

Regulatory Procedures

Justification for Final Rule

Pursuant to section 702(a)(5) of the Social Security Act, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of the notice and public comment procedures for this regulation because those procedures are unnecessary in this situation. This regulation does not contain discretionary policy or substantive change, but merely notifies the public of prior OMB approval for the information collection and recordkeeping requirements contained in several sections and supplies the OMB control number for several sections. Therefore, we are issuing this regulation as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date, as provided by 5 U.S.C. 553(d), because such delay in unnecessary. This is not a substantive rule. It merely notifies the public of prior OMB approval for several sections and provides the OMB control number for several sections.

Executive Order 12866

We have consulted with OMB and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review. We have also determined that this final rule meets the plain language requirement of Executive Order 12866.

Regulatory Flexibility Act

We certify that this final regulation will not have a significant economic impact on a substantial number of small entities, including small governmental jurisdictions. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This final regulation imposes no additional reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program No. 96.001 Social Security—Disability Insurance; 96.002 Social

Security—Retirement Insurance; and 96.004 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability insurance, Reporting and recordkeeping requirements, Social security.

Dated: May 18, 2001.

Larry G. Massanari,

Acting Commissioner of Social Security.

For the reasons set forth in the preamble, subpart M of 20 CFR part 404 is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart M—[Amended]

1. The authority citation for subpart M of part 404 continues to read as follows:

Authority: Secs. 205, 210, 218, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 410, 418, and 902(a)(5)); sec. 12110, Pub. L. 99–272, 100 Stat. 287 (42 U.S.C. 418 note); sec. 9002, Pub. L. 99–509, 100 Stat. 1970.

2. A parenthetical is added to the end of sections 404.1203, 404.1204, 404.1214, 404.1215, 404.1216, 404.1220, 404.1225, 404.1237, 404.1239, 404.1242, 404.1243, 404.1247, 404.1249, 404.1251, 404.1265, 404.1271, 404.1272, and 404.1292 to read as follows:

(Approved by the Office of Management and Budget under control number 0960–0425.)

[FR Doc. 01–13242 Filed 5–24–01; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AK–01–003b; FRL–6986–4]

Clean Air Act Promulgation of Attainment Date Extension for the Fairbanks North Star Borough Carbon Monoxide Nonattainment Area, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a one-year extension of the attainment date for the Fairbanks North Star Borough (FNSB), Alaska nonattainment area for carbon monoxide (CO). FNSB failed to attain the National Ambient Air Quality Standards (NAAQS) for CO by the applicable attainment date of December 31, 2000. This action is based on EPA's evaluation of air quality monitoring data and the extension request submitted by

the Commissioner, Alaska Department of Environmental Conservation (ADEC) on March 29, 2001, in accordance with section 186(a)(4) of the Clean Air Act (CAA).

DATES: This action is effective on July 24, 2001 unless EPA receives adverse comments by June 25, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Connie Robinson, EPA, Region 10, Office of Air Quality, OAQ–107, 1200 Sixth Ave., Seattle, WA 98101. Copies of the documents relevant to this action are available for public inspection during normal business hours at EPA, Region 10, 1200 Sixth Ave., Seattle, WA 98101. Copies of the state documents relevant to this action are available for public inspection at the Alaska Department of Environmental Conservation, 410 Willoughby, Suite 303, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT:

Connie Robinson, EPA, Region 10, Office of Air Quality, OAQ–107, 1200 Sixth Ave., (206) 553–1086.

SUPPLEMENTARY INFORMATION:

Throughout this document, wherever “we,” “us,” or “our” is used, we mean the Environmental Protection Agency (EPA). This supplementary information is organized as follows:

- I. Background
 - A. Designation and Classification of CO Nonattainment Areas.
 - B. How Does EPA Make Attainment Determinations?
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- II. EPA's Action
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 - A. Air Quality Data
 - B. Compliance with the Applicable SIP
 - C. Substantial Implementation of Control Measures
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I. Background

A. Designation and Classification of CO Nonattainment Areas

Upon enactment of the 1990 CAA Amendments, areas meeting the requirements of section 107(d) of the CAA were designated nonattainment for CO by operation of law and classified either “moderate” or “serious.” Moderate CO nonattainment areas with

a design value between 9.1–16.4 parts per million (ppm), were expected to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995. Serious CO nonattainment areas with a design value between 16.5 ppm and above were expected to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 2000.

States containing areas designated as either moderate or serious for CO had the responsibility of developing and submitting to EPA State Implementation Plans (SIPs) which addressed the nonattainment air quality problems in those areas. EPA issued general guidance concerning the requirements for SIP submittals, which included requirements for CO nonattainment area SIPs, pursuant to Title I of the Act, (see generally 57 FR 13489 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). The air quality planning requirements for CO nonattainment areas are set out in sections 186–187 respectively of the CAA, which pertain to the classification of CO nonattainment areas and submission of SIP requirements for these areas.

B. How Does EPA Make Attainment Determinations?

EPA has the responsibility for determining whether a nonattainment area has attained the CO NAAQS by the applicable attainment date. We have the responsibility of making attainment determinations for CO nonattainment areas by no later than six (6) months after the applicable attainment date for the areas. We make 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." We 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 at established state and local air monitoring stations (SLAMS) and entered into the Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined to meet federal monitoring requirements (see 40 CFR 50.8, 40 CFR part 50, appendix C, 40 CFR part 53, 40 CFR part 58, appendix A & B) 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, may be used to determine the attainment of areas. CO design values are discussed in terms of the 8-hour CO NAAQS. The CO NAAQS requires that not more than one, 8-hour average per year can exceed 9.0 ppm (greater than 9 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 and that there were at least 2 values above the standard (9.0 ppm) during 1 of the 2 years being reviewed at a particular monitoring site. Thus, the standard was not met.

C. What Are the CAA Requirements for an Attainment Date Extension That Apply to FNSB?

Pursuant to section 186(a)(4) of the Act, if a State containing a CO nonattainment area does not have 2 consecutive years of clean air quality data to demonstrate that the area has attained the CO NAAQS, the State may apply for a one year extension of the attainment date. EPA may extend the attainment date for one additional year only 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 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 in a serious CO nonattainment area by its attainment date and does not apply, or does not qualify for an attainment date extension, the area will be determined by EPA to have failed to attain the standard and the State must submit a plan revision pursuant to section 187(g) of the CAA.

The authority delegated to the Administrator to extend attainment dates for serious 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 we grant extensions to such areas. In exercising this discretionary authority for serious CO nonattainment areas, we will examine the air quality planning progress made in the serious CO nonattainment area. We will also be

disinclined to grant an attainment date extension unless a State has, in substantial part, addressed the applicable CO nonattainment area planning obligations for the area. In order to determine whether the State has substantially met these planning requirements, we will review the State's application for the attainment date extension to determine whether the State has: (1) Adopted and substantially implemented control measures to satisfy the requirements for the serious CO nonattainment area; and (2) demonstrated that reasonable further progress (RFP) is being met for the area as defined by section 171(1) of the CAA.

If the State cannot make a sufficient demonstration that the area has complied with the extension criteria stated above, the area will be required to submit a plan revision within 9 months of this determination by EPA in the **Federal Register** pursuant to section 187(g) of the CAA. If an attainment date extension is granted for the area, at the end of the extension year, we will again determine whether the area has attained the CO NAAQS. If the requisite 2 consecutive years of clean air quality data needed to demonstrate attainment are not met, the State will be required to submit a plan revision for the area pursuant to section 187(g) of the CAA.

II. EPA's Action

A. What Is EPA Approving?

In response to a request from the Commissioner, ADEC, we are, by today's action, granting a 1-year attainment date extension for the FNSB CO nonattainment area. This action extends the attainment date from December 31, 2000, to December 31, 2001. The action to extend the attainment date for FNSB is based on monitored air quality data for the CO NAAQS for calendar year 2000.

B. What Is the History Behind This Approval?

FNSB was designated nonattainment for CO by operation of law upon enactment of the 1990 CAA Amendments. Under 186(a) of the Act, each CO area designated nonattainment was also classified by operation of law as either "moderate" or "serious" depending on the severity of the area's air quality problem. States containing areas that were classified as moderate nonattainment were required to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995. If a moderate CO nonattainment area was unable to attain the CO NAAQS by December 31, 1995, the area was reclassified as a serious

nonattainment area by operation of law. FNSB was reclassified as a serious nonattainment area by operation of law effective March 30, 1998 (see 63 FR 9945, February 27, 1999). As a result of the reclassification, FNSB was to demonstrate attainment of the CO NAAQS as expeditiously as practical but no later than December 31, 2000, the CAA attainment date for all serious CO areas.

As noted above, EPA has the responsibility for determining whether a nonattainment area has attained the CO NAAQS by the applicable 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. Notwithstanding significant efforts by the State of Alaska to demonstrate attainment, the State has failed to meet the December 31, 2000 deadline. We are now approving an extension of the attainment date to December 31, 2001. As we explain more fully below, we believe the extension is warranted under CAA section 186(a)(4).

III. Basis for EPA's Action

A. Air Quality Data

We are using data from calendar year 2000 to determine whether the area met the air quality criteria for granting a 1-year extension to the attainment date under section 186(a)(4)(B) of the CAA.

The FNSB operates three CO monitors: Federal Building/2nd & Cushman, State Office Building/675 7th Avenue, and Hunter Elementary/17th & Gilliam Way. Sampling at these sites is conducted every day. Data was submitted by Alaska to be included in AIRS and the data was deemed valid by EPA.

In calendar year 2000, one exceedance occurred on February 8, 2000, at the Federal Building/2nd & Cushman site and one exceedance occurred on February 8, 2000, at the State Office Building/675 7th Avenue. The 8-hour CO NAAQS average was 11.5 and 9.7 respectively. Neither of these monitoring stations exceeded the CO standard a second time during calendar year 2000. Therefore, no violation of CO NAAQS occurred during 2000. The area has met one of the requirements to qualify for an attainment date extension under section 186(a)(4).

B. Compliance With the Applicable SIP

The State of Alaska submitted CO SIP revisions to comply with the CAA on July 11, 1994 and we approved the revisions effective June 5, 1995 (see 60 FR 17232, April 5, 1995). Alaska submitted three additional SIP revision

packages on February 6, 1997, June 1, 1998, and September 10, 1998 (see 64 FR 72940, December 29, 1999). The approved SIP control strategies consist of controls for stationary and area sources of CO emissions. Based on the milestone report the State submitted with their extension request, we believe that Alaska is in compliance with the requirements and commitments in the applicable implementation plan that pertains to the FNSB CO nonattainment area. The milestone report indicates that Alaska has implemented and continues to operate its adopted emission control measures. The predominant source of CO emission in the nonattainment area is motor vehicles. The moderate CO area SIP focuses on control strategies to reduce CO from motor vehicles. These control measures consist of the federal emission controls required for new vehicles, and the Inspection/Maintenance (I/M) program. The contingency measure adopted for FNSB was an enhanced repair technician training and certification program as an element of the I/M program. This program element was triggered when Fairbanks failed to attain by the moderate area deadline of December 31, 1995, and has been fully implemented. All current control strategies are being maintained.

C. Substantial Implementation of Control Measures

The State of Alaska has developed and implemented substantial control measures for the FNSB nonattainment area for the serious CO SIP to be submitted. Improvements to the vehicle I/M program which have already been submitted to EPA will be incorporated into the serious area plan. These include improved test equipment and procedures which increase accuracy of CO emissions measurements and pass/fail determinations; quality assurance and quality control procedures which result in a lower rate of fraudulent and erroneous tests; more stringent repair requirements which reduce the number of repair cost waivers; an increase in vehicle-related enforcement efforts by ADEC; and a vehicle sticker program to show compliance with I/M program requirements.

FNSB has been working toward reducing cold starts through the use of engine block heaters/electrical plug-ins. Recent testing programs have shown plug-ins provide a substantial reduction in motor vehicle cold start emissions. The Borough has increased the number of parking spaces equipped with electrical outlets in the 1995–2000 period. This has been achieved by retrofitting existing public facilities and

including outlets in all new public facilities. It has also been achieved by encouraging the private sector to retrofit existing facilities and to include outlets in new private facilities. This effort has resulted in 786 additional spaces equipped with electrical outlets, an increase of about 12 percent. In contrast, data from the Alaska Department of Transportation and Public Facilities (ADOT&PF) indicate that travel increased by only 3.1% in the same 1995–2000 period. This trend is expected to continue using Congestion Mitigation Air Quality (CMAQ) funds that FNSB has secured from the Federal Highway Administration for retrofitting additional public parking spaces.

FNSB has shown a commitment to modifying public behavior through outreach efforts. Initially, they began informing the public of air quality alerts when CO forecasts indicated that the 9 ppm 8-hour average was likely to be exceeded. As part of the alert, the public is encouraged to minimize driving, plug in their vehicles, and use transit when possible. Additional outreach efforts urge citizens to plug in at warmer temperatures informing them of the benefits to the air and to their vehicles through reduced maintenance. Public service announcements have also warned the public of increased enforcement activities for violators of the I/M program. Public outreach advertising free bus rides during the CO season in 2000/2001 was quite successful and ridership increased 72% in 2000.

Over the past 5 years 11 separate highway improvement projects were completed. The projects focused primarily on intersection and signalization improvements. Several projects were also focused on roadway upgrades and reconstruction. ADOT&PF estimates that the combined effort of these improvements increases speeds in the nonattainment area by 0.2 miles per hour.

D. Reasonable Further Progress

The historical trend in the FNSB's air quality has been toward lower CO levels. CO concentrations have decreased from a second-high 8-hour average of 19.0 ppm and 45 violations in 1983, to a second-high 8-hour average of 8.9 ppm and zero violations in calendar year 2000. The continued improvement in CO concentrations in the FNSB of 32% CO emission reduction projected between 1995 and 2000, has been achieved mainly by emission reductions resulting from turnover of the vehicle fleet and required vehicle repairs and maintenance under the I/M program.

These control measures and emission reductions are permanent and enforceable.

The implementation of the enhanced I/M, combined with the Federal Motor Vehicle Control Program; the continuation of the program of retrofitting public parking lots with electrical outlets; and the recent free transit program along with an expanded public awareness program is expected to result in further decreases in CO emissions and ambient concentrations in the FNSB. Based on the above, EPA believes that RFP toward attainment of the CO NAAQS has been demonstrated.

IV. Summary of Action

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 FNSB CO nonattainment area from December 31, 2000, to December 31, 2001.

EPA is publishing this action without prior proposal because the Agency views this action as noncontroversial and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the extension should adverse comments be filed. This action will be effective July 24, 2001 without further notice unless we receive relevant adverse comment by June 25, 2001. If EPA receives such comments, then this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. 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 July 24, 2001.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves a state request for an attainment date extension. Accordingly, the Administrator certifies 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.*). Because this rule does not impose any enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state request for an attainment date extension and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary

steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 24, 2001 unless EPA receives adverse written comments by June 25, 2001.

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 July 24, 2001. 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: May 16, 2001.

Charles Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 01-13273 Filed 5-24-01; 8:45 am]

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