

§ 63.966 Reporting requirements.

Owners and operators that use a closed-vent system and a control device in accordance with the provisions of § 63.962 shall prepare and submit to the Administrator the reports required for closed-vent systems and control devices in accordance with the requirements of § 63.693.

Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators

12. Section 63.1045 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 63.1045 Standards—Pressurized separator.

* * * * *

(b) * * *

(3) * * *

(ii) At those times when purging of inerts from the separator is required, and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the applicable requirements of § 63.693.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 81**

[NV 032-FON; FRL-6927-7]

Clean Air Act Reclassification; Nevada—Reno Planning Area; Particulate Matter of 10 Microns or Less (PM-10)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to find that the Reno (Washoe County) Planning Area (RPA) has not attained the annual and 24-hour PM-10 national ambient air quality standards (NAAQS) by the Clean Air Act (CAA) mandated attainment date for moderate nonattainment areas, December 31, 1994. This finding is based on monitored air quality data for the PM-10 NAAQS during the years 1992-1994. As a result of this failure to attain, the RPA will be reclassified under CAA section 188(b)(2) by operation of law as a serious nonattainment area on the effective date of this rule. The State of Nevada will be required to submit a state implementation plan (SIP) revision addressing the CAA provisions for serious areas within 18 months of the reclassification.

EFFECTIVE DATE: This action is effective on February 7, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region 9 office during normal business hours. U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR-2), 75 Hawthorne Street, San Francisco, California 94105.

Electronic Availability

This document is also available as an electronic file on EPA's Region 9 Web Page at <http://www.epa.gov/region09/air>.

FOR FURTHER INFORMATION CONTACT: For monitoring data questions contact Manny Aquitania, U.S. EPA, Region 9, Air Division, Technical Support Office (AIR-7), 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1299, aquitania.manny@epa.gov. For other questions contact Doris Lo, U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR-2), 75 Hawthorne Street, San Francisco, California 94105, (415) 744-1287, lo.doris@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On November 22, 2000, EPA proposed to find that the RPA, a moderate PM-10 nonattainment area (40 CFR 81.329) did not attain either the 24-hour or annual PM-10 NAAQS by the required attainment date of December 31, 1994 and, as a result, would be reclassified as a serious area. 65 FR 70326. The proposed finding and resulting reclassification is based on air quality data which revealed violations of the PM-10 NAAQS during 1992-1994. For more background information see the November 22, 2000 proposal at 65 FR 70326. Today's rulemaking provides EPA's responses to public comments and finalizes EPA's proposed action.

II. Public Comments and EPA Responses

In response to the November 22, 2000 proposal, EPA received one comment letter from the Washoe County District Health Department Air Quality Management Division (the District). In general, the District believes that the air quality in the RPA has improved over the past decade and that a reclassification to serious is not indicative of the air quality improvement for the area; however, the District also recognizes that EPA proposed to reclassify the RPA pursuant to the Clean Air Act's statutory requirements. Below are EPA's responses to the District's comments.

Comment 1: The District is concerned that after years of improving PM-10 ambient levels and public outreach efforts promoting their successes, the proposed action will bring into question the credibility of both the District and EPA. Moreover, the District believes that the reclassification of the area to serious nonattainment will require considerable staff resources to be spent on plan preparation and documentation requirements.

In addition, the District does not believe that the serious classification correctly defines the current PM-10 status of the RPA and that maintaining the moderate classification, although it may not be an option provided by the Clean Air Act, would more correctly characterize the area.

Response 1: While the PM-10 ambient levels may have improved over the years, the RPA was violating the PM-10 standard on its CAA attainment deadline of December 31, 1994 and is currently still in violation of the PM-10 standard. The basis for this conclusion and the data supporting it are discussed in detail in the proposed rule. See 65 FR at 70327.

EPA has the responsibility under CAA sections 179(c) and 188(b)(2) to make findings of failure to attain for areas which have not attained the NAAQS by the statutory deadline. Under section 188(b)(2)(A), a moderate PM-10 nonattainment area is reclassified as serious by operation of law if the Administrator finds that the area has failed to attain the NAAQS by the statutory attainment date.

EPA supports the District's efforts to improve the air quality in the Reno area and understands that the District has already spent considerable resources in developing measures that will satisfy the requirements in CAA section 189(b) for a serious PM-10 area. EPA understands that the plan preparation and document requirements can be resource-intensive and difficult, but EPA is encouraged by the District's ongoing efforts and believes that the District's past efforts (e.g., residential wood burning and construction dust control measures) will also help address the serious area planning requirements. These ongoing and past efforts should help the serious area plan preparation and documentation requirements proceed with fewer resources and less difficulty.

Comment 2: The District stated that the lawsuit and accompanying arguments levied by the Sierra Club present the perception that the air quality in the RPA has continually been at a level endangering public health. The District believes this is a

misconception and stresses that they have adopted and are enforcing strict regulations pertaining to residential wood burning and construction dust control, historically two of the largest PM-10 contributors. The District reiterates that the ambient air quality in Washoe County has improved dramatically in the past ten years.

Response 2: EPA agrees that the air quality in the Reno area has improved over the past 10 years. Unfortunately, the area is still in violation of the NAAQS for PM-10 due to a violation recorded in 1999. See "Table of Sites Violating PM-10 NAAQS in Reno Planning Area, 1997-1999" in the docket for the proposed rule. As stated in the response to comment 1, EPA supports the District in its efforts to improve the air quality in the Reno area and understands that the District has already spent considerable resources in developing measures that will satisfy the CAA requirements for a serious PM-10 area.

Comment 3: The District states that the RPA attained the annual standard for PM-10 in 1995.

Response 3: As discussed in the proposed rule at 65 FR 70327, attainment for the PM-10 NAAQS is achieved when there are 3 consecutive years of clean data. In 1995, the highest annual arithmetic mean for the RPA was 47 $\mu\text{g}/\text{m}^3$ found at the Reno-Galetti Way monitor (below the annual PM-10 NAAQS of 50 $\mu\text{g}/\text{m}^3$). While the RPA did not violate the annual PM-10 NAAQS in 1995 (*i.e.*, had clean data), the RPA still had not attained the annual standard for PM-10 in 1995 due to the annual PM-10 levels in 1993 and 1994. The clean data pointed out by the District are encouraging to EPA, however, the violations recorded in 1999 make an attainment finding impossible at this time.

Comment 4: The District states that the Truckee Meadows Basin did not experience any 24-hour PM-10 violations for 5 years (1994 through 1998). The District states that the RPA measured a violation of the 24-hour standard one day in 1993 and one day six years later in 1999. The District states that the measured 24-hour violations were based on the national every six-day monitoring schedule. For both 1993 and 1999, the District also collected continuous PM-10 data that indicate the RPA did not violate the 24-hour standard during those years. The District claims that if those continuous monitoring instruments were either certified as a federal reference method or if the data were subjected to federal quality assurance procedures by the District, the Truckee Meadows Basin

would not, by federal definition, currently be in violation of the standard.

Response 4: In its proposal, EPA explains how the number of violations are determined from monitored exceedance information. In general, for monitors that collect air quality samples less than every day, a recorded exceedance will in effect be prorated, or adjusted, so that the number of expected exceedances for that year will account for the days not sampled. 65 FR 70327. Once this adjustment is made, the number of violations in 1993 and 1999 would be greater than one in each of those years.

The operating agency can avoid the adjustment process for incomplete data by initiating and maintaining everyday sampling for four (4) calendar quarters. 40 CFR part 50, appendix K. However, the continuous PM-10 data collected by the District using a Federal Equivalent Monitor (FEM) during the 1993 and 1999 violation years cannot be considered because quality assurance procedures prescribed in 40 CFR part 58, Appendix A and "Quality Assurance Handbook for Air Pollution Measurement Systems," EPA, August 1998 were not followed.

Comment 5: The District states that the PM10 violation days in 1993 and 1999 were characterized by stagnant air conditions with low carbon monoxide levels. Thus, the District has determined that fugitive dust and residential wood combustion were not the cause, but that re-entrained road dust from wintertime sanding/de-icing operations was the cause of the 24-hour PM-10 violations during 1993 and 1999. The District recognizes the important effect of re-entrained road dust on the area's air quality and is committed to enhancing its efforts to prevent and mitigate this source. The District believes that Washoe County is currently meeting the NAAQS for PM-10 and, with the additional work it plans, the area can maintain attainment for PM-10.

Response 5: EPA believes the District has made a reasonable assessment of the cause of the PM-10 violations in 1993 and 1999 and the Agency expects to see measures to address this issue in its serious area PM-10 plan for the RPA. As stated previously, based on air quality data, EPA does not agree that the RPA is currently meeting the NAAQS for PM-10; however, EPA believes that the District has a good understanding of the controls needed to attain and maintain the PM-10 NAAQS.

III. SIP Requirements for Serious Areas

PM-10 nonattainment areas reclassified as serious under section 188(b)(2) of the CAA are required to

submit, within 18 months of the area's reclassification, SIP revisions providing for the implementation of best available control measures (BACM) no later than four years from the date of reclassification. The SIP also must contain, among other things, a demonstration that the implementation of BACM will provide for attainment of the PM-10 NAAQS no later than December 31, 2001. CAA sections 189(b)(1)(A) and 188(e) authorize EPA to grant an extension of that deadline if certain conditions are met. EPA has provided specific guidance on developing serious area PM-10 SIP revisions in an addendum to the General Preamble to title I of the Clean Air Act. See 59 FR 41998 (August 16, 1994).

IV. Summary of Final Action

As stated above, EPA is finalizing its proposed action to find that the RPA failed to attain the PM-10 NAAQS by the December 31, 1994 CAA deadline for moderate areas and, as a result, the RPA will be reclassified as a serious PM-10 nonattainment area on the effective date of this final rule.

V. 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.

Under section 188(b)(2) of the CAA, findings of failure to attain are based solely upon air quality considerations and the subsequent nonattainment area reclassification must occur by operation of law in light of those air quality conditions. These actions do not, in-and-of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassifications cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

Accordingly, the Administrator certifies that this action 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.*).

Similarly, because the finding of failure to attain is a factual determination based on air quality considerations and the resulting reclassification must occur by operation of law and, do not impose any federal

intergovernmental mandate, these actions do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Indian tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). Also for the same reasons, this finding of failure to attain and resulting reclassification will 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 action is also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. Finally, for the same reason that this finding of failure to attain is a factual determination based on air quality considerations and the resulting reclassification must occur by operation of law, 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 finding of failure to attain, EPA has taken the necessary

steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This finding of failure to attain 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 March 9, 2001. 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 Subject in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: December 22, 2000.

John Wise,

Acting Regional Administrator, Region IX.

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.*

2. In § 81.329, the table for Nevada-PM-10 Nonattainment Areas is amended by revising the entry for "Washoe County" to read as follows:

§ 81.329 Nevada.

* * * * *

NEVADA—PM-10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Washoe County Reno Planning Area Hydrographic area 87.	11/15/90	Nonattainment	2/7/01	Serious

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