

majority of the nonattainment area is located.

The data also show an increase in the amount of acreage in Benton County and Walla Walla County that has been put in the USDA Conservation Reserve Program (CRP). The CRP is particularly effective in reducing dust emissions because permanent vegetative cover on those lands reduces the opportunity for erosion to occur. In both counties, the CRP acreage percentage increased substantially from 1994 to 2000. In Benton County, CRP acreage increased by over 100 percent, while in Walla Walla County, CRP acreage increased by almost 40 percent. This increase is another indication of the widespread use and the overall upward trend in the use of BMPs in the Wallula area. In sum, data show that of total planted and CRP acreage, 63 percent in Benton County and 84 percent in Walla Walla County used tillage BMPs or was placed in the CRP in 2000.

Based on the information provided by Ecology, other available information showing widespread use of, and an overall upward trend in, the use of BMPs in the Wallula area from 1994 to 2000, and the area's soil and climate characteristics, EPA concludes that BACM was being implemented at the time of the June 21, 1997, July 10, 1998, June 23, 1999, and August 10, 2000 exceedances. EPA, therefore, believes that these exceedances should be excluded from consideration in attainment determinations for the Wallula PM₁₀ nonattainment area and that, in the absence of any other exceedances during 1999, 2000, and 2001, the Wallula PM₁₀ nonattainment area attained the 24-hour PM₁₀ standard as of the serious area attainment date of December 31, 2001. EPA notes, however, that identification and application of BACM for agricultural lands is evolving. EPA expects Ecology to continue efforts in identifying and implementing BACM on sources of agricultural windblown dust in the Wallula area in order for future exceedances caused by high winds to be characterized as "natural events" and excluded in attainment determinations. This includes reviewing and revising the Columbia Plateau NEAP on a periodic basis to ensure continued implementation of BACM on sources of wind blown dust in the area.

C. Effect of Proposed Finding of Attainment

As discussed above, EPA proposes to find that the Wallula PM₁₀ nonattainment area attained the PM₁₀ NAAQS as of the serious area attainment date of December 31, 2001.

If we finalize this proposal, consistent with CAA section 188, the area will remain a serious PM₁₀ nonattainment area, but will avoid the additional planning requirements that apply to serious PM₁₀ nonattainment areas that fail to meet the attainment date under section 189(d) of the CAA.

This proposed finding of attainment should not be confused with a redesignation to attainment under CAA section 107(d). Washington has not submitted a serious area plan for the Wallula area that meets the requirements of section 189(b) of the CAA. In addition, Washington has not 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 serious nonattainment for the Wallula PM₁₀ nonattainment area until such time as Washington meets the CAA requirements for redesignations to attainment.

We are soliciting public comments on EPA's proposal to find that the Wallula PM₁₀ nonattainment area has attained the PM₁₀ NAAQS as of the December 31, 2001, attainment date. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

III. Administrative Requirements

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

This proposed finding 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 proposed action merely makes a determination based on air quality data and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed finding rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects in 40 CFR Part 81

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

Dated: August 23, 2002.

John Iani,

Regional Administrator, Region 10.

[FR Doc. 02-22362 Filed 8-30-02; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5b

Privacy Act, Exempt Record System

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office for Civil Rights (OCR) of the Department of Health and Human Services is implementing a new System of Records (SOR) called the "Program Information Management System (PIMS), HHS/OS/OCR (09-90-0052)." PIMS effectively combines, and

ultimately will replace, OCR's two existing systems of records, the "Case Information Management System (CIMS), HHS/OS/OCR (09-90-0050)," and the "Complaint File and Log, HHS/OS/OCR (09-90-0051)," to create a single, integrated system with enhanced electronic storage, retrieval and tracking capacities. The Department proposes to exempt the investigative records in PIMS from certain provisions of the Privacy Act, 5 U.S.C. 552a. The exemption is authorized by subsection (k)(2) of the Privacy Act, which applies to investigative materials compiled for law enforcement purposes. Unrestricted disclosure of confidential information in OCR files can impede ongoing investigations, invade the personal privacy of individuals, reveal the identities of confidential sources, or otherwise impair the ability of the Office for Civil Rights to conduct investigations. For these reasons, the Complaint File and Log system was exempted from the notification, access, correction and amendment provisions of the Privacy Act under subsection (k)(2) concerning records compiled for law enforcement purposes. 49 FR 14107 (April 10, 1984). Therefore, in this proposed rule, we merely extend this important exemption to OCR's new SOR.

OCR is authorized to gather information for civil and administrative law enforcement purposes pursuant to a number of statutes that prohibit discrimination based on race, color, national origin, disability, age, and, in some instances, sex and religion by recipients of Federal financial assistance, and, in certain instances, by public entities and the Department's federally conducted programs. OCR is also responsible for enforcement of medical records privacy protections under the Health Insurance Portability and Accountability Act (HIPAA). In order to maintain the integrity of the OCR investigative process and to assure that OCR will be able to obtain access to complete and accurate information, the Department proposes to exempt the investigative records in PIMS, under subsection (k)(2), from the notification, access, correction and amendment provisions of the Privacy Act, specifically subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f). The Department is requesting public comments on the proposed exemption.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on October 3, 2002.

ADDRESSES: The public should address comments to: Larry Velez, Program,

Policy and Training Division, Office for Civil Rights, Department of Health and Human Services, Room 509F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Comments also may be sent via e-mail to OCRmail@hhs.gov. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.-3 p.m., eastern standard time.

FOR FURTHER INFORMATION CONTACT:

Claudia Schlosberg, Acting Director, Program, Policy and Training Division, Office for Civil Rights, Department of Health and Human Services, Room 503F, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201, telephone (202) 619-3196. (TTY No. 1-800-537-7697).

SUPPLEMENTARY INFORMATION: The Office for Civil Rights (OCR) is responsible for enforcing Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and other statutes which prohibit discrimination by programs or entities that receive Federal financial assistance.

Additionally, OCR has jurisdiction over Federally conducted programs in cases involving disability-based discrimination under Section 504 of the Rehabilitation Act, over state and local public entities in cases involving disability-based discrimination under Title II of the Americans with Disabilities Act, and certain health plans, health clearinghouses and health care providers with respect to enforcement of health care privacy obligations under the Health Insurance Portability and Accountability Act (HIPAA).

OCR is implementing a new System of Records (SOR) called the "Program Information Management System (PIMS), HHS/OS/OCR (09-90-0052)," but in doing so seeks both to ensure personal privacy as well as its ability to conduct proper, unimpaired investigations. PIMS effectively combines and replaces OCR's two existing systems of records, the "Case Information Management System (CIMS), HHS/OS/OCR (09-90-0050)," and the "Complaint File and Log, HHS/OS/OCR (09-90-0051)," into a single, integrated system with enhanced electronic storage, retrieval and tracking capacities. While the types of information collected and stored in PIMS will be the same as the information collected in CIMS and the Complaint File and Log, PIMS will allow OCR to manage more effectively the information it does collect.

Under the Privacy Act, individuals generally have a right to access to information pertaining to them in government files. However, the Act permits agencies, by regulation, to exempt from the general access provision records which are "investigative material compiled for law enforcement purposes," 5 U.S.C. 552a(k)(2). This exemption is qualified in that if the material results in the denial of any right, privilege, or benefit to the individual, the individual will have access to the material (except to the extent necessary to protect confidential sources).

OCR investigative files are records compiled for law enforcement purposes. In the course of investigations, OCR often has a need to obtain confidential information involving individuals other than the complainant. In these cases, it is necessary for OCR to preserve the confidentiality of the information to avoid unwarranted invasions of personal privacy and to assure recipients of Federal financial assistance that such information provided to OCR will be kept confidential. This assurance is often central to resolving disputes concerning access by OCR to the recipient's records, and is necessary to facilitate prompt and effective completion of investigations.

Unrestricted disclosure of confidential information in OCR files can impede ongoing investigations, invade the personal privacy of individuals, reveal the identities of confidential sources, or otherwise impair the ability of the Office for Civil Rights to conduct investigations. For these reasons, the Complaint File and Log system was exempted from the notification, access, correction and amendment provisions of the Privacy Act under subsection (k)(2) concerning records compiled for law enforcement purposes. 49 FR 14107 (April 10, 1984).

PIMS, OCR's new System of Records, will consist of an electronic repository of information and documents, and supplementary paper document files. Like its predecessor, PIMS will include records compiled for law enforcement purposes such as complaint allegations, information gathered during complaint investigations or reviews, letters of findings and correspondence relating to investigations. The Department therefore is proposing an amendment to the agency's Privacy Act regulation at 45 CFR 5b.11 to ensure that OCR's investigative records remain exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of the Privacy Act pursuant to the provisions of subsection (k)(2), both during the period of transition to the

new SOR and when the new SOR becomes effective.

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis. The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule does not have federalism implications under Executive Order 13132. Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that this rule will not significantly affect a substantial number of small entities. The proposed rule imposes no duties or obligations on small entities. In accordance with the provisions of the Paperwork Reduction Act of 1995, it has been determined that this proposed rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 45 CFR Part 5b

Privacy.

For reasons set out in the preamble, the Department's Privacy Act Regulations, Part 5b of 45 CFR Subtitle A, is proposed to be amended as follows:

PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for part 5b continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. Section 5b.11 is amended by adding paragraph (b)(2)(ii)(G) to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(G) Investigative materials compiled for law enforcement purposes for the Program Information Management System, HHS/OS/OCR are exempt under (k)(2) of the Privacy Act.

* * * * *

Dated: August 29, 2002.

Richard M. Campanelli,
Director, Office for Civil Rights.

Dated: August 29, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–22516 Filed 8–30–02; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH47

Endangered and Threatened Wildlife and Plants; Proposal To Delist the California Plant *Berberis* (= *Mahonia*) *sonnei* (Truckee barberry)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to delist or remove *Berberis* (= *Mahonia*) *sonnei* (Truckee barberry) from the List of Endangered and Threatened Plants. We propose this action based on a review of all available data, which indicate that this plant is not a discrete taxonomic entity and does not meet the definition of a species (which includes subspecies and varieties of plants) as defined by the Endangered Species Act of 1973, as amended (Act). *Berberis sonnei* has been synonymized with *B. repens*, a common and widespread taxon with a distribution from California northward to British Columbia and Alberta, and eastward to the Great Plains. If made final, this proposed rule would eliminate Federal protection for *Berberis sonnei* under the Act. Comments from the public regarding this proposal are sought. **DATES:** Comments from all interested parties must be received by November 4, 2002. Public hearing requests must be received by October 18, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal to delist or remove *Berberis* (= *Mahonia*) *sonnei* (Truckee barberry) from the List of Endangered and Threatened plants by any one of several methods:

You may submit written comments and information to Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, California 95825.

You may send electronic mail (e-mail) to barberry@fws.gov. See the Public

Comments Solicited section below for file format and other information about electronic filing.

You may hand-deliver comments to our Sacramento Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Kirsten Tarp or Jim Browning, at the above address (telephone 916/414–6600; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

Berberis (= *Mahonia*) *sonnei* (Truckee barberry) is a small colonial evergreen shrub known only from a 250-meter (m) (280-yard (yd)) section of Truckee River flood plain in the town of Truckee, Nevada County, California. *Berberis* (= *Mahonia*) *sonnei* (Truckee barberry) is a small colonial evergreen shrub known only from a 250-meter (m) (280-yard (yd)) section of Truckee River flood plain in the town of Truckee, Nevada County, California. LeRoy Abrams described *Berberis sonnei* as *Mahonia sonnei* in 1934. McMinn (1939) transferred *Mahonia sonnei* to the genus *Berberis*. Separation of *Berberis* and *Mahonia* at the generic level is in dispute among taxonomists. The generic name *Berberis* will be used throughout this discussion following Yoder-Williams (1985, 1987).

The collections amateur botanist Charles Sonne made between 1884–1886 from around the Truckee River in Nevada County, California, provided the material from which the *Berberis sonnei* type later was taken. Sonne placed his collections in *B. aquifolium*, which at the time was the only suitable name to which he could refer his specimens (Roof 1974).

LeRoy Abrams (1934) determined that Sonne's specimens were not *Berberis aquifolium* and recognized them as a new species, *B. sonnei*, in his revision of the western barberries. Abrams distinguished the new species from *B. aquifolium* by the numerous small teeth on the leaf margins, dull color of underside leaf surfaces, and presence of papillae (small round or conic projections), concluding that these characters indicated a closer relationship with *B. repens*.

Sonne's material, and an 1881 collection by Marcus Jones at Soda Springs, Nevada County, California, were the only specimens of *Berberis sonnei* available to botanists for many