

condition of the veteran, inclement weather, road conditions, or the mode of transportation used by the veteran.

(Authority: 38 U.S.C. 501, 1708)

§ 60.6 Condition of veteran.

As a condition for receiving temporary lodging under this part, the veteran must be medically stable and must be capable of self-care or be accompanied by a caregiver able to provide the necessary care. Questions regarding these issues will be resolved by an appropriate health care provider at the VA health care facility of jurisdiction.

(Authority: 38 U.S.C. 501, 1708)

§ 60.7 Duration of temporary lodging.

Temporary lodging may be furnished to eligible persons in connection with care or C&P examinations provided at a VA health care facility. When a veteran is undergoing extensive treatment or procedures, such as an organ transplant or chemotherapy, eligible persons may be furnished temporary lodging for the duration of the episode of care subject to limitations described in this section. Temporary lodging may be available the night before the day of the scheduled care, if the veteran leaving home by 8:00 AM, would be unable to arrive at the health care facility by the time of the scheduled care. Temporary lodging may be available the night of the scheduled care if, after the completion of the care, the veteran would be unable to return home by 7:00 PM.

(Authority: 38 U.S.C. 501, 1708)

§ 60.8 Lodging availability.

Fisher Houses are available solely for temporary lodging under this part. Non-utilized beds and rooms at a VA health care facility will be made available if not barred by law and if the Director of the VA health care facility determines that such action would not have a negative impact on patient care. Temporary lodging facilities, such as hotels or motels, will be utilized based on availability of local funding as determined by the Director of the health care facility of jurisdiction. Temporary lodging will be provided on a first-come first-serve basis.

(Authority: 38 U.S.C. 501, 1708)

§ 60.9 Decisionmaker.

Except as otherwise provided in this part, the person responsible for coordinating the temporary lodging program at the VA health care facility of jurisdiction is responsible for making decisions under this part.

(Authority: 38 U.S.C. 501, 1708)

§ 60.10 Costs.

Costs for temporary lodging under this part shall be borne by VA.

(Authority: 38 U.S.C. 501, 1708)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-7203-6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this document, EPA is proposing to approve requests from the State of Nevada, pursuant to section 107(d) of the Clean Air Act (Act), to redesignate the current single unclassifiable area for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀) into numerous individual areas to be consistent with the area definitions for other pollutants. EPA is also proposing to approve a state-requested subdivision of one of those individual areas, referred to as hydrographic area 61 (Boulder Flat), into two areas. EPA's approval of these requests would establish hydrographic areas as the section 107(d) unclassifiable areas for PM₁₀ and would replace hydrographic area 61 with two new section 107(d) areas for PM₁₀, sulfur dioxide (SO₂), and nitrogen dioxide (NO₂): Upper area 61 and lower area 61. In this action, EPA is also proposing to delete certain total suspended particulate (TSP) area designations that are no longer necessary. EPA believes that the State's requests comply with the federal standards for approval of section 107(d) redesignations and that approving the State's request is appropriate.

DATES: Comments on this proposed rule must be received in writing by May 30, 2002.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Chief, Permits Office, Air Division (AIR-3), EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

You can inspect copies of the State's submittal, and other supporting

documentation relevant to this action, during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

You may also see copies of the State's submittal at the Nevada Division of Environmental Protection, 333 W. Nye Lane, Room 138, Carson City, Nevada 89706.

FOR FURTHER INFORMATION CONTACT:

David Albright, EPA Region 9, Air Division, Permits Office (AIR-3), at (415) 972-3971 or albright.david@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

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I. Evaluation of State's Request To Redesignate PM₁₀ Unclassifiable Area

Section 107(d)(1) of the 1977 Amendments to the Act required each State to submit to the Administrator a list identifying those areas which (1) do not meet a national ambient air quality standard (NAAQS) (nonattainment areas), (2) cannot be classified on the basis of available ambient data (unclassifiable areas), and (3) have ambient air quality levels better than the NAAQS (attainment areas). In 1978, we published the original list of all area designations pursuant to section 107(d)(2) (commonly referred to as "section 107 areas"), including those designations for TSP. See 43 FR 8962 (March 3, 1978). EPA's designations of nonattainment, attainment, and unclassifiable areas in the State of Nevada are codified at 40 CFR 81.329. The designations for Nevada have been the subject of a recent technical correction by EPA. See 67 FR 12474 (March 19, 2002). This recent EPA action clarified that the TSP (as well as the NO₂ and SO₂) designations in the State of Nevada are based on hydrographic areas¹ as delineated by

¹ The State of Nevada is divided into 14 distinct hydrologic units called hydrographic regions. The hydrographic regions (or waterbasins or watersheds) have been further disaggregated into 256 hydrographic areas and sub-areas. The hydrographic areas and sub-areas, which Nevada also uses to define their air quality management areas, typically comprise a valley, a portion of a valley, or a terminal basin. For simplicity, in this notice we use the term "hydrographic areas" to refer to both the hydrographic areas and the sub-areas.

the Nevada Division of Water Resources in 1971 with one exception: the split of the Carson Desert hydrographic area (101) into two areas: A smaller Carson Desert (101) and Packard Valley (101A). See 45 FR 46807 (July 11, 1980). The total number of TSP section 107 areas in the State of Nevada is 255.

EPA revised the primary and secondary NAAQS for particulate matter on July 1, 1987 (52 FR 24634), eliminating TSP as the indicator for the NAAQS and replacing it with the PM₁₀ indicator. However, we did not establish PM₁₀ area designations at the time we established PM₁₀ as the new indicator for the particulate matter NAAQS. Instead, Congress established a process for PM₁₀ area designations in the Clean Air Act Amendments of 1990. In 1991, pursuant to the 1990 Amendments, the State of Nevada submitted their recommendations concerning nonattainment areas for PM₁₀. Dated March 15, 1991, the State's letter containing their recommendations did not refer to PM₁₀ attainment or unclassifiable areas, instead focusing solely on the identification of nonattainment areas. Later in 1991, based on the State's recommendations, we revised the nonattainment areas under section 107(d) for PM₁₀, but we did not identify attainment or unclassifiable areas for PM₁₀ at that time. See 56 FR 56694 (November 6, 1991). In 1992, we recognized that we had neglected to identify attainment or unclassifiable areas for PM₁₀ in our 1991 rule and thus added the designation "unclassifiable" for the areas not otherwise designated nonattainment for PM₁₀, using the term "rest of state." See 57 FR 56762 (November 30, 1992). In this context, the use of the term "rest of state" in the PM₁₀ table in 40 CFR 81.329 was only identifying the portion of the State that EPA had not designated nonattainment for PM₁₀. However, as EPA clarified in our recent action cited above, the designation "rest of state" in the PM₁₀ table refers to previously designated hydrographic areas for the purposes of the PSD program. See 67 FR 12474 (March 19, 2002).

Pursuant to the redesignation procedures of section 107(d)(3) of the Act, States may request EPA's approval of area redesignations (including boundary changes to existing areas), and on April 16, 2002, the State of Nevada submitted a request to EPA to redesignate the existing PM₁₀ section 107 unclassifiable area by establishing hydrographic areas within the State as the PM₁₀ unclassifiable areas.

The State of Nevada's request to establish the hydrographic areas as section 107 unclassifiable areas for PM₁₀

is supported by the fact that the State has a long history, dating to the 1970s, of relying upon the hydrographic areas as air quality management areas. EPA approved the use of hydrographic areas as section 107 areas in 1978 (see 43 FR 8962, March 3, 1978). In fact, the hydrographic area-based approach has been used by the State since 1978 to manage particulate matter (and other criteria pollutant) emissions, and it remains the basis on which they implement their federally delegated PSD program for all pollutants. Thus, the effect of finalizing today's proposal to approve the State's request to establish the hydrographic areas as the section 107 unclassifiable areas for PM₁₀ would be to synchronize the classification of designated PM₁₀ section 107 areas with the current and longstanding approach the State has used to manage its air quality.

In summary, we are proposing to approve the State's request to establish the statewide hydrographic areas (previously established for TSP) as the PM₁₀ unclassifiable areas under section 107(d) of the Act.² Our proposed action would replace the single unclassifiable area designated for Nevada for PM₁₀ with 253 unclassifiable areas. These areas would be defined as the hydrographic areas delineated by the Nevada Division of Water Resources in 1971, as adjusted in 1980 to recognize an additional hydrographic area (101A) referred to as Packard Valley. Together with the two PM₁₀ nonattainment areas in Nevada (Las Vegas and Reno planning areas), the total number of PM₁₀ section 107 areas would become 255; these are the same 255 section 107 areas currently designated for TSP.

II. Removing Unnecessary TSP Area Designations from Part 81

The PSD provisions of part C (of title I) of the Act apply in all section 107 areas that are designated attainment or unclassifiable (40 CFR 52.21(i)(3)). Under the PSD program, the air quality in an attainment or unclassifiable area is not allowed to deteriorate beyond prescribed maximum allowable

² It is important to note that hydrographic areas are already established as the PSD baseline areas for PM₁₀ (and other pollutants), so finalization of today's proposal will not effect any change in how the State manages their federally delegated PSD program. For example, pursuant to 40 CFR 52.21(b)(14)(iv), minor source baseline dates originally established for the TSP increments would not be rescinded by finalization of this proposed action and would remain in effect and continue to apply for purposes of determining the amount of available PM₁₀ increment. For further explanation see 67 FR 12474 (March 19, 2002), which includes a detailed explanation of EPA's prior approval of the use of hydrographic areas for PSD baseline purposes.

increases in pollutant concentrations (i.e., increments). As discussed above, EPA revised the primary and secondary NAAQS for particulate matter on July 1, 1987 (52 FR 24634), eliminating TSP as the indicator for the NAAQS and replacing it with the PM₁₀ indicator. However, EPA did not revise 40 CFR part 81 at that time to delete the areas designated as attainment or unclassifiable for TSP because the Agency had not yet promulgated increments for PM₁₀. In 1990, Congress provided (in section 107(d)(4)(B) of the amended Act) that the designations for TSP existing immediately prior to the enactment date of the amendments (November 15, 1990) would remain in effect until EPA determined that the designations were no longer necessary for implementing the maximum allowable increases in concentrations of particulate matter pursuant to section 163(b) of the amended Act.

In 1993, EPA promulgated the PM₁₀ increments and revised the PSD regulations accordingly. See 58 FR 31622 (June 3, 1993). In our 1993 PSD rule, we indicated that the replacement of the TSP increments with PM₁₀ increments (which operate independently from the section 107 area designations for TSP) negates the need for the TSP attainment or unclassifiable area designations to be retained. We also indicated that we would delete such TSP designations in 40 CFR part 81 upon the occurrence of one of the following events: EPA's approval of a State's revised PSD program containing the PM₁₀ increments; EPA's promulgation of the PM₁₀ increments into a State's SIP where the State chooses not to adopt the increments on their own; or EPA's approval of a State's request for delegation of PSD responsibility under 40 CFR 52.21(u). See 58 FR 31622, 31635 (June 3, 1993). In some instances, where a State's request for delegation of PSD responsibility (and EPA's approval of that request) occurred prior to our 1993 PSD rule, the § 52.21 delegation automatically extended to subsequent revisions to the PSD regulations (such as implementation of the PM₁₀ increment). Our 1993 PSD rule became effective on June 3, 1994.

For PSD implementation and enforcement purposes, the State of Nevada is divided into three jurisdictions: the Nevada Department of Conservation and Natural Resources (DCNR), Washoe County District Health Department (WCDHD), and the Clark County Department of Air Quality Management (CCDAQM). EPA has delegated authority under 40 CFR 52.21(u) to implement and enforce the

federal PSD program to DCNR for those PSD major sources or major modifications locating in or constructing in its jurisdiction, which includes the entire State with the exception of Washoe and Clark counties. This delegation agreement covers any revisions that EPA makes to the PSD regulations. See 48 FR 28269 (June 21, 1983), as amended at 54 FR 22888 (May 30, 1989). With certain exceptions not relevant here, EPA did the same for the WCDHD, pursuant to an agreement effective May 9, 1985.

As noted above, for delegated PSD programs, such as those administered by DCNR and WCDHD, the listing of designated TSP attainment or unclassifiable areas became unnecessary on the effective date of our 1993 PSD rule (i.e., June 3, 1994) because, from that date onward, the PM₁₀ increments and baseline areas replaced the TSP increments and baseline areas for the purposes of the federal PSD program. Therefore, if EPA finalizes today's proposal, we will eliminate the listing of designated TSP attainment or unclassifiable areas in Nevada, except for the designations in Clark County. In contrast to NDEP and WCDHD, CCDAQM administers an EPA-approved PSD program (rather than administering a delegated federal PSD program) for PSD sources in Clark County (see 47 FR 26620 (June 21, 1982)). We will delete the appropriate TSP designations for Clark County when we approve revisions to their PSD program that include the PM₁₀ increments.

In summary, we are proposing to update the TSP table in 40 CFR part 81 for Nevada to delete those designations that are no longer necessary. Specifically, we are proposing to delete the TSP attainment and unclassifiable area designations statewide, except for those in Clark County.

III. Proposed Redesignation of Hydrographic Area 61

A. Nevada's Submittal

In a letter dated November 6, 2001, the State of Nevada requested EPA's approval of a redesignation of the boundary of hydrographic area 61 to create two new PSD baseline areas for PM₁₀, NO₂, and SO₂. The State's redesignation request was made pursuant to section 107(d)(3)(D) of the Act, which states: "the Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State."

The State's redesignation submittal included substantial documentation supporting their request. They provided

detailed maps showing the proposed subdivision of hydrographic area 61 into upper area 61 (156 square miles) and lower area 61 (390 square miles). The maps include such features as the area's topography, major roads, railroads, major and minor sources in the area and in nearby areas, and the location of Jarbidge Wilderness Area (the only Class I area in the State). The State also provided a detailed legal description of the proposed new baseline areas, data regarding emissions from all stationary sources in the hydrographic area and major sources in nearby areas, population characteristics and census data for the area, descriptions of the principal land uses, and results of ambient air quality modeling and monitoring, in hydrographic area 61 specifically, and in the larger regional area. Finally, the submittal included the State's perspective on how EPA's approval of the redesignation request would promote Nevada's air quality management.

B. EPA's Criteria for Evaluating State Requests for PSD Baseline Area Redesignations

Section 107(d)(3)(D) of the Act provides that, "within 18 months of receipt of a complete State redesignation submittal, the Administrator shall approve or deny such redesignation." Section 107(d)(3) does not provide specific direction to EPA for evaluating redesignation requests that involve subdivision of existing attainment or unclassifiable areas, in contrast to requests that involve a change in the designation of a given area, e.g., from nonattainment to attainment (see section 107(d)(3)(E)) or from nonattainment to unclassifiable (see section 107(d)(3)(F)). However, section 107(d)(3)(A) of the Act, which describes EPA initiation of an area redesignation, indicates that redesignations may be initiated "on the basis of air quality data, planning and control considerations, or any other air-quality related considerations the Administrator deems appropriate." EPA believes it is reasonable to conclude that these considerations, provided in the Act as an appropriate basis for EPA-initiated redesignations, also provide some basis for EPA's evaluation of state-initiated redesignation requests.

In addition to the general statutory language of section 107, EPA's rules also guide evaluation of a proposed subdivision of existing PSD baseline areas, imposing some minimal limits on the establishment of new baseline areas. These limits include a prohibition on the creation of new baseline areas if: (1) A PSD source has located in, or

significantly impacted on the clean area being considered for redesignation; or (2) the newly created areas either intersect the area of impact of any major PSD source or have a boundary that is smaller than such impact area. EPA's rules currently define "area of impact" as the 1 µg/m³ annual average ambient level isopleth around the major PSD source. See 40 CFR 52.21(b)(15) and 45 FR 52716 (August 7, 1980).

Historically, EPA has relied almost exclusively on the regulatory criteria in part 52 as the basis for evaluating state-initiated requests for PSD baseline area redesignations. See, for example, 60 FR 47297 (September 12, 1995) and 58 FR 50275 (September 27, 1993) (EPA's approvals of redesignation requests made by the States of Wyoming and Minnesota, respectively). However, Federal Land Managers and EPA have recently become concerned about the existing regulatory criteria for redesignation of PSD baseline areas. As a result of these concerns, EPA is currently evaluating the existing regulatory and policy framework for PSD baseline area redesignations to ensure that it continues to adequately prevent significant deterioration of air quality in attainment and unclassifiable areas. Until EPA has completed its evaluation, the Agency will continue to evaluate requests based on the currently applicable federal requirements and policies. Thus, EPA is evaluating Nevada's request based on the statutorily derived "appropriate air quality-related considerations" and the regulatory criteria for PSD baseline redesignations in 40 CFR part 52.

C. Evaluation of Nevada's Request to Redesignate Area 61

EPA has evaluated the State's request to divide hydrographic area 61 and determined that the request adequately complies with the currently applicable federal requirements and policies for PSD baseline area redesignations.

As described above, EPA's part 52 regulations prohibit the creation of new baseline areas if a PSD source has located in, or significantly impacted on the clean area being considered for redesignation, or if the newly created areas either intersect the area of impact of any major PSD source or have a boundary that is smaller than such impact area. Nevada's redesignation submittal indicates that hydrographic area 61 does not presently contain any major PSD sources³ and that no major

³ There is one major source located in Hydrographic area 61 (Barrick Goldstrike Mines, Inc.); however, the source has not been subject to PSD review.

PSD sources are significantly impacting hydrographic area 61. Thus, no PSD source has located in, or is significantly impacting the clean area being considered for redesignation (hydrographic area 61), and the newly created baseline areas (upper and lower area 61) do not intersect the area of impact of any major PSD source nor do they have boundaries that are smaller than such impact area. EPA therefore concludes that the proposed new baseline areas comply with our regulatory criteria for the redesignation of PSD baseline areas.

In addition, EPA believes that consideration of whether the proposed PSD baseline area redesignation will interfere with the State's ability to effectively manage air quality constitutes an appropriate "air quality-related consideration" in evaluating the State's request. In this case, the State believes that the redesignation will promote their air quality management objectives by conforming their management of hydrographic area 61 to the distinct geographic, meteorologic, and land use characteristics of the upper and lower areas.

Since EPA's policy has long been to provide States a fair degree of autonomy to balance air quality management with economic planning, our concern in evaluating this request is not necessarily to ensure that the redesignation will improve air quality management, but to ensure that it both complies with regulatory standards and does not interfere with the State's management of air quality.⁴

Our evaluation of Nevada's request indicates that approving the subdivision of hydrographic area 61 is not likely to interfere with the State's management of air quality in the affected area. Since the minor source baseline date has not been triggered in hydrographic area 61, approving the subdivision would not untrigger the baseline area and, in general, EPA believes that it would not likely result in the types of adverse effects described in footnote 4. For example, since there would not be an untriggering of the baseline area, there is no elimination of already consumed increment and no consumed increment would be added to the baseline for the

area. That is, the amount of pollution allowed in hydrographic area 61 would not change as a result of EPA's approval of Nevada's request. In addition, the area proposed for redesignation is not located in close proximity to Jarbidge Wilderness Area (the only Class I area in Nevada), and approval of the redesignation request is not expected to have any impact on air quality related values (AQRVs) at Jarbidge or any other Class I area.

IV. Proposed Action

After considering all of the factors described in the above sections, EPA is proposing to approve the State of Nevada's request to redesignate the current single section 107 unclassifiable area for PM₁₀ into 253 individual areas to correspond with those areas originally designated for TSP and is also proposing to remove the section 107 TSP designations that are no longer necessary. Finally, EPA is proposing to approve the State's request to redesignate hydrographic area 61 by dividing the basin into two section 107 areas: upper area 61 and lower area 61.

V. Request for Public Comment

We are soliciting public comment on all aspects of this proposal. These comments will be considered before taking final action. To comment on today's proposal, you should submit comments by mail (in triplicate if possible) as described in the ADDRESSES section listed in the front of this document. EPA will consider any written comments received by May 30, 2002.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed 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 proposed action would redesignate areas for air quality planning purposes and would not impose additional requirements. Accordingly, the Administrator certifies that this proposed 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 proposed rule does not impose any enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as

described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed 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 proposed rule also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed rule does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects in 40 CFR Part 81

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

Dated: April 19, 2002.

Laura Yoshii,

Acting Regional Administrator, Region 9.
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⁴ Some examples of the types of redesignations that might interfere with effective air quality management are those that would have the effect of untriggering a minor source baseline date in an area affecting a Class I area or in an area where a substantial portion of the available increment has been consumed, redesignations that serve to carve out small "postage stamp" areas encompassing only the significant impact area around a major PSD source, or large-scale redesignations creating numerous small baseline areas with little or no basis in effective management of air quality.