

**SUPPLEMENTARY INFORMATION:** An interim final rule amending VA's medical regulations to extend CHAMPVA eligibility to persons age 65 and over who would have otherwise lost their CHAMPVA eligibility due to attainment of entitlement to hospital insurance benefits under Medicare Part A, implement coverage of physical examinations required in connection with school enrollment for beneficiaries through age 17, and reduce the catastrophic cap for CHAMPVA dependents and survivors (per family) from \$7,500 to \$3,000 for each calendar year was published in the **Federal Register** on January 30, 2002 (67 FR 4357). A correction to the interim final rule was published in the **Federal Register** on February 14, 2002 (67 FR 6874).

We provided a 60-day comment period that ended April 1, 2002. No comments have been received. Based on the rationale set forth in the interim final rule, we now affirm as a final rule the changes made by the interim final rule.

#### **Administrative Procedure Act**

The changes made by this final rule in large part reflect statutory changes. Moreover, we have found good cause to dispense with the notice-and-comment and delayed effective date provisions of the Administrative Procedure Act (5 U.S.C. 553). Compliance with such provisions would be impracticable, unnecessary, and contrary to the public interest. To avoid significant administrative confusion, it was in the public's interest to provide these benefits within approximately the same period as similar benefits were provided to DoD's TRICARE beneficiaries.

#### **Unfunded Mandates**

The Unfunded Mandates Reform Act requires at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

#### **Paperwork Reduction Act**

This final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that this regulatory amendment will not

have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Based on a more recent projection, the number of potential beneficiaries over age 65 has increased from 89,500 as estimated in the interim final rule to approximately 135,209 potential beneficiaries that will use the benefit of coverage secondary to Medicare. The interim final rule estimates of approximately 2,000 beneficiaries impacted by the inclusion of school-required physical examination benefit and approximately 2,500 families benefiting from the reduction of the catastrophic cap remain unchanged. Since these beneficiaries are widely geographically diverse, the health care provided to them would not have a significant impact on any small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### **Catalog of Federal Domestic Assistance Numbers**

There are no Catalog of Federal Domestic Assistance program numbers for the programs affected by this document.

#### **List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: September 25, 2002.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

#### **PART 17—MEDICAL**

Accordingly, the interim final rule amending 38 CFR part 17 that was published at 67 FR 4357 on January 30, 2002, and corrected at 67 FR 6874 on February 14, 2002, is adopted as a final rule without change.

[FR Doc. 02–27877 Filed 10–31–02; 8:45 am]

**BILLING CODE 8320–01–P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Parts 52 and 81**

[Docket # WA–01–006; FRL–7267–8]

#### **Approval and Promulgation of Air Quality Implementation Plans; State of Washington; Yakima Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** On September 26, 2001, the State of Washington requested EPA to redesignate the Yakima “not classified” carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS) and submitted a CO maintenance plan for Yakima. In this action, EPA is approving the maintenance plan and redesignating the Yakima CO nonattainment area to attainment.

**DATES:** This direct final rule will be effective December 31, 2002, unless EPA receives adverse comments by December 2, 2002. If relevant adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to: Steve Body, State and Tribal Programs Unit, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle WA.

**FOR FURTHER INFORMATION CONTACT:** Steve Body, State and Tribal Programs Unit, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle WA, Telephone number: (206) 553–0782.

#### **SUPPLEMENTARY INFORMATION:**

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### I. What Is the Purpose of This Action?

EPA is redesignating the Yakima “not classified” CO nonattainment area from nonattainment to attainment and approving the maintenance plan that will keep the area in attainment for the next 10 years.

EPA originally designated the Yakima area as nonattainment for CO under the provisions of the 1977 Clean Air Act (CAA) Amendments (see 43 FR 8962, March 3, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the CAA, the Yakima area was designated nonattainment for CO by operation of law because the area had been designated as nonattainment before November 15, 1990. The Yakima area is classified as an unclassified, or “not classified” CO nonattainment area.

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA provides the requirements for redesignation. These are:

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

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

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

(iv) The Administrator has fully approved a maintenance plan for the

area as meeting the requirements of CAA section 175A; and,

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

Before an area can be redesignated to attainment, all applicable State Implementation Plan (SIP) elements must be fully approved.

### II. What Is the State's Process To Submit These materials to EPA?

The CAA requires States to follow certain procedural requirements for submitting SIP revisions to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted by the State after reasonable notice and public hearing. The State then submits the SIP revision to EPA for approval.

The Yakima Regional Clean Air Authority (YRCAA), which has regulatory authority for sources of air pollution in the Yakima CO nonattainment area, developed the CO maintenance plan. They released the draft maintenance plan for public review on August 21, 2000. On February 14, 2001, the Board of Directors for the YRCAA adopted the *Yakima Carbon Monoxide Nonattainment Area Limited Maintenance Plan and Redesignation Request*. On July 11, 2001, the State of Washington held a public hearing on the plan. On October 3, 2001, the State of Washington adopted the plan. On September 26, 2001, the State submitted the SIP to EPA. EPA has evaluated the State's submittal and determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

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

EPA has reviewed the State's maintenance plan and redesignation request and is approving the maintenance plan and redesignating the area to attainment consistent with the requirements of CAA section 107(d)(3)(E). The following is a summary of EPA's evaluation and a description of how each requirement is met.

#### (a) The Area Must Have Attained the Carbon Monoxide NAAQS

Section 107(d)(3)(E)(i) requires that the Administrator determine that the area has attained the applicable NAAQS. The primary NAAQS for CO is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average, not to be exceeded more than once per year. CO in the ambient air is measured by a reference method based on 40 CFR part

50, Appendix C. EPA considers an area as attaining the CO NAAQS when all of the CO monitors in the area have one or less exceedance of the CO standard each calendar year over a two calendar year period. (See 40 CFR 50.8 and 40 CFR part 50, Appendix C.) EPA's interpretation of this requirement is that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least two consecutive calendar years (September 4, 1992, John Calcagni policy memorandum “Procedures for Processing Requests to Redesignate Areas to Attainment” (“Calcagni Memorandum”). In addition, the area must continue to show attainment through the date that EPA promulgates redesignation to attainment.

Washington's CO redesignation request for the Yakima area is based on valid ambient air quality data. Ambient air quality monitoring data for calendar years 1988 through 2001 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year at all monitoring sites. These data were collected and analyzed as required by EPA (see 40 CFR 50.8 and 40 CFR part 50, Appendix C) and have been stored in EPA's Aerometric Information and Retrieval System (AIRS). These data have met minimum quality assurance requirements and have been certified by the State as being valid before being included in AIRS. Further information on CO monitoring is presented in Section 2.3 and 2.4 of the Yakima maintenance plan. EPA has analyzed the ambient air quality data and determined that the Yakima area has not violated the CO standard since January 1988 and continues to attain through 2001.

#### (b) The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. EPA interprets this requirement to mean the State must meet all requirements that applied to the area prior to, or at the time of, the submission of a complete redesignation request.

#### 1. CAA Section 110 Requirements

On May 31, 1972, EPA approved the original Washington SIP as meeting the requirements of section 110(a)(2) of the CAA (see 37 FR 10900). Although section 110 of the CAA was amended in 1990, the changes to the implementation plan requirements of section 110(a)(2) were not substantial. Thus, EPA has determined that the SIP revisions

approved in 1972 along with subsequent revisions that were previously approved, continue to satisfy the requirements of section 110(a)(2) of the CAA. EPA has analyzed the SIP elements that are being approved as part of this action and has determined they comply with the requirements of section 110(a)(2) of the CAA and that the area meets all applicable requirements under section 110 of the CAA.

## 2. Part D Requirements

The Yakima area was originally designated as nonattainment for CO on March 3, 1978 (see 43 FR 8962). On May 20, 1983, (48 FR 22716) EPA approved an extension of the attainment date to December 31, 1982. Washington's original CAA Part D plan for the Yakima CO nonattainment area was submitted and approved by EPA on June 5, 1980.

Prior to the 1990 CAA Amendments, EPA had begun development of its post-1987 policy for carbon monoxide; however, EPA did not finalize the post-1987 policy for CO because the Clean Air Act (CAA) was amended on November 15, 1990. Under section 107(d)(1)(C) of the CAA, the Yakima area was by operation of law designated nonattainment for CO because the area had been previously designated nonattainment before November 15, 1990. In the November 6, 1991, **Federal Register**, (56 FR 56694) the Yakima area was classified as a "not classified" CO nonattainment area as the area had not violated the CO NAAQS in 1988 or 1989.

Before the Yakima "not classified" CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or nonclassifiable.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176. The April 16, 1992, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (see 57 FR 13498) ("General Preamble of April 16, 1992") provides EPA's interpretation of the CAA requirements for not classified CO areas (see specifically 57 FR 13535). The General Preamble reads, "Although it seems clear that the CO-specific requirements of subpart 3 of part D do not apply to CO "not classified" areas, the 1990 CAAA are silent as to how the requirements of subpart 1 of part D, which contains general SIP planning requirements for all designated

nonattainment areas, should be interpreted for such CO areas. Nevertheless, because these areas are designated nonattainment, some aspects of subpart 1 necessarily apply."

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due no later than three years after an area was designated as nonattainment under section 107(d) of the amended CAA (see 56 FR 56694, November 6, 1991). In the case of the Yakima area, the due date was November 15, 1993. Since the Yakima CO redesignation request and maintenance plan were not submitted by Washington until September 26, 2001, the General Preamble of April 16, 1992, provides that the applicable requirements of CAA section 172 are: 172(c)(3) (emissions inventory), 172(c)(5) (new source review permitting program), and 172(c)(7) (the section 110(a)(2) air quality monitoring requirements). See 57 FR 13535, April 16, 1992.

EPA has determined that the Part D requirements for Reasonably Available Control Measures (RACM), an attainment demonstration, reasonable further progress (RFP), and contingency measures (CAA section 172(c)(9)) are not applicable to "not classified" CO nonattainment areas. See 57 FR 13535, April 16, 1992. EPA has also interpreted the requirements of sections 172(c)(1) (reasonably available control measures—RACM), 172(c)(2) (reasonable further progress—RFP), 172(c)(6) (other measures), and 172(c)(9) (contingency measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See the General Preamble of April 16, 1992, and the Calcagni Memorandum. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4) (identification of certain emissions increases) and 172(c)(8) (equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

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

The remaining applicable requirements of CAA section 172 are discussed below.

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

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the Yakima CO nonattainment area. The emission inventory requirement for "not classified" CO nonattainment areas is detailed in the General Preamble of April 16, 1992. EPA has determined that an emissions inventory is required by CAA section 172(c)(3) regardless of air quality levels. An emissions inventory must be included as a revision to the SIP and was due three years from the time of the area's designation. For "not classified" CO areas, this date is November 15, 1993. To address the section 172(c)(3) requirement for a "current" inventory, EPA interpreted "current" to mean calendar year 1990 (see 57 FR 13502, April 16, 1992).

On March 4, 1994, Washington submitted a 1992 emission inventory for the Yakima CO nonattainment area. EPA deferred action on that inventory pending submittal of a maintenance plan. A 1996 emission inventory was prepared by YRCAA but it was never submitted to EPA. A new 1999 emission inventory was prepared for the CO maintenance plan. EPA believes this 1999 inventory meets the emission inventory obligation. EPA has reviewed the emission inventory and determined it is current, accurate, and comprehensive at the time and it continues to represent emissions in the area that provide for attainment with a 1998–1999 design value of 5.1 ppm CO.

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

The CAA requires all nonattainment areas to meet several requirements regarding NSR. The State must have an approved NSR program that meets the requirements of section 172(c)(5) of the Act. The State of Washington has an approved NSR program (see 60 FR 28726, June 2, 1995) that is applicable in Yakima CO nonattainment area. The requirements of the Part D, 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.

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

According to the General Preamble of April 16, 1992, “not classified” CO nonattainment areas should meet the “applicable” air quality monitoring requirements of section 110(a)(2) of the CAA. The State of Washington has operated a CO monitor in the Yakima area since the early 1970’s. EPA previously approved the SIP for monitoring on April 15, 1981 (46 FR 21994). This SIP revision does not change that monitoring provision and it remains approved and in effect.

*(c) The Area Must Have A Fully Approved SIP Under Section 110(k) of the CAA*

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

Based on the approval into the SIP of provisions under the pre-1990 CAA, EPA’s prior approval of a SIP revision required under the 1990 amendments to the CAA, and its approval of the State’s commitment to maintain an adequate monitoring network, EPA has determined that, as of the date of this action, Washington has a fully approved CO SIP under section 110(k) for the Yakima CO nonattainment area.

*(d) The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emission Reductions*

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

The CO emissions reductions for the Yakima area were achieved through a number of control measures. The primary emission reductions are the result of the Federal Motor Vehicle Emission Standards and fleet turnover. These reductions will continue into the maintenance period for the Yakima area. In addition, there is a State requirement for commute trip reduction within the city of Yakima. The Yakima CO nonattainment area is a geographic area contained within the City boundary.

This measure covers six employers in the nonattainment area and six additional employers within the City of Yakima, but outside the nonattainment area. And lastly there are three local measures that reduce CO emissions in the area: control of outdoor and agricultural burning, prohibition of installation of uncertified wood stoves, and wood stove curtailment program. While these local control measures are aimed at controlling particulate matter emissions, they concurrently reduce CO emissions especially during wintertime inversion conditions that are conducive to both PM and CO pollutant build-up. These local control measures have previously been approved by EPA in the PM-10 SIP for Yakima.

EPA has evaluated the various State and Federal control measures, and the 1999 emission inventory, and have concluded that the improvement in air quality in the Yakima nonattainment area has resulted from emission reductions that are permanent and enforceable.

*(e) The Area Must Have A Fully Approved Maintenance Plan Under CAA Section 175A*

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

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. For areas such as Yakima that are utilizing EPA’s limited maintenance plan approach, as detailed in the EPA guidance memorandum, “Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas” from Joseph Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality and Planning Standards, dated October 6, 1995 (“Paisie Memorandum”), the maintenance plan demonstration requirement is considered to be satisfied for “not classified” areas if the monitoring data show the design value is at or below 7.65 ppm, or 85% of the level of the 8 hour CO NAAQS. The design value must be based on the 8 consecutive quarters of data. There is no requirement to project emissions or air quality over the maintenance period. EPA believes if the area begins the maintenance period at, or below, 85 percent of the level of the CO 8 hour NAAQS, the applicability of PSD requirements, the control measures already in the SIP, and Federal

measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period. In addition, the design value for the area must continue to be at or below 7.65 ppm until the time of final EPA action on the redesignation. The method for calculating the design value is presented in the June 18, 1990, EPA guidance memorandum entitled “Ozone and Carbon Monoxide Design Value Calculations”, from William G. Laxton, Director of the OAQPS Technical Support Division, to Regional Air Directors (hereafter referred to as the “Laxton Memorandum”).

In the case of a “not classified” area applying for a limited maintenance plan, all the monitors must have a separate design value calculated and the highest design value must be at or below 7.65 ppm. Should the design value for the area exceed 7.65 ppm prior to final EPA action on the redesignation, then the area no longer qualifies for the limited maintenance plan and must instead submit a full maintenance plan as described in the Calcagni Memorandum.

Eight years after redesignation to attainment, the State must submit a revised maintenance plan that demonstrates continued maintenance of the CO NAAQS for an additional 10 years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In this direct final rulemaking action, EPA is approving the limited maintenance plan for the Yakima nonattainment area because EPA has determined, as detailed below, that the State’s maintenance plan submittal meets the requirements of section 175A of the CAA.

The analysis of the pertinent maintenance plan requirements follows:

1. Emissions Inventory—Attainment Year

The plan must contain an attainment year emissions inventory to identify the level of emissions in the area which is sufficient to attain the CO NAAQS. This inventory is to be consistent with EPA’s most recent guidance on emissions inventories for nonattainment areas available at the time<sup>1</sup> and should

<sup>1</sup> The October 6, 1995, limited maintenance plan guidance memorandum states that current guidance on the preparation of emissions inventories for CO areas is contained in the following documents: “Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of

represent emissions during the time period associated with the monitoring data showing attainment. The Yakima CO maintenance plan contains an accurate, current, and comprehensive emission inventory for calendar year 1999 which coincides with the year that the design value of 5.1 ppm CO was calculated. Therefore the Yakima maintenance plan meets the emission inventory requirement.

#### 2. Demonstration of Maintenance

As described in the October 6, 1995, limited maintenance plan guidance memorandum (Paisie Memorandum), the maintenance plan demonstration requirement is considered to be satisfied for "not classified" CO areas if the design value for the area is equal to, or less than 7.65 ppm. The CO design value for 1998–1999 period for the Yakima area is 5.1 ppm, which is below the limited maintenance plan requirement of 7.65 ppm. Therefore, the Yakima area has adequately demonstrated that it will maintain the CO NAAQS into the future.

#### 3. Monitoring Network and Verification of Continued Attainment

Continued ambient monitoring of an area is required over the maintenance period. Sections 5.3 and 5.4 of the Yakima CO maintenance plan provide for continued ambient monitoring in the area.

#### 4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. As discussed above, this requirement is not relevant to the redesignation request, but a contingency measure has been included in the plan. The plan contains a measure that requires the City of Yakima to change the timing of intersection stop lights in the downtown core to increase the speed of traffic on the heavily traveled streets. The change in speed is estimated to be from an average of 14 mph to 16 mph resulting in a 17% reduction in CO emissions. The City will adjust the stop light timing to achieve the reductions when CO levels reach 7.1 ppm and levels continue to increase.

### IV. Conformity

Because Yakima submitted a limited maintenance plan, special conformity provisions apply. The transportation conformity rule (58 FR 62188; November 24, 1993) and the general

conformity rule (58 FR 63214; November 30, 1993) apply to nonattainment areas and maintenance areas operating under maintenance plans. Under either rule, one means of demonstrating conformity of Federal actions is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area. Emissions budgets in limited maintenance plan areas may be treated as essentially not constraining for the length of the initial maintenance period because there is no reason to expect that such an area will experience so much growth in that period that a violation of the CO NAAQS would result. In other words, emissions need not be capped for the maintenance period. Therefore, in areas with approved limited maintenance plans, Federal actions requiring conformity determination under the transportation conformity rule could be considered to satisfy the "budget test" required in sections 93.118, 93.119, and 93.120 of the rule. Similarly, in these areas, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in section 93.158(a)(5)(i)(A) of the rule."

#### V. Final Action

EPA approves the maintenance plan and request to redesignate the Yakima CO nonattainment area to attainment.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is 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 December 31, 2002 without further notice unless the Agency receives adverse comments by December 2, 2002.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 31, 2002 and no further action will be taken on the proposed rule.

#### Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action 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. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

Ozone: Volume I" (EPA-450/4-91-016), and "Procedures for Emission Inventory Preparation: Volume IV, Mobile Sources" (EPA-450/4-81-026d revised).

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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).

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 December 31, 2002. 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, Intergovernmental relations, Reporting and recordkeeping requirements.

*40 CFR Part 81*

Air pollution control, National parks, Wilderness areas.

Dated: August 13, 2002.

**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:

WASHINGTON—CARBON MONOXIDE

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

**Subpart WW—Washington**

2. Subpart WW is amended by adding § 52.2475 to read as follows:

**§ 52.2475 Approval of plans.**

- (a) Carbon Monoxide.
  - (1) Yakima.
    - (i) EPA approves as a revision to the Washington State Implementation Plan, the Yakima Carbon Monoxide maintenance plan submitted by the State on August 31, 2001.
    - (ii) [Reserved]
  - (2) Spokane. [Reserved]
- (b) Lead. [Reserved]
- (c) Nitrogen Dioxide. [Reserved]
- (d) Ozone. [Reserved]
- (e) Particulate Matter. [Reserved]
- (f) Sulfur dioxide. [Reserved]

**PART 81—[AMENDED]**

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

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

2. In § 81.348, the table entitled "Washington-Carbon Monoxide" is amended by revising the entry for "Yakima Area" to read as follows:

**§ 81.348 Washington.**  
\* \* \* \* \*

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * *	* * *	* * *	* * *	* * *
Yakima Area:				
Yakima County (part) .....	12-31-2002	[Attainment].		
Portion of the Central Business District Street inter- sections: S. 16th Ave. & W Mead Ave, S. 16th Ave & Hathaway Ave., E "I" St. & N 1st St., N 1st St & E "G" St., E "G" St & N 8th St., N 8th St. & Pitcher St., Pitcher St. & I-82 Interchange, Nob Hill Blvd & I-82 Interchange, Rudkin Rd & I- 82 Interchange, S 1st St. & Old Town Rd., Old Town Rd & Main St., W Washington & S 1st St., E Mead Ave & S 1st St., S 16th Ave & W Mead Ave.				
* * *	* * *	* * *	* * *	* * *

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

\* \* \* \* \*

[FR Doc. 02-27833 Filed 10-31-02; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180****[OPP-2002-0298; FRL-7279-6]****Thiamethoxam; Pesticide Tolerance****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for combined residues of thiamethoxam and its metabolite in or on corn forage, corn stover and popcorn, corn grain and sweet corn (kernal and cob with husk removed). Syngenta Crop Protection, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective November 1, 2002. Objections and requests for hearings, identified by docket ID number OPP-2002-0298, must be received on or before December 31, 2002.

**ADDRESSES:** Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Dani Daniel, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703 305-5409; e-mail address: daniel.dani@epa.gov.

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does This Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Cat-egories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2002-0298. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_40/40cfr180\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html), a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still

access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

**II. Background and Statutory Findings**

In the **Federal Register** of June 27, 2002 (67 FR 43310-43314) (FRL-7183-2), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104-170), announcing the filing of a pesticide petition (PP 0F6142) by Syngenta Crop Protection, Inc., P.O. Box 18300 Greensboro, NC 27419-8300. That notice included a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.565 be amended by establishing tolerances for combined residues of the insecticide thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl] tetrahydro-5-methyl-N-nitro-4H-1,3,5-oxadiazin-4-imine and its metabolite (N-(2-chloro-thiazol-5-ylmethyl)-N'-methyl-N'-nitro-guanidine) in or on the raw agricultural commodities: field corn forage at 0.10 parts per million (ppm), sweet corn forage at 0.10 ppm, popcorn forage at 0.10 ppm, field corn stover at 0.05 ppm, sweet corn stover at 0.05 ppm, field corn grain at 0.07 ppm, popcorn grain at 0.02 ppm, and sweet corn (kernal and cob with husk removed) at 0.02 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of