Dated: October 3, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(188) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(188) Revisions to the Pennsylvania Regulations including a 10-year ozone maintenance plan for the Pittsburgh-Beaver Valley area, submitted on May 21, 2001 by the Pennsylvania Department of Environmental Protection.

(i) *Incorporation by reference.*

(A) Letter dated May 21, 2001 submitted by the Pennsylvania Department of Environmental Protection transmitting the maintenance plan for Pittsburgh-Beaver Valley Area.

(B) The Pittsburgh-Beaver Valley Area ozone maintenance plan submitted by the Pennsylvania Department of Environmental Protection, effective May 15, 2001. This plan establishes motor vehicle emissions budgets for VOCs of 109.65 tons/day for 1999, 98.22 tons/day for 2007, and 102 tons/day for 2011. This plan also establishes motor vehicle emissions budgets for NO_X of 171.05 tons/day for 1999, 129.12 tons/day for 2007, and 115.02 tons/day for 2011.

(ii) *Additional material.* Remainder of State Submittal pertaining to the revision listed in paragraph (c)(188)(i) of this action.

3. Section 52.2036 is amended by revising the section heading and by adding paragraph (m) to read as follows:

§ 52.2036 1990 base year emission inventory.

* * * * *

(m) EPA approves the 1990 NO_X base year emission inventory for the Pittsburgh-Beaver Valley area, submitted by the Pennsylvania Department of Environmental Protection on March 22, 1996 and supplemented on February 18, 1997.

§ 52.2037 [Amended]

4. In § 52.2037 remove and reserve paragraph (b)(1).

PART 81—[AMENDED]

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

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

2. In § 81.339, the table for Ozone (1-Hour Standard) is amended by revising the entry for the ''Pittsburgh-Beaver Valley Area'' to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* *	*	* *	*	*
Pittsburgh-Beaver Valley Area:				
Allegheny County	October 19, 2001	Attainment		
Armstrong County	October 19, 2001	Attainment		
Beaver County	October 19, 2001	Attainment		
Butler County	October 19, 2001	Attainment		
Fayette County	October 19, 2001	Attainment		
Washington County	October 19, 2001	Attainment		
Westmoreland County	October 19, 2001	Attainment		
* *	*	* *	*	*

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

[FR Doc. 01–26093 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 81

[CA058–FOA; FRL–7087–1]

Clean Air Act Finding of Attainment; California-Imperial Valley Planning Area; Particulate Matter of 10 Microns or Less (PM–10)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to find that the State of California has established to EPA's satisfaction that the Imperial Valley Planning Area (Imperial County), a PM–10 moderate nonattainment area, would have attained the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM–10) by the applicable Clean Air Act (CAA or the Act) attainment date, December 31, 1994, but for emissions emanating from outside the United States, i.e., Mexico. As a result of this final action, Imperial County will not be subject to a finding of failure to attain and reclassification to serious at this time and will remain a moderate PM–10 nonattainment area.

EFFECTIVE DATE: This action is effective on November 19, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region 9 office during normal business hours. U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, California 94105.

Electronic Availability: This document is also available as an electronic file on EPA's Region 9 Web Page at http://www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Doris Lo, U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1287, lo.doris@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Imperial County is a moderate PM–10 nonattainment area located on the

California border with Mexico, with a December 31, 1994 attainment deadline. Under CAA section 188(b)(2)(A), moderate PM–10 nonattainment areas must be reclassified as serious by operation of law after the statutory attainment date if the Administrator finds that the area has failed to attain the NAAQS. However, CAA section 179(B)(d) provides that any area that establishes to the satisfaction of EPA that it would have attained the PM–10 NAAQS by the applicable attainment date but for emissions emanating from outside the United States shall not be subject to the provisions of CAA section 182(b).

Imperial County and the California Air Resources Board submitted evidence that the County would have attained the PM–10 NAAQS but for transport from Mexico. The primary information prepared by the Imperial County Air Pollution Control District (ICAPCD) is ''Imperial County PM–10 Attainment Demonstration'' (hereafter referred to as the ''179B(d) demonstration'') which was transmitted to EPA by the California Air Resources Board (CARB) on July 18, 2001 letter from Michael P. Kenny, Executive Officer, CARB, to Ms. Laura Yoshii, Acting Regional Administrator, EPA Region 9).

Pursuant to CAA section 188(b)(2)(B) of the Act, EPA must publish a notice in the **Federal Register** identifying those areas that failed to attain the standard and reclassifying the areas to serious. On August 6, 2001, EPA issued two alternative proposals:

(1) To find that the State of California had established to EPA's satisfaction that Imperial County, a PM–10 moderate nonattainment area, would have attained the NAAQS PM–10 by the applicable Clean Air Act attainment date, December 31, 1994, but for emissions emanating from outside the United States, i.e., Mexico.

(2) Alternatively, to find that Imperial County did not attain the PM–10 NAAQS by its CAA mandated attainment date. This proposed finding was based on monitored air quality data for the PM–10 NAAQS during the years 1992–1994. A final action would result in a reclassification to serious PM–10 nonattainment for Imperial County.

These proposed alternative actions were published in a **Federal Register** notice (66 FR 42187) on August 10, 2001 (proposed rule or notice of proposed rulemaking, NPR). The 30-day public comment period ended on September 10, 2001. EPA requested public comments on both proposals and received ten comment letters from the following:

- Sierra Club/EarthJustice Legal Defense Fund (David S. Baron, Attorney)
- Imperial County Air Pollution Control District (Stephen L. Birdsall, Air Pollution Control Officer)
- Congressman Duncan Hunter, U.S. House of Representatives, Washington, D.C. 20515–0552
- Imperial Valley Vegetable Growers Association (Lauren S. Grizzle, Executive Director)
- Imperial County Farm Bureau (Lauren S. Grizzle, Executive Director)
- California Farm Bureau Federation (Cynthia L. Cory, Director, Environmental Affairs)
- Mar Vista Farms, Inc. (Michael B. Cox, President)
- Nisei Farmers League (Manuel Cunha, Jr., President)
- California Cotton Ginners and Growers Association (Roger A. Isom, Vice President & Director of Technical Services)
- Granite Construction Company (Jeff Mercer, Area manager)

All of the commenters supported EPA's proposed finding of attainment pursuant to section 179B(d) of the CAA, except for the Sierra Club/EarthJustice Legal Defense Fund (Sierra Club).

While the Sierra Club raises some important issues, EPA was aware of these issues prior to the proposed rulemaking and has not been convinced by Sierra Club that the State's 179B(d) demonstration is inadequate and that the finding of nonattainment and reclassification to serious should be finalized. Thus, EPA is finalizing its action to find that the State of California has established that Imperial County would have attained the NAAQS for PM–10 by the applicable CAA attainment date, December 31, 1994, but for emissions emanating from Mexico. Today's rulemaking provides EPA's responses to public comments and finalizes EPA's proposed action.

II. Public Comments and EPA Responses

A. Sierra Club/EarthJustice Legal Defense Fund (David S. Baron, Attorney)

Comments were submitted by the EarthJustice Legal Defense Fund on behalf of the Sierra Club. In general, the Sierra Club opposes our proposed finding of attainment and asserts that the 179B(d) demonstration does not adequately demonstrate attainment but for the emissions emananting from Mexico. The Sierra Club believes we must finalize our proposed finding of nonattainment and reclassification to serious PM–10 nonattainment for Imperial County.

1. CAA Requires Modeling

The Sierra Club's first group of comments address the need for a modeling demonstration. The Sierra Club asserts that air quality modeling is a requirement under CAA Section 179B(d) and that in order to qualify for a 179B(d) waiver, the state must make a showing that is the equivalent of an attainment demonstration which the Act and EPA's own regulations and guidelines require to be based on air quality modeling. The Sierra Club then discusses how the State's air quality modeling does not adequately demonstrate attainment of the 24-hour and annual PM–10 NAAQS due to deficiencies with the modeling inventory and modeling assumptions which are summarized in EPA's responses below.

EPA's response: EPA disagrees with the Sierra Club that a CAA Section 179(B)(d) waiver must be based on air quality modeling. CAA section 179B(d) does not require air quality modeling for PM–10 nonattainment areas at international borders, and EPA's guidance relating to serious PM–10 nonattainment areas suggests modeling as one of five methods that may be used to determine attainment but for international transport.[1] In issuing guidance on CAA section 179(B), EPA considered it appropriate to grant states more flexibility in making the ''but-for'' attainment determination for border areas due to the special difficulties that can be encountered at these areas.

For example, it may be particularly difficult for States to acquire the necessary input data for a valid modeling analysis, including monitored meteorological and air quality data, accurate speciated emissions inventories with temporal and spatial breakdown, and information on day-specific emissions, when such data must be collected in areas outside of the U.S. The acquisition of such data is

[1] EPA's guidance appears in ''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 guidance lists 5 types of information that could be used to qualify for treatment under section 179B, and provides that ''States may use one or more of these types of information or other techniques, depending on their feasibility and applicability, to evaluate the impact of emissions emanating from outside the U.S. on the nonattainment area.'' The General Preamble goes on to note that ''the first 3 examples do not require the State to obtain information from a foreign country.'' Only the fifth method employs modeling. 59 FR 42001. As discussed in the proposed action, the State submitted information addressing each of the 5 methods. 66 FR 42189–90.

resource intensive both in terms of money and expert staff time, and the exercise may consume years of preparatory work and then require additional time and expense for quality assurance and data preparation and analysis. In cases where the critical modeling input data are not available or are incomplete or inaccurate, EPA believes that Congress could not have intended to disallow areas from presenting, and EPA from approving, non-modeling evidence of ''attainment but for transport.''

Although modeling input data were recognized to be sparse, the State's 179B(d) demonstration did attempt to address each of the 5 allowable approaches specified in the General Preamble, including an air quality modeling ''but-for'' attainment demonstration for both the annual and 24-hour PM–10 NAAQS.

As discussed in the proposed rule, EPA did not base the proposed finding of attainment for the 24-hour PM–10 NAAQS on the State's air quality modeling demonstration. The sensitivity of the 24-hour PM–10 NAAQS to the modeling inputs, coupled with the lack of model validation, led EPA to conclude that, unlike the annual PM–10 NAAQS, the air quality modeling could not be relied upon for the 24-hour PM–10 NAAQS attainment demonstration. Instead, EPA based its finding of attainment for the 24-hour PM–10 NAAQS on the State's analysis of monitoring sites, meteorological conditions (which involves an analysis of spatial plots, wind roses and back trajectories) and inventory estimates for both sides of the border. EPA believes that these are valid alternative methods for determining attainment but for international transport (see General Preamble at 59 FR 42001).

For the annual PM–10 NAAQS, model performance assessment also raises issues, although these concerns are less than for the 24-hour NAAQS because day-specific modeling inputs and predictions are not needed. Moreover, to determine whether or not Imperial County would have attained the annual PM–10 NAAQS but for international transport does not require modeling precision, due to the fact that the annual arithmetic mean concentrations for 1992–1994 are only slightly above the annual PM–10 NAAQS (51 μg/m^3 at Brawley and 56 μg/m^3 at Calexico Dichot-Grant Street). All that is required of the model in support of a ''but for'' demonstration is evidence that at least a small portion of the monitored concentrations was due to transport of pollution from Mexico.

2. Adequacy of the State's Emissions Inventory Input to the Modeling

The Sierra Club comments that the State's modeling inventory is insufficient because it was not developed for PM–10 modeling, does not reflect peak PM–10 levels, is not a ''current'' and ''accurate'' inventory, and does not contain data on actual PM–10 emissions, but is based on the SCOS inventory which is adjusted with invalid assumptions (i.e., percentage of TSP that is PM–10 and correlation of PM–10 emissions to population).

EPA Response: While the modeling inventory for Imperial County was not developed specifically for PM–10 modeling, it does include PM–10 emissions and represents the best available inventory at this time. As discussed in EPA's Technical Support Document (TSD) for the proposed rule, the modeling inventory was derived from the Southern California Ozone Study (SCOS) modeling inventory for a typical summer day. Seasonal adjustments were made to the inventory, and the inventory was scaled, based on population changes, for the years 1992 to 1994. The use of this modeling inventory to represent average annual PM–10 concentrations is an acceptable approach, but the use of this modeling inventory to represent peak PM–10 days is less reliable because emissions of PM–10 are likely to be higher than the seasonal average on peak days. In other words, this inventory is more reliable for the determining attainment of the annual PM–10 NAAQS than for the 24-hour PM–10 NAAQS.

EPA does not agree that the modeling inventory is insufficient because it is based on the SCOS inventory and adjustments made to that inventory (i.e., percentage of TSP that is PM–10 and correlation of PM–10 emissions to population). As discussed above, the modeling inventory developed is the best available inventory and information at this time. In order to develop a modeling inventory for Imperial County, the State took the SCOS modeling inventory and made adjustments to reflect the PM–10 emissions in Imperial county. For example, the SCOS inventory included emissions of total suspended particulates (TSP). PM–10 is a subset of TSP. In order to to adjust for the SCOS inventory for PM–10 emissions, the State used an adjustment factor of 1.93 which is based on a comparison of the 1997 SCOS inventory to Imperial County's 1995 PM–10 emissions inventory (best available PM–10 inventory). The State also adjusted the inventory for changes in the population since the ''vast majority of PM–10 emission in Imperial County are from area sources such as unpaved roads, paved roads and agriculture.'' [2] While these may not be the most precise adjustment techniques for the Imperial County PM–10 modeling inventory, EPA believes these adjustments are reasonable for the annual PM–10 NAAQS.

In general, there are many uncertainties in developing PM–10 inventories. This is partly due to intrinsic variability, but also because socioeconomic surrogate data and location-specific data needed to build a spatially and temporally resolved inventory is sometimes not available. However, EPA believes that the fugitive PM–10 emission estimates and the modeling that uses them are an adequate basis for this action. The State is continuously improving and updating inventory information. The inventory used in the State's demonstration represents the best available PM–10 inventory for the 1992–1994 timeframe.

3. Background Concentration in the Model

The Sierra Club comments that there is no basis for using the annual background concentration of 25 μg/m^3 and that it is ''the product of pure speculation.''

EPA Response: The background concentration level was based on a frequency distribution analysis of measured PM–10 concentrations at monitors in the Imperial County and Mexicali from 1992 to 2000.[3] EPA believes the 25 μg/m^3 background concentration level is a conservative level.

4. Secondary Particles in the Model

The Sierra Club comments that the State's modeling demonstration includes no analysis for secondary particle formation.

EPA Response: While there is no specific discussion of secondary particulates in EPA's proposed rule (66 FR 42187), the analysis provided by the state did account for the formation of secondary particulates. See Imperial County PM10 Attainment Demonstration, Chapter III.B, page 4. In addition the Imperial Valley/Mexicali Cross Border PM–10 Transport Study (Transport Study) provides a filter analysis which indicates that secondary

[2] See the State's 179B(d) demonstration (Chapter III.B. Modeling Emissions Inventory) for more detailed information on the how the State's modeling inventory was developed.

[3] See the State's 179B(d) demonstration (Chapter III.D. Background Concentrations) for more information.

particulates are measured in the range of 2 to 4 μg/m^3 for secondary ammonium sulfates and 2 to 3 μg/m^3 for secondary ammonium nitrates (Transport Study, Summary and Conclusion, page 9–5) and are thus a small portion of the particulate matter in Imperial County.

5. Proof That Mexico Emissions Impact U.S. Monitors and Adequacy of Alternative Demonstration

The Sierra Club asserts that the state has failed to demonstrate that PM–10 violations in Imperial County are actually being caused by emissions from Mexico and that, even if air quality modeling was not required, the state's ''alternative'' 179B(d) demonstration (i.e., based on analysis of wind patterns and population densities) is grossly inadequate. The Sierra Club believes that the State's analysis of wind patterns and population densities does not show that any quantifiable amount of particulates traveled to the U.S. monitors, let alone any amount that would contribute to nonattainment and that there is nothing in the record relating to an actual amount of PM–10 emissions traveling from Mexico to Imperial County. Also, the Sierra Club states that the Imperial Valley/Mexicali Cross Border PM–10 Transport Study (Transport Study), which indicates that international transport is not always the cause of PM–10 violations, were not refuted and are more reliable than the more recent analysis by the state which the Sierra Club claims to be speculative. Finally, the Sierra Club asserts that there is no analysis of the PM–10 transport to Imperial County's border from places other than Mexico (i.e., on the U.S. side).

EPA's response: The State's 179B(d) demonstration, which includes a detailed analysis of spatial plots, wind roses and back trajectories for each of the PM–10 exceedance days during 1992–1994, provides the best qualitative analysis of the emissions from Mexico possible for the Imperial County area for the period in question. Filter analyses often can provide more specificity on where the monitoring emissions are coming from but, since the types of PM–10 sources are similar on both sides of the border, analysis of the Imperial County samples would not show what portion of the catch originated on the Mexican side of the border.[4]

The Sierra Club suggests that the analyses found in the State's 179B(d) demonstration prove nothing about whether or not emissions from Mexico are impacting U.S. monitors. EPA believes that given the available information, the State has made a good argument that Imperial County is being impacted by Mexico emissions. Additional activities (tracer studies, air monitoring studies, establishment of more meteorology stations at border) could have been conducted, but it is not now possible to create information from new studies for the 1992–1994 timeframe. Thus, EPA believes that the State's 179B(d) analysis of spatial plots, wind roses and back trajectories provides the best determination of PM–10 emissions transport from Mexico.

EPA does not have to refute the Transport Study results in order to make this finding of attainment but for international transport. As discussed in the proposed rule, the additional windfield analyses (Attachment 2 to EPA's TSD, Additional windroses and windfields for January 25, 1993) provided a more detailed analysis, supplementing information from the Transport Study.[5] The Transport Study is simply an effort to collect air quality data on exceedance days and analyze the data based on wind direction and speed, and the study is thus very similar to the analyses found in the State's demonstration. The Transport Study indicates that several of the exceedance days appear to have stagnant wind conditions (1/19/93, 1/25/93, 7/7/94, 10/17/94 and 12/16/94), but the State's demonstration uses more meteorological data and finds evidence that transport from Mexico is likely even with the stagnant conditions at the surface. For each of the exceedances, the State's analysis took into account additional information not included in the Transport Study. This information included: (a) The number of hours with southerly wind directions that have the potential to carry emissions from Mexico into Imperial County; (b) the back trajectories and back trajectories based on upper-air synoptic wind data, which show the existence of much higher winds from the south that are de-coupled from the surface stagnant conditions, and (c) the windroses developed for all meteorological stations, suggesting that emissions from Mexico likely contributed to the concentrations measured at Brawley. Based on this additional information and the further analyses, the State concluded that Imperial County would not have violated the PM–10 NAAQS but for transport from Mexico. In weighing the ''but-for'' evidence, EPA also considered it important to consider the relatively low level of the 24-hour exceedances (162 μg/m^3), 175 μg/m^3, 165 μg/m^3, 159 μg/m^3, and 153 μg/m^3). EPA concedes that information is not available to determine with confidence the exact quantity of PM–10 coming from Mexico, but EPA continues to believe that the State has diligently collected and analyzed available evidence and has successfully demonstrated for each of the exceedance days the probability that Imperial County would not have violated the NAAQS but for the emissions emanating from Mexico.

Finally, EPA believes that there were insufficient data to support a modeling assessment of the potential for long range transport from the South coast or other California areas to Mexico and back again to Imperial. The Sierra Club presents no evidence that there is transport from U.S. sources outside of Imperial County. Even if evidence existed that the Imperial County monitors were being impacted by long range transport from within the U.S., such evidence would not invalidate the State's demonstration that Imperial County would have attained the NAAQS but for emissions emanating from Mexico.

6. Emissions Inventories

The Sierra Club asserts that the comparison of emissions inventories between Imperial and Mexicali is inadequate due to the uncertainty in the Mexicali inventory, that the Mexicali inventory has not been analyzed for transportability of particles and that the emissions inventory for Imperial County has never been approved by EPA, and thus cannot be used to support a ''but-for'' finding.

EPA's response: The comparison of Imperial and Mexicali emissions was intended to provide support for the attainment finding. EPA agrees that there is uncertainty in the Mexicali inventory, however, EPA also believes it is useful to examine all available data for this attainment finding. Even if the Mexicali emissions were one-half of 257, as suggested by the Sierra Club, the emissions in the city of Mexicali (200 square miles) would be about half of the emissions in all of Imperial County (4060 square miles), but the emissions density in Mexicali would still be much

[4] As discussed in the proposed rule, the 1992–1993 Imperial Valley/Mexicali Cross Border PM–10 Transport Study (Final Report, January 30, 1997) includes an analysis of the particles collected in areas within Imperial County where violations have been recorded. This sample analysis determined that geological dust (70–90%), motor vehicle exhaust (10–15%) and vegetative burning (10%) account for the highest contribution to PM–10 concentrations. These are the predominant emissions sources on both sides of the border. Thus, the filter analysis by itself could not be used to determine the extent to which violations might result from international transport.

[5] See Attachment 2 to EPA's TSD, Additional windroses and windfields for January 25, 1993.

greater than in Imperial County. As far as determining the transportability of emissions from Mexicali, as discussed above and in the proposed rule, filter analyses have been examined for the border area and provided some information on the particles characteristics. Finally, as discussed above, the emission inventories used in the State's 179B(d) demonstration are the most current and best available. EPA plans to take action on the inventories when they are submitted as part of the State Implementation Plan (SIP) for Imperial County.

7. Post-1994 Exceedances

The Sierra Club asserts that the 179B(d) determination is inadequate because it fails to consider the post-1994 exceedances. The Sierra Club states that the post-1994 exceedances are numerous, in some cases extreme, and relevant to the attainment but for international transport determination.

EPA's response: EPA believes that the post-1994 exceedances are irrelevant to the determinations at issue. The statutory attainment date for the Imperial County PM–10 moderate nonattainment area is December 31, 1994. EPA believes the State's 179B(d) demonstration adequately demonstrates attainment by examining the air quality data from 1992–1994. If this demonstration is adequate, reclassification to serious is not required. Section 188(b)(2) provides that: ''Within 6 months following the applicable attainment date for a PM–10 nonattainment area, the Administrator shall determine whether the area attained the standard by that date. If the Administrator finds that any Moderate Area is not in attainment after the applicable attainment date * * *'' the area shall be reclassified. While the second sentence of section 188(b)(2) contains the language quoted by the commentor ''is not in attainment after the applicable attainment date,'' it is clear that in the context of the first sentence of the provision, which is the sentence that establishes the duty to make an attainment determination, the duty is to ''determine whether the area attained the standard by that date [referring to the phrase ''applicable attainment date'' in the opening clause of the sentence].'' Thus, EPA's duty is to determine whether the area attained by its attainment date and the language in the second sentence regarding a finding after the attainment date may reasonably be interpreted as referring to the date the finding is made, which would necessarily be after the attainment date, not to the date used in the determination as the benchmark for determining attainment. The question of whether an area should be reclassified is considered along with whether an area has achieved attainment by the attainment date. Thus, the air quality data from the years 1992–1994 are the relevant data for determining whether Imperial County should be reclassified to serious.

8. SIP Requirements

Finally, the Sierra Club asserts that a 179B(d) waiver cannot be granted unless all moderate area SIP requirements (e.g., RACM, RACT, New Source Review, etc.) are being met.

EPA's response: As discussed in the EPA's proposal, this rulemaking does not address the SIP requirements for Imperial County but only the question of whether or not the State has established that Imperial County attained the NAAQS by December 31, 1994, but for international transport. CAA section 179B(d) states that ''any State that establishes to the satisfaction of the Administrator * * * that such State has attained the national ambient air quality standard for [PM–10] by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be submit to the provisions of section 7512(b)(2) * * *'' which requires reclassification upon failure to attain. This provision does not require a SIP submittal in order for the waiver to be granted. EPA is currently working with the Imperial County Air Pollution Control District and the California Air Resources Board on developing an approvable State Implementation Plan for Imperial County. A draft of this plan was issued for public review in July 2001.

B. Other Comments Supporting EPA's Final Action

Besides the Sierra Club, all of the commentors support EPA's finding of attainment but for international transport and are extremely opposed to the finding of nonattainment and reclassification to a serious PM–10 nonattainment area. Commentors discussed the overwhelming pollution problem coming from Mexico, the measures their industries have taken to reduce pollution and that it would be unfair to impose additional controls on sources in Imperial County. The Imperial County Air Pollution Control District also provided additional technical analysis supporting the methods used in the State's 179B(d) demonstration.

III. Summary of Final Action

EPA's proposed rule (66 FR 42187) discusses how the State's 179B(d) demonstration is based on a competently collected and examined set of the relevant available information, and reaches a reasoned conclusion that each of the 1992–94 exceedances, which are only slightly above the NAAQS, would likely not have occurred without pollutant transport from Mexico.

In summary, EPA continues to believe that CAA section 179B(d) does not mandate a modeling demonstration, and that the State has provided evidence sufficient to show that, but for international transport of PM–10, Imperial County would have attained the annual and 24-hour PM–10 NAAQS by the December 31, 1994 deadline.

IV. Administrative Requirements

A. Executive Order 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, (1) have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients therof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that the final finding of attainment pursuant to CAA section 179B(d) would result in none of the effects identified in section 3(f). A finding of attainment under section 179B(d) of the CAA does not impose any additional requirements on an area. This actions does not, in-and-of-itself, impose any new requirements on any sectors of the economy.

B. Executive Order 13211

The final finding of attainment under CAA 179B(d) is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 Fed. Reg. 28355 (May 22, 2001)) because

it is not a significant regulatory actions under Executive Order 12866.

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 Executive Order 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.

The final finding of attainment under CAA 179B(d) is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, ''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.

The final finding of attainment will not have substantial direct effects on California, on the relationship between the national government and California, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As stated above, a finding of attainment under section 179B(d) of the CAA does not impose any additional requirements on an area. This action does not, in-and-of-itself, impose any new requirements on any sectors of the economy. Thus, the requirements of section 6 of the Executive Order do not apply to this final action.

E. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The final finding of attainment under CAA 179B(d) does not have tribal implications. For the reasons discussed above, the final action will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. 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.

As discussed above, the final finding of attainment under CAA 179B(d) does not impose additional requirements on small entities. Therefore, I certify that this final action will not have a significant economic impact on a substantial number of small entities.

G. 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 costs to State, local, or tribal governments in the aggregate; or to the 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.

With respect to EPA's final finding of attainment under CAA 179B(d), EPA notes that this actions in-and-of itself establishes no new requirements. Furthermore, EPA is not directly establishing any regulatory requirements that may significantly impact or uniquely affect small governments, including tribal governments. Thus, EPA is not obligated to develop under section 203 of UMRA a small government agency plan.

H. 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 a new regulation. To comply with NTTAA, 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 today's final action because they do not require the public to perform activities conducive to the use of VCS.

I. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

J. 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 December 18, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

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

Authority: 42 U.S.C. 7401–7671q.

Dated: October 9, 2001.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26406 Filed 10–18–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7515]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Administrator for Federal Insurance and Mitigation Administration reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator for Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows: