

adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule.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

**DATES:** Comments must be received in writing by July 14, 2000.

**ADDRESSES:** Written comments should be addressed to:

Richard R. Long, Director, Air & Radiation Program (8P-AR), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202-2466.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 8, Air & Radiation Program, 999 18th Street, Suite 500, Denver, Colorado 80202-2466.

**FOR FURTHER INFORMATION CONTACT:** Jeff Houk, Air & Radiation Program (8P-AR), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202-2466 ph. (303) 312-6446.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: June 1, 2000.

**Jack McGraw,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 00-14994 Filed 6-13-00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[NV-022-0022; FRL-6715-9]

#### Approval and Promulgation of Implementation Plans; Nevada—Las Vegas Valley Nonattainment Area; PM-10

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove the moderate and serious nonattainment area state implementation plans (SIPs) submitted by the State of Nevada for attaining the particulate matter (PM-10) national ambient air quality standards (NAAQS) in the Las Vegas Valley. EPA is proposing to disapprove the reasonably

available control measure/best available control measure (RACM/BACM) and rate of progress provisions in both the moderate and serious area SIPs, and the attainment demonstration provision in the serious area SIP. EPA is also proposing to deny the State's request for an extension to December 31, 2006 to attain the PM-10 NAAQS in the area. If EPA takes a final disapproval action, it will trigger the 18-month clock for mandatory application of sanctions and the 2-year time clock for a federal implementation plan (FIP) under the Clean Air Act (CAA).

**DATES:** Written comments on this proposal must be received by August 14, 2000.

**ADDRESSES:** Comments should be addressed to the EPA contact below. Copies of the State's submittal and other information are contained in the docket for this rulemaking. The docket is available for inspection during normal business hours at the following location: U. S. Environmental Protection Agency, Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105-3901. The docket can also be viewed at our web site: [www.epa.gov/region9/](http://www.epa.gov/region9/).

Copies of the SIP materials are also available for inspection at the addresses listed below: Nevada Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada, 89710; and, Clark County Department of Comprehensive Planning, 500 South Grand Central Parkway, 3012, Las Vegas, Nevada, 89155-1741.

**FOR FURTHER INFORMATION CONTACT:** Larry Biland, U. S. Environmental Protection Agency, Region 9, Air Division (AIR-2), 75 Hawthorne Street, San Francisco, CA 94105-3901. (415) 744-1227, e-mail address: [biland.larry@epa.gov](mailto:biland.larry@epa.gov)

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Clean Air Act Requirements

###### 1. Designation and Classification

On the date of enactment of the 1990 CAA Amendments, PM-10 areas, including the Las Vegas Valley Planning Area, meeting the qualifications of section 107(d)(4)(B) of the amended Act, were designated nonattainment by operation of law. See 56 FR 11101 (March 15, 1991). The boundaries of the Las Vegas Valley nonattainment area (Hydrologic Unit #212) are codified at 40 CFR 81.329.

Once an area is designated nonattainment, section 188 of the CAA outlines the process for classification of the area and establishes the area's attainment deadline. In accordance with

section 188(a), at the time of designation, all PM-10 nonattainment areas, including the Las Vegas Valley, were initially classified as moderate by operation of law. Section 188(b)(1) of the Act further provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot "practicably" attain the PM-10 NAAQS by this attainment date.

Nevada submitted a moderate area PM-10 plan for Las Vegas Valley on December 6, 1991. Based on this submittal, EPA determined on January 8, 1993, that the Las Vegas Valley could not practicably attain both the annual and 24-hour standards by the applicable attainment deadline for moderate areas (December 31, 1994, per section 188(c)(1) of the Act), and reclassified the Las Vegas Valley as serious (58 FR 3334). In accordance with section 189(b)(2) of the Act, SIP revisions for the Las Vegas Valley addressing the requirements for serious PM-10 nonattainment areas in section 189(b) and (c) of the Act were required to be submitted by August 8, 1994 and February 8, 1997.

##### 2. Moderate Area Planning Requirements

The air quality planning requirements for PM-10 nonattainment areas are set out in subparts 1 and 4 of Title I of the Clean Air Act. Those states containing initial moderate PM-10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

(a) Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993 (CAA sections 172(c)(1) and 189(a)(1)(C));

(b) Provisions to assure implementation of RACT on major stationary sources of PM-10 precursors except where EPA has determined that such sources do not contribute significantly to exceedances of the PM-10 standards (CAA section 189(e));

(c) Either a demonstration (including a complete emissions inventory and air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable (CAA sections 188(c)(1) and 189(a)(1)(B));

(d) For plan revisions demonstrating attainment, quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994 (CAA section 189(c)); and

(e) For plan revisions demonstrating impracticability, such annual incremental reductions in PM-10 emissions as are required by part D of the Act or may reasonably be required by the Administrator for the purpose of ensuring attainment of the PM-10 NAAQS by the applicable attainment date (CAA sections 172(c)(2) and 171(1)).

Moderate area plans were also required to meet the generally applicable SIP requirements for reasonable notice and public hearing under section 110(l), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280; and the description of enforcement methods as required by 40 CFR 51.111, and EPA guidance implementing these sections.

### 3. Serious Area Planning Requirements

Moderate PM-10 areas that have been reclassified to serious, such as the Las Vegas Valley area, in addition to meeting the moderate area requirements outlined above, must submit a plan that includes provisions addressing additional requirements. The additional serious area requirements that are relevant to this proposed action include:

(a) A demonstration (including a complete emissions inventory and air quality modeling) that the plan provides for attainment of the PM-10 standards by December 31, 2001, or for any area seeking an extension of that date, a demonstration that attainment by 2001 is impracticable and a demonstration of attainment by the most expeditious alternative date practicable (CAA sections 188(c)(2) and 189(b)(1)(A));

(b) Provisions to assure that the best available control measures (BACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of best available control technology (BACT)) for the control of PM-10 shall be implemented no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B));

(c) Provisions to assure implementation of BACT on major stationary sources of PM-10 precursors except where EPA has determined that such sources do not contribute significantly to exceedances of the PM-10 standards (CAA section 189(e)); and

(d) Quantitative milestones which are to be achieved every 3 years and which demonstrate RFP toward attainment by the applicable attainment date (CAA section 189(c)).

As discussed above in connection with the moderate area plan requirements, SIPs submitted to meet the CAA's serious area requirements must conform to general requirements applicable to all SIPs.

### B. EPA Guidance

EPA has issued a "General Preamble"<sup>1</sup> describing EPA's preliminary views on how the Agency intends to review SIPs and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM-10 nonattainment area SIP provisions. EPA has also issued an Addendum to the General Preamble (Addendum) describing the Agency's preliminary views on how it intends to review SIPs and SIP revisions containing serious area plan provisions.<sup>2</sup>

#### 1. RACM/BACM

Sections 172(c)(1) and 189(a)(1)(C) read together require that moderate area PM-10 SIPs include RACM and RACT for existing sources of PM-10. These SIPs were to provide for implementation of RACM/RACT no later than December 10, 1993. Since the moderate area deadline for the implementation of RACM/RACT has passed, EPA has concluded that the RACM/RACT required in the State's moderate plan must now be implemented as soon as possible. *Delaney v. EPA*, 898 F.2d 687, 691 (9th Cir. 1990). EPA has interpreted this requirement to be "as soon as practicable." 63 FR 15920, 15926 (Apr. 1, 1998).

The methodology for determining RACM/RACT is described in detail in the General Preamble. 57 FR at 13540-13541. In summary, EPA suggests starting to define RACM with the list of available control measures for fugitive dust, residential wood combustion, and prescribed burning contained in Appendices C1, C2, and C3 of the General Preamble and adding to this list any additional control measures proposed and documented in public comments. The state can then cull from

<sup>1</sup> See "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

<sup>2</sup> 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 Act Amendments of 1990," 59 FR 41998 (August 16, 1994).

the list any measures for insignificant emission sources of PM-10 and any measures that are unreasonable for technological or economic reasons. The General Preamble does not define insignificant except to say that it would be unreasonable to apply controls to sources that are negligible ("de minimis") contributors to ambient concentrations. However, in its serious area plan guidance, EPA does establish a presumption, for use in BACM determinations, that a "significant contributor" source category as one that contributes 1 µg/m<sup>3</sup> or more of PM-10 to a location of annual violation and 5 µg/m<sup>3</sup> to a location of 24-hour violation. Addendum at 42011. EPA has also used this same definition to define significance in determining which source categories require the application of RACM. See 63 FR 41326, 41331 (Aug. 3, 1998).

For any RACM that are rejected by the state, the plan must provide a reasoned justification for the rejection. Once the final list of RACM is defined, each RACM must be converted into a legally enforceable vehicle such as a rule, permit, or other enforceable document. General Preamble at 13541.

Under CAA section 189(b)(2), for moderate areas that have been reclassified as serious under section 188(b)(1), the state must submit BACM 18 month after reclassification, i.e., August 8, 1994 for the Las Vegas Valley area, and must implement those measures four years after reclassification, i.e., by February 8, 1997. As with the RACM/RACT implementation deadline, the BACM/BACT deadline has passed. Therefore BACM/BACT must now be implemented as soon as practicable.

BACM is defined as the "maximum degree of emission reduction of PM-10 and PM-10 precursors from a [significant] source [category] which is determined on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such sources through application of production processes and available methods, systems, and techniques. . . ." Addendum at 42010. BACM/BACT must be determined and documented consistent with the Addendum (at 42012-14) and must be applied, at a minimum, to each significant source or source category. Addendum at 42010. The state must document its selection of BACM by showing what control measures applicable to each significant source category were considered. Addendum at 42014. BACM should go beyond existing RACM controls and can include

expanded use of RACM controls (e.g., paving more miles of unpaved roads). Addendum at 42013.

## 2. RFP/Quantitative Milestones

Both PM-10 moderate and serious area nonattainment SIPs demonstrating attainment must include quantitative milestones to be achieved every three years until the area is designated attainment and must demonstrate RFP toward attainment by the applicable date. CAA section 189(c)(1). EPA has addressed these requirements in several guidance documents. See the General Preamble at 13539, the Addendum at 42015-42017, and the memorandum from Sally Shaver, EPA, to EPA Division Directors, "Criteria for Granting 1-Year Extensions of Moderate PM-10 Nonattainment Area Attainment Dates, Making Attainment Determinations, and Reporting on Quantitative Milestones," November 14, 1994 (Shaver memorandum). Of these guidance documents, the most comprehensive is the Addendum which discusses both the RFP annual incremental reduction requirement and the appropriate interpretation of the milestone requirement as it relates to moderate areas that have been reclassified to serious. EPA has considerable discretion in reviewing the SIP to determine whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective of timely attainment. Addendum at 42015.

With respect to the quantitative milestone requirement, for initial moderate areas, EPA concluded that the SIP should initially address at least two milestones and that the starting point for the first 3-year period would be the SIP submittal due date, i.e. November 15, 1991. EPA further concluded that since the time lag between the first milestone date (November 15, 1994) and the December 31, 1994 attainment deadline was de minimis, emission reduction progress made between the submittal date and December 31, 1994 would satisfy the first milestone. The second milestone to be addressed by these initial moderate area SIPs was November 15, 1997. General Preamble at 131539, Addendum at 42016, and Shaver memorandum. For moderate areas that are reclassified as serious, the third milestone achievement date is November 15, 2000. Addendum at 42016. The quantitative milestones should consist of elements that allow progress to be quantified or measured, e.g., percent compliance with implemented control measures. Addendum at 42016.

EPA will assess whether an area has achieved RFP in conjunction with determining compliance with the quantitative milestone requirement. Thus a state should address compliance with both requirements in its RFP/milestone reports. The contents of these reports is discussed in the General Preamble, the Addendum, and the Shaver memorandum.

## II. Evaluation of the State's Submittals

### A. Identification of SIPs

This proposal covers the PM-10 moderate area nonattainment plan titled "PM-10 Air Quality Implementation Plan, Las Vegas Valley, Clark County, Nevada", (1991 Moderate Plan) submitted to EPA by the Nevada State Department of Natural Resources and Conservation on December 6, 1991; a February 15, 1995 submittal of an "Addendum to the 'Moderate Area' PM-10 State Implementation Plan for the Las Vegas Valley" (1995 RACM Addendum); a BACM analysis plan titled "Providing for the Evaluation, Adoption and Implementation of Best Available Control Measures and Best Available Control Technology to Improve PM-10 Air Quality," (1994 BACM Plan) submitted on December 6, 1994; and the PM-10 serious area nonattainment plan for the Las Vegas Valley nonattainment area titled "Particulate Matter (PM-10) Attainment Demonstration Plan" (1997 Serious Plan), submitted to EPA on August 25, 1997. "Moderate Area SIP" in this proposal refers collectively to the 1991 Moderate Plan and the 1995 RACM Addendum. "Serious Area SIP" refers collectively to the 1994 BACM Plan and the 1997 Serious Plan.

The Clark County Department of Comprehensive Planning and the Clark County Health District are the agencies responsible for addressing PM-10 pollution in the Las Vegas Valley. The Clark County Department of Comprehensive Planning is responsible for the development of the SIP. The Clark County Health District is responsible for development of rules and regulations, air permits, enforcement, and air monitoring.

### 1. The Las Vegas Valley Moderate Area SIP

Since the moderate area attainment deadline, December 31, 1994, has passed, and the Las Vegas Valley has been reclassified from a moderate to a serious nonattainment area, EPA believes that the moderate area attainment demonstration requirements have been superseded by the area's reclassification. See, e.g., 61 FR 54972,

54974 (October 23, 1996). Therefore, EPA addresses only the RACM/RACT and rate of progress provisions of the Moderate Area SIP in this notice.

*a. Evaluation of RACM/RACT.* EPA is proposing to disapprove the RACM demonstration in the Moderate Area SIP because, among other things, the control measures are not comprehensive enough to constitute RACM for any source category identified in the Moderate Area SIP as significant for the annual or 24-hour standard. For example, the only control measures submitted as RACM for disturbed vacant land include textual references to Clark County's efforts to encourage limits on off-road motor vehicle use on public lands and local government policies promoting infill development.<sup>3</sup> These measures do not establish requirements that prevent vacant land disturbances or mitigate disturbed vacant land throughout the PM-10 nonattainment area and thus do not meet the RACM requirements of the CAA.

EPA is also proposing to disapprove the Moderate Area SIP with respect to the RACT requirement for primary PM-10 sources because existing sources are not subject to controls as required by the CAA<sup>4</sup>. Furthermore, we cannot fully approve Rule 34, New Source Performance Standards for Nonmetallic Mineral Mining and Processing, which was submitted as RACT. For a more detailed review of RACM/RACT, see the Technical Support Document (TSD) that is part of this docket.

*b. Evaluation of RFP/Quantitative Milestones.* The 1991 Moderate Plan includes a demonstration of attainment for the annual standard and an impracticability demonstration for the 24-hour standard. See 1991 Moderate Plan, pp. 54-58.<sup>5</sup> PM-10 moderate area nonattainment SIPs demonstrating attainment must include quantitative milestones to be achieved every three years until the area is redesignated attainment and must demonstrate RFP toward attainment of both standards by the applicable date. CAA sections 172(c)(2) and 189(c)(1). Section 171(1) of the Act defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part [part D of title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable

<sup>3</sup> 1994 BACM Plan, pgs. 35-36 and 1995 RACM Addendum, pg. 5.

<sup>4</sup> 1991 Moderate Plan, pg. 36.

<sup>5</sup> As noted previously, EPA is proposing no action on these demonstrations as the moderate area attainment requirements for the Las Vegas Valley have been superseded by those applicable to serious areas.

national ambient air quality standard by the applicable date." For PM-10 moderate area nonattainment SIPs demonstrating impracticability, sections 172(c)(2) and 171(1) apply. The Moderate Area SIP for the Las Vegas Valley does not contain any annual emission reductions or quantitative milestones. Therefore, EPA proposes to disapprove the Moderate Area SIP for failing to meet the CAA requirements for RFP and quantitative milestones.

## 2. The Las Vegas Valley Serious Area SIP

*a. Emission Inventory.* All emission inventories must be current, comprehensive, and complete. Section 172(c)(3). Current inventories present emissions for a relatively recent year. Comprehensive inventories desegregate the emission sources into many. Complete inventories address all of the sources of emissions of the subject pollutant in the area of concern.

The 1997 Serious Plan describes the average annual emissions of directly emitted PM-10 for the base and current attainment years (1995 and 2001) and the March 11, 1994 and 2001 design day for the 1,500 square mile Las Vegas Valley. The significant sources for the 24-hour standard were found to be construction activities which contribute 48.5%, disturbed vacant land with 30.9%, and natural sources<sup>6</sup> with 14% of the total. The total for these three sources is 93.4%. The significant sources for the annual standard were found to be construction activities which contribute 42.6%. Paved and unpaved road dust contributes 11.1%, disturbed vacant land with 6.4%, and natural sources with 36.2% of the total. The total for these four sources is 96.3%.<sup>7</sup>

Generally the inventory estimates in the 1997 Serious Plan are well documented, the inventory is reasonably current and the categorization of the inventory is fairly complete. However, the 1997 Serious Plan's inventory has several significant shortcomings:

- The plan does not address inventories for condensible particulate or PM-10 precursors, including volatile organic compounds (VOC), nitrogen oxides (NOx), sulfur dioxide (SO<sub>2</sub>), and ammonia (NH<sub>3</sub>). The insignificance of these particulate sources is address in the modeling section of this Notice. Based on air quality analysis, these sources would appear to have a de minimis impact.

- The plan does not include emission estimates for airport activities, agricultural activities, various cooking methods, off-road vehicle exhaust, and lawn care equipment.

The plan acknowledges that primary, condensible, and secondary PM-10 categorically constitute what is called PM-10, but does not address condensible and secondary PM-10 in the inventory. The plan's explanation for not including emissions from condensible and secondary PM-10 is that these emission categories do not contribute significantly to the emission or air quality totals. Condensible and secondary PM-10 generally are not addressed in PM-10 inventories because of their de minimis ambient air quality contribution. Clark County will need to include emissions from these source categories of directly emitted PM-10 in its revised inventories and cite evidence of the triviality of those secondary and condensible emissions contributions.

EPA proposes to disapprove the emissions inventory given these deficiencies.

*b. Mobile Source Emissions Budget.* The 1997 Serious Plan did not establish any PM-10 emission budgets for the annual or 24-hour PM-10 standard. Thus EPA determined in a letter dated July 12, 1999, to the Nevada Division of Environmental Protection, that the area did not have adequate budgets for purposes of transportation conformity.

*c. Evaluation of BACM/BACT.* As discussed in the summary of CAA requirements, the Serious Area SIP for the Las Vegas Valley must include control measures consistent with the CAA requirements for BACM and BACT. EPA has determined that, collectively, the submitted rules, ordinances, permits and other measures do not meet the BACM requirements for any significant source category for either PM-10 standard. In summary, EPA is proposing to disapprove the Serious Area SIP for failure to provide for the implementation of BACM based upon the following four deficiencies:

- Failure to demonstrate that the control measures in the Serious Area SIP constitute BACM for significant sources. EPA finds that the Serious Area SIP either lacks BACM for some significant sources without adequate justification or the submitted measures are not comprehensive enough to provide for the implementation of BACM. For example, no measures were submitted as BACM to control vacant lots, unpaved parking lots,<sup>8</sup> or paved road dust.

- Failure to provide an adequate justification for available control measures not being implemented. EPA's RACM guidance indicates that SIP submittals should contain a reasoned justification for partial or full rejection of any available control measures; similar principles apply to consideration of BACM.<sup>9</sup> For example, although the 1994 BACM Plan lists controlling unpaved shoulders and containing truck spillage as candidate BACM for paved roads, the plan indicates that an addendum will be provided in 1997 that documents the evaluation process and adoption and implementation of specific control measures.<sup>10</sup> However, no subsequent BACM evaluation for paved roads was submitted to EPA.

- Lack of sufficient stringency in some submitted measures. Certain requirements (or lack thereof) in rules, ordinances, or permits require further stringency to meet BACM, and/or have not been properly justified by the District as supporting a BACM level of control. For example, EPA believes that the standards established in Rule 41 for construction sites and other sources may be insufficiently protective in many circumstances. Coupled with the fact that construction site permits lack other standards by which compliance can be gauged, there is no assurance that the required construction site controls will be implemented to an extent that meets BACM requirements. The 1994 BACM Plan contains little discussion as to whether or how the specific control measures in the Las Vegas Valley are stringent enough to meet the BACM level of control.

- Failure of certain measures to be fully enforceable. On a macro-scale, this encompasses the concern that important control measures have not been submitted to EPA in a format that can be approved into the SIP and enforced as such.<sup>11</sup> On a micro-scale, vague language or the absence of appropriate standards in permits, rules or ordinances makes them difficult to enforce in an equitable, repeatable, accurate and practical manner to achieve emission reductions. This, in turn, lessens the ability of the control

requirements for unpaved parking lots located at certain types of non-metallic mineral plants, there are no measures to address other unpaved parking lots throughout the PM-10 nonattainment area.

<sup>9</sup> 57 FR 13498, 13541 (April 16, 1992); Addendum at 42014.

<sup>10</sup> Pg. 53.

<sup>11</sup> For example, a copy of a dust control permit form for construction sites, containing boilerplate requirements, was included in the 1997 Serious Plan. However, these requirements should be placed into a rule that Clark County Health District adopts and submits to EPA.

<sup>6</sup> Natural sources are discussed further in the TSD.

<sup>7</sup> 1997 Serious Plan, pp. 35-37.

<sup>8</sup> While County Ordinance 1541 was submitted as BACM for stationary sources and it contains

measures to result in a BACM level of control.

The BACM deficiencies summarized in the preceding paragraphs reflect that discussion of BACM in the Serious Area SIP is limited and does not show that the adopted PM-10 control measures for any significant source category collectively meet the CAA's BACM requirements. This may be due to a belief expressed in the 1997 Serious Plan that limitations in the accuracy of PM-10 emission inventories and the lack of specific information on control efficiencies preclude a meaningful application of the procedures for determining BACM.<sup>12</sup> However, EPA does not view this statement as an adequate reason for failure to implement BACM or, alternatively, to provide a justification for not implementing BACM. Furthermore, general estimates of control efficiencies are available<sup>13</sup> and are not required to be exact in order to evaluate whether a candidate or adopted measure meets the BACM requirements.

EPA is also proposing to disapprove the Serious Area SIP with respect to the BACT requirement for primary PM-10 sources. This is because existing sources are not subject to controls that are in place for new and modified sources and there is no justification for not implementing those controls. Also, the Serious Area SIP does not provide sufficient information on stationary source requirements for EPA to evaluate whether BACT is being implemented. Information to be submitted includes all control equipment and/or emission limit requirements, test method requirements, and reporting/recordkeeping requirements. For EPA's complete review of BACM/BACT, see the TSD that is part of this docket.

*d. Major Sources of PM-10 Precursors Need BACT Rules.* Under section 189(e), BACT controls are required for all existing major sources of VOC, NO<sub>x</sub>, SO<sub>x</sub>, and ammonia in the Las Vegas nonattainment area unless they do not contribute significantly to PM-10 levels which exceed the standards in the area. The inventory does not quantify these sources for their secondary PM-10 contribution and therefore EPA cannot determine if controls are needed. Therefore we are proposing to disapprove the Serious Area SIP's BACT demonstration for failure to include

such controls or justify why they are not required.

*e. Reasonable Further Progress (RFP)/Quantitative Milestones.* PM-10 serious area nonattainment SIPs must include quantitative milestones to be achieved every three years until the area is redesignated attainment and must demonstrate RFP toward attainment of both standards by the applicable date. CAA section 189(c)(1). The 1997 Serious Plan for the Las Vegas Valley does not contain annual incremental emission reductions or quantitative milestones for either the annual or 24-hour standard. Therefore, EPA proposes to disapprove the plan for failing to meet the CAA requirement for RFP and quantitative milestones.

*f. Attainment Demonstration.* Serious area PM-10 SIPs must provide a detailed demonstration (including air quality modeling) that the specified set of strategies will reduce PM-10 emissions so that the standards will be attained as soon as practicable but no later than December 31, 2001 or, for an extension beyond that date, a demonstration that attainment by December 31, 2001 would be impracticable and a demonstration of attainment by the most expeditious alternative date practicable. EPA considers the area to be in attainment of the NAAQS if 24-hour concentrations are 150 µg/m<sup>3</sup> or less and the annual arithmetic mean is 50 µg/m<sup>3</sup> or less.

The attainment demonstration in the 1997 Serious Plan applies to both the 24-hour and the annual NAAQS. The plan does purport to demonstrate attainment for the annual standard by 2001 with a modeled concentration of 49.79 µg/m<sup>3</sup>, 0.21 µg/m<sup>3</sup> below the annual standard. The plan does not demonstrate attainment for the 24-hour standard by 2001, since the modeled concentration of 212.35 µg/m<sup>3</sup> is 62.35 µg/m<sup>3</sup> above the 24-hour standard.<sup>14</sup> The submittal describes several modeling approaches used to assess the effect of control measures on ambient PM-10 concentrations. This is in accord with the spirit of EPA modeling guidance, which recommends a combination of dispersion and receptor models. However, in the details of implementation of the modeling, the submittal falls short of this guidance. The following discussion applies to both the annual and the 24-hour NAAQS, unless otherwise indicated.

The Chemical Mass Balance (CMB) receptor modeling performed as part of the submittal confirmed that around 90% of the PM-10 in the Las Vegas Valley is due to fugitive dust, in general

agreement with the emission inventory. Unfortunately CMB is not capable of distinguishing emissions from particular activities such as paved road dust, unpaved road dust, construction activities, etc., so it must be combined with another approach. CMB also showed that secondary particulates (those not directly emitted but forming in the atmosphere from precursors) and vehicle exhaust are small contributors to the area's PM-10 concentrations, only a few percent. The main modeling approach used in the submittal was proportional rollback, in which it is assumed that a source category's contribution to observed PM-10 emissions is directly proportional to its share of the area's PM-10 emission inventory. This is appropriate when no other information is available, or if the sources are uniform across the area modeled.<sup>15</sup> However, the sources are not likely uniform. Though PM-10 can have a regional component, generally a particular fugitive dust source has a fairly localized impact on air quality; the ISCST3 dispersion modeling done as part of the submittal confirmed that individual sources have minimal impact five miles away. Different areas will have different mixes of sources contributing to their PM-10 concentrations. Comparison of area-wide and sub-area emissions inventories shows many similarities in source categories' percent contributions, but also some differences, especially for paved road dust. Thus, a demonstration that the PM-10 NAAQS are attained should take into account differences between sites. Ideally, dispersion modeling would be done to explicitly take into account different sources' distances from modeled locations, in order to show the effect of control measures throughout the area. At a minimum, proportional rollback should have been performed for multiple monitoring sites.<sup>16</sup>

Secondary particulates are not addressed in the proportional rollback modeling in the submittal. The effect of this is to inappropriately assume that control measures on primary particulates decrease secondary particulates at the same rate. Though secondaries are only a few percent of the PM-10 ambient concentrations, so this is not a large effect, they should be dealt with explicitly.

In summary, though some solid work was done in preparing the modeling

<sup>12</sup> 1997 Serious Plan, pg. 24.

<sup>13</sup> EPA's guidance documents on fugitive dust sources provide information on control efficiencies: "Control of Open Fugitive Dust Sources", U.S. EPA, September 1988 and "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures", U.S. EPA, September 1992.

<sup>14</sup> 1997 Serious Plan, pp. 35-37.

<sup>15</sup> EPA memorandum "PM-10 SIP Demonstrations for Small Isolated Areas With Spatially Uniform Emissions"—Robert Bauman & Joseph Tikvart 7/5/90.

<sup>16</sup> PM-10 SIP Development Guideline, EPA-450/2-86-001, June 1987, section 6.4.2.

portion of the submittal, it does not adequately account for differences in PM-10 source contributions at different locations. Additional dispersion and receptor modeling work could help with this, with a minimum being the use of proportional rollback at multiple sites representative of the varying mix of sources across the Las Vegas Valley. Lastly, secondary particulates should not implicitly be assumed to decline. The submittal's technical approach is inadequate for its goal of demonstrating attainment of the annual NAAQS, and also for demonstrating the impracticability of attaining the 24-hour NAAQS. The next SIP submittal should use a different approach.

EPA concludes that, because the air quality modeling is not consistent with existing EPA guidelines, the impracticability and attainment demonstrations in the Serious Area SIP are not approvable. The impracticability demonstration is also not approvable because the plan does not provide for the implementation of BACM. Therefore, EPA proposes to disapprove the 24-hour standard impracticability demonstration and the annual standard attainment demonstration.

*g. Extension of the Attainment Deadline.* CAA section 188(e) allows states to apply for up to a 5-year extension of the serious area attainment deadline of December 31, 2001. In order to obtain the extension, the state must demonstrate that: (1) attainment by 2001 would be impracticable, (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area, (3) the state demonstrates to the satisfaction of the Administrator that the plan for the area includes the most stringent measures that are included in the plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area.<sup>17</sup> The state's request for an extension must also contain a demonstration of attainment by the most expeditious alternative date practicable. For a complete discussion of EPA's proposed interpretation of section 188(e), see 65 FR 19964, 19967-19969 (Apr. 13, 2000)(proposed

approval of the Maricopa County PM-10 serious area nonattainment plan). EPA is proposing to deny the State of Nevada's request for an extension for failing to adequately demonstrate that the area cannot practicably attain the 24-hour PM-10 standard by December 31, 2001. Therefore, the area's attainment deadline for both standards remains as soon as practicable but no later than December 31, 2001.

*h. Transportation Conformity Budgets.* EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs, and projects conform to the SIP and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The link between the SIP and transportation planning activities is the conformity emission budget(s) contained in the SIP. On March 2, 1999, the D.C. Circuit Court of Appeals ruled that submitted SIPs cannot be used for conformity determinations unless EPA has affirmatively found the conformity budget adequate through a process providing for public notice and comment. Where EPA finds a budget inadequate, it cannot be used for conformity determinations. As discussed in (2)(b), EPA determined that the PM-10 mobile source emission budgets for the Las Vegas Valley are inadequate and thus cannot be used for conformity determination. The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

### 3. General SIP Requirements

*a. Adequate Public Process.* On November 5, 1991, the Clark County Board of County Commissioners (CCBCC) adopted the Las Vegas Valley PM-10 Air Quality Implementation Plan (1991 Moderate Plan), after providing public notice and opportunity to comment. The State submitted the plan as a revision to the Nevada PM-10 SIP (letter from Bob Miller, Governor of Nevada, to Daniel McGovern, EPA Regional Administrator dated December 6, 1991). The SIP submittal includes proof of publication for the notice of the State public hearing. This submittal became complete by operation of law under CAA section 110(k)(1).<sup>18</sup> We believe that the public process

associated with the 1991 Moderate Plan meets the procedural requirements of CAA section 110(a) and (l) and 40 CFR 51.102.

On December 6, 1994 CCBCC adopted "Providing for the Evaluation and Implementation of Best Available Control Measures and Best Available Control Technology to Improve PM-10 Air Quality for the Las Vegas Valley" (1994 BACM Plan), after providing public notice and opportunity to comment. The State submitted the plan as a revision to the Nevada SIP (letter from L.H. Dodgion, Administrator, to David Howekamp, EPA Director, Air and Toxics Division, dated February 15, 1995). The SIP submittal includes proof of publication for the notice of CCBCC public hearing. This submittal became complete by operation of law. We believe that the public process associated with the 1994 BACM Plan meets the procedural requirements of CAA section 110(a) and (l) and 40 CFR 51.102.

On August 25, 1997, CCBCC adopted the Las Vegas Valley Non-attainment Area Clark County Nevada Serious Plan (1997 Serious Plan), after providing public notice and opportunity to comment. The State submitted the plan as a revision to the Nevada SIP (letter from L.H. Dodgion, Administrator, to Felicia Marcus, EPA Regional Administrator, dated September 11, 1997). The SIP submittal includes proof of publication for the notice of CCBCC public hearing. This submittal became complete by operation of law. We believe that the public process associated with the 1997 Serious Plan meets the procedural requirements of CAA section 110(a) and (l) and 40 CFR 51.102.

*b. Adequate Personnel and Funding.*—Section 110(a)(2)(E)(i) of the Clean Air Act requires that implementation plans provide necessary assurances that the state (or the general purpose local government) will have adequate personnel and funding to carry out the plan. Requirements for resources are further defined in 40 CFR part 51, subpart L (51.230-232) and for resources in 40 CFR 51.280. States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. SIPs must also describe the resources that are available or will be available to the State and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal. The 1997 Serious Plan does not adequately address personnel and funding for the

<sup>17</sup> Section 188(e) further provides: "In determining whether to grant an extension, and the appropriate length of time for any such extension, the Administrator may consider the nature and extent of nonattainment, the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and transboundary emissions from foreign countries), the population exposed to concentrations in excess of the standard, the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and the technological and economic feasibility of various control measures."

<sup>18</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).

air program in the Las Vegas Valley. The plan needs to detail the number of personnel needed to carry out the air program as well as the funding level and commit to these levels for five years.

*c. Adequate Legal Authority.*—Section 110(a)(2)(E)(i) of the Clean Air Act requires that implementation plans provide necessary assurances that the state (or the general purpose local government) will have authority under state or local law to carry out the plan. Requirements for legal authority are further defined in 40 CFR 51.230–232. States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. EPA finds that the State of Nevada has the legal authority to regulate air pollution as evidenced by Nevada Revised Statutes (NRS) 445B.100 through NRS 445B.845.

*d. Description of Enforcement Methods.*—Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of SIP measures. The implementing regulation for this section is found at 40 CFR 51.111(a) and requires a control strategy to include a description of enforcement methods including (1) procedures for monitoring compliance with each of the selected control measures, (2) procedures for handling violations, and (3) the designation of the agency responsible for enforcement. Procedures for monitoring compliance with existing regulations are missing from the 1997 Serious Plan.

### III. Summary of Proposed Action

#### A. Proposed Disapproval

EPA is proposing to disapprove certain provisions of the Moderate Area SIP and Serious Area SIP submitted by the State of Nevada for attaining the PM–10 NAAQS in the Las Vegas Valley. Specifically, EPA is proposing to disapprove the RACM/BACM and RFP/milestone provisions for both the annual and 24-hour PM–10 standards in both the Moderate Area SIP and Serious Area SIP, and the emission inventory, transportation conformity budgets, and attainment demonstration provisions for both standards in the Serious Area SIP. EPA is also proposing to deny the State's request for an extension to December 31, 2006 to attain the 24-hour PM–10 NAAQS in the area. If finalized in a subsequent EPA notice, these disapprovals will trigger the 18-month time clock for mandatory application of sanctions and 2-year time clock for a federal implementation plan under the Act as discussed below.

#### B. Consequences of the Proposed Disapproval

The CAA establishes specific consequences if EPA disapproves a State plan. Section 179(a) sets forth four findings that form the basis for application of mandatory sanctions, including disapproval by EPA of a State's submission based on its failure to meet one or more required CAA elements. EPA has issued a regulation, codified at 40 CFR 51.31, interpreting the application of sanctions under section 179 (a) and (b). If EPA has not approved a SIP revision correcting the deficiency within 18 months of the effective date of a final rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If EPA has still not approved a SIP revision correcting the deficiency 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31. In addition, CAA section 110(c)(1) provides that EPA must promulgate a FIP no later than 2 years after a finding under section 179(a) unless EPA takes final action to approve a revised plan correcting the deficiency within 2 years of EPA's findings. For more details on the timing and implementation of the sanctions, see 59 FR 39859 (August 4, 1994), promulgating 40 CFR 52.31, "Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act." There are, however, certain exceptions to the general rule for the application of sanctions described above. The reader is referred to 40 CFR 52.31(d) for the circumstances under which the application of sanctions may be stayed or deferred.

One of the conformity consequences of the overall plan disapproval is commencement of a conformity freeze. Under a conformity freeze, the area can only move forward on transportation projects included in the first three years of the transportation plan and no new transportation plans can be adopted until the freeze is lifted. If the area submits a new PM–10 SIP with PM–10 budgets, once the PM–10 budgets are deemed adequate by EPA, the freeze is lifted. If the area is in a conformity freeze and a conformity lapse occurs, the area can not come out of the lapse until the freeze is lifted. Note that the conformity freeze would not begin until the effective date of the final plan disapproval. Today, EPA is proposing to disapprove portions of the PM–10 plans for the Las Vegas Valley and therefore

the above mentioned time frames for imposing sanctions will not start until the effective date of any final disapproval.

### 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 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### C. Executive Order 13045

Executive Order 13045, entitled 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 proposed 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 proposed 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 proposed rule will not have a significant impact on a substantial number of small entities because disapprovals of SIP revisions under section 110 and subchapter I, part D of the Clean Air Act do not affect any existing requirements applicable to small entities. Federal disapproval of the State SIP submittal will not affect State-enforceability. Moreover, EPA’s disapproval of the submittal would not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

#### 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 proposed disapproval action 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. The proposed disapproval will not change existing requirements 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. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, the EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this proposed action. Today’s proposed action does not require the public to perform activities conducive to the use of VCS.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: June 5, 2000.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

[FR Doc. 00–15032 Filed 6–13–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 141 and 142

[FRL–6715–5]

**RIN 2040-AA97**

### National Primary Drinking Water Regulations; Ground Water Rule

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

**ACTION:** Notice of Extension of Public Comment Period for the Proposed Ground Water Rule.

**SUMMARY:** Today, the Environmental Protection Agency (EPA) is providing notice to extend the public comment period for the proposed Ground Water Rule (GWR). The proposed GWR was published in the **Federal Register** on May 10, 2000 (65 FR 30194). The proposed GWR requirements provide a meaningful opportunity to reduce public health risk associated with the consumption of waterborne pathogens from fecal contamination for a substantial number of people served by ground water sources.

**DATES:** EPA must receive public comments, in writing, on the proposed regulations by August 9, 2000. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time), August 9, 2000.

**ADDRESSES:** You may send written comments to the GWR, W–98–23 Comments Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW., East Tower