

used on unmined land within the region.

At OAC 460:20-43-46(c)(4)(G) and 460:20-45-46(c)(4)(G), other normal husbandry practices that may be conducted on postmining land uses of fish and wildlife habitat, recreation, and forestry without restarting the liability period are disease, pest, and vermin control; pruning; and transplanting and replanting trees and shrubs in accordance with OAC 460:20-43-46(b)(3) and 460:20-45-46(b)(3).

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

#### Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

#### Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on August 25, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the

audience who wish to speak have been heard.

#### Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

### IV. Procedural Determinations

#### Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

#### Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

#### National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

#### Paperwork Reduction Act

This rule does not contain information collection requirements that

require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

#### List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 1, 1997.

**Russell W. Frum,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 97-21033 Filed 8-7-97; 8:45 am]

BILLING CODE 4310-05-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[AK 17-1705; FRL-5872-4]

#### Clean Air Act Reclassification; Fairbanks, Alaska, Carbon Monoxide Nonattainment Area

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

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to find that the Fairbanks North Star Borough, Alaska, carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standards (NAAQS) by December 31, 1995, the Clean Air Act (CAA) mandated attainment date for moderate nonattainment areas. This proposed

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 Fairbanks CO nonattainment area will be reclassified by operation of law as a serious nonattainment area. The intended effect of such a reclassification would be to allow the State 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 September 8, 1997.

**ADDRESSES:** Written comments should be addressed to M. Livingston, Environmental Protection Agency, Office of Air Quality (OAQ 107), Docket AK 17-1705, 1200 6th Avenue, Seattle, WA 98101. Information supporting this action is available for inspection during normal business hours at the following locations: EPA, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101, and the Alaska Department of Environmental Conservation (ADEC), 410 Willoughby, Suite 105, Juneau, Alaska 99801-1795.

**FOR FURTHER INFORMATION CONTACT:** Montel Livingstone, (206) 553-0180.

*Comment Line:* A special CO Fairbanks Air Quality comment line will be available during normal business hours. The number may be accessed directly by dialing (206) 553-1388, or it may be accessed through a toll free telephone number 1-800-424-4372, extension 1388.

#### SUPPLEMENTARY INFORMATION:

### I. Background

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

The CAA Amendments of 1990 were enacted on November 15, 1990. Under section 107(d)(1)(C) of the CAA, each CO area designated nonattainment prior to enactment of the 1990 Amendments, such as the Fairbanks area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. 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 nonattainment areas with a design value between 9.1-16.4 parts per million (ppm), such as the Fairbanks 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 CO moderate nonattainment 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 NAAQS as expeditiously as practicable but no later than December 31, 1995.<sup>1</sup>

#### B. Reclassification to a Serious Nonattainment Area

1. 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 Fairbanks 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 notice in the **Federal Register** identifying areas which it determines failed to attain the standard and therefore must be reclassified as serious by operation of law.<sup>2</sup> 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.<sup>3</sup> Section 179(c)(1) of the CAA 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

<sup>1</sup>The moderate area SIP requirements are set forth in section 187(a) of the CAA Amendments of 1990 and differ depending on whether the area's design value is below or above 12.7ppm. The Fairbanks area has a design value below 12.7ppm. 40 CFR part 81.302.

<sup>2</sup>Language in the 1996 budget legislation, section 308, H.R. 1099, U.S. House of Representatives, dated April 15, 1996, restricted EPA from taking the action for Fairbanks, AK proposed here. "Sec. 308. None of the funds appropriated under this Act may be used to implement the requirements of section 186(b)(2), section 187(b) or section 211(m) of the Clean Air Act . . . with respect to any moderate nonattainment area in which the average daily temperature is below 0 degrees Fahrenheit. The preceding sentence shall not be interpreted to preclude assistance from the Environmental Protection Agency to the State of Alaska to make progress toward meeting the CO standard in such areas and to resolve remaining issues regarding the use of oxygenated fuels in such areas."

<sup>3</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).

Aerometric Information Retrieval System (AIRS) data base.

EPA determines a CO nonattainment area's air quality status in accordance with 40 CFR part 50.8 and EPA policy.<sup>4</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 recorded in the Fairbanks area in 1994 and 1995, this document addresses only the air quality status of the Fairbanks area with respect to the 8-hour standard. The 8-hour CO NAAQS requires that not more than one non-overlapping 8-hour average per year per monitoring site can exceed 9.0ppm (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 year constitutes a violation of the CO NAAQS.

2. 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 CAA 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 CAA. 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 Fairbanks' area is reclassified to serious, the State would have to submit a SIP revision to EPA that, in addition to the attainment demonstration, includes: (1) A forecast of vehicle miles travelled (VMT) for each year before the attainment year and provisions for annual updates of these forecasts; (2) adopted contingency measures; and (3) adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or

<sup>4</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.

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 Fairbanks area must be implemented.

### C. Attainment Date Extensions

If the State does not have the two consecutive clean years of 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 CO NAAQS at any monitoring site in the nonattainment area in the year preceding 1996, the extension year. Because the Fairbanks nonattainment area had three exceedances in 1995, the area did not qualify for an extension.

## II. This Action

By today's action, EPA is proposing to find that the Fairbanks CO nonattainment area failed to demonstrate attainment of the CO NAAQS by December 31, 1995. This proposed finding is based upon air quality data showing violations of the CO NAAQS during 1995.

**Ambient Air Monitoring Data:** The following table lists the monitoring sites in the Fairbanks CO nonattainment area where the 8-hour CO NAAQS was exceeded during 1995, based on data validated by the Alaska Department of Environmental Conservation and entered into the AIRS data base.

1995 CARBON MONOXIDE SUMMARY TABLE

Address of Monitoring Site	2nd maximum 8-hour average value	Date	Number of readings exceeding 8-hour standard
675 7th Ave. ...	10.6	1/03/95	3
2nd and Cushman ....	11.8	1/04/95	9
17th and Gilliam Way	11.6	12/29/95	7

Fairbanks had no violations of the CO NAAQS in 1996. Although one exceedance occurred in 1996 (9.8 ppm at the 2nd and Cushman site), it did not constitute as a CO violation in Fairbanks because a violation of the CO NAAQS means two exceedances of the 8-hour CO NAAQS at a given monitoring site

within the same year. However, two CO NAAQS violations have been recorded in Fairbanks to-date in 1997, respectively on January 11, 1997, at the monitoring site located at 2nd and Cushman and on January 16, 1997, at the monitoring site located at 17th and Gilliam Way. This data has been validated by ADEC and entered into the AIRS data base.

In a letter to EPA dated February 11, 1997, the State of Alaska questioned whether or not Fairbanks should be reclassified to serious nonattainment status given that (1) there were no CO violations of the NAAQS in 1996, and (2) a Memorandum of Understanding had been signed, dated January 23, 1997, between ADEC and the Municipality of Fairbanks which deals directly with the CO nonattainment problem. In a letter to the State of Alaska dated March 24, 1997, EPA Region 10 pointed out that while further delay of reclassification is not possible, the progress achieved thus far in Fairbanks to improve air quality and decrease the ambient levels of CO can form the base on which to build and continue movement towards attaining the CO NAAQS. As noted above, even though 1996 was a clean year for Fairbanks, two violations were recorded in January 1997. It is important to continue developing control strategies to further reduce CO concentrations in order to attain the CO standard. EPA explained that reclassification is mandated under section 186(b) of the CAA and the Administrator does not have authority to decide otherwise once EPA determines the area has failed to meet the CO NAAQS.

Because the 1995 exceedances are valid for use in determining the attainment status of the Fairbanks area, EPA is proposing to find, based on the 1995 CO violations discussed above, that the area did not attain the CO NAAQS by December 31, 1995.

## 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 document, 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 Fairbanks 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, Intergovernmental relations, Carbon monoxide.

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

Dated: August 1, 1997.

**Chuck Findley,**

*Acting Regional Administrator.*

[FR Doc. 97-20969 Filed 8-7-97; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 439

[FRL 5872-6]

#### Notice of Availability; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Pharmaceutical Manufacturing Category

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

**ACTION:** Notice of availability.

**SUMMARY:** On May 2, 1995, EPA proposed Clean Water Act (CWA) effluent limitations guidelines, new source performance standards, and pretreatment standards for the introduction of pollutants into publicly owned treatment works to reduce the discharge of pollutants from the pharmaceutical manufacturing industry (60 FR 21592). This document describes new information the Agency has obtained since the proposal, provides detailed information concerning regulatory options under the CWA which were identified in the April 2, 1997 (62 FR 15753) Maximum Achievable Control Technology (MACT) Standard Clean Air Act (CAA) proposal, and presents the results of analyses of old and newly acquired data and suggested modifications to the proposal. This document also solicits public comments regarding any of the information presented in this document and the record supporting this notice of data availability.

**DATES:** Comments on this document are solicited and will be accepted until September 22, 1997. Comments are to be submitted in triplicate, and also in electronic format (diskettes) if possible.

**ADDRESSES:** Comments are to be submitted to Dr. Frank H. Hund at the following address: Engineering and

Analysis Division (4303), EPA, 401 M Street, S.W., Washington, D.C. 20460.

The data and analyses being announced today are available for review in the EPA Water Docket at EPA Headquarters at Waterside Mall, room M2616, 401 M Street, SW, Washington, DC 20460. For access to the Docket materials, call (202) 260-3027 between 9:00 a.m. and 3:30 p.m. for an appointment. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For additional technical information, contact Dr. Frank H. Hund at the following address: Engineering and Analysis Division (4303), EPA, 401 M Street, S.W., Washington, D.C. 20460, telephone number (202) 260-7182. For information on economic impacts, contact Mr. William Anderson at the same address, telephone number (202) 260-5131.

#### SUPPLEMENTARY INFORMATION:

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#### I. Summary of the CWA Regulatory Options Identified in the Maximum Achievable Control Technology (MACT) Standard Proposal and Purpose of This Notice

On May 2, 1995 (60 FR 21592), EPA proposed regulations to reduce discharges to navigable waters of toxic, conventional, and nonconventional pollutants in treated wastewater from the Pharmaceutical Manufacturing Category. In that proposed rule the Agency indicated that it would be proposing a Maximum Achievable Control Technology (MACT) standard for the Pharmaceutical Manufacturing Industry. Under the CAA on April 2, 1997 at 62 FR 15753, EPA proposed MACT Standards to control emissions of Hazardous Air Pollutants (HAPs) from storage tanks, process vents, equipment leaks and wastewater (the MACT proposal). In the preamble to the MACT proposal (62 FR 15760), EPA also indicated it was considering modifications to its effluent guidelines proposal of May 2, 1995 in order to avoid duplicative regulations.

For direct discharging fermentation (subcategory A) and chemical synthesis (subcategory C) facilities, EPA discussed changing its model BAT technology basis for Volatile Organic Pollutants (VOCs), which include many of the HAPs intended for control by the MACT Standards, from in-plant steam stripping followed by advanced biological treatment to advanced biological treatment. This change was based on the