revision, published on July 25, 1996. Several minor regulation citations and the date of the Governor's SIP submission letter were erroneously cited in the final approval. The EPA is correcting these citations in this action. 

EFFECTIVE DATE: October 2, 1997. 

FOR FURTHER INFORMATION CONTACT: Mr. Eaton R. Weller, (214) 665-2174 

SUPPLEMENTARY INFORMATION: 

I. Background 

On July 25, 1996, EPA published a final approval of Louisiana's RACT Catch-up SIP revision (61 FR 38590). Several errors in the Incorporation by Reference (IBR) language were discovered subsequent to publication. The revisions to LAC 33:III.2103 included IBR to revise paragraphs G., G.1, and G.4. The correct citation should have been to revise paragraphs G., I., and I.4. The Waste Gas Disposal regulation was cited as Section 2215. The correct cite for Waste Gas Disposal is Section 2115. In addition, Section 2215's introductory paragraph, paragraphs H. and H.5 were unnecessarily adopted. The April 14, 1993, SIP submission further amended Section 2115 and alleviated the need to adopt revisions to Section 2115 from the December 21, 1992, submission. Finally, the second of the two SIP submissions from Louisiana was submitted to EPA from the Governor of Louisiana by letter dated April 14, 1993. The date of this letter was erroneously stated as April 13, 1993. 

II. Administrative Requirements 

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) Under 5 U.S.C. 801(a)(1)(A) as added by the Business and Securities Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).
area designated nonattainment prior to enactment of the 1990 Amendments, such as the Clark County 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 Clark County 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. 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: (1) The state has 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. EPA has granted Clark County one extension to December 31, 1996. (61 FR 575407, Wednesday, Nov. 6, 1996).

C. 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 179(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 Clark County, Nevada nonattainment area must be implemented.

D. Proposed Finding of Failure to Attain

On June 26, 1997 EPA proposed to find that the Clark County, Nevada carbon monoxide (CO) nonattainment area had failed to attain the CO NAAQS by the applicable attainment date. 62 FR 34419. This proposed finding was based on CO monitoring data collected at the East Charleston monitoring site during the years 1995 and 1996. These data demonstrate violations of the CO NAAQS in 1996. For the specific data considered by EPA in making this proposed finding, see 62 FR 34419.

E. 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 Clark County 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, where an area has received an extension, EPA will determine whether an area’s air quality has met the CO NAAQS by the required date, or in the case of Clark County by the extended date of December 31, 1996, 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 Clark County area, this document addresses only the air quality status of the Clark County 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.

II. Response to Comments on Proposed Finding

During the public comment period on EPA’s proposed finding, EPA received no comments.

III. Today’s Action

EPA is today taking final action to find that the Clark County CO nonattainment area did not attain the CO NAAQS by December 31, 1996, the CAA attainment date for moderate CO nonattainment areas. As a result of this finding, the Clark County CO nonattainment area is reclassified by operation of law as a serious CO nonattainment area as of the effective date of this document. This finding is based upon air quality data showing exceedances of the CO NAAQS during 1995 and 1996, resulting in two violations in 1996.

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 of $100 million or more or adversely affect, in a material way, the

¹ 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).

² 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 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. 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 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 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. EPA believes, as discussed above, that the finding of failure to attain and reclassification of the Clark County 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.