(1) *Financial requirements.* A lender must submit, within 120 days following the end of its fiscal year, an audited and certified financial statement with a classified balance sheet or a separate footnote for adjusted net worth to VA Central Office (264) for review. The same minimum financial requirements described in § 36.4348(b)(5) must be maintained and verified annually in order to be recertified for automatic authority.

(2) *Processing annual lender data.* The VA regional office having jurisdiction for the lender's corporate office will mail an annual notice to the lender requesting current information on the lender's personnel and operation. The lender is required to complete the form and return it with the appropriate annual renewal fees to the VA regional office.

(Authority: 38 U.S.C. 501(a), 3702(d))

(e) *Lender fees.* To participate as a VA automatic lender, non-supervised lenders of the class described in 38 U.S.C. 3702(d)(3) shall pay fees as follows:

(1) $500 for new applications;

(2) $200 for reinstatement of lapsed or terminated automatic authority;

(3) $100 for each underwriter approval;

(4) $100 for each agent approval;

(5) A minimum fee of $100 for any other VA administrative action pertaining to a lender's status as an automatic lender;

(6) $200 annually for certification of home offices; and

(7) $100 annually for each agent renewal.

* * * * *

5. In § 36.4349, paragraph (a)(2) is revised and a parenthetical is added at the end of the section to read as follows:

§ 36.4349 Withdrawal of authority to close loans on the automatic basis.

(a)(l) * * *

(2) Automatic-processing authority may be withdrawn at any time for failure to meet basic qualifying and/or annual recertification criteria.

(i) *Non-supervised lenders.* (A) Automatic authority may be withdrawn for lack of a VA-approved underwriter, failure to maintain $50,000 in working capital or $250,000 in adjusted net worth, or failure to file required financial information.

(B) During the 1-year probationary period for newly approved lenders, automatic authority may be temporarily or permanently withdrawn for any of the reasons set forth in this section regardless of whether deficiencies previously have been brought to the attention of the probationary lender.

(ii) *Supervised lenders.* Automatic authority will be withdrawn for loss of status as an entity subject to examination and supervision by a Federal or State supervisory agency as required by 38 U.S.C. 3702(d).

(Authority: 38 U.S.C. 501(a), 3702(d))

* * * * *

(The information collection requirements in this section have been approved by the Office of Management and Budget under control numbers 2900–0574)

[FR Doc. 98–6411 Filed 3–11–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[WA 54–7127; FRL–5975–8]

Clean Air Act Reclassification; Spokane, Washington Nonattainment Area, Carbon Monoxide

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this document, EPA is making a final determination that the Spokane, Washington carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standard (NAAQS) under the Clean Air Act (the Act). 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 Spokane, Washington nonattainment area is reclassified as a serious CO nonattainment area by operation of law. The result of the reclassification is to establish a period of 18 months from the effective date of this action for the State of Washington to submit a new State Implementation Plan (SIP) demonstrating attainment of the CO NAAQS as expeditiously as practical but no later than December 31, 2000, the attainment date for serious areas under the Act.

EFFECTIVE DATE: This action is effective on April 13, 1998.

FOR FURTHER INFORMATION CONTACT: William M. Hedgebeth, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, M/S OAQ–107, Seattle, Washington 98101, telephone (206) 553–7369.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designations and Classifications

The Clean Air Act Amendments of 1990 (CAAA) were enacted on November 15, 1990. Under Section 107(d)(1)(C) of the CAAA, each CO area designated nonattainment prior to enactment of the CAAA, such as the Spokane, Washington area, was designated nonattainment by operation of law upon enactment of the CAAA. 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 Spokane 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.[1] Moderate areas failing to attain the CO NAAQS by that deadline are reclassified to serious, by operation of law.

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 (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 Sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1) of the Act. Finally, upon the effective date of this reclassification, contingency measures in the moderate area plan for the Spokane nonattainment area must be implemented.

[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 Spokane area has a design value below 12.7 ppm. 40 CFR 81.348.

C. Proposed Finding of Failure To Attain

On July 1, 1996, EPA proposed to find that the Spokane, Washington CO nonattainment area had failed to attain the CO NAAQS by the applicable attainment date. 61 FR 33879. This proposed finding was based on CO monitoring data collected at the 3rd and Washington monitoring site in downtown Spokane during the years 1994 and 1995. These data demonstrate violations of the CO NAAQS in 1995. For the specific data considered by EPA in making this proposed finding, see 61 FR 33879, July 1, 1996.

D. Reclassification to a Serious Nonattainment Area

EPA has the responsibility, pursuant to Sections 179(c) and 186(b)(2) of the Act, of determining whether the Spokane area has attained the CO NAAQS. Under Section 186(b)(2)(A), if EPA finds that the area has not attained the CO NAAQS, it is reclassified as serious by operation of law. Pursuant to Section 186(b)(2)(B) of the Act, EPA must publish a document in the **Federal Register** identifying areas which failed to attain the standard and therefore must be reclassified as serious by operation of law.

EPA makes attainment determinations for CO nonattainment areas based upon 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 determines whether an area's air quality has met the CO NAAQS by the required date based upon the most recent two years of air quality data.

EPA determines a CO nonattainment area's air quality status in accordance with 40 CFR 50.8 and EPA policy.[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 Spokane area, this document addresses only the air quality status of the Spokane 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 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. In the case of Spokane, EPA finds there were four violations of the CO NAAQS recorded in 1995. Based on EPA's review of all of the information assembled to evaluate the monitor location and other information, EPA finds that the recorded violations show that the area failed to attain the CO NAAQS by December 31, 1995.

II. Response to Comments on Proposed Finding

In response to its July 1, 1996, proposal, EPA received a number of comments from the state and local governments, industry and local businesses, public interest organizations, and private citizens from the Spokane area. Below is EPA's response to all substantive comments received, and detailed response to each comment is included in the docket for this rulemaking.

1. A number of commenters had concerns that the location of the monitor which recorded the violations of the CO NAAQS produced unusual results, and that the conditions contributing to higher CO concentrations at the 3rd and Washington site are significantly different from those causing CO concentrations at other monitoring sites. One commenter noted that CO concentrations drop significantly in all directions moving away from the monitoring station, even at those intersections with higher traffic and poorer levels of service. A commenter stated that the lack of higher CO concentrations as traffic moves eastward would indicate vehicle congestion on Third Avenue, while a contributor to background concentrations, is not causing the higher readings recorded at the monitor. Another commenter believed it was necessary to conduct a microinventory emissions inventory to see if other sources in the area of the monitor at 3rd and Washington could be contributing to exceedances. A commenter wrote that EPA's recent technical audit of the monitor having the violations in 1995 failed to provide information related to the causes of the violation. A commenter believes that, without an accurate inventory of Btu output during these conditions it would be premature to determine the cause of violations or begin developing SIP control strategies in the event of reclassification.

Response: It is generally recognized that carbon monoxide monitors, especially those measuring street canyons, will be strongly influenced by local conditions. So it is not unusual or unexpected for different locations in a CO nonattainment area to have different recorded CO levels because of conditions specific to those locations. It is the nature of carbon monoxide that levels at one monitor do not necessarily represent general levels within the entire city, and that locations within any specific large (city-size) geographic area may have widely differing concentrations. EPA has long recognized that ''the diversity of measured concentrations and the diversity of land use suggest that there may be no one station that is representative of the entire city. Therefore, stations should probably be chosen to represent various aspects of the city's CO concentration distribution.'' [4] EPA further recognized that ''. . . concentrations at 3 meters above a downtown street can change by several parts per million (or a factor of nearly 2) over distances of only a few tens of meters.'' [5] A Spokane County Air Pollution Control Authority survey of stationary sources in the downtown area around the 3rd/Washington monitor indicated minimal CO contribution from businesses, schools, and apartments in that area.

EPA agrees that understanding the causes of the CO violations is an important step in planning how to address CO in Spokane. However, the CAAA does not authorize EPA to delay a finding of failure to attain the NAAQS until after the exact causes of the violations have been identified.

EPA has been part of a cooperative effort to understand the causes of the violations and plan control strategies. EPA entered into a four-agency Memorandum of Agreement (the others being the the Spokane Regional Transportation Council, Spokane County Air Pollution Control Authority, and the Washington Department of Ecology), which is included in the docket for this rulemaking. The primary purpose of the Agreement was to coordinate additional studies to clarify why the 3rd and Washington monitor was recording high CO levels. The

[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.

[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.

[4] EPA Document EPA 450/3–75–077, Selecting Sites for Carbon Monoxide Monitoring, September 1975, I.A., Introduction, Monitoring Site Standards.

[5] EPA Document EPA 450/3–75–077, Selecting Sites for Carbon Monoxide Monitoring, September 1975, I.C., Introduction, Special Characteristics of Carbon Monoxide That Affect Monitoring Site Selection.

results of the work done since the proposed finding of failure to attain has increased EPA's confidence that the recorded violations were valid and provide the basis for making redesignation decisions.

2. Several commenters wrote that the CO Ambient Air Monitoring Station at 3rd and Washington in Spokane is not sited properly in accordance with applicable EPA guidelines. The following are EPA responses to specific points that were made in comments.

a. A commenter stated that the inlet is not located at a mid-block location as recommended by EPA guidance documents, but instead is located at a car dealership's service area entrance two thirds of the way down the block.

Response: EPA is satisfied that the inlet was located appropriately and consistent with EPA's regulations and guidance. The microscale inlet probes must be located at least 10 meters from an intersection (the probe was located at a measured 19.2 meters from intersection of 3rd and Washington). Mid block location for microscale sites is not mandatory. The sample probe location in relationship to its location within the block is within EPA's ''Appendix E'' guidelines, which can be found in the docket for this rulemaking.

b. Commenter stated that ''EPA siting criteria require an unrestricted airflow of at least 180 degrees around a sample probe located on the side of a building. There is an awning overhanging the service entrance to the car dealership and immediately adjacent (about one meter) to the probe. This awning will cause micro-scale eddies disturbing the airflow at the sample inlet.''

Response: EPA does not consider the awning an obstruction since the probe is located 1.1 meters below its underside. EPA believes that the unrestricted airflow requirements are being met, and that the inlet airflow is not unduly restricted.

c. Commenter wrote that ''EPA siting criteria also require placing probes to avoid introducing bias to the sample. With the sample probe inlet located immediately adjacent to the service area entrance and vehicle drop off zone, the sample is very likely affected by nearby CO emissions from the service area, the existing awning on the building and the building parking area overhang wake effect.''

Response: No evidence has been provided that placement of the probe immediately adjacent to the service area entrance and vehicle drop off zone has unduly biased the monitor results. In addition, the exceedances at this monitor have occurred in the afternoon to early evening, when it would be much less likely for cars to be queuing up to enter the service center.

d. A commenter noted that while 3rd Street is a high volume arterial, the intersection being monitored is not among the City's 40 most congested intersections according to the Spokane Regional Transportation Council.

Response: The location of this monitor was selected by the State of Washington Department of Ecology based primarily on the results of a 1988–1989 saturation study which is included in the docket for this rule. While this intersection may not be the most congested intersection in the City, this does not negate the fact that exceedances have been registered at this monitor location, supporting the conclusion that other factors, combined with traffic congestion, have played a part in the resulting exceedances.

e. A commenter stated that ''the historical rationale for the site location appears to be a special purpose monitor, rather than a middle-scale street canyon monitor. This affects both the appropriate siting criteria and the use of the data in nonattainment decision and area boundaries.''

Response: The Washington Department of Ecology has designated this monitor as a special purpose monitor. That Agency has quality-assured the data from the monitor and entered the data from 1995 into EPA's Aerometric Information Retrieval System (AIRS) and has verified that the monitor meets the SLAMS (State and Local Air Monitoring Station) criteria of 40 CFR 58.13 and 58.22, and Appendices A and E of 40 CFR Part 58. The monitor is specifically identified in the State Implementation Plan approved by EPA as part of the Spokane carbon monoxide monitoring network. As noted above, EPA has determined that the monitor is properly sited for a microscale monitor and EPA has determined that the data is valid and appropriate for use in determining whether or not the Spokane CO nonattainment area attained the CO standard by December 31, 1995. See the response below on use of data from a special purpose monitor for attainment decisions.

f. One commenter wrote that ''what is apparent is an inordinate difference between average highs of CO in December 1995 and the highest CO measured during those days in December 1995 when CO standard exceedances were measured. For example, both December 11 and 12, 1995, had hourly highs between 19 and 22 ppm, while the average highs for the months of December were 6.5 and 7 ppm. This large disparity indicates abnormal or anomalous CO readings or sources rather than an exceedance of the CO standard from ordinary CO sources and meteorological conditions.''

Response: Since CO exceedances typically happen in times of inversions combined with periods of heavy traffic, the differences cited do not seem unusual. In times of unstable weather, when there is good air circulation, and especially when temperatures are above freezing, it would be expected that CO levels would be much lower because CO under such circumstances would tend to disperse fairly quickly. EPA does not agree with the commenter's conclusion that the disparity of readings over the month indicates a problem with the data.

g. A commenter stated that CH2M Hill, under contract to the Spokane Area Chamber of Commerce, concluded that the Third Avenue monitor may not be sited according to EPA's CO monitor location standards and CO probe placement criteria. Commenter further stated that CH2M Hill concluded that the configuration of and activities at one building at Third and Washington significantly contributed to high CO readings at the Third Avenue monitor.

Response: With regard to the proper citing of the monitor, as previously indicated, EPA has concluded that it was properly sited. With regard to the effect of one building at Third and Washington significantly contributing to high CO readings at the Third Avenue monitor, EPA agrees that such an effect is possible. The building, although only three stories tall, is the tallest building in that area of 3rd Avenue along the north side of Interstate 90. However, this does not affect the validity of the data registered at the monitor on 3rd Avenue during 1995. Rather, it is an issue which needs to be considered when identifying possible additional control measures to address the CO problem at this location.

3. Several commenters wrote that data from a special purpose monitor should not be used for designation or redesignation decisions. A commenter believes that ''after reviewing the audit report and sections of 40 CFR part 58, there is a legitimate question as to the appropriateness of using a microscale special purpose monitor for the purpose of making attainment/nonattainment decisions.'' Another commenter wrote that EPA's regulations at ''40 CFR 58.14(a) implies that the official State and Local Air Monitoring Sites (SLAMS) are more appropriately used for demonstration of attainment or nonattainment.'' Another commenter wrote that ''arguably, a case could be made that the 3rd and Washington

monitor meets the minimum criteria for a SLAMS site, but the language of 40 CFR 58.14(a) suggests that it is up to the discretion of the state (not EPA) to decide whether or not to use this special purpose monitoring data as the basis for such a significant decision as the status of attainment.'' Finally, a commenter stated that Spokane is the only CO nonattainment area facing imminent reclassification to ''serious'' on the basis of microscale special purpose monitoring data and that all of the other nonattainment areas facing imminent reclassification are doing so on the basis of NAMS or SLAMS data.

Response: EPA has considered data from microscale monitors or special purpose monitors for the purpose of making attainment/nonattainment decisions, and has not established any limitations on the use of data from properly sited monitors that has been validated. On the contrary, EPA has long indicated that ''air quality standards must be met on all scales* * *''[6] In addition, as indicated in a previous response, EPA has held that ''[i]n any large city there will be locations with widely differing concentrations, many of which are not representative of the city's general air quality. In fact, the diversity of measured concentrations and the diversity of land use suggest that there may be no one station that is representative of the entire city. Therefore, stations should probably be chosen to represent various aspects of the city's CO concentration distribution.''[7] EPA has further acknowledged that ''[t]he area presumed to be represented by a measurement may be relatively small, such as one side of a downtown street canyon* * *''[8] The CO NAAQS, 8-hour standard, requires that no place in the designated area exceed the standard. It cannot be determined if the area meets that standard unless it is determined that the standard is met on all scales.

The issue of the appropriateness of using special purpose monitors for making attainment/nonattainment determinations has been addressed by EPA previously, and recently EPA issued guidance on this subject. In a memo dated August 22, 1997, entitled ''Agency Policy on the Use of Special Purpose Monitoring Data,'' which is included in the docket for this rulemaking, by John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards, EPA wrote that ''[t]he Agency policy on the use of all special purpose monitoring data for any regulatory purpose, with the exception of fine particulate matter data (PM–2.5), is that all quality-assured and valid data meeting 40 CFR part 58 requirements must be considered within the regulatory process. This policy applies to all ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, lead and particulate matter (PM–10) special purpose monitors, whether the data are reported into the AIRS database or available through other means.''

EPA does not agree that 40 CFR 58.14(a) establishes that data for determining attainment must be measures at SLAMS or PSD stations. In this case, EPA is basing its determination on validated data from a special purpose monitor that has been set up as part of the State's monitoring network and specifically approved by EPA in the SIP. This section of EPA's regulations clearly anticipates the potential use of data other than that from SLAMS or PSD stations, and identifies the standards that the data must meet if used. Specifically, it states that ''[a]ny ambient air quality monitoring station other than a SLAMS or PSD station from which the State intends to use the data as part of a demonstration of attainment or nonattainment or in computing a design value for control purposes of the National Ambient Air Quality Standards (NAAQS) must meet the requirements for SLAMS described in § 58.22 and, after January 1, 1983, must also meet the requirements for SLAMS as described in § 58.13 and appendices A and E to this part.'' The State of Washington Department of Ecology has certified that the monitor which recorded the four CO exceedances during 1995 met those requirements. EPA has already noted that the State of Washington specifically included this monitor in the approved SIP as an official part of the monitoring network for this nonattainment area.

EPA does not agree that 40 CFR 58.14(a) authorizes State or Local agencies to decide whether to EPA may use data from a special purpose monitor that has been set up and specifically approved by EPA in the SIP for attainment determinations. Congress has authorized EPA, pursuant to Section 186(b)(2)(A) of the Clean Act, to make that determination based on valid data. As noted above, EPA recently clarified its policy on this subject in the Seitz memo issued on August 22, 1997, entitled ''Agency Policy on the Use of Special Purpose Monitoring Data.'' That memo clarifies that ''all special purpose monitoring data for any regulatory purpose, with the exception of fine particulate matter data (PM–2.5), [with] quality-assured and valid data meeting 40 CFR part 58 requirements must be considered within the regulatory process.''

4. Commenters were concerned that a reclassification is unnecessary and potentially counterproductive to the community's efforts to achieve long term attainment. One commenter asserted that reclassification is not necessary for Spokane to achieve long-term air quality goals. Another commenter was concerned that reclassification carries consequences which may be unintended but which severely limit the City's ability to attract new business and meet demands for public services. One commenter believed that reclassification will distract members of the general public, business community, local government and regulatory agencies when our efforts should be more focused on implementing measures we all agree can and should be implemented.

Response: Congress established in Section 186(b)(2) of the Act that the Administrator of EPA is to make a determination whether the CO nonattainment area attained the CO NAAQS by December 31, 1995. That determination is based on available, verified data. If a determination is made that the area did not attain the CO NAAQS, the reclassification is made as a matter of law. The Act offers no flexibility for this requirement. The intent of the law is to ensure that the community achieve long term maintenance of this health-based standard. Congress also established in the Act certain SIP requirements for serious CO nonattainment areas and a schedule for submittal of the SIP after EPA makes the determination that the area failed to attain the CO standard.

EPA supports the efforts already made by the Washington Department of Ecology, Spokane County Air Pollution Control Authority, and the Spokane Regional Transportation Council, and the commitments made by those agencies, with the expectation that the efforts already underway or in the planning stages will result in attainment and maintenance of the CO NAAQS in the future. EPA acknowledges the commenter's concern that reclassification to serious will be counterproductive to the community's efforts to achieve long term maintenance of the CO NAAQS. However, the planning and implementation of control

[6] EPA Document EPA 450/3–75–077, Selecting Sites for Carbon Monoxide Monitoring, September 1975, II.C., Deciding the Type of CO Measurements That Are To Be Made, Relative Importance of the Different Scales of Measurement.

[7] EPA Document EPA 450/3–75–077, Selecting Sites for Carbon Monoxide Monitoring, September 1975, I.A., Introduction, Monitoring Site Standards.

[8] EPA Document EPA 450/3–75–077, Selecting Sites for Carbon Monoxide Monitoring, September 1975, I.B., Introduction, Philosophy of Approach.

strategies resulting from the reclassification will incorporate control measures developed by representatives of the community to supplement those measures already in place and working to decrease the level of CO emissions in the nonattainment area. The process prescribed by state and federal law provides that the general public, business community, local government and regulatory agencies will work together to identify measures they agree can and should be implemented. This is already occurring, as evidenced by the Technical Advisory Committee convened by the Spokane County Air Pollution Control Authority to develop recommended transportation control measures to address the remaining CO problems in Spokane. As previously indicated, most of the control measures needed for the Spokane area to meet the national CO standard are already in place.

5. A commenter wrote that ''EPA is required to respond to Executive Order 12866 determining whether regulatory action is significant. It is also required to respond to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, assessing the impact of any proposed or final rule on small entities. Finally, EPA is required by the Unfunded Mandates Act of 1995 to assess whether various actions undertaken in association with proposed or final rule making include a federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State and local governments in the aggregate.'' The commenter further stated that ''EPA's findings regarding these requirements are based upon a remarkably narrow construction of the language and violate the intent of the EO and respective statues. There will almost certainly be adverse economic impacts due to a reclassification. From recruiting new business to the area, to business retention and enhancing the vitality of our downtown core, the stigma of a serious designation will affect our ability to compete.''

Response: A finding of failure to attain (and consequent reclassification by operation of law of the nonattainment area) under section 186(b)(2) of the Act, and the establishment of a SIP submittal schedule for a reclassified area, do not, in and of themselves, directly impose any new requirements on small entities. Congress established in the Act certain requirements that become effective once EPA makes findings of failure to attain based upon air quality considerations. Under section 182(b)(2), once EPA determines that air quality data shows a CO nonattainment area failed to meet the NAAQS, reclassification of the area to ''serious'' must occur by operation of law. As discussed more fully below in the section on Administrative Requirements, EPA believes that the reclassification action complies with the requirements cited by the commenter. This rulemaking simply makes a factual determination, and merely establishes a schedule for submittal of certain SIP requirements established by Congress in the Act that are automatically triggered. Therefore, the findings of failure to attain and reclassification, or the establishment of a new SIP submittal schedule, cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities as identified by E.O. 12866. Similarly, this rulemaking simply makes a factual determination and establishes a SIP submission schedule, and does not directly regulate any entity. Therefore, this action will not have a significant impact on a substantial number of small entities within the meaning of the those terms for the RFA. As for the Unfunded Mandates Reform Act, the discussion below explains why the UMRA does not apply to this action.

6. A commenter stated that Spokane should be classified ''serious.'' Real change is needed. The basic issue is public health.

Response: EPA agrees with the commenter that the data supports the reclassification of the area to ''serious.'' The CO NAAQS is health-based, and the CAAA mandates attainment of that standard by specific dates. EPA's decision is based data showing that the standard was not met by December 31, 1995.

III. Today's Action

EPA is today taking final action to find that the Spokane CO nonattainment area did not attain the CO NAAQS by December 31, 1995, the attainment date for moderate CO nonattainment areas identified in the Act. This finding is based upon air quality data showing exceedances of the CO NAAQS during 1994 and 1995, resulting in a violation of the NAAQS during 1995. As a result of this finding, the Spokane CO nonattainment area is reclassified by operation of law as a serious CO nonattainment area as of the effective date of this document. This reclassification establishes that the State has eighteen months from the date of this notice to submit SIP revisions, and that the State must implement the CO contingency measures in the approved SIP.

IV. 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 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 above, a finding of failure to attain (and consequent reclassification by operation of law) of the nonattainment area under section 186(b)(2) of the CAA, and the establishment of a SIP submittal schedule for a reclassified area do not in-and-of-themselves create any new requirements on small entities. Instead,

this rulemaking simply makes a factual determination and establishes a schedule to require States to submit SIP revisions, and does not directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA reaffirms its certification made in the proposal that today's action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

VI. Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates ''any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more'' in any 1 year. A ''Federal mandate'' is defined under section 101 of the UMRA as a provision that ''would impose an enforceable duty'' upon the private sector, or State, local or tribal governments, with certain exceptions not here relevant. Under section 203 of UMRA, EPA must develop a small government agency plan before EPA ''establish[es] any regulatory requirements that might significantly or uniquely affect small governments.'' Under section 204 of the UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and tribal governments for EPA's ''regulatory proposals'' that contain significant Federal intergovernmental mandates. Under section 205 of the UMRA, before EPA promulgates ''any rule for which a written statement is required under [UMRA sec.] 202,'' EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

Generally, EPA has determined that the provisions of sections 202 and 205 of UMRA do not apply to this decision. Under section 202 of UMRA, EPA is to prepare a written statement that is to contain assessments and estimates of the costs and benefits of a rule containing a Federal Mandate ''unless otherwise prohibited by law.'' Congress clarified that ''unless otherwise prohibited by law'' referred to whether an agency was prohibited from considering the information in the rulemaking process, not to whether an agency was prohibited from collecting the information. The Conference Report on UMRA states: ''This section [202] does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule.'' 141 Cong. Rec. H3063 (Daily ed. March 13, 1995). Because the Clean Air Act prohibits, when determining whether an area attained the NAAQS, from considering the types of estimates and assessments described in section 202, UMRA does not require EPA to prepare a written statement under section 202. Although the establishment of a SIP submission schedule may impose a Federal mandate, this mandate would not create costs of $100 million or more, and therefore, no analysis is required under section 202. The requirements in section 205 do not apply because those requirements are for rules ''for which a written statement is required under section 202. * * *''

With respect to the outreach described in UMRA section 204, EPA discussed with State officials EPA's proposed and final action in advance of the publication.

Finally, section 203 of the UMRA does not apply to today's action because the regulatory requirements finalized today—the SIP submittal schedule—affect only the State of Washington, which is not a small government under UNRA.

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).

VIII. Petitions for Judicial Review

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 May 11, 1998. 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 81

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

Chuck Clarke,

Regional Administrator, Region 10.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.348, the table for ''Washington-Carbon Monoxide'' is amended by revising the entry for the Spokane Area to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * * * * *				
Spokane Area:				

WASHINGTON—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Spokane County (part)				
Spokane urban area (as defined by the Washington Department of Transportation urban area maps).	.....	Nonattainment	4–13–98	Serious.
* * * * * * *				

[1] This date is November 15, 1990, unless otherwise noted.

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[FR Doc. 98–5978 Filed 3–11–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket No. 97–151; FCC 98–20]

Pole Attachments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Report and Order describes rules and policies concerning a methodology for just, reasonable and nondiscriminatory rates for pole attachments, conduits and rights-of-way for telecommunications carriers. The Report and Order amends our regulations to reflect the provisions regarding rates for telecommunications carriers in the Telecommunications Act of 1996 (the ''1996 Act''). The Report and Order fulfills Congress' mandate in the 1996 Act and will provide guidance to pole owners, cable operators and telecommunications carriers.

DATES: Effective April 13, 1998, except §§ 1.1403, 1.1404, 1.1409, 1.1417 and 1.1418 which contain information collection requirements that are not effective until approved by the Office of Management and Budget. Sections 1.1403, 1.1404, 1.1409, 1.1417 and 1.1418 of the Commission's rules will become effective July 30, 1998, unless the Commission publishes a notice before that date stating that the Office of Management and Budget (''OMB'') has not approved the information collection requirements contained in the rules. Written comments by the public on the new and/or modified information collection requirements should be submitted on or before May 11, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: A copy of any comments on the information collection requirements contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the information collection requirements contained herein, contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, CS Docket 97–151, adopted and released February 6, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036.

The requirements adopted in this Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 (''1995 Act'') and found to impose new and modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Report and Order, as required by the 1995 Act. Public comments are due May 11, 1998. Comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0392.

Title: 47 CFR 1 Subpart J—Pole Attachment Complaint Procedures.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; State, local and tribal governments.

Number of Respondents: 1,381 calculated to account for the following activities: 256 notices regarding removal or termination of facilities, 10 petitions for stay and 10 responses to petitions for stay, 1,000 notices that telecommunications services are offered, 50 complaints and 50 responses to complaints, and 5 state certifications.

Estimated Time Per Response: .5–35 hours.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 3,047 hours, calculated to account for the following activities: Section 1.1403(c)(1) and (2) Notices regarding removal of facilities or termination of any service and notices regarding any increase in pole attachment rates. The Commission estimates that there are an average of 64 pole attachment contracts per state. 18 states are certified to regulate the rates, terms and conditions for pole attachments, while the Commission maintains jurisdiction in the remaining 32 states. 64 contracts per state × 32 states = 2,048 estimated contracts. We estimate that these contracts expire on a 7 to 8 year basis, thus requiring an average of 256 notices to be issued per year. Utilities will undergo an average burden of 2 hours per notice. 256 notices × 2 hours per notice = 512 hours.

Section 1.1403(d) Petitions for Stay. To account for burden hours associated with this collection of information, we estimate that 10 petitions of stay may be filed with the Commission within the next year with an average burden of 4 hours for each petitioner and 4 hours for each respondent. The burden estimates account for all aspects of the petition procedure. 10 petitions × 2 parties × 4 hours per party = 80 hours.