

identified in the NPR are the lack of: (1) A definition for the term "carriers"; (2) a sampling procedure; and (3) procedures for the calculation of oxygen content in the gasoline sampled; the absence of which compromise the enforceability of the regulation and are deficiencies under section 110(a)(2) of the Clean Air Act. This final limited disapproval begins a new 18 month sanctions clock. The 24 month FIP clock continues to run.

Because of the previously identified deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the rule does not meet the section 110(a)(2) requirement because of the noted enforcement deficiencies. Thus, EPA is approving the oxygenated gasoline regulations found in 20 DCMR chapter 1, section 199 definitions for the terms blending plant, distributor, non-oxygenated gasoline, oxygenate, oxygenated gasoline, oxygenated gasoline control period, oxygenated gasoline control area, refiner, refinery, retailer, retail outlet, terminal, wholesale purchaser-consumer; chapter 5, section 500, subsections 500.4 and 500.5; chapter 5, section 502, subsection 502.18; chapter 9, section 904, subsections 904.1 and 904.2, which were submitted by the District of Columbia under sections 110(k)(3) and 301(a) of the CAA, for the limited purpose of strengthening the District of Columbia SIP.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a 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).

At the same time, EPA is also disapproving the District of Columbia oxygenated gasoline rule because it contains deficiencies that have not been corrected as required by section 110(a)(2) of the CAA, and, as such, the rule does not fully meet the requirements of part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. The 18 month sanctions clock for the District of Columbia oxygenated gasoline regulation begins on January 26, 1995. Moreover, the 24 month clock for the FIP requirement under section 110(c) continues to run.

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

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

This action makes final the action proposed at 59 FR 34401. As noted elsewhere in this document, EPA received no public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from a Table 2 to a Table 3 under the processing procedures

established at 54 FR 2214, January 19, 1989, as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables.

The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the District of Columbia's oxygenated gasoline regulation, must be filed in the United States Court of Appeals for the appropriate circuit by March 27, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

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

Dated: December 29, 1994.

**Peter H. Kostmayer**,  
Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart J—District of Columbia

2. Section 52.470 is amended by adding paragraphs (c)(28) to read as follows:

#### § 52.470 Identification of plan.

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(c) \* \* \*

(28) Revisions to 20 District of Columbia Municipal Regulations (DCMR) pertaining to oxygenated gasoline submitted on October 22, 1993 by the District of Columbia's Department of Consumer and Regulatory Affairs.

(i) Incorporation by reference.

(A) Letter of October 22, 1993 from the District of Columbia's Department of Consumer and Regulatory Affairs transmitting the oxygenated gasoline regulations.