

Coke Works, effective August 15, 1997, specifically:

(1) Revisions to section 2104.02. limiting particulate matter emission from Boiler #1, requiring specific improvements to coal handling at Secondary Pulverizer #2, and requiring the operation of a mist eliminator at the Keystone cooling tower.

(2) Revisions to section 2105.21 requiring the installation of "big plug" doors on most coke ovens by January 1, 2000.

(3) The adoption of section 2106.05 requiring a source-specific "self audit emergency action plan."

(ii) Additional Material—Remainder of the October 30, 1997 State submittal.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[AK 19-1707; FRL-6108-6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** In this document EPA is making a final finding that the Anchorage, Alaska, carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standards (NAAQS) under the Clean Air Act Amendments of 1990 (CAA). The CO nonattainment occurred after Anchorage received a one year extension to December 31, 1996 from the mandated attainment date of December 31, 1995 for moderate nonattainment areas. This finding is based on EPA's review of monitored air quality data for compliance with the CO NAAQS. As a result of this finding, the Anchorage CO nonattainment area is reclassified as a serious CO nonattainment area by operation of law. As a result of the reclassification, the State is to submit within 18 months from the effective date of this action a new State Implementation Plan (SIP) demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000, the CAA attainment date for serious areas. **EFFECTIVE DATE:** July 13, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ms. Montel Livingston, Office of Air Quality, U.S. EPA, Region 10, Seattle, Washington, 98006, telephone (206) 553-0180.

## SUPPLEMENTARY INFORMATION:

### I. Background

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

The CAA Amendments were enacted on November 15, 1990. Under section 107(d)(1)(C) of the CAA, each CO area designated nonattainment prior to enactment of the 1990 Amendments, such as the Anchorage nonattainment area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of the CAA, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either "moderate" or "serious" depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm), such as the Anchorage nonattainment area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81. See 56 FR 56694 (November 6, 1991).

States containing areas that were classified as moderate nonattainment by operation of law under section 107(d) were required to submit SIPs designed to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995.<sup>1</sup>

#### B. Effect of Reclassification

CO nonattainment areas reclassified as serious are required to submit, within 18 months of the area's reclassification, SIP revisions providing for attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000. In addition, the State must submit a SIP revision that includes: (1) a forecast of vehicle miles traveled (VMT) for each year before the attainment year and provisions for annual updates of these forecasts; (2) adopted contingency measures; and (3) adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or number of vehicle trips. See CAA sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1). Finally, upon the effective date of this reclassification, contingency measures in the moderate area plan for the Anchorage nonattainment area must be implemented.

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

The reclassification to serious does not mean that CO pollution levels in Anchorage are getting worse. In Anchorage, CO levels have dropped by more than 50% since the early 1980's. Reclassification to serious allows additional planning time to develop control strategies to meet the CO NAAQS because Anchorage failed to attain the CO standard by the end of its extension date, December 31, 1996.

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

EPA makes attainment determinations for CO nonattainment areas based upon whether an area has two years (or eight consecutive quarters) of clean air quality data.<sup>2</sup> Section 179(c)(1) of the CAA states that the attainment determination must be based upon an area's "air quality as of the attainment date."

EPA determines a CO nonattainment area's air quality status in accordance with 40 CFR 50.8 and EPA policy.<sup>3</sup> EPA has promulgated two NAAQS for CO: an 8-hour average concentration and a 1-hour average concentration. Because there were no violations of the 1-hour standard in the Anchorage nonattainment area, this document addresses only the air quality status of the Anchorage nonattainment area with respect to the 8-hour standard. The 8-hour CO NAAQS requires that not more than one non-overlapping 8-hour average in any consecutive two-year period per monitoring site can exceed 9.0 ppm (values below 9.5 are rounded down to 9.0 and they are not considered exceedances). The second exceedance of the 8-hour CO NAAQS at a given monitoring site within the same two-year period constitutes a violation of the CO NAAQS.

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

On December 2, 1997 (62 FR 63687), EPA proposed to find that the Anchorage CO nonattainment area had failed to attain the CO NAAQS by December 31, 1996, the CO attainment extension date. Anchorage did not have two consecutive years of CO data without violations of the CO NAAQS. This proposed finding was based on air quality data showing three violations of

<sup>2</sup> See generally memorandum from Sally L. Shaver, Director, Air Quality Strategies and Standards Division, EPA, to Regional Air Office Directors, entitled "Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to Attain the NAAQS for Moderate CO Nonattainment Areas," October 23, 1995 (Shaver memorandum).

<sup>3</sup> See memorandum from William G. Laxton, Director Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations," June 18, 1990. See also Shaver memorandum.

the CO NAAQS during 1996. For the specific data considered by EPA in making this proposed finding, see 62 FR 63687.

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

EPA has the responsibility, pursuant to sections 179 (c) and 186 (b)(2) of the CAA, for determining whether the Anchorage CO nonattainment area attained the CO NAAQS by December 31, 1995. Under section 186(b)(2)(A), if EPA finds that the area has not attained the CO NAAQS, the area is reclassified as serious by operation of law. There were three CO violations recorded in 1996. Additional control strategies are needed to further reduce CO concentrations in order to attain the CO standard. Pursuant to section 186(b)(2)(B) of the Act, EPA is publishing this notice to identify the Anchorage area as failing to attain the standard and therefore reclassified as serious by operation of law.

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

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

*Commenter:* A commenter objected to the serious classification because good efforts have been made, and continue to be made, to attain the standards. Given the cold temperature environmental conditions which cause the elevated concentrations and the fact that the required 90% reduction in emissions from automobiles has not been achieved, the commenter believes additional time to attain the standard is necessary.

*Response:* EPA's actions are following the schedule and specific requirements imposed by Congress in the CAA. Additional time to attain the CO standard is allowed upon reclassification to serious. Under the CAA of 1990, the attainment date for a serious CO nonattainment area becomes December 31, 2000. The new attainment date of December 31, 2000 authorizes more time for Anchorage, together with ADEC, to devise an air quality control plan which will include additional control measures for attaining the CO standard.

EPA recognizes the progress Anchorage has achieved thus far toward improving air quality and decreasing the ambient levels of CO. Anchorage implements two basic air quality control measures, a decentralized inspection/maintenance program and an oxygenated gasoline program. However,

because Anchorage failed to attain the CO NAAQS within the specified time frame allowed by the CAA, Congress mandated reclassification under section 186(b) of the CAA in specific circumstances once EPA determines the area has failed to meet the CO NAAQS.

The same commenter also raised another issue and stated that cold temperature certified cars will affect fleet emissions, without requiring unnecessary control programs.

*Response:* While EPA agrees that technology in new cars is expected to reduce emissions, the deadlines mandated by Congress in the CAA do not provide the flexibility to delay this action until older model cars are replaced. Fleet turnover in Anchorage to newer, cleaner cars is factored into mobile models for purposes of projecting and demonstrating attainment of the CO NAAQS. But because fleet turnover in Anchorage to newer, cleaner cars is a phased-in process over several years, additional control strategies must be planned for within the allowable CAA time frame to ensure clean air and protect the public's health from exposure to CO in ambient air. The CAA requires, under a serious reclassification, that additional control measures be adopted and implemented for inclusion into the SIP within 18 months of reclassification.

*Commenter:* A commenter stated that Anchorage has worked hard to achieve federal clean air standards for CO and remains committed to improving air quality. They believe this reclassification sends a counterproductive message to a community that has made a significant and largely successful effort to solve this problem. There are conditions that are unique to our sub-arctic environment that contribute to the CO problem, such as extraordinarily strong and persistent temperature inversions. Another aspect of our problem that needs further investigation and review is how cold climate affects driver behavior and consequent CO emissions.

*Response:* EPA's reclassification of Anchorage allows additional planning time to carry out wintertime research which will result in a better understanding and characterization of the CO problem in Anchorage. Projects will be underway in Anchorage during the winter of 1998-99 which have a goal of quantifying impacts that motor vehicle cold start emissions have on the overall emissions inventories. These projects will include enhanced CO air monitoring as well as observation and documentation of driver behavior in Anchorage. EPA supports these projects and continues to work with Anchorage

and the State in their development of an air quality plan to meet the CO air quality standard by December 31, 2000, the new attainment deadline.

Stagnation and inversions are frequent climatological occurrences that must be considered in evaluating whether a control program is adequate to attain and maintain the NAAQS. Meteorological events such as these are almost never accepted as justification for waiving the NAAQS. Because inversions are expected to occur frequently and are part of normal weather patterns, they are not considered special events warranting exemptions from reclassification. In some parts of the United States, stagnation episodes usually persist for an extended period of time, and they can affect an entire air basin. While stagnations may not occur frequently, they are not uncommon; therefore, they are not considered sufficiently exceptional to waive application of the NAAQS.

The national CO standard is a health-based standard and is intended to provide an adequate margin of safety in the nonattainment area, recognizing the wide range of human susceptibility to CO exposure. Young infants, pregnant women, the elderly, and people with cardiovascular disease or emphysema are likely to be more susceptible to the health impacts from CO. Carbon monoxide can also impact mental function, vision, and alertness in healthy people, even at relatively low concentrations.

*Commenter:* A commenter stated that while air quality modeling combined with limited monitoring is the accepted means for determining the status of attainment versus nonattainment, he questions the conclusion that the area is in serious nonattainment when marginal exceedances of the 8 hour limit occur at select monitoring sites on a very infrequent basis. The commenter disagrees that the monitoring information portrays the area as nonattainment because it is not indicative of the area's air quality, which is the standard to be met.

*EPA response.* The action today is based on data measured by a monitoring network that was established to demonstrate attainment of the CO NAAQS. Two monitors in the immediate vicinity of major signalized road intersections and several businesses, the Spenard and Benson site and the Seward Highway and Benson site, have each recorded exceedances of the CO NAAQS three times in 1996. The 8-hour CO readings ranged from 10.1 ppm to 9.5 ppm. The CO national standard is 9 ppm (35 ppm for 1 hour),

and these standards have been developed to protect the public's health from exposure to CO in ambient air. More recently (early 1998), the Garden neighborhood monitoring site has shown high CO concentrations. These three permanent monitoring sites are part of a four site "State and Local Air Monitoring Stations" (SLAMS) CO monitoring network designed by the State to provide measurements that represent ambient air quality. The network provides a profile of high level, and potentially maximum, CO levels. Particular monitoring locations in the network have been established for site placement to meet the following SLAMS objectives:

- To measure the highest concentrations within the area.
- To measure representative concentrations within areas where population density is high.
- To measure the impact on ambient pollution levels of significant sources.

If any monitor within the network violates the CO NAAQS, an appropriate area, which includes the site, is defined as a "nonattainment area." So although we agree with the commenter that the national standard was violated at specific locations on a small number of days, this situation does in fact describe a nonattainment condition.

The CO NAAQS is defined to protect human health and welfare. The goal of achieving the CO NAAQS standard applies to all locales, regardless of population density. Data from monitoring sites are the only available measure of air quality and it is maintained by use of an adequate quality assurance program. Thus, careful attention is given to the data within the monitoring network with respect to possibly harmful pollutant concentrations.

### III. Today's Action

EPA is today taking final action to find that the Anchorage nonattainment area did not attain the CO NAAQS after it received a one year extension to December 31, 1996 from the mandated attainment date of December 31, 1995, the CAA attainment date for moderate CO nonattainment areas. As a result of this finding, the Anchorage nonattainment area is reclassified by operation of law as a serious CO nonattainment area as of the effective date of this document. This finding is based upon air quality data showing exceedances of the CO NAAQS during 1996. As a result of the reclassification, the State is to submit within 18 months from the effective date of this action a new SIP demonstrating attainment of the CO NAAQS as expeditiously as

practical but no later than December 31, 2000, the CAA attainment date for serious areas.

### IV. Executive Order (E.O.) 12866, "Regulatory Planning and Review"

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 is making final the proposed determinations found in EPA's action published on December 2, 1997 (62 FR 63687) that the finding of failure to attain results in none of the effects identified in section 3(f) and finalize the proposed determinations found in EPA's.

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.

This final action is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

### V. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant

impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. As discussed in section IV of this document, findings of failure to attain and reclassification of nonattainment areas under section 186(b)(2) of the CAA do not in-and-of-themselves create any new requirements. Therefore, I certify that today's action does not have a significant impact on small entities.

### VI. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA believes, for reasons discussed above and as part of EPA's proposed determinations published on December 2, 1997 (62 FR 63687), that the finding of failure to attain and reclassification of the Anchorage nonattainment area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 81**

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

Dated: May 29, 1998.

**Chuck Clarke,**  
*Regional Administrator, Region 10.*

For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

**PART 81—[AMENDED]**

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

**Alaska-Carbon Monoxide**

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

2. In § 81.302, the table for “Alaska-Carbon Monoxide” is amended for the Anchorage area by revising the entry for the Anchorage area to read as follows:

**§ 81.302 Alaska.**

\* \* \* \* \*

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
Anchorage Area: Anchorage Election District (part) Anchorage nonattainment area boundary.	.....	Nonattainment ..	July 13, 1998 ...	Serious.
* * * * *				

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-300672; FRL-5795-7]

RIN 2070-AB78

**Phospholipid: Lyso-PE (lysophosphatidylethanolamine); Time-Limited Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a time-limited tolerance for residues of the biochemical phospholipid: Lyso-PE (lysophosphatidylethanolamine) on apples, citrus, cranberries, grapes, nectarines, peaches, pears, strawberries, and tomatoes when used to promote pre-harvest and post-harvest ripening and extend the storage shelf life. J P BioRegulators, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) requesting the time-limited tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of phospholipid. The tolerance will expire on June 1, 2001.

**DATES:** This regulation is effective June 12, 1998. Objections and requests for hearings must be received by EPA on or before August 11, 1998.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number [OPP-300672], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled “Tolerance Petition Fees” and forwarded to: EPA Headquarters Accounting Operations Branch, OPP “Tolerance Fees” and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300672], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies

of electronic objections and hearing requests must be identified by the docket number [OPP-300672]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Sheila A. Moats, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: 9th fl., CM #2 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308-1259; e-mail: moats.sheila@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** J P BioRegulators Inc., 1611 Maple Street, Middleton, Wisconsin 53562, has requested in pesticide petition (PP 7G4892) the establishment of a temporary exemption from the requirement of a tolerance for residues of the biochemical phospholipid. A notice of filing was published in the **Federal Register** on December 10, 1997 (62 FR 65077)(FRL-5749-3), and the notice announced that the comment period would end on January 11, 1998; no comments were received. This temporary exemption from the requirement of a tolerance will permit the marketing of apples, citrus, cranberries, grapes, nectarines, peaches, pears, strawberries, and tomatoes when treated in accordance with the provisions of the experimental use