Distribution, or Use'' (66 FR 28355 (May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program , to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 23, 2001. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 14, 2001.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding paragraph (b) in the entry for New Hampshire to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

New Hampshire

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(b) The New Hampshire Department of Environmental Services submitted program revisions on May 14, 2001. EPA is hereby granting New Hampshire full approval effective on November 23, 2001.

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[FR Doc. 01–23763 Filed 9–21–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket #: WA–01–001; FRL–7064–3]

Clean Air Act Finding of Attainment; Spokane, Washington Particulate Matter (PM–10) Nonattainment Area

AGENCY: Environmental Protection Agency (EPA or we).

ACTION: Final rule.

SUMMARY: EPA has determined that the Spokane nonattainment area has attained the National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter of less than or equal to 10 microns by the attainment date of December 31, 1997, as required by the Clean Air Act.

EFFECTIVE DATE: October 24, 2001.

ADDRESSES: Copies of all information supporting this action are available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Pacific Standard Time at EPA Region 10, Office of Air Quality, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Steven Body, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0782.

SUPPLEMENTARY INFORMATION

I. Background

On May 16, 2001, we solicited public comment on a proposal to find that the Spokane nonattainment area has attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to 10 microns (PM–10) by the attainment date of December 31, 1997, as required by the Clean Air Act. In the proposal, we stated that EPA would accept public comments on the proposed finding until June 15, 2001. *See* 66 FR 27055 (May 16, 2001).

During the public comment period that ended on June 15, 2001, we received written comments from two commenters. The Washington State Department of Ecology (Ecology or State) supported EPA's proposed determination. Earthjustice, on behalf of the Sierra Club, submitted adverse comments.

II. Major Issues Raised by Commenters

The following is a summary of the issues raised in the comments on the proposal, along with EPA's response to those issues.

A. Attainment Date for the Area

Earthjustice stated that EPA's proposal wrongly assumed that the attainment date for the Spokane PM–10 nonattainment area was December 31, 1997, and that, pursuant to section 188(c)(1) of the CAA, the attainment date for the area is December 31, 1994. According to Earthjustice, EPA's temporary waiver of the attainment date was void from the outset and that, in any event, it did not purport to

permanently extend the original attainment date. The commenter further asserted that the temporary waiver was conditional on Ecology submitting a showing meeting the requirements of section 188(f), which includes a showing that nonanthropogenic sources contribute significantly to violation of PM–10 standards in the area and that anthropogenic sources do not contribute significantly to PM–10 violations in the area. Because Ecology never made this showing, and EPA has never made either of these determinations with respect to Spokane, Earthjustice asserts, the temporary waiver of the attainment date was nullified, even assuming EPA had authority to grant a ''temporary'' waiver of the attainment date in the first place. Moreover, according to Earthjustice, the temporary waiver applied only where windblown dust was an important contributor to the exceedances and EPA has not proposed to find that windblown dust was an important contributor to the exceedances that occurred as of December 31, 1994. Therefore, according to the commenter, the attainment date for the Spokane area is December 31, 1994 and, based on the data in the EPA Aerometric Information Retrieval System (AIRS), the Spokane PM–10 nonattainment area was not in attainment of the PM–10 standards as of that date.

EPA disagrees with the commenter's assertions that EPA's temporary waiver of the attainment date for the Spokane area was invalid at the outset and that the temporary waiver was in any event nullified because the conditions for the temporary waiver were not met. As discussed in the proposed finding of attainment, the Spokane PM–10 nonattainment area was an ''initial'' PM–10 nonattainment area with an attainment date of December 31, 1994. *See* 66 FR 27056; *see also* CAA section 188(a) and (c)(1). Section 188(f) of the CAA provides EPA with the authority to waive a specific date for attainment of the standard under certain circumstances based on the relative contribution of anthropogenic and nonanthropogenic sources of PM–10 to violation of the PM–10 standards in the area. *See* ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Amendments of 1990,'' 59 FR 41998, 42003 (April 16, 1994) (Serious Area Guidance).

In the moderate area State Implementation Plan (SIP) submitted by Ecology for the Spokane area in the early 1990s, Ecology included information indicating that nonanthropogenic sources may be significant in the Spokane PM–10 nonattainment area during windblown dust events. Based on our review of the State's submissions, we approved Spokane's moderate area SIP for all sources except for windblown dust and, under section 188(f) of the CAA and consistent with EPA's Serious Area Guidance interpreting that provision, granted a temporary waiver to extend the attainment date for the Spokane area to December 31, 1997. *See* 62 FR 3800 (January 27, 1997) (final action); 61 FR 35998 (July 9, 1996) (proposed action). The temporary waiver was intended to provide Ecology time to evaluate further the Spokane nonattainment area and to determine the significance of the anthropogenic and nonanthropogenic sources impacting the area. EPA stated that, once these activities were complete or the temporary waiver expired, EPA would make a decision on whether the area was eligible for a permanent waiver under section 188(f) of the CAA or whether the area had attained the standards by the extended attainment date. *See* 62 FR 3802.

Earthjustice asserts that EPA's temporary waiver of the attainment date for the Spokane area was invalid from the outset. However, neither Earthjustice, the Sierra Club, nor any other commenter commented on EPA's authority to grant the Spokane area a temporary waiver of the attainment date when EPA proposed the temporary waiver in 1996. *See* 62 FR 3801. In addition, no petitions for review were filed in response to EPA's final action to grant the temporary waiver to the Spokane area. Any concerns regarding EPA's authority to grant a temporary waiver of the attainment date under CAA section 188(f) were required to be raised when EPA took final action to grant the temporary waiver and, coming more than four years after EPA's action to grant the Spokane area a temporary waiver of the attainment date, are untimely in the context of this rulemaking to determine whether the Spokane area attained the PM–10 standards by the attainment date. *See* CAA section 307(b)(1)(a petition for review must be filed within 60 days from the date of notice of final agency action).

EPA also disagrees that the temporary waiver of the attainment date for the Spokane area was nullified because Ecology did not establish, and EPA did not find, that the Spokane area met the requirements of CAA section 188(f) for a permanent waiver of the attainment date. There is nothing in the proposal or the final action for the temporary waiver to suggest that the temporary waiver of the attainment date to December 31, 1997 was conditioned on Ecology ultimately being successful in obtaining a permanent waiver of the attainment date. The clear purpose of the temporary waiver was to ''allow[] Ecology and EPA to evaluate further the windblown dust PM–10 problems in the Spokane PM–10 nonattainment area.'' 62 FR 3802 (final action granting temporary waiver); *see also* 61 FR 35999 (proposal for temporary waiver). Both the final action and the proposal state that ''once that evaluation is completed, and/or the temporary waiver expires, EPA will make final determinations on the designations and other requirements.'' 62 FR 3802 (final action granting temporary waiver); *see also* 61 FR 35999 (proposal for temporary waiver). The fact that the notices state that EPA would make the attainment determination ''after the temporary waiver expires'' is completely inconsistent with the notion that the temporary waiver would be retroactively nullified if the Spokane area did not qualify for a permanent waiver of the attainment date.

Earthjustice cites the Serious Area Guidance (59 FR 42008) in support of its position that EPA guidance precludes a waiver unless EPA also finds that anthropogenic sources do not contribute significantly to PM–10 violations. In fact, the Serious Guidance makes clear that the purpose of a temporary waiver of the moderate area attainment date for up to three years is ''to allow further evaluation'' of whether nonanthropogenic sources contribute significantly to violations and anthropogenic sources contribute insignificantly to violations of the PM–10 standards. Although the Serious Area Guidance does state, as the commenter points out, that ''the need for reinstating a specific attainment date and/or previously waived serious area requirements should be reconsidered periodically,'' 59 FR 42006, that statement is made in the context of discussing the need to evaluate whether the conditions for a permanent waiver continue to exist. There is no indication in the Serious Area Guidance that the reference to ''reinstating a specific attainment date'' contemplated the retroactive reinstatement of an attainment date that had already passed in time.[1]

[1] As an example of a situation where an attainment date could be reinstated, consider the case of a serious PM–10 nonattainment area with an attainment date of December 31, 2006. Assume that, in 2000, based on the information available at

Continued

Earthjustice is correct that the temporary waiver for Spokane is conditioned on windblown dust (both anthropogenic and nonanthropogenic) being an important contributor to the exceedances. EPA included this condition when it granted the temporary waiver to ensure it could reclassify the area to serious before December 31, 1997 if PM–10 exceedances in the Spokane area were caused by sources other than windblown dust. *See* 61 FR 36003 (''If any of the non-wind blown dust sources cause any exceedances of the PM–10 24-hour standard the area could be reclassified to serious.''). The relevant question, however, is whether windblown dust was an important contributor to exceedances that occurred during the life of the temporary waiver (between January 1, 1995 and December 31, 1997), and not, as Earthjustice asserts, whether windblown dust was an important contributor to exceedances that occurred prior to December 31, 1994.

The preamble language discussing the temporary waiver for the Spokane area is ambiguous regarding whether the temporary waiver could be nullified by a single exceedance attributable to non-windblown dust sources or whether the temporary waiver would be nullified only if the area continued to be in nonattainment because of exceedances caused by non-windblown dust sources. The memorandum of agreement between EPA and Ecology addressing the temporary waiver, which is quoted in the proposed and final action for the temporary waiver, states that ''The Spokane and Wallula nonattainment areas will retain the classification of a moderate PM–10 nonattainment area until 12/31/97 unless PM–10 air quality data indicates that the area has failed to attain the 24-hour standard because of exceedances that cannot be primarily attributable to windblown dust.'' *See* 62 FR 3802 (final action); 61 FR 3599 (proposed action). In several other places in EPA's proposal to grant the temporary waiver, the preamble states that the temporary waiver would apply to ''PM–10 exceedances caused by windblown dust.'' *See* 61 FR 3599 and 3603. Because the relevant inquiry under the CAA is whether an area is in attainment of the NAAQS, not whether the area has a single exceedance of the NAAQS, EPA's intent in granting the temporary waiver was that it would apply unless the Spokane area continued to violate the 24-hour PM–10 NAAQS because of exceedances that could not be primarily attributable to windblown dust.

As discussed in the proposed finding of attainment, a review of the air quality data in AIRS for the three-year period from January 1, 1995 through December 31, 1997 shows that there was only one recorded exceedance of the 24-hour PM–10 standard in the Spokane PM–10 nonattainment area: a concentration of 186 ug/m3 reported at the Crown Zellerbach site on August 30, 1996. 66 FR 27056. As also discussed in the proposal, even if the August 30, 1996 exceedance is included in determining the attainment status of the Spokane area, the data for the period from January 1, 1995 through December 31, 1997 would still show attainment of the 24-hour PM–10 standard.[2] 66 FR 27057.

In addition, the State has claimed and submitted information to show that the August 30, 1996 exceedance was due to emissions of soils caused by high winds and thus qualified as a natural event under EPA guidance. *See* Memorandum from EPA's Assistant Administrator for Air and Radiation to EPA Regional Air Directors entitled ''Areas Affected by Natural Events,'' dated May 30, 1996 (Natural Events Policy). A copy of the documentation submitted by Ecology is in the docket. Based on the information provided by Ecology, EPA believes that windblown dust (both anthropogenic and nonanthropogenic) was an important contributor to the exceedance that occurred on August 30, 1996. There is no evidence to show that non-wind blown dust sources were the main cause of this exceedance. Moreover, as discussed above, this one exceedance does not represent a violation of the 24-hour PM–10 NAAQS. Thus, EPA concludes that this August 30, 1996 exceedance does not nullify the temporary waiver and that the attainment date for the Spokane PM–10 nonattainment area is December 31, 1997.

Earthjustice comments that EPA must seek notice and public comment on any determination that windblown dust was an important contributor to the exceedances before we can conclude that the temporary waiver remained in effect until December 31, 1997. EPA disagrees. This finding is implicit in our statements in the proposal that the attainment date for the Spokane PM–10 nonattainment area is December 31, 1997. The information supporting EPA's position on this issue has been in the docket since the proposal for this action was published and was available for review and comment by interested parties. In any event, the intent of EPA in granting the temporary waiver was that it would apply unless the Spokane area continued to violate the 24-hour PM–10 NAAQS because of exceedances that could not be primarily attributable to windblown dust. The single exceedance that occurred in August 1996, even if it is not deemed primarily attributable to windblown dust, does not represent a violation of the 24-hour PM–10 NAAQS.

B. Application of Natural Events Policy

Earthjustice commented that EPA's proposal to exclude consideration of the August 30, 1996 exceedance at the Crown Zellerbach monitor is not defensible because the State did not have a Natural Event Action Plan (NEAP) for the area at the time of the exceedance and the State did not document that best available control measures (BACM) were required for sources of windblown dust in the Spokane area at the time of the exceedance. As discussed in the proposal for this action, even if the exceedance recorded at the Crown Zellerbach monitoring site on August 30, 1996 is not excluded as a natural event and is considered in the attainment determination, the expected exceedance rate for the Spokane area averaged over the three-year period of 1995, 1996 and 1997 would be 0.34. This is less than the expected exceedance rate of 1.0 that would represent a violation of the 24-hour PM–10 standard. Therefore, even if the commenter were correct in its assertions, the data would still support a finding that the Spokane PM–10 nonattainment area attained the 24-hour PM–10 standard as of the attainment date of December 31, 1997.

C. Clarification of Factual Issues

Ecology submitted a letter supporting EPA's proposed finding that the Spokane PM–10 nonattainment area attained the PM–10 standards by the attainment date of December 31, 1997.

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that time, the area requested and EPA granted a permanent waiver of the serious area attainment date. The Serious Area Guidance states that an area that receives a waiver should review the status of anthropogenic and nonanthropogenic source contributions in the area every three years. 59 FR 42006. If, in 2003, the available information shows that nonanthrogenic sources no longer contribute significantly to the exceedances in the area, the serious area attainment date of December 31, 2006 should be reinstated.

[2] Even if air quality data for the three-year calendar period preceding and including the August 30, 1996 exceedance is considered and it is assumed that the August 30, 1996 exceedance was due to non-windblown dust sources, that exceedance would still not nullify the temporary waiver because it would not indicate the Spokane area ''failed to attain the 24-hour health standard because of exceedances that cannot be primarily attributable to windblown dust. There were no exceedances of the 24-hour PM–10 standard in the Spokane area in 1994 or 1995. Thus, the area was in attainment of the 24-hour standard as of December 31, 1996 even if the August 30, 1996, exceedance is considered.

Ecology also noted three areas where it believed EPA should clarify factual issues in the final determination. First, Ecology stated that EPA should clarify that EPA has fully approved the moderate area SIP for the Spokane PM–10 nonattainment area except as it relates to windblown dust. EPA acknowledges that it has approved the emission inventory, control measures, attainment demonstration, quantitative milestones/reasonable further progress, and contingency measures in the Spokane PM–10 SIP for all sources except for sources of windblown dust and has also granted the area the exclusion from the control requirements for PM–10 precursors. *See* 62 FR 3802 (final action); 61 FR 36000–36003 (proposed action).

Ecology also requested that EPA clarify that we have acknowledged in AIRS that the exceedance that occurred on September 25, 1999 was due to a natural event. In the proposed finding of attainment for the Spokane area, EPA stated that it was still reviewing the documentation to support the State's determination that this exceedance was due to a natural event and had not yet confirmed the State's claim for this exceedance. Just after publication of the proposed finding of attainment, EPA discovered this error and, before expiration of the public comment period, notified Ecology, the local air authority for Spokane County, and Earthjustice of this error. EPA also provided to Earthjustice a copy of EPA's September 20, 2000 letter to Ecology acknowledging the September 25, 1999 exceedance was attributable to a natural event.

Ecology also stated in its comments that there were five monitoring sites in the Spokane PM–10 nonattainment area during the period of 1995 through 1997, not six as stated in EPA's proposed finding of attainment for the Spokane area. It is true that there are in fact only five monitoring sites operating in the Spokane PM–10 nonattainment area during this time, although there is a sixth monitor located in Spokane County outside of the nonattainment area which EPA did consider in making this attainment determination. However, neither this clarification, nor any of the other clarifications requested by Ecology affect EPA's determination that the Spokane PM–10 nonattainment area attained the PM–10 standards by the attainment date.

III. Implications of Today's Action

As discussed above, EPA finds that the Spokane PM–10 nonattainment area attained the PM–10 NAAQS by December 31, 1997, the attainment date for the area. This finding of attainment should not be confused, however, with a redesignation to attainment under CAA section 107(d) because the State has not, for the Spokane area, submitted a maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignations to attainment. The designation status in 40 CFR part 81 will remain moderate nonattainment for the Spokane PM–10 nonattainment area until such time as Washington meets the CAA requirements for redesignations to attainment.

IV. Administrative Requirements

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

This action 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, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it will 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, ''Federalism'' (64 FR 43255, August 10, 1999). The action merely makes a determination based on air quality data and does not impose any requirements and therefore does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act.

This action 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 a significant regulatory action under Executive Order 12866.

This action does not involve technical standards. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. In addition, this action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 23, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 81

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

Dated: September 13, 2001.

Charles E. Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 01–23765 Filed 9–21–01; 8:45 am]

BILLING CODE 6560–50–P