal Register to inform the public that the delegation has taken place and to indicate where a source notification and other reports should be sent.

In response to comment No. 3, EPA agrees to grant interim approval of SWAPCA Regulation 400-091, as it was in effect September 21, 1995, in place of SWAPCA Regulation 400-090.

Finally, in response to comment No. 4, it was not EPA's intention to raise any doubts regarding the Washington permitting authorities' ability to provide for adequate resources for implementing, assuring compliance, and enforcing the adopted NESHAP regulations within the state of Washington. EPA believes that the Washington permitting authorities have adequately documented that they will be able to provide resources which are adequate to run their respective air toxics programs.

III. Programs for Interim Approval

In this action, under the authority of section 112(l)(5) and 40 CFR 63.91, EPA is promulgating interim approval of the Washington permitting authorities' request for delegated authority to implement and enforce 40 CFR Part 61, subparts A, C through F, J, L through P,

V, Y, BB, and FF, as adopted into WAC 173-400 (as in effect February 16, 1993), NWAPA Section 104.2 (as in effect December 8, 1993), PSAPCA Regulation III Section 2.02 (as in effect October 19, 1995), SWAPCA Regulation 400 Section 075 (as in effect February 1, 1995), and YCCAA Regulation I Section 12.02 (as in effect September 14, 1994), as these rules apply to Part 70 sources. EPA is also promulgating interim approval of the NWAPA, PSAPCA, and SWAPCA request for delegated authority to implement and enforce the following locally-adopted 40 CFR Part 63 NESHAP regulations as they apply to Part 70 sources: NWAPA regulation 104.2 which adopts by reference 40 CFR Part 63 subparts A through D, F through I, L, M, and Q, as amended on October 19, 1994; PSAPCA Regulation III, Section 2.02 as in effect on October 19, 1995, which adopts by reference 40 CFR Part 63 subparts A, B, D, F through I, L through O, Q, R, T, W, X, and EE, as in effect as of July 1, 1995; and, SWAPCA Regulation 400-075 as in effect on February 1, 1995, which adopts by reference 40 CFR Part 63 subparts A, B, D, F-I, L-O, R, Q, T, and EE.

Additionally, EPA is promulgating interim approval under the authority of section 112(l)(5) and 40 CFR 63.91 of Washington's mechanism for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated.

EPA is also promulgating interim approval of PSAPCA Regulation I, Article 6, and Regulation III, Appendix A; and, SWAPCA Regulation 400-091, -110, -112, -113, and -114 under the authority of § 112(l) of the Act in order to recognize these regulations as federally enforceable for purposes of establishing potential-to-emit limitations. Upon Ecology's request, EPA is withholding action on WAC 173-400-110, -112, -113, and -114; NWAPA Regulation, Sections 300 through 303; OAPCA Regulation 1, Article 7; SCAPCA Regulation I, Article II and V; and, YCCAA Restated Regulation I, Sections 4.02 and 12.01, until further notice.

Since EPA has determined that Washington's criminal authorities under RCW 70.94.430 do not meet the stringency requirement of 40 CFR 70.11, EPA is only promulgating interim approval of the Washington permitting authorities request for delegation. In this respect, EPA will retain implementation and enforcement authority for these rules as they apply to non-Part 70 sources during the interim period or until such time as the Washington permitting authorities demonstrate that their criminal authorities meet EPA

stringency requirements. As outlined in the proposed rulemaking to this final action (61 FR 6184), the Washington permitting authorities were requested to demonstrate to EPA that Washington's criminal enforcement authorities are consistent with the requirements of 40 CFR 70.11(a), and therefore 40 CFR 63.91(b)(1) and (b)(6), if they wish to receive "full" approval. Specifically, the Washington permitting authorities were requested to:

(1) Revise RCW 70.94.430 to provide for maximum criminal penalties of not less than \$10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii),

(2) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than \$10,000 per day per violation, and

(3) Revise RCW 70.94.430 to allow the imposition of criminal penalties against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). This provision must include maximum penalties of not less than \$10,000 per day per violation, or

(4) Demonstrate to the satisfaction of EPA that these authorities are consistent with 40 CFR 70.11, and therefore 40 CFR 61.91.

To date, Ecology has only submitted supporting documentation to demonstrate that existing state laws are adequate to meet the requirements of (1) above. It is EPA's understanding that final action at the state level resolving issues (2) and (3) above will be completed by August 15, and will become effective on September 15. Since EPA has not had the opportunity to fully review the supporting documentation received to date in regard to (1) above, a final determination as to whether the requirements of 40 CFR 70.11 and 61.91 have been met will not be made at this time. EPA anticipates being able to take final action on these interim delegation issues in the near future, but not before Ecology's proposed regulatory changes in regard to (2) and (3) above become effective on September 15. Unless EPA takes prior action, this delegation of authority to implement and enforce the federal NESHAP regulations will extend only until December 9, 1996, the day on which interim authority for Washington's Title V federal operating permit program expires. EPA will not extend this interim delegation past December 9, 1996, unless deemed appropriate under Part 70 rulemaking.

IV. Summary of Action

Pursuant to the authority of § 112(l) of the Act and 40 CFR Part 63 subpart E, EPA is promulgating interim approval of the Washington permitting authorities' request for delegation of authority to implement and enforce specific 40 CFR Part 61 and Part 63 federal NESHAP regulations which have been adopted into Washington state and local law for part 70 sources. Additionally, EPA is promulgating interim approval of the mechanism by which the Washington permitting authorities will receive delegation of future NESHAP regulations. Finally, EPA is promulgating interim approval of specific SWAPCA and PSAPCA air regulations for the purpose of conferring federal enforceability to synthetic minor permits or orders issued pursuant to these regulations.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

NESHAP rule or program delegations approved under the authority of section 112(l) of the Act do not create any new requirements, but simply confer federal authority for those requirements that the state of Washington is already imposing. Therefore, because section 112 delegation approvals do not impose any new requirements, the Agency has determined that it would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning State programs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates Reform Act

EPA has determined that the proposed 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.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations.

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

Dated: July 24, 1996.

Chuck Clarke,

Regional Administrator.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.