

tissue, decrease lung function, and impair the body's defenses against respiratory infection.

**DATES:** Written comments on this proposed action must be received by July 28, 1997.

**ADDRESSES:** Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

**FOR FURTHER INFORMATION CONTACT:** Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8656.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**. Copies of the request are available for inspection at the following address: (Please telephone Patricia Morris at (312) 353-8656 before visiting the Region 5 office.) EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

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

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: June 11, 1997.

**Michelle D. Jordan,**

*Acting Regional Administrator.*

[FR Doc. 97-16740 Filed 6-25-97; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[NV029-0003; FRL-5847-5]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to find that the Clark County, Nevada carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standard (NAAQS) by the Clean Air Act (CAA) after having received a one year extension from the mandated attainment date of December 31, 1995 for moderate nonattainment areas to December 31, 1996. This finding is

based on EPA's review of monitored air quality data for compliance with the CO NAAQS. If EPA takes final action on this proposed finding, the Clark County, Nevada nonattainment area will be reclassified by operation of law as a serious nonattainment area. As a result of a reclassification the State will have additional time to submit a new State implementation plan (SIP) providing for attainment of the CO NAAQS by no later than December 31, 2000, the CAA attainment deadline for serious CO areas.

**DATES:** Written comments on this proposal must be received by July 28, 1997.

**ADDRESSES:** Written comments should be sent to: Julia Barrow, Chief, Air Planning Office, AIR-2, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105.

The rulemaking docket for this document, Docket No. NV029-0003, may be inspected and copied at the following location between 8 a.m. and 4:30 p.m. on weekdays. A reasonable fee may be charged for copying parts of the docket. U.S. Environmental Protection Agency, Region 9, Air Division, Air Planning Office, AIR-2, 75 Hawthorne Street, San Francisco, California 94105.

Copies of the docket are also available at the State and County offices listed below:

Nevada Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada, 89710; and, Clark County Department of Comprehensive Planning, 500 South Grand Central Parkway, Suite 3012, Las Vegas, Nevada, 89155-1741.

**FOR FURTHER INFORMATION CONTACT:** Larry Biland, AIR-2, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1227.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

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

The Clean Air Act Amendments of 1990 (CAA) were enacted on November 15, 1990. Under section 107(d)(1)(C) of the CAA, each carbon monoxide (CO) area designated nonattainment prior to enactment of the 1990 Amendments, such as the Clark County area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of the Act, 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), such as the Clark County area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81. See 56 FR 56694 (November 6, 1991).

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.<sup>1</sup>

##### B. Attainment Date Extensions

If a state does not have the two consecutive years of clean data necessary to show attainment of the NAAQS, it may apply, under section 186(a)(4) of the CAA, for a one year attainment date extension. EPA may, in its discretion, grant such an extension if the state has: (1) complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has 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. Under section 186(a)(4), EPA may grant up to two such extensions if these conditions have been met. EPA has granted Clark County one extension to December 31, 1996. (40 CFR Part 52 Vol. 61, No. 216, Wednesday, Nov. 6, 1996).

##### C. 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, whether the Clark County area has attained the CO NAAQS. Under section 186(b)(2)(A), if EPA finds that the 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

<sup>1</sup> The moderate area SIP requirements are set forth in section 187(a) of the Act and differ depending on whether the area's design value is below or above 12.7 ppm. The Clark County area has a design value below 12.7 ppm. 40 CFR 81.303.

whether an area has two years (or eight consecutive quarters) of clean air quality data.<sup>2</sup> 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, where an area has received an extension, EPA will determine whether an area's air quality has met the CO NAAQS by the required date, or in the case of Clark County by the extended date of December 31, 1996, based upon the most recent two years of air quality data.

EPA determines a CO nonattainment area's air quality status in accordance with 40 CFR 50.8 and EPA policy.<sup>3</sup> EPA has promulgated two NAAQS for CO: an

8-hour average concentration and a 1-hour average concentration. Because there were no violations of the 1-hour standard in the Clark County area, this notice addresses only the air quality status of the Clark County area with respect to the 8-hour standard. The 8-hour CO NAAQS requires that not more than one non-overlapping 8-hour average in any consecutive two-year period per monitoring site can exceed 9.0 ppm (values below 9.5 are rounded down to 9.0 and they are not considered exceedances). The second exceedance of the 8-hour CO NAAQS at a given monitoring site within the same two-year period constitutes a violation of the CO NAAQS.

**II. Today's Action**

By today's action, EPA is proposing to find that the Clark County CO nonattainment area has failed to attain the CO NAAQS by December 31, 1996. This proposed finding is based upon air quality data showing exceedances of the CO NAAQS during 1995 and 1996, resulting in two violations in 1996.

*A. Ambient Air Monitoring Data*

The following table lists each of the monitoring sites in the Clark County CO nonattainment area where the 8-hour CO NAAQS has been exceeded during 1995 and 1996.

EXCEEDANCES OF 8-HOUR CARBON MONOXIDE NATIONAL AMBIENT AIR QUALITY STANDARD<sup>1</sup> IN THE CLARK COUNTY, NEVADA NONATTAINMENT AREA

Monitoring site	1995		1996	
	Concentration <sup>2</sup>	Date	Concentration <sup>2</sup>	Date
2850 East Charleston Blvd. ....	10.2 ppm .....	11/23	10.1 ppm .....	1/6
	.....	.....	10.3 ppm .....	1/14
	.....	.....	10.2 ppm .....	3/10

<sup>1</sup> The eight-hour carbon monoxide NAAQS is 9 parts per million.

<sup>2</sup> Concentration = monitored carbon monoxide concentration in parts per million.

**1. 1995 Data**

During calendar year 1995, Clark County exceeded the eight-hour CO NAAQS once at the East Charleston monitoring site. Consequently, there were no violations of the CO NAAQS in 1995.

**2. 1996 Data**

During the first quarter of 1996, Clark County exceeded the eight-hour CO NAAQS three times, all at the East Charleston monitoring site. These exceedances total two violations of the CO NAAQS.

**3. Discussion of CO NAAQS**

Exceedances During the 1995-96 Winter CO Season

Clark County qualified for an attainment date extension to December 31, 1996 by having no more than one exceedance of the CO NAAQS in the nonattainment area in 1995. However, this achievement was clouded by three exceedances of the CO NAAQS during January and March 1996. Clark County raised several concerns with the East Charleston monitoring site which recorded the violations, suggesting that

siting problems biased the data collected there.

**a. Clark County Concerns With East Charleston Monitoring Site**

In 1995 and early 1996, Clark County raised to EPA several concerns with the siting of the East Charleston monitor, and also proposed several changes to their CO monitoring network.<sup>4</sup> Clark County asserted that the configuration of the East Charleston monitoring site was inconsistent with the requirements for National Air Monitoring Stations (NAMS) given in the Code of Federal Regulations (see 40 CFR Part 58) and this was biasing the data. Because of these concerns, Clark County asked EPA to delay a finding of attainment or nonattainment for the 1995 attainment deadline until new CO data was collected during October to December of 1996 at the new monitoring sites. Towards this end, Clark County proposed the following actions: (a) to relocate the East Charleston monitoring station within the same neighborhood; (b) to increase the number of EPA recognized neighborhood sites by adding monitoring sites at East Sahara and East Flamingo Boulevards, and at

Crestwood Elementary School in the East Charleston Blvd. vicinity, and, (c) to add a microscale monitoring station with high pedestrian traffic at the Las Vegas Blvd. and Tropicana Ave. intersection.

In response to Clark County's concerns and proposal, EPA agreed with revisions to the CO monitoring network in Clark County. The East Charleston monitoring site continued to operate according to all applicable protocols until its lease expired in 1997. Three new monitoring sites were added to the Clark County air monitoring network before the 1996-97 winter CO season: two neighborhood scale sites, one at Sunrise Acres Elementary School and the other at Crestwood Elementary School in the East Charleston area; and, a microscale site, the MGM site, located on Las Vegas Blvd. at Tropicana. The Sunrise Acres site was the direct replacement site for the high-CO East Charleston site.

At the close of the winter 96-97 season Region 9 and the State of Nevada examined whether East Charleston CO levels correlated with the levels at

<sup>2</sup> See generally memorandum from Sally L. Shaver, Director, Air Quality Strategies and Standards Division, EPA, to Regional Air Office Directors, entitled "Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to

Attain the NAAQS for Moderate CO Nonattainment Areas," October 23, 1995 (Shaver memorandum).

<sup>3</sup> See memorandum from William G. Laxton, Director Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value

Calculations", June 18, 1990. See also Shaver memorandum.

<sup>4</sup> See correspondence from Michael Naylor, Clark Co. Health District to John Kennedy, U.S. Environmental Protection Agency, February 7, 1996.

Sunrise Acres. Based on November 1996 to March 1997 CO data, EPA staff determined that there was a strong correlation of peak 1- and 8-hour average CO levels at East Charleston and Sunrise Acres. A comparison of peak 8-hour CO concentrations at Sunrise Acres and the East Charleston site showed that Sunrise Acres values consistently exceeded East Charleston levels. With the continued operation of Sunrise Acres and MGM replacement sites, and the value-added Crestwood site, Region 9 supported Clark County's shutdown of the East Charleston site. It is implicit that in showing that Sunrise Acres closely tracked East Charleston CO levels, that previous East Charleston data were valid. Previous Clark County assertions that the configuration of the East Charleston siting positively biased previously collected CO data are inconsistent with EPA findings. Thus EPA considers data from the East Charleston station collected in 1995-96 to be valid for regulatory purposes. EPA is relying on this data in the proposed finding that Clark County failed to attain the Federal CO standard on December 31, 1996.

#### B. SIP Requirements for Serious CO Areas

CO nonattainment areas reclassified as serious under section 186(b)(2) of the CAA are required to submit, within 18 months of the area's reclassification, SIP revisions demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000. The serious CO area planning requirements are set forth in section 187(b) of the CAA. EPA has issued two general guidance documents related to the planning requirements for CO SIPs. The first is the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" that sets forth EPA's preliminary views on how the Agency intends to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The second general guidance document for CO SIPs issued by EPA is the "Technical Support Document to Aid the States with the Development of Carbon Monoxide State Implementation Plans," July 1992.

If the Clark County area is reclassified to serious, the State would have to submit a SIP revision to EPA within 18 months of the final reclassification that, in addition to the attainment demonstration, includes: (1) Any new measures necessary to attain the standard; (2) a forecast of vehicle miles traveled (VMT) for each year before the attainment year and provisions for

annual updates of these forecasts; (3) adopted contingency measures; and (4) adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or number of vehicle trips. See CAA sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1). Upon reclassification, contingency measures in the moderate area plan for the Clark County area must be implemented.

#### III. 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 the finding of failure to attain proposed today would result in none of the effects identified in section 3(f). Under section 186(b)(2) of the CAA, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and 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. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

#### IV. 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 III of this notice, findings of failure to attain and reclassification of nonattainment areas under section 186(b)(2) of the CAA do not in-and-of-themselves create any new requirements. Therefore, I certify that today's proposed action does not have a significant impact on small entities.

#### V. 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 proposed finding of failure to attain and reclassification of the Clark County nonattainment area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

#### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

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

Dated: June 16, 1997.

**Felicia Marcus,**

*Regional Administrator.*

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 721

[OPPTS-50623C; FRL-5726-3]

RIN 2070-AB27

#### Significant New Uses of Certain Chemical Substances; Proposed Significant New Use Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for certain chemical substances which were the subject of premanufacture notices (PMNs). This proposal would require certain persons