

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

[CT051-7209; A-1-FRL-6224-8]

**Removal of the Approval of the Maintenance Plan, Carbon Monoxide Redesignation Plan and Emissions Inventory for the Connecticut Portion of the New York-N. New Jersey-Long Island Area****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** On November 2, 1998 (63 FR 58637), EPA published a direct final rule that approved the maintenance plan, carbon monoxide redesignation plan, and emissions inventory for the Connecticut portion of the New York-N. New Jersey-Long Island Area. EPA stated in that direct final rule that if we received adverse comment by December 2, 1998, the rule would not take effect and EPA would publish a timely notice withdrawing the rule. EPA subsequently received adverse comment on that direct final rule, but did not publish the withdrawal notice prior to the effective date of the direct final rule. In this action, EPA is removing the amendments that were published in the November 2, 1998, direct final rule. In today's **Federal Register**, EPA also is issuing a subsequent direct final rule and parallel proposal that addresses the adverse comment EPA received on the November 2, 1998 rule and approves the Connecticut portion of the New York-N. New Jersey-Long Island Area.

**DATES:** This action is effective March 10, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey S. Butensky, Environmental Planner, Air Quality Planning Unit of the Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114-2023, or at (617) 918-1665 or butensky.jeff@epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA is removing the amendments to this rule that were published as a direct final rule on November 2, 1998. Those amendments approved the redesignation request, maintenance plan, and emissions inventory for the State of Connecticut intended to redesignate the Connecticut portion of the New York-N. New Jersey-Long Island nonattainment area to attainment for carbon monoxide. That action was to establish the area as attainment for carbon monoxide and require the state

to implement their 10 year maintenance plan. Since EPA received a letter dated December 2, 1998 with adverse comments from the State of Connecticut, by its terms, the direct final rule should not have become effective. EPA, therefore, is hereby removing those amendments in today's action. Also, in today's **Federal Register**, EPA is publishing a subsequent direct final rulemaking, which approves the enhanced inspection and maintenance program in Connecticut and also addresses the comment we received from the State of Connecticut on EPA's November 2, 1998 direct final rule. That action also articulates an additional legal rationale for the redesignation and invites comment on that action before the rule becomes effective. EPA is offering the public another opportunity to comment on the issue raised in that comment and on the action as a whole in that direct final rule in today's **Federal Register**.

This removal action is simply a ministerial correction of the prior direct final rulemaking, which by its terms should not have become effective because Connecticut commented adversely on the redesignation action. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B) because EPA believes that notice-and-comment rulemaking of this removal action is contrary to the public interest and unnecessary. This removal action merely corrects the status of the previous direct final rulemaking. EPA stated in the November 2, 1998 direct final action that should adverse comment be received, the rule would not take effect. The rule took effect because EPA did not publish a timely withdrawal in the **Federal Register** prior to the rule's effective date. It would be contrary to the public interest to keep that final rule in effect when it should not have taken effect since adverse comment was received. Additionally, notice-and-comment on this action is unnecessary because EPA is affording the public an opportunity to comment on any issues raised by this rulemaking and the comment EPA received in the parallel direct final action published elsewhere in today's **Federal Register**.

**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any

significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 10, 1999. 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**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 10, 1999. Filing a petition for reconsideration by

the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

hydrocabons, Intergovernmental relations, Ozone.

#### List of Subjects in 40 CFR Part 81

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

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

Dated: January 15, 1999.

**John P. DeVillars,**

*Regional Administrator, Region I.*

40 CFR Parts 52 and 81 are amended as follows:

#### PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

#### Subpart H—Connecticut

2. Section 52.374 is amended by revising the table to read as follows:

##### § 52.374 Attainment dates for national standards.

\* \* \* \* \*

Air quality control region and nonattainment area	Pollutant					
	SO <sub>2</sub>		PM10	NO <sub>x</sub>	CO	O <sub>3</sub>
	Primary	Secondary				
<b>AQCR 41: Eastern Connecticut Interstate</b>						
Middlesex County (part) .....	(a)	(b)	(a)	(a)	(a)	(a)
All portions except cities and towns in Hartford Area:						
New London County .....	(a)	(b)	(a)	(a)	(a)	(c)
Tolland County (part) .....	(a)	(b)	(a)	(a)	(a)	(c)
All portions except cities and towns in Hartford Area:						
Windham County .....	(a)	(b)	(a)	(a)	(a)	(c)
<b>AQCR 42: Hartford-New Haven-Springfield Interstate Hartford-New Britain-Middletown Area</b>						
Hartford County (part) See 40 CFR 81.307 .....	(a)	(b)	(a)	(a)	(d)	(c)
Litchfield County (part) See 40 CFR 81.307 .....	(a)	(b)	(a)	(a)	(d)	(c)
Middlesex County (part) See 40 CFR 81.307 .....	(a)	(b)	(a)	(a)	(d)	(c)
Tolland County (part) See 40 CFR 81.307 .....	(a)	(b)	(a)	(a)	(d)	(c)
New Haven-Meriden-Waterbury Area:						
Fairfield County (part) See 40 CFR 81.307 .....	(a)	(b)	(a)	(a)	(d)	(c)
Litchfield County (part) See 40 CFR 81.307 .....	(a)	(b)	(a)	(a)	(d)	(c)
New Haven County:						
All portions except City of New Haven .....	(a)	(b)	(a)	(a)	(d)	(c)
City of New Haven .....	(a)	(b)	(g)	(a)	(d)	(c)
<b>AQCR 43: New York-New Jersey-Connecticut Interstate New York-N. New Jersey-Long Island Area</b>						
Fairfield County (part) See 40 CFR 81.307 .....	(a)	(b)	(a)	(a)	(d)	(f)
Litchfield County (part) See 40 CFR 81.307 .....	(a)	(b)	(a)	(a)	(d)	(f)
<b>AQCR 44: Northwestern Connecticut Interstate</b>						
Hartford County (part) .....	(a)	(b)	(a)	(a)	(a)	(c)
Hartford Township:						
Litchfield County (part) See 40 CFR 81.307 .....	(a)	(b)	(a)	(a)	(a)	(c)
All portions except cities and towns in Hartford, New Haven, and New York Areas.						

<sup>a</sup> Air quality levels presently below primary standards or area is unclassifiable.

<sup>b</sup> Air quality levels presently below secondary standards or area is unclassifiable.

<sup>c</sup> November 15, 1995.

<sup>d</sup> December 31, 1995.

<sup>e</sup> November 15, 1999.

<sup>f</sup> November 15, 2007.

<sup>g</sup> December 31, 1996 (two 1-year extensions granted).

3. Section 52.376 is amended by revising paragraphs (a) and (d) and removing paragraphs (e) and (f) to read as follows:

##### § 52.376 Control Strategy: Carbon Monoxide.

(a) Approval. On January 12, 1993, the Connecticut Department of Environmental Protection submitted a revision to the carbon monoxide State

Implementation Plan for the 1990 base year emission inventory. The inventory was submitted by the State of Connecticut to satisfy Federal requirements under sections 182(a) of the Clean Air Act as amended in 1990, as a revision to the carbon monoxide State Implementation Plan.

\* \* \* \* \*

(d) Approval. On January 17, 1997, the Connecticut Department of

Environmental Protection submitted a request to redesignate the New Haven/Meriden/Waterbury carbon monoxide nonattainment area to attainment for carbon monoxide. As part of the redesignation request, the State submitted a maintenance plan as required by 175A of the Clean Air Act,

as amended in 1990. Elements of the section 175A maintenance plan include a base year emission inventory for carbon monoxide, a demonstration of maintenance of the carbon monoxide NAAQS with projected emission inventories to the year 2008 for carbon monoxide, a plan to verify continued attainment, a contingency plan, and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. If the area records a violation of the carbon monoxide NAAQS (which must be

confirmed by the State), Connecticut will implement one or more appropriate contingency measure(s) which are contained in the contingency plan. The menu of contingency measure includes reformulated gasoline and the enhanced motor vehicle inspection and maintenance program. The redesignation request and maintenance plan meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively.

#### PART 81—[AMENDED]

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

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

#### Subpart C—Section 107 Attainment Status Designations

2. The table in § 81.307 entitled “Connecticut-Carbon Monoxide” is revised to read as follows:

#### § 81.307 Connecticut.

\* \* \* \* \*

#### CONNECTICUT—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Hartford-New Britain-Middletown Area:				
Hartford County (part) .....	1/2/96	Attainment.		
Bristol City, Burlington Town, Avon Town, Bloomfield Town, Canton Town, E. Granby Town, E. Hartford Town, E. Windsor Town, Enfield Town, Farmington Town, Glastonbury Town, Granby Town, Hartford city, Manchester Town, Marlborough Town, Newington Town, Rocky Hill Town, Simsbury Town, S. Windsor Town, Suffield Town, W. Hartford Town, Wethersfield Town, Windsor Town, Windsor Locks Town, Berlin Town, New Britain city, Plainville Town, and Southington Town				
Litchfield County (part) .....	1/2/96	Attainment.		
Plymouth Town				
Middlesex County (part) .....	1/2/96	Attainment.		
Cromwell Town, Durham Town, E. Hampton Town, Haddam Town, Middlefield Town, Middletown City, Portland Town, E. Haddam Town				
Tolland County (part) .....	1/2/96	Attainment.		
Andover Town, Bolton Town, Ellington Town, Hebron Town, Somers Town, Tolland Town, and Vernon Town				
New Haven—Meriden—Waterbury Area:				
Fairfield County (part) .....	12/4/98	Attainment.		
Shelton City				
Litchfield County (part) .....	12/4/98	Attainment.		
Bethlehem Town, Thomaston Town, Watertown, Woodbury Town				
New Haven County .....	12/4/98	Attainment.		
New York-N. New Jersey-Long Island Area:				
Fairfield County (part) .....	.....	Nonattainment .....	.....	Moderate > 12.7ppm
All cities and townships except Shelton City				
Litchfield County (part) .....	.....	Nonattainment .....	.....	Moderate > 12.7ppm
Bridgewater Town, New Milford Town				
AQCR 041 Eastern Connecticut Intrastate .....	.....	Unclassifiable/Attainment.		
Middlesex County (part)—All portions except cities and towns in Hartford Area				
New London County				
Tolland County (part)—All portions except cities and towns in Hartford Area				
Windham County				
AQCR 044 Northwestern Connecticut Intrastate .....	.....	Unclassifiable/Attainment.		
Hartford County (part)—Hartland Township				
Litchfield County (part)—All portions except cities and towns in Hartford, New Haven, and New York Areas				

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

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

[CT008-7210a; A-1-FRL-6225-1]

**Approval and Promulgation of Air Quality Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Connecticut; Enhanced Motor Vehicle Inspection and Maintenance Program; Approval of Maintenance Plan, Carbon Monoxide Redesignation Plan and Emissions Inventory for the Connecticut Portion of the New York-N. New Jersey-Long Island Area****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is conditionally approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut on June 24, 1998 and a commitment submitted November 13, 1998 to start on-board diagnostic testing (OBD) by July 1, 2001. This revision conditionally approves the Connecticut statewide enhanced inspection and maintenance (I/M) program. The effect of this action is to conditionally approve the State's I/M SIP revision which for the most part is approvable, but which does not meet all EPA enhanced I/M program regulatory requirements. Connecticut has committed to correcting these deficiencies by July 1, 1999. EPA is also approving a request by the Connecticut Department of Environmental Protection (CTDEP) on May 29, 1998 to redesignate the Connecticut portion of the New York-N. New Jersey-Long Island carbon monoxide nonattainment area from nonattainment to attainment for carbon monoxide (CO). EPA is approving this request which establishes the Connecticut portion of this area as attainment for carbon monoxide and requires the State to implement its 10 year maintenance plan that will insure that the area remains in attainment. Under the Clean Air Act (CAA), section 107 as amended in 1990, designations can be revised if sufficient air quality data is available to warrant such revisions. EPA is approving the Connecticut request because it addresses the redesignation requirements set forth in the CAA. This action is being taken under section 107 of the Clean Air Act.

**DATES:** This direct final rule is effective on May 10, 1999 without further notice, unless EPA receives relevant adverse comment by April 9, 1999. If relevant 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:** Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress St., Suite 1100, Boston, MA 02114-2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th Floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE-131), Washington, D.C. 20460; and (the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630.

**FOR FURTHER INFORMATION CONTACT:** Peter X. Hagerty, (617) 918-1049 or Jeff Butensky, (617) 918-1665.

**SUPPLEMENTARY INFORMATION:****I. Background****A. Clean Air Act Requirements for I/M**

The Clean Air Act, as amended in 1990 (CAA or Act), requires certain States to revise and improve existing I/M programs or implement new ones. All ozone nonattainment areas classified as moderate or worse must implement a basic or enhanced I/M program depending upon its nonattainment classification, regardless of previous requirements. In addition, Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States must then incorporate this guidance into the SIP for all areas required by the Act to have an I/M program. Metropolitan statistical areas with populations of 100,000 or more that are within the Northeast Ozone Transport Region are required to meet EPA guidance for enhanced I/M programs.

Final full approval of the portions of the state's I/M SIP revision subject to the conditions stated in this notice is still necessary under section 110 and under section 182, 184 or 187 of the CAA.

**B. Rationale for CO Redesignation**

On November 2, 1998 EPA published a direct final rule in the **Federal Register** approving the maintenance plan, carbon monoxide (CO) redesignation, and emissions inventory for the Connecticut portion of the New York-N. New Jersey-Long Island Area (62 FR 58637). This action was meant to redesignate the southwest Connecticut moderate carbon monoxide (CO) area to attainment. On December 2, 1998, EPA received a comment on that action, which should have prevented the direct final rule from taking effect. EPA is removing the amendments in that action in a parallel document published elsewhere in today's **Federal Register**. This action addresses the comment received and again redesignates Southwest Connecticut to attainment for CO.

In the November 2, 1998 document, EPA inaccurately stated that Connecticut has a fully approved CO SIP. A fully approved CO nonattainment SIP for this area must include a fully approved enhanced I/M program. On December 2, 1998, EPA received a comment pointing out that EPA has not fully approved Connecticut's enhanced I/M program and inquiring as to the basis for EPA's redesignation in light of the absence of a fully approved enhanced I/M program.<sup>1</sup>

A memorandum from John Calcagni, September 4, 1992, Procedures for Processing Requests to Redesignate Areas to Attainment, states that areas requesting redesignation to attainment must fully adopt rules and programs that come due prior to the submittal of a complete redesignation request. However, EPA is allowing a de minimis exception to this policy in today's action. While all nonattainment area SIP requirements that come due prior to the submission of the redesignation request

<sup>1</sup> EPA also received a comment from the State of New Jersey supporting the Connecticut redesignation and making certain assertions about New Jersey's eligibility for redesignation and the use of oxygenated fuels. EPA is taking no position in this notice on New Jersey's eligibility for redesignation and the use of oxygenated fuels in either New Jersey or Connecticut. The Clean Air Act requires the sale of oxygenated fuels in areas that are located within a CMSA in which a carbon monoxide nonattainment area with a design value of 9.5 parts per million or greater, and that requirement is not changed merely by the redesignation of such areas to attainment. Although the Southwest Connecticut emission inventory and maintenance plan EPA presented in its prior document (See 63 FR 58641 (Nov. 2, 1998)) did not include any emissions reductions from the sale of oxygenated fuels, the applicability of the requirements concerning the sale of oxygenated fuels in the southwest Connecticut portion of the New York City consolidated metropolitan statistical area will not be affected by the redesignation of southwest Connecticut to attainment.