

**PART 52—[AMENDED]****Subpart XX—West Virginia**

Parkersburg-Marietta, WV-OH Area at the end of the table to read as follows:

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding an entry for the 8-Hour Ozone Maintenance Plan,

**§ 52.2520 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* * *	* * *	* * *	* * *
8-Hour Ozone Maintenance Plan for the Parkersburg-Marietta, WV-OH Area.	Wood County .....	09/08/06	05/08/07 [Insert page number where the document begins].	

**PART 81—[AMENDED]**

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

Parkersburg-Marietta, WV-OH Area to read as follows:

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

■ 4. In § 81.349 the table entitled “West Virginia—Ozone (8-Hour Standard)” is amended by revising the entry for the

**§ 81.349 West Virginia.**

\* \* \* \* \*

**WEST VIRGINIA—OZONE**  
[8-Hour Standard]

Designated Area	Designation <sup>a</sup>		Category/Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * *	* * *	* * *	* * *	* * *
Parkersburg-Marietta, WV-OH Area Wood County .....	05/08/07	Attainment.		
* * *	* * *	* * *	* * *	* * *

<sup>a</sup> Includes Indian country located in each county or area except otherwise noted.

<sup>1</sup> This date is June 15, 2004, unless otherwise noted.

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2006-0677a; FRL-8303-2]

**Revisions to the Nevada State  
Implementation Plan, Washoe County**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Washoe County portion of the Nevada State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions from fugitive dust sources, such as open areas, unpaved roads, and construction activities. We are approving this local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on July 9, 2007 without further notice, unless EPA receives adverse comments by June 7, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2006-0677a, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected

should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

**Docket:** The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:**

Jerald S. Wamsley, EPA Region IX, at either (415) 947-4111, or [wamsley.jerry@epa.gov](mailto:wamsley.jerry@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

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**I. The State’s Submittal***A. What rule did the State submit?*

Table 1 lists the rule we are approving with the date that it was adopted by Washoe County and submitted by Nevada.

**TABLE 1.—SUBMITTED RULES**

Local agency	Rule No.	Rule title	Adopted	Submitted
Washoe Co .....	040.030	Dust Control .....	07/26/02	08/05/02

On February 5, 2003, this Rule 040.030 submittal became complete by operation of law because EPA did not make a formal finding that it met the completeness criteria in 40 CFR part 51 Appendix V. These criteria must be met before formal EPA review may begin.

*B. Are there other versions of this rule?*

We approved a prior version of this rule into the Nevada SIP on July 27, 1972; please see 37 **Federal Register** (FR) 15086. On October 30, 1991, Nevada submitted a revised version of Regulation 040.030 to EPA as part of its moderate PM-10 nonattainment area plan. Nevada submitted additional revisions to Regulation 040.030 to EPA on September 18, 1992, and March 25, 1994, as “addenda” to its moderate PM-10 area nonattainment plan. EPA did not act on these submitted versions of the rule, but they have been in effect under state law since their adoption.

*C. What is the purpose of the submitted rule revision?*

Washoe County Regulation 040.030—Dust Control is designed to limit the emissions of fugitive dust or particulate matter from a variety of activities and sources such as construction sites, bulk material hauling, unpaved parking lots, and disturbed soil in open areas and vacant lots. Regulation 040.030 is a significant part of the Washoe County serious area PM-10 attainment plan control strategy for the Truckee Meadows Air Basin (TMAB). The Washoe County serious area PM-10 attainment plan (submitted August 2002) identified fugitive dust from construction activity and disturbed land as significant sources of PM-10 emissions. EPA’s technical support document (TSD) has more information about this rule.

**II. EPA’s Evaluation and Action.***A. How is EPA evaluating the rule?*

On January 8, 2001, EPA determined TMAB had failed to attain the annual and 24-hour PM-10 standards by the statutory deadline of December 31, 1994 based on monitored air quality data during the years 1992–94. Consequently, the area was reclassified under CAA 188(b)(2) by operation of law as a serious nonattainment area, effective February 7, 2001. See 66 FR 1268 (January 8, 2001). States containing initial moderate PM-10 nonattainment areas that are reclassified as serious under CAA section 188(b)(2) are required under section 189(b)(2) to submit a serious PM-10 nonattainment plan within 18 months of the reclassification. A serious PM-10 nonattainment plan must provide for, among other things, implementation of best available control measures (BACM), including best available control technology (BACT). Also, SIP rules must be enforceable (see section 110(a) of the Act) and must not interfere with existing requirements contributing towards meeting air quality standards (section 110(l)) or relax control requirements existing before November 15, 1990 (see section 193). We have listed below the guidance and policy documents that we used to evaluate this rule for enforceability, RACM, and BACM requirements.

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. “Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency”, September 23, 1987.

3. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,” (Blue Book), notice of

availability published in the May 25, 1988 **Federal Register**.

4. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).

5. “General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” at 57 FR 13498, April 16, 1992.

6. “General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” at 57 FR 18070, April 28, 1992.

7. “Fugitive Dust Background Document and Technical Information Document for Best Available control Measures,” EPA 450/2-92-004, September 1992.

8. General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” at 59 FR 41998, August 16, 1994.

*B. Does the rule meet the evaluation criteria?*

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, BACM, and SIP relaxations. Regulation 040.030 contains specific well-defined requirements that are enforceable. The rule also contains new control measures that achieve substantially greater emission reductions compared to the 1972 rule in the SIP. Consequently, EPA finds that the submitted rule does not interfere with progress toward air quality standards and does not relax any SIP control requirements existing before November 15, 1990. The TSD provides more information on our evaluation.

*C. EPA Recommendations To Further Improve the Rule*

We have no recommendations.

*D. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it

fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by June 7, 2007, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 9, 2007. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175

(65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission 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. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by July 9, 2007. 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) of the CAA.)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 15, 2007.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

**Editorial Note:** This document was received at the Office of the Federal Register on May 2, 2007.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

### Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraph (c)(55)(i)(A)(2) to read as follows:

#### § 52.1470 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(55) \* \* \*

(i) \* \* \*

(A) \* \* \*

(2) Regulation 040.030 adopted on July 26, 2002.

\* \* \* \* \*

[FR Doc. E7-8695 Filed 5-7-07; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2006-0635; FRL-8308-2]

### Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Visible Emissions and Particulate Matter Rules

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

**ACTION:** Final rule.