Proposed Rules

Federal Register
Vol. 67, No. 242
Tuesday, December 17, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–276–0374; FRL–7423–4]

Approval and Promulgation of Implementation Plans and Designation of Areas; California—Indian Wells Valley PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve pursuant to the Clean Air Act (CAA or the Act) the moderate area plan and maintenance plan for the Indian Wells Valley planning area in California and to redesignate the area from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10).

DATES: Comments on this proposal must be received in writing by January 16, 2003.

ADDRESSES: Please address your comments to Karen Irwin, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. We may charge you a reasonable fee for copying parts of the docket.

Environmental Protection Agency, Region 9 Air Division, Air Planning Office (AIR–2) 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301.

California Air Resources Board, 1001 I Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Air Planning Office (AIR–2), EPA Region 9, at (415) 947–4116 or: *irwin.karen@epa.gov*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of Action

We are proposing to approve the moderate area nonattainment plan and maintenance plan submitted to EPA by the California Air Resources Board (ARB) on December 5, 2002.[1] If EPA takes final action on this proposal, the Indian Wells Valley PM–10 nonattainment area (Indian Wells) would be redesignated to attainment for the 24-hour and annual PM–10 NAAQS.

II. Introduction

A. What National Ambient Air Quality Standards Are Considered in Today's Rulemaking?

Particulate matter with an aerodynamic diameter of 10 micrometers or less (PM–10) is the pollutant that is the subject of this action. The NAAQS are safety thresholds for certain ambient air pollutants set to protect public health and welfare. PM–10 is among the ambient air pollutants for which we have established such a health-based standard.

PM–10 causes adverse health effects by penetrating deep in the lung, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 (52 FR 24634), we revised the NAAQS for particulate matter with an indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. *See* 40 CFR 50.6.

The annual primary PM–10 standard is 50 ug/m^3 as an annual arithmetic mean. The 24-hour PM–10 standard is 150 ug/m^3 with no more than one expected exceedance per year. The secondary PM–10 standards, promulgated to protect against adverse welfare effects, are identical to the primary standards. *Id.*

B. What Is a State Implementation Plan?

The Clean Air Act requires States to attain and maintain ambient air quality equal to or better than the NAAQS. The State's commitments for attaining and maintaining the NAAQS are outlined in

[1] We previously received a draft of the plan for review.

the State Implementation Plan (or SIP) for that State. The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. Each State currently has a SIP in place, and the Act requires that SIP revisions be made periodically as necessary to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) An inventory of emission sources; (2) statutes and regulations adopted by the State legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date.

The State must make the SIP available for public review and comment through a public hearing, it must be adopted by the State, and submitted to EPA by the Governor or his designee. EPA takes Federal action on the SIP submittal thus rendering the rules and regulations Federally enforceable. The approved SIP serves as the State's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

C. What Is the Classification of This Area?

Upon enactment of the 1990 Clean Air Act Amendments (CAA or Act), PM–10 areas meeting the requirements of either (i) or (ii) of section 107(d)(4)(B) of the Act were designated nonattainment for PM–10 by operation of law and classified ''moderate.'' These areas included all former Group I PM–10 planning areas identified in 52 FR 29383 (August 7, 1987) and further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for PM–10 prior to January 1, 1989 (many of these areas were identified by footnote 4 in the October 31, 1990 FederalRegister document). A **Federal Register** document announcing the areas designated nonattainment for PM–10 upon enactment of the 1990 Amendments, known as ''initial'' PM–10 nonattainment areas, was published on March 15, 1991 (56 FR 11101). A subsequent **Federal Register** document correcting some of these areas was published on August 8, 1991 (56 FR 37654). These nonattainment designations and moderate area classifications were codified in 40 CFR part 81 in a **Federal Register** document published on November 6, 1991 (56 FR 56694).

The Searles Valley planning area was designated nonattainment and classified as moderate. The area originally included three subregions (Coso Junction, Indian Wells Valley and Trona) under the planning jurisdiction of different air pollution control agencies. On August 6, 2002, EPA changed the boundaries of the Searles Valley PM–10 nonattainment area by dividing this area into three separate, newly created PM–10 nonattainment areas. 67 FR 50805. One of these areas is Indian Wells Valley which is under the jurisdiction of the Kern County Air Pollution Control District (APCD or the District). The Indian Wells Valley PM–10 nonattainment area boundaries include the portion of Kern County contained within the United States Geological Survey Hydrologic Unit #18090205. The Indian Wells Valley area covers approximately 300 square miles and is populated by about 30,000 persons, with only one community of significant size, Ridgecrest.

D. What Are the Applicable CAA Provisions for PM–10 Moderate Area Plans?

The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of title I of the Act. We have issued guidance in a General Preamble describing our preliminary views on how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing moderate PM–10 nonattainment area SIP provisions. 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). The General Preamble provides a detailed discussion of our interpretation of the title I requirements.

1. Statutory Provisions

States with 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;

(b) Either a demonstration (including 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;

(c) Pursuant to section 189(c)(1), 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; and

(d) Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area.

In addition, States must submit a permit program for the construction of new and modified major stationary sources in 1992 and contingency measures in 1993. See sections 189(a) and 172(c)(5).

2. Clean Data Areas Approach

The clean data areas approach applies the clean data policy concept already in place for ozone [2] to selected PM–10 nonattainment areas in order to approve control measures for these areas into the SIP. The approach only applies to PM–10 areas with simple PM–10 source problems, such as residential wood combustion and fugitive dust. If an area meets the following requirements, the State will no longer be required to develop, among other things, an attainment demonstration. The requirements for the approach are:

(a) The area has attained the PM–10 NAAQS with the three most recent years of quality assured air quality data.

(b) The State must continue to operate an appropriate PM–10 air quality monitoring network, in accordance with 40 CFR part 58, in order to verify the attainment status of the area.

(c) The control measures responsible for bringing the area into attainment must be approved by EPA as meeting the CAA requirements for RACM/RACT.

(d) An emissions inventory must be completed for the area. In addition to the above requirements for the use of the clean data areas approach, any requirements that are connected solely to designation or classification, such as new source review (NSR) and RACM/RACT, will remain in effect. However, the requirements under CAA sections 172(c) and 189 for developing attainment demonstrations, RFP

[2] See memorandum from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS) to Regional Division Directors entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' May 10, 1995.

demonstrations and contingency measures are suspended.

Any sanctions and/or federal implementation plan (FIP) clocks that may be running for an area due to failure to submit, or disapproval of any attainment demonstration, RFP or contingency measure requirements, are stopped. In addition, areas are still required to demonstrate transportation conformity. Areas typically use the build/no-build test or the no-greater-than-1990 test because the requirements for an attainment demonstration and RFP, which establish the budgets, no longer apply. However, the emissions budget test applies once a maintenance plan is submitted and its budgets are determined adequate. The applicable tests for general conformity still apply.

The use of the clean data areas approach does not constitute a CAA section 107(d) redesignation, but only serves to approve nonattainment area SIPs required under part D of the CAA.[3]

E. What Are the Applicable Provisions for Redesignation To Attainment for PM–10?

The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment:

(1) The area must have attained the applicable NAAQS;

(2) The area has a fully approved SIP under section 110(k) of the Act;

(3) The air quality improvement must be due to permanent and enforceable reductions;

(4) The area has met all relevant requirements under section 110 and part D of the Act; and

(5) The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

Our primary guidance on redesignation requests is a September 4, 1992 memorandum from John Calcagni, Director, Air Quality Management Division, to Regional Division Directors, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni memo). Below is a summary of the discussion in the memo of each of the above statutory requirements:

a. Attainment of the Standard. There are two components involved in making this demonstration. The first component concerns ambient air quality monitoring. The ambient air quality monitoring data used to demonstrate attainment should be representative of the area of highest concentration. The monitors should remain at the same location for the duration of the monitoring period required for demonstrating attainment. The data should be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the Air Quality Systems (AQS) Database for public review. The second component relies on supplemental EPA-approved air quality modeling to ensure source impacts are comprehensively evaluated, however, specific circumstances may determine whether there is a need for modeling. See also section IV.A.2.a of this proposed action.

b. State Implementation Plan Approval. The SIP for the area must be fully approved under section 110(k) and must satisfy all requirements that apply to the area.

c. Permanent and Enforceable Improvement in Air Quality. The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable. Attainment resulting from temporary reductions in emission rates (*e.g.*, reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.

d. Section 110 and part D Requirements. A State must meet all requirements of section 110 and part D that were applicable prior to submittal of the complete redesignation request except those suspended by the use of the clean data approach. These requirements must be fully approved into the plan at or before the time EPA redesignates the area. Section 110(a)(2) contains general requirements for nonattainment plans and part D consists of general requirements applicable to all areas which are designated nonattainment based on a violation of the NAAQS and pollutant-specific subparts.[4] One of the applicable requirements necessary for redesignation is that the State show its SIP provisions are consistent with section 176(c) conformity requirements.

e. Fully Approved Maintenance Plan. CAA section 175A provides the general framework for maintenance plans. The Calcagni memo lists five core provisions to ensure maintenance of the relevant NAAQS in an area seeking redesignation: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan. Below is a summary of each provision:

1. Attainment Inventory. The State should develop an attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS. Where the State has made an adequate demonstration that air quality has improved as a result of the SIP, the attainment inventory will generally be the actual inventory at the time the area attained the standard. This inventory should be consistent with EPA's most recent guidance on emissions inventories, including emissions during the time period associated with the monitoring data showing attainment.

2. Maintenance Demonstration. There are two means by which maintenance of the NAAQS in the future can be demonstrated—a projected inventory showing that future emissions for the 10-year period following redesignation will not exceed the level of the attainment inventory, or modeling showing that the future mix of sources and emission rates in the 10-year period following redesignation will not cause a violation of the NAAQS. The projected inventory should consider future growth, including population and industry, be consistent with the attainment inventory, and document data inputs and assumptions. Any assumptions concerning emission rates must reflect permanent, enforceable measures.

3. Monitoring Network. Once an area has been redesignated, the State should continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

4. Verification of Continued Attainment. Each State should ensure that it has the legal authority to implement and enforce all measures necessary to attain and to maintain the NAAQS. One such measure is ambient and source emission data. Also, the State should track the progress of the maintenance plan. One option is for the State to periodically update the emissions inventory. Another option is a comprehensive review of the factors that were used in developing the attainment inventory to show no significant change; if such review showed significant change, the State should then perform an update of the inventory. In any event, the State should monitor the indicators for triggering contingency measures.

[3] Moreover, the lack of a requirement to submit the SIP revisions noted above and the suspension of sanction clocks/FIP requirements will exist only as long as the area continues to attain the NAAQS. If we determine prior to a final redesignation to attainment that the area has violated the standards, the basis for the determination that the area need not make these SIP revisions would no longer exist.

[4] Note that this requirement and the second requirement, SIP approval, discussed previously are effectively coterminous.

5. Contingency Plan. A maintenance plan is required to include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. For purposes of CAA section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered. The plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. As a necessary part of the plan, the State should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented. The EPA will review what constitutes a contingency plan on a case-by-case basis. At a minimum, it must require that the State will implement all measures contained in the part D nonattainment plan for the area prior to redesignation.

III. Background

On December 5, 2002, ARB submitted to EPA the ''PM–10 (Respirable Dust) Attainment Demonstration, Maintenance Plan, and Redesignation Request; Kern County Portion of Indian Wells Valley Segment of 'Searles Valley' Federal Planning Area,'' Kern County Air Pollution Control District, September 5, 2002 (September 2002 plan) that is the subject of this proposed action.[5,6] On December 6, 2002, we found that the submittal met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

The Indian Wells PM–10 nonattainment area has two PM–10 monitoring sites. One is located downwind of the City of Ridgecrest and the ''main base'' of the Naval Air Weapons Station at China Lake-Powerline Road (China Lake monitor). This site has been monitoring PM–10 emissions since 1990. The other site is located in downtown Ridgecrest at City Hall, 100 West California Avenue (Ridgecrest monitor). This second site began monitoring PM–10 concentrations in January 2000.

On June 13, 2001, EPA proposed to find, pursuant to CAA section 188(b)(2), that the Indian Wells Valley had not attained the 24-hour and annual PM–10 NAAQS by the applicable attainment date of December 31, 1994. 66 FR 31873. This proposed finding was based on inadequate data collection from the China Lake monitor during the 1992–1994 period. If EPA had finalized that proposal, the Indian Wells Valley nonattainment area would have been reclassified by operation of law as a serious PM–10 nonattainment area under CAA section 188(b)(2)(A).

When we issued our proposed finding of failure to attain, the Indian Wells Valley had not recorded any PM–10 exceedances during 1999 and 2000, but ambient air quality data for the year 2001 in its entirety was not yet available. Today's action proposing to redesignate the area to attainment is predicated on ambient air quality data from the year 2001 in full, in combination with the data sets from the years 1999 and 2000.

IV. Review of the State Submittal

A. Is the Moderate Area Plan Approvable?

1. Did the State Meet the CAA Procedural Provisions?

Prior to adoption by the State, the plan received proper public notice and was the subject of a public hearing in Bakersfield on September 5, 2002.

2. Has the State Demonstrated that the Area Qualifies for the Clean Data Policy?

a. Based on the past 3 years of air quality data, is the area attaining both the 24-hour and annual PM–10 NAAQS?

Attainment of the annual PM–10 standard is achieved when the annual arithmetic mean PM–10 concentration over a three year period is equal to or less than 50 ug/m^3. Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 ug/m^3. The 24-hour standard is attained when the expected number of days with levels above 150 ug/m^3 (averaged over a three year period) is less than or equal to one. Three consecutive years of air quality data are generally necessary to show attainment of the 24-hour and annual standards for PM–10. See 40 CFR part 50 and appendix K. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, is comprised of all 4 calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

All data cited in the following discussion are recorded in the AQS database. Three years of clean data (1999–2001) have been recorded in the Indian Wells Valley, with values well below both the 24-hour and annual NAAQS. The monitoring data meets EPA's minimum requirements for data collection and data substitution. The following table summarizes the PM–10 data collected at the China Lake monitoring site during the period 1999—2001.[7]

Year	1st max 24-hr conc. (μg/m^3)	2nd max 24-hr conc. (μg/m^3)	3rd max 24-hr conc. (μg/m^3)	4th max 24-hr conc. (μg/m^3)	Annual average (μg/m^3)	3 year annual average (μg/m^3)
1999	28	28	27	24	16	NA
2000	53	38	34	30	15	NA
2001	115	37	27	26	15	NA
						15

Source: EPA/AQS database.

[5] ARB submitted in October 1993 an initial moderate area PM–10 plan for the Searles Valley PM–10 nonattainment area, including the Indian Wells subregion, entitled ''Searles Valley Planning Area State Implementation Plan,'' November 1991. (November 1991 plan).

[6] While the moderate area nonattainment plan, the maintenance plan and the redesignation request are contained in one document, each component is discussed separately in the sections of this proposed action.

[7] The Calcagni memo notes that air quality modeling should be considered in determining whether an area has attained the NAAQS. However, accurately estimating fugitive dust emissions for input to dispersion modeling over a large area is much more difficult than for point sources of gaseous pollutants, which were the archetypes for development of much of our modeling guidance. This is due to uncertainty in fugitive dust emissions' temporal and spatial variability. Since the Indian Wells September 2002 plan addresses a simple PM–10 source problem (fugitive dust) in an area that lacks major stationary sources, we believe it is adequate for the attainment demonstration to be based on representative monitoring data rather than dispersion modeling.

The highest annual arithmetic mean calculated during 1999–2001 was 16; the highest 24-hour value recorded in that time period was 115 μg/m^3. Data collected in 2002 through the end of October has shown the highest 24-hour value recorded as 74 μg/m^3.

Additional data collected by the Kern County APCD at the Ridgecrest monitoring site supports our proposed finding that the Indian Wells Valley area has attained the PM–10 NAAQS. This monitor does not have three full years of data at this time since it began operation in January 2000. The following table summarizes the data from the Ridgecrest monitoring site.

RIDGECREST PM–10 MONITORING DATA 2000–2001

Year	1st max conc. (μg/m^3)	2nd max conc. (μg/m^3)	3rd max conc. (μg/m^3)	4th max conc. (μg/m^3)	Annual average (μg/m^3)
2000	90	52	48	45	21
2001	63	46	41	38	21

The monitoring site at China Lake upon which this proposed finding of attainment is based is representative of the area of highest PM–10 concentration, downwind of the City of Ridgecrest.[8] The China Lake monitor readings are affirmed by data showing concentrations well within the standards collected from the Ridgecrest monitor, which also represents a site of highest PM–10 concentration.[9]

Based on quality-assured monitoring data from 1999 through 2001 meeting the requirements of 40 CFR part 50, appendix K, we propose to find that the Indian Wells Valley PM–10 nonattainment area has attained the PM–10 NAAQS.

b. Is the State continuing to operate an appropriate PM–10 air quality monitoring network?

As stated previously, demonstrating that an area has attained the PM–10 NAAQS involves submittal of ambient air quality data from an ambient air monitoring network representing peak PM–10 concentrations which should be stored in AQS. Once the area has been redesignated, the State will continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. ARB has committed to work with Kern County APCD to ensure continued PM–10 air quality monitoring in the Indian Wells Valley PM–10 nonattainment area, in accordance with 40 CFR Part 58, for at least 10 years following redesignation of the area to attainment, in order to verify the attainment status of the area.[10] This commitment satisfies the obligation to maintain an adequate monitoring program in the area.

c. Has EPA approved as meeting the CAA's RACM/RACT requirements the control measures responsible for bringing the area into attainment?

In this action, we are proposing to approve the following measures as meeting the RACM requirement of CAA section 189(a)(1)(C)[11] that we can reasonably ascertain were collectively responsible for bringing the area into attainment of the 24-hour PM–10 standard:[12]

1. Fugitive Dust Control Plan for the Naval Air Weapons Station, China Lake, California (September 1, 1994).[13] This plan establishes controls for unpaved roads, disturbed vacant land and open storage piles.

2. Paving of unpaved roads between 1993 and the present.[14] The District identifies the funding sources for some of those road miles as California Department of Motor Vehicle funds, City of Ridgecrest funds and Congestion Mitigation and Air Quality funds.

3. Kern County 1990 Land Use Ordinance—Chapter 18.55 and Kern County Development Standards, Chapter III. This ordinance requires paving of streets for new subdivisions according to the County Development Standards.[15]

4. City of Ridgecrest Municipal Code 1980 which requires paving of streets for new subdivisions.[16]

5. Bureau of Land Management closure of 83 miles of unpaved roads/off-highway vehicle trails, between 1994 and the present[17], which reduces disturbance to open areas and corresponding windblown emissions.

6. Rule 401 ''Visible Emissions,'' November 29, 1993; Rule 404.1 ''Particulate Matter Concentration, April 18, 1972; and Rule 405 ''Particulate Matter Emission Rate,'' July 18, 1983, with respect to control of process fugitive emissions.

This list is a subset of the measures attributed in the September 2002 plan as responsible for bringing the area into attainment.[18] We look to the November 1991 plan for the Searles Valley Planning Area to provide information on the sources that primarily contributed to the area's exceedences. The November 1991 plan provides a source category breakdown for emissions contributing to the China Lake monitor which recorded an exceedence of 166 μg/m^3 on the selected March 13, 1991 design day.[19] Unpaved roads were estimated to contribute 46 percent of the emissions, wind erosion 14 percent, process fugitives 17 percent and stationary stack emissions 1 percent. The remaining contribution (22 percent) was attributed to government aircraft associated with the Naval Air Weapons Station. However, since the District does not have authority to control military flight operations, the District focused its control strategy on the unpaved road, wind erosion and process fugitive categories.[20]

In the current submittal, Kern County APCD only credits emission reductions to the unpaved road, wind erosion and process fugitive categories,[21] further confirming that controls on these

[8] September 2002 plan, Chapter 5, pg. 5–1.

[9] Op. Cit.

[10] ARB Executive Order G–125–295, pg. 4 of the submittal.

[11] CAA Section 172(c)(1) requires RACT for existing sources in PM–10 nonattainment areas and CAA Section 189(e) requires RACT provisions for gaseous precursors of PM–10 except where EPA determines that such sources do not contribute significantly to PM–10 levels exceeding the standard. There are no major stationary sources of PM–10 in the nonattainment area, and total emissions associated with all industrial sources account for only 0.16 tons per day, or less than 3 percent of PM–10 emissions in 2001. For this reason, no sources within the Indian Wells area are subject to the RACT requirement, either with respect to primary or secondary PM–10 emissions.

[12] There have been no recorded exceedances of the annual 50 μg/m^3 PM–10 standard in the area since the inception of PM–10 monitoring. September 2002 plan, Chapter 2, pg. 2–1.

[13] Appendix D of the September 2002 plan.

[14] Appendix E of the September 2002 plan ''Map of Roadways Paved''.

[15] Appendix E of the September 2002 plan.

[16] Op. Cit.

[17] Appendix E of the September 2002 plan, letter from Hector Villalobos, U.S. Bureau of Land Management, to Thomas Paxson, Kern County APCD, September 9, 2002.

[18] See Table 4–3 of the September 2002 plan.

[19] The design day, by definition, is the day with the highest ambient concentration determined to be the result of local effects, *i.e.* a worst case day.

[20] November 1991 plan, pg. 6.

[21] September 2002 plan, Chapter 4, Table 4–2.

sources are primarily responsible for the area's ability to attain the 24-hour standard.

Our list of control measures responsible for bringing the area into attainment therefore only includes measures that reduced emissions from these three areawide source categories.[22]

The September 2002 plan attributes a 25 percent reduction in process fugitives (0.06 tons per day), a 15 percent reduction in wind erosion PM–10 emissions (0.08 tons per day) and a 25 percent reduction in unpaved road PM–10 emissions (0.41 tons per day) from the measures implemented in the area. While the actual reduction achieved from each of these categories is uncertain, the clean monitoring data reported in the 1998–2001 timeframe speaks to their success.

We conclude that the six control measures listed in this subsection are responsible for bringing the area into attainment, and therefore propose to approve them into the California SIP as meeting the RACM provisions of CAA section 189(a)(1)(C). The submittal demonstrates that these measures have been fully carried out. The measures will be approved SIP regulations upon finalization of this proposed action.

The measures have been implemented in total with sufficient expedition to achieve three years of clean data between 1999 and 2001. In addition to these six controls, we consider the other measures implemented in the Indian Wells area as supplemental strategies that contributed still further emission reductions and public health protection. Continued implementation of these measures will help ensure that the Indian Wells area maintains the 24-hour and annual PM–10 NAAQS but we are not relying on them for this determination.

3. Do the Emissions Inventories Meet CAA Provisions?

Our guidance specifies that an attainment inventory be developed that identifies the level of emissions during the time period associated with the monitoring data showing attainment. ARB has developed an actual inventory of emissions for the year 2001 and has estimated the inventory for the year 1999. See Chapter 7, Table 7–1 of the September 2002 plan. Total tonnage per day in 1999 is estimated to be 5.76 and total tonnage per day in 2001 is estimated to be 5.68. We can assume the estimated tonnage per day in 2000 lies in between these two values. A detailed inventory is provided in Appendix C of the September 2002 plan and was prepared by ARB using its most recent emissions factors. Background information on the assumptions underlying the emissions inventory estimates can be found in a report titled ''Development of Emission Growth Surrogates and Activity Projections Used in Forecasting Point and Area Source Emissions, Final Report,'' E.H. Pechan and Associates, February 26, 2001 (Pechan Report).

For the mobile source component of the emissions inventories, ARB uses a California-specific model known as EMFAC, including the model used to calculate exhaust and evaporative emissions from motor vehicles and the contribution of mobile emissions to the PM–10 inventory. We have no evidence that supports a conclusion that PM–10 gaseous precursors (such as nitrogen oxides) within the area are a significant contributor to the PM–10 nonattainment problem, and therefore emissions inventories for PM–10 gaseous precursors were not included in the plan and are not required. *See also* footnote 11 and section IV.D.1 of this proposed action which discuss stationary source and motor vehicle exhaust emissions.

We propose to approve the emissions inventory under CAA section 172(c)(3) as current, accurate, and complete.

4. Are the CAA Provisions for New Source Review Satisfied?

All new major sources and modifications to existing major sources are subject to the new source review (NSR) and prevention of significant deterioration (PSD) requirements of Rule 210.1. We have not yet approved the District's NSR rule into the SIP, but, for major sources and modifications of PM–10 emissions, we have delegated to Kern County APCD the authority to administer the PSD program.

CAA section 172(c)(5) requires NSR permits for the construction and operation of new and modified major stationary sources anywhere in nonattainment areas. We have determined that areas being redesignated from nonattainment to attainment do not need to comply with the requirement that a NSR program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without part D nonattainment NSR in effect. The rationale for this decision is described in a memorandum from Mary Nichols dated October 14, 1994 (''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment''). We have determined that the Indian Wells Valley September 2002 plan's maintenance demonstration does not rely on nonattainment NSR and, therefore, the area need not have a fully approved nonattainment NSR program prior to approval of the redesignation request.

The requirements of the Part D NSR program will be replaced by the PSD program once the area has been redesignated.[23] Kern County's PSD program pursuant to 40 CFR 52.21 will become effective in the area with respect to PM–10 upon redesignation of the area to attainment, per the delegation agreement between EPA and Kern County APCD dated August 12, 1999.

B. Is the Maintenance Plan Approvable?

1. Does the Plan Contain an Adequate Attainment Inventory?

Yes. See section IV.A.3 of this proposed action.

2. Does the Plan Demonstrate Future Maintenance of the NAAQS?

As previously discussed, the Calcagni memo identifies two means by which maintenance of the NAAQS in the future can be demonstrated—emissions inventory projections or modeling for the 10-year period following redesignation. The Indian Wells Valley September 2002 plan relies on the former.

The plan includes a linear model forecast that projects emissions in tons per day between 2001 and 2013[24] and corresponding concentrations. Overall, ARB predicts that emissions in the Indian Wells Valley PM–10 nonattainment area will decrease from 5.68 tons per day in 2001 to 5.18 tons per day in 2013. This decrease reflects assumptions that fugitive dust emissions from farming operations and farmland (part of the area source and natural wind erosion source categories, respectively) will decrease by urbanization and attrition of farmland throughout Kern County. In contrast, increased urbanization would lead to slight emissions increases in all other categories throughout the county, although this effect is so slight on the unpaved road and offroad mobile source categories that the daily tonnage from these two categories remains the same. ARB's projections are based on assumptions of statewide population growth that are incorporated into the

[22] See EPA's Technical Support Document associated with this proposed rule for our evaluation of other measures listed in the September 2002 plan that we are not proposing to approve as responsible for bringing the area into attainment.

[23] Calcagni memo, pg. 6.

[24] September 2002 plan, Chapter 7, Table 7–1.

Pechan Report emission factors.[25] However, statewide growth assumptions may not apply to growth trends in the Indian Wells area because the Kern County APCD indicates that the area experienced a reduction in population between 1990 and 2001,[26] and no significant population increases in the area are anticipated in the future. Kern County APCD explains that the economy is heavily dependent on Naval Air Weapon Station activities which have declined in recent years and only a small amount of farming is conducted in the Valley, limited by groundwater supplies and weather.

The linear model forecast in the plan conservatively assumes a baseline ''worst case'' concentration of 149 μg/m^3 in the year 2001. Since the highest maximum 24-hour value recorded in 2001 equaled 115 μg/m^3 (this is also the highest value recorded in the 1998–2001 time frame), we believe it more accurately reflects current conditions. Assuming no significant population change, the emissions inventory would remain the same into the future, thus not triggering an exceedence. ARB's calculations (under the population growth scenario) show a decrease in emissions of 0.5 tons per day after 2001, resulting in a maximum concentration of 136 μg/m^3 in 2013. Even if the expected decreases in farming operations and farmland do not occur as predicted, the result would be an emissions increase of only 0.19 tons per day by 2013. Based on the highest 24-hour concentration recorded in the 1999–2001 time frame (115 μg/m^3), this increase would be too slight to have an impact on maintenance of the 24-hour standard.

Although an exceedence attributable to Owens Lake PM–10 transport has not been recorded in the area since 1995, for purposes of maintaining the NAAQS, we consider the possibility for an Owens Lake wind event to cause or contribute to a future exceedence. Indian Wells Valley is located at the southern edge of the 50-mile radius Owens Lake impact zone with respect to NAAQS violations.[27] Fugitive dust controls are currently being implemented on Owens Lake according to the adopted and EPA SIP-approved Owens Valley PM–10 SIP. As of January 27, 2002, control measures were implemented on ten (10) square miles of lake bed[28] and controls on an additional 3.5 square miles of lake bed are to be completed by December 31, 2002.[29]

Another 3 square miles will be controlled by December 31, 2003 and the Great Basin APCD has committed to revise the Owens Valley PM–10 Plan in 2003 to provide for controls on any additional square milage deemed necessary for attainment of the NAAQS by December 31, 2006. EPA has approved these controls as meeting Best Available Control Measures (BACM) for the Owens Valley PM–10 nonattainment area, required per CAA 189(b) for PM–10 nonattainment areas classified as serious. 64 FR 48305 (September 3, 1999). Therefore, we believe this adequately addresses future PM–10 transport emissions from Owens Lake into surrounding areas.

3. Does the Plan Meet the CAA Provisions for Contingency Measures?

The maintenance plan must identify contingency measures to promptly correct any violation of the NAAQS that occurs after redesignation of the area.[30] *See* section II.E of this proposed action for additional detail.

Kern County APCD has included a contingency measure in the Indian Wells Valley plan to control unpaved roads for an emission reduction of 0.16 tons per day.[31] Kern County APCD has also identified a trigger for the contingency measure, which is failure of the area to maintain the NAAQS.[32]

Furthermore, Kern County APCD indicates that additional contingency control measures could be implemented as needed, for example control of truck tire carryout onto paved roads.[33] Since it is difficult to predict what source category(ies) would potentially contribute to a future exceedence, we believe it is appropriate for our proposed approval to rely on a contingency measure that targets additional emissions reductions from unpaved roads, which constituted the single largest source of PM–10 emissions for the 1991 design day exceedence. We conclude that the plan satisfies the contingency measure provision of CAA Section 175A(d).

4. Has the State Committed to Continue to Operate an Appropriate PM–10 Air Quality Monitoring Network?

Yes. See section IV.A.2.b of this proposed action.

5. Has the State Provided for Verification of Continued Attainment?

According to the Calcagni memo, the State's maintenance plan submittal should indicate how the State will track the progress of the maintenance plan. ARB continually updates its inventory as new information becomes available, and will review impacts of inventory changes on the Indian Wells maintenance portion of the September 2002 plan and notify EPA if inventory changes necessitates a revision to the maintenance strategy and plan.[34]

C. Is the Redesignation Request Approvable?

1. Has the Area Attained the 24-hour and Annual PM–10 NAAQS?

Yes. See section IV.A.2.a of this proposed action.

2. Has the Area Met All Relevant Requirements Under Section 110 and Part D of the Act?

Yes. See section IV.A of this proposed action.

3. Does the Area Have a Fully Approved SIP Under Section 110(k) of the Act?

Yes. We are proposing to approve in today's action the moderate area plan for the Indian Wells Valley, and confirming that the SIP meets other applicable provisions of the CAA. See section IV.A of this proposed action.

4. Has the State Shown That the Air Quality Improvement in the Area Is Permanent and Enforceable?

CAA sections 110(a) and 172(c) generally require that plan provisions include enforceable emissions limitations, means or techniques. If an implemented measure has resulted in permanent emission reductions, we need not evaluate it for enforceability. Measures 2 through 5 (see section IV.A.2.c. of this proposed action) which we are proposing as meeting RACM per CAA 189(a) are permanent measures for the following reasons. Measures 2, 3 and 4 concern road paving, which is permanent by its very nature. Measure 5 concerns BLM closure of off-highway roads/trails which reduces emissions from wind erosion through permanent prevention of disturbance.

Measure 1 (Naval Air Weapons Fugitive Dust Control Plan) was

[25] Pechan Report, pg. 41.

[26] September 2002 plan, Chapter 4, pg. 4–5 and Chapter 7, pg. 7–1.

[27] ''Owens Valley PM–10 Planning Area Demonstration of Attainment State Implementation Plan'', Great Basin Unified APCD, November 16, 1998, pg. S–3.

[28] Letter from Brian Lamb, Great Basin APCD, to Richard Harasick, Los Angeles Department of Water and Power, March 12, 2002.

[29] Op. Cit. Owens Valley PM–10 Plan, pg. S–17.

[30] Calcagni memo, pg. 12.

[31] September 2002 plan, Chapter 8, pg. 8–1.

[32] September 2002 plan, Appendix A, Rule 402, section III.F.

[33] September 2002 plan, Chapter 8, pg. 8–1.

[34] ARB Executive Order G–125–295, pg. 3 of the submittal.

developed employing a three-step process that included identifying/characterizing potential sources of fugitive dust, proposing control measures, and establishing a compliance schedule for the control measures to be completed. The Dust Control Plan presents a detailed assessment of each fugitive dust source. The Plan requires paving of unpaved roads with motor vehicle traffic of 25 vehicle trips per day or more that are greater than or equal to 75 feet in length; closing off of certain areas of vacant land from use and allowing natural recrusting or vegetation growth; stabilizing unpaved traffic and parking areas by applying recycled asphalt or concrete, spreading and compacting granite, or applying chemical dust stabilizers; watering an open pit actively disturbed once a week prior to and after soil excavation; and covering all open storage piles with a tarp or other suitable material. Once approved into the SIP, the dust control plan will be federally enforceable.

Measure 6 includes Kern County APCD Rules 401, 404.1 and 405. These rules have been previously approved by EPA and remain a federally enforceable component of the California SIP.

5. Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?

We are proposing to approve the maintenance plan based on applicable EPA guidance as discussed in section IV.B.

D. Conformity

Section 176(c)(1) of the Act prohibits federal agencies from permitting, approving, or funding any activity in nonattainment or maintenance areas that does not conform to a SIP once the SIP has been approved by EPA under section 110 of the Act. Section 176(c)(1) also prohibits metropolitan planning organizations (MPOs), such as the Kern County Counsel of Governments, from approving any project, program, or plan that does not conform to a SIP once the SIP has been approved by EPA under section 110 of the Act. The transportation conformity rule and the general conformity rules, which were developed in response to Section 176(c)(1), apply to nonattainment areas and attainment areas with maintenance plans. Both rules provide that conformity can be demonstrated by showing that the expected emissions from planned actions are consistent with the emissions budgets for the area.

1. Transportation Conformity

A motor vehicle emissions budget consists of the projected vehicle-related PM–10 emissions. For Indian Wells, this includes PM–10 from paved and unpaved roads and construction activities. A transportation conformity finding is a demonstration that emissions associated with regional transportation plans (RTPs) and transportation improvement plans (TIPs) do not exceed emission budgets contained in the SIP for the area. The transportation conformity budgets contained in the Indian Wells Plan are 1.6 tons per day for 2001 and 1.7 tons per day for 2013.

PM–10 vehicle exhaust is a very small portion of the total 2001 PM–10 inventory, 1.7 percent, and only 6 percent of the motor vehicle emissions budget. Therefore, Kern County APCD has concluded that vehicle exhaust PM–10 is not a significant factor in ensuring that future transportation plans will not interfere with maintenance of the PM–10 standard, and has not included the exhaust emissions in the budget.

Our review of the budgets has also been announced on EPA's conformity website: *http://www.epa.gov/oms/traq*. Once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity.'' We are concurrently revising the budgets for adequacy against the criteria contained in the conformity rule (40 CFR 93.118(e)(4)). In this notice, we propose to approve the PM–10 motor vehicle emission budgets contained in the plan as meeting the purposes of section 176(c)(1) and the transportation conformity rule at 40 CFR part 93, subpart A. We expect to publish a notice announcing our findings on the budgets in January 2003.

2. General Conformity

For Federal actions which are required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that ''the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP.'' 40 CFR 93.158(a)(5)(i)(A).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the State and local air quality agencies. Such emissions budgets are unlike and not to be confused with those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels.

Kern County APCD and ARB have not chosen to include any specific emissions allocations for Federal projects that would be subject to the provisions of general conformity.

V. Proposed Action

We are proposing to approve the moderate area plan and the maintenance plan for the Indian Wells Valley, and to redesignate the area from nonattainment to attainment for the 24-hour and annual PM–10 NAAQS.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). It merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law.

Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule would approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: December 6, 2002.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 02–31665 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–274–0372; FRL–7422–5]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes; California—Coachella Valley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve state implementation plan (SIP) revisions submitted by the State of California to provide for attainment of the particulate matter (PM–10) national ambient air quality standard (NAAQS) in the Coachella Valley area and to establish emissions budgets for purposes of transportation conformity. EPA is also proposing to grant the State's request for an extension of the PM–10 attainment deadline to December 31, 2006. EPA is proposing to approve the SIP revisions under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Written comments on this proposal must be received by January 16, 2003.

ADDRESSES: Comments should be mailed to: Eleanor Kaplan, Office of Air Planning (AIR–2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. The rulemaking docket for this notice is available for public inspection during normal business hours at the EPA Region 9 office. A reasonable fee may be charged for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, California 95814

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California 91765–0932. The 2002 plan is electronically available at: *http://www.aqmd.gov/aqmp/.*

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, (415) 947–4147 or *kaplan.eleanor@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means EPA. This supplementary information is organized as follows.

Table of Contents

I. Background

A. Summary

We are proposing to approve the SIP revisions submitted by the State of California to provide for the attainment of the particulate matter (PM–10) NAAQS for the Coachella Valley (Valley) and to grant the State's request that the attainment date be extended from December 31, 2001 to December 31, 2006. We are also proposing to approve the motor vehicle emissions budgets contained in the revised SIP as adequate for transportation conformity purposes.

B. Description of the Coachella Valley and its PM–10 Problem

The Coachella Valley PM–10 nonattainment area consists of an approximately 2,500 square mile portion of central Riverside County in California. The Valley, which is part of the Salton Sea Air Basin, extends in a northwest-southeast direction from the Banning Pass to the Salton Sea and is bounded by the San Jacinto Mountains to the west and the Little San Bernardino Mountains to the east. The Valley includes ten local jurisdictions, namely: the County of Riverside and the following cities: Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs and Rancho Mirage.

The Valley's climate is continental desert-type with hot summers, mild winters and very little annual rainfall. Elevation ranges from approximately 500 feet above sea level in the northern part of the Valley to about 150 feet below sea level near the Salton Sea.

The economy of the Valley is mixed. The upper portion which includes the area north of Indio is used primarily for resort and retirement activities. The