ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WA–72–7147a; FRL–6938–5]

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

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) approves the maintenance plan and request for redesignation from nonattainment to attainment for three Washington areas in the Puget Sound region, (Kent, Seattle, and Tacoma) that are currently designated nonattainment for suspended particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM–10).

DATES: This direct final rule is effective on May 14, 2001 without further notice, unless EPA receives adverse comment by April 12, 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 should be addressed to: Debra Suzuki, SIP Manager, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's maintenance plan and redesignation request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Washington Department of Ecology, 300 Desmond Drive, PO Box 47600, Olympia, Washington 98504–7600.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553–0782.

SUPPLEMENTARY INFORMATION:

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I. Summary of Action

On August 23, 1999, the State of Washington submitted a maintenance plan for the Kent, Seattle, and Tacoma PM–10 nonattainment areas as well as a request for redesignation of these areas from nonattainment to attainment. This maintenance plan was prepared by the Puget Sound Clean Air Agency (PSCAA), submitted to the Washington State Department of Ecology, adopted by the State, and submitted by the Department of Ecology to EPA. EPA is approving the maintenance plan for these areas and redesignating the areas from nonattainment to attainment for PM–10.

EPA is publishing this rule without prior proposal because the Agency views this action as noncontroversial and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is concurrently 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 14, 2001 without further notice unless the Agency receives adverse comments by April 12, 2001.

If the EPA receives such comments, then EPA will publish a Federal Register document withdrawing the final rule and 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. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 14, 2001 and no further action will be taken on the proposed rule.

II. Supplementary Information

1. What Is the Purpose of This Rulemaking?

This rulemaking announces two actions being taken by EPA related to air quality in the State of Washington. These actions are taken at the request of the Governor of Washington in response to Clean Air Act (Act) requirements and EPA regulations.

First, EPA approves the PM–10 maintenance plan for the Kent, Seattle, and Tacoma PM–10 nonattainment areas and incorporates this plan into the Washington State Implementation Plan (SIP).

Second, EPA redesignates Kent, Seattle, and Tacoma, Washington from nonattainment to attainment for PM–10. This redesignation is based on valid monitoring data and projections of ambient air quality made in the maintenance plan's demonstration. EPA believes the area will continue to meet the National Ambient Air Quality Standards (NAAQS) for PM–10 for at least ten years beyond this redesignation, as required by the Act.

2. What Is a State Implementation Plan?

The Clean Air Act requires states to attain and maintain ambient air quality equal to or better than standards that provide an adequate margin of safety for public health and welfare. These ambient air quality standards are established by EPA and known as the National Ambient Air Quality Standards, or NAAQS.

The state's commitments for attaining and maintaining the NAAQS are outlined in the State Implementation Plan (or SIP) for that state. The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. Each state currently has a SIP in place, and the Act

requires that SIP revisions be made periodically as necessary to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) An inventory of emission sources; (2) statutes and regulations adopted by the state legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date.

The state must make the SIP available for public review and comment through a public hearing, it must be adopted by the state, and submitted to EPA by the Governor or his appointed designee. EPA takes federal action on the SIP submittal thus rendering the rules and regulations federally enforceable. The approved SIP serves as the state's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

Washington submitted their original SIP on January 28, 1972, and it was approved by EPA soon thereafter. Other SIP revisions have been submitted over the intervening years and likewise have been approved. The maintenance plan and redesignation request for Kent, Seattle, and Tacoma, that is the subject of this action, was prepared by the Puget Sound Clean Air Agency (PSCAA), the local air pollution control agency with primary regulatory authority over most sources in these areas. The State of Washington retains primary regulatory jurisdiction over kraft pulp mills and aluminum smelters. PSCAA submitted the maintenance plan to the Washington Department of Ecology. The State subsequently submitted it to EPA on August 23, 1999, as a revision to the SIP.

3. What National Ambient Air Quality Standards Are Considered in Today's Rulemaking?

Particulate matter with an aerodynamic diameter of less than 10 micrometers (PM–10) is the pollutant that is the subject of this action. The NAAQS are safety thresholds for certain ambient air pollutants set by EPA to protect public health and welfare. PM–10 is among the ambient air pollutants for which EPA has established a health-based standard.

PM–10 causes adverse health effects by penetrating deep in the lung, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 (52 FR 24634), EPA revised the NAAQS for particulate matter with an indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. (See 40 CFR 50.6).

The 24-hour primary PM–10 standard is 150 micrograms per cubic meter (ug/m^3), with no more than one expected exceedance per year. The annual primary PM–10 standard is 50 ug/m^3 as an expected annual arithmetic mean. The secondary PM–10 standards, promulgated to protect against adverse welfare effects, are identical to the primary standards.

4. What Are the Air Quality Characteristics of the Areas?

Kent

The Kent nonattainment area is located approximately 15 miles south of Seattle, Washington, and is an area comprised of commercial, light industrial and residential development. Motor vehicle exhaust and residential wood combustion are the largest sources of PM–10 in the nonattainment area, each category contributing approximately 40% of the mass on days of high concentration. Fugitive dust comprises approximately 16% of the measured PM–10 mass. Sulfate and marine aerosol account for the remaining 4%. All other sources are considered insignificant.

Air quality has been monitored in the Kent area since 1988 using federal reference or equivalent methods. No violations of the 24-hour or annual PM–10 standards have ever been recorded in the nonattainment area since monitoring began in 1988. The Kent PM–10 nonattainment plan, approved on July 27, 1993, (58 FR 40059) identifies a 24-hour concentration of 125 ug/m^3 as the 1991 attainment year concentration. The current 1994 24-hour design value based on 1993 through 1995 measured air quality data is 76 ug/m3. The 24-hour design value in the year 2010 is projected to be 70 ug/m^3 based on continued reductions in emissions from the attainment year. Because the health based 24-hour standard is set at 150 ug/m^3, this data clearly shows that the Kent area continues to attain, and will maintain, the PM–10 NAAQS.

Seattle

The Seattle nonattainment area is comprised of the Duwamish industrial and commercial area immediately south of the downtown district and includes the Port of Seattle. Emissions primarily come from industrial sources (83%) with a minor amount of emissions from diesel exhaust (8%) and gasoline fueled motor vehicles (4%). All remaining sources are insignificant.

Exceedences of the 24-hour PM–10 NAAQS were recorded in 1988. The maximum 24-hour concentration reported was 178 ug/m3. This information was sufficient at the time for designation as nonattainment by operation of law upon enactment of the Clean Air Act Amendments of 1990. No exceedence of the 24-hour or annual PM–10 NAAQS has been recorded since 1988 using federal reference or equivalent methods. The 1994 design value using 1993 though 1995 measured air quality data is 117 ug/m3. With minor projected emission reductions of 3%, the predicted design value in 2010 is 115 ug/m3.

Tacoma

The Tacoma PM–10 nonattainment area is comprised of the industrial area of Tacoma, including the Port of Tacoma, a kraft pulp mill, an aluminum smelter, forest product operations, and other industrial operations. Industry accounts for 92% of emissions in the area, with diesel exhaust the next most significant source at 3%.

There are three ambient monitoring sites for PM–10 in the Tacoma nonattainment area. The Fire Station #12 site measures the highest concentrations in the area. In 1990, a 24-hour PM–10 level of 186 ug/m3 was reported. There have been no exceedences of the 24-hour PM–10 NAAQS in the Tacoma area since 1991. The 1994 design value using measured air quality data from 1993 through 1995 is 95 ug/m3. With a projected 3.7% increase in emissions between 1994 and 2010, the predicted design value for 2010 is 97 ug/m3, well below the level of the 24-hour PM–10 NAAQS.

There have been no exceedences of the annual PM–10 standard since 1988.

5. What Is the Background Information for This Action?

All three areas were designated as moderate PM–10 nonattainment areas upon enactment of the Clean Air Act Amendments of 1990 (November 15, 1990) and the boundaries were specified in the **Federal Register** of March 15, 1991 (56 FR 11101).

Title I, section 107(d)(3)(D) of the Act as explained in detail in the General Preamble to Title I (57 FR 13498 (April 16, 1992) hereafter referred to as the General Preamble), allows the Governor of a State to request the redesignation of an area from nonattainment to attainment. On August 23, 1999, the

State submitted a maintenance plan and redesignation request for the Kent, Seattle, and Tacoma PM–10 nonattainment areas.

6. What Criteria Did EPA Use To Review of the Redesignation Request and Maintenance Plan?

The criteria used to review the maintenance plan and redesignation request are derived from the Act, the General Preamble, and the following policy and guidance memorandum from John Calcagni, September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment.* Section 107(d)(3)(E) of the Act states that the EPA can be redesignate an area to attainment if the following conditions are met:

1. The Administrator has determined the area has attained the NAAQS.
2. The Administrator has fully approved the applicable implementation plan under section 110(k).
3. The Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.
4. The state has met all applicable requirements for the area under section 110 and part D.
5. The Administrator has fully approved a maintenance plan, including a contingency plan, for the area under section 175A.

7. How Does the State Show That the Areas Have Attained the PM–10 National Ambient Air Quality Standard?

Demonstrating that an area has attained the PM–10 NAAQS involves submittal of ambient air quality data from an ambient air monitoring network representing peak PM–10 concentrations, which should be stored in the EPA Aerometric Information Retrieval System (AIRS). The area has attained the 24-hour standard when the average number of expected exceedances per year is less than or equal to one, when averaged over a three year period. (40 CFR 50.6) To make this determination, three consecutive years of complete ambient air quality data must be collected in accordance with federal requirements (40 CFR part 58, including appendices).

Kent

Kent has one ambient air quality monitoring station located near the intersection of James Street and Central Avenue. This site is located in the highest density development and measures maximum PM–10 levels in the area. The site has monitored PM–10 beginning in 1988 to the present. There have been no recorded exceedences of either the annual or 24-hour PM–10 NAAQS in the area.

The area has attained both the annual and 24-hour PM–10 NAAQS.

Seattle

The Seattle PM–10 nonattainment area has three PM–10 monitoring sites. The site at 4752 E. Marginal Way S. measures the highest PM–10 concentrations in the area. It is located just south of the largest PM–10 sources in the area. The last recorded exceedences of the 24-hour standard were measured in 1988 (there were two exceedences) with the highest concentration being 178 ug/m3.

There is no recorded violation of the annual PM–10 NAAQS in Seattle.

The area has attained both the annual and 24-hour PM–10 NAAQS.

Tacoma

The Tacoma PM–10 nonattainment area has three PM–10 monitoring sites. The site at Fire Station #12 measures the highest PM–10 concentrations in the area. The last recorded exceedence of the 24-hour standard was measured in 1990 with a concentration of 186 ug/m3.

There is no recorded violation of the annual PM–10 NAAQS in Tacoma.

The area has attained both the annual and 24-hour PM–10 NAAQS.

8. Do the Nonattainment Areas Have Fully Approved Nonattainment SIPs?

Yes. Those States containing initial moderate PM–10 nonattainment areas were required to submit a SIP by November 15, 1991, which implemented reasonably available control measures (RACM) by December 10, 1993, and demonstrated attainment of the PM–10 NAAQS by December 31, 1994. The SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area.

Kent

On July 27, 1993 (58 FR 40059) EPA approved the Kent PM–10 nonattainment area SIP.

Seattle

On June 23, 1994, EPA conditionally approved the PM–10 SIP for Seattle. See 59 FR 32370. This conditional approval was contingent upon the State providing a demonstration of attainment using allowable emissions from permitted industrial sources. In order to provide this demonstration, the PSCCA established emission limits for sources under its jurisdiction. These limits were established and the State provided EPA documentation of these limits and a revised attainment demonstration on May 11, 1995. There are no sources in the Seattle area for which the Department of Ecology has primary regulatory authority. On October 26, 1995, EPA fully approved the nonattainment area SIP for Seattle. See 60 FR 54812.

Tacoma

On October 12, 1994, (59 FR 51506) EPA conditionally approved the PM–10 nonattainment SIP for Tacoma. This conditional approval was based on the lack of enforceable emission limits on the industrial sources in the Tacoma PM–10 nonattainment area (i.e., the SIP failed to provide for RACM including reasonably available control technology (RACT), an adequate demonstration of attainment based on allowable emissions, and quantative milestones and reasonable further progress).

Upon receiving further submissions from the Department of Ecology, on October 25, 1995, EPA fully approved the PM–10 nonattainment SIP for Tacoma. See 60 FR 54599.

9. Are the Improvements in Air Quality Which Warrant This Redesignation Permanent and Enforceable?

Yes. The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual enforceable emission reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic.

As discussed above, PSCAA is the local agency that regulates emissions from most sources in the three nonattainment areas. The maintenance plan was prepared by PSCAA and submitted to the Washington Department of Ecology. Air pollution rules and regulations promulgated by the PSCAA apply to all areas within their four county jurisdiction of King, Snohomish, Kitsap, and Pierce counties. The Kent, Seattle, and Tacoma nonattainment areas are all located within the PSCAA jurisdiction. The control measures and emission reduction programs implemented by PSCAA and discussed in this notice likewise apply to all three nonattainment areas.

PSCAA demonstrated that the air quality improvements are the result of

permanent enforceable emission reductions and not a result of either economic trends or meteorology. The first demonstration is based on vehicle miles traveled (VMT) in each nonattainment area as compared to the region-wide trends. Between 1986 and 1994 VMT increased in the nonattainment areas from 32 to 43 percent depending on the area. This compares with the regional increase of 43 percent. Therefore, though there was an increase in VMT, air quality continued to improve. See the Technical Support Document accompanying this notice for additional detail.

An analysis of meteorological conditions over the time period of the measured high PM–10 levels of the late 1980's, shows that conditions were consistent with conditions in the early 90's. Dr. Halstead Harrison, Professor of Meteorology at the University of Washington, presented this analysis to the PSCAA September 12, 1994. His analysis showed that light scattering properties of the atmosphere improved by about two thirds and that this improvement was attributable to reduced emissions, while at the same time meteorology contributed approximately 2 percent of this improvement.

Therefore, the conclusion is that neither economic trends nor meteorology significantly contributed to the improvement in measured air quality. PSCAA continues their showing with a discussion of their regulatory programs for residential wood smoke, fugitive dust, industrial source controls, open burning, and programs applicable to diesel exhaust. These are briefly discussed below.

Wood Smoke Program: The PSCAA and the State of Washington initiated a wood smoke program in 1987 with revisions to State Law banning the sale of uncertified wood stoves, establishing opacity limitations, prohibiting the burning of certain fuels, and establishing a curtailment program. Revisions to the program have been made at various times to incorporate mandatory curtailment provisions, enforcement capabilities, more stringent opacity limitations, and reduced trigger points for burn bans. Two studies were conducted to estimate emission reductions from the program. Dr. Harrison, from the University of Washington, estimates emission reductions of 25 to 35 percent on days when a curtailment is in effect. A Lawerence Livermore National Laboratory study estimates reductions on the order of 37%. EPA has previously determined the PSCAA program to be RACM by approval of the nonattainment area SIP for each area. For Kent see 58 FR 40059 (July 27, 1993), for Seattle see 59 FR 32370 (June 23, 1994) and 60 FR 54812 (October 26, 1995) and for Tacoma see 59 FR 51506 (October 12, 1994) and 60 FR 54599 (October 25, 1995).

Kent is the only area of the three for which residential wood smoke emissions are significant. In Kent, projected 2010 residential wood smoke emissions will account for approximately 66% of total area PM–10 emissions.

Fugitive Dust: PSCAA adopted regulations that require open fugitive dust sources, including dust from unpaved roads, staging areas, and parking lots to employ best available control technology (BACT). Implementation of these requirements has resulted in numerous (over 500) notices of violation throughout the PSCAA jurisdiction. EPA has previously determined in the approval of the nonattainment area plan that these fugitive dust regulations represented RACM. For Kent see 58 FR 40059 (July 27, 1993), for Seattle see 59 FR 32370 (June 23, 1994) and 60 FR 54812 (October 26, 1995) and for Tacoma see 59 FR 51506 (October 12, 1994) and 60 FR 54599 (October 25, 1995).

Fugitive dust is an insignificant source of particulate matter in all three nonattainment areas as presented in both the 1994 and projected 2010 emission inventory.

Industrial Source Controls: Industrial sources contribute significantly to emissions in the Seattle and Tacoma nonattainment areas and insignificantly in the Kent area. Significant reductions in emissions have been achieved through the retirement and shutdown of processes and sources in these two areas. Emission credits have been confiscated from trading banks. Emission limitations have been established for all permitted sources in the Seattle and Tacoma areas. The State of Washington has issued regulatory orders, which contain enforceable emission limitations, to the sources in the Seattle and Tacoma area that remain under their regulatory jurisdiction. EPA has previously approved these emission limits as representing RACT for the industrial sources in the approval of the nonattainment area SIPs. For Kent see 58 FR 40059 (July 27, 1993), for Seattle see 59 FR 32370 (June 23, 1994) and 60 FR 54812 (October 26, 1995) and for Tacoma see 59 FR 51506 (October 12, 1994) and 60 FR 54599 (October 25, 1995).

Diesel Programs: Emission reductions have occurred as a result of Federal motor vehicle emission control programs. These reductions are the result of reduction in the sulfur content of diesel fuel from 0.5 percent to 0.05 percent by weight as of October 1, 1993. In addition, EPA recently promulgated rules limiting the amount of sulfur in gasoline. See 65 FR 6697 (February 10, 2000). While sulfur and sulfur dioxide are not particulate when emitted into the atmosphere, sulfur dioxide is a precursor to the formation of secondary aerosol. Secondary aerosol is particulate matter formed through chemical reactions in the atmosphere from emissions of precursor gases. Thus, a reduction in sulfur in gasoline and resulting sulfur dioxide emissions will reduce particulate loading in the atmosphere from secondary aerosol.

The State of Washington also requires that heavy duty vehicles registered in the Puget Sound region pass a ''snap idle'' test in which exhaust opacity is measured while the vehicle is subjected to heavy acceleration. Vehicles which fail the test must be repaired and pass the test before they can be registered for operation.

These emission reductions are not considered in the demonstration of maintenance in the maintenance plans for these areas.

Open Burning: Open burning is not a significant source of particulate matter in the Kent, Seattle, and Tacoma nonattainment areas. In 1991, the Washington Clean Air Act was amended to prohibit land clearing and yard debris waste fires within either PM–10 or carbon monoxide (CO) nonattainment areas. The area of this ban was expanded in 1995 to include the newly defined urban growth areas. The ban will continue after the areas are redesignated to attainment.

10. Has the State Met All the Section 110 and Part D Planning Requirements Applicable to This Nonattainment Area?

Yes. The September 1992 Calcagni memorandum directs states to meet all of the applicable section 110 and part D planning requirements for redesignation purposes. Thus, EPA interprets the Act to require state adoption and EPA approval of the applicable programs under section 110 and part D that were due prior to the submittal of a redesignation request, before EPA may approve a redesignation request. How the State has met these requirements is discussed in detail below.

11. How Does the State Meet Section 110 Requirements?

Section 110(a)(2) of the Act contains general requirements for nonattainment plans. These requirements include, but

are not limited to, submittal of a SIP that has been adopted by the State after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling, and provisions for public and local agency participation. See the General Preamble for further explanation of these requirements.

For purposes of redesignation, the Washington SIP was reviewed to ensure that all requirements under the Act were satisfied. 40 CFR 52.2473 further provides evidence that the Washington SIP was approved under section 110 of the Act and found to satisfy all part D, Title I requirements.

12. How Does the State Meet Part D Requirements?

Part D consists of general requirements applicable to all areas which are designated nonattainment based on a violation of the NAAQS. The general requirements are followed by a series of subparts specific to each pollutant. All PM–10 nonattainment areas must meet the applicable general provisions of Subpart 1 and the specific PM–10 provisions in subpart 4, ''Additional Provisions for Particulate Matter Nonattainment Areas.'' The following paragraphs discuss these requirements as they apply to the Kent, Seattle, and Tacoma areas.

13. How Does the State Meet the Section 172(c) Plan Provisions Requirements?

Section 172(c) contains general requirements for nonattainment plans. A thorough discussion of these requirements may be found in the General Preamble. EPA anticipates that areas will already have met most or all of these requirements to the extent that they are not superseded by more specific part D requirements. The requirements for reasonable further progress, identification of certain emissions increases, and other measures needed for attainment will not apply to redesignations because they only have meaning for areas not attaining the standard. The requirements for an emission inventory will be satisfied by the inventory requirements of the maintenance plan. The requirements of the part D New Source Review (NSR) program will be replaced by the Prevention of Significant Deterioration (PSD) program upon the effective date of this redesignation. The Federal PSD regulations found at 40 CFR 52.21 are the PSD rules in effect in Washington.

14. How Does the State Meet Subpart 4 Requirements?

The Kent, Seattle, and Tacoma areas are classified as moderate nonattainment areas. Therefore, part D, subpart 4, section 189(a) requirements apply. The requirements which came due prior to the submission of the request to redesignate the areas must be fully approved into the SIP before redesignating the area to attainment.

These requirements are discussed below:

(a) Provisions to assure that RACM shall be implemented by December 10, 1993;

(b) Either a demonstration that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

(c) Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

(d) Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area.

As previously stated, EPA approved the PM–10 SIPs for these areas. Each SIP met the initial requirements of the 1990 amendments for moderate PM–10 nonattainment areas (for Kent on July 27, 1993, (58 FR 40059), for Seattle on October 26, 1995, (60 FR 54812) and for Tacoma October 25, 1995 (60 FR 54599)). Other provisions were due at a later date.

States with initial PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992. States also were to submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline. See sections 172(c)(9) and 189(a) and 57 FR 13543–13544.

The State has presented an adequate demonstration that it has met the requirements applicable to the area under section 110 and part D. EPA approved Washington State's NSR regulations effective June 2, 1995. Contingency measures as required by the Act, specify measures that are to be undertaken if the area fails to make reasonable further progress or fails to attain the national primary ambient air quality standard by the applicable attainment date. All three areas have attained the national primary ambient air quality standard by the applicable attainment date. Therefore, contingency measures no longer are required under section 172(c)(9) of the Act. Contingency measures are also required for maintenance plans under section 172A(d). The State of Washington has provided in their maintenance plan for the Kent, Settle, and Tacoma, a contingency measure to meet this requirement. The contingency measure in the maintenance plan is discussed below.

15. Has the State Submitted a Fully Approvable Maintenance Plan for the Kent, Seattle and Tacoma PM–10 Areas?

Yes. Section 107(d)(3)(E) of the Act stipulates that for an area to be redesignated, EPA must fully approve a maintenance plan which meets the requirements of section 175A. Section 175A defines the general framework of a maintenance plan, which must provide for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. The following is a list of core provisions required in an approvable maintenance plan.

(a) Plan revision: The maintenance plan must provide for the maintenance of the NAAQS for ten years beyond redesignation.

(b) Subsequent plan revisions: Eight years after redesignation, the maintenance plan must provide for additional revisions as needed to maintain the standard for an additional ten years.

(c) Nonattainment requirements applicable pending plan approval: All provisions and controls in place as part of the nonattainment plan must be implemented until final redesignation to attainment.

(d) Contingency provisions: The maintenance plan must include contingency control measures which will go into effect automatically to correct any future violation of the NAAQS. These provisions must include a requirement that the State will implement all measures contained in the nonattainment area SIP.

16. How Has the State Met the Attainment Year Inventory Requirement?

The State should develop an attainment year emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS. Where the State has made an adequate demonstration that air quality has improved as a result of the SIP, the attainment inventory will generally be an inventory of actual emissions at the time the area attained the standard. This inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time and should include the emissions during the time period associated with the monitoring data showing attainment.

For the Kent, Seattle, and Tacoma maintenance plan, updated, gridded based year (1994) and future year (2010) emission inventories were compiled to show emission levels consistent with attainment and continued maintenance of the PM–10 standard. The inventory of allowable emissions contained in the plan provides an adequate basis for approving the plan.

The State has developed an adequate attainment emissions inventory for 1994 that identifies the levels of emissions of PM–10 in the area that are consistent with the federally approved demonstration of attainment of the NAAQS contained in the original nonattainment area SIPs.

17. How Does the State Demonstrate Maintenance of the PM–10 Standard in the Future?

A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future anticipated mix of sources and emission rates will not cause a violation of the NAAQS. Under the Act, PM–10 areas were required to submit modeled attainment demonstrations to show that proposed reductions in emissions will be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstration should be based upon the same level of modeling.

For Tacoma and Kent, the attainment demonstration in the original nonattainment area SIP was based on proportional rollback modeling in which future air quality is assumed to be directly proportional to the area-wide decrease in emissions. In the case of Seattle, the attainment demonstration in the original nonattainment area SIP was based on a combination of Regional Air Model (RAM) and WYNDvalley dispersion modeling. In the maintenance plan, the demonstration of maintenance for all three areas is based on proportional rollback modeling in which future projected air quality is assumed to be directly proportional to the area-wide increase (or decrease) in emissions.

After careful review and analysis of the attainment demonstration and after conducting additional analysis of the specific situation for each area, EPA has determined that the plan is adequate to maintain the PM–10 standards through 2010 in Kent, Seattle, and Tacoma. See the Technical Support Document accompanying this notice for further detail.

18. How Will the State Monitor Air Quality To Verify Continued Attainment?

Once an area has been redesignated, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. In its submittal, the PSCAA commits to continue to operate and maintain the network of PM–10 monitoring stations necessary to verify ongoing compliance with the PM–10 NAAQS.

19. What Contingency Plan Will the State Rely Upon To Correct any Future Violation of the NAAQS?

Section 175A of the Act also requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation. These contingency measures are distinguished from those generally required for nonattainment areas under section 172(c)(9) which are discussed above. However, if the contingency measures in a nonattainment SIP have not been implemented at the time the area is redesignated to attainment and the contingency measures included a requirement that they be implemented prior to redesignation, then they can be carried over into the area's maintenance plan.

The contingency measure contained in the Kent, Seattle, and Tacoma maintenance plan would address residential woodsmoke emissions should a violation of the PM–10 NAAQS be recorded. Under this measure (RCW 70.94.477(2) and section 13.07 of PSCAA Regulation I), PSCAA will ban the use of uncertified wood burning devices in the maintenance area.

20. How Does This Action Affect Transportation Conformity?

Under section 176(c) of the Act, transportation plans, programs, and projects in nonattainment or maintenance areas that are funded or approved under the Federal Transit Act, must conform to the applicable SIPs. In short, a transportation plan is deemed to conform to the applicable SIP if the emissions resulting from implementation of that transportation plan are less than or equal to the motor vehicle emission level established in the SIP for the maintenance year and other analysis years.

In this maintenance plan, procedures for estimating motor vehicle emissions are well documented. The maintenance plan includes a motor vehicle emissions budget which can be used in conformity determinations for PM–10 on future Transportation Improvement Programs and Regional Transportation Plans.

21. What Is the Motor Vehicle Emissions Budget for the Kent, Seattle, and Tacoma Areas?

Transportation conformity determinations must be consistent with the motor vehicle emissions budgets for Kent, Seattle and Tacoma of 105, 383, and 209 kilogram of PM–10 per day, respectively. These mobile source emissions represent a combination of vehicle exhaust, tire wear, and road dust. The maintenance plan does distinguish between motor vehicle exhaust emissions and road dust emissions.

22. In Summary, What Conclusion Has EPA Reached and What Is it Doing in This Action?

EPA has reviewed the maintenance plan as a revision to the Washington SIP and the adequacy of the State's request to redesignate the Kent, Seattle, and Tacoma PM–10 nonattainment areas to attainment. EPA finds that the submittal sufficiently meets the requirements for redesignation requests. Therefore, the EPA approves Washington's redesignation request for the Kent, Seattle, and Tacoma PM–10 areas and approves the maintenance plan as a revision to the Washington SIP.

III. Final Action

EPA approves the PM–10 maintenance plan for the Kent, Seattle, and Tacoma, Washington PM–10 nonattainment areas and redesignates the areas from nonattainment to attainment for PM–10.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from 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. Additionally, redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Therefore, 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 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).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in

estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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 14, 2001 unless EPA receives adverse written comments by April 12, 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 14, 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

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

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

Dated: December 11, 2000.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

Parts 52 and 81, Chapter I, Title 40 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 WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(81) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(81) On August 23, 1999, the Washington State Department of Ecology requested the redesignation of Kent, Seattle, and Tacoma PM–10 nonattainment areas to attainment of the National Ambient Air Quality Standard for particulate matter. EPA approves the State's PM–10 maintenance plan for Kent, Seattle, and Tacoma and request for redesignation to attainment.

(i) Incorporation by reference.

(A) Revised Code of Washington (RCW) 70.94.477(2), dated 1995.

(B) RCW 70.94.457, dated 1995.

(ii) Additional Material.

(A) August 23, 1999, letter from Washington State Department of Ecology to EPA Region 10 submitting the PM–10 maintenance plan for Kent, Seattle, and Tacoma nonattainment areas of Washington.

PART 81—[AMENDED]

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

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

§ 81.348 [Amended]

2. In § 81.348, the table entitled ''Washington—PM–10'' is amended by revising the three entries for King County—''The portion of the City of Seattle'', King County—''The City of Kent'', and Pierce County—''Tacoma metropolitan area'' to read as follows.

* * * * *

WASHINGTON—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
King County:				
The portion of the City of Seattle bounded on the east by I–5/East Duwamish Greenbelt, on the south by 104th street, on the west by the West Duwamish Greenbelt north to Fairmont Avenue, S.W., north on Fairmont Avenue to Elliot Bay, and Dearborn Street to I–5.	May 14, 2001 ...	Attainment.		
The City of Kent and a portion of the Green River valley bounded on the east and west by the 100 foot contour, on the north by South 212th Street, and on the south by Highway 516.	May 14, 2001 ...	Attainment.		
Pierce County:				

WASHINGTON—PM–10—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
Tacoma metropolitan area bounded on the north by Marine View Drive from Commencement Bay east to the 100 foot contour, southeast along the 100 foot contour to 64th Avenue east, south along 64th Avenue east as extended to I–5, I–5 west to the 100 foot contour near Pacific Avenue, and north along the 100 foot contour to Commencement Bay.	May 14, 2001 ...	Attainment.		
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[FR Doc. 01–6082 Filed 3–12–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 001120327–1037–02; I.D. 091800H]

RIN 0648–AO58

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to modify the management measures applicable to the American lobster fishery. This action exempts black sea bass fishers who concurrently hold limited access lobster and limited access black sea bass permits from the more restrictive gear requirements in the lobster regulations when fishing in Lobster Conservation Management Area 5 (LCMA 5) if they obtain a ''Area 5 Trap Waiver'' category permit. Under this exemption, such fishers are restricted to the non-trap lobster allowance while targeting black sea bass in LCMA 5. This regulation also clarifies that lobster trap regulations do not affect trap gear requirements for fishermen who do not possess a Federal limited access American lobster permit. The intent of these regulations is to relieve restrictions on fishers that were unintended, without compromising lobster conservation goals.

DATES: Effective April 12, 2001.

ADDRESSES: Copies of the Final Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from the Director, State, Federal, and Constituent Programs Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the same address. Comments regarding the collection of information requirements contained in the final rule should be sent to: the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Robert Ross, NMFS, Northeast Region, 978–281–9234.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published in the **Federal Register** on December 5, 2000 (65 FR 75916). The comment period closed on December 26, 2000.

Black Sea Bass LCMA 5 Trap Waiver Permit

The black sea bass LCMA 5 trap waiver permit measures contained in this final rule are unchanged from those in the proposed rule. A complete discussion of background issues that led to the development of these measures is contained in the preamble to the proposed rule and is not repeated here. This final rule establishes an American lobster limited access category permit to allow dual permit status vessels—vessels having limited access eligibility in the black sea bass and lobster fisheries—to elect to participate in a program that exempts them from the lobster gear restrictions while targeting black sea bass in LCMA 5 but which limits them to the non-trap lobster allowance. The non-trap allowance is a landing limit of 100 lobsters per day and up to 500 lobsters per trip for trips 5 days or longer.

To be exempt to lobster gear restrictions while targeting black sea bass in LCMA 5, a vessel will obtain an ''Area 5 Trap Waiver'' category permit through the normal permitting process. A vessel with an ''Area 5 Trap Waiver'' category permit will be limited to the non-trap allowance and may only land lobsters in greater numbers by formally canceling the ''Area 5 Trap Waiver'' category permit and switching to the commercial lobster category permit, again through the normal Federal permitting process. Cancellations of the ''Area 5 Trap Waiver'' category permit will be treated administratively as a lobster permit category change and will not result in the loss of limited access eligibility in either the lobster or the black sea bass fisheries. Vessels will be required to comply with the regulations that are appropriate for the target fishery and with the category of permits presently issued.

The creation of this new permit category addresses a common problem in managing overlapping or mixed fisheries. Ideally, conservation restrictions should be tailored as closely as possible to the target fishery; for instance, lobster fishers will be required to comply with the lobster gear restrictions and black sea bass fishers with sea bass restrictions. In mixed fisheries, tailoring becomes more difficult because the least restricted fishery can be used as a loophole for the other; in this case, black sea bass traps can become a loophole in the lobster conservation program. This final rule isolates and prohibits the problematic trips, namely, those that would target lobster with black sea bass traps. Only incidental amounts of lobster could be retained from such trips. These measures preserve the ability to fish in both fisheries in a single year under rules appropriate to the fisher's preferred target and without the loss of limited access status in either fishery. Detection of violations is simplified through the permit mechanism because an agent will need only to compare the observed landings with the rules associated with the permit.

Comments and Responses

There were no comments submitted in response to the proposed rule during the comment period.