

**§ 63.1311 Compliance schedule and relationship to existing applicable rules.**

\* \* \* \* \*

(b) New affected sources that commence construction or reconstruction after March 29, 1995, shall be in compliance with this subpart upon initial start-up or February 27, 1998, whichever is later, as provided in § 63.6(b), except that new affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is poly(ethylene terephthalate) (PET) shall be in compliance with § 63.1331 upon initial start-up or by September 12, 1999, whichever is later.

\* \* \* \* \*

(d) Except as provided for in paragraphs (d)(1) through (d)(6) of this section, existing affected sources shall be in compliance with § 63.1331 no later than February 27, 1998 unless a request for a compliance extension is granted pursuant to section 112(i)(3)(B) of the Act, as discussed in § 63.182(a)(6).

(1) Compliance with the compressor provisions of § 63.164 shall occur no later than February 27, 1998 for any compressor meeting one or more of the criteria in paragraphs (d)(1)(i) through (d)(1)(iii) of this section if the work can be accomplished without a process unit shutdown, as defined in § 63.161:

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 81**

[AK 17-1705; FRL-5971-4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** In this document EPA is making a final finding 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 finding is based on EPA's review of monitored air quality data for compliance with the CO NAAQS. As a result of this finding, the Fairbanks North Star Borough CO nonattainment area is reclassified as a serious CO nonattainment area by operation of law.

As a result of the reclassification, the State is to submit within 18 months from the effective date of this action a new State Implementation Plan (SIP) demonstrating attainment of the CO NAAQS as expeditiously as practical but no later than December 31, 2000, the CAA attainment date for serious areas.

**EFFECTIVE DATE:** This action is effective March 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ms. Montel Livingston, Office of Air Quality, U.S. Environmental Protection Agency, Region 10, Seattle, Washington, (206) 553-0180.

**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 CO area designated nonattainment prior to enactment of the 1990 Amendments, such as the Fairbanks North Star Borough nonattainment 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 areas with design values between 9.1 and 16.4 parts per million (ppm), such as the Fairbanks nonattainment 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 SIPs designed to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995.<sup>1</sup>

**B. Effect of Reclassification**

CO nonattainment areas reclassified as serious are required to submit, within 18 months of the area's reclassification, SIP revisions providing for attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000. In addition, the State must submit a SIP revision that includes: (1) a forecast of vehicle miles traveled

<sup>1</sup> 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. The Fairbanks area has a design value below 12.7 ppm. 40 CFR 81.302.

(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 number of vehicle trips. See CAA sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1). Finally, upon the effective date of this reclassification, contingency measures in the moderate area plan for the Fairbanks nonattainment area must be implemented.

**C. Attainment Determinations for CO Nonattainment Areas**

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>2</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."

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 Fairbanks nonattainment area, this document addresses only the air quality status of the Fairbanks nonattainment 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.

**D. Proposed Finding of Failure to Attain**

On August 8, 1997 EPA proposed to find that the Fairbanks North Star Borough CO nonattainment area had failed to attain the CO NAAQS by the applicable attainment date. 62 FR 42717. Fairbanks did not have two

<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.

consecutive clean years of CO data. This proposed finding was based on air quality data showing violations of the CO NAAQS at three monitoring sites during 1995, with the number of readings exceeding the 8 hour standard totaling 19. For the specific data considered by EPA in making this proposed finding, see 62 FR 42719.

#### *E. Reclassification to a Serious Nonattainment Area*

EPA has the responsibility, pursuant to sections 179(c) and 186(b)(2) of the CAA, for determining whether the Fairbanks North Star Borough CO nonattainment area attained the CO NAAQS by December 31, 1995. Under section 186(b)(2)(A), if EPA finds that the area has not attained the CO NAAQS, the area is reclassified as serious by operation of law. There were 26 CO exceedances recorded in the years 1994–1995. Additional control strategies are needed to further reduce CO concentrations in order to attain the CO standard. Pursuant to section 186(b)(2)(B) of the Act, EPA is publishing this notice to identify the Fairbanks area as failing to attain the standard and therefore reclassified as serious by operation of law.

## **II. Response to Comments on Proposed Finding**

During the public comment period on EPA's proposed finding, EPA received several comments. Below is EPA's response to all substantive comments received.

#### *Air Quality Monitoring Data*

A commenter represented an association which had undertaken a detailed review of the air quality monitoring data from a variety of areas around the country using the Aerometric Information Retrieval System data base. Specifically, the report alleged that the Fairbanks North Star Borough Air Quality Division does not monitor the ambient air temperature within their CO monitor instrument enclosures to ensure that the station temperature remained within the 20–30 degree C range specified by the EPA reference method designation for the TECO 48 CO analyzers used at the sites where exceedances were recorded. Thus, the report concluded, these exceedances were measured by equipment that was being operated under untested specifications for which the analyzer has not been certified and are therefore open to question.

*Response:* EPA Region 10 prepared a report dated August 27, 1997 (located in our docket), regarding the quality of CO monitoring data collected in Fairbanks

for the time period 1994 through 1996. The study focused on time periods when CO exceedances occurred (27 times at three sites in Fairbanks during the time period 1994 through 1996). The evaluation relied upon EPA monitoring guidelines in 40 CFR Part 58, the Quality Assurance Handbook for Air Pollution Measurement Systems—Volume II: Ambient Air Specific Methods (Red book), and manufacturer recommended operations guidelines for CO analyzers. CO monitoring data, precision, and accuracy data used in EPA's analysis were extracted from the EPA Aerometric Information Retrieval System. Zero, span checks, audit results, site logs, and strip charts were obtained from ADEC and the local air pollution control agencies in Fairbanks. Specifications for the operation of individual CO analyzers were obtained from the instrument manufacturers and from the EPA list of air monitoring reference and equivalent methods.

The analysis revealed that ADEC and the Fairbanks North Star Borough have closely followed EPA regulations and guidelines in the collection and quality assurance of CO monitoring data. While the building environment where the monitors were located was not monitored 24 hours a day for every day of the year to show the area was always controlled to 20°–30° C, the analysis showed that:

- (a) all monitors were operated indoors.
- (b) all buildings containing monitors controlled their indoor temperatures to values within the specified 20°–30° during the workday.
- (c) ADEC's quality assurance program verified that monitors were operating properly during periods of standard exceedances. The strip chart data used to identify any suspect behavior of the analyzers was investigated. No "drift" or "cycling" of readings were found on the strip charts. The strip charts showed that the instruments were operating properly at all times during periods of standard exceedances.
- (d) ADEC configured their CO monitors to show that both precision and accuracy checks exceeded required frequencies for all sites in Fairbanks for the entire time period of 1994–1996.
- (e) At least eight exceedances were recorded in Fairbanks during 8 hour periods when the buildings in which the monitors were located were being heated to employee "comfort" temperatures (usually at the low end of the 20°–30° range).

(f) No exceedances of the 8 hour NAAQS occurred on weekends during this time period.

For these reasons, EPA has concluded that it is very unlikely that enclosure temperature has caused CO levels in Fairbanks to be "over measured" to the extent that a violation of the 8 hour NAAQS could not be confidently demonstrated. EPA's view is that ADEC's data is of high quality and clearly shows repeated exceedances of the CO NAAQS. EPA has no reason to question any of the CO exceedances measured during the 1994 through 1996 time period. Questions have arisen that monitor readings could have been influenced by temperature fluctuations in the buildings where the instruments were operated. Although no daily temperatures were measured in the rooms where monitors were housed, information from the building managers shows that temperatures were maintained at a comfort level for workers in all of the buildings where monitors were housed. The indoor temperatures were well within the range of temperatures that the instrument manufacturers recommend for operation of CO monitors. Also, outside temperatures in Fairbanks were considerably above normal during times of standard exceedances which would minimize a lowering of temperatures indoors even if thermostats were lowered. In addition, no CO exceedances occurred on weekends when thermostats in some buildings could be lowered slightly. For these reasons it is unlikely that CO exceedances were influenced by fluctuations in building temperatures.

#### *Unique Weather Conditions*

Several commenters felt that Fairbanks should be given an allowance or exemption from the serious status because of the severity and consistency of its cold weather, as well as the intensity and regularity of its temperature inversions.

*Response:* EPA prepared a report, dated August 27, 1997, and which is part of the docket, showing CO violations and outside temperature data by monitor location for all the dates exceedances were recorded during 1995. Fairbanks outside temperatures in 1995 were considerably above normal during times of CO air quality standard exceedances (i.e., highs recorded at +44, +34, +32, +30, +29, etc.). Thus, CO exceedances occur in Fairbanks at varying degrees of winter temperatures, not just very low winter temperatures.

Stagnation and inversions are frequent climatological occurrences that must be considered in evaluating whether a control program is adequate to attain and maintain the NAAQS. Meteorological events such as these are

almost never accepted as justification for waiving the NAAQS. Inversions occur very frequently, are usually short-lived, and disperse shortly after sunrise. Because inversions are expected to occur frequently and are part of normal weather patterns, they are not considered special events warranting exemptions from reclassification.

In some parts of the United States, stagnation episodes usually persist for an extended period of time, and they can affect an entire air basin. While stagnations may not occur frequently, they are not uncommon; therefore, they are not considered sufficiently exceptional to waive application of the NAAQS.

#### *Number of Violations Declining—Why Reclassify?*

Commenters asked why Fairbanks is being reclassified when air quality has improved over the last 10–15 years; is reclassification necessary?

*Response:* Reclassification does not mean that the air quality in Fairbanks has deteriorated. Congress established the attainment dates of reclassification requirements to allow additional planning time to meet the CO NAAQS. The attainment date under the CAA of 1990 for a serious CO nonattainment area is December 31, 2000, and authorizes more time for Fairbanks North Star Borough, together with ADEC, to devise an air pollution control plan to meet the CO air quality standard. EPA recognizes the progress Fairbanks has achieved thus far toward improving air quality and decreasing the ambient levels of CO. However, Congress mandated reclassification under section 186(b) of the CAA in specific circumstances, and the Administrator does not have flexibility to decide otherwise once EPA determines the area has failed to meet the CO NAAQS. Fairbanks currently has an inspection and maintenance program as its base control measure. The general public will have the opportunity to comment on additional control measures that would be most effective towards improving air quality in Fairbanks.

#### *Timeliness of Reclassification Notice*

A commenter stated concern that it is unrealistic to expect a community like Fairbanks to complete the planning and implementation of control measures necessary to achieve the NAAQS by a December 31, 2000 deadline. If this determination and notice requirement were published by June 30, 1996 as envisioned in the Clean Air Act, Fairbanks would have had four years to

plan and implement a revised CO strategy and achieve attainment.

*Response:* Language in the 1996 budget legislation, section 308, H.R. 1099, restricted EPA from taking reclassification action for Fairbanks within six months after the applicable attainment date of December 31, 1995: “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 EPA 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.” In the meantime, Fairbanks had no violations of the CO standard in 1996. However, in 1997, while EPA began the reclassification process, CO violations were once again repeated.

When a nonattainment CO area such as Fairbanks is reclassified, the timetable given for planning requirements allows the state 18 months from the date of final reclassification to submit its new SIP revisions to EPA. In the meantime, the adopted CO contingency measure is implemented immediately to strengthen the air quality control measures already in place. The CAA defines specific timetables by which nonattainment areas must meet the requirements for moderate and serious CO classified areas. These requirements include attainment deadlines, area classifications, and the required provisions of the SIP’s for these nonattainment areas. The revised general requirements for all SIPs appear early in Title I of the CAA. It is unlikely that significant regulatory changes would occur affecting stationary sources in that section 187(c)(1) of the Act only requires redefining “major stationary source” if stationary sources “contribute significantly” to CO levels, i.e., if a facility by itself would cause a violation of the national CO standard. No existing facility in the nonattainment area meets this criterion and it seems unlikely that a new facility, which would emit a large amount of CO, would meet such a standard unless it were sited in an area already identified as prone to CO buildup in the nonattainment area.

EPA feels that by working closely with the Borough and ADEC, an approvable plan meeting reclassification requirements can be developed and

taken through the public hearing process in a timely way.

### **III. Today’s Action**

EPA is today taking final action to find that the Fairbanks North Star Borough CO nonattainment area did not attain the CO NAAQS by December 31, 1995, the CAA attainment date for moderate CO nonattainment areas. As a result of this finding, the Fairbanks North Star Borough CO nonattainment area is reclassified by operation of law as a serious CO nonattainment area as of the effective date of this document. This finding is based upon air quality data showing exceedances of the CO NAAQS during 1995. The Fairbanks North Star Borough CO nonattainment area was not eligible for an extension from the mandated attainment date of December 31, 1995.

### **IV. Executive Order (E.O.) 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 finalized 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.

**V. Regulatory Flexibility Act**

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. As discussed in section IV 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 action does not have a significant impact on small entities.

**VI. Unfunded Mandates Act**

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 believes, as discussed above, that the 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.

**VII. Submission to Congress and the General Accounting Office**

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. 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**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: February 20, 1998.

**Chuck Findley,**

*Acting Regional Administrator, Region 10.*

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

**PART 81—[AMENDED]**

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

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

2. In section 81.302, the table for "Alaska-Carbon Monoxide" is amended for the Fairbanks area by replacing "moderate" with "serious" under the classification column to read as follows:

**§ 81.302 Alaska.**

\* \* \* \* \*

ALASKA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Fairbanks Area, Fairbanks Election District (part), Fairbanks nonattainment area boundary.	.....	Nonattainment .....	Mar. 30, 1998 .....	Serious.
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[FRL-5970-4]

**National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of deletion of the Browning-Ferris Industries—South

Brunswick Landfill superfund site from the National Priorities List.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) announces the deletion of the Browning-Ferris Industries—South Brunswick Landfill Site in South Brunswick Township, Middlesex County, New Jersey from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey have determined that the Site poses no

significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

**EFFECTIVE DATE:** February 27, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mary Anne Rosa, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007-1866, (212) 637-4407.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is: Browning-Ferris Industries—South Brunswick Landfill Site, South Brunswick Township, Middlesex County, New Jersey.

A Notice of Intent to Delete for this Site was published in the **Federal**