**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

**[AD-FRL-4158-4]**

**RIN NO. 2060-AC56**

## Reclassification of Moderate PM-10 Nonattainment Areas to Serious Areas

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

**ACTION:** Final rule.

**SUMMARY:** Under section 188(b)(1) of the Clean Air Act, EPA is reclassifying as serious four areas in California and one area in Nevada which were initially classified as moderate nonattainment areas for PM-10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers).

**EFFECTIVE DATE:** This action will become effective on February 8, 1993.

**ADDRESSES:** The technical reports referenced in today's document can be found in Public Docket No. A-91-53. The docket is located at the U.S. EPA Air Docket, Rm. M-1500, Waterside Mall, LE-131, 401 M St., SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. on weekdays except for legal holidays, and a reasonable fee may be charged for copying.

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**SUPPLEMENTARY INFORMATION:**

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### I. Background

On the date of enactment of the 1990 Clean Air Act Amendments, PM-10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law [see generally, 42 U.S.C. 7407(d)(4)(B) of the Act; references in this notice to "the Act" or "the Clean Air Act" are to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.]. These areas included all former Group I areas identified in 52 FR 29383 (August 7, 1987) and clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the PM-10 standards prior to January 1, 1989 (many of these areas were identified by footnote 4 in the October 31, 1990 **Federal Register** document). A **Federal Register** document announcing all of the areas designated nonattainment for PM-10 at enactment and classified as moderate was published in 56 FR 11101 (March 15, 1991). A followup notice correcting some of these areas was published August 8, 1991 (56 FR 37654). These nonattainment designations and moderate area classifications were codified in 40 CFR part 81 in a **Federal Register** document published on November 6, 1991 (56 FR 56694). All of the areas in the Nation not designated nonattainment at enactment were designated unclassifiable [see section 107(d)(4)(B)(iii) of the Act].

Once an area is designated nonattainment, section 188 of the Act outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a) of the Act, at the time of designation, all PM-10 nonattainment areas are initially classified as moderate by operation of law.

A moderate area can subsequently be reclassified as serious either before the applicable moderate area attainment date if EPA determines the area cannot "practicably" attain the PM-10 NAAQS by this attainment date, or following the passage of the applicable moderate area attainment date if EPA determines the area has failed to attain the standard.

Under the plain meaning of the terms of section 188(b)(1) of the Act, EPA has general authority to reclassify at any time before the applicable attainment date any area EPA determines cannot practicably attain the standard by such date. Accordingly, section 188(b)(1) of the Act is a general expression of delegated rulemaking authority. In addition, subparagraphs (A) and (B) of section 188(b)(1) of the Act mandate that EPA reclassify "appropriate" PM-10 nonattainment areas at specified time frames (i.e., by December 31, 1991 for the initial PM-10 nonattainment areas, and within 18 months after the SIP submittal due date for subsequent nonattainment areas). These subparagraphs do not restrict EPA's general authority but simply specify that, at a minimum, it must be exercised at certain times.[1] Any decision by EPA to reclassify an area as serious before the applicable attainment date will be based on facts specific to the nonattainment area at issue, and will only be made after providing notice in the **Federal Register** and an opportunity for public comment on the basis for EPA's proposed decision.

In those cases where EPA determines that an area has failed to attain the NAAQS by the applicable attainment date, the area is reclassified as serious by operation of law [see section 188(b)(2) of the Act]. The EPA must publish a notice in the **Federal Register** of such determinations and consequent reclassifications within 6 months following the applicable attainment date.

In accordance with section 188(b)(1)(A) of the Act, EPA is announcing the reclassification of those initial moderate nonattainment areas which EPA has determined at this time cannot "practicably" attain the PM-10 NAAQS by December 31, 1994, the applicable attainment date [see section 188(c)(1) of the Act]. As explained further below, today's action discharges EPA's statutory obligation under section 188(b)(1)(A) of the Act which required EPA to reclassify appropriate initial moderate PM-10 nonattainment areas as serious by December 31, 1991.

### II. Determining That an Area Cannot Practicably Attain

Generally, EPA will rely on information in the State's SIP submittal, such as the control strategy, attainment demonstration, and compliance schedule to determine whether it is practicable to attain the NAAQS in that area by the applicable attainment date. The SIP's which were due on November 15, 1991 for the initial PM-10 moderate nonattainment areas were required to contain, among other requirements, a control strategy based upon the use of reasonably available control measures (RACM) which includes reasonably available control technology (RACT) [see sections 172(c)(1) and 189(a)(1)(C) of the Act].[2] The States were also required to demonstrate that the SIP's provide for timely implementation of RACM and attainment of the NAAQS. The RACM must be implemented in the initial PM-10 nonattainment areas by December 10, 1993, and the areas must attain the standard as expeditiously as practicable, but no later than December 31, 1994, unless an area can demonstrate that attainment by that date

[1] The EPA's interpretation of the reclassification provisions in section 188(b)(1) of the Act was discussed in the proposal for today's final rule and in the "General Preamble to Title I of the Clean Air Act Amendments of 1990," 57 FR 13537-13538 (April 16, 1992).

[2] The RACT is a subset of the overarching RACM requirement [see section 172(c)(1) of the Act]. The RACT generally refers to only the technological control measures which apply to large stationary sources. Any reference to RACM herein implicitly includes RACT.

is impracticable [see sections 188(c)(1) and 189(a)(1)(C) of the Act].

There are at least three reasons why an area may not practicably attain the standards by the applicable attainment date. First, implementation of the SIP control strategy, including RACM, may not create sufficient emissions reductions to bring the area into attainment. The State will have demonstrated that an initial PM-10 nonattainment area cannot practicably attain the NAAQS by the applicable attainment date if the implementation of RACM by December 10, 1993 will not achieve sufficient emissions reductions to attain the standards by December 31, 1994. The EPA has interpreted RACM, including RACT, to be those emission-reduction measures which EPA believes are generally reasonable considering technological feasibility and costs of control. The State should prepare a reasoned justification to show that a particular control measure for an existing source is infeasible or otherwise unreasonable and, therefore, would not constitute RACM.[3] Otherwise, the SIP should include implementation of all available emission reduction measures that have not been demonstrated to be unreasonable.

Second, nonanthropogenic sources which cannot reasonably be controlled may contribute significantly to the violation of the PM-10 NAAQS in the area. Moreover, section 188(f) of the Act authorizes the Administrator to waive a specific attainment date for an area where the Administrator determines that nonanthropogenic sources contribute significantly to the violation of the PM-10 standard in the area. Section 188(f) of the Act also provides that the Administrator may, on a case-by-case basis, waive certain requirements applicable to serious areas where the Administrator determines that anthropogenic sources of PM-10 do not contribute significantly to violation of the PM-10 standard in the area.[4] Note that an area is reclassified if EPA determines that it cannot practicably meet the applicable attainment date or that it has failed to meet such date. Thus, reclassification is keyed to a specific date. If that date is waived, the area would not be subject to reclassification because there simply would be no date that the area cannot practicably meet or that the area fails to meet. Thus, while nonanthropogenic sources which cannot be reasonably controlled may be a reason an area cannot practicably attain, if such area qualifies for a waiver of the attainment date under section 188(f) of the Act, it may also be a basis for not reclassifying the area. Note that in today's action, in order not to undermine the waiver provision, EPA has given some consideration to Spokane's potential exclusion from reclassification under section 188(f) of the Act in determining whether it is "appropriate" to reclassify that area at this time.

Third, the area may be significantly impacted by PM-10 emissions emanating from outside the United States. In the latter case, the State may demonstrate that the area qualifies for treatment under section 179B(d) of the Act, which provides that areas which would have attained the NAAQS by the applicable attainment date but for emissions emanating from outside the United States shall not be subject to reclassification requirements under section 188(b)(2) of the Act (see 56 FR 58662). In such cases of international transport, the State will be expected to demonstrate and quantify the international contribution of PM-10 in the affected area. Any State containing an area which may qualify for treatment under this provision still must timely submit a moderate area SIP for such area. In order to have its moderate PM-10 SIP approved under section 179B(a) of the Act in addition to demonstrating that it would have timely attained the PM-10 NAAQS but for international emissions, the State must submit a moderate SIP meeting all requirements applicable to moderate PM-10 nonattainment areas other than the requirement that it demonstrate timely attainment.

The EPA may also consider reclassifying moderate areas for which a SIP has not been submitted whenever it becomes apparent, e.g., because of an extensive delay in submitting the SIP, that the area cannot practicably attain the standards by the end of 1994. The EPA also may determine that an area cannot practicably attain the PM-10 NAAQS by the applicable date when the State submits an incomplete or otherwise inadequate SIP for the area, which would not assure timely attainment and the State does not act expeditiously to correct such deficiencies. The EPA has notified certain States of their failure to submit PM-10 SIP revisions for the initial areas by the November 15, 1991 deadline and has notified some States that their SIP's are incomplete [see, e.g., 57 FR 19906 (May 8, 1992)]. These actions constituted determinations under section 179(a)(1) of the Act and were communicated in letters to affected State Governors. As provided under section 179(a) of the act, States containing areas for which EPA has made such determinations have up to 18 months from EPA's determination to submit the plan or plan revision before EPA is required to impose either the highway funding sanction or the requirement to provide two-to-one new source offsets described in section 179(b) of the Act. The EPA's determination also triggered the requirement for EPA to impose a Federal implementation plan as provided under section 110(c)(1) of the Act. In conjunction with the possible imposition of sanctions, EPA may propose or issue a final determination to reclassify the area as serious. Reclassification of an area as serious does not obviate the legal requirement to implement a moderate area SIP.[5]

### III. Determination for Reclassification

As noted, the PM-10 reclassification provisions contain a general delegation of authority to the Administrator indicating that he "may" reclassify as serious "any" moderate nonattainment area that he determines "cannot practicably attain" the PM-10 NAAQS by the applicable statutory deadline [see section 188(b)(1) of the Act]. By its plain terms, this provision confers broad discretionary authority on the Administrator (hereafter referred to as the "discretionary" reclassification authority). As a subset of that broad authority, section 188(b)(1)(A) of the Act mandates that the Administrator propose to reclassify "appropriate" initial moderate nonattainment areas as serious by June 30, 1991 and take final action by December 31, 1991.[6]

As described above, initial moderate area SIP's were due November 15, 1991. Thus, EPA did not have the benefit of these required SIP submittals before developing and issuing the reclassification proposal required under section 188(b)(1)(A) of the Act. In the absence of better information, EPA used surrogate criteria as evidence of an area's ability to timely attain and proposed to reclassify 14 areas relying on that criteria. However, in its proposal, EPA also contemplated that it may get better information about an area's ability to attain in, for example,

[3] See the "General Preamble to Title I of the Clean Air Act Amendments of 1990," 57 FR 13540-13544 and 13560-13561 (April 16, 1992).

[4] The EPA has made available to the public draft guidance on the application of the waiver provisions under section 188(f) of the Act [see 57 FR 31477 (July 16, 1992)] and will finalize that guidance at a later date.

[5] See 56 FR 58658 (November 21, 1991), note 3.

[6] This directive does not restrict EPA's general authority, but simply specifies that it must be exercised, at a minimum, in accordance with certain dates for areas designated nonattainment under section 107(d)(4)(b) of the Act.

the form of the required SIP submittals.[7] Thus, EPA entertained the possibility of receiving information which rebutted the indicators (56 FR 58658; Nov. 21, 1991): Thus, while EPA believes the indicators for assessing an area's ability, or inability, to attain area reasonable, they are rebuttable on a case-by-case basis.

Since this proposal, EPA has received SIP's for some of the 14 areas identified and has received other information bearing on the determination of whether it is appropriate to reclassify such areas at this time. For example, EPA has received SIP submittals and detailed SIP work plans for some of the areas identified in EPA's proposal which purport to provide for timely attainment. As noted, EPA is directed by the statute to make a final decision to reclassify appropriate areas by a date certain and that date has already passed. Due to these time constraints, EPA cannot fully review the SIP's or wait for SIP's which have not yet been submitted. On the other hand, EPA believes this information is relevant and should be given at least some consideration. The EPA has reconciled this dilemma by preliminarily reviewing the SIP submittals and other relevant information (including the public comments submitted in response to EPA's proposal). To the extent such information indicates, contrary to the criteria identified in EPA's proposal, that the area may be able to practicably attain by the end of 1994, EPA is determining that it is not appropriate to reclassify the area at this time and, hence, has declined to take final action on such area in today's rulemaking.

Nevertheless, EPA may conclude at a later date that one of these areas cannot practicably attain. For example, a full review of the required SIP submittal may reveal that the area cannot practicably attain. In addition, the delays in developing and submitting the required November 15, 1991 SIP submittal may become so prolonged that the area cannot practicably attain. In such instances, EPA would exercise its discretionary authority under section 188(b)(1) of the Act to reclassify the area.

Note that EPA's decision not to reclassify these areas at this time does not mean that any SIP relied on in making such determination will be approved. If a SIP purports to demonstrate attainment, that is simply strong evidence contradicting EPA's criteria and militating against reclassifying the area at that time. The EPA may conclude after a full review of the SIP that it has deficiencies that warrant less than full approval. Further, if such deficiency would preclude an area from timely attaining, then EPA may exercise its discretionary authority to reclassify the area. In any case, no binding EPA decision about the approvability of any such SIP will be made until the public has had an opportunity to comment on such decision.

In some instances, EPA's preliminary review of the SIP for an area revealed that the area could not practicably attain by the required date and should be reclassified. These are the areas reclassified in today's action. Specifically, in today's action, EPA is reclassifying five areas (listed in Table 1 and discussed below) which EPA has determined, at this time, cannot practicably attain by December 31, 1994. The EPA has not received public comments or other information during the public comment period in opposition to EPA's decision to reclassify these areas.

Note that, as indicated in EPA's proposal, reclassification of an area in no manner obviates the obligation to submit a moderate area SIP (56 FR 58658; Nov. 21, 1991). Thus, those areas reclassified in today's action must, among other things, submit provisions to assure that reasonably available control measures (including reasonably available control technology) are implemented no later than December 10, 1993 and submit a demonstration that attainment by December 31, 1994 is impracticable.

Two areas identified in EPA's proposal have requested treatment under the International Border provision (see section 179B of the Act). While EPA has not yet received a PM-10 SIP for either of these areas, EPA has significant information suggesting that the areas may qualify for treatment under section 179B of the Act, including an exclusion from reclassification under section 179B(d) of the Act[8]. Because EPA has information indicating that these areas are significantly impacted by emissions emanating from Mexico, but insufficient information to determine whether they would qualify for treatment under section 179B of the Act, EPA is declining to reclassify these areas at this time. This represents, in some fashion, a change in position from EPA's proposal in that EPA believes the information currently available to EPA, standing alone, is a sufficient basis upon which to conclude that these areas should not be reclassified at this time. So as not to undermine section 179B of the Act, EPA believes it is reasonable to conclude that it is not "appropriate" to reclassify these areas at this time where there is some significant evidence suggesting that these areas may qualify for an exclusion from reclassification under that provision.

However, EPA may reclassify these areas using its discretionary reclassification authority should EPA at some time in the future determine, for example, that the areas cannot practicably attain and do not qualify for exclusion from reclassification under section 179B(d) of the Act. For example, prolonged delays in submitting the required SIP for these areas may lead EPA to conclude at some future time that these areas cannot practicably attain by the end of 1994.

In sum, in today's final rulemaking, EPA is reclassifying those areas which EPA has determined at this time cannot practicably attain the PM-10 NAAQS by the applicable statutory attainment date. Today's action wholly discharges EPA's statutory duty to reclassify "appropriate" moderate areas as serious by December 31, 199 [see section 188(b)(1)(A) of the Act]. However, EPA also reserves the right to use its broad discretionary authority under section 188(b)(1) of the Act to reclassify at a later date the nine areas EPA declined to reclassify in today's action. If, at times in the future before the applicable attainment date, EPA determines that such areas cannot practicably attain the PM-10 NAAQS, EPA will take final

[7] The statute does not specify what information EPA must consider in exercising the authority delegated to it by section 188(b)(1) of the Act. Since the statute does not address this precise question, EPA may base a decision that an area cannot practicably attain by the applicable date on any relevant information, which may inlcude SIP submittals, modeling demonstrations, or other roasonable information (*Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 842-845 (1984)].

[8] Section 179B(d) of the Act states that areas demonstrating attainment of the NAAQS but for emissions emanating from outside the United States shall not be subject to section 188(b)(2) of the Act (reclassification for failure to attain). By analogy to this provison and applying rules of statutory construction, EPA will not reclassify before the applicable attainment date areas which can demonstrate attainment of the NAAQS but for emissions emanating from outside the United States [see section 188(b)(1) of the Act]. First, section 179B of the Act evinces a general congressional intent not to penalize areas where emissions emanating from outside the country are the but-for case of the PM-10 attainment problems. Further, if EPA were to reclassify such areas before the applicable attainment date, EPA, in effect, would be reading section 179(d) of the Act out of the statute. Specifically, if EPA proceeded to reclassify before the applicable attainment date those areas qualifying for treatment under section 179B of the Act, an area would never be subject to the provision in section 179B(d) of the Act which prohibits EPA from reclassifying such areas after the applicable attainment date. Canons of statutory construction counsel against interpreting the law such that language is rendered mere surplusage (see 56 FR at 58662; Nov. 21, 1991, note 12).

action to reclassify these areas. Note that the materials in the rulemaking docket for today's action pertaining to the nine areas not reclassified today will remain in force as part of the ongoing rulemaking record for any future decision to reclassify these areas utilizing EPA's discretionary authority.

TABLE 1.—AREAS WHICH EPA IS RECLASSIFYING AT THIS TIME[1]

| EPA region | Area of concern | Sources |
|---|---|---|
| IX | San Joaquin Valley, CA | FD[2], secondary PM, PB[3] |
| IX | Owens Valley, CA | FD |
| IX | South Coast Air Basin, CA | Secondary PM, FD |
| IX | Coachella Valley, CA | FD |
| IX | Las Vegas, NV | FD |

[1] The full legal descriptions for those areas reclassified in today's document are indicated in the revisions to 40 CFR part 81 at the end of this document.
[2] FD = Fugitive dust.
[3] PB = Prescribed burning.

## IV. Areas Which EPA is Reclassifying at This Time

*Coachella Valley, California.* The EPA is reclassifying the Coachella Valley nonattainment area at this time because the SIP for the area submitted to EPA by the State of California on November 15, 1991 suggests that it is not practicable to provide for attainment of the annual and 24-hour PM-10 NAAQS until December 31, 1995, 1 year after the moderate area attainment date. The PM-10 SIP for the Coachella Valley indicates that 97 percent of the PM-10 emissions are due to fugitive dust sources. The most significant of these sources are construction activities, reentrained dust from paved roads, and windblown dust from agricultural and disturbed lands.

*Las Vegas, Nevada.* The EPA is reclassifying the Las Vegas nonattainment area due to the fact that the PM-10 SIP submitted to EPA by the State of Nevada on December 6, 1991 suggests that implementation of the control measures contained in the SIP will result in sufficient emissions reductions to attain the annual PM-10 NAAQS by December 31, 1994, but that it will not be practicable to timely attain the 24-hour PM-10 NAAQS. A 1989 valley-wide emissions inventory suggests that a substantial amount of PM-10 emissions are due to fugitive dust sources. Microinventories indicate that significant sources of fugitive dust include construction activities, paved and unpaved roads, and windblown dust from disturbed vacant land including disturbed desert.[9]

*Owens Valley, California.* The EPA is reclassifying the Owens Valley nonattainment area at this time based upon the fact that the PM-10 SIP submitted to EPA by the State of California on January 9, 1992 suggests that the area cannot practicably attain the PM-10 standards by December 31, 1994. Ambient PM-10 levels in Owens Valley are among the highest in the country. In 1989, for instance, the highest 24-hour PM-10 concentration observed in the area was 1861 micrograms per cubic meter ($ug/m^3$), in contrast to the NAAQS of 150 $ug/m^3$. The PM-10 SIP for Owens Valley includes an analysis of wind direction and wind speed on days when PM-10 levels are high, which indicates that the major source causing violations of the PM-10 NAAQS in this area is Owens Dry Lake. Owens Dry Lake covers approximately 110 square miles near the south end of the planning area. Approximately 60 square miles of the lake is dry. The Great Basin Unified Air Pollution Control District is currently developing and evaluating a variety of mitigation measures. The final mitigation program is scheduled for implementation in 1995. The Great Basin Unified Pollution Control District submitted comments to EPA supporting the reclassification of this area.

*San Joaquin Valley, California.* The EPA is reclassifying the San Joaquin nonattainment area due to the fact that the PM-10 SIP for San Joaquin Valley submitted to EPA by the State of California on December 24, 1991 suggests that the area cannot practicably attain the PM-10 NAAQS by December 31, 1994. Moreover, the area has not projected attainment before the December 31, 2001 serious area attainment date. Violations of the PM-10 NAAQS in the San Joaquin Valley are dominated by two source categories: (1) primary PM-10 sources, including reentrained road dust, construction activities, and farming operations; and (2) secondarily-formed PM-10, including ammonium nitrate and ammonium sulfate. On days when primary PM-10 emissions dominate, fugitive dust emissions account for nearly 80 percent of the PM-10 mass. On days when secondary PM-10 dominates, nitrates and sulfates account for 63 percent of the PM-10 mass. The attainment strategy for the San Joaquin Valley will rely heavily on the control of widespread fugitive dust sources and the control of precursors of PM-10, including nitrogen dioxide, sulfur dioxide, and volatile organic compounds.

*South Coast Air Basin, California.* The EPA is reclassifying the South Coast Air Basin at this time because the SIP for the South Coast Air Basin projects that it is not practicable to attain the 24-hour PM-10 NAAQS until the year 2000 and attainment of the annual PM-10 NAAQS by the year 2006. These dates are well beyond the December 31, 1994 moderate area attainment date. The basin-wide emissions inventory for the area covers approximately 6600 square miles and indicates that 91 percent of primary PM-10 emissions are due to area sources, primarily reentrained road dust. With projected increases in population (31 percent) and increases in vehicle miles travelled (62 percent), PM-10 emissions associated with reentrained road dust are expected to increase from 663 tons/day in 1987 to 1025 tons/day in 2010. In addition to the widespread sources of primary PM-10 emissions, source

[9] The EPA used the occasion of the publication of the PM-10 reclassification proposal to request public input on issues related to its preliminary efforts to develop a nonbinding policy addressing the section 188(f) of the Act PM-10 waiver provisions [56 FR 56661-56662; Nov. 21, 1991]. The Clark County Health District submitted comments setting out some of its suggestions regarding the implementation of 188(f) of the Act. Clark County's comments address EPA's interpretation of anthropogenic and nonanthropogenic under section 188(f) of the Act and do not request that EPA alter its proposed decision to reclassify this area. Moreover, Clark County does substantiate to what extent the October 25, 1989 exceedance example was in fact attributable to nonanthropogenic sources. In any event, the county's comments have no bearing on today's action which, as indicated, ultimately was based on the SIP developed for that area. Finally, EPA recently made a draft of its section 188(f) of the Act policy available to the public and held a public meeting to provide the public with additional opportunity to comment on its contents [57 FR 31477; July 16, 1992]. That draft indicates that a decision to reclassify an area as serious will not affect an area's eligibility for a waiver. The EPA will consider the Clark County comments addressing section 188(f) of the Act issues as it revises its draft section 188(f) of the Act policy in light of the various comments received.

contribution estimates indicate that secondarily-formed particles (nitrates and sulfates) can contribute as much as 52 percent of the 24-hour PM-10 mass and as much as 37 percent of the annual PM-10 mass. Therefore, the attainment strategy for the South Coast Air Basin will also rely heavily on the control of important precursors to PM-10 including nitrogen dioxide, sulfur dioxide, and volatile organic hydrocarbons.

### V. Areas Which EPA is not Reclassifying at This Time

While EPA is taking final action to reclassify the five areas described above, EPA is not reclassifying the nine areas listed in Table 2 at this time, including those areas which EPA has determined, in its preliminary assessment, to be affected by international transport. Generally, EPA has information for these areas indicating that they may practicably be able to attain the PM-10 NAAQS or may be excluded from reclassification due to international transport [see section 179B(d) of the Act]. Thus, EPA believes it is premature to reclassify these areas at this time. However, as noted, EPA holds open the possibility of reclassifying these areas using its discretionary authority under section 188(b)(1) of the Act. This will permit EPA to undertake a comprehensive review of each area's control strategy. The EPA anticipates that it will take final action on its proposal to reclassify these areas because they cannot practicably attain at the time it takes rulemaking action on each area's SIP. Note also that if a PM-10 SIP control strategy and demonstration have not yet been submitted for an area, EPA may conclude at some future date that the area cannot practicably attain due to protracted delays in making such submittal. A more specific discussion follows below for each of these nine areas, including the significant public comments which EPA has received.

TABLE 2.—AREAS WHICH EPA IS NOT RECLASSIFYING AT THIS TIME [1]

| EPA region | Area of concern | Sources |
|---|---|---|
| III | Liberty, Lincoln, Port Vue, and Glassport Boroughs and the City of Clairton, PA | Point |
| V | Oglesby, IL | Point |
| VIII | Libby, MT | FD [2], RWC [4], PB [3] |
| VIII | Utah Co., UT | Point [6] |
| IX | Paul Spur, AZ | Point, FD |
| IX Nogales, AZ | International [5], FD | |
| IX | Imperial Valley, CA | FD, International, PB |
| X Klamath Falls, OR | FD, RWC, PB | |
| X Spokane, WA | FD, PB, RWC | |

[1] The full legal descriptions for those areas which EPA is not reclassifying at this time can be found at 56 FR 56694 (Nov. 6, 1991).
[2] FD = Fugitive dust.
[3] PB = Prescribed burning.
[4] RWC = Residential wood combustion.
[5] International = International transport of PM-10.
[6] Point = Dominant point source impact.

*Liberty Borough, Pennsylvania.* The EPA has determined that, at this time, it is not appropriate to reclassify the Liberty Borough nonattainment area to serious. This decision is based on comments and information received during the public comment period regarding the ability of Allegheny County to attain and maintain the PM-10 standard by December 31, 1994. The decision is also based on the commitment by the Allegheny County Bureau of Air Pollution Control to submit an applicable implementation plan which demonstrates the attainment of the PM-10 NAAQS by the moderate area attainment date (i.e., December 31, 1994).

The Liberty Borough nonattainment area is comprised of Liberty, Lincoln, Port Vue, Glassport Boroughs, and the City of Clairton in Allegheny County, Pennsylvania (56 FR 56823; Nov. 6, 1991). The area is heavily industrialized with a diverse mix of sources including steel manufacturing, utilities, and industrial boilers. These sources generate both point source PM-10 emissions and fugitive dust. In 1989 and 1990, emissions control measures were implemented in the nonattainment area in addition to those measures which had been installed previously.

However, EPA has not received a PM-10 SIP for the Liberty Borough nonattainment area. On December 16, 1991, the EPA Regional Administrator sent a letter notifying the Governor of Pennsylvania of EPA's determination that the State had failed to submit the PM-10 SIP for Allegheny County by the statutory submittal date of November 15, 1991 (see, e.g., 57 FR 19906, May 8, 1992). This determination started the 18-month timeclock for the imposition of sanctions and the 2-year timeclock for promulgation of a Federal implementation plan.

The EPA did receive a "PM-10 work plan" from the Allegheny County Health Department on March 26, 1992. The work plan commits to attainment of the PM-10 NAAQS by the statutory attainment date of December 31, 1994. It summarizes the procedures to be followed for the development of the SIP submittal, including modeling and monitoring air quality in the area, conducting an emissions inventory, and producing a control strategy. The work plan also establishes a schedule for SIP submittal, indicating that the schedule will be met through a cooperative effort with EPA. The schedule projects that the SIP will be submitted to EPA by June 15, 1993.

The EPA received more detailed comments on its proposal to reclassify the Liberty Borough nonattainment area than on its proposed action on other areas. Rather than discuss those comments and EPA's responses in detail here, EPA has placed a document in the docket accompanying this notice which describes those comments and explains further the rationale for EPA's decision not to reclassify the Liberty Borough nonattainment area as serious at this time.

Comments were received from the local air pollution control agency, the Commonwealth of Pennsylvania, affected industries, local citizens, and public interest groups. Those commenters opposing reclassification based their views on assertions that recent improvements in air quality are the result of locally-instituted controls, that EPA did not adequately consider the air quality impact of those controls in its decision to propose reclassification of this area, and that the PM-10 work plan provides evidence of the State's commitment to, and the practicability of, attaining the PM-10

NAAQS by December 31, 1994. For these reasons, some of the commenters indicated that it would be premature for EPA to reclassify this area. Comments favoring reclassification were based primarily on concerns about poor air quality in the area, on disagreement as to the cause of recently-observed improvements in air quality, on assertions that the State's failure to submit a SIP by the November 15, 1991 due date precludes the area's ability to timely attain the NAAQS, and on the belief that reclassification would best advance the goal of expeditious attainment of the NAAQS.

Briefly, EPA has based its decision on the evidence provided in the Allegheny County Health Department's work plan in support of that area's commitment to attain the NAAQS by December 31, 1994. The EPA has further based its decision on the fact that commenters favoring reclassification have not provided any evidence which rebuts the State's and county's assertions that attainment by December 31, 1994 is practicable. The EPA notes in response to those favoring reclassification that reclassifying the area at this time would result in the requirement that the area implement additional control measures, but would also permit the State to postpone attainment potentially up to the statutory serious area attainment date of December 31, 2001.[10] By not reclassifying the area as serious, EPA intends to enforce the statutory moderate area requirement for the State to adopt a plan which provides for attainment of the NAAQS as expeditiously as practicable, but not later than December 31, 1994. The EPA believes that the principal concerns expressed by the commenters favoring reclassification—the need to promote near-term improvements in air quality—are better served by not taking final action to reclassify an area at this time where there is some reasonable evidence that the area may practicably attain by December 31, 1994.

*Spokane, Washington.* The EPA is not taking final action to reclassify the Spokane nonattainment area at this time, but will make a final decision at the time the Agency takes rulemaking action on the SIP. This will permit EPA the opportunity to comprehensively review the SIP and to assess the claims that nonattainment in the area is attributable, at least in part, to nonanthropogenic dust storms, and that the area is potentially eligible for a waiver of the December 31, 1994 attainment date under section 188(f) of the Act. The EPA cannot reject or accept these claims at the present time. The Agency is currently reviewing the SIP for Spokane, giving particular consideration to any anthropogenic contributions to emissions that may be reentrained during the area's dust storms. The EPA will determine Spokane's eligibility for a waiver of the moderate area attainment date under section 188(f) of the Act and will make a final decision on reclassification when the Agency has completed its review of the area's SIP.

Comments received from 14 private citizens and government, industry, and environmental groups attribute Spokane's nonattainment status to nonanthropogenic dust storms. One commenter asserted that these dust storms emanate from the approximately 100,000 acres of undeveloped, untilled land southwest of Spokane, and to approximately 500,000 acres of farmland vulnerable to soil erosion due to high winds. According to the Spokane County Conservation District, such soil erosion is especially prevalent after harvest and prior to the emergence of the new crop, stating that it is not possible to prevent windblown dust during this vulnerable period. They add that, when compounded by high winds, preventing this windblown dust is "beyond the realm of legislation or regulation."[11] One conservation farmer indicated, however, that farmers have been working closely with the Soil Conservation Service to mitigate the erosion to their cropland.

In addition to comments regarding nonanthropogenic sources of PM-10 in Spokane County, 3 elected officials in Washington State, the Intermountain Grass Growers Association, 3 Spokane County public agencies, and 1 private corporation contended that the severe duststorms in the Spokane nonattainment area should be treated as "exceptional events," as discussed in 40 CFR part 50, Appendix K, section 2.4. As such, the commenters believe that contributions from these dust storms should be discounted when measuring exceedances of the PM-10 NAAQS. Because the State has measured 7 such occurrences during the 3-year reporting period, there is reason to believe that these events happen with a regularity which would disqualify them from treatment as exceptional events. Again, EPA will make a final determination regarding this claim following a comprehensive review of the SIP submittal. One commenter urged EPA to classify this area as serious, but did not substantively address whether the area cannot practicably attain by the applicable attainment date or the likelihood of the area qualifying for a waiver of its moderate area attainment date under section 188(f) of the Act.

Available information indicates that both Imperial Valley, California, and Nogales, Arizona, may qualify for treatment under the International Transport provision in section 179B of the Act due to particulate matter emanating from Mexico. While the Agency has sufficient data at this time to verify that PM-10 originating in Mexico contributes to nonattainment in these areas, additional monitoring and air quality analysis are necessary to quantify the international contribution so that the SIP's for Nogales and Imperial Valley may accurately discount international transport from their attainment demonstrations, and EPA can correspondingly determine whether the SIP's for the areas would be adequate to attain and maintain the PM-10 NAAQS but for emissions emanating from Mexico (see section 179B of the Act). The following is a more detailed discussion of the areas affected by international transport:

*Imperial Valley, California.* The EPA is not reclassifying the Imperial Valley nonattainment area at this time. Although the State of California has not yet submitted a PM-10 SIP for Imperial Valley, previous reports indicate that transport from Mexicali, Mexico, may significantly contribute to elevated PM-10 levels in the Valley.[12] As such, the area may qualify for exclusion from reclassification to serious under section 179B(d) of the Act.

On December 16, 1991, the EPA Regional Administrator for Region IX sent a letter to the Governor of California notifying him of the State's failure to submit a SIP for the Imperial Valley. This notification started the 18-month timeclock which will result in the imposition of sanctions if EPA does not receive a SIP [see section 179(a) of the Act]. The Imperial County Air Pollution Control District is currently working with the California Air Resources Board (CARB) to develop a PM-10 SIP for this area. The SIP is scheduled to be submitted to EPA by the

[10] Section 188(b)(2) of the Act requires that such serious nonattainment areas attain the NAAQS as expeditiously as practicable, but not later than December 31, 2001.

[11] Letter from Spokane County Conservation District to Ken Woodard, December 17, 1991.

[12] "Draft Analysis of the Imperial County, California Rural Fugitive Dust Area," prepared by PEI Associates, January 1989; "Example Level One Air Quality Analysis for Particulate Matter State Implementation Plan Revisions (Imperial Valley, California)," State of California Air Resources Board, March 1988; "Draft Program Plan for the Imperial Valley/Mexicali Particulate Matter Sources Apportionment Study," Desert Research Institute, December 20, 1991.

end of 1992. In addition, EPA and CARB will be conducting a PM-10 source apportionment study in the Imperial Valley/Mexicali air basin in cooperation with the Imperial County Air Pollution Control District and the Secretary of Social Development in Mexico. The objectives of the study are to: (1) estimate the spatial and temporal distributions of PM-10 concentrations in the Imperial Valley and Mexicali; (2) apportion PM-10 concentrations to source emissions; and (3) estimate cross-border transport of PM-10. The monitoring portion of the study began on March 10, 1992.

*Nogales, Arizona.* The EPA is not taking final action to reclassify the Nogales nonattainment area at this time. Despite the fact that the State of Arizona has not yet submitted a PM-10 SIP for Nogales, previous studies by the Arizona Department of Environmental Quality indicate that transport from Nogales, Mexico, may significantly contribute to elevated PM-10 levels in the nonattainment area.[13] As such, the area may qualify for exclusion from reclassification as serious under section 179B(d).

On December 16, 1991, the EPA Regional Administrator for Region IX sent a letter to the Governor of Arizona notifying him of the State's failure to submit a SIP for Nogales. This notification started the 18-month timeclock which will result in the imposition of sanctions if EPA does not receive a SIP [see section 179(a) of the Act]. The Arizona Department of Environmental Quality intends to submit a SIP by the end of 1992. They also planned to initiate a project in the summer of 1992 to provide additional emissions inventory data and source contribution estimates for the Nogales area.

The SIP's submitted for the remaining 5 areas contain control strategy demonstrations purporting to show that the NAAQS will be attained by December 31, 1994. The Agency is reviewing the public comments received for these areas, as well as the SIP control strategies and, as stated previously, will make a determination concerning reclassification upon taking rulemaking action on the SIP's. Further discussion of these areas follows below.

*Klamath Falls, Oregon.* Based upon EPA's preliminary review of the PM-10 SIP submitted in response to the November 15, 1991 SIP requirement, EPA, at this time, supports the State's determination that the nonattainment area will practicably attain the NAAQS by December 31, 1994. One comment was received from the Oregon Department of Environmental Quality opposing reclassification. The commenter asserted that the PM-10 SIP submittal includes the necessary air pollution control provisions and a demonstration that attainment of the NAAQS by December 31, 1994.

*Libby, Montana.* Based upon EPA's preliminary review of the area's PM-10 SIP submitted in response to the November 15, 1991 SIP requirement, EPA, at this time, supports Montana's determination that the Libby nonattainment area will practicably attain the NAAQS by December 31, 1994. The Montana Department of Health and Environmental Sciences submitted comments opposing reclassification. The commenter contended that the SIP contains an adequate control strategy, including point source permit modification, and that it would be premature to reclassify at this time.

*Oglesby, Illinois.* Based upon EPA's preliminary review of the PM-10 SIP for this area, EPA at this time supports the State's determination that the nonattainment area will practicably attain the NAAQS by December 31, 1994. The EPA is currently evaluating the SIP and will make a final determination about reclassifying the area because it cannot practicably attain when EPA takes formal action on the submittal.

*Paul Spur, Arizona.* Based upon EPA's preliminary review of the SIP submitted for this area, EPA, at this time, supports Arizona's determination that the nonattainment area will practicably attain the NAAQS by December 31, 1994. The Arizona Department of Environmental Quality opposes reclassification based upon EPA's design value criteria [see 56 FR 58658; Nov. 21, 1991] and its belief that EPA should review the SIP before deciding to reclassify the area. One comment received from a private corporation adds that significant improvements to air quality have already been made with the imposition of control measures as indicated by the data from 1988 through the third quarter of 1991. Further control measures, the commenter claims, are outlined in the SIP revision.

*Utah County, Utah.* Following EPA's preliminary review of the PM-10 SIP submitted for this area in response to the November 15, 1991 SIP requirement, EPA, at this time, supports Utah's determination that the nonattainment area will practicably attain the NAAQS by December 31, 1994. The State of Utah's Department of Environmental Quality opposes reclassification based on its belief that the PM-10 SIP revision provides for emissions reductions sufficient to demonstrate attainment by December 31, 1994. The commenter states that EPA should be fair in giving Utah County the opportunity to show such attainment.

## VI. Effect of Reclassification

Additional SIP revisions are required under section 189(b) of the Act for the nonattainment areas that are reclassified to serious. First, regulations requiring the use of best available control measures (BACM), including "the application of best available control technology (BACT) to existing stationary sources," must be adopted and submitted to EPA within 18 months after the area is reclassified to serious [section 189(b)(2) of the Act].[14] The BACM requirement must be implemented within 4 years after the area is reclassified [section 189(b)(1)(B) of the Act]. Second, the State must submit a SIP revision within 4 years after reclassification of the area (within 18 months after reclassification for failure to attain) that includes a demonstration that the plan will attain the PM-10 NAAQS by December 31, 2001 [see sections 188(c)(2), 189(b)(1)(A)(i), and 189(b)(2) of the Act].[15] Third, section 189(b)(3) of the Act provides that "for any Serious Area, the terms 'major source' and 'major stationary source' include any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 70 tons per year of PM-10." This provision requires, among other things, smaller new and modified sources (those with the potential to emit 70 tons per year or greater, rather than 100 tons per year or

[13] "Preliminary Investigation of Causes and Extent of the Nogales, Arizona PM-10 Problem," Arizona Department of Environmental Quality, September 1990

[14] As with RACM and RACT, BACT is a subset of the overarching BACM requirement. The BACT generally refers to the technological control measures which apply to large stationary sources. Thus, any reference to BACM herein implicitly includes BACT.

[15] Alternatively, the State must demonstrate that attainment by December 31, 2001, is impracticable, that the plan provides for attainment by the most expeditious alternative date practicable (but no more than 5 years after the serious area attainment date), and that the section 188(e) of the Act requirements for receiving an extension of the attainmet date have been satisfied (i.e., the plan includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State and can feasibly be implemented in the area)[see section 189 (b)(1)(A)(ii) of the Act]. Areas that are reclassified under section 188(b)(2) of the Act following failure to attain must submit attainment demonstarations within 18 months after reclassification to serious [see section 189(b)(2) of the Act].

greater) to obtain section 172(c)(5) of the Act construction permits which include requirements to comply with lowest achievable emission rates and to obtain emission offsets [see sections 172(c)(5) and 173 of Act].

Where an area is being reclassified to serious, it may be reasonable for States to consider the relationship of RACM to BACM for the affected sources. The EPA discussed this relationship in the proposal for today's action (see 56 FR 58660-58661; Nov. 21, 1991). The EPA anticipates that BACM for area sources will generally be additive to or not significantly incompatible with RACM for these sources.[16] Therefore, the moderate area SIP's for the areas which EPA is reclassifying should continue to implement the requirements for the application of RACM to appropriate sources. After reclassification to serious, additional regulations which require BACM must be adopted and submitted within 18 months and implemented within 4 years, as stated above.

## VII. Miscellaneous

### *A. Executive Orders*

Under Executive Order 12291, EPA has determined that this action is not "major" because reclassification of the areas does not have an annual effect on the economy of $100 million or more, would not cause a major increase in prices, and would not have a significant adverse impact on competition or the ability of United States enterprises to compete with foreign enterprises. This notice and the November 21, 1991 proposal were submitted to the Office of Management and Budget (OMB) as required by Executive Order 12291. Any written comments from OMB and written EPA responses to those comments are included in the docket. Similarly, any written comments from OMB regarding today's final action, and any written responses, have been placed in the docket. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. sections 3501 et seq.). A federalism assessment under Executive Order 12612 is not required for this action since this action was directed under section 188(b)(1)(A) of the Act.

### *B. Regulatory Flexibility Act*

Under 5 U.S.C. section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709). Because the regulatory impact of reclassifications under section 188(b) of the Act is no different substantively from that associated with designations, such actions are also not expected to have significant impacts on small entities.

### List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: November 18, 1992.

**William K. Reilly,**
*Administrator.*

## PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7407, 7501-7515, 7601.

2. Section 81.305 is amended by revising the table for California—PM-10, to read as follows:

**§ 81.305 California.**

* * * * *

CALIFORNIA.—PM–10. Nonattainment Areas

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| Inyo County | | | | |
| Owens Valley planning area | 11/15/90 | Nonattainment | 02/08/93 | Serious. |
| Hydrologic Unit #18090103 | | | | |
| San Bernardino, Inyo, and Kern Counties | | | | |
| Searles Valley planning area | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Hydrologic Unit #18090205 | | | | |
| Mono County | | | | |
| Mammoth Lake planning area | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Includes the following sections: | | | | |
| a. Sections 1–12, 17, and 18 of Township T4S, R28E; | | | | |
| b. Sections 25–36 of Township T3S, R28E; | | | | |
| c. Sections 25–36 of Township T3S, R27E; | | | | |
| d. Sections 1–18 of Township T4S, R27E; and | | | | |
| e. Sections 25 and 36 of Township T3S, R26E | | | | |
| Fresno, Kern, Kings, Tulare, San Joaquin, Stanislaus, Madera Counties | | | | |
| San Joaquin Valley planning area | 11/15/90 | Nonattainment | 02/08/93 | Serious. |
| Riverside, Los Angeles, Orange, and San Bernardino Counties | | | | |
| South Coast Air Basin | 11/15/90 | Nonattainment | 02/08/93 | Serious. |
| Riverside County | | | | |
| Coachella Valley planning area | 11/15/90 | Nonattainment | 02/08/93 | Serious. |
| Imperial County | | | | |
| Imperial Valley planning area | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Rest of State | 11/15/90 | Unclassifiable | | |

[16] The EPA also discussed the relationship between RACM and BACM in the "General Preamble to Title I of the 1990 Clean Air Act Amendments," 57 FR 13544 (April 16, 1992). Specifically, EPA indicated that it may be reasonable for States containing areas that will be reclassified as serious to consider the compatibility of RACM and RACT with BACM and BACT that ultimately will be implemented under the serious area plans for these areas. The EPA indicated that States containing such areas need not require major changes to control systems for specific stack and process sources in the affected moderate area SIP's where they demonstrate that such changes will be significantly incompatible with the application of BACT-level control systems.

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3. Section 81.329 is amended by revising the table for Nevada—PM–10, to read as follows:

**§ 81.329 Nevada.**

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NEVADA.—PM–10 NONATTAINMENT AREAS

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| Washoe County | | | | |
| Reno planning area | 11/15/90 | Nonattainment | 11/15/90 | Moderate. |
| Hydrographic area 87 | | | | |
| Clark County | | | | |
| Las Vegas planning area | 11/15/90 | Nonattainment | 02/08/93 | Serious. |
| Hydrographic Area 212 | | | | |
| Rest of State | 11/15/90 | Unclassifiable | | |

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