requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 1, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, 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 *et seq.*

Subpart PP—South Carolina

2. In § 52.2120 the table in paragraph (c) is amended by adding a new entry under Regulation No. 62.1 after Section III for ''Section V Credible Evidence'' and removing the entry for ''Standard No. 3 Emissions from Incinerators'' to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Federal register notice
Regulation No. 62.1	Definitions, Permits Requirements and Emissions Inventory			
*	*	*	*	*
Section V	Credible Evidence	07/27/01	01/13/03	67 FR 68767
*	*	*	*	*

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[FR Doc. 02–28698 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–7408–2]

Designation of Areas for Air Quality Planning Purposes; Redesignation of Particulate Matter Unclassifiable Areas; Redesignation of Hydrographic Area 61 for Particulate Matter, Sulfur Dioxide, and Nitrogen Dioxide; State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document, EPA is approving a request from the State of Nevada, pursuant to section 107(d) of the Clean Air Act (Act), to redesignate the current single unclassifiable area for particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM–10) into numerous individual areas to be consistent with the area definitions for other pollutants. EPA is also approving a State-requested subdivision of one of those individual areas, referred to as hydrographic area 61 (Boulder Flat), into two areas. EPA's approval of these requests establishes hydrographic areas as the section 107(d) unclassifiable areas for PM–10 and replaces hydrographic area 61 with two new section 107(d) areas for PM–10, sulfur dioxide (SO_2), and nitrogen dioxide (NO_2): upper area 61 and lower area 61. In this action, EPA is also deleting certain total suspended particulate (TSP) area designations that are no longer necessary. EPA proposed these actions in the **Federal Register** on April 30, 2002 (67 FR 21194). EPA received comments from several commenters on our proposed actions. After carefully reviewing and considering the issues raised by the commenters, EPA is finalizing our actions as proposed.

EFFECTIVE DATE: This action will become effective on December 13, 2002.

ADDRESSES: Copies of the State's submittal, and other supporting documentation relevant to this action, are available for inspection during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region 9, Air Division, Permits Office (AIR–3), at (415) 972–3974 or *rios.gerardo@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents.

I. Background

Pursuant to the redesignation procedures of section 107(d)(3) of the Clean Air Act (Act), States may request EPA's approval of air quality planning area redesignations, including boundary changes to existing areas. The State of Nevada submitted two such section 107(d) redesignation requests to EPA. One request (dated April 16, 2002) was for EPA to redesignate the existing PM–10 section 107 unclassifiable area by establishing hydrographic areas within the State as the PM–10 unclassifiable areas. The State's other request (dated November 6, 2001) was to split an existing PSD baseline area, hydrographic area 61, into two parts: upper area 61 and lower area 61.

On April 30, 2002, EPA proposed to approve the requests made by the State of Nevada, pursuant to section 107(d) of the Act. *See* 67 FR 21194. Today's rule finalizes our approval of these two requests from the State of Nevada. EPA's approval of these requests establishes hydrographic areas as the section 107(d) unclassifiable areas for PM–10 and replaces hydrographic area 61 with two new section 107(d) areas for PM–10, sulfur dioxide (SO_2), and nitrogen dioxide (NO_2): upper area 61 and lower area 61. In this action, EPA is also deleting certain total suspended particulate (TSP) section 107(d) area designations because they are no longer necessary.

II. Comments Received by EPA on Our Proposed Rulemaking and EPA's Responses.

EPA received seven sets of comments on our proposal to approve the State of Nevada's 107(d) redesignation requests. Provided below is a summary of the significant comments, and EPA's responses thereto. Complete copies of the submitted comments are available for inspection during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

Comment 1: One commenter claims that EPA's rule will result in significant

deterioration of air quality in designated attainment/unclassifiable areas for PM–10 in violation of the PSD program requirements. The commenter alleges that PSD increments will be violated by EPA's proposed action. Their allegation is based on a belief that the State is a single, triggered, PSD baseline area for PM–10 and that EPA's action would untrigger most of the State.

Response: EPA is promulgating this rule because we do not believe that the rule will result in significant deterioration of air quality nor that PSD increments will be violated. As such, we disagree with the commenter's claims. The comment, which relates to EPA's proposal to approve the State's request to redesignate the existing PM–10 section 107 unclassifiable area by establishing hydrographic areas within the State as the PM–10 unclassifiable areas, is based on the incorrect belief of the commenter that prior to EPA's present action, the State consisted of a single PSD baseline area for PM–10. Prior to EPA's action, as the Agency clarified in our March 19, 2002 final rule (see 67 FR 12474), the State's 253 hydrographic areas had already been established as the PSD baseline areas for particulate matter (originally for the indicator pollutant TSP, then for PM–10, even though there was a single PM–10 section 107 unclassifiable area). Today's rule aligns the section 107 area definitions for PM–10 with the established hydrographic area approach the State has used for almost twenty years in implementing the PSD program for particulate matter. Today's rule has no effect on PSD baseline areas for PM–10 in the State, other than in hydrographic area 61, where the rule proposes to split a single area into two.

Comment 2: One commenter notes that the PM–10 redesignation request and the request to subdivide hydrographic area 61 were submitted by Allen Biaggi, Administrator of the Nevada Division of Environmental Protection, rather than from the Governor of Nevada. The commenter concludes that since EPA's regulations require that the submittals be made by the Governor, the requests are unlawful and cannot be acted upon by EPA.

Response: The commenter is correct that the redesignation requests were submitted by Allen Biaggi, Administrator of the Nevada Division of Environmental Protection (''NDEP''), rather than by the Governor of Nevada. NDEP is one of the divisions within the State Department of Conservation and Natural Resources (''Department''). Nevada law authorizes the Department to take all action necessary or appropriate to secure to Nevada the benefits of the Federal Clean Air Act. *See* Title 40 of the Nevada Revised Statutes, Chapter 445B, sections 445B.125, 445B.205, and 445B.135. The Department is a State administrative Agency overseen by the Governor. Therefore, EPA can reasonably assume that the redesignation request has been made with the full knowledge and endorsement of the Governor of Nevada. Thus, Allen Biaggi acted lawfully in submitting the State's redesignation requests to EPA on behalf of the Governor of Nevada.

Comment 3: One commenter argues that neither Nevada nor EPA provide the required documentation that the 253 unclassifiable areas would not intersect the area of impact of any major stationary source or modification that has established the minor source baseline date.

EPA Response: EPA's definition of ''baseline area'' at 40 CFR 52.21(b)(15) notes that redesignated areas ''cannot intersect or be smaller than the area of impact of any major stationary source or major modification which'' establishes a minor source baseline date. Thus, if a State's redesignation was establishing new or different baseline areas, then documentation would be needed to demonstrate that the newly created baseline areas meet the federal regulatory definition for such areas by not intersecting or being smaller than the area of impact of any major stationary source or major modification which established a minor source baseline date. However, Nevada's request to create 253 PM–10 section 107 unclassifiable areas does not establish new or different baseline areas for PM–10. As EPA explained in our March 19, 2002 final rule, the PM–10 PSD baseline areas in the State are the hydrographic areas and have been for many years.[1] The State's implementation of the federal PSD program has been based on the hydrographic area approach since EPA delegated the program in 1983. Thus, contrary to the commenter's assertion, our action is not establishing a new or revised state-wide map of PSD baseline areas for PM–10, and it is not necessary for the State or EPA to provide the documentation requested by the commenter. As an example, Sierra Pacific Power's submittal of a complete PSD permit application on March 11, 1994 for Tracy Generating Station established the PM–10 minor source baseline date in hydrographic area 83. EPA's action today has no effect on the status of this basin, *i.e.*, the basin remains triggered with the same minor source baseline date.

Comment 4: One commenter alleges that EPA's action would untrigger the minor source baseline date for PM–10 in the proposed lower basin 61 (which should have been triggered by Barrick gold mine), and in many key areas of the State, such as Jarbidge Wilderness, the State's only mandatory Class I area, and on many Indian reservations and colonies. The commenter also states that EPA failed to conduct the required consultation with the Tribes who would be affected because minor source baseline dates on tribal reservations will be eliminated.

EPA Response: In accordance with EPA's PSD program regulations at 40 CFR 52.21, the PSD minor source baseline date in a given baseline area is established by submittal of the first complete PSD permit application in that area. Once the minor source baseline date has been established in an area, all sources consume increment in that area. However, in some cases, a larger area where the minor source baseline date has been established (or ''triggered'') can be broken up into two or more smaller areas and such action could potentially result in the elimination of the minor source baseline date in one or more of the smaller areas (''untrigger'' the areas) which subsequently do not contain the PSD source.

EPA disagrees that today's rule would untrigger the minor source baseline date for PM–10 (or any other pollutant) in lower basin 61, the Class I-designated Jarbidge Wilderness, or on any Indian reservations or colonies in the State. EPA's action will not untrigger any minor source baseline dates in the State of Nevada. As with Comment 1, this comment is based on the incorrect belief of the commenter that prior to EPA's present action, the State consisted of a single PSD baseline area for PM–10 and that the effect of our action would be to create new baseline areas for PM–10, thereby untriggering numerous areas of the State where the minor source baseline date has already been established. As previously explained, EPA's current rule has no effect at all on PSD baseline areas for PM–10 in the State, other than in hydrographic area 61. In hydrographic area 61, our action will split a single PSD baseline area into two PSD baseline areas. However, the minor source baseline date has not been established in hydrographic area 61, so our action does not untrigger any established minor source baseline date.

[1] In 1993, EPA revised its PSD regulations to address the transition from TSP to PM–10. Among other changes in our 1993 rule related to PSD, EPA retained the existing TSP baseline areas (*i.e.*, the hydrographic areas in the State of Nevada) as part of the program for implementing the newly-promulgated PM–10 increments. *See* 58 FR 31622; June 3, 1993.

EPA disagrees with the commenter's claim that Barrick gold mine has triggered the minor source baseline date in hydrographic area 61. Although Barrick gold mine is a ''major source'' located in hydrographic area 61, it has not been subject to PSD permitting requirements.[2] As previously noted, the minor source baseline date in a given baseline area is established by submittal of the first PSD permit application in that area. Neither Barrick gold mine nor any other source in hydrographic area 61 has submitted a PSD permit application, so the minor source baseline date has not been established in that area.

Finally, EPA disagrees that the Agency was required to consult with Indian tribes regarding the effect of this rulemaking. EPA concluded that the rule will not have a substantial direct effect on one or more Indian tribes, in part because the rule will not untrigger the minor source baseline date within any tribal boundary, thus we did not initiate a formal consultation process.

Comment 5: One commenter claims that EPA did not consider the impact of the proposed PM–10 redesignation on the State's ability to attain and maintain the new PM–2.5 NAAQS. The commenter states that such consideration is required in light of EPA's December 1997 guidance on implementation of the new standards, because the proposed action would relax the State's PSD program and allow increased degradation of air quality.

EPA Response: EPA did not consider the impact of the proposed PM–10 redesignation on the State's ability to attain and maintain the new PM–2.5 NAAQS because the rule will not have any effect on the State's implementation of the new standard. Our action does not relax the State's PSD program and we do not believe it will result in significant degradation of air quality in the State. Other than in hydrographic area 61, EPA's action will have *no* effect on the State's implementation of the PSD program. In hydrographic area 61, the only effect will be that a single untriggered PM–10 PSD baseline area will become two separate unclassifiable/attainment areas (constituting two untriggered PSD baseline areas for PM–10). Subdividing one untriggered PSD baseline area into two untriggered PSD baseline areas conforms with EPA's existing regulatory criteria for such actions and is consistent with relevant statutory requirements under the Clean Air Act.

Comment 6: One commenter argues that EPA cannot rely upon the March 19, 2002 final rule as the sole basis for approving the State's PM–10 redesignation request because EPA never approved the use of hydrographic areas for PM–10. The commenter also argues that the claim that Nevada has relied upon the hydrographic area approach for managing particulate emissions in Nevada is unsupported by fact.

EPA Response: EPA is not relying upon the March 19, 2002 final rule as the basis for approving Nevada's PM–10 redesignation request. While EPA does substantially base its proposed approval of the State's PM–10 redesignation request on the existing hydrographic area approach used by the State to manage particulate matter emissions, this approach was not effectuated by EPA's March 19, 2002 rule. EPA's March 2002 rule, rather than establishing hydrographic areas as the PSD baseline areas for particulate matter, merely clarified that several previous Agency rulemakings had already established hydrographic areas as the PSD areas. Moreover, despite the commenter's claim to the contrary, Nevada has an almost 20-year history of using hydrographic areas as the geographic basis for PSD program implementation. All of the PSD permits issued by the State (and the increment analyses conducted in support of these permits) have relied upon the hydrographic area approach for determining whether sources were locating in areas where the minor source baseline date had already been established or whether the new source was initially triggering the area. Some examples of permit-related documents which demonstrate the State's reliance on the hydrographic area scheme have been added to the administrative record for this rulemaking.

Lastly, since publication of the March 19, 2002 rule discussed above, EPA has discovered two additional documents which lend further support to the action EPA took: (1) EPA's final rule reaffirming the area boundaries established in our original March 3, 1978 designation of nonattainment, attainment, and unclassifiable areas in Nevada under section 107(d) of the 1977 CAA Amendments; and (2) a letter from Allyn Davis, Director, Air & Hazardous Materials Division, EPA—Region 9, to Dick Serdoz, Air Quality Officer, Nevada Department of Conservation and Natural Resources, dated May 8, 1979, concerning the EPA final rule affirming the area designations. *See* 43 FR 8962 (March 3, 1978) for the original area designations and *see* 44 FR 16388, at 16391 (March 19, 1979) for the rule re-affirming the boundaries for areas in Nevada. These documents have also been added to the administrative record for this rulemaking.

Comment 7: One commenter argues that since the March 19, 2002 rule is being challenged in the 9th Circuit Court of Appeals, EPA should not rely on the rule as the basis for approving Nevada's PM–10 redesignation request. Instead, EPA must assume that the terms ''rest of state'' and ''entire state'' constitute single attainment/unclassifiable areas for which the minor source baseline date has been triggered until such time as the issue is resolved by the Court.

Response: On May 17, 2002, Reno-Sparks Indian Colony and Great Basin Mine Watch (''petitioners'') filed a petition for review in the U.S. Court of Appeals for the Ninth Circuit (Docket # 02–71503) challenging those portions of EPA's final rule (parts I and II) clarifying the tables in 40 CFR 81.329 that identify the attainment and unclassifiable areas within the State of Nevada for TSP, SO_2, and NO_2 and clarifying the PSD baseline areas for PM–10. The petitioners reject EPA's characterization of the action taken on March 19, 2002 as a clarification of the existing regulatory framework and contend that EPA's action represents an unlawful redesignation of a single area referred to as ''rest of state'' into numerous subareas under section 107(d) of the Clean Air Act. The petition for review notwithstanding, the Agency continues to believe that its decision to clarify the meaning of the term ''rest of state'' in 40 CFR 81.329 as Nevada's hydrographic areas is amply supported by the record and that the decision to publish the March 19th rule as a technical correction (*i.e.*, without notice and comment) is consistent with the Administrative Procedure Act.

EPA does not agree that the Agency must interpret the terms ''rest of state'' and ''entire state'' as constituting single attainment/unclassifiable areas for which the minor source baseline date has been triggered until such time as the issue is resolved by the Ninth Circuit Court of Appeals. As we have previously explained, and as clarified in the March 19, 2002 rulemaking, the effect of EPA's prior regulatory actions (finalized long ago) was to establish hydrographic areas as the PSD baseline areas in the State of Nevada. The current legal challenge to EPA's March 19, 2002 rule has no effect on the status of the

[2] While it is accurate that only major sources are subject to PSD permitting requirements, a source is not required to obtain a PSD permit merely because it is a major source. PSD permits are only required for construction of new major sources and for existing major sources making a modification that increases emissions above designated ''significance'' thresholds. *See* 40 CFR 52.21(i).

rule, nor, more importantly, on the already established use of hydrographic areas as air quality planning areas for purposes of implementing the PSD permitting program in Nevada. EPA will continue to interpret the terms ''rest of state'' and ''entire state'' as referring to the hydrographic areas in the State that are not designated as nonattainment. If this issue is ultimately resolved by the Courts in a manner that is inconsistent with EPA's current approach, then we will take all necessary steps at that time to remedy the situation, including, if necessary, reassessing the appropriateness of this rulemaking.

Comment 8: One commenter claims that because Nevada does not have an approved State Implementation Plan (SIP) that meets the requirements of CAA sections 160 through 165, then in order for EPA to redesignate Nevada's PM–10 unclassifiable area into hydrographic areas, and to redesignate hydrographic area 61, the Agency must revise Nevada's Federal Implementation Plan (FIP).

Response: Neither EPA's action to redesignate Nevada's PM–10 unclassifiable area into hydrographic areas nor EPA's action to subdivide hydrographic area 61 from a single unclassifiable area into two unclassifiable areas represents, nor requires, a revision to Nevada's SIP or FIP. Rather these are EPA actions to promulgate the boundaries of designated attainment/unclassifiable areas in the State of Nevada.

As noted by the commenter, and reflected at 40 CFR 52.1485(a), Nevada does not have an approved State Implementation Plan (SIP) that meets the requirements of CAA sections 160 through 165. However, as further clarified at 40 CFR 52.1485(b), ''the provisions of § 52.21(b) through (w) are incorporated and made a part of the applicable State plan for the State of Nevada except for that portion applicable to the Clark County Health District.'' *See* 45 FR 52676, at 52741 (August 7, 1980) and 47 FR 26620 (June 21, 1982). (Sections 52.21(b) through (w) in part 52 of title 40 of the Code of Federal Regulations consist of the Federal PSD regulations.) Thus, the Federal PSD regulations, codified at 40 CFR 52.21, represent EPA's FIP for Nevada (for purposes of implementing the PSD program).

However, while the part 52 Federal PSD regulations refer to section 107 attainment and unclassifiable areas, they do not incorporate the section 107 area designations by reference. Thus, the regulatory changes effected by today's rule are located at 40 CFR 81.329, which describes the ''Section 107 Attainment Status Designations'' for Nevada; no changes are being made to 40 CFR 52.21 or to 40 CFR part 52, subpart DD—Nevada (Nevada's SIP). Since EPA is making no changes to these regulatory sections, today's action does not require a revision to the Nevada SIP or FIP.

Comment 9: One commenter asserts that EPA's action to delete certain TSP attainment and unclassifiable areas from 40 CFR 81.329 is unlawful because the Agency's regulations state that ''[a]ny baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM–10 increments. * * *'' The commenter also questions why EPA is taking action to delete TSP area designations given that the State of Nevada did not make a formal request for such action.

Response: The Agency is not acting unlawfully in deleting the listing of certain TSP attainment and unclassifiable area designations from 40 CFR 81.329. Deletion of the listing of certain TSP attainment and unclassifiable areas does not eliminate any baseline area established originally for the TSP increments. Rather, the baseline areas originally established for the TSP increments (*i.e.*, the hydrographic areas) ''remain in effect and * * * apply for purposes of determining the amount of available PM–10 increments.* * *'' (40 CFR 52.21(b)(15)(iii)) As we explained in the proposed rule:

> In our 1993 PSD rule, we indicated that the replacement of the TSP increments with PM_{10} increments (which operate independently from the section 107 area designations for TSP) negates the need for the TSP attainment or unclassifiable area designations to be retained. We also indicated that we would delete such TSP designations in 40 CFR part 81 upon the occurrence of one of the following events: EPA's approval of a State's revised PSD program containing the PM_{10} increments; EPA's promulgation of the PM_{10} increments into a State's SIP where the State chooses not to adopt the increments on their own; or EPA's approval of a State's request for delegation of PSD responsibility under 40 CFR 52.21(u). *See* 58 FR 31622, 31635 (June 3, 1993). [Emphases added]

Thus, the listing of designated TSP attainment and unclassifiable areas in Nevada became unnecessary upon the effective date of the Agency's 1993 rule in areas where EPA had delegated the PSD program (*i.e.*, the entire State of Nevada except for Clark County.[3]

Finally, although the commenter is correct that the State of Nevada did not make a formal request to EPA to eliminate their unnecessary TSP area designations, such a request was not needed for EPA to act. EPA had already noted, in our 1993 rulemaking, that the Agency's intention was to delete the TSP area designations in 40 CFR part 81 once they were no longer necessary. Moreover, section 107 of the Act authorizes EPA to eliminate a section 107 designation for particulate matter (measured as TSP), when ''the Administrator determines that such designation is no longer necessary.'' *See* CAA section 107(d)(4)(B). In today's action, the Agency is merely following through on a prior commitment to eliminate TSP designations based on a determination that they are no longer necessary. EPA's action in this regard is consistent with prior rulemakings by EPA to delete TSP area designations in other States. *See, e.g.*, 59 FR 28480 (June 2, 1994) (EPA action to delete TSP area designations in response to a State's request to redesignate TSP nonattainment areas to attainment).

Comment 10: Two commenters question whether the Agency's redesignation of hydrographic area 61 is in the public's interest because, they contend, the action merely splits an area into two pieces so that the air pollution in the region can be doubled and EPA's PSD requirements can be avoided. They further assert that continued subdivision of hydrographic areas to allow sources to avoid the PSD program will pollute the entire State.

Response: EPA does not agree that the effect of splitting hydrographic area 61 into upper and lower basins will be to allow air pollution in the region to be doubled. Area 61 is currently designated attainment or unclassifiable for all criteria pollutants and the minor source baseline date has not been triggered for any pollutant. Thus, the ''allowable'' amount of air pollution, and consequent level of air quality degradation, is presently constrained only by the NAAQS. After area 61 is split into upper and lower basins, the ''allowable'' amount of air pollution and level of air quality degradation in each of the two basins will also be constrained only by the NAAQS (*i.e.*, the overall level of air quality protection will be exactly the same) unless and until a PSD permit application triggers one or both areas. The commenter does not provide any justification for their contention that the

[3] The PSD program delegation does not apply in Clark County, Nevada. Clark County administers an EPA-approved PSD program (rather than administering a delegated federal PSD program) for PSD sources in Clark County. Therefore, as noted in our proposal, EPA is not deleting the TSP attainment and unclassifiable area designations in Clark County at this time.

effect of EPA's action in area 61 will be a doubling of the allowable air pollution in the region. However, it is true that if one area is triggered before the other, then there could be additional minor growth in the baseline of the untriggered area relative to the newly triggered area, because the triggered area would then be constrained by the PSD increments.

In addition, the commenter's concern that EPA's approval of the subdivision of area 61 portends a larger state-wide effort to split hydrographic areas is unwarranted. The Agency has not received any other request for such action by Nevada. Moreover, EPA's actions on requests for area redesignations under section 107(d) that affect PSD baseline areas are handled on a case-by-case basis in light of relevant statutory and regulatory requirements. The Agency's approval of the State's request to subdivide hydrographic area 61 does not assure EPA approval of any potential future requests the State might make to redesignate other existing section 107(d) attainment or unclassifiable areas, if the circumstances of the request, including any impact on the State's ability to effectively manage air quality, warrants denial.

Comment 11: Two commenters question the rationale provided by EPA for splitting area 61. They claim that the upper and lower basins are not self-contained, that the split will not promote the State's ability to effectively manage their air quality, and that Nevada has only limited and supervised authority to manage EPA's PSD program, so it is extremely unlikely that the redesignation would reduce the complexity of Nevada's PSD program. They further allege that the objective of the hydrographic area 61 redesignation, based on articles in the Nevada Press, appears to be to ensure that a new source in lower basin 61 (*i.e.*, a proposed power plant) will not trigger the PSD minor source baseline date in upper basin 61 where there are mining operations. Thus, they claim, EPA's approval of the redesignation would help the mines circumvent PSD requirements and is inconsistent with the goals and intent of the PSD provisions of the Act.

Response: As stated in our proposed rule, EPA is approving Nevada's request to subdivide hydrographic area 61 into upper and lower basins because the request complies with the existing federal standards for approval of section 107(d) redesignations and we do not believe the redesignation will interfere with the State's ability to manage air quality. As we further explained in our proposal, EPA's policy is to provide States with a fair degree of autonomy to balance air quality management with economic planning considerations. It is not necessary for EPA to make a finding that Nevada's redesignation request will improve air quality management by the State; rather, the Agency has to ensure that the request complies with the regulatory standards for section 107(d) redesignations and that the redesignation will not interfere with the State's management of air quality. Our proposed rule clearly describes how the State's request to split hydrographic area 61 complies with the Federal standards for section 107(d) and PSD baseline area redesignations, and provides the Agency's basis for concluding that the redesignation will not interfere with the State's management of air quality. *See* 67 FR 21194, at 21196–21197 (April 30, 2002).

Comment 12: One commenter claims that EPA has not shown that hydrographic areas are PSD baseline areas. They assert that EPA's notice aims to ''replace the single unclassifiable area designated for Nevada for PM–10 with 253 unclassifiable areas'' which, they contend, disagrees with a footnote in the proposal saying that these areas are ''already established as the PSD baseline areas.''

Response: The Federal PSD regulations define ''baseline area'' in terms of 107(d) attainment or unclassifiable areas. *See* 40 CFR 52.21(b)(15) and 40 CFR 51.166(b)(15). However, as EPA explained in our proposal, the transition from TSP to PM–10 resulted in a difference between the section 107(d) and PSD baseline areas for PM–10 in Nevada. Specifically, the TSP baseline areas (based upon the State's hydrographic areas) became PM–10 baseline areas pursuant to our 1993 rulemaking; however, the State of Nevada has a single section 107(d) unclassifiable area for PM–10. Thus, our current action represents another step in the transition from TSP to PM–10. This step re-aligns the section 107(d) areas with the PSD baseline areas by approving a request for establishing hydrographic areas, which had been the basis for TSP attainment and unclassifiable areas pursuant to our 1978 rulemaking, as the attainment and unclassifiable areas under section 107(d) of the Act for PM–10.

Comment 13: One commenter argues that even if EPA had the intention of establishing 253 hydrographic areas as section 107(d) areas in 1978, that is not what the Agency actually did, nor is it what the Agency codified in the CFR. The commenter asserts that the public has been misled by what is in the CFR as opposed to what EPA is now saying it meant, and that all of this was done under the guise of a ''technical correction'' with no opportunity for public comment.

Response: Our March 19, 2002 clarifying rule indicates that, in our 1978 rulemaking establishing the first nonattainment, attainment and unclassifiable areas, we stated that some States provided long lists of individual attainment and unclassifiable areas and that we were not listing each such area for those States. *See* 67 FR 12474, at 12475. Through our 1978 rulemaking, we did in fact designate those areas as individual attainment and unclassifiable areas for the purposes of section 107(d), but used the short-hand term ''rest of state'' or ''entire state'' to denote them rather than listing each separate area. The commenter did not provide any evidence to the contrary. Moreover, at the time of our 1978 rulemaking, there was no compelling reason for EPA to list each and every attainment and unclassifiable area. The need for specificity arose in 1980 with our promulgation of changes to the PSD regulations that established the link between PSD baseline areas and section 107(d) areas. Since 1978, hydrographic areas have represented the 107(d) attainment and unclassifiable areas, and the tables in 40 CFR 81.329 have continued to describe the areas for Nevada using the short-hand terms, ''rest of state'' and ''entire state.'' Our March 2002 rule added footnotes clarifying the connection between ''rest of state''/''entire state'' and hydrographic areas.

Comment 14: One commenter notes that Nevada's request for the PM–10 107(d) redesignation was made on April 16, 2002 and that EPA has 18 months to act on the request (until October 2003). The commenter questions why EPA is taking action so quickly, especially when the Agency is currently evaluating the existing regulatory and policy framework for PSD baseline area redesignations.

Response: EPA's action approving the State's April 16, 2002 request to redesignate the single PM–10 unclassifiable area in Nevada into multiple unclassifiable areas (based on hydrographic areas) under section 107(d), is simply another step in the regulatory transition from TSP to PM–10. This particular type of section 107(d) action does not create new PSD baseline areas because the PM–10 baseline areas were established by operation of law through our 1993 PSD rulemaking as the PSD baseline areas originally established for TSP. (*See* our March 19, 2002 Technical Correction at

67 FR 12474 for further explanation.) Further, because this type of section 107(d) action does not create new PSD baseline areas, it is not the type that could theoretically be affected by a change in the regulatory criteria for evaluating PSD baseline area redesignations.

In contrast, EPA's action approving the State's November 6, 2001 request to redesignate hydrographic area 61 does create new PSD baseline areas and is the type that could potentially be affected by a change in the regulatory criteria. EPA's approval of this request is occurring roughly one year after the State of Nevada submitted its redesignation request related to area 61. EPA has 18 months under the Act to take final action on State redesignation requests, and the re-evaluation of the regulatory criteria is not likely to be completed by May 6, 2003 (18 months from the November 2001 request); thus, EPA can not wait and must finalize action based on the current statutory and regulatory criteria.

Comment 15: Several commenters urged EPA to expeditiously finalize our approval of Nevada's area 61 redesignation request.

Response: Section 107(d)(3)(D) allows EPA 18 months from receipt of a complete State redesignation submittal to approve or deny such redesignation. In today's notice, EPA is finalizing its proposal to approve Nevada's November 6, 2001 request to redesignate area 61 into two areas. In so doing, EPA is acting well within the 18-month review period allowed by the Act.

Comment 16: One commenter argues that redesignation of area 61 is necessary because of the way in which EPA's PSD program forces areas with air quality better than the National Ambient Air Quality Standards (NAAQS) to further limit source emissions of PM–10, NO_2 and SO_x to levels at only 20–35% of the NAAQS. The commenter asserts that these more stringent limits, the PSD increments, were set by EPA as a simple percentage of the NAAQS and are not health or welfare-based.

Response: Since 1967, Congress has declared that one of the purposes of the Clean Air Act is ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' *See* section 101(b)(1) of the Act. Originally, EPA did not interpret the 1967 Act as granting authority to the Agency to promulgate regulations designed to prevent ''significant deterioration'' of air quality in those areas which have air that already is cleaner than the NAAQS. However, EPA's narrow interpretation of its own authority was overruled by the Court in *Sierra Club* v. *Ruckelshaus,* 344 F. Supp. 253 (D.D.C. 1972), aff'd per curiam, 4 E.R.C. 1815 (D.C. Cir. 1972), aff'd by an equally divided Court, sub nom. *Fri* v. *Sierra Club,* 412 U.S. 541, 37 L. Ed. 2d 140, 93 S. Ct. 2770 (1973). Pursuant to Court order, EPA promulgated the initial PSD regulations in 1974 and these early PSD regulations identified increments for total suspended particulate and sulfur dioxide.

In 1977, Congress clarified its purposes in this regard and explicitly endorsed the increment approach for preventing significant deterioration by enacting increments for total suspended particulate and sulfur dioxide (*see* section 163 of the Act). For nitrogen dioxide and PM–10, EPA promulgated increments that are of equivalent stringency as those established by Congress in section 163, as required under sections 166(d) and 166(f) of the Act. *See* 53 FR 40656 (October 17, 1988) with respect to nitrogen dioxide PSD increments and 58 FR 31622 (June 3, 1993) with respect to PM–10 PSD increments. The EPA does not agree that the redesignation of area 61 is necessary because of the statutory and regulatory limits on increases in concentrations of these pollutants. Congress's clearly expressed objective in Part C of the Clean Air Act is to prevent significant deterioration of air quality in clean air areas within the United States.

Comment 17: One commenter claims that EPA must review and consider comments submitted on the proposed rule in light of what its PSD regulations currently provide—State discretion in redesignating PSD baseline areas—and not what some commenters want the rules to provide. The commenter argues that to delay final approval of the proposed rule for consideration of comments that could only be described as a request for change to EPA's current rules and policies would be to deny the State of Nevada the discretion accorded it under the Clean Air Act, Alabama Power and established by EPA in its PSD regulations.

Response: As described in the proposed rule and above, EPA reviewed the request by the State of Nevada to subdivide hydrographic area 61 on the basis of general statutory language from section 107(d)(3) of the Act, which addresses redesignations, and EPA's PSD regulations, specifically 40 CFR 52.21(b)(15). *See* 67 FR 21194, at 21196. In the proposed rule, EPA acknowledges concerns about the existing regulatory criteria for redesignations, but indicates that, unless and until those criteria are revised, the Agency will continue to evaluate State-initiated section 107(d) redesignation requests based on the language of the statute itself and the regulatory criteria in 40 CFR part 52. In so doing, EPA has not delayed final action on this particular redesignation request but is acting well within the 18-month period allowed for such actions under section 107(d)(3)(D) of the Act.

Comment 18: One commenter argues that the court in *Alabama Power Co.* v *Costle,* 636 F. 2d 323 (D.C. Cir. 1979) held that the Clean Air Act delegated decisions on increment consumption and allocation thereof by baseline area designations to the States. They further claim that based on the decision in Alabama Power and EPA's 1980 PSD regulations, EPA's discretion to review redesignation requests by States involving boundaries of areas designated attainment or unclassifiable is limited to consideration of two criteria: (1) The boundaries of any area redesignated by a State cannot intersect the area of impact of any major stationary source or major modification that established or would have established a baseline date for the areas proposed for redesignation; and (2) the area redesignation can be no smaller than the area of impact of such sources. In this proposed rule, they assert that EPA has attempted to change its redesignation policy by adding a statutorily-derived standard of ''appropriate air quality-related considerations,'' including review to ensure that the PSD baseline area redesignation ''does not interfere with the State's management of air quality'' and, in doing so, has identified the types of redesignations that may not be approvable even though the examples that EPA lists in the proposed rule are precisely the type of redesignations that have been approved by EPA in the past. The commenter states that EPA cannot change its redesignation policy except through notice and comment rulemaking.

Response: Among many PSD issues, the court in *Alabama Power* addressed the issue of how the increments were to be protected, but did not address the specific issue of whether section 107(d) redesignations are an appropriate means by States to manage the increments. In the section of the opinion entitled ''Protection of the Increments,'' the court held: ''We rule that EPA has authority under the statute to prevent or to correct a violation of the increments, but the agency is without authority to dictate to the States their policy for management of the consumption of allowable increments.'' *See* 636 F.2d 323, at 361. The court also recognized that: ''The fundamentals of the statutory

approach include differentiation within the clean air areas of Class I, II, and III areas, and specification for each class of areas of maximum allowable increases (''increments'') in pollution concentrations for particulate matter and sulfur dioxide, with provision for the Administrator to promulgate allowable increments or similar limitations for other pollutants governed by NAAQS.'' *Id.* at 361, 362. In *Alabama Power,* environmental groups had petitioned the court to require EPA to promulgate guidelines detailing the manner in which States may permit consumption of the available increments and also to have EPA set aside some portion of the available increments to ensure that current development does not inadvertently cause a violation of the maximum thresholds. The court declined to do so, and it was in this context that the court held that the Agency may not prescribe the manner in which States will manage their allowed internal growth. *Id.* At 363, 364.

The commenter cites the *Alabama Power* decision as endorsing a State's use of section 107(d) redesignations to create new PSD baseline areas and untrigger minor source baseline dates, but the court in *Alabama Power* did not address this specific issue. The court emphasized the State's authority to manage the increment, the size of which is based on an area's designation as Class I, II, or III, but did not rule on States' use of section 107(d) redesignations as a means to create new PSD baseline areas (*e.g.*, additional Class II areas), or to untrigger minor source baseline dates and thereby ''baseline'' the portion of the increment consumed prior to the redesignation. This practice has been allowed under EPA regulations but was not one of the issues before the court in the *Alabama Power* case. Thus, while EPA acknowledges that States have the right to make increment management decisions, States also have the responsibility to do so in such as way as to prevent significant deterioration of their clean air resources and thereby achieve the fundamental statutory purposes of the PSD program as set forth in section 160 of the Act:

> ''(1) To protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipated to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air, notwithstanding attainment and maintenance of all national ambient air quality standards; (2) to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic or historic value; (3) to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources; (4) to assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and (5) to assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

EPA's role is to ensure that States fulfill these responsibilities under the Act. *See Alaska* v. *EPA,* 298 F.3d 814 (9th Cir. 2002).

In reviewing a redesignation request under section 107(d)(3) of the Act, EPA looks to the statute and to relevant regulations and policies. As noted in the proposed rule, section 107(d)(3) does not provide specific criteria for EPA to use in evaluating a State redesignation request that involves changing the boundaries of existing attainment or unclassifiable areas, as opposed to redesignations that involve changes in status (*e.g.*, ''nonattainment'' to ''attainment'' or ''nonattainment'' to ''unclassifiable''). *See* 67 FR 21194, at 21196. As explained in the proposed rule, EPA concluded that the considerations set forth in section 107(d)(3)(A) provide EPA with a statutory basis with which to evaluate State-initiated redesignation requests in addition to the existing regulatory criteria, and in this context (*i.e.*, a request to change the boundaries of attainment or unclassifiable areas), EPA concluded that one appropriate ''air-quality related consideration'' is whether the redesignation would interfere with a State's management of air quality.

The Act provides support for application of this consideration in a context where boundaries or PSD class designations of existing attainment or unclassifiable areas would be affected (rather than changes in attainment status). *See* section 107(e) (State is authorized with EPA approval to redesignate air quality control regions ''for purposes of efficient and effective air quality management'') and section 164(e) (resolution of disputes between State and Indian tribes arising from area redesignations from one PSD increment class to another: ''In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area'').

The proposed rule indicates that EPA did not intend through this rulemaking to revise PSD regulations (40 CFR 52.21) or redesignation policies. *See* 67 FR 21194, at 21196. If and when EPA decides to revise the redesignation criteria in the PSD regulations or to change its practice with regard to its evaluation of redesignation requests, the Agency will take the appropriate steps. Furthermore, even if one were to interpret the application of the statutorily-derived consideration discussed above to State redesignation requests as a change in policy, EPA clearly indicated in the proposed rule the criteria the Agency used to evaluate this State's request, including the statutorily-derived consideration, and is acting through notice-and-comment rulemaking.

Comment 19: Several commenters express support for our proposed action and imply a connection between the State's redesignation request for area 61 and the construction of a natural gas pipeline, construction of a power plant in the area, the State's electric power needs, electric rates, and economic viability of the affected area.

Response: We acknowledge the commenters' support for our action, but note that we do not share the opinion that the subdivision of area 61 under section 107(d) of the CAA is necessary for the subsequent construction of a natural gas pipeline, the development of a power plant, or the energy and economic benefits that flow from those projects. We also note that a power plant proposal for area 61 could proceed, in full accordance with all applicable statutory and regulatory requirements, regardless of EPA's action to redesignate hydrographic area 61. The PSD permit process and regulatory requirements for any future power plant development will be essentially the same with or without the redesignation of area 61 into two areas.

III. EPA's Final Action

After considering all of the factors described in the above sections, EPA is taking action to approve the State of Nevada's two section 107(d) redesignation requests. Specifically, we are approving the State's request to establish the statewide hydrographic areas (previously established for TSP) as the PM–10 unclassifiable areas under section 107(d) of the Act.[4] This action

[4] It is important to once again note that hydrographic areas are already established as the PSD baseline areas for PM–10 (and other

Continued

replaces the single unclassifiable area designated for Nevada for PM–10 with 253 unclassifiable areas. These 253 areas are defined as the hydrographic areas delineated by the Nevada Division of Water Resources in 1971, as adjusted in 1980 to recognize an additional hydrographic area (101A) referred to as Packard Valley. Together with the two PM–10 nonattainment areas in Nevada (Las Vegas and Reno planning areas), the total number of PM–10 section 107 areas in the State is now 255; these are the same 255 section 107 areas that have previously been designated for TSP. Thus, the effect of today's final rule approving the State's request to establish the hydrographic areas as the section 107 unclassifiable areas for PM–10 is to synchronize the classification of designated PM–10 section 107 areas with the current and longstanding approach the State has used to manage its air quality.

In approving the State's other section 107(d) request, we are redesignating hydrographic area 61 (Boulder Flat) by dividing the basin into two new section 107(d) areas for PM–10, sulfur dioxide (SO_2), and nitrogen dioxide (NO_2): upper area 61 and lower area 61.

Finally, we are updating the TSP table in 40 CFR 81 for Nevada to delete those designations that are no longer necessary. In particular, we are deleting the TSP attainment and unclassifiable area designations statewide, except for those in Clark County. We will delete the appropriate TSP designations for Clark County at such time as we approve revisions to their PSD program that include the PM–10 increments.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action redesignates areas for air quality planning purposes and does not impose additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2002. 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)).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 6, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

Part 81, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

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

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

Subpart C—Section 107 Attainment Status Designations

2. In § 81.329, the tables for Nevada—TSP, Nevada—SO_2, Nevada—PM–10, and Nevada—NO_2 are revised to read as follows:

§ 81.329 Nevada.

pollutants), so today's action regarding the statewide designation for PM–10 does not effect any change in how the State manages their federally-delegated PSD program. For example, pursuant to 40 CFR 52.21(b)(14)(iv), minor source baseline dates originally established for the TSP increments are not rescinded by today's rule; they remain in effect and continue to apply for purposes of determining the amount of available PM–10 increment.

NEVADA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
(Township Range):				
Clark County:				
Las Vegas Valley (212)(15–24S, 56–64E)	X			
Colorado River Valley (213) (22–33S, 63–66E)			X[1]	
Rest of County[2]				X
Carson Desert (101)(15–24.5N, 25–35E)	X			
Winnemucca Segment (70)(34–38N, 34–41E)	X			
Lower Reese Valley (59)(27–32N, 42–48E)		X		
Fernley Area (76)(19–21N, 23–26E)	X			
Truckee Meadows (87)(17–20N, 18–21E)	X			
Mason Valley (108)(9–16N, 24–26E)	X			
Clovers Area (64)(32–39N, 42–46E)		X		

[1] EPA designation replaces State designation.
[2] Rest of County refers to 27 hydrographic areas either entirely or partially located within Clark County as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971), excluding the two designated areas in Clark County specifically listed in the table.

NEVADA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
(Township Range):				
Steptoe Valley (179) (10–29N, 61–67E):				
Central				X
Northern (area which is north of Township 21 North and within the drainage basin of the Steptoe Valley)			X	
Southern (area which is south of Township 15 North and within the drainage basin of the Steptoe Valley)			X	
Boulder Flat (61) (31–37N, 45–51E):				
Upper Unit 61				X
Lower Unit 61				X
Rest of State[1]				X

[1] Rest of State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971), excluding the designated areas specifically listed in the table.

* * * * *

NEVADA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Washoe County:				
Reno planning area	11/15/90	Nonattainment	02/07/01	Serious.
Hydrographic area 87				
Clark County:				
Las Vegas planning area	11/15/90	Nonattainment	02/08/93	Serious.
Hydrographic area 212				
Boulder Flat (61) (31–37N, 45–51E):				
Upper Unit 61	11/15/90	Unclassifiable		
Lower Unit 61	11/15/90	Unclassifiable		
Rest of State[1]	11/15/90	Unclassifiable		

[1] Rest of State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971), as revised to include a division of Carson Desert (area 101) into two areas, a smaller area 101 and area 101A, and excluding the designated areas specifically listed in the table.

NEVADA–NO_2

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Boulder Flat (61)(31–37N, 45–51E):		
Upper Unit 61		X
Lower Unit 61		X
Rest of State [1]		X

[1] Rest of State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971), excluding the designated areas specifically listed in the table.

[FR Doc. 02–28851 Filed 11–12–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3600, 8200, and 8360

[WO–320–1430–PB–24 1A]

RIN 1004–AD29

Mineral Materials Disposal; Natural History Resource Management: Procedures; Visitor Services

AGENCY: Bureau of Land Management, Interior.

ACTION: Correcting amendments.

SUMMARY: This document corrects the Bureau of Land Management (BLM) final rule on mineral materials disposal that was published November 23, 2001 (66 FR 58892), by adding changes in several cross references to the regulations on mineral materials disposal that appear elsewhere in BLM regulations. These cross-reference amendments should have appeared in the original final rule. This document also corrects typographical and editorial errors in the 2001 final rule.

EFFECTIVE DATE: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Durga N. Rimal, Solid Minerals Group, at (202) 452–0350. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: The final rule published on November 23, 2001 (66 FR 58892–58910), removed part 3610 and subpart 3621 as part of its reorganization of the regulations on mineral materials disposal in 43 CFR part 3600, and made a conforming amendment in 43 CFR subpart 3809. The final rule should have amended the cross-references to part 3610 that appear in 43 CFR sections 8224.1 and 8365.1–5, and a cross-reference to subpart 3621 that appears in section 8365.1–5. Because the substance of the removed CFR units appears in other sections of revised part 3600, the cross-references should have been amended and not removed. These erroneous cross-references in the Code of Federal Regulations may prove to be misleading and need to be corrected. This document corrects this oversight.

We are also correcting editorial and typing errors in part 3600. In section 3601.51, which describes when BLM may inspect your mineral materials operation, we are correcting a conjunction from ''and'' to ''or'' in order to forestall a possible interpretation of the provision to require a BLM inspector planning to inspect, for example, mine conditions also to conduct unnecessary surveys and examine weight tickets, which was not our intent in preparing the final rule. Also, in section 3602.12(c), we are correcting the term ''public lands laws'' to read ''public land laws'', the term as used in all other BLM regulations.

Finally, we are correcting a printing error in a CFR authority citation. The citation for the Land and Water Conservation Fund Act is 16 U.S.C. 460*l*–6a, which contains the italic letter ''ell'' in the section number. This appears in the authority citation for part 8360 as the numeral ''one'', an error that this document corrects.

Dated: October 29, 2002.

Michael H. Schwartz,

Group Manager, Regulatory Affairs.

For these reasons, make the following correcting amendments in 43 CFR parts 3600, 8200, and 8360:

PART 3600—MINERALS MATERIALS DISPOSAL

1. The authority citation for part 3600 continues to read as follows:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1201, 1732, 1733, 1740; Sec. 2, Act of September 28, 1962 (Pub. L. 87–713, 76 Stat. 652).

§ 3601.51 [Corrected]

2. In § 3601.51, amend paragraph (d) by removing the word ''and'' following the semicolon at the end of the paragraph, and adding in its place the word ''or''.

§ 3602.12 [Corrected]

3. In § 3602.12, amend paragraph (c) by removing the phrase ''public lands laws'' from where it appears in the first sentence, and adding in its place the phrase ''public land laws''.

Group 8200—Natural History Resource Management

PART 8200—PROCEDURES

4. The authority citation for part 8200 continues to read as follows:

Authority: 43 U.S.C. 1181 (a) and (e), 43 U.S.C. 1201, 43 U.S.C. 1701 *et seq.*

Subpart 8224—Fossil Forest Research Natural Area

§ 8224.1 [Corrected]

5. Correct § 8224.1 by removing at the end of paragraph (b) the term ''§ 3610.1'' and adding in its place the term ''subpart 3602''.

PART 8360—VISITOR SERVICES

6. The authority citation for part 8360 is corrected to read as follows:

Authority: 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 460*l*–6a, 16 U.S.C. 1241 *et seq.*

Subpart 8365—Rules of Conduct

§ 8365.1 [Corrected]

7. Correct § 8365.1–5 in paragraph (b)(4) by revising the reference to ''subpart 3621 of this title'' to read ''subpart 3604'', and in paragraph (c) by revising the phrase ''part 3610 or 5400 of this title'' to read ''part 3600 or 5400 of this chapter''.

[FR Doc. 02–28704 Filed 11–12–02; 8:45 am]
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