

FOR FURTHER INFORMATION CONTACT:

Steven K. Body, EPA, Office of Air Quality (OAQ-107), Seattle, Washington, (206) 553-0782.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: July 16, 2001.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 01-18649 Filed 7-25-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket OR-01-004b; FRL-7018-4]

Finding of Attainment for PM-10; Lakeview, Oregon, PM-10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Lakeview nonattainment area in Oregon has attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than, or equal to a nominal ten micrometers (PM-10) as of December 31, 1999.

In the Final Rules section of this **Federal Register**, the EPA is publishing its determination as a direct final rule without prior proposal because the Agency views this as a noncontroversial determination and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before August 27, 2001.

ADDRESSES: Written comments should be addressed to, Steven K. Body, (OAQ-107), Office of Air Quality, at the EPA Regional Office listed below.

Copies of air quality data and other relevant information supporting this action are available for inspection during normal business hours at the

following location: EPA, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT:

Steven K. Body, EPA, Office of Air Quality (OAQ-107), Seattle, Washington, (206) 553-0782.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: July 16, 2001.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 01-18647 Filed 7-25-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 140

[FRL-7018-3]

Marine Sanitation Devices (MSDs); Proposed Regulation to Establish a No Discharge Zone (NDZ) for State Waters within the Boundaries of the Florida Keys National Marine Sanctuary (FKNMS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to establish a NDZ for State waters within the boundaries of the FKNMS pursuant to section 312 (f)(4)(A) of the Clean Water Act. This action is being taken in response to an October 27, 1999 resolution passed by the FKNMS Water Quality Protection Program Steering Committee and a December 8, 1999 resolution of the Board of County Commissioners of Monroe County, Florida to establish a NDZ area for State waters within the FKNMS, which led to a December 7, 2000 letter from the Governor of Florida requesting this action. A map which delineates the area to be designated can be obtained or viewed by accessing the FKNMS's Web site at "http://www.fknms.nos.noaa.gov/", by calling the Sanctuary office at (305) 743-2437, or by writing to the Sanctuary Superintendent at P.O. Box 500368, Marathon, Florida, 33050. It should also be noted that the National Oceanic and Atmospheric Administration (NOAA) plans to pursue NDZ status for Federal waters within the FKNMS in the near future. Currently, there are about 30 pump out facilities located throughout the Florida Keys. To obtain a list of these facilities you may contact George Garrett, Director of Marine Resources for

Monroe County, at (305) 289-2507, E-mail at garrettg@mail.state.fl.us, or by writing to Monroe County Service Center, 2798 Overseas Highway, Suite 420, Marathon, Florida, 33050-2227.

DATES: Comments must be submitted to EPA on or before August 27, 2001.

ADDRESSES: Written comments or requests for information may be submitted to Wesley B. Crum, Chief, Coastal and NonPoint Source Programs, EPA Region 4, 61 Forsyth Street, Atlanta, Georgia, 30303-8960.

SUPPLEMENTARY INFORMATION:

I. Background

The Florida Keys are a national treasure of international acclaim that contain unique environments and possess high value to humans when properly conserved. Adjacent to the Florida Keys land mass are located spectacular, unique nationally significant marine environments, including seagrass meadows, mangrove islands, and extensive living coral reefs. These marine environments support rich biological communities possessing extensive conservation, recreational, commercial, ecological, historical, research, educational, and aesthetic values. These marine environments are the maritime equivalent of tropical rain forests in that they support high levels of biological diversity, are fragile and easily susceptible to damage from human activities. The economy of the Florida Keys is based in large part on tourism and fisheries that are directly tied to the ecological resources and quality of the waters surrounding the Florida Keys. In recognition of this, Congress created the FKNMS with the signing of H.R. 5905 (Public Law 101-605, the FKNMS and Protection Act) on November 16, 1990. The purpose of a marine sanctuary is to protect resources and their conservation, recreational, ecological, historical, research, educational, or aesthetic values through comprehensive long-term management. The mission of the National Marine Sanctuary Program is to identify, designate, and comprehensively manage marine areas of national significance. National Marine Sanctuaries are established for the public's long-term benefit, use, and enjoyment. Congress also recognized the critical role of water quality in maintaining the ecological resources of the Florida Keys, and directed the U.S. EPA and the State of Florida to develop a Water Quality Protection Program (WQPP) for the Sanctuary. The WQPP was finalized in September 1996 and implementation of the numerous recommended actions within the WQPP is ongoing.

The State of Florida recognized the importance of good water quality to ecosystem structure and function and declared the waters surrounding the Florida Keys as "Outstanding Florida Waters" or OFW in 1985. Florida Statute grants the Florida Department of Environmental Protection the power to establish rules that provide for the category of water bodies called OFW, which are worthy of special protection because of their natural attributes. No degradation of water quality is allowed in OFW. In addition, the Florida Keys have been designated as an "Area of Critical State Concern". The objective of this program is to provide another level of legislative review for development plans within areas where unique and fragile natural resources exist and local protection may be lacking. "Areas of Critical State Concern" are declared where there is a perceived need to protect public resources from risk by unregulated or inadequately regulated development. Further, the pristine and unique habitats of the Florida Keys have led to the establishment of special protection areas by the Federal government, including the Key West Wildlife Refuge and the Great White Heron Wildlife Refuge. These actions are further evidence of the importance of the Florida Keys and their unique natural resources.

The purpose of the WQPP is to recommend priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the FKNMS. This includes restoration and maintenance of a balanced, indigenous population of corals, shellfish, fish and wildlife, and recreational activities in and on the water. NOAA's Final Management Plan/Environmental Impact Statement for the FKNMS became effective on July 1, 1997 and includes the WQPP. The Monroe County Board of County Commissioners and the State of Florida recognize and support this document.

There is a large community in the Florida Keys that live on boats and many live-aboard vessels are permanently anchored in harbors and are not capable of movement. Transient vessels also anchor in harbors and other protected sites and are very numerous in winter months. The number of live-aboard vessels has increased dramatically in recent years. While the Clean Vessel Act prohibits the dumping of raw sewage, treated wastewater from vessels may be discharged into State waters. Wastewater treatment (disinfection) by Type I and II MSDs does not remove all nutrients from

wastewater. Many live-aboard and transient vessels discharge wastewater into surface waters. It is estimated that nutrients from vessel wastewater account for about 2.8% of nitrogen and 3.0% of phosphorus loadings into nearshore waters of the Florida Keys (U.S. EPA, 1993, Phase II Report). Nutrient loadings from vessels may be relatively minor contributions to total Keys-wide loadings. However, loadings from vessels are a significant source of nutrients to harbors and result in eutrophication of waters that typically exhibit poor circulation/flushing. Violations of fecal coliform standards are common in marinas and harbors throughout the Florida Keys (Florida Department of Environmental Regulation 1987, 1990).

The WQPP Phase II Report (1993) and other studies have determined that discharges of wastewater from vessels are degrading water quality in nearshore and confined waters. The final WQPP document (1996) identified the need to eliminate sewage discharges from live-aboard vessels and other vessels as a high priority action item. The State of Florida, as requested by the City of Key West, recently determined that the protection and enhancement of the quality of waters surrounding the City of Key West require greater environmental protection. This action prohibits the discharge from all vessels of any sewage, whether treated or not, into such waters out to a distance of 600 feet from shore. The U.S. EPA, pursuant to section 312(f)(3) of the Clean Water Act (Public Law 92-500), recently (August 25, 1999) concurred with the State's determination that adequate pumpout facilities for safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters surrounding the City of Key West.

The Board of County Commissioners of Monroe County, Florida has for some time been concerned about water quality in the Florida Keys. Monroe County's Comprehensive Plan is very strongly predicated upon environmental protection and water quality issues and the associated Executive Order and Work Program adopted by the Florida Governor and Cabinet are geared toward assisting Monroe County with improving and protecting water quality. The Board of County Commissioners of Monroe County has adopted a resolution requesting that the Governor of the State of Florida petition the EPA to declare all waters of the State within the boundaries of the FKNMS to be a NDZ for sewage, whether treated or not, from all vessels. Monroe County believes that this action would be a major step in protecting water quality

around the Keys and especially in those areas where there is a high concentration of vessels. The NDZ designation is fully supported by the WQPP Steering Committee and is consistent with the overall goals of the WQPP for the FKNMS. This designation is also consistent with Florida's Area of Critical State Concern Program and the Principles for Guiding Development for the Florida Keys. The Governor of the State of Florida supports Monroe County's request to designate all State waters located within the FKNMS as a NDZ and has submitted the County's request to EPA Region 4 for consideration.

Section 312(f)(4)(a) states: "If the EPA Administrator determines upon application by a State that the protection and enhancement of the quality of specified waters within such State requires such a prohibition, he shall, by regulation completely prohibit the discharge from a vessel of any sewage (whether treated or not) into such waters." This authority has now been delegated to EPA Regional Administrators. On December 7, 2000, the Governor of Florida, Jeb Bush, requested that EPA Region 4 establish the NDZ status for State waters within the FKNMS. The EPA Region 4 Administrator concurs with this request.

II. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. This Order defines "significant regulatory action" as likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

- (3) Materially alter the budgetary impact or entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA, in consultation with local and State government officials, has

determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13132

The State of Florida is requesting that EPA take action to designate State waters within the FKNMS as a NDZ. Therefore, this order does not apply.

C. Executive Order 13175

This order pertains to compliance costs of this rule to tribes. There are no tribal lands within the boundaries of the FKNMS. Therefore, this order does not apply.

D. Executive Order 13045

This order authorizes EPA the discretion to consider health or safety risks (especially for children) when making regulatory determinations. The net result of this action will be to improve environmental conditions within the FKNMS.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 6501 *et seq.* whenever an agency is developing regulations, it must prepare and make available for public comment the impact of the regulations on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required if the head of the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. EPA policy dictates that an Initial Regulatory Flexibility Analysis (IRFA) be prepared if the proposed action will have any significant effect on any small entities. An abbreviated IRFA can be prepared depending on the severity of the economic impact and relevant statute's allowance of alternatives. After considering the economic impacts of this proposed regulation/rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and recordkeeping burden on the regulated community, as we minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record keeping requirements affecting 10 or more non-Federal respondents be approved by OMB. Since today's rule would not establish or modify any

information and record keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

G. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Public Law 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statute is required for EPA rules under section 205 of the Act, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must consider that alternative, unless the Administrator explains otherwise in the final rule. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them opportunity for meaningful and timely input during the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them of compliance with the regulatory requirements.

EPA, in consultation with local and State government officials, has determined that this rule does not include a Federal mandate that will result in estimated annualized costs of \$100 million or more to either State, local, and tribal governments in the aggregate, or to the private sector. All vessels that are equipped with MSDs and that navigate throughout the FKNMS are already subject to the EPA MSD Standard at 40 CFR part 140 and the U.S. Coast Guard MSD Standard at 33 CFR part 159. These standards prohibit the overboard discharge of untreated vessel sewage in State waters in the FKNMS and require that vessels with on-board toilets shall have U.S. Coast Guard certified MSDs which either retain sewage or treat sewage to the applicable standards. There are 3 types of MSDs certified by the U.S. Coast Guard. Only those vessels that have either one of the two types of certified flow-through devices will be affected by this proposed rule. Those vessels affected by this rule will either

retain and pump out treated sewage or discharge outside of the designated NDZ. Any costs associated with those activities is minimal and it is therefore estimated that the annualized costs to State or tribal governments in the aggregate, or to the private sector, will not exceed \$100 million.

Therefore, this rule is not subject to the requirements of sections 202 and 205 of the Act. Because the rule contains no regulatory requirements that might significantly or uniquely affect small governments, it is also not subject to the requirements of section 203 of the Act. Small governments are subject to the same requirements as other entities whose duties result from this rule and they have the same ability as other entities to retain and pump out treated sewage or discharge outside of the designated zones.

Lists of Subjects in 40 CFR Part 140

Environmental protection, Sewage disposal, Vessels.

Dated: July 16, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Title 40, Chapter 1, Part 140 of the Code of Federal Regulations is amended as follows:

PART 140—[AMENDED]

1. The authority citation for part 140 continues to read as follows:

Authority: 33 U.S.C. 1322

2. Section 140.4 is amended by adding paragraph (b)(1)(ii) to read as follows:

§ 140.4 Complete prohibition.

* * * * *

(b) * * *

(ii) Waters of the State of Florida within the boundaries of the Florida Keys National Marine Sanctuary as delineated on a map of the Sanctuary at "<http://www.fknms.nos.noaa.gov/>".

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[FR Doc. 01-18650 Filed 7-25-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-7003-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Amendment

AGENCY: Environmental Protection Agency.