

Dated: January 31, 2001.

**Stephen Perkins,**

*Acting Regional Administrator, EPA-New England.*

Part 52 of 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 *et seq.*

**Subpart OO—Rhode Island**

2. In § 52.2070 the table in paragraph (c) is amended by adding a new entry

in numerical order under “Air Pollution Control Regulation” and by adding a new State citation to the end of the table for “Rhode Island Motor Vehicle Safety and Emissions Control Regulation” to read as follows:

**§ 52.2070 Identification of plan.**  
 \* \* \* \* \*  
 (c) \* \* \*

**EPA APPROVED RHODE ISLAND REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Explanations
* * * Air Pollution Control Regulation No. 34.	* * * Rhode Island Motor Vehicle Inspection/Maintenance Program.	* * * March 30, 2000 .....	* * * February 9, 2001 .....	* * * Department of Environmental Management regulation containing I/M standards.
* * * Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1.	* * * Rhode Island Motor Vehicle Inspection/Maintenance Program.	* * * January 31, 2001 .....	* * * [Insert FR citation from published date].	* * * Department of Administration regulation for the I/M program.
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

[Docket WA-00-01; 6937-5]

**Clean Air Act Reclassification; Wallula, Washington Particulate Matter (PM-10) Nonattainment Area**

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

**ACTION:** Final rule.

**SUMMARY:** EPA has determined that the Wallula nonattainment area has not attained the National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter of less than or equal to 10 microns by the attainment date of December 31, 1997, as required by the Clean Air Act. EPA’s finding is based on EPA’s review of monitored air quality data reported for the years 1995 through 2000. As a result of this finding, the Wallula PM-10 nonattainment area will be reclassified by operation of law as a serious PM-10 nonattainment area.

**DATES:** Effective March 12, 2001.

**ADDRESSES:** Copies of all information supporting this action are available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Pacific Standard Time at EPA Region 10, Office of Air Quality, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. A

reasonable fee may be charged for copies.

**FOR FURTHER INFORMATION CONTACT:** Donna Deneen, EPA, Region 10, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-6706.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On November 16, 2000, we solicited public comment on a proposal to find that the Wallula nonattainment area has not attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to 10 microns (PM-10) by the attainment date of December 31, 1997, as required by the Clean Air Act. Such a finding would result in the reclassification of the Wallula PM-10 nonattainment area as a serious PM-10 nonattainment area by operation of law. In the proposal, we stated that EPA would accept public comments on the proposal until December 1, 2000. See 65 FR 69275.

During the public comment period that ended December 1, 2000, numerous commenters asked for an extension of the public comment period. In light of the significant public interest in the proposal and in response to the numerous request for an extension, EPA reopened the public comment period to December 27, 2000, resulting in a public comment period of at least 30 days. See 65 FR 77544 (December 12, 2000). In addition, in conjunction with other public agencies in the Wallula area, EPA

held an informational meeting regarding the proposal at the Walla Walla County Airport on December 15, 2000. The purpose of the meeting was to provide an opportunity for EPA to explain to the community the basis for its proposal and an opportunity for the community to ask questions of EPA. See 65 FR at 77545. EPA also accepted written comments at the meeting.

EPA received written comments on the proposal from more than 30 commenters. After carefully reviewing and considering all comments received, EPA finds that the Wallula nonattainment area has not attained the PM-10 NAAQS by the attainment date of December 31, 1997, as required by the Clean Air Act. Copies of all written comments received by EPA are in the docket.

**II. Major Issues Raised By Commenters**

The following is a summary of the major issues raised in comments on the proposal, along with a summary of EPA’s responses to those issues. A separate document containing responses to all comments on the proposal (Response to Comments) is in the docket.

**A. Public Participation**

Almost every commenter requested that the original 15-day public comment period be extended to provide more opportunity for public review of EPA’s proposal and more opportunity for public input. Many requested that the public comment period be extended to as long as 120 days and several

commenters requested that EPA hold a public hearing before taking final action.

This action is subject to the requirements of the Administrative Procedures Act (APA) regarding notice and public comment. 5 U.S.C. 551–559. The APA requires EPA to provide notice of all proposed rulemakings in the **Federal Register** and to provide interested persons an opportunity to participate in the rulemaking through the submission of written data, views, or arguments, with or without the opportunity for oral presentation. 5 U.S.C. 553(b) and (c). As discussed above, in response to the many requests for an extension of the public comment period, EPA reopened the public comment period on the proposal, providing at least 30 days for public comment. The issues involved in the proposal are relatively straightforward: Whether the available air monitoring data shows that the Wallula PM–10 nonattainment area attained the PM–10 NAAQS by the attainment date of December 31, 1997. As discussed in more detail below, the air quality data on which EPA is relying in this action has been certified by State of Washington, Department of Ecology (Ecology), as valid data and was put into a publicly available data system several years ago. EPA believes that, under the circumstances, a public comment period of at least 30 days provided an adequate opportunity for interested parties to participate in the rulemaking process.

With respect to the requests for a hearing, the APA does not require a public hearing before final action. Rather, it makes clear that the requirement to provide interested persons an opportunity to participate in the rulemaking process through the submission of written data, views, or arguments may be “with or without opportunity for oral presentation.” 5 U.S.C. 553(c). In this case, EPA determined that an informational meeting, rather than a public hearing, would more appropriately respond to the public’s request for information and explanation regarding the basis for EPA’s action than would a public hearing. EPA notes that, of the seven commenters submitting comments on the proposal after the original public comment period was reopened and the informational meeting held, only one person requested that EPA hold a public hearing before taking final action.

### B. Monitoring

#### 1. Location of the Wallula Monitoring Site

Many commenters, including Ecology, commented that the Wallula PM–10

monitoring site is not properly located and does not meet siting criteria. A primary concern noted by many commenters was that there is no year-round vegetative ground cover near the monitor to keep the impact of wind blown dust to a minimum.

EPA’s monitoring criteria are specified in 40 CFR 58, appendix D and appendix E (2000). Appendix D describes the monitoring objectives and general criteria for establishing the State and Local Air Monitoring Stations (SLAMS) network. Appendix E contains specific siting criteria for the placement of ambient air quality sampling probes and samplers for measuring air quality. As early as the mid 1980s, EPA evaluated the Wallula site and found that it met all of the EPA siting criteria. More recently, in response to concerns raised during the public comment period on this action, EPA again visited the Wallula monitoring site, reviewed the Federal siting criteria, and confirmed that the Wallula monitoring site meets the criteria in both appendices D and E of 40 CFR 58. See Memorandum from Steven K. Body to Files, “Evaluation of the Wallula PM–10 Monitoring Site, Wallula, Washington,” (January 11, 2001).

It is important to note that the criteria providing that monitoring sites should not be located in an unpaved area unless there is vegetative ground cover year round is stated as a “should,” and thus is a goal for consistency of data among monitoring sites across the country, but is not a requirement. See 40 CFR part 58, appendix E, section 8.4. In any event, although the Wallula monitoring site is located in an area of very fine soil that is easily entrained by wind, the surrounding area does have some limited natural vegetation of Russian Thistle, sage and grass providing some protection from wind erosion. Moreover, the soil and vegetation near the Wallula monitor is representative of large areas of the Wallula PM–10 nonattainment area and is not unique to the area surrounding the monitoring site. It is thus representative of population exposure in the area. Some areas near the Wallula monitoring site do not have any ground cover. In general, these areas are areas that are impacted by human (anthropogenic) activities, and include off-road motor vehicle tracks, the monitoring site service access road, a fertilizer composting facility, and a cattle feedlot. Thus, to the extent the monitor is impacted by windblown dust, the dust is attributable in part to human activities and therefore appropriately measured by the monitor.

Although Ecology has recently asserted that the Wallula monitor is not properly sited, Ecology has entered air quality data from the monitor into EPA’s national air data base for more than a decade. By entering the data into this data base, Ecology certified that the data is valid data that meets Federal quality control/quality assurance requirements. See 40 CFR 58.35(d). Ecology used the data from the Wallula monitor in preparing a State Implementation Plan for the Wallula PM–10 nonattainment area, which it submitted to EPA in November 1991. See *State Implementation Plan for Particulate Matter in the Wallula Study Area* (November 1991) (1991 Wallula SIP). In addition, Ecology specifically stated in a 1993 letter to a local citizen that the monitor is in a good location. See Letter from Claude W. Sappington to Randy Buchanan, dated August 5, 1993. Finally, as recently as June 1998, Ecology included the Wallula monitor in its SLAMS network description for EPA approval.

#### 2. Flying Ant Infestation

Several commenters stated that additional analysis of the filters that were collected on June 3, 1997, and July 23, 1999, should be conducted to determine the extent of filter contamination due to “flying ant infestations.” These commenters asserted that there was a correlation between flying ant infestations and the days on which these exceedances were recorded at the Wallula monitoring site. According to the commenters, additional analysis could show that the data was contaminated and should be invalidated.

In response to these concerns, Ecology’s Manchester Laboratory, in cooperation with Bacon Donaldson Laboratory in Richmond, British Columbia, conducted additional analysis of the filter samples collected on July 3, 1997, and June 23, 1999, to determine if the filter samples had been contaminated by swarms of flying ants on those days. According to Ecology, the filters were examined using light microscopy and scanning electron microscopy (SEM). The light microscopy found possible insect parts. The more definitive SEM found no obvious insect fragments. Most of the particles on the filters consisted of small mineral grains or clumps of small mineral grains. Pollen grains were found scattered throughout as a minor fraction of the dust samples. Ecology has concluded, and EPA agrees, that filters for July 3, 1997, and June 23, 1999, were not compromised by contamination with insect fragments and are valid. See

Letter from Mary Burg, Washington Department of Ecology, to Donna Deneen, EPA, Region 10, dated December 27, 2000. Therefore, the concentrations of 210  $\mu\text{g}/\text{m}^3$  and 297  $\mu\text{g}/\text{m}^3$  stand as the PM-10 concentrations monitored in Wallula, Washington, for July 3, 1997, and June 23, 1999, respectively.

### 3. Purpose of the Monitor

Several commenters stated that the Wallula monitoring site was established as a special study site and should have been discontinued. The purpose for which the site was originally established is irrelevant, however, so long as the monitor meets Federal siting criteria. Even if the Wallula monitor was originally established as a special study site, Ecology has included the site in its statewide PM-10 SLAMS network and has submitted air quality data from the monitor to the national air data base for more than a decade. In short, regardless of the purpose or objective for which a monitoring site was established, if the site meets EPA siting criteria, meets quality assurance requirements, and reports valid data, that data can be used for determining compliance with the NAAQS.

### C. Nonattainment Area Boundaries

Several commenters stated that the boundaries of the Wallula PM-10 nonattainment area are arbitrary because the boundaries were set as a 12 mile square box centered on the monitoring site, which includes portions of both Benton and Walla Walla County. These commenters asserted that the boundaries were not based on any evidence indicating sources from Benton County are causing or contributing to the nonattainment problem. Moreover, because Benton County has its own regulatory authority for air (the Benton Clean Air Authority or BCAA), whereas Walla Walla County does not and is subject to Ecology's jurisdiction, these commenters argue it is inappropriate for any portion of Benton County to be included in the nonattainment area.

The boundaries of the Wallula PM-10 nonattainment area were established based on information provided by Ecology to EPA in the late 1980s and early 1990s and a description of the nonattainment area was included in the 1991 Wallula SIP. The SIP states that "A major area of concern is the Horse Heaven Hills, \* \* \* a vast area of dry-land wheat farming." 1991 Wallula SIP, pg. 52. The Horse Heaven Hills area is located in Benton County across the Columbia River from the Wallula monitoring site and a portion of the area

is included in the Wallula PM-10 nonattainment area. During the public comment period on the 1991 Wallula SIP at the state level, no one asserted that Benton County should be excluded from the nonattainment area. In fact, one commenter asserted that progressive tillage practices were needed on farms in the Horse Heaven Hills area because dust from that area blows into the Wallula area. 1991 Wallula SIP, appendix J, pg. 3. In responding to this comment, Ecology agreed that progressive farming practices may be needed in the Horse Heaven Hills area. 1991 Wallula SIP, appendix J, pg. 3.<sup>1</sup> Under section 107(d)(1) of the CAA, nonattainment areas are to include, not only areas that do not meet the NAAQS, but also areas that contribute to ambient air quality in a nearby area that does not meet the NAAQS. The available technical information indicates that emissions from portions of Benton County may cause or contribute to NAAQS violations in Walla Walla County. Although the commenters suggest that sources from Benton County are not causing or contributing to the nonattainment problem in Walla Walla County, they provided no technical information to support this position.

It is true that Benton County has a local air pollution control authority with primary planning responsibilities for air quality in the County, whereas Walla Walla County does not, and Ecology therefore has the primary planning responsibilities for Walla Walla County. This fact does not, however, support the exclusion of Benton County from the nonattainment area, especially in light of available information showing that sources in portions of Benton County may cause or contribute to PM-10 NAAQS violations in Walla Walla County. Indeed, there are many other examples of nonattainment areas where more than one air planning authority has jurisdiction. See, e.g., 40 CFR 81.305 (PM-10 for Searles Valley planning area in California); 81.318 (ozone for Louisville in Kentucky); 81.331 (New York City metropolitan area in New York, New Jersey, and Connecticut). Indeed, because local air authorities in Washington do not have jurisdiction over pulp and paper mills and aluminum plants, it is often the case that Ecology will have primary

<sup>1</sup>EPA also notes that, when EPA proposed action on the 1991 Wallula SIP, no one commented that the boundaries of the nonattainment area were improper. See 60 FR 63019 (December 8, 1995) (proposal); 62 FR 3800, 3802 (January 27, 1997) (noting that EPA received no public comments on its proposal).

regulatory authority over some sources in a nonattainment area and a local air authority will have primary regulatory authority over other sources in the nonattainment area. Coordination between Ecology and the local air pollution control authority with jurisdiction over Benton County was required for the development of the 1991 Wallula SIP and coordination between Ecology and BCAA will continue to be required in future planning efforts as well.

### D. Classification

#### 1. Considerations in Classification

Many commenters stated that the proposed reclassification of the Wallula PM-10 nonattainment area is not appropriate and not the best way to address potential air problems in the area for a variety of reasons. Some commenters stated that EPA should not take action because the exceedances are caused by wind blown dust, not human actions, and that EPA must first determine the cause of the exceedances before finding the Wallula area has not attained the PM-10 standards. Others raised concerns with the economic impact of a serious designation on the area's economic development and with Ecology's limited resources to address air quality issues throughout the State of Washington. Many commenters stated that EPA should use its discretion to avoid reclassifying the area to serious. Several noted that the Wallula area is sparsely populated.

The Wallula area has been designated nonattainment for PM-10 and classified as a moderate PM-10 nonattainment area since 1990, with an original attainment date of December 31, 1994. This attainment date was later extended to December 31, 1997. Pursuant to sections 179(c)(1) and 188(b)(2) of the CAA, EPA has the responsibility to determine, within six months of the applicable attainment date, whether PM-10 nonattainment areas attained the PM-10 NAAQS by the attainment date. If EPA determines that an area is not in attainment of the PM-10 NAAQS after the attainment date, "the area shall be reclassified by operation of law as a Serious Area." CAA section 188(a)(2)(A). Therefore, once EPA makes a finding of nonattainment after the attainment date, reclassification to serious occurs by operation of law, without further action by EPA. EPA's discretion in this regard is constrained by the requirements of the Clean Air Act.

Findings of attainment or nonattainment under section 179(c)(1) of the Act are to be based upon an area's

“air quality as of the attainment date.” CAA section 188(b)(2) is consistent with this requirement. With two exceptions discussed below, the cause of the exceedances is not relevant to the determination of whether air quality in an area is meeting the PM-10 NAAQS. Similarly, factors such as the economic impact of a reclassification, the number of people living in the nonattainment area, the planning authority’s resources needed to address a serious designation, whether the moderate area SIP is being implemented, or the best means of controlling the sources of PM-10 emissions are not relevant to the determination of whether air quality in a nonattainment area meets air quality standards. Under the statutory scheme enacted by Congress, these factors may to some extent be considered by authorities during the process of planning how to bring an area into attainment, but Congress has not included them as appropriate for consideration in determining whether the air quality of an area is meeting Federal standards.

There are two circumstances in which the cause of an exceedance is an appropriate consideration in determining the air quality of an area. First, section 188(f) of the Clean Air Act gives EPA authority to waive a specific date for attainment of the standards where EPA makes certain findings regarding the relative impact on air quality of anthropogenic sources of PM-10 (resulting from human activities) versus nonanthropogenic sources of PM-10 (activities where the human role in the cause of such emissions is highly attenuated). As discussed in section II.E below, the Wallula area does not qualify for a permanent waiver of the attainment date. Second, under section 107(d)(4)(B)(ii) of the CAA and 40 CFR part 50, appendix K, section 2.4, specific exceedances due to uncontrollable natural events may be discounted or excluded entirely from decisions regarding an area’s air quality status. See also Memorandum from EPA’s Assistant Administrator for Air and Radiation to EPA Regional Air Directors entitled “Areas Affected by Natural Events,” dated May 30, 1996 (EPA’s Natural Events Policy). As discussed in section II.F. below, even if some of the data from the Wallula monitoring site are considered uncontrollable natural events and excluded from consideration in determining the air quality status of the area, the remaining data still show that the Wallula area has not attained the PM-10 NAAQS.

EPA agrees with the commenters that additional evaluation of the data and

cause of the high PM-10 readings in the Wallula area would help to better identify the sources and activities resulting in the high PM-10 levels recorded on the Wallula monitor. This information would in turn assist in developing a control strategy that would bring the Wallula area into attainment with the PM-10 NAAQS as expeditiously as possible and with the best use of limited resources. EPA encourages Ecology to work with BCAA, local government, PM-10 sources, and the public in the Wallula area to conduct such evaluation.

## 2. Data After December 1997

One commenter stated that EPA’s determination that the Wallula area failed to attain the PM-10 NAAQS should not be based on data collected after the attainment date of December 31, 1997. In the case of Wallula with an attainment date of December 31, 1997, EPA first reviewed data for calendar years 1995, 1996, and 1997. During that period, there were two recorded exceedances, one on June 21, 1997, and one on July 3, 1997. As discussed in more detail in section II.F below, although Ecology has claimed that the June 21, 1997, exceedance was due to a natural event and should not be considered in an attainment determination, Ecology has made no such claim for the exceedance on July 3, 1997. Because the Wallula monitor is scheduled to sample once every six days, each measured exceedance is generally counted as six expected exceedances and represents a violation of the 24-hour PM-10 standard. Thus, the data shows that, even if only the data available on or before the attainment date of December 31, 1997, is considered and Ecology’s natural events flagging is accepted, the Wallula area was still not in attainment of the 24-hour PM-10 NAAQS as of the attainment date. EPA disagrees, however, that data collected after the attainment date of December 31, 1997, is not relevant to EPA’s decision. The exceedances occurring after the attainment date provide confirmation that the Wallula area has not attained the 24-hour PM-10 standard.

## 3. Kennewick Area

Several commenters stated that EPA used its discretion in the case of the Kennewick/Richland/Pasco Tri-Cities area in neighboring Benton and Franklin Counties to designate the area as “unclassifiable” because of the occurrence of natural events similar to those that occur in the Wallula area. These commenters urged EPA to do the same for the Wallula area.

As noted above, the Wallula area has been designated nonattainment for PM-10 and classified as moderate since 1990. Pursuant to sections 179(c)(1) and 188(b)(2) of the CAA, EPA is required to determine, within six months of the applicable attainment date, whether PM-10 nonattainment areas attained the PM-10 NAAQS by the attainment date. If EPA determines that an area is not in attainment of the PM-10 NAAQS after the attainment date, “the area shall be reclassified by operation of law as a Serious Area.” See CAA section 188(a)(2)(A).

In contrast, the Kennewick/Richland/Pasco Tri-Cities area was designated unclassifiable under the Clean Air Act of 1990. As a result, CAA section 107(d)(3)(B) (instead of sections 179(c)(1) and 188(b)(2)) applies to the area. Section 107(d)(3)(B) allows the EPA to consider air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate in determining whether an area’s designation should be revised. EPA used this statutory discretion to use a different approach in the case of the Kennewick/Richland/Pasco Tri-Cities area. EPA does not have discretion under the Clean Air Act to designate the Wallula PM-10 nonattainment area as “unclassifiable” for PM-10. Section 107(d)(3)(F) of the Act expressly states that, “The Administrator shall not promulgate any redesignation of any area (or portion thereof) from nonattainment to unclassifiable.”

## E. Waiver

Several commenters stated that Wallula should receive a permanent waiver of the attainment date under section 188(f) of the CAA due to the significant contribution of nonanthropogenic sources. These commenters stated that identifying and evaluating the relative contributions of anthropogenic and nonanthropogenic sources to the PM-10 exceedances was a primary objective of the Columbia Plateau project and that EPA cannot find the Wallula area has not attained the PM-10 NAAQS until EPA determines that windblown dust was not significantly contributing to the measured 1997 PM-10 concentrations.

Congress recognized that there may be areas where the NAAQS may never be attained because of PM-10 emissions from nonanthropogenic sources, and that the imposition in such areas of certain state planning requirements may not be justified. Therefore, under section 188(f) of the Act, Congress provided a means for EPA to waive a specific date for attainment and certain

control and planning requirements when certain conditions are met in the nonattainment area. Section 188(f) provides two types of waivers. First, EPA may, on a case-by-case basis, waive any PM-10 nonattainment planning requirement applicable to any serious nonattainment area where EPA determines that anthropogenic sources of PM-10 do not contribute significantly to violation of the standards in the area. Second, EPA may waive a specific date for attainment of the standards where EPA determines that nonanthropogenic sources of PM-10 contribute significantly to the violation of the standards in the area. Thus, section 188(f) contains two different legal tests. The first test applies to a waiver of the serious area requirements and requires that EPA determine that anthropogenic sources do not contribute significantly before EPA grants such a waiver. The second test applies to a waiver of an area's attainment date and requires that EPA determine that nonanthropogenic sources contribute significantly before waiving the attainment date. The first test is more stringent than the second.

EPA has issued guidance addressing implementation of section 188(f) and reconciling the two legal tests set out in that provision and cited above. See 59 FR 41998 (August 16, 1994) ("State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990", referred to hereafter as "Serious Area Guidance"). In particular, EPA noted that the disparity between the legal tests set out in section 188(f) could lead to an absurd result. If, for example, a moderate area was granted a permanent waiver because nonanthropogenic sources contribute significantly to violations of the PM-10 NAAQS, the attainment date for the area would be vacated. Therefore, the moderate area would not be subject to reclassification under section 188(b) because there simply would be no attainment date that the area cannot practicably meet or that the area fails to meet. The result would be that a moderate area would be effectively relieved from the serious area requirements without having met the more stringent test that Congress expressly required to be met as a prerequisite to a waiver of such requirements in the first sentence of section 188(f)—a determination that anthropogenic sources of PM-10 do not contribute significantly to violation of the PM-10 NAAQS. In such an event,

the more stringent test for determining whether to waive serious area requirements would be rendered meaningless.

To avoid this absurd result and only grant a waiver of the serious area requirements consistent with the legal standard set out in the Act, EPA has construed section 188(f) to provide that a moderate area may only qualify for an attainment date waiver if it also qualifies for a waiver of the serious area requirements under the first sentence of section 188(f). Therefore, EPA must determine that anthropogenic sources in the area do not contribute significantly to the violation of the PM-10 NAAQS, and that the serious area requirements should be waived, before EPA can grant an attainment date waiver for a moderate area. If such a determination is made, then the attainment date may be waived and the area would not be reclassified.<sup>2</sup> See 59 FR at 42005; 58 FR 18190, 18192 (April 8, 1993) (proposal to grant a waiver of the attainment date for Anthony, New Mexico).

In the Serious Area Guidance, EPA set forth threshold levels for determining whether areas qualify for waivers under section 188(f). Where emissions from all anthropogenic sources as a whole contribute less than or equal to 5 µg/m<sup>3</sup> to 24-hour average design concentrations and less than or equal to 1 µg/m<sup>3</sup> to annual mean design concentrations in a nonattainment area, after all reasonably available control measures (RACM) have been implemented,<sup>3</sup> EPA will generally regard such contributions as insignificant for purposes of waiving requirements applicable to serious PM-10 nonattainment areas pursuant to section 188(f). In addition, if an area meeting this test has not yet been reclassified as serious and the area would qualify under this test for a waiver of certain serious area requirements as deemed appropriate by EPA, then EPA will generally not require reclassification, since that action

<sup>2</sup> These special considerations would not be relevant where EPA is determining whether to waive the attainment date for a serious area (rather than a moderate area) since waiving the date in such circumstances would not as a matter of course have the effect of relieving the area of the serious area requirements. An area already reclassified as serious could qualify for an attainment date waiver solely by showing that nonanthropogenic emissions contribute significantly to the nonattainment problem.

<sup>3</sup> Implementation of RACM (including reasonably available control technology (RACT)) is required in all moderate PM-10 nonattainment areas and that requirement is not waived under the provisions of section 188(f). Therefore, the issue is whether anthropogenic sources still contribute significantly to violations of the NAAQS in an area, after implementing RACM.

would have no practical effect. In contrast, if the contribution of anthropogenic emissions to the 24-hour design concentration exceeds 5 µg/<sup>3</sup>, or if the contribution to the annual design concentration exceeds 1 µg/<sup>3</sup>, even after the application of all RACM, then the area should be reclassified as serious, and serious area requirements, including best available control measures (BACM), should be implemented. See 59 FR at 42004–42005; 58 FR 47383 (September 9, 1993) (final action granting waiver of the attainment date for Anthony, New Mexico). If evidence in a given nonattainment area suggests that anthropogenic source contributions are relatively small but not less than 5 µg/m<sup>3</sup>, then EPA will review the situation on a case-by-case basis taking into account relevant information such as the relative contribution of nonanthropogenic emissions/ anthropogenic emissions and the effects of applying additional controls to both types of sources.

In the Serious Area Guidance, EPA also discussed temporary waivers of the attainment date for moderate areas. In cases where preliminary data (emission inventory, filter analysis, etc.) persuasively indicate that anthropogenic emissions may be insignificant and that nonanthropogenic emissions may be significant in an area, but such data are not decisive, then EPA has stated it will consider granting a temporary or conditional waiver of the moderate area attainment date for no more than three years to allow further evaluation of the situation. See 59 FR at 42005–42006. In the case of Wallula, EPA granted a temporary waiver to extend the attainment date for Wallula to December 31, 1997, based on preliminary information that nonanthropogenic sources of PM-10 may be significant in the Wallula area. See 60 FR 63109 (December 6, 1995)(proposed action); 62 FR 3800 (January 27, 1997) (final action). The temporary waiver was intended to provide Ecology time to evaluate further the Wallula nonattainment area and to determine the significance of the anthropogenic and nonanthropogenic sources impacting the area. Once these activities were complete or the temporary waiver expired, EPA stated it would make a decision on whether the area was eligible for a permanent waiver under section 188(f) of the CAA or whether the area had attained the 24-hour PM-10 standard by the extended attainment date. See 62 FR at 3802.

Because Wallula is currently classified as a moderate PM-10 nonattainment area, EPA must find that

anthropogenic sources in the area do not contribute significantly to violation of the PM-10 NAAQS before EPA will grant a permanent waiver of the moderate area attainment date for Wallula, which in turn would forestall reclassification of the area to serious. Although more than three years have elapsed since expiration of Wallula's temporary waiver, Ecology has not submitted a request for a permanent waiver under section 188(f) of the CAA. Nor has Ecology submitted any information to support a finding that anthropogenic sources in the area do not contribute significantly to violation of the PM-10 NAAQS in the Wallula PM-10 nonattainment area.

In addition, information available to EPA does not support such a finding. First, a review of the location of the monitor itself strongly suggests that the impact of anthropogenic sources is not insignificant. Within a two kilometer radius of the Wallula monitor lie a pulp mill, a feed lot with capacity for over sixty thousand cattle, a beef processor, a composting facility, a tree farm, and a highway, which collectively emit more than 631 tons of PM-10 each year. Second, based on the 1991 Wallula SIP, although 95% of the PM-10 emissions in the nonattainment area are classified by the State as "wind blown dust," the State characterizes the emissions as "agricultural wind blown dust," that is, dust from crop land subject to agricultural practices. The SIP also states that "A major source of windblown dust in the area are agricultural fields lying fallow or bare." Of the approximately 92,160 acres in the Wallula PM-10 nonattainment area, approximately 41,420 acres are under cultivation for wheat, corn, or alfalfa.

Ecology and EPA have participated in a research project to better understand the causes and impacts of wind erosion and windblown dust on the Columbia Plateau, which includes the Wallula area, and to develop strategies for minimizing impacts. This project is known as the Columbia Plateau Particulate Matter Research Project (the Columbia Plateau Project). The Columbia Plateau Project supports the conclusion that the ambient impact of anthropogenic sources of PM-10 in the Wallula area is not insignificant. As part of the project, researchers specifically evaluated the question of whether the air is significantly more dusty in the Columbia Plateau since the beginning of systematic farming (an anthropogenic activity), about 120 years ago. Beginning in about the 1880s, the record shows there is a marked increase in the mineral content of the sediment, a change that has remained consistent to

the present. The researchers attributed this increase to an increase in dust deposition. The report further states that specific characteristics of the dust (i.e., the mean diameter and the amount of PM-10) corroborate the assumption that agricultural activity led to this increase. See *Columbia Plateau Particulate Matter Research Project, Final Report: Executive Summary* (March 1998). Moreover, the overall tenor of the project focuses on the impacts of the wind on farming and best management practices for reducing those impacts. In fact, a publication published by the Columbia Plateau Project, "Farming with the Wind," maintains that, in the Columbia Plateau, fine particulates in the air are usually attributed to wind erosion of field soils. See *Farming with the Wind* (1998). Here and throughout the document, this publication makes clear the connection between wind and farming and, in promoting best management practices, suggests that agricultural activities exacerbate the effects of the wind. For these reasons we believe that anthropogenic sources of PM-10 can not be characterized as contributing only insignificantly to violation of the 24-hour PM-10 standard in the Wallula area.

The information regarding the mix of anthropogenic and nonanthropogenic sources in the Wallula area is in marked contrast to the information provided by New Mexico, in seeking a permanent waiver of the moderate attainment date under section 188(f) for Anthony, New Mexico. In that case, New Mexico submitted information showing that, in the Anthony nonattainment area, there are no point sources emissions and only 37.4 tons/year of PM-10 emissions from area sources (mostly roads) and that, in the county in which the nonattainment area is located, there are 72.1 tons/year of PM-10 emissions from point sources. In contrast, there are more than 500,000 tons/year of nonanthropogenic emissions from the desert and well-maintained rangeland in the county which could not be feasibly controlled. EPA noted that no agricultural tilling takes place in the Anthony nonattainment area and most farmlands in the surrounding county are located along the Rio Grange flood plain in an area containing more rich, well developed soil. New Mexico also showed that RACM and RACT had been implemented for all anthropogenic sources of PM-10 in the nonattainment area and the surrounding county. Based on the emissions inventory information, dispersion modeling, filter analysis, and other information provided by New Mexico, EPA agreed that point source

and all other anthropogenic sources in the nonattainment area and the surrounding county were insignificant, and that nonanthropogenic emissions from the surrounding desert and rangelands were overwhelmingly the dominant sources of PM-10 ambient concentrations in the Anthony PM-10 nonattainment area. Therefore, EPA waived the moderate attainment date for the Anthony PM-10 nonattainment area pursuant to section 188(f) of the CAA. See 58 FR at 18192-18194. EPA does not believe that a waiver of the moderate area attainment date is appropriate in the case of the Wallula PM-10 nonattainment area because it has not been established that anthropogenic sources of PM-10 in the area contribute only insignificantly to violation of the PM-10 NAAQS.

#### F. Natural Events

##### 1. Wallula Exceedances as Natural Events

Numerous commenters stated that the exceedances of the PM-10 NAAQS at the Wallula monitoring site are caused by windblown dust, which is considered a "natural event," and should be excluded in determining the attainment status of the Wallula area. In addition to the waiver provisions of section 188(f) of the CAA, the Clean Air Act provides for the exclusion of certain data attributable to uncontrollable natural events from attainment determinations. See CAA section 107(d)(4)(B)(ii) and 40 CFR part 50, appendix K, section 2.4. Appendix K provides, in part, that measured exceedances of the PM-10 NAAQS in an area may be discounted from determinations regarding nonattainment status if the data are shown to be influenced by uncontrollable events caused by natural sources of particulate matter. EPA has issued guidance addressing three categories of natural events: (1) Volcanic and seismic activity; (2) wildland fires; and (3) high wind events. See Memorandum from EPA's Assistant Administrator for Air and Radiation to EPA Regional Air Directors entitled "Areas Affected by Natural Events," (May 30, 1996) (Natural Events Policy).

There are important distinctions between waivers under section 188(f) of the CAA and the exclusion of exceedances due to uncontrollable natural events from attainment determinations under section 107(d)(4)(B)(ii) of the CAA and 40 CFR part 50, appendix K, section 2.4, although there is some overlap. In the case of a waiver under section 188(f) of the CAA, a determination is made that

the area cannot attain the 24-hour PM-10 standard because of the ambient impact of nonanthropogenic sources of PM-10. The focus is on the source of the particulate—anthropogenic or nonanthropogenic. In the case of natural event determinations under 107(d)(4)(B)(ii) of the CAA and 40 CFR part 50, appendix K, section 2.4, the focus is on a time-limited event that causes elevated PM-10 levels on a specific day or days: a volcanic or seismic event, a wildfire, or high winds. The source of the PM-10 can be anthropogenic or nonanthropogenic.

In the case of high winds, EPA has stated that it will consider ambient PM-10 concentrations due to dust raised by unusually high winds as due to uncontrollable natural events (and thus excludable from attainment determinations) if either (1) the dust originated from nonanthropogenic sources or (2) the dust originated from anthropogenic sources controlled with best available control measures (BACM). See Natural Events Policy, pg. 7. EPA's Natural Events Policy sets forth a process for declaring an exceedance as due to natural events and for documenting a natural events claim. If natural events cause ambient concentrations of PM-10 that exceed the NAAQS, the State is responsible for developing a Natural Events Action Plan (NEAP) to address future exceedances due to natural events, which includes commitments to: (1) establish public education and notification programs; (2) minimize public exposure to high concentrations of PM-10 due to future natural events; (3) abate or minimize contributing controllable sources of PM-10, which includes the application of BACM to any sources of soil that have been disturbed by anthropogenic activities; (4) identify, study, and implement practical mitigating measures as necessary; and (5) periodically reevaluate the NEAP. See Natural Events Policy, pp. 7–10.

With respect to a specific claim of natural event, when air quality data affected by a natural event are submitted for inclusion in the national air data base, the State should request that a flag be placed on the data to indicate that a natural event was involved and to submit documentation to support the flag. To support a natural event claim for high winds, the State is responsible for documenting, among other things: (1) a clear and causal relationship between the measured exceedance and the natural event; (2) that BACM were required for sources of anthropogenic dust and that the sources were in compliance at the time of the high wind event; and 3) that the documentation of

natural events and their impact on air quality is available for public review. EPA is then to acknowledge receipt of the natural events documentation and confirm the flagging of the exceedance as a natural event.

In EPA's November 14, 2000, proposal finding that the Wallula area had not attained the 24-hour PM-10 standard as of the attainment date, EPA discussed four exceedances of the standard recorded at the Wallula monitor during calendar years 1995 through 1999:

Date	Wallula monitoring site
6/21/97 .....	160 $\mu\text{g}/\text{m}^3$
7/03/97 .....	210 $\mu\text{g}/\text{m}^3$
7/10/98 .....	215 $\mu\text{g}/\text{m}^3$
6/23/99 .....	297 $\mu\text{g}/\text{m}^3$

In addition, EPA has since learned that another exceedance of the 24-hour standard was recorded at the Wallula monitoring site on August 10, 2000, at a level of 215  $\mu\text{g}/\text{m}^3$ . Because the Wallula monitor is scheduled to sample once every six days, each measured exceedance is generally counted as six expected exceedances.

As discussed in EPA's November 16, 2000, proposal, Ecology flagged the June 21, 1997, exceedance in the national air data base as an exceedance caused by high winds under EPA's Natural Events Policy, although it is unclear if EPA received Ecology's documentation of this exceedance as a natural event before the summer of 2000. 65 FR at 69276. In addition, Ecology originally flagged the July 10, 1998, exceedance as due to a natural, high wind event. In response to a specific inquiry from EPA in January 2000, however, Ecology notified EPA that, after further investigation, it did not consider the July 10, 1998, exceedance to be due to high winds and that it would be removing the flag. None of the other exceedances were flagged by Ecology when the data was entered into the national air data base.

In response to EPA's November 16, 2000, proposal to find that the Wallula area had not attained the PM-10 NAAQS as of the attainment date, Ecology again reviewed the meteorology for the July 10, 1998, exceedance and now asserts that, despite its earlier conclusion, the July 10, 1998, exceedance was in fact attributable to a natural, high wind event and should not be considered in determining the attainment status of the Wallula PM-10 nonattainment area. Ecology also submitted information to show that the June 23, 1999, exceedance was due to a natural, high wind event. Ecology has not flagged or submitted information to

show that a natural, high wind event caused either the July 3, 1997, exceedance or the more recent August 10, 2000, exceedance. Because of the one-in-every-six day sampling schedule at the Wallula monitor, either one of these exceedances precludes a finding that the Wallula area has attained the 24-hour PM-10 standard. The July 3, 1997, exceedance alone is sufficient to establish that the Wallula area had not attained the 24-hour PM-10 standard by the December 31, 1997, attainment date. The August 10, 2000, exceedance establishes that the Wallula area has not attained the 24-hour PM-standard as of the end of the most recent three-year period (1998 through 2000).

EPA is still reviewing the documentation submitted to support Ecology's flagging of the June 21, 1997, July 10, 1998, and June 23, 1999, exceedances as attributable to uncontrollable natural events (high winds). Once EPA has completed its review, EPA will notify Ecology regarding whether EPA will confirm the flagging of the June 21, 1997, July 10, 1998, and June 23, 1999, exceedances as due to natural events.

Although EPA is not determining in this action whether the events were properly flagged as natural, high wind events and qualify for exclusion from consideration under EPA's Natural Events Policy, EPA does have preliminary concerns with the documentation submitted by Ecology to support these natural event claims. First, Ecology has not yet identified threshold wind conditions for the Wallula area which would be expected to overcome BACM controls and entrain dust. In addition, Ecology has only provided meteorology for the days on which it has claimed the occurrence of natural events, and has not provided a similar meteorological analysis showing wind conditions were below a threshold on days when measured values were low. The Natural Events Action Plan submitted by Ecology in March 1998 for the Columbia Plateau, which includes the Wallula area, indicates spring planting and late summer/fall harvest are the times that agricultural soil is most exposed and subject to wind erosion. See *Natural Events Action Plan for High Wind Events in the Columbia Plateau* (March 1998) (Columbia Plateau NEAP). These time frames do not coincide with the measured exceedances recorded on the Wallula monitor in June through August, a time when vegetative cover (i.e., crops) would be expected to be the highest for providing protection of the soil from wind erosion.

Ecology has also not provided information to show that BACM has been implemented on all anthropogenic sources of PM-10 that contributed to the exceedances at the Wallula monitoring site and that such sources were in compliance with BACM at the time of the exceedances. In the Columbia Plateau NEAP, Ecology states that BACM will be applied to windblown dust from anthropogenic sources to mitigate the impact of high wind events and states that a time line for identifying and implementing BACM will be developed by May 1998. Columbia Plateau NEAP, pp. 11 and 16. Although more than two and one half years have elapsed since Ecology submitted its NEAP, EPA has received no information regarding implementation of BACM in the Wallula area except for the State's assertion that the Food Securities Act of 1996 constitutes implementation of BACM on agricultural lands. There is no discussion of Ecology's commitment in its NEAP to study and develop additional BACM for agricultural sources on the Columbia Plateau in cooperation with Washington State University and U.S. Department of Agriculture. Ecology also has not provided documentation of implementation of BACM for the other sources of dust that are near the Wallula

monitoring site, such as the cattle feedlot, the fertilizer composting facility, and off-road recreational vehicle activity. Without documentation that BACM was in effect on these sources at the time of each event, EPA cannot conclude that the wind conditions were sufficient to overcome BACM controls. Finally, EPA does not have evidence of Ecology's public information and outreach efforts with respect to the exceedances recorded in the Wallula area that are claimed to be due to natural events. During the December 15, 2000, informational meeting held in Walla Walla to discuss EPA's proposed finding for the Wallula area, comments by several attendees indicated that there had not been widespread knowledge of the exceedances.

2. Comparison with the Kennewick Monitoring Site

Several commenters noted that during the period from 1997 to the present when the Wallula PM-10 monitoring site recorded five exceedances of the 24-hour PM-10 standard, the Kennewick monitoring site also recorded five exceedances, four of which qualified as "natural events due to high winds" under EPA's Natural Event's Policy. These commenters state that the Wallula exceedances should also be classified as

natural events because the Wallula and Kennewick monitoring sites are less than 20 miles apart.

As discussed above in this section II.F, even if some of the exceedances recorded on the Wallula monitor can be characterized as natural events, two of them have not been flagged as natural events. Because of the sampling frequency at the Wallula monitor, either one of these exceedances requires a finding that the Wallula area has not attained the 24-hour PM-10 standard.

In any event, each exceedance of the 24-hour PM-10 standard and the documentation to support it needs to be assessed independently based on the criteria outlined in EPA's Natural Events Policy to determine whether the exceedances can be attributable to a natural event and thus qualify for exclusion from consideration in attainment determinations for the area. EPA notes that it has confirmed only three of the flags—the exceedances recorded on March 30, 1997, September 23, 1999, and September 25, 1999. Moreover, as shown in the summary table below, the exceedances recorded on the Kennewick monitor since 1997 have not been recorded on the same days as the exceedances recorded on the Wallula monitor.

Year	Kennewick monitoring site	Wallula monitoring site
1997 .....	165 µg/m <sup>3</sup> (March 30)** .....	160 µg/m <sup>3</sup> (June 21)* 210 µg/m <sup>3</sup> (July 3)
1998 .....	no exceedances .....	215 µg/m <sup>3</sup> (July 10)*
1999 .....	183 µg/m <sup>3</sup> (Sept 23)** .....	297 µg/m <sup>3</sup> (July 23)*
2000 .....	306 µg/m <sup>3</sup> (Sept 25)** .....	
	227 µg/m <sup>3</sup> (June 21) .....	215 µg/m <sup>3</sup> (Aug 10)
	230 µg/m <sup>3</sup> (July 31) .....	

\* Indicates Ecology has flagged the data due to a natural event.  
 \*\* Indicates EPA has confirmed the flag.

The fact that there is no correlation between the occurrence of PM-10 exceedances at the two monitors suggests that the mix of PM-10 sources that contribute to PM-10 concentrations above the NAAQS, as well as any natural events that may impact those PM-10 sources, appear to be different in the Kennewick area and the Wallula area.

A review of meteorological data for July 10, 1998, clearly demonstrates that wind conditions can be significantly different in the Kennewick area as compared to the Wallula area. An article in the Tri-City Herald on July 11, 1998, reported that a thunder storm with peak winds of 66 to 69 miles per hour and heavy rain passed through the Kennewick area on July 10 causing significant damage. The Kennewick

monitor reported a PM-10 concentration of 45 µg/m<sup>3</sup> for July 10, 1998, whereas the Wallula monitor reported a PM-10 value of 215 µg/m<sup>3</sup>. The article also notes that Prosser police (Prosser is located approximately 30 miles east of Kennewick) and Hermiston police (Hermiston, Oregon is located approximately 30 miles south of Kennewick) reported relatively calm weather at the time of the storm. Wind measured at Wallula for July 10, 1998, had an average speed of 7.7 miles per hour, with a one-hour maximum wind measurement of 26 miles per hour. Thus, it is not possible to conclude that, because PM-10 exceedances during the period from 1997 through 2000 in the Kennewick area were caused by natural events, exceedances recorded during the same period but on different days at the

Wallula monitoring site were also caused by natural events.

G. Settlement Agreement

A few comments raised issues relating to a Consent Decree EPA entered into in response to a law suit alleging that, among other things, EPA had failed to make a finding regarding whether the Wallula PM-10 nonattainment area had attained the PM-10 standards by the attainment date as provided in CAA section 188(b)(2). Under that Consent Decree, which was lodged with the court on January 12, 2001, EPA agreed to sign a notice on or before January 16, 2001, for publication in the **Federal Register** containing EPA's final determination regarding whether the Wallula PM-10 nonattainment area attained the NAAQS for PM-10 by the



applicable attainment date. The commenters requested a copy of the Consent Decree so that they could comment on the decree. The commenter also asserted that the Consent Decree incorrectly referred to Wallula as one of the "Group 2 PM-10 nonattainment area," when in fact it was designated as a Group 1 PM-10 planning area after promulgation of the 1987 PM-10 NAAQS. The commenter suggested that EPA would delay taking action regarding whether the Wallula PM-10 area had attained the PM-10 standard if Wallula had been properly characterized as a Group 1 area in the Consent Decree.

EPA has provided a copy of the Consent Decree as requested by the commenter and a copy is in the docket. Pursuant to section 309(g) of the CAA, the Consent Decree will be subject to public notice and comment. EPA does not believe, however, the Consent Decree is relevant to the finding made by EPA in this action, because the Consent Decree only specified a time by which EPA was required to make a finding under CAA section 188(b)(2) with respect to the Wallula area, not the substance of the finding. In addition, although it is true that the Wallula PM-10 nonattainment area was identified as a "Group 1 PM-10 planning area" after promulgation of the 1987 PM-10 standards, the reference in the Consent Decree to "Group 2 PM-10 nonattainment areas" was not intended to refer to the planning areas for purposes of the 1987 PM-10 NAAQS but rather was a category created for purposes of the Consent Decree only.

### III. SIP Requirements for Serious Areas

As stated above, EPA is finalizing its proposed action to find that the Wallula PM-10 nonattainment area failed to attain the PM-10 NAAQS by December 31, 1997, the CAA attainment date for the area. As a result, the Wallula area will be reclassified by operation of law as a serious PM-10 nonattainment area on the effective date of this final rule.

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 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.<sup>4</sup> In addition, the terms "major source" or "major stationary source" include any stationary source or group of stationary sources located within a contiguous area and under common control that emit, or have the potential to emit, at least 70 tons per year of PM-10. See CAA sections 188(c)(2) and 189(b).

EPA has issued specific guidance on developing serious area PM-10 SIP revisions in the Serious Area Guidance. See 59 FR 41998 (August 16, 1994). The serious area requirements are in addition to the moderate PM-10 nonattainment requirements of RACT/RACM.

### IV. Administrative Requirements

#### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities."

The Agency has determined that the finding of failure to attain would result in none of the effects identified in section 3(f) of the Executive Order. Under section 188(b)(2) of the CAA, findings of failure to attain are based upon air quality considerations and the resulting reclassifications must occur by operation of law. They 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 reclassification cannot be said to impose a materially adverse impact on State, local or tribal governments or communities.

<sup>4</sup>CAA sections 189(b)(1)(A), 188(e), and 188(f) authorize EPA to grant an extension of that deadline if certain conditions are met.

#### B. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

#### C. Executive Order 13175

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA developed this final rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on

matters that significantly or uniquely affect their communities.

Today's finding of failure to attain does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this finding of failure to attain.

#### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Findings of failure to attain and the resulting reclassification of nonattainment areas by operation of law under section 188(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), I certify that today's final action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

#### E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), 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 believes, as discussed above, that the finding of failure to attain is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

#### F. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This finding of failure to attain and the resulting reclassification of a nonattainment area by operation of law 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), because this action does not, in-and-of-itself, impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to these actions.

#### G. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical

standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### H. Submission to Congress and Comptroller General

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).

#### I. Petitions for Judicial Review

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 April 10, 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 CAA section 307(b)(2).

#### List of Subjects in 40 CFR Part 81

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

Dated: January 16, 2001.

**Charles E. Findley,**

*Acting Regional Administrator, Region 10.*

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 § 81.348, the table entitled “Washington—PM-10” is amended by removing the entry for “Walla Walla County, Wallula” and adding a new

entry in its place for “Walla Walla and Benton Counties” to read as follows:

**§ 81.348 Washington.**  
 \* \* \* \* \*

WASHINGTON—PM-10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * * *				
Walla Walla and Benton Counties				
Wallula: The area bounded on the south by a line from UTM coordinate 5099975mN, 362500mE, west to 5099975mN, 342500mE, thence north along a line to coordinate 5118600mN, 342500mE, thence east to 5118600mN, 362500mE, thence south to the beginning coordinate 5099975mN, 362500mE.	11/15/90	Nonattainment .....	3/12/01	Serious.

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 BILLING CODE 6560-50-P

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**46 CFR Parts 10, 15, and 67**

**49 CFR Part 40**

**49 CFR 571**

RIN 2105-AC49, 2127-AH07; 2115-AF23; 2115-AF88

**Procedures for Transportation Workplace Drug and Alcohol Testing Programs; Metric Conversion of Tire Standards; Licensing and Manning for Officers of Towing Vessels; Citizenship Standards for Vessel Ownership and Financing: Notice Concerning Review**

**AGENCIES:** Office of the Secretary, Transportation, National Highway Traffic Safety Administration, and United States Coast Guard, DOT.

**ACTION:** Notice concerning review.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled “Regulatory Review Plan,” published in the **Federal Register** on January 24, 2001, the Department has postponed for 60 days the effective dates of a number of final rules that were published before January 20, 2001, but have not yet gone into effect. This notice concerns the status of four regulations for which the effective dates were not postponed.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ashby, Deputy Assistant General Counsel for Regulation and

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**SUPPLEMENTARY INFORMATION:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled “Regulatory Review Plan,” published in the **Federal Register** on January 24, 2001, the Department has postponed for 60 days the effective dates of a number of final rules that were published before January 20, 2001, but have not yet gone into effect. The four rules mentioned in this notice were published before January 20, 2000 and have not yet gone into effect. However, for the reasons stated below, we are not postponing their effective dates.

The Department published its new drug and alcohol testing regulation (49 CFR part 40) on December 19, 2000. A portion of this rulemaking went into effect on January 18, 2001, and it consequently is not subject to the withdrawal requirement of the Chief of Staff’s memorandum. The remainder of this rule goes into effect August 1, 2001. The Department does not believe that it is necessary, in order to comply with the intent of the memorandum, to extend the effective date of the rule to a date 60 days after August 1. The time between now and August 1 affords ample opportunity for the Department to review the rule before it becomes effective. In addition, since the August 1 effective date was selected, in part, to coincide with the date on which use of a new Department of Health and Human Services drug test collection form becomes mandatory, postponing the effective date could lead to confusion and mistakes in the administration of drug tests.

The National Highway Traffic Safety Administration (NHTSA) rule on metric conversion of tire standards was published May 27, 1998. The rule converts English measurements in NHTSA rules concerning tire standards to metric measurements. Voluntary compliance was authorized upon publication. The final rule becomes effective May 27, 2003. Because of the very long period of time before this rule becomes effective, the Department does not believe that it is necessary, in order to comply with the intent of the memorandum, to extend the effective date of the rule to a date 60 days after May 27, 2003. The time between now and May 27, 2003, affords ample opportunity for the Department to review the rule before it becomes effective.

The United States Coast Guard (USCG) Interim Final Rule on licensing and manning for officers of towing vessels was published on November 19, 1999. The rule creates new licenses, with levels of qualification and enhanced training and operating experience requirements for these personnel. On October 27, 2000, the effective date of the rule was delayed until May 21, 2001, in order to allow time to issue guidance for new licenses and revised training criteria. Because of the period of time before this rule becomes effective, and the fact that the effective date has already been postponed beyond 60 days from today’s date, the Department does not believe that it is necessary, in order to comply with the intent of the memorandum, to extend the effective date of the rule to a date 60 days after May 21, 2001.

The USCG rule on citizenship standards for vessel ownership and financing was issued on December 7, 2000, and becomes effective on October