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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 81**

[NV-FOA-126; FRL-7907-3]

**Determination of Attainment for the Ozone and Carbon Monoxide National Ambient Air Quality Standards in Washoe County, NV****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA has determined that the marginal one-hour ozone nonattainment area that includes all of Washoe County, Nevada has attained the 1-hour ozone National Ambient Air Quality Standard by the applicable attainment date (1993) and has continued to attain since that time. EPA has also determined that the moderate carbon monoxide nonattainment area that includes the Truckee Meadows area of Washoe County has attained the carbon monoxide National Ambient Air Quality Standard by the applicable attainment date (1995) and has continued to attain since that time. This determination of attainment does not redesignate the Washoe County area to attainment for the 1-hour ozone or the carbon monoxide standard. The Clean Air Act requires that, for an area to be redesignated, five criteria must be satisfied including the submittal of a maintenance plan as a State Implementation Plan revision. The intended effect of this action will be to relieve the State of Nevada of the obligation to submit revisions to the state implementation plan to address additional requirements under the Clean Air Act for the next higher nonattainment classifications for the 1-hour ozone and carbon monoxide standards.

**EFFECTIVE DATE:** This finding is effective on June 2, 2005.

**ADDRESSES:** Copies of documents relevant to this action are available for public inspection during normal business hours at the Air Planning Office of the Air Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California, 94105-3901.

**FOR FURTHER INFORMATION CONTACT:** Eleanor Kaplan, Air Planning Office (AIR-2), U.S. Environmental Protection

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**SUPPLEMENTARY INFORMATION:**

Throughout this document, “we,” “us” and “our” refer to U.S. EPA.

**I. Background**

Under sections 179(c), 181(b)(2) and 186(b)(2) of the Clean Air Act (CAA or “Act”), EPA has the responsibility for determining whether a nonattainment area has attained the 1-hour ozone and carbon monoxide (CO) national ambient air quality standards (NAAQS) by the applicable attainment dates. In this case, the EPA was required to make determinations concerning the Washoe County ozone nonattainment area and the Truckee Meadows CO nonattainment area. As a “marginal” 1-hour ozone nonattainment area, Washoe County was subject to a December 31, 1993 attainment date, and as a “moderate” CO nonattainment area, the Truckee Meadows area was subject to a December 31, 1995 attainment date.

On January 21, 2005 (70 FR 3170), we published a notice announcing a proposed finding that the Washoe County nonattainment area had attained the 1-hour ozone NAAQS by the applicable attainment date (December 31, 1993) and has continued to attain the 1-hour ozone standard since that time, and that the Truckee Meadows nonattainment area had attained the CO NAAQS by the applicable attainment date (December 31, 1995) and has continued to attain the CO standard since that time. A detailed discussion of EPA’s proposal is contained in the January 21, 2005 proposed rule and will not be restated here. The reader is referred to the proposed rule for more details.

**II. Public Comments and EPA Responses**

EPA received one comment letter during the 30-day comment period. This letter, dated February 22, 2005, was submitted on behalf of a coalition of groups including the North West Great Basin Association, Environmental Defense, Progressive Leadership Alliance of Nevada, Western Resource Advocates, and Clean Air Task Force. The comments center on the possible effects on air quality in Washoe County resulting from operation of a coal-fired power plant for which plans are being developed and that would be located within Washoe County near the Town of Gerlach. In response to a request from EPA for additional information regarding a reference made in the letter, the commenter submitted to us an excerpt from a report on a pre-

construction monitoring site called Squaw Creek Valley located in the southeast corner of the proposed power plant site to collect on-site ambient air quality, meteorological and upper air data. The site was installed in mid-July 2004. Official data collection began in August 2004, and the excerpt submitted to us contained a summary of air quality data collected during the months of August through October 2004. The comments and EPA responses are as follows:

*Comment 1*

Notwithstanding a finding of attainment, Washoe County remains designated “nonattainment” for the 1-hour ozone and CO NAAQS, and any new major sources of ozone and CO emissions must comply with all nonattainment requirements.

*Response 1*

EPA agrees that a finding of attainment does not constitute a redesignation to “attainment” and that all new major sources or major modifications that are to be located in a nonattainment area and that receive permits to construct while the area remains designated as “nonattainment” must comply with all applicable nonattainment “new source review” (NSR) requirements, including installation of control technology representing the lowest achievable emission rate (LAER) and offsets. However, we note that the proposed power plant outside of Gerlach would be constructed in an area that is designated as “unclassifiable/attainment” for the CO NAAQS,<sup>1</sup> and thus, with respect to CO emissions, would be subject to the NSR requirements that apply within such areas (*i.e.*, the Prevention of Significant Deterioration, or PSD program), not those that apply to nonattainment areas. Also, because the power plant undoubtedly will not receive an authority to construct until after revocation of the 1-hour ozone NAAQS (*i.e.*, June 15, 2005) and because Washoe County is designated as “unclassifiable/attainment” for the 8-hour ozone NAAQS [see 69 FR 23858, 23919-23920 (April 30, 2004)], which is replacing the 1-hour ozone NAAQS, the applicable permitting agency (in this case, the Nevada Division of Environmental Protection, or NDEP) will be applying PSD requirements to ozone precursor emissions from this proposed power

<sup>1</sup> The Town of Gerlach is approximately 75 miles north-northeast of the northern boundary of the Truckee Meadows CO nonattainment area (*i.e.*, hydrographic area 87).

plant as well. The only nonattainment NSR requirements that would apply to this proposed facility would be those (if any) that remain in effect under the EPA-approved Nevada state implementation plan (SIP) upon revocation of the 1-hour ozone NAAQS.

*Comment 2*

Given the large size of the proposed coal-fired power plant, its numerous support operations (e.g., rail and truck import of coal, limestone, ammonia, etc.), and expected significant emissions of ozone precursors and carbon monoxide, it is premature for EPA to make a determination regarding attainment for ozone or carbon monoxide in Washoe County. Instead, EPA should postpone any such determination until after the project applicant submits emissions data and the Federal agencies can determine the impacts of these emissions on compliance with the ozone and carbon monoxide NAAQS.

*Response 2*

Under sections 179(c), 181(b)(2) and 186(b)(2) of the Clean Air Act, EPA is responsible for making a determination (of whether an area has attained the applicable NAAQS by its attainment date) within six months of the attainment date. We are very late in making these determinations for Washoe County (1-hour ozone NAAQS) and Truckee Meadows (CO NAAQS), and thus, further postponement is not appropriate. However, we note that, if the State of Nevada seeks redesignation from “nonattainment” to “attainment,” we will review the latest monitoring data to ensure that our finding of attainment remains valid for the purposes of section 107(d)(3)(E)(i) of the Act.

With regard to the possible impacts of emissions from the proposed power plant, it is our understanding that the project proponent is still in the process of collecting the information necessary for submittal of a complete permit application to NDEP for the proposed power plant near Gerlach. Once a complete application for an authority to construct (ATC) is submitted, the applicable permitting agency (NDEP) will not issue the ATC unless it is satisfied that the applicant has demonstrated, as required under the PSD program, that the project would not cause or contribute to any NAAQS violation. See 40 CFR 52.21(k)(1). We also note that any draft ATC for the proposed power plant will be subject to EPA and public review and comment under the applicable PSD regulations

and delegation agreement between EPA and NDEP.

*Comment 3*

The available monitoring data is not adequate. The finding of attainment is based on data from only three to six monitoring stations, which are clustered in urban areas. Ozone is formed downwind of the area where precursors are released. Precursors emitted in the Reno-Sparks and Tahoe area, as well as in California could contribute to or cause exceedances of ozone standards in other areas not covered by the existing monitoring network. Recent monitoring data collected north of Gerlach, for example, shows high ozone concentrations.

*Response 3*

We disagree that the monitoring network is insufficient for the purposes of determining whether Washoe County has attained the 1-hour ozone NAAQS. The monitoring stations are, as noted by the commenter, concentrated in the more urbanized portion of the county in and near Reno and Sparks, but we believe that the spatial distribution of the monitoring stations is sufficiently widespread to provide representative worst-case ozone concentration data for the county.

In further support of our attainment finding, we note that, not only have no 1-hour ozone NAAQS violations been recorded at any of the monitoring stations in Washoe County since before 1991, but also the 1-hour ozone design values<sup>2</sup> at the various stations have been well below the NAAQS of 0.12 parts per million (ppm). For example, over the 2001–2003 period, the highest design value among the six ozone monitoring stations located within Washoe County was 0.093 ppm (recorded at the 4th Street Sparks station). We also note that the design values at more distant monitoring stations (i.e., located outside of Washoe County) are also well below the 1-hour ozone NAAQS as shown in table 1, below.

<sup>2</sup>The design value generally represents the fourth highest daily maximum (hourly) ozone concentration over a given three-year period at a given site. Design values provide one basis of comparison between different locations with respect to peak ozone exposure; as such, the design values are provided herein for informational purposes only. Under the CAA, findings of attainment of the 1-hour ozone NAAQS rely on the average number of exceedances per year, not design values. The design value is used under the CAA if an area is found to have missed its attainment deadline and must be reclassified.

TABLE 1.—ONE-HOUR OZONE DESIGN VALUES AT STATION MONITORS NEAR TO, BUT OUTSIDE OF, WASHOE COUNTY, 2001–2003

Summary of one hour ozone air quality 2001–2003	
Monitoring site—approximate distance from Reno, NV	One-hour ozone design value, ppm
Carson City, NV—25 miles south of Reno .....	0.082
Cave Rock State Park, NV—35 miles southwest of Reno .....	0.086
Quincy, CA—65 miles northwest of Reno .....	0.087
South Lake Tahoe, CA—45 miles southwest of Reno .....	0.083

Source: EPA Air Quality System (AQS) Database.

Lastly, we requested and received further information from the commenters regarding their statement “Recent monitoring data collected north of Gerlach, for example, shows high ozone concentrations.” The data referred to in that comment was collected at a monitoring station installed and operated outside of the Town of Gerlach by a contractor working for the power plant project proponent. A summary of air quality monitoring data for the months of August through October, 2004 was provided to us by the commenter, and it shows a maximum 8-hour ozone concentration of 115.6 micrograms per cubic meter (i.e., approximately 0.06 ppm). This maximum 8-hour ozone concentration was measured during the month of August, and it represents approximately 74% of the corresponding 8-hour ozone NAAQS of 157 micrograms per cubic meter (0.08 ppm). While the ozone data collected in connection with the power plant project is incomplete (in that the data only cover three months of a single year), the data that is available does not show ozone concentrations that exceed or even approach the 8-hour ozone NAAQS and does not justify a change or deferral of our attainment finding for Washoe County with respect to the 1-hour ozone NAAQS nor does the data justify a re-evaluation of our designation of Washoe County as “unclassifiable/attainment” for the 8-hour ozone NAAQS.

*Comment 4*

EPA should review and incorporate the most recent monitoring data prior to issuing any final rule.

#### Response 4

The proposed finding of attainment for 1-hour ozone and CO relied upon monitoring data through year 2003. In response to this comment, we have reviewed the latest available data (*i.e.*, the data for year 2004) collected at the Washoe County monitors and input to AQS and have found no exceedances of either the 1-hour ozone or CO NAAQS. The highest 1-hour ozone concentration measured in 2004 in Washoe County was 0.09 ppm (recorded at both the Reno State Street and Sparks Fourth Street stations) and the highest CO concentrations were 5.9 ppm, one-hour average, and 4.0 ppm, eight-hour average, as recorded at the Sparks Fourth Street station and Reno Galletti station, respectively. In contrast, the 1-hour ozone NAAQS is 0.12 ppm and the CO NAAQS are 35 ppm, one-hour average, and 9 ppm, eight-hour average. Thus, the 2004 data add further support to our finding of attainment for Washoe County (with respect to the 1-hour ozone NAAQS) and Truckee Meadows (with respect to the CO NAAQS).

#### III. Final Action

No comments were submitted that change our assessment that the 1-hour ozone NAAQS has been attained in Washoe County and that the CO NAAQS has been attained in the Truckee Meadows portion of Washoe County. Therefore, we are taking final action, pursuant to sections 179(c), 181(b)(2) and 186(b)(2) of the Act, to determine that the Washoe County "marginal" nonattainment area has attained the NAAQS for 1-hour ozone by the applicable attainment date and has continued to attain the 1-hour ozone NAAQS since that time and, further, that the Truckee Meadows "moderate" nonattainment area has attained the NAAQS for CO by the applicable attainment date and has continued to attain the CO NAAQS since that time. These findings relieve the State of Nevada from the additional requirements under the Clean Air Act for the next higher nonattainment classifications for the 1-hour ozone and CO standards.

It should be noted that this action does not redesignate these areas from "nonattainment" to "attainment". Under section 107(d)(3)(E), the Clean Air Act requires that, for an area to be redesignated from nonattainment to attainment, five criteria must be satisfied including the submittal by the State (and approval by EPA) of a maintenance plan as a SIP revision. Therefore, the designations for Washoe County (for 1-hour ozone) and Truckee

Meadows (for CO) in 40 CFR part 81 are unaffected by this action, and Washoe County will remain a "marginal" nonattainment area for 1-hour ozone and "moderate" for CO until such time as EPA finds that the State of Nevada has met the Clean Air Act requirements for redesignation to attainment.

#### IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely finds that an area has attained a national ambient air quality standard based on an objective review of measured air quality data. This action will not impose any new regulations, mandates, or additional enforceable duties on any public, nongovernmental, or private entity. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This 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 finds that an area has attained a national ambient air quality standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885,

April 23, 1997), because it is not economically significant.

This rule does not involve establishment of technical standards, and thus, 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. section 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. section 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 July 5, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

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

Dated: April 20, 2005.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

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