

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it

does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add § 165.106 to read as follows:

§ 165.106 Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire.

(a) *Location.* The following area is a security zone: All land and waters within 250 yards of the waterside property boundary of Seabrook Nuclear Power Plant identified as follows: beginning at position 42°53'58" N, 070°51'06" W then running along the property boundaries of Seabrook Nuclear Power Plant to position 42°53'46" N, 070°51'06" W. All coordinates reference 1983 North American Datum (NAD 83).

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine (COTP).

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Portland, Maine or designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state and federal law enforcement vessels.

(3) No person may swim upon or below the surface of the water within the boundaries of this security zone.

Dated: October 9, 2002.

M.P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 02–26818 Filed 10–21–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket WA–02–001; FRL–7397–1]

Finding of Attainment for PM₁₀; Wallula PM₁₀ Nonattainment Area, Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined that the Wallula nonattainment area in Washington has attained the National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers as of December 31, 2001, as required by the Clean Air Act.

DATES: This rule will become effective on November 21, 2002.

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, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle Washington, 98101, (206) 553–6706.

SUPPLEMENTARY INFORMATION:

I. Background

On September 3, 2002, EPA solicited public comment on a proposal to find that the Wallula nonattainment area had attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to 10 microns (PM₁₀) by the attainment date of December 31, 2001, as required by the Clean Air Act. See 67 FR 56249.

The Wallula area was designated nonattainment for PM₁₀ and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act upon enactment of the Clean Air Act Amendments of 1990 (Act or CAA) with an attainment date of December 31, 2001. See 40 CFR 81.348 (PM₁₀ Initial

Nonattainment Areas); *see also* 56 FR 56694 (November 6, 1991). EPA later granted the area a temporary waiver of the moderate area attainment date, which extended the attainment date to December 31, 1997. *See* 62 FR 3800 (January 27, 1997).

On February 9, 2001, EPA made a final determination that the Wallula area had not attained the PM₁₀ standard by the moderate area attainment date of December 31, 1997. *See* 66 FR 9663 (February 9, 2001) (final action); (65 FR 69275 (November 16, 2000) (proposed action). EPA made this determination based on air quality data for calendar years 1995, 1996, and 1997. As a result of that finding, the Wallula PM₁₀ nonattainment area was reclassified by operation of law as a serious PM₁₀ nonattainment area effective March 12, 2001, with an attainment date of December 31, 2001. *See* sections 188(b)(2)(A) and 188(c)(2).

Pursuant to sections 179(c) of the CAA, we have the responsibility of determining within six months of the applicable attainment date whether, based on air quality data, PM₁₀ nonattainment areas attained the PM₁₀ NAAQS by the attainment date. Determinations under section 179(c)(1) of the Act are to be based upon the area's "air quality as of the attainment date." Three consecutive years of air quality data are generally required to show attainment of the annual and 24-hour standards for PM₁₀. *See* 40 CFR part 50 and appendix K.

As discussed in the proposal, the Wallula monitor recorded no violations of the annual PM₁₀ standard for the three-year period from 1999 through 2001. EPA therefore proposed to determine that the Wallula area attained the annual PM₁₀ standard as of the serious area attainment date of December 31, 2001. *See* 67 FR 56250.

With respect to the 24-hour PM₁₀ standard, there were two exceedances of the 24-hour PM₁₀ standard recorded at the Wallula monitor during the period of 1999 through 2001: A concentration of 297 µg/m³ on June 23, 1999, and a concentration of 215 µg/m³ on August 10, 2000.¹ Washington flagged both of these exceedances as attributable to high wind "natural events." 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, such as unusually high winds, may be discounted or excluded entirely from

decisions regarding an area's air quality status in appropriate circumstances. *See* 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). EPA has stated that it will treat ambient PM₁₀ exceedances caused by 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, pp. 4–5.

As discussed in detail in the proposal, based on information submitted by Washington and other information available to EPA, EPA proposed to find that the exceedances that occurred on June 23, 1999 and August 10, 2000, as well as two previous exceedances on June 21, 1997 and July 10, 1998 (which had also been flagged by Washington as high wind events), qualify as high wind natural events under EPA's Natural Events Policy. Therefore, EPA proposed to exclude the 1999 and 2000 exceedances from consideration in determining whether the Wallula PM₁₀ nonattainment area attained the 24-hour standard as of December 31, 2001 and to find that the area had attained the 24-hour PM₁₀ standard as of that date. *See* 67 FR 56250–56252. EPA noted, however, that identification and application of BACM for agricultural lands is evolving and that EPA expects Washington to continue efforts in identifying and implementing BACM on sources of agricultural windblown dust in the Wallula area in order for future exceedances caused by high winds to be characterized as "natural events" and excluded in attainment determinations. *See* 67 FR 56252. EPA received no comments in response to its September 3, 2002 proposal.

II. Final Action

EPA has determined that the Wallula PM₁₀ nonattainment area attained the PM₁₀ NAAQS as of the serious area attainment date of December 31, 2001 and that the exceedances that occurred on June 21, 1997, July 10, 1998, June 23, 1999, and August 10, 2000 qualify as high wind natural events under EPA's Natural Events Policy.

Consistent with CAA section 188, the Wallula nonattainment area will remain a serious PM₁₀ nonattainment area, but will avoid the additional planning requirements that apply to serious PM₁₀ nonattainment areas that fail to meet the

attainment date under section 189(d) of the CAA. This finding of attainment should not be confused with a redesignation to attainment under CAA section 107(d). Washington has not submitted a serious area plan for the Wallula area that meets the requirements of section 189(b) of the CAA. In addition, Washington has not submitted a maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignations to attainment. The designation status in 40 CFR part 81 will remain serious nonattainment for the Wallula PM₁₀ nonattainment area until such time as Washington meets the CAA requirements for redesignations to attainment.

III. Administrative Requirements

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

This finding also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely makes a determination based on air quality data and does not alter the relationship or the distribution of power

¹ Because the Wallula monitor is scheduled to sample only once every six days, each measured exceedance is generally counted as six expected exceedances and would generally represent a violation of the 24-hour PM₁₀ standard.

and responsibilities established in the Clean Air Act. This finding also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because this action does not involve technical standards. This finding 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 December 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 81

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

Dated: October 10, 2002.

Ronald A. Kreizenbech,

Acting Regional Administrator, Region 10.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-2508; MB Docket No. 02-105; RM-10396]

Radio Broadcasting Services; Boonville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 67 FR 39935 (June 11, 2002), this document substitutes Channel 300A for the vacant Channel 241A allotment at Boonville, California, thus allowing Station KRSB(FM) to increase its power to maximum Class A (equivalent) FM facilities on Channel 240A at Healdsburg, California. The coordinates for Channel 300A at Boonville are 39-01-33 North Latitude and 123-29-33 West Longitude, with a site restriction of 11.2 kilometers (7 miles) west of Boonville.

DATES: Effective November 19, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02-105, adopted September 25, 2002, and released October 4, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202 863-2893, facsimile 202 863-2898, or via e-mail: qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is

amended by adding Channel 300A at Boonville, and removing Channel 241A at Boonville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02-2507; MB Docket No. 02-185; RM-10463]

Radio Broadcasting Services; Balmorhea, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 283C to Balmorhea, Texas, in response to a petition filed by Linda Crawford. *See* 67 FR 50850, August 6, 2002. The coordinates for Channel 283C at Balmorhea are 31-08-42 and 103-36-54. There is a site restriction 21.7 kilometers (13.5 miles) northeast of the community. Concurrence of the Mexican Government has been received for the allotment of Channel 283C at Balmorhea. With this action, this proceeding is terminated. A filing window for Channel 283C at Balmorhea will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 02-185, adopted September 25, 2002, and released October 4, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 863-2893, facsimile (202) 863-2898, or via e-mail: qualexint@aol.com.