

interim rule with request for comments allowed SHAs who choose to participate in the CA program and others adequate opportunity to comment on the interim rule. The FHWA, based on an analysis of public comments received, has re-examined its decision to go forward with the interim final rule as the basis for CA and has determined that an interim rule was the appropriate choice in this case. The FHWA also determined that prior notice and opportunity for comment were not required under the Department of Transportation's Regulatory Policies and Procedures because it was not anticipated that such action would result in the receipt of useful information.

#### *Specific Comments*

No specific comments were received for §§ 640.107, 640.109, 640.111, 640.115, and 640.117 and these sections are unchanged.

Section 640.113 is being revised to conform to comments received. Comments from the States included: (1) one State recommended removal of paragraph (e) to be consistent with the removal of 23 CFR 140, Subpart A, formerly titled "Reimbursable Vouchers"; and (2) two States suggested removal of the reference to FHWA approval of exceptions in paragraph (e) to be consistent with 640.113(b) which only requires the States to justify and document the approval of the exceptions. In the final rule, the requirements of FHWA approval of exceptions and the submission of final vouchers to the FHWA in paragraph (e) are removed and the remaining text in paragraph (e) is merged into paragraph (d). Paragraph (f) is redesignated as paragraph (e) in the final rule.

#### Rulemaking Analysis and Notices

#### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. As stated, this regulation merely streamlines and updates the current CA regulation by giving added flexibility to the States in their use of CA. It is anticipated that the economic impact of the rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C.

601-612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The FHWA made this determination based on the fact that the final rule for CA is an update of a current regulation and will provide greater flexibility in using the CA alternate procedures in the administration of projects consistent with the provisions of ISTEA.

#### *Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This rule does not impose additional costs or burdens on the States, including the likely source of funding for the States nor does it affect the ability of the States to discharge traditional State government functions. The intent of this rule is to provide the States with additional administrative flexibility in the use of the regulation.

#### *Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

#### *Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

#### *National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

#### *Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this

document can be used to cross reference this action with the Unified Agenda.

#### List of Subjects in 23 CFR Part 640

Government procurement, Grant programs-transportation, Highways and roads.

Issued on: October 28, 1996.

Rodney E. Slater,

*Federal Highway Administrator.*

In consideration of the foregoing, the interim rule published at 60 FR 47480 on September 13, 1995, title 23, Code of Federal Regulations, Part 640 is adopted as a final rule with the following changes:

#### **PART 640—CERTIFICATION ACCEPTANCE**

1. The authority citation continues to read as follows:

Authority: 23 U.S.C 101(e), 117, and 315; 49 CFR 1.48.

2. Section 640.113 is amended by revising paragraph (d), by removing paragraph (e), and by redesignating paragraph (f) as paragraph (e) to read as follows:

#### **§ 640.113 Procedures.**

\* \* \* \* \*

(d) The FHWA may accept projects based on inspections of a type and frequency necessary to ensure the projects are completed in accordance with appropriate standards. The State is to notify the FHWA when a project is complete and/or ready for such inspection and will certify that the plans, design, and construction for the project were in accord with the laws, regulations, directives, and standards contained in the State certification or such project exceptions as were approved by the State.

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#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[NV-029-0001; FRL-5644-8]

#### **Clean Air Act Reclassification; Nevada-Clark County Nonattainment Area; Carbon Monoxide**

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

**ACTION:** Final rule.

**SUMMARY:** EPA finds that the Clark County, Nevada carbon monoxide (CO) nonattainment area has met the criteria

in section 186(b)(4) of the Clean Air Act (CAA): it exceeded the CO National Ambient Air Quality Standard (NAAQS) once in 1995; it has adopted and implemented the CAA required moderate nonattainment area control measures; and, it has demonstrated progress towards attaining the CO NAAQS. As a result of this finding, EPA grants a one-year extension of Clark County's moderate area attainment date from December 31, 1995 to December 31, 1996. EPA's finding is based on a review of monitored air quality data for compliance with the CO NAAQS, as well as the air quality planning progress of Clark County. With EPA's extension of the CAA mandated attainment date for one year, the Clark County CO nonattainment area remains classified as a moderate CO nonattainment area. The intended effect of EPA's attainment date extension is to allow Nevada and Clark County either to fully implement and strengthen current CO control measures, or to adopt additional control measures prior to the 1996-97 winter CO season in an effort to attain the CO NAAQS.

**EFFECTIVE DATE:** This action is effective on December 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jerry Wamsley, A-2-2, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1226.

**SUPPLEMENTARY INFORMATION:**

I. Background

*A. CAA Requirements and EPA Actions Concerning Designation and Classifications*

In 1990, under section 107(d)(1)(C) of the Clean Air Act Amendments (CAA), each carbon monoxide (CO) area designated nonattainment prior to enactment of the 1990 Amendments was designated nonattainment by operation of law. Under section 186(a) of the CAA, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either "moderate" or "serious" depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm) were classified as moderate. States containing areas that were classified as moderate nonattainment by operation of law under section 107(d) were required to submit State implementation plans (SIPs) designed to attain the CO national ambient air quality standard (NAAQS) as expeditiously as practicable but no later than December 31, 1995.

On November 6, 1991, Clark County was designated nonattainment for CO

and was classified as a "high" moderate area given its design value of 14.4 ppm (parts per million) (See 56 FR 56694 published in the Federal Register on November 6, 1991 and 40 CFR 81.329.) The moderate area SIP requirements are set forth in section 187(a) of the CAA and differ depending on whether the area's design value is below or above 12.7 ppm. Clark County is required to meet the "high" moderate nonattainment area requirements, because of its 14.4 ppm design value, and attain the CO NAAQS by December 31, 1995.

*B. Reclassification to a Serious Nonattainment Area*

EPA has the responsibility, pursuant to sections 179(c) and 186(b)(2) of the CAA, of determining within six months of the applicable attainment date, December 31, 1995, whether a moderate area has attained the CO NAAQS. Under section 186(b)(2)(A), if EPA finds that a moderate area has not attained the CO NAAQS, it is reclassified as serious by operation of law. Pursuant to section 186(b)(2)(B) of the Act, EPA must publish a document in the Federal Register identifying areas which failed to attain the standard and therefore must be reclassified as serious by operation of law.

EPA makes attainment determinations for CO nonattainment areas based upon whether an area has two years (or eight consecutive quarters) of clean air quality data. Section 179(c)(1) of the Act states that the attainment determination must be based upon an area's "air quality as of the attainment date." Consequently, EPA will determine whether an area's air quality has met the CO NAAQS by December 31, 1995 based upon the most recent two years of air quality data entered into the Aerometric Information Retrieval System (AIRS) data base.

The reader should consult EPA's notice of proposed rulemaking for this action for a more detailed discussion of the applicable CAA requirements and EPA guidance on those requirements and the method of calculating CO NAAQS violations for reclassification purposes. Please see 61 FR 41759 (August 12, 1996).

*C. Attainment Date Extensions*

If a state does not have the two consecutive years of clean data necessary to show attainment of the CO NAAQS, it may apply, under section 186(a)(4) of the CAA, for a one year attainment date extension. At its discretion, EPA may grant an extension if the area has: (1) Measured no more than one exceedance of the CO NAAQS at any monitoring site in the

nonattainment area in the year preceding the extension year; and (2) complied with the requirements and commitments pertaining to the applicable implementation plan for the area. Consequently, EPA will examine the moderate area's air quality planning progress and will be disinclined to grant an attainment date extension unless a State has, in substantial part, addressed its moderate area CO planning obligations. To determine if the State has substantially met these planning requirements, EPA will review the State's attainment date extension application to assess whether the State has: (1) Adopted and substantially implemented control measures to satisfy the requirements for a 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 met the extension criteria described above and EPA determines that the area has not demonstrated attainment of the CO NAAQS, then 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, then, at the end of the extension year, EPA will review the area's air quality data to determine if the area has attained the CO NAAQS.

Under section 186(a)(4), EPA may grant up to two one year extensions if these conditions have been met. However, if the area measures a violation of the CO NAAQS during the extension year, the area will be unable to qualify for a second one year extension. Then, once EPA makes a finding of failure to attain the CO NAAQS, the moderate area will be reclassified as serious by operation of law.

*D. EPA's Proposed Attainment Date Extension for Clark County*

On August 12, 1996, EPA proposed to find that the Clark County, Nevada carbon monoxide (CO) nonattainment area has met the criteria in section 186(b)(4) of the Clean Air Act (CAA): it exceeded the CO National Ambient Air Quality Standard (NAAQS) once in 1995; it has adopted and implemented the CAA required moderate nonattainment area CO control measures; and, it has demonstrated progress towards attaining the CO NAAQS. As a result of this finding, EPA proposed to grant a one-year extension of Clark County's moderate area attainment date from December 31, 1995 to December 31, 1996. EPA's proposed finding was based on a review of monitored air quality data from 1994

and 1995 for compliance with the CO NAAQS, as well as the air quality planning progress of Clark County.

The reader should consult EPA's notice of proposed rulemaking for a more detailed discussion of monitored air quality in Clark County, especially CO values observed in 1995 and 1996, and for EPA's review of Clark County's attainment date extension application. Please see 61 FR 41759 (August 12, 1996).

## II. Response to Comments on Proposed Finding

During the public comment period on EPA's proposed finding, EPA received no comments.

## III. Today's Final Action

EPA takes final action on its proposal and finds that the Clark County CO nonattainment area has met the criteria in section 186(b)(4) of the CAA. As a result of this finding, EPA grants a one-year extension of Clark County's moderate area attainment date from December 31, 1995 to December 31, 1996. This finding is based on both EPA's review of 1994 and 1995 monitored air quality data for compliance with the CO NAAQS and EPA's review of Clark County's application for an attainment date extension. With this final action, Clark County remains classified as a moderate CO nonattainment area.

After December 31, 1996, EPA will again review the air quality data for Clark County to determine if it has attained the CO NAAQS. If Clark County measures violations of the CO NAAQS during 1996, the area will be unable to qualify for a second one year extension. Then, after an EPA finding of failure to attain the CO NAAQS, Clark County would be reclassified as a serious carbon monoxide nonattainment area by operation of law.

## IV. Regulatory Process

### A. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities."

The Agency has determined that extending attainment dates would not result in the effects identified in section 3(f). Under section 186(a)(4) of the CAA, attainment date extensions are based upon air quality conditions and planning considerations and are either administrative in nature, or must occur by operation of law in light of certain air quality conditions. They do not, in-and-of-themselves, impose any new requirements on any sectors of the economy.

### B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *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 economic 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.

As discussed in section IV. of this document, attainment date extensions under section 186(a)(4) of the CAA do not create any new requirements. Therefore, I certify that today's proposed action does not have a significant impact on small entities.

### C. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local or tribal governments in the aggregate. EPA believes, as discussed above, that the finding that Clark County nonattainment area meets the criteria in section 186(a)(4) and thereby qualifies for an attainment date extension is a factual determination based upon air quality considerations and must occur by operation of law and, hence, does not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

### D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### E. 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 January 6, 1997. 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, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 17, 1996.

*Felicia Marcus,*

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 DD—Nevada

2. Subpart DD is amended by adding § 52.1478 to read as follows:

#### § 52.1478 Extensions.

The Administrator, by the 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 Clark County (Las Vegas Valley), Nevada carbon monoxide nonattainment area.

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