

[FR Doc. 99-22933 Filed 9-2-99; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA-221-158; FRL-6430-7]

#### Approval and Promulgation of Implementation Plans; California—Owens Valley Nonattainment Area; PM-10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** EPA is taking final action to approve a State Implementation Plan (SIP) submitted by the State of California for attaining the particulate matter (PM-10) national ambient air quality standards (NAAQS) in the Owens Valley Planning Area, along with the State's request for an extension to December 31, 2006 to attain the PM-10 NAAQS in the area. EPA is taking these final actions under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary standards, and plan requirements for nonattainment areas.

**EFFECTIVE DATE:** This action is effective on October 4, 1999.

**ADDRESSES:** The rulemaking docket for this notice, may be inspected and copied at the following location during normal business hours. A reasonable fee may be charged for copying parts of the docket.

U.S. Environmental Protection Agency, Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the SIP materials area also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, P.O. Box 2815, Sacramento, CA 95814; or

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514.

**FOR FURTHER INFORMATION CONTACT:** Larry A. Biland, U.S. Environmental Protection Agency, Region 9, Air Division (AIR-2), 75 Hawthorne Street, San Francisco, CA 94105-3901, (415) 744-1227.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The 1998 PM-10 plan (1998 SIP) for the Owens Valley Planning Area<sup>1</sup> was adopted on November 16, 1998, by the Great Basin Unified Air Pollution Control District (GBUAPCD or the District), and submitted as a SIP revision by the California Air Resources Board (CARB) on December 10, 1998. EPA determined this submission to be complete on February 2, 1999.<sup>2</sup>

### II. Summary of EPA Action

EPA is finalizing approval of the serious area SIP submitted by the State of California for the Owens Valley PM-10 nonattainment area. Specifically, EPA is approving the 1998 SIP with respect to the CAA requirements for public notice and involvement under section 110(a)(1); emissions inventories under section 172(c)(3); control measures under section 110(k)(3), as meeting the requirements of sections 110(a) and 189(b)(1)(B); Reasonable Further Progress (RFP) and rate-of-progress milestones under section 189(c); contingency measures under section 172(c)(9); and demonstration of attainment under section 189(b)(1)(A). EPA is also finalizing approval of the State's request for an extension of the attainment date from December 31, 2001, to December 31, 2006, under CAA section 188(e).

These actions were proposed on June 25, 1998 (64 FR 34173-34179). The reader is referred to that notice for additional detail on the affected area and the SIP submittal, as well as a summary of relevant CAA provisions and EPA interpretations of those provisions.

### III. Response to Public Comments

EPA received only one comment, from Dorothy Alther of California Indian Legal Services, representing the Lone Pine and Timbisha Shoshone Indian Tribes and the Owens Valley Indian Water Commission. The commenter summarized the position of the Tribes as having some concerns regarding the 1998 SIP and its implementation, but being anxious to see work begin on the Dry Lake. The comments did not urge EPA disapproval of the 1998 SIP.

Ms. Alther stated that EPA erred in stating that required controls on 16.5 square miles in the first phase of implementation is discretionary. EPA agrees. The Los Angeles Department of

Water and Power is mandated to place controls on 10 square miles of the Owens Lake bed. Implementation of controls on an additional 3.5 square miles in Phase 2 is required "unless the District determines, on or before December 31, 2001, that the Owens Valley Planning Area (OVPA) will attain the PM-10 NAAQS by December 31, 2006 without implementation of further control measures." Implementation of controls on an additional 3 square miles in Phase 3 is required unless the District makes a similar determination by December 31, 2002. Board Order #981116-01, Paragraphs 2 and 3.

The commenter expressed concern regarding the lack of certainty regarding what measures will be implemented in the second increment of the 1998 SIP. EPA believes that the second increment (Phases 4-6) of the SIP control strategy includes an enforceable City obligation to implement controls on additional areas of the Owens Lake bed by particular dates sufficient to meet progress and attainment requirements as determined by the District. In view of the absence of information on large-scale fugitive dust control projects at a dry lake bed, EPA believes that it is reasonable to allow the City and District the discretion to identify more precisely the specific measures that will be most effective in achieving attainment, based on the practical experience gained in implementing the first increment of the control strategy. The commenter and other stakeholders will have an opportunity to review the specific strategies included in a SIP revision to be submitted on December 31, 2003. EPA will work with the District and City to ensure that the selected strategies in the second increment are adequate to achieve progress and attainment by 2006, and that any necessary SIP updates are prepared and adopted in a process that provides full opportunities for public involvement.

The commenter disagreed with EPA's discussion and proposed approval of the 5-year attainment date extension. The commenter did not explain why she believed that the SIP failed to qualify for an extension. EPA continues to believe that the area meets the CAA section 188(e) criteria for the extension. Despite an expeditious schedule for implementing all feasible and effective control measures, the 1998 SIP provides information showing that attainment by 2001 is impracticable. The State has complied with all implementation requirements and commitments pertaining to the area in the implementation plan. Finally, EPA continues to conclude that the 1998 SIP includes the most stringent measures

<sup>1</sup> For a description of the boundaries of the Owens Valley Planning Area, see 40 CFR 81.305.

<sup>2</sup> EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

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.

The commenter questioned the adequacy of the attainment demonstration, since the modeling assessment shows the probable need to control 22,400 acres and the 1998 SIP concentrates on control of 14,400 acres. The District has committed to a program of continuing scientific investigation of emission reductions and air quality progress, and based on this refined information will adjust the strategy as needed to provide for attainment by 2006. If attainment has not been achieved in the first increment of control, the District will revise the SIP's control strategy in 2003 to provide controls over the lake playa sufficient to attain the NAAQS by 2006. EPA will monitor the results of these strategy assessments and work with the District and other plan participants to ensure that the plan is adjusted, as may be necessary, to meet progress and attainment deadlines.

The commenter noted that the plan shows a design day PM-10 concentration of 149.95  $\mu\text{g}/\text{m}^3$ , which is technically below the 150  $\mu\text{g}/\text{m}^3$  24-hour PM-10 NAAQS, but provides no "cushion." EPA agrees that the plan predicts that the control strategy will reduce peak concentrations only to levels very slightly below the 24-hour NAAQS. While the attainment provision meets minimal approval criteria, it will be important for the District, State, and EPA to verify that implementation of the plan is having the predicted impact on air quality.

For the reasons stated above, EPA is finalizing the proposed plan approval.

#### IV. Administrative Requirements

##### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

##### B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior

consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

##### C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

##### D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a

summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

##### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

##### F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and

is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### G. Submission to Congress and the Comptroller General

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**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

#### H. Petitions for Judicial Review

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 2, 1999. 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 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 18, 1999.

**Felicia Marcus**,  
Regional Administrator, Region IX.

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.*

2. Section 52.220 is amended by adding paragraph (c)(247) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(267) New plan for Owens Valley PM-10 Planning Area for the following agency was submitted on December 10, 1998 by the Governor's designee.

(i) Incorporation by reference.

(A) Great Basin Unified APCD.

(1) Owens Valley PM-10 Planning Area Demonstration of Attainment State Implementation Plan, Section 7-4, Commitment to adopt 2003 SIP Revision and Section 8-2, the Board Order adopted on November 16, 1998 with Exhibit 1.

\* \* \* \* \*

[FR Doc. 99-22930 Filed 9-2-99; 8:45 am]

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#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[FCC 99-147; MM Docket No. 91-259; RM-7309, RM-7942, RM-7943, RM-7944, RM-7948]

**Radio Broadcasting Services; Canovanas, Culebra, Las Piedras, Mayaguez Quebradillas San Juan and Vieques, PR, and Christiansted and Frederiksted, VI**

**ACTION:** Final rule; Application for review.

**SUMMARY:** This document denies an Application for Review filed by WKJB AM-FM, Inc. directed to the *Memorandum Opinion and Order* in this proceeding. Based upon preferential FM allotment priorities, the Commission finds a proposed channel substitution, its reallocation, and the modification of a station's license to be within the public's interest. With this action, the proceeding published September 16, 1996 (61 FR 48638) is terminated.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau (202) 418-2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Memorandum Opinion and Order* in MM Docket No. 91-259, adopted June 17, 1999, and released June 21, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 1231 20th Street, NW, Washington, D.C. 20036.

Federal Communications Commission.

**Magalie Roman Salas**,

Secretary.

[FR Doc. 99-23071 Filed 9-2-99; 8:45 am]

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#### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AE22

#### Endangered and Threatened Wildlife and Plants; Final Endangered Status for 10 Plant Taxa From Maui Nui, HA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** Under the authority of the Endangered Species Act of 1973 (Act), as amended, we (the U.S. Fish and Wildlife Service (Service)) determine endangered status for 10 plant taxa—*Clermontia samuelii* (oha wai), *Cyanea copelandii* ssp. *haleakalaensis* (haha), *Cyanea glabra* (haha), *Cyanea hamatiflora* ssp. *hamatiflora* (haha), *Dubautia plantaginea* ssp. *humilis* (na'ena'e), *Hedyotis schlechtendahliana* var. *remyi* (kopa), *Kanaloa kahoolawensis* (kohe malama malama o Kanaloa), *Labordia tinifolia* var. *lanaiensis* (kamakahala), *Labordia triflora* (kamakahala), and *Melicope munroi* (alani). All 10 taxa are endemic to the Maui Nui group of islands in the Hawaiian Islands. This group includes Maui, Molokai, Lanai, and Kahoolawe. *Clermontia samuelii*, *Cyanea copelandii* ssp. *haleakalaensis*, *Cyanea glabra*, *Cyanea hamatiflora* ssp. *hamatiflora*, and *Dubautia plantaginea* ssp. *humilis* are endemic to the island of Maui. *Hedyotis schlechtendahliana* var. *remyi* and *Labordia tinifolia* var. *lanaiensis* are