

MEMORANDUM

SUBJECT: Criteria for Granting Attainment Date Extensions ,  
Making Attainment Determinations, and Determination s  
of Failure to Attain the NAAQS for Moderate C O  
Nonattainment Areas

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Purpose

Pursuant to sections 179(c) and 186(b)(2) of the Clean Air Act,<sup>1</sup> the Administrator is to determine whether a nonattainment area has attained the Carbon Monoxide (CO) NAAQS by the applicable attainment date. The purpose of this memorandum is to provide the EPA Regional Offices and the State air pollution control agencies with the relevant criteria for making attainment determinations, and to provide information on the criteria for granting attainment date extensions for moderate CO

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<sup>1</sup>The Clean Air Act is codified, as amended, at 42 U.S.C .  
7401, et seq.

nonattainment areas. <sup>2</sup>

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<sup>2</sup>The policies set out in this memorandum are intended solely as guidance, do not represent final action, and are not ripe for judicial review. They are not intended to bind the States and public as a matter of law. This guidance contains EPA's preliminary views, and EPA may modify this guidance at any time or act at variance with the guidance based upon analysis of specific circumstances.

## Background

The EPA has general authority to designate areas which violate the CO NAAQS as nonattainment pursuant to section 107(d) of the Act. Any area that is designated nonattainment for CO under section 107(d), shall, at the time of designation, be classified by operation of law as either a "moderate" or "serious" nonattainment area [see section 186(b)(1) of the Act].

States with areas which have been designated as nonattainment for CO have the responsibility of developing and submitting to EPA a SIP which addresses the nonattainment air quality problem in the area. The EPA issued a "General Preamble" describing EPA's preliminary views on the interpretation of various SIP requirements, including those requirements applicable to moderate CO nonattainment areas.<sup>3</sup> Sections 172(c) and 187(a) of the Act outline some of the most important elements which must be contained in the SIP.

The air quality planning requirements for moderate CO nonattainment areas are set out in sections 186-187 of the Clean Air Act (Act) Amendments of 1990 (CAAA) which pertain to the classification of CO nonattainment areas and to the submission requirements of the SIP's for these areas, respectively. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)].

Those States containing CO nonattainment areas with design values  $\geq 12.7$  parts per million (ppm) were required to submit, among other things, an attainment demonstration by November 15, 1992, that the plan will provide for attainment by December 31, 1995 for moderate CO nonattainment areas and December 31, 2000 for serious CO nonattainment areas. The attainment demonstration must include a SIP control strategy, which was also due by November 15, 1992. The SIP control strategy for a given nonattainment area must be designed to ensure that the area meets the specific annual emissions reductions necessary for reaching attainment by the deadline. In addition, section 187(a)(3) requires these areas to implement contingency measures

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<sup>3</sup>See generally, 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

if any estimate of actual vehicle miles travelled (VMT) or any updated VMT forecast for the area contained in an annual report for any year prior to attainment exceeds the number predicted in the most recent VMT forecast. Contingency measures are also triggered by failure of an area to attain the NAAQS for CO by the attainment deadline. Contingency measures were required to be submitted with the CO SIP by November 15, 1992.

#### I. Attainment determination

The EPA has the responsibility for determining whether a nonattainment area has attained the CO NAAQS by the applicable attainment date.<sup>4</sup> The EPA must make attainment determinations for moderate CO nonattainment areas by June 30, 1996, no later than 6 months after the attainment date for the area. The Act also requires EPA to identify in the Federal Register those areas which failed to attain and must be reclassified as "serious" nonattainment areas by operation of law.

The EPA will be making attainment determinations for CO nonattainment areas based upon whether an area has 8 consecutive quarters of clean air quality data, and no special or additional SIP submittal will be required from the State for this determination. Section 179(c)(1) of the Act provides that the attainment determination is to be based upon an area's "air quality as of the attainment date." The EPA will make the determination of whether an area's air quality is meeting the CO NAAQS by the applicable attainment date based upon the most recent two years of data gathered from air quality monitoring sites which have been entered into the Aerometric Information Retrieval System (AIRS) data base. The EPA will be disinclined, however, to redesignate any CO area to attainment unless EPA has received and approved the SIP for the area.

A CO nonattainment area's air quality status is determined in accordance with 40 CFR Part 50.8, and in accordance with EPA policy as stated in a memorandum from William G. Laxton, Director Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations", June 18, 1990. CO design values are discussed in terms of the 8 hour CO NAAQS. The 1-hour CO design value should be computed in the same manner as

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<sup>4</sup> See sections 179(c) and 186(b)(2) of the Act.

the 8 hour NAAQS.<sup>5</sup>

The 8-hour CO design value is computed by first finding the maximum and second maximum (non-overlapping) 8 hour values at a site for the most recent 2 years of data. Then the maximum value of the second high values is used as the design value for the monitoring site. The design values for all of the monitoring sites in the area must be determined and the highest of these values serves as the design value for the entire area. Individual years of CO data are considered separately to determine the second maximum value for each year. CO data are not combined from different years.

The CO NAAQS requires that not more than one 8 hour average per year can exceed 9ppm (9 greater than or equal to 9.5ppm to adjust for rounding). CO attainment is evaluated by reviewing 8 quarters or a total of two complete years of data. If an area has a design value greater than 9ppm, this serves as an indication that a monitoring site in the area, where the second highest (non-overlapping) 8 hour average was measured, was greater than 9ppm in at least 1 of the two years. This indicates that there were at least two values above the standard during 1 of the two years being reviewed at a particular monitoring site, thus the standard was not met.

The EPA will begin processing and analyzing data related to the attainment of CO areas immediately after the applicable attainment date for the affected areas. Current EPA policy, pursuant to 40 CFR Part 58, sets the deadline for submittal of air quality data into the AIRS data base for no later than 90 days after the end of the calendar year. In order for EPA to determine the attainment status of CO areas, EPA must review the data for the 2 years prior to the attainment date for the areas. Due to the schedule for making attainment determinations,

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<sup>5</sup> Attainment determinations for multi-state CO nonattainment areas will be made in the same manner as other CO nonattainment areas, as stated in this guidance memorandum. Attainment in multi-state nonattainment areas must be demonstrated in the entire area before the area can be determined to have attained the NAAQS. If a Multi-State nonattainment area is determined to have failed to attain the NAAQS the area will be reclassified as serious, by operation of law, unless the area qualifies and is granted a 1 year extension of the attainment date. Areas seeking a 1 year extension of the attainment date must qualify for attainment date extensions in the same manner as other CO nonattainment areas.

pursuant to sections 179(c)(2) and 186(b)(2), States should submit the required air quality data for the year preceding the attainment date into the AIRS data base as expeditiously as practicable, but no later than 90 days after the attainment date for the area. States should identify any issues concerning the validity of the data or discrepancies related to the data during this time period. The EPA will address issues related to the adequacy of data on a case-by-case basis in accordance with 40 CFR part 50, appendix C.

II. Criteria for obtaining an extension of the attainment date for moderate areas

Pursuant to section 186(a)(4) of the Act, if a State containing a moderate CO nonattainment area does not have consecutive years of clean air quality data to demonstrate that the area has attained the NAAQS, the State may apply for a 1-year extension of the attainment date. The EPA may extend the attainment date for 1 year only if the State submits an application for the affected nonattainment area satisfying all of the following requirements:

1. The area must have no more than one exceedance of the NAAQS at any monitoring site in the nonattainment area in the year preceding the extension year.

2. The State must demonstrate that it has complied with all requirements and commitments pertaining to the affected nonattainment area in the applicable implementation plan.<sup>6</sup> Requirements and commitments in the "applicable implementation plan" include SIP revisions approved by EPA under section 110(k) of the Act and FIP's promulgated by EPA under section 110(c)(1) of the Act [see section 302(q) of the Act<sup>7</sup> [see generally section

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<sup>6</sup> The CO SIP revisions required under the 1990 Amendments are not included in the definition of "applicable implementation plan" if EPA has not taken final rulemaking action to approve the revisions.

<sup>7</sup> States were required to submit CO SIP revisions for initial moderate nonattainment areas on November 15, 1992. In the instances where EPA will not have taken final rulemaking action on the State's moderate area SIP revision prior to granting the attainment date extension for the area, the applicable SIP for the area would be the most recent federally-

186(a)(4) of the Act].

The authority delegated to the Administrator to extend attainment dates for moderate areas is discretionary. Section 186(a)(4) of the Act provides that the Administrator "may" extend the attainment date for areas that meet the minimum requirements specified above. The provision does not dictate or compel that EPA grant extensions to such areas.

In exercising this discretionary authority for CO moderate nonattainment areas, EPA will examine the air quality planning progress made in the moderate area. In addition to the two criteria specified in section 186(a)(4), EPA will be disinclined to grant an attainment date extension unless a State has, in substantial part, addressed its moderate CO nonattainment area planning obligations for the area. While States are encouraged to take expeditious steps toward completing SIP revisions which satisfy the requirements of the Act, Federal approval of CO SIP requirements is not required in order to be granted an attainment date extension. The EPA, however, will expect the State to have adopted and substantially implemented control measures necessary to reduce CO emissions in the moderate nonattainment area.<sup>8</sup>

The EPA believes that requesting the State to demonstrate that control measures have been adopted and are being substantially implemented for areas seeking an extension is a reasonable expectation because the implementation of the control measures is an appropriate indication that the improvement in air quality, evidenced by the low number of exceedances, reflects the application of permanent steps to improve the air quality, rather than temporary economic or meteorological changes. As a part of this showing, EPA will expect the State to demonstrate that the CO moderate nonattainment area has made emission reductions which contribute to reasonable further progress (RFP) toward attainment of the CO NAAQS as defined in section 171(1) of the Act.

In order to demonstrate that the control measures have been adopted and are being substantially implemented, and that RFP is being met, the State must submit an application for an

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approved particulate matter SIP for the area.

<sup>8</sup> See sections 172(c)(1) of the Act.

attainment date extension in the form of a milestone report . This report may be submitted to EPA by the governor or his/her designee no later than 90 days after the attainment date for the area. The EPA Regional Offices will address a State's request for a 1-year extension of the attainment date through the comment and rulemaking process no later than 6 months after the applicable attainment date. If the State cannot make a sufficient demonstration that the area has complied with the extension criteria stated above, and EPA determines that the area has not timely demonstrated attainment of the CO NAAQS, the area will be reclassified as serious by operation of law pursuant to section 186(b)(2) of the Act.

If an extension is granted at the end of the extension year, EPA will again review the area's air quality data to determine whether the area has attained the CO NAAQS. Because CO areas must have two consecutive years of clean air quality data to demonstrate attainment, if the area fails to attain the NAAQS during the extension year by measuring violations of the NAAQS, the area will be unable to qualify for a second 1 year extension and will be reclassified as serious by operation of law.

### III. Consequences of failure to attain or qualify for an extension

If EPA finds that a CO moderate nonattainment area is not in attainment after the applicable attainment date and does not qualify for an attainment date waiver as stated in section 179B(c) of the Act, the area will be reclassified by operation of law as serious, pursuant to section 186(b)(2).<sup>9</sup> The EPA Regional Offices have been delegated the responsibility of making the decisions concerning whether an area should be reclassified as serious and will identify these areas through the notice and comment rulemaking process in the Federal Register, no later than 6 months following the attainment date.

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<sup>9</sup> Pursuant to section 179B(c) of the Act, a State may request a waiver of the attainment date for a CO nonattainment area if the State can make an approvable demonstration that the area has attained the NAAQS by the applicable attainment date, but for the emissions emanating from outside the United States. If the State can make this demonstration, in accordance with EPA guidance and the request is granted, the area will not be subject to reclassification as serious required under section 186(b)(2).



For efficiency, the Regional Offices may also choose to identify those areas which have been granted a 1-year extension of the attainment date in the same Federal Register notices.

Within 18 months after reclassification, the State must meet the planning requirements for serious CO nonattainment areas as stated in section 187(b) of the Act. Serious CO nonattainment areas must meet all of the requirements of the moderate nonattainment areas with design values of 12.7ppm and above plus other additional requirements. The requirements of section 187 include SIP provisions for regular emissions inventories, forecasts and verification of the Vehicle Miles Traveled (VMT), RACM, RFP, new source review, contingency measures, enhanced vehicle I/M programs, attainment demonstrations, transportation control measures (TCM's), clean fuel vehicle fleet program, and use of oxygenated gasoline.<sup>10</sup> In addition, contingency measures must take effect upon a determination by EPA that an area has failed to timely attain the CO NAAQS.<sup>11</sup> Moderate area plans are required to provide for the implementation of specific measures to be undertaken if the area has a VMT forecast which exceeds the number predicted in the most recent VMT forecast or an area fails to attain the NAAQS by the applicable attainment date.<sup>12</sup>

#### IV. Requests for Redesignation to Attainment

A State that has a moderate CO nonattainment area that has been determined by EPA to have attained the CO NAAQS, may request redesignation to attainment. The Administrator may grant a request to redesignate an area to attainment if the following conditions are satisfied:

1. The EPA determines that the area has attained the NAAQS.
2. The applicable implementation plan for the area has been fully approved by EPA under section 110(k).
3. The EPA determines that the improvement in air quality

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<sup>10</sup> See section 187(b) of the Act in general for SIP requirements for serious CO nonattainment areas.

<sup>11</sup> See section 172(c)(9) of the Act.

<sup>12</sup> See section 187(a)(3).

is due to permanent and enforceable reductions in emissions.

4. The State has met all requirements applicable to the area under section 110 and part D, title I, of the Act.

5. The EPA has fully approved a maintenance plan, including a contingency plan, for the area as meeting the requirements of section 175A of the Act [see generally section 107(d)(3)(E) of the Act].

Each of these criteria is discussed in more detail in a memorandum from John Calcagni to the Regional Air Directors dated September 4, 1992, addressing the guidelines for qualifying for redesignation to attainment. [See "Procedure for Processing Requests to Redesignate Areas to Attainment" memorandum to Regional Air Directors from John Calcagni, Director of the Air Quality Management Division, September 4, 1992.] The second half of the memorandum gives particular attention to the maintenance plan requirement under section 175A since this constitutes a new requirement under the 1990 Amendments. The memorandum provides that special concerns for areas seeking redesignation will be addressed on a case-by-case basis.

If there are any questions concerning this policy, please contact me at (919) 541-5505 or Larry Wallace of the Integrated Policy and Strategies Group at (919) 541-0906.

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