

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Parts 9 and 63

[FRL-5963-8]

**Technical Amendments to National
Emission Standards for Hazardous Air
Pollutant Emissions: Group IV
Polymers and Resins; Correction of
Effective Date Under Congressional
Review Act (CRA)**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On September 12, 1996 (61 FR 48207), the Environmental Protection Agency published in the **Federal Register** a final rule promulgating national emission standards for hazardous air pollutants (NESHAP) from existing and new plant sites that emit organic hazardous air pollutants (HAP) identified on the EPA's list of 189 HAP during manufacture of Group IV polymers and resins. The September 12, 1996, document stated the rule would be effective September 12, 1996. On January 14, 1997, and June 6, 1997, EPA amended this rule to change some of the compliance dates. This document corrects the effective date of the rule to February 27, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808, and amends certain compliance dates.

EFFECTIVE DATE: This rule is effective on February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, OAR, at (202) 260-9766

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated September 12, 1996, by operation of law, the rule did not take effect on September 12, 1996, as stated therein. The two documents of January 14, 1997, and June 6, 1997, however, were submitted to Congress and GAO as required under CRA. Now that EPA has discovered its error, the rule is being

submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Certain compliance dates in the September 12, 1996, final rule were amended in a direct final rule published January 14, 1997 (62 FR 1835) which was effective on March 5, 1997, and by a direct final rule published June 6, 1997, (62 FR 30993) which was effective on July 27, 1997. Because of the change in the effective date of the September 12, 1996, final rule made in this document, the compliance dates for new affected sources in 40 CFR 63.1311(b), and existing affected sources in 40 CFR 63.1311(d) and (d)(1), are being amended to be the effective date of this amendment. Except to the extent compliance dates are amended by this document, the compliance dates in the September 12, 1996, final rule, as amended by the January 14, 1997, and June 6, 1997, direct final rules, remain unchanged.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date and compliance dates of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter, and because EPA must amend certain compliance dates as a result of the amended effective date. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since September 12, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

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 regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the September 12, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 27, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule and related compliance dates; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended dates. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of publication of the amendment.

List of Subjects in 40 CFR Part 63

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

Dated: February 6, 1998.

Carol Browner,
Administrator.

For reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.1311 is amended by revising paragraphs (b), (d) introductory text, and (d)(1) introductory text to read as follows:

§ 63.1311 Compliance schedule and relationship to existing applicable rules.

* * * * *

(b) New affected sources that commence construction or reconstruction after March 29, 1995, shall be in compliance with this subpart upon initial start-up or February 27, 1998, whichever is later, as provided in § 63.6(b), except that new affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is poly(ethylene terephthalate) (PET) shall be in compliance with § 63.1331 upon initial start-up or by September 12, 1999, whichever is later.

* * * * *

(d) Except as provided for in paragraphs (d)(1) through (d)(6) of this section, existing affected sources shall be in compliance with § 63.1331 no later than February 27, 1998 unless a request for a compliance extension is granted pursuant to section 112(i)(3)(B) of the Act, as discussed in § 63.182(a)(6).

(1) Compliance with the compressor provisions of § 63.164 shall occur no later than February 27, 1998 for any compressor meeting one or more of the criteria in paragraphs (d)(1)(i) through (d)(1)(iii) of this section if the work can be accomplished without a process unit shutdown, as defined in § 63.161:

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[FR Doc. 98-4940 Filed 2-26-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 81**

[AK 17-1705; FRL-5971-4]

Clean Air Act Reclassification; Fairbanks, 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 Fairbanks North Star Borough, Alaska, carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standards (NAAQS) by December 31, 1995, the Clean Air Act (CAA) mandated attainment date 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 Fairbanks North Star Borough 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 practical but no later than December 31, 2000, the CAA attainment date for serious areas.

EFFECTIVE DATE: This action is effective March 30, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Montel Livingston, Office of Air Quality, U.S. Environmental Protection Agency, Region 10, Seattle, Washington, (206) 553-0180.

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 CO area designated nonattainment prior to enactment of the 1990 Amendments, such as the Fairbanks North Star Borough 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 Fairbanks 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, 1995.¹

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

¹ 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 Fairbanks area has a design value below 12.7 ppm. 40 CFR 81.302.

(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 Fairbanks nonattainment area must be implemented.

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.² 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.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 Fairbanks nonattainment area, this document addresses only the air quality status of the Fairbanks 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 August 8, 1997 EPA proposed to find that the Fairbanks North Star Borough CO nonattainment area had failed to attain the CO NAAQS by the applicable attainment date. 62 FR 42717. Fairbanks did not have two

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.