

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c) (84) to read as follows:

§ 52.920 Identification of plan.

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(c) * * *

(84) Revisions to the Kentucky State Implementation Plan submitted by the Natural Resources and Environmental Protection Cabinet on December 29, 1994. The regulations being revised are 401 KAR 59:101 New Bulk Gasoline Plants and 401 KAR 61:056 Existing Bulk Gasoline Plants.

(i) Incorporation by reference. Division for Air Quality regulations 401 KAR 59:101 New bulk gasoline plants, and 401 KAR 61:056 Existing bulk gasoline plants, effective September 28, 1994.

(ii) Additional material. None.

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40 CFR Part 52

[AK13-7101a; FRL-5523-7]

Clean Air Act Attainment Extension for the Municipality of Anchorage Area Carbon Monoxide Nonattainment Area: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action grants a one (1) year attainment date extension for the Municipality of Anchorage (MOA), Alaska carbon monoxide (CO) nonattainment area. The MOA area failed to attain the National Ambient Air Quality Standard (NAAQS) for CO by the December 31, 1995 deadline pursuant to the 1990 Clean Air Act Amendments (CAAA). CO attainment is based on eight (8) consecutive quarters (two years) of clean air quality data. There were two (2) exceedances of the CO NAAQS recorded in the nonattainment area in 1994, and no exceedances in 1995. Due to no exceedances in 1995 and the State's compliance with all requirements and commitments pertaining to the MOA area in the Alaska State Implementation Plan (SIP), an extension to meet the standards by December 31, 1996 is granted. This action is based on 1994 and 1995 monitored air quality data for the CO NAAQS.

DATES: This action is effective on August 27, 1996 unless adverse or critical comments are received by July 29, 1996. If the effective date is delayed,

timely notice will be published in the Federal Register.

ADDRESSES: Comments should be addressed to Tamara Langton, Environmental Protection Specialist, Office of Air Quality (OAQ-107), EPA, Seattle, Washington 98101.

Copies of the State's 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; the Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska, 99801-1795.

FOR FURTHER INFORMATION CONTACT: Tamara Langton, Environmental Protection Specialist, Office of Air Quality (OAQ-107), EPA, Seattle, Washington 98101, (206) 553-2709.

SUPPLEMENTARY INFORMATION:**I. Background**

A. CAAA Requirements and EPA Actions Concerning Designation and Classification

The 1990 CAAA created a new classification structure for CO nonattainment areas which was based upon the severity of the nonattainment problem. For moderate CO nonattainment areas with a design value between 9.1-16.4 parts per million (ppm), the attainment date was to be as expeditious as practicable but no later than December 31, 1995.

The air quality planning requirements for moderate CO nonattainment areas are set out in sections 186-187 of the CAAA which pertain to the classification of CO nonattainment areas and submission of SIP requirements for these areas, respectively. The EPA issued a "General Preamble" which stated EPA's preliminary views concerning how EPA intended to review SIP's and SIP revisions submitted as required under Title I of the Act, [See generally 57 FR 13489 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. States containing CO moderate nonattainment areas with design values of 9.1-16.4 ppm were required to submit SIP's for these areas on or before November 15, 1992 which would provide for attainment by December 31, 1995.

B. Attainment Determinations

The EPA has the responsibility for determining whether a nonattainment area has attained the CO NAAQS by the applicable attainment date.¹ The EPA has the responsibility of making

attainment determinations for moderate CO nonattainment areas by no later than six (6) months after the December 31, 1995 attainment date for these areas.

The EPA will be making attainment determinations for CO nonattainment areas based upon whether an area has 8 consecutive quarters (2 years) of clean air quality data. No special or additional SIP submittal is required from the State for this determination. Section 179(c)(1) of the Act provides that the attainment determination is to be based upon an area's "air quality as of the attainment date." The EPA will make the determination of whether an area's air quality is meeting the CO NAAQS by the applicable attainment date based upon the most recent 2 years of data gathered from air quality monitoring sites which have been entered into the Aerometric Information Retrieval System (AIRS) data base.

A CO nonattainment area's air quality status is determined in accordance with 40 CFR Part 50.8, and in accordance with EPA policy as stated in a memorandum from William G. Laxton, Director Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations", June 18, 1990. CO design values are discussed in terms of the 8-hour CO NAAQS. The 1-hour CO design value should be computed in the same manner as the 8-hour NAAQS.

The CO NAAQS requires that not more than 1, 8-hour average per year can exceed 9.0 ppm (9 greater than or equal to 9.5 ppm to adjust for rounding). CO attainment is evaluated by reviewing 8 quarters or a total of 2 consecutive and complete years of data. If an area has a design value greater than 9.0 ppm, this serves as an indication that a monitoring site in the area, where the second-highest (non-overlapping) 8-hour average was measured, had CO concentrations measured at levels greater than 9.0 ppm in at least 1 of the 2 years. This indicates that there were at least 2 values above the standard (9.0 ppm) during 1 of the 2 years (1994) being reviewed at a particular monitoring site, thus the standard was not met.

C. Application for a 1-year Extension of the Attainment Date

If the State does not have the 2 consecutive clean years of data to show attainment of the NAAQS, a State may apply for an extension of the attainment date. Pursuant to section 186(a)(4) of the Act, a State may apply for and EPA may grant a 1-year extension of the attainment date if the State has: (1) complied with the requirements and commitments pertaining to the

¹ See sections 179(c) and 186(b)(2) of the Act.

applicable implementation plan for the area, and (2) the area has measured no more than 1 exceedance of CO NAAQS at any monitoring site in the nonattainment area in the year preceding the extension year. If the State does not have the requisite number of years of clean air quality data to show attainment and does not apply or does not qualify for an attainment date extension, the area will be reclassified as serious by operation of law.

The authority delegated to the Administrator to extend attainment dates for moderate areas is discretionary. Section 186(a)(4) of the Act provides that the Administrator "may" extend the attainment date for areas that meet the minimum requirements specified above. The provision does not dictate or compel that EPA grant extensions to such areas. In exercising this discretionary authority for CO nonattainment areas, EPA will examine the air quality planning progress made in the moderate area. EPA will be disinclined to grant an attainment date extension unless a State has, in substantial part, addressed its moderate CO planning obligations for the area. In order to determine whether the State has substantially met these planning requirements the EPA will review the States application for the attainment date extension to determine whether the State has: (1) adopted and substantially implemented control measures to satisfy the requirement for the moderate CO nonattainment area; and (2) that reasonable further progress is being met for the area.

If the State cannot make a sufficient demonstration that the area has complied with the extension criteria stated above, and EPA determines that the area has not timely demonstrated attainment of the CO NAAQS, the area will be reclassified as serious by operation of law pursuant to section 186(b)(2) of the Act. If an extension is granted, at the end of the extension year, EPA will again review the area's air quality data to determine whether the area has attained the CO NAAQS.

II. Summary of Today's Action

EPA is, by today's action, granting the State of Alaska's request for a 1-year extension of the CO attainment date for the MOA area. The MOA area failed to meet the December 31, 1995 CO attainment date. This actions extends the attainment date from December 31, 1995, to December 31, 1996.

A. Granting the CO Nonattainment Area Extension

If a State containing a moderate CO nonattainment area does not have the 8 quarters (2 consecutive years) of clean air quality data to demonstrate that the area has attained the CO NAAQS, the State may apply for a 1-year extension of the attainment date. The EPA may extend the attainment date for 1 year only if the State submits an application for the affected nonattainment area satisfying all of the following requirements:

1. Air Quality Data

Pursuant to section 186(a)(4)(B) of the CAAA, an area must have no more than 1 exceedance of the 8-hour CO NAAQS in the year proceeding the extension year at any 1 monitoring site in the nonattainment area.

The MOA nonattainment area has four (4) CO Special Purpose Monitoring (SPM) sites: Benson/Spenard, Sand Lake, Garden and Seward/Benson. Sampling at these sites is conducted every day. Data from these sites has been deemed valid by EPA and submitted by the State of Alaska for inclusion in the EPA's air quality data system, AIRS.

A review of the data for calendar years 1994 through 1995 for the MOA CO nonattainment area shows 2 exceedances in 1994. These exceedances occurred on November 30 and December 7, 1994; both at the Seward/Benson SPM site. The 8-hour CO NAAQS average was 11.3 and 11.0 ppm, respectively. There were no exceedances in 1995; therefore, this requirement has been met.

2. Compliance With Applicable SIP

Pursuant to section 186(a)(4)(A) of the CAAA, a State must demonstrate that it has complied with all requirements and commitments pertaining to the "affected nonattainment area" in the applicable implementation plan. The State of Alaska is in compliance with this requirement.

EPA has approved portions of the Alaska CO SIP (see 60 FR 17232 and 60 FR 33727). The State of Alaska is currently amending the SIP regarding the biennial Inspection and Maintenance (I/M) program mandated by the Alaska State legislature. Primary changes are modifications required to implement biennial I/M testing and modeling results which can demonstrate that the MOA can meet CAAA requirements.

3. Substantial Implementation of Control Measures

The State of Alaska has developed and implemented substantial control measures for CO in the MOA nonattainment area. These control measures consist of the federal emission controls required for new vehicles, the ethanol-blended fuels program, the I/M program, and the rideshare program.

4. Emission Reduction Progress

The historical trend in the MOA's air quality has been toward lower CO levels. CO concentrations have decreased from a second-high 8-hour average of 26.2 ppm and 40 violations in 1980, to a second-high 8-hour average of 8.4 ppm and zero violations in 1995. The continued improvement in CO concentrations in the MOA has been achieved mainly by emission reductions resulting from turnover of the vehicle fleet, required vehicle repairs and maintenance under the I/M program, and the mandatory wintertime use of ethanol blends. These control measures and emission reductions are permanent and enforceable.

The continued implementation of the I/M and ethanol fuels program, combined with the Federal Motor Vehicle Control Program and the recent rideshare program is expected to result in further decreases in CO emissions and ambient concentrations in the MOA. Based on the above, EPA believes that reasonable further progress (RFP) toward attainment of the CO NAAQS has been demonstrated.

In summary, for the reasons discussed above, EPA is granting the State's request for a 1-year extension of the attainment date for the MOA CO nonattainment area from December 31, 1995, to December 31, 1996.

III. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Attainment date extensions under section 186, as with SIP approvals under section 110 and subchapter I, Part D of the CAA, do not create any new requirements. Therefore, because the granting of the MOA 1-year CO attainment date extension does not

impose any new requirements, I certify that it does not have a significant impact on any small entities. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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 an attainment date extension 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. A finding that an area should be granted a 1-year extension of the attainment date consists of factual determinations based on air quality considerations and the area's compliance with certain prior requirements, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The EPA has reviewed this request for a 1-year extension of the CO attainment date for the MOA nonattainment area for conformance with the 1990 CAAA enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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 the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the

procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective August 27, 1996 unless, by July 29, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 27, 1996.

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 August 27, 1996. 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), 42 U.S.C. 7607(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 3, 1996.

Jane S. Moore,

Regional Administrator.

Part 52, 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 C—Alaska

2. Section 52.82 is revised to read as follows:

§ 52.82 Extensions.

The Administrator, by authority delegated under section 186(a)(4) of the Clean Air Act, as amended in 1990, hereby extends for one year (until December 31, 1996) the attainment date for the MOA, Alaska CO nonattainment area.

[FR Doc. 96-16156 Filed 6-27-96; 8:45 am]

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40 CFR Parts 52 and 81

[Region II Docket No. 146, NJ23-1-7243(c); FRL-5524-4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of New Jersey; Revised Policy Regarding Applicability of Oxygenated Fuels Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 28, 1995, the New Jersey Department of Environmental Protection (NJDEP) submitted requests to redesignate the Camden County nonattainment area and nine not-classified areas from nonattainment to attainment for carbon monoxide (CO). NJDEP also submitted the required plans to assure continued attainment of the CO standards in the redesignated areas. On December 7, 1995, EPA published a direct final rulemaking (60 FR 62741) approving New Jersey's redesignation requests along with several elements of the New Jersey State Implementation Plan (SIP) for CO.

This action announced that the rulemaking would take effect on February 5, 1996 (60 days after publication), unless EPA received adverse comments by January 8, 1996 (30 days after publication), in response to a notice of proposed rulemaking published on the same day (60 FR 62792). EPA also committed to withdraw the direct final rule in the event that it received adverse comments, and to respond to any adverse comments in a subsequent final rulemaking action. EPA did receive adverse comments on this action, but failed to withdraw the final rule within the 60 days given in the notice of direct final rulemaking. Therefore, the rule took effect on February 5, 1996.