ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AZ072–0085C; FRL–6852–6]

Approval and Promulgation of Maintenance Plan and Designation of Area for Air Quality Planning Purposes for Carbon Monoxide; State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule that was published in the **Federal Register** on June 8, 2000 approving the request of Arizona for the redesignation of the Tucson Air Planning Area to attainment for the carbon monoxide National Ambient Air Quality Standard and for approval of a maintenance plan.

EFFECTIVE DATE: This action is effective on August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, Air Planning Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1159.

SUPPLEMENTARY INFORMATION: On June 8, 2000 at 65 FR 36353, EPA published a final rulemaking action approving the request of Arizona for the redesignation of the Tucson Air Planning Area to attainment for the carbon monoxide National Ambient Air Quality Standard and for approval of a maintenance plan. The final rulemaking contained amendments to 40 CFR part 52 relating to revised Arizona statutes and to 40 CFR part 81 relating to attainment status designations. Two of those amendments were incomplete. This action will correct the listing under § 52.120(c)(96)(i)(A)(1) to add Sections 7 and 8 of House Bill 2254 which were omitted. This action will also correct the description of the boundaries for the ''Tucson Area'' contained in § 81.303 which was incomplete.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is amending the tables in 40 CFR 52.120 and 81.303 that were contained in the final approval of the Arizona request for redesignation to attainment of the carbon monoxide National Ambient Air Quality Standard for the Tucson Air Planning Area and approval of a maintenance plan that was published in the **Federal Register** on June 8, 2000. That redesignation was previously subject to notice and comment. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Summary of Final Action

In this action EPA is correcting amendments to 40 CFR part 52, subpart D and 40 CFR part 81, subpart C that were contained in the final **Federal Register** Notice published on June 8, 2000 redesignating the Tucson Air Planning Area to attainment for the carbon monoxide National Ambient Air Quality Standard. Specifically, this action amends § 52.120 relating to Arizona revised statutes and § 81.303 describing the boundaries for the Tucson Air Planning Area.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, is therefore not subject to review by the Office of Management and Budget. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA)(Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). 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 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implication of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 8, 2000 **Federal Register** action.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 21, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

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

John Wise,

Acting Regional Administrator, Region IX.

For the reasons set out in the preamble, title 40, chapter I 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 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by revising paragraph (c)(96)(i)(A)*(1)* to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(i) * * *

(A) * * *

(96) * * *

(*1*) House Bill 2254, Section 1: ARS 41–3009.01 (amended); Section 2: 49–541.01 (amended); Section 3: 49–542 (amended); Section 4: 49–545 (amended); Section 5: 49–557 (amended); Section 6: 49–573 (amended); Section 7: 41–803 (amended) and Section 8: 41–401.01 (amended), adopted on May 18, 1999.

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PART 81—[AMENDED]

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

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

Subpart C—Arizona

2. In § 81.303 the table for ''Arizona-Carbon Monoxide'' is amended by revising the entry for ''Tucson area: Pima County (part)'' to read as follows:

§ 81.303 Arizona

* * * * *

Designated Area	Arizona—Carbon Monoxide Designation		Classification	
	Date	Type Attainment	Date	Type
* * *	*	*	*	*
Tucson Area:	September 20, 2000.			
Pima County (part):				
Township and Ranges as follows: T11–12S, R12–14E; T13–15S, R11–16E; and T16S, R12–16e Gila and Salt River Baseline and Meridian excluding portions of the Saguaro National Monument and the Coronado National Forest.				
* * *	*	*	*	*

[FR Doc. 00–21079 Filed 8–18–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[WT Docket No. 99–263; FCC 00–292]

Availability of Monetary Damages for State Law Claims Against CMRS Providers

AGENCY: Federal Communications Commission.

ACTION: Interpretation.

SUMMARY: In this document, the Commission responds to a Petition for Declaratory Ruling, and finds that certain portions of the Communications Act do not generally preempt the award of monetary damages against Commercial Mobile Radio Service Providers by state courts based on state consumer protection, tort, or contract claims. The action is taken to respond to the Petition and to clarify this issue.

FOR FURTHER INFORMATION CONTACT: Mary Woytek or Susan Kimmel, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Memorandum Opinion and Order (MO&O) in WT Docket No. 99–263, FCC 00–292, adopted August 3, 2000, and released August 14, 2000. The complete text of this MO&O is available for inspection and copying during normal business hours at the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

Synopsis of the Memorandum Opinion and Order

1. In this Memorandum Opinion and Order (MO&O), the Commission responds to a Petition for Declaratory Ruling, filed on July 16, 1999, by Wireless Consumers Alliance, Inc. (WCA Petition). The WCA Petition concerns whether the provisions of the Communications Act of 1934, as amended, serve to preempt state courts from awarding monetary relief against Commercial Mobile Radio Service (CMRS) providers: (a) for violating state consumer protection laws prohibiting false advertising and other fraudulent business practices, or (b) in the context of contractual disputes and tort actions adjudicated under state contract and tort laws. In addition, the issue regarding damage awards raised in a Petition for Declaratory Ruling filed by Southwest Bell Mobile Systems is incorporated into the Commission's response to the WCA Petition. (FCC 99–365, 14 FCC Rcd 19898, 1999.)

2. The Commission finds that section 332(c)(3)(A) does not generally preempt the award of monetary damages by state courts based on state consumer protection, tort, or contract claims. The Commission notes, however, that whether a specific damage calculation is prohibited by section 332 will depend on the specific details of the award and the facts and circumstances of a particular case.

3. Specifically, the Commission concludes that award of damages to customers damaged by a CMRS provider's breach of contract or fraud violation would not normally require a state court to prescribe, set or fix wireless rates. A consideration of the price originally charged, for the purposes of determining the extent of harm or injury involved, is not necessarily an inquiry into the reasonableness of the original price and therefore is permissible.