

a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center (6102), 401 M Street, S.W., Washington, D.C. 20460, or by calling (202) 260-7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Szykman or Mr. Anthony Wayne, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-2452 (Szykman) or (919) 541-5439 (Wayne).

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule, and the direct final rule in the final rules section of this Federal Register will automatically go into effect on the date specified in that rule. If significant adverse comments are timely received, the direct final rule will be withdrawn, and all public comment received will be addressed in a subsequent final rule. Because the EPA will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule provisions, see the information provided in the direct final rule in the final rules section of this Federal Register.

Administrative

A. Regulatory Impact Analysis

This rule was classified "non-significant" under Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget.

B. Impact on Reporting Requirements

The information collection requirements of the previously promulgated rule for Regulations Governing Equivalent Emission Limitations by Permit were submitted to and approved by the Office of Management and Budget. A copy of this Information Collection Request (ICR) document (OMB control number 2060-0266) may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2136), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, or by calling (202) 260-2740. Today's proposed revisions to the deadline for submittal of section 112(j) permit applications does not affect the information collection burden estimates made previously. Therefore, the ICR has not been revised.

C. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this proposed rulemaking imposes no economic impacts, adverse or otherwise, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

D. Reduction of Governmental Burden

Executive Order 12875 ("Enhancing the Intergovernmental Partnership") is designed to reduce the burden to State, local, and Tribal governments of the cumulative effect of unfunded Federal mandates. The Order recognizes the need for these entities to be free from unnecessary Federal regulation to enhance their ability to address problems they face and provides for Federal agencies to grant waivers to these entities from discretionary Federal requirements. The Order applies to any regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government. The EPA anticipates that there will be no additional cost burden imposed on State, local, and Tribal governments as a result of today's action. Indeed, the purpose of the action is to reduce unnecessary burden on permitting agencies.

E. Environmental Justice

Executive Order 12898 requires that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. Today's action will help ensure timely compliance and the application of consistent regulatory requirements by allowing the section 112(d) MACT standards to become effective without triggering an unnecessary section 112(j) process. Therefore, no adverse human health or environmental effects are anticipated as a result of today's action.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), the 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, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 3, 1996.
Carol M. Browner,
Administrator.
[FR Doc. 96-11738 Filed 5-9-96; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 81

[AZR92-0004; FRL-5503-8]

Clean Air Act Reclassification; Arizona-Phoenix Nonattainment Area; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to find that the Phoenix, Arizona carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standard (NAAQS) by the Clean Air Act (CAA) mandated attainment date for moderate nonattainment areas, December 31, 1995. 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 Phoenix 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 June 10, 1996.

ADDRESSES: Written comments should be sent to: Wallace Woo, Chief, Plans Development Section, A-2-2, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105.

The rulemaking docket for this notice, Docket No. 96-AZ-PL-002, 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 and Toxics Division, Plans Development Section, A-2-2, 75 Hawthorne Street, San Francisco, California 94105.

Copies of the docket are also available at the State office listed below: Arizona Department of Environmental Quality, Library, 3033 North Central Avenue, Phoenix, Arizona 85012.

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

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation and Classifications

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 Phoenix 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 Phoenix 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, 1995.¹

B. Reclassification to a Serious Nonattainment Area

EPA has the responsibility, pursuant to sections 179(c) and 186(b)(2) of the CAA, of determining, within six months of the applicable attainment date whether the Phoenix 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 failed to attain the standard and therefore must be reclassified as serious by operation of law.

EPA makes attainment determinations for CO nonattainment areas based upon whether an area has two years (or eight consecutive quarters) of clean air quality data.² Section 179(c)(1) of the Act states that the attainment determination must be based upon an area's "air quality as of the attainment date." Consequently, EPA will determine whether an area's air quality has met the CO NAAQS by December 31, 1995 based upon the most recent two years of air quality data entered into the Aerometric Information Retrieval System (AIRS) data base.

EPA determines a CO nonattainment area's air quality status in accordance with 40 CFR part 50.8 and EPA policy.³

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 Phoenix area in 1994 and 1995, this notice addresses only the air quality status of the Phoenix 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 9.0 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 year constitutes a violation of the CO NAAQS.

C. 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.

II. Today's Action

By today's action, EPA is proposing to find that the Phoenix CO nonattainment area has 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 1994 and 1995.

A. Ambient Air Monitoring Data

The following table lists each of the monitoring sites in the Phoenix CO nonattainment area where the 8-hour CO NAAQS has been exceeded during 1994 and 1995.

¹ 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 Phoenix area has a design value below 12.7 ppm. 40 CFR part 81.303.

² 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).

³ 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.

EXCEEDANCES OF 8-HOUR CO NAAQS FOR PHOENIX NONATTAINMENT AREA

Monitoring site	1994		1995	
	Concentration	Date	Concentration	Date
3847 W. Earll Drive	9.6 ppm	12/3	None recorded.	
	10.0 ppm	12/17	None recorded.	
1845 E. Roosevelt Street	9.7 ppm	12/17	None recorded.	
2710 N.W. Grand Avenue			None recorded.	
			9.89 ppm	11/23
			10.23 ppm	12/2
			9.5 ppm	12/3
3315 W. Indian School Road	9.7 ppm	12/2	10.1 ppm	12/2
	10.4 ppm	12/3	9.5 ppm	12/3
	10.5 ppm	12/17		

1. 1994 Data

In a March 1995 letter to EPA,⁴ Arizona requested that the 1994 exceedances of the CO NAAQS at the West Indian School Road monitoring site be "flagged" as affected by "exceptional events" as those terms are defined in EPA guidance.⁵ In the same letter, the State requested that the December 17, 1994 exceedance at the West Earll Drive monitoring site be invalidated because that monitor had failed an audit. In response, EPA requested more information to evaluate the exceptional event claims at the West Indian School Road monitoring site and disapproved the State's request to invalidate the December 17, 1994 exceedance at the West Earll Drive monitoring site.⁶

In response to EPA's request for more information, on March 25, 1996, the Arizona Department of Environmental Quality (ADEQ) submitted to EPA additional documentation, prepared by the Maricopa Association of Governments (MAG), on the West

Indian School Road exceedances.⁷ On April 12, 1996, EPA responded to ADEQ's submittal by concluding that MAG's claims that these 1994 exceedances were affected by exceptional events (unusual traffic conditions and air stagnation conditions) were not supported by the submitted documentation. EPA stated that minor traffic accidents are common in any metropolitan area and that air stagnation conditions routinely occur during the CO season in the Phoenix area. See letter from David P. Howekamp, EPA, to Russell Rhoades, ADEQ, April 12, 1996.

Furthermore, as demonstrated in the table above, even if the West Indian School Road exceedances were deemed to be exceptional events and ultimately rejected for use in the Phoenix area's attainment status determination, there would still be two exceedances in 1994 at West Earll Drive since EPA disapproved the State's request to invalidate the December 17, 1994 exceedance. As discussed in section I.B. of this notice, the second exceedance at a given monitoring site in the same year constitutes a violation. Therefore, based on the 1994 data alone, EPA has concluded that the Phoenix area cannot be deemed to have attained the CO NAAQS by December 31, 1995.

2. 1995 Data

As demonstrated by the above table, the monitoring data indicate that Phoenix area recorded violations of the CO NAAQS in 1995 at Grand Avenue (three exceedances) and West Indian School Road (two exceedances). To date, the State has made no claims to EPA that the exceedances recorded at these monitoring sites are invalid for the purpose of determining the area's attainment status. However, EPA is aware that there have been ongoing communications between ADEQ and

MAG regarding potential exceptional events claims for all except one of these exceedances (December 3, 1995 at West Indian School Road).⁸ MAG has recommended that ADEQ flag all 1995 exceedances at Grand Avenue and the December 2, 1995 exceedance at West Indian School Road as being affected by traffic accidents, freeway ramp closures, meteorological considerations, and other events. In response, ADEQ stated that in order to meet EPA's Exceptional Event Guideline, MAG would have to submit appropriate documentation demonstrating a causal relationship between the events and measured air quality, and referred MAG to EPA's November 27, 1995 letter on the appropriate documentation regarding traffic accidents. EPA concurs with ADEQ's assessment and refers the reader for further detail to the correspondence between MAG and ADEQ.

Based on the MAG/ADEQ correspondence, EPA believes that the 1995 exceedances are valid for use in determining the attainment status of the Phoenix area. EPA is therefore proposing to find, based on the 1994 and 1995 CO violations discussed above, that the area did not attain the CO NAAQS by December 31, 1995. Similarly, because of the 1995 violations, EPA does not believe that the area could qualify for a one year extension of the attainment deadline.⁹

⁸ See e.g., letter from Roger A. Herzog, MAG, to Russell F. Rhoades, ADEQ, February 22, 1996; letter from Nancy Wrona, ADEQ, to John DeBolske, MAG, March 29, 1996.

⁹ On March 11, 1996, MAG requested that ADEQ flag as affected by exceptional events (unusual traffic conditions and meteorological considerations) CO NAAQS exceedances on January 10 and 13, 1996 at Grand Avenue. See letter from Roger A. Herzog, MAG, to Russell F. Rhoades, ADEQ, March 11, 1996, attached to letter from Russell F. Rhoades to David Howekamp, March 25, 1996. In its March 25, 1996 letter to EPA, ADEQ submitted documentation from MAG in support of these claims. These 1996 exceedances, while lending additional support to EPA's proposed

⁴ See letter from Edward Z. Fox, Director, Arizona Department of Environmental Quality to David P. Howekamp, Director, Air & Toxics Division, EPA, Region IX, March 31, 1995.

⁵ EPA has established criteria and procedures to identify or flag data which may be affected by exceptional events (e.g., structural fires or industrial accidents) in its "Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events," July 1986. Under the flagging system, state and local air pollution control agencies are responsible for initially identifying and documenting data influenced by exceptional events. These agencies are expected to develop the appropriate background information necessary to support a decision to flag an individual piece of data. The agencies must then submit the information to EPA for concurrence. Flagging a piece of data or data set does not exclude that data from being used for nonattainment designations or classifications. The actual exclusion would only be allowed if, as a result of a public review process, the responsible government agency, in this case EPA, determines that the data are inappropriate for use in a specific regulatory activity.

⁶ See letter from David P. Howekamp, Director, EPA, to Russell F. Rhoades, Director, Arizona Department of Environmental Quality, November 27, 1995.

⁷ See letter from Russell F. Rhoades, ADEQ, to David Howekamp, EPA, March 25, 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 Phoenix 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 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 Phoenix 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"

finding of failure to attain based on the 1994 and 1995 data, are relevant to today's proposal in only one respect. If EPA were to conclude that the Phoenix area qualified for a one year extension of the attainment date, the 1996 exceedances, if validated as a NAAQS violation, would prevent the area from obtaining a second one year extension. As stated above, EPA does not believe the Phoenix area can qualify for the first extension. Moreover, EPA does not believe that the 1996 exceedances were affected by exceptional events. See letter from David P. Howekamp, EPA to Russell Rhoades, ADEQ, April 12, 1996. Therefore, the 1996 data are not addressed further in this notice.

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.

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.

Clean Air Act Reclassification; Arizona-Phoenix; Carbon Monoxide 14 EPA believes, as discussed above, that the proposed finding of failure to attain and reclassification of the Phoenix 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. sections 7401-7671q.

Dated: April 29, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96-11739 Filed 5-9-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Parts 148, 261, 268, 271

[FRL-5503-4]

RIN 2050-AE05

Land Disposal Restrictions Phase IV Proposed Rule—Issues Associated With Clean Water Act Treatment Equivalency, and Treatment Standards for Wood Preserving Wastes and Toxicity Characteristic Metal Wastes; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: Since publication of the Land Disposal Restrictions (LDR) Phase IV proposal (60 FR 43654, August 22, 1995), EPA has received additional information which will be considered in developing its final rule. The public has 30 days from publication of this notice to comment on that additional information. Readers should note that only comments about the new information discussed in this notice will be considered during the comment period; issues proposed in the August 22, 1995 Phase IV rule, and in the Phase IV Supplemental Proposal on mineral processing wastes (61 FR 2338, January 25, 1996), that are not discussed in this Notice of Data Availability, are not open for further comment.

DATES: Comments are due by June 10, 1996.

ADDRESSES: To submit comments, the public must send an original and two copies to Docket Number F-96-P42A-