**§ 176.40 [Amended]**

6. Newly redesignated 176.40(a) introductory text is amended by revising § 92.35(b)'' to read ''§ 176.35(b)''.

**§ 176.45 [Amended]**

7. Newly redesignated 176.45 is amended in paragraph (b) by revising ''§ 92.40(c)'' to read ''§ 176.40(c)'' and paragraph (c) by revising ''§ 92.35(c) and § 92.40(d)'' to read ''§ 176.35(d) and § 176.40(d)''.

Dated: October 28, 1996.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 96–28299 Filed 11–4–96; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

**RIN 2900–AH77**

### Contract Program for Veterans With Alcohol and Drug Dependence Disorders

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends 38 CFR part 17 by adopting as a final rule the proposal to modify eligibility criteria for veterans participating by contract in the Department of Veterans Affairs' program of alcohol and drug dependence or abuse treatment and rehabilitation in residential and nonresidential facilities. Previous regulations stipulated that, prior to participation in contract care under this program, veterans were to be provided hospital care in facilities over which the Secretary has direct jurisdiction. It was proposed to change the regulations to stipulate that, prior to participation in contract care, veterans must have been or must be receiving care (regardless of whether it was or is hospital care) by professional staff over whom the Secretary has jurisdiction (regardless of whether it is direct jurisdiction). The elimination of the requirement of ''hospital care'' is necessary to address changed clinical practices and continue the intended program. In the past, substance abuse treatment generally was provided in a hospital setting. Now, much substance abuse treatment also is provided in an ambulatory care or residential setting. Further, this document changes ''direct jurisdiction of the Secretary'' to ''jurisdiction of the Secretary'' to allow for continuation of any cases in which VA has had involvement (including, among other things, fee basis care) and thereby help ensure that a complete course of treatment is provided.

**EFFECTIVE DATE:** November 5, 1996.

**FOR FURTHER INFORMATION CONTACT:** Richard T. Suchinsky, M.D., Associate Director for Addictive Disorders and Psychiatric Rehabilitation (111C1B), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; (202) 273–8436. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** This final rule is based on a proposed rule published in the Federal Register on May 21, 1996 (61 FR 25428). We requested that comments to the proposed rule be submitted on or before July 22, 1996. We received no comments. For reasons set forth in the proposed rule and this document, the proposed rule is adopted as a final rule.

The Secretary hereby certifies that the provisions of the final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. There does not appear to be a basis for considering special provisions for small entities since, in all likelihood, only entities that are small entities would conduct activities affected by this rule. Also, because of budgetary constraints and the high utilization of this program, we anticipate no change in the total number of bed days of care paid by VA to participating small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number is 64.019.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: September 17, 1996.

Jesse Brown,

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

## PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. In section 17.80, paragraph (a)(1) is revised to read as follows:

**§ 17.80 Alcohol and drug dependence or abuse treatment and rehabilitation in residential and nonresidential facilities by contract.**

(a) * * *

(1) Veterans who have been or are being furnished care by professional staff over which the Secretary has jurisdiction and such transitional care is reasonably necessary to continue treatment.

* * * * *

[FR Doc. 96–28324 Filed 11–4–96; 8:45 am]

**BILLING CODE 8320–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[Region 2 Docket NJ24–1a–158; FRL–5643–2]**

### Clean Air Act Attainment Extension for the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Carbon Monoxide Nonattainment Area

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

**ACTION:** Direct final rule.

**SUMMARY:** This action grants a one (1) year attainment date extension for the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Carbon Monoxide nonattainment area (NYCMSA) which also includes parts of two counties in southwestern Connecticut. The NYCMSA failed to attain the National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO) by the December 31, 1995 deadline contained in the Clean Air Act as amended in 1990 (CAA). However, section 186(a)(4) of the CAA provides for a one year extension of the CO attainment date if specific requirements are met. Since the NYCMSA has met these requirements, EPA is granting the one year extension.

**DATES:** This action is effective on January 6, 1997,unless adverse or critical comments are received by December 5, 1996.If this action is withdrawn prior to the effective date, timely notice withdrawing this action will be published in the Federal Register.

**ADDRESSES:** All comments should be addressed to: Ronald J. Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York, 10007–1866.

Copies of the States' requests and relevant documents are available at the following locations for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th floor, New York, New York 10007–1866.

Environmental Protection Agency, Region I Office, Air Quality Planning Unit, One Congress Street, 11th floor, Boston, Massachusetts 02203.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Henry Feingersh, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th floor, New York, New York 10007–1866, (212) 637–4249, or

Wing Chau, Air Quality Planning Unit, Environmental Protection Agency, Region I Office, One Congress Street, 11th floor, Boston, Massachusetts 02203, (617) 565–3570.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. CAA Requirements and EPA Actions Concerning Designation and Classification*

The CAA created a new classification structure for CO nonattainment areas which was based on the severity of the nonattainment problem. For moderate CO nonattainment areas with a design value between 9.1–16.4 parts per million (ppm), the attainment date was to be as expeditious as practicable but no later than December 31, 1995.

The air quality planning requirements for moderate CO nonattainment areas are set out in sections 186 and 187 of the CAA which pertain to the classification of CO nonattainment areas and submission of SIP requirements for these areas, respectively. EPA issued a ''General Preamble'' which stated EPA's preliminary views concerning how EPA intended to review SIPs and SIP revisions submitted as required under Title I of the Act, [see generally 57 FR 13489 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. States containing CO moderate nonattainment areas with design values of 9.1–16.4 ppm were required to submit SIPs for these areas on or before November 15, 1992 which would provide for attainment by December 31, 1995.

### *B. Attainment Determinations*

EPA has the responsibility for determining whether a nonattainment area has attained the CO NAAQS by the applicable attainment date, [see sections 179(c) and 186(b)(2) of the CAA]. EPA also has the responsibility of making attainment determinations for moderate CO nonattainment areas by no later than six (6) months after the December 31, 1995 attainment date for these areas. EPA bases the attainment determinations for CO on whether an area has eight consecutive quarters (two years) of clean air quality data. No special or additional SIP submittal is required from the area for this determination. Section 179(c)(1) of the CAA provides that the attainment determination is to be based on an area's ''air quality as of the attainment date.''

A CO nonattainment area's air quality status is determined in accordance with 40 CFR 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. Compliance with the NAAQS is discussed in terms of the eight-hour CO NAAQS, rather than the one-hour NAAQS, because the eight-hour NAAQS is typically the standard of concern. For this nonattainment area, the one-hour CO NAAQS was not exceeded in 1994 or 1995. For determining compliance with the eight-hour CO NAAQS, the maximum and second maximum (non-overlapping) eight-hour values at a site for the most recent two years of data are examined. The highest observed second maximum is used to determine compliance for that site. The eight-hour CO NAAQS is violated when the second maximum exceeds the 9 ppm standard (greater than or equal to 9.5 ppm to adjust for rounding, as in 40 CFR 50.8(d)), in either of the two most recent years of data. If all monitors in a nonattainment area have eight-hour second maximum values less than 9.5 for the previous eight quarters or a total of two consecutive and complete years of data, the CO NAAQS is met. If any monitoring site in an area has a second maximum value greater than or equal to 9.5 ppm, the area has violated the CO NAAQS.

### *C. Application for a One-year Extension of the Attainment Date*

If the area does not have the two consecutive clean years of data to show attainment of the CO NAAQS, an area may apply for an extension of the attainment date. Pursuant to section 186(a)(4) of the Act, an area may apply for and EPA may grant a one-year extension of the attainment date if the area has: (1) 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. If the area does not have the requisite number of years of clean air quality data to show attainment and does not apply or does not qualify for an attainment date extension, the area will be reclassified as serious by operation of law.

Section 186(a)(4) of the CAA providing for the extension of attainment dates for areas that meet the above minimum requirements has been delegated to the Regional Administrators. This provision does not dictate or compel that EPA grant extensions to such areas. In exercising this discretionary authority for CO nonattainment areas, EPA will examine the air quality planning progress made in the moderate area. EPA will be disinclined to grant an attainment date extension unless an area had, in substantial part, addressed its moderate CO planning obligations. In order to determine whether the area has substantially met these planning requirements, EPA will review the area's application for the attainment date extension to determine whether the area has: (1) adopted and substantially implemented control measures to satisfy the requirement for the moderate CO nonattainment area; and (2) that reasonable further progress is being met for the area.

If the area cannot make a sufficient demonstration that it has complied with the extension criteria stated above, and EPA determines that the area has not made a timely demonstration of 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, EPA will again review the area's air quality data at the end of the extension year to determine whether the area has attained the CO NAAQS.

II. Extension Request

On April 24, 1996, New Jersey submitted to EPA a request for a one-year extension of the NYCMSA CO nonattainment area. New York and Connecticut submitted letters to EPA on July 31, 1996 and June 27, 1996, respectively, concurring with New Jersey's request. The nonattainment area is composed of a number of counties in New York, New Jersey, and Connecticut. These counties include Bronx County, Kings County, Nassau County, New York County, Queens County, Richmond County, and Westchester County in New York, part of Fairfield County (all cities and townships except Shelton City) and part of Litchfield County (Bridgewater Town and New Milford Town) in Connecticut, Bergen County, Essex County, Hudson County, Union County, and the Passaic County municipalities of Clifton, Passaic and Patterson in New Jersey. As required by the CAA, this request was based on air quality data from the two years (1994 and 1995) prior to the December 31, 1995 attainment date.

*A. Air Quality Data*

Pursuant to section 186(a)(4)(B) of the Act, an area must have no more than one exceedance of the CO NAAQS in the year proceeding the extension year at any one monitoring site in the nonattainment area.

The NYCMSA nonattainment area has one CO Special Purpose Monitoring (SPM) site, five National Air Monitoring System Sites (NAMS), and nine State and Local Air Monitoring Sites (SLAMS). Sampling at these sites is conducted every day. Data from these sites was submitted by each of the States in the CMSA for inclusion in EPA's air quality data system, AIRS and was deemed valid by EPA.

A review of the data for calendar years 1994 and 1995 for the NYCMSA CO nonattainment area shows violations of the eight hour NAAQS occurred at two separate monitoring stations in 1994. As discussed previously in this document, a violation is defined as more than one exceedance of the NAAQS occurring at the same site during a calendar year. Exceedances occurred at the monitoring site in North Bergen, NJ, on February 19 (11.6 ppm), December 4 (10.7 ), and December 22 (10.1 ), therefore, resulting in a violation of the NAAQS. In addition, on two separate and non-overlapping eight hour periods on February 19 (12.0 ppm and 11.3 ppm), concentrations exceeded the NAAQS at the Elizabeth, NJ monitoring site. Thus the CO standard was violated here also.

In 1995, the North Bergen, NJ monitoring site and the Flatbush Avenue, NY monitoring site each recorded one exceedance. However, since neither of these sites had two exceedances, there were no violations of the CO NAAQS. Therefore, the area has met the air quality requirements for a one year extension of the attainment date.

*B. Compliance with Applicable SIP*

Pursuant to section 186(a)(4)(A) of the Act, an area must demonstrate that it has complied with all requirements and commitments pertaining to the affected nonattainment area in the applicable implementation plan. The States of New York, New Jersey, and Connecticut are in compliance with the requirements and commitments of each States' CO SIPs, (see 61 FR 38594, 61 FR 38591, and 61 FR 38574).

*C. Substantial Implementation of Control Measures*

The States of New York, New Jersey, and Connecticut have developed and implemented substantial control measures for CO in the NYCMSA nonattainment area. These control measures consist of the Federal emission controls required for new vehicles, oxygenated fuels programs, and inspection and maintenance (I/M) programs. The National Highway System Designation Act of 1995 has given states additional time and flexibility in the development of enhanced I/M programs. Therefore, New York and New Jersey are currently amending their SIPs regarding their enhanced I/M programs.

*D. Emission Reduction Progress*

The historical trend in the NYCMSA's air quality has been toward lower CO levels. CO concentrations have decreased from a second-high eight-hour average of 15.8 ppm and 186 exceedances in 1981, to a second-high eight-hour average of 8.1 ppm and two exceedances (at separate sites) in 1995. The continued improvement in CO concentrations in the NYCMSA has been achieved mainly by emission reductions resulting from turnover of the vehicle fleet, required vehicle repairs and maintenance under the existing I/M programs, and the mandatory wintertime use of oxygenated fuels. These control measures and emission reductions are permanent and enforceable.

The enhancement of existing I/M programs and the continued implementation of oxygenated fuels programs, combined with the Federal Motor Vehicle Control Program is expected to result in further decreases in CO emissions and ambient concentrations in the NYCMSA. Based on the above, EPA believes that reasonable further progress (RFP) toward attainment of the CO NAAQS has been demonstrated.

III. Summary

EPA is, by today's action, granting New Jersey's request for a one-year extension of the CO attainment date for the NYCMSA. EPA had received letters of concurrence on New Jersey's extension request from New York and Connecticut. Although the CMSA area failed to meet the December 31, 1995 CO attainment date, the CMSA has shown the progress requisite to the extension authorized by section 186(a)(4) of the Act. This action extends the attainment date from December 31, 1995, to December 31, 1996 for the entire NYCMSA.

EPA has reviewed this request for a one-year extension of the CO attainment date for the NYCMSA nonattainment area for conformance with the CAA enacted on November 15, 1990. EPA has determined that this action conforms with those requirements. EPA is publishing this action without a prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve this attainment date extension should adverse or critical comments be filed. This final action will be effective January 6, 1997, unless, by December 5, 1996, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action before its effective date. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 6, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP will be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

*Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

*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. See 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.

Attainment date extensions under section 186, as with SIP approvals under section 110 and subchapter I, part D of the Act, do not create any new requirements. Therefore, because the granting of the NYCMSA one-year CO attainment date extension does not impose any new requirements, I certify that it does not have a significant impact on any small entities. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

*Unfunded Mandates*

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 annual 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 has determined that an attainment date extension does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. A finding than an area should be granted a one-year extension of the attainment date consists of factual determinations based on air quality considerations and the areas's compliance with certain prior requirements, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory 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).

*Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 6, 1997. 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), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 15, 1996.

William J. Muszynski,

*Deputy Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

### Subpart H—Connecticut

2. Section 52.372 is added to read as follows:

**§ 52.372 Extensions.**

Pursuant to section 186(a)(4) of the Clean Air Act, as amended in 1990, the Regional Administrator hereby extend for one year (until December 31, 1996) the attainment date for the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Carbon Monoxide nonattainment area.

### Subpart FF—New Jersey

3. Section 52.1572 is added to read as follows:

**§ 52.1572 Extensions.**

Pursuant to section 186(a)(4) of the Clean Air Act, as amended in 1990, the Regional Administrator hereby extends for one year (until December 31, 1996) the attainment date for the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Carbon Monoxide nonattainment area.

### Subpart HH—New York

4. Section 52.1672 is added to read as follows:

**§ 52.1672 Extensions.**

Pursuant to section 186(a)(4) of the Clean Air Act, as amended in 1990, the Regional Administrator hereby extends for one year (until December 31, 1996) the attainment date for the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Carbon Monoxide nonattainment area.

[FR Doc. 96–28197 Filed 11–4–96; 8:45 am]

BILLING CODE 6560-50–F

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### 46 CFR Part 221

**[Docket No. R–168]**

**RIN 2105–AC63**

## Regulated Transactions Involving Documented Vessels and Other Maritime Interests; Inflation Adjustment of Civil Monetary Penalties

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Final rule.