

final rule. If EPA receives no relevant adverse comments, the EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Electronic comments should be sent either to [Diggs.Thomas@epa.gov](mailto:Diggs.Thomas@epa.gov) or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in our direct final rulemaking document published in the "Rules and Regulations" section of this **Federal Register**. Our Technical Support Document for this rule revision contains more information about this action.

**DATES:** Written comments must be received by August 29, 2003.

**ADDRESSES:** Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Shar, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-6691, and [shar.alan@epa.gov](mailto:shar.alan@epa.gov).

**SUPPLEMENTARY INFORMATION:** This document concerns Control of Air Pollution from nitrogen compounds, Cement kiln, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

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

Dated: July 17, 2003.

**Lawrence Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 03-19278 Filed 7-29-03; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[ID-02-003; FRL -7537-8]

#### Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Ada County/Boise, ID Area

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA, Agency, or we) proposes to rescind its earlier finding that the PM<sub>10</sub> standards promulgated on July 1, 1987 and the accompanying nonattainment designation and classification are no longer applicable in the Ada County/Boise, Idaho area, and simultaneously, to approve a PM<sub>10</sub> SIP maintenance plan for the Ada County/Boise Idaho area and to redesignate the area from nonattainment to attainment. PM<sub>10</sub> air pollution is suspended particulate matter with a diameter less than or equal to a nominal ten micrometers.

**DATES:** Written comments must be received on or before August 29, 2003.

**ADDRESSES:** Written comments should be addressed and mailed to Donna Deneen, Office of Air Quality, (OAQ-107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of documents relevant to this action are available for public review during normal business hours (8 a.m. to 4:30 p.m.) at this same address. Comments may also be submitted electronically, or through hand delivery/courier. Detailed instructions for submitting comments are described in the **SUPPLEMENTARY INFORMATION** section, under "How can comments be made on this rulemaking?"

**FOR FURTHER INFORMATION CONTACT:** Donna Deneen, Office of Air Quality (OAQ-107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553-6706.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

##### I. Background

1. What is the purpose of this rulemaking?
2. What is a State Implementation Plan (SIP)?

3. What National Ambient Air Quality Standards (NAAQS) are considered in today's rulemaking?
  4. What is the background information for this action?
  5. What are the air quality characteristics of the area?
  6. What criteria did EPA use to review the redesignation request and maintenance plan?
  7. How does the State show that the area has attained the PM<sub>10</sub> NAAQS?
  8. Does the area have a fully approved nonattainment SIP?
  9. Are the improvements in air quality which warrant this redesignation permanent and enforceable?
  10. Has the State met all the planning requirements applicable to this area?
  11. How does the State meet Section 110 requirements?
  12. How does the State meet Part D requirements?
  13. How does the State meet the Section 172(c) plan provisions requirements?
  14. How does the State meet Subpart 4 requirements?
  15. Has the State submitted a fully approvable maintenance plan for the area?
  16. How has the State met the attainment year emission inventory requirement?
  17. How does the State demonstrate maintenance of the PM<sub>10</sub> standards in the future?
  18. How will the State monitor air quality to verify continued attainment?
  19. What contingency measure will the State rely upon to correct any future violation of the NAAQS?
  20. How does this action affect Transportation Conformity?
- II. How Can Comments Be Made on This Rulemaking?
- III. Statutory and Executive Order Reviews

## I. Background

### 1. What Is the Purpose of This Rulemaking?

This rulemaking proposes to take certain actions related to the PM<sub>10</sub> designation and classification of the Ada County/Boise, Idaho area.<sup>1</sup> First, EPA is proposing to rescind the March 12, 1999 finding (64 FR 12257) that the PM<sub>10</sub> standards promulgated on July 1, 1987 (52 FR 24634) and the accompanying designation and classification for PM<sub>10</sub> no longer apply in the Ada County/Boise, Idaho area. The intended effect of this proposal is to restore the applicability of the current PM<sub>10</sub> standards in the Ada County/Boise, Idaho area as well as the nonattainment designation and moderate classification associated with those standards. Secondly, EPA is proposing to approve the PM<sub>10</sub>

<sup>1</sup> Although the State's maintenance plan and redesignation request refers to "Northern Ada County," we are using the term "Ada County/Boise, Idaho" or "Ada County/Boise, Idaho area" for consistency with 40 CFR 81.313.

maintenance plan for the Ada County/Boise, Idaho area as a SIP revision and to redesignate the area to "attainment" for PM<sub>10</sub>.

The proposed redesignation to attainment is based on valid monitoring data and projections of ambient air quality made in the demonstration that accompanies the maintenance plan. EPA believes the area will continue to meet the National Ambient Air Quality Standards (NAAQS) for PM<sub>10</sub> for at least ten years beyond this redesignation, as required by the Act.

## 2. What Is a State Implementation Plan (SIP)?

The Clean Air Act requires states to attain and maintain ambient air quality equal to or better than standards that provide an adequate margin of safety for public health and welfare. These ambient air quality standards are established by EPA and are known as the National Ambient Air Quality Standards, or NAAQS.

The state's plans for attaining and maintaining the NAAQS are outlined in 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 states make SIP revisions 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 take effect if an area fails to attain the standards or to 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 also must be adopted by the state, and submitted to EPA by the Governor or his appointed designee. After EPA approves the SIP submission, the rules and regulations are rendered federally enforceable. The approved SIP serves as the state's plan 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.

The Idaho Department of Environmental Quality (Idaho DEQ, the State, or Idaho) submitted a SIP for particulate matter in the Ada County/Boise, Idaho nonattainment area in three parts on November 14, 1991, December 30, 1994, and July 13, 1995 (the 1991

PM<sub>10</sub> SIP) and EPA approved it on May 30, 1996. Other SIP revisions, e.g., state-wide revisions affecting the area, have been submitted over the intervening years and have likewise been approved. See 40 CFR 52.670. The State submitted the maintenance plan and redesignation request for the Ada County/Boise, Idaho area to EPA on September 27, 2002, and provided supplemental information on July 10, 2003 and July 21, 2003, as a revision to the SIP.

## 3. What National Ambient Air Quality Standards (NAAQS) Are Considered in Today's Rulemaking?

This action by EPA pertains to Idaho's compliance with the PM<sub>10</sub> NAAQS. PM<sub>10</sub> is particulate matter with an aerodynamic diameter of less than ten micrometers (PM<sub>10</sub>). The NAAQS are national standards for certain ambient air pollutants set by EPA to protect public health and welfare. PM<sub>10</sub> is among the ambient air pollutants for which EPA has established health-based standards.

PM<sub>10</sub> causes adverse health effects by penetrating deep in the lungs, 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), EPA 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 (PM<sub>10</sub>). (See 40 CFR 50.6). The 24-hour primary PM<sub>10</sub> standard is 150 micrograms per cubic meter (ug/m<sup>3</sup>), with no more than one expected exceedance per year over a three year period. The annual primary PM<sub>10</sub> standard is 50 ug/m<sup>3</sup> as an expected annual arithmetic mean over a three year period. The secondary PM<sub>10</sub> standards, promulgated to protect against adverse welfare effects, are identical to the primary standards.

## 4. What Is the Background Information for This Action?

On August 7, 1987 (52 FR 29383), EPA identified the Ada County/Boise, Idaho area as a PM<sub>10</sub> "Group I" area of concern, i.e., an area with a 95% or greater likelihood of violating the PM<sub>10</sub> NAAQS and requiring substantial SIP revisions. The area was subsequently designated as a moderate PM<sub>10</sub> nonattainment area upon enactment of the Clean Air Act Amendments of 1990 (November 15, 1990).

The State developed a nonattainment area SIP revision designed to bring about the attainment of the PM<sub>10</sub> NAAQS. This was submitted to EPA in three parts on November 14, 1991,

December 30, 1994, and July 13, 1995. EPA fully approved this plan as a revision to the Idaho SIP in a **Federal Register** Notice published on May 30, 1996 (61 FR 27019).

On July 18, 1997 (62 FR 38856), EPA revised the NAAQS standard for PM<sub>10</sub>. Also, on July 18, 1997, we announced that the existing PM<sub>10</sub> standards and associated designations and classifications would continue to apply for an interim period. In addition, we identified the criteria for determining that the pre-existing PM<sub>10</sub> NAAQS would no longer be applicable for an area. On March 12, 1999 (64 FR 12257), we issued final rules approving Idaho's request that EPA revoke the pre-existing PM<sub>10</sub> NAAQS, along with the associated nonattainment designation and classification for the Ada County/Boise, Idaho area because it had met the criteria. The Environmental Defense Fund (EDF) and others filed a Petition for Review in the U.S. Court of Appeals for the 9th Circuit opposing the revocation of the existing PM<sub>10</sub> standard in Idaho. Before EPA responded to the petition, in a separate legal action, the U.S. Court of Appeals for the District of Columbia vacated the revised 1997 PM<sub>10</sub> standard. *American Trucking Association, et al., v. EPA, et al.*, and consolidated cases. Thus, because the pre-existing PM<sub>10</sub> standards were revoked for the Ada County/Boise, Idaho area, and the revised 1997 PM<sub>10</sub> standards were vacated, the Ada County/Boise, Idaho area was left without federally applicable PM<sub>10</sub> standards. On June 26, 2000, EPA proposed to rescind the finding that the pre-existing PM<sub>10</sub> standards and the accompanying designation and classification were no longer applicable in the Ada County/Boise, Idaho area. 65 FR 39321.<sup>2</sup> Soon after, the EDF, Community Planning Association of Southwest Idaho, Idaho Department of Environmental Quality (Idaho DEQ) and EPA reached a settlement agreement that called for the submission of a maintenance demonstration and plan containing motor vehicle emissions budgets for the Ada County/Boise, Idaho area and other measures necessary to meet the requirements of CAA section 175A as part of a petition for redesignation of the area to attainment under section 107(d)(3)(E) of the Clean Air Act. See 66 FR 8229 (January 30, 1999). On September 27, 2002, Idaho

<sup>2</sup> EPA extended the comment period for this rulemaking on July 26, 2000 (65 FR 45953) and later reopened the comment period on September 11, 2000 (65 FR 54828). EPA took final action on only the portion of the proposal related to the deletion of 40 CFR 50.6(d) on December 22, 2000. 65 FR 80779.

DEQ submitted to EPA a maintenance plan and a request for redesignation of the area to attainment.<sup>3</sup> Idaho provided supplemental information on July 10, 2003 and July 21, 2003.

#### 5. What Are the Air Quality Characteristics of the Area?

The Ada County/Boise, Idaho area is located in the southwestern part of Idaho and encompasses the northern half of Ada County. For a legal description of the boundaries, see 40 CFR 81.313. The area includes the City of Boise and some, but not all, of the surrounding suburbs. The Boise Metropolitan Statistical Area, which includes Ada County and Canyon County, is currently one of the fastest growing metropolitan regions in the nation with a 2001 population of over 452,000. Four additional counties make up the remainder of a larger region known as the Treasure Valley.

Located in the Boise River Valley, the Ada County/Boise, Idaho area is prone to periods of air stagnation conditions due to atmospheric inversions, especially during the winter. Stagnation periods, combined with primary and secondary emissions of PM<sub>10</sub>, have led to exceedances of the PM<sub>10</sub> NAAQS. As a result, the maintenance plan submitted by the State focuses particularly on periods of air stagnation when high levels of PM<sub>10</sub> in the area are most likely.

Since 1991, only one exceedance of the 24-hour standard in the Ada County/Boise, Idaho area has been recorded. There have been six other exceedances, all measured in winter months and recorded in 1991 or earlier. There have been no exceedances of the annual PM<sub>10</sub> standard since the PM<sub>10</sub> standard was promulgated in 1987.

#### 6. What Criteria Did EPA Use To Review the Redesignation Request and Maintenance Plan?

The criteria used to review the maintenance plan and redesignation request are derived from the Act, the General Preamble, and a policy and guidance memorandum from John Calcagni, September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment*. Section 107(d)(3)(E) of the Act states that the EPA can be redesignate an area to attainment if the following conditions are met:

1. The Administrator has determined the area has attained the NAAQS.

2. The Administrator has fully approved the applicable implementation plan under Section 110(k).

3. The Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

4. The State has met all applicable requirements for the area under Section 110 and Part D.

5. The Administrator has fully approved a maintenance plan, including a contingency plan, for the area under Section 175A.

#### 7. How Does the State Show That the Area Has Attained the PM<sub>10</sub> NAAQS?

Demonstrating that an area has attained the PM<sub>10</sub> NAAQS involves submission of ambient air quality data from an ambient air monitoring network representing peak PM<sub>10</sub> concentrations. The data should be stored in the EPA Air Quality System. The 24-hour PM<sub>10</sub> NAAQS is 150 ug/m<sup>3</sup>. An area has attained the 24-hour standard when the average number of expected exceedances per year is less than or equal to one, when averaged over a three year period. (40 CFR 50.6) To make this determination, three consecutive years of complete ambient air quality data must be collected in accordance with federal requirements (40 CFR part 58, including appendices).

An attainment determination was made for 1999–2001 (to include the 1999 baseline inventory year) as well as 2000–2002 (to reflect most recent data). The data in EPA's Air Quality System show no exceedances of the 24-hour PM<sub>10</sub> standard in the Ada County/Boise, Idaho Area during any of those four years (1999, 2000, 2001, or 2002). Therefore, the average annual number of expected exceedances of the 24 hour standard for both periods, 1999–2001 and 2000–2002 is zero. Thus, the Ada County/Boise, Idaho Area is in attainment with the 24-hour PM<sub>10</sub> NAAQS.

The annual PM<sub>10</sub> NAAQS is 50 ug/m<sup>3</sup>. To determine attainment, the standard is compared to the expected annual mean, which is the average of the weighted annual mean for three consecutive years. The weighted annual mean for each year, 1999 through 2002, is below 50 ug/m<sup>3</sup> at all monitoring sites (it ranged from 18 ug/m<sup>3</sup> to 34 ug/m<sup>3</sup>). Consequently the three year weighted annual mean is below 50 ug/m<sup>3</sup>. Thus the Ada County/Boise, Idaho Area is in attainment with the annual PM<sub>10</sub> NAAQS.

#### 8. Does the Area Have a Fully Approved Nonattainment SIP?

States containing initial moderate PM<sub>10</sub> nonattainment areas were required to submit a SIP by November 15, 1991, which implemented reasonably available control measures (RACM) by December 10, 1993, and demonstrated attainment of the PM<sub>10</sub> NAAQS by December 31, 1994. The SIP for the area must be fully approved under Section 110(k) of the Act, and must satisfy all requirements that apply to the area. On May 30, 1996, (61 FR 27019), EPA fully approved the Ada County/Boise, Idaho PM<sub>10</sub> nonattainment area SIP originally submitted by the State on November 14, 1991, and supplemented on December 30, 1994 and July 13, 1995. The Part D NSR rules for PM<sub>10</sub> nonattainment areas were approved on July 23, 1993 (58 FR 39445) and amended on January 16, 2003 (68 FR 2217). The Ada County/Boise, Idaho PM<sub>10</sub> nonattainment SIP demonstrated attainment of the PM<sub>10</sub> NAAQS by December 31, 1994. Thus, the area has a fully approved nonattainment SIP.

#### 9. Are the Improvements in Air Quality Which Warrant This Redesignation Permanent and Enforceable?

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual enforceable emission reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic.

Idaho has demonstrated that the air quality improvements in the Ada County/Boise, Idaho area are the result of permanent enforceable emission reductions and not a result of either economic trends or meteorology. EPA concludes that the modeling demonstration shows that the area will meet the NAAQS, even under worst case meteorological conditions. The modeling demonstration assumes emission rates corresponding to the control measures relied on by the 1991 PM<sub>10</sub> SIP for the area (which are still being implemented and relied on by the maintenance plan) as well as the terms and conditions limiting primary and secondary particulate matter emissions in newly-issued Tier II operating permits for twelve industrial sources. EPA approved the control measures relied on for the 1991 PM<sub>10</sub> SIP as

<sup>3</sup> Title I, section 107(d)(3)(D) of the Act and the general preamble to Title I, 57 FR 13498 (April 16, 1992), allow the Governor of a State to request the redesignation of an area from nonattainment to attainment.

meeting the enforceability requirements on September 22, 1994 and May 30, 1996. 59 FR 48582 and 61 FR 27019. The Tier II Operating Permits are issued under federally-approved IDAPA 58.01.01 and are enforceable because they contain provisions that would result in penalties for not meeting the terms and conditions limiting particulate matter. Accordingly, Idaho can reasonably attribute improvement in air quality to emission reductions from these permanent and enforceable measures. Finally, with respect to economic trends, with the Ada County/Boise, Idaho area currently one of the fastest growing metropolitan regions in the nation, it is unlikely that air quality improvements are due to this factor. Even though the economic trend is positive, air quality improvements can still be expected because of the control measures that are in place in combination with motor vehicle technology improvements. In short, EPA believes that Idaho DEQ has demonstrated air quality improvements are the result of permanent enforceable emission reductions and not a result of economic trends or meteorological conditions and has met the enforceability requirements of Section 175.

#### *10. Has the State Met All the Planning Requirements Applicable to This Area?*

The September 1992 Calcagni memorandum directs states to meet all of the applicable Section 110 and Part D planning requirements for redesignation purposes. Thus, EPA interprets the Act to require state adoption and EPA approval of the applicable programs under Section 110 and Part D that were due prior to the submission of a redesignation request, before EPA may approve a redesignation request. How the State has met these requirements is discussed below.

#### *11. How Does the State Meet Section 110 Requirements?*

Section 110(a)(2) of the Act contains general requirements for nonattainment plans. These requirements include, but are not limited to, submission of a SIP that has been adopted by the State after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting,

provisions for modeling; and provisions for public and local agency participation. See the General Preamble for further explanation of these requirements. 57 FR 13498 (April 16, 1992).

For purposes of redesignation, review of the Idaho SIP shows that the State has satisfied all requirements under the Act. Further, in 40 CFR 52.673, EPA has approved Idaho's SIP for the attainment and maintenance of the national standards under Section 110.

#### *12. How Does the State Meet Part D Requirements?*

Part D consists of general requirements applicable to all areas which are designated nonattainment based on a violation of the NAAQS. The general requirements are followed by a series of subparts specific to each pollutant. All PM<sub>10</sub> nonattainment areas must meet the applicable general provisions of Subpart 1 and the specific PM<sub>10</sub> provisions in Subpart 4, "Additional Provisions for Particulate Matter Nonattainment Areas." The following paragraphs discuss these requirements as they apply to the Ada County/Boise, Idaho area.

#### *13. How Does the State Meet the Section 172(c) Plan Provisions Requirements?*

Subpart 1, section 172(c) contains general requirements for nonattainment plans. A thorough discussion of these requirements may be found in the General Preamble. 57 FR 13538 (April 16, 1992). The requirements for reasonable further progress, identification of certain emissions increases, and other measures needed for attainment were satisfied with the initial attainment plan for the Ada County/Boise, Idaho area. The requirement for an emission inventory is satisfied by the completion of the inventory required for the maintenance plan. The requirements of the Part D New Source Review (NSR) program will be replaced by the Part C Prevention of Significant Deterioration (PSD) program for PM<sub>10</sub> upon the effective date of this redesignation action. The federally-approved PSD regulations for Idaho can be found at IDAPA 16.01.012,07, as incorporated by reference by EPA on July 28, 1982 (47 FR 32531), and most recently amended on January 16, 2003 (68 FR 2217).

#### *14. How Does the State Meet Subpart 4 Requirements?*

Part D, Subpart 4, Section 189(a), (c) and (e) requirements apply to any moderate nonattainment area before the area can be redesignated to attainment. The requirements which were

applicable prior to the submission of the request to redesignate the area must be fully approved into the SIP before redesignating the area to attainment. These requirements are discussed below:

(a) Provisions to assure that RACM was implemented by December 10, 1993;

(b) Either a demonstration that the plan provided for attainment as expeditiously as practicable but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable;

(c) Quantitative milestones which were 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<sub>10</sub> also apply to major stationary sources of PM<sub>10</sub> precursors, except where the Administrator determined that such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the NAAQS in the area.

As previously stated, EPA approved the 1991 PM<sub>10</sub> SIP for the Ada County/Boise, Idaho area containing the elements meeting requirements (a) through (d) above on May 30, 1996 (61 FR 27019). Other requirements were due at a later date.

States with PM<sub>10</sub> nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM<sub>10</sub> by June 30, 1992. States also were to submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM<sub>10</sub> NAAQS by the applicable statutory deadline. See Sections 172(c)(9) and 189(a) and 57 FR 13543–13544.

Idaho has presented an adequate demonstration that it has met the requirements applicable to the area under Section 110 and Part D. The Part D NSR rules for PM<sub>10</sub> nonattainment areas in Idaho were approved by EPA on July 23, 1993 (58 FR 39445) and amended provisions were approved by EPA on January 16, 2003 (68 FR 2217). The Clean Air Act requires that contingency measures take effect if the area fails to meet reasonable further progress requirements or fails to attain the NAAQS by the applicable attainment date. The Ada County/Boise, Idaho area attained the NAAQS for PM<sub>10</sub> by the applicable attainment date of December 31, 1994 (*i.e.*, the average

annual number of expected exceedances of the 24-hour standard for the three year period 1992–1994 was less than one and the average weighted annual mean for the same period was below 50 ug/m<sup>3</sup>). Therefore, contingency measures no longer are required under Section 172(c)(9) of the Act. Contingency measures are also required for maintenance plans under Section 175A(d). Idaho has provided contingency measures in the maintenance plan for the Ada County/Boise, Idaho area to meet this requirement. The contingency measures in the maintenance plan are discussed below.

*15. Has the State Submitted a Fully Approvable Maintenance Plan for the Area?*

Section 107(d)(3)(E) of the Act stipulates that for an area to be redesignated to attainment, EPA must fully approve a maintenance plan which meets the requirements of Section 175A. Section 175A defines the general framework of a maintenance plan, which must provide for maintenance, *i.e.*, continued attainment, of the relevant NAAQS in the area for at least ten years after redesignation. The following is a list of core provisions required in an approvable maintenance plan.

1. The State must develop an attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS.

2. The State must demonstrate maintenance of the NAAQS.

3. The State must verify continued attainment through operation of an appropriate air quality monitoring network.

4. The maintenance plan must include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area.

As explained below, Idaho has complied with each of these requirements in the PM<sub>10</sub> maintenance plan for the Ada County/Boise, Idaho area.

*16. How Has the State Met the Attainment Year Emission Inventory Requirement?*

The State should develop an attainment year 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 central measures in the SIP, the attainment inventory will generally be an inventory

of actual emissions at the time the area attained the standards. This inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time and should include the emissions during the time period associated with the monitoring data showing attainment.

Idaho used monitoring data from 1999, 2000, and 2001 to show attainment of the NAAQS. The maintenance plan includes an attainment year emissions inventory for 1999. The State chose 1999 for the attainment year inventory because, among other things, it was the most recent year in which an air stagnation episode occurred and for which inventory data was available for collection. Based on the methodologies used to develop the inventory and EPA's review of assumptions and calculations, the inventory meets the inventory requirement in section 175a of the Act.

*17. How Does the State Demonstrate Maintenance of the PM<sub>10</sub> Standards in the Future?*

A State may generally demonstrate maintenance of the NAAQS either by showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future anticipated mix of sources and emission rates will not cause a violation of the NAAQS. Under the Act, PM<sub>10</sub> areas were required to submit modeled attainment demonstrations to show that proposed reductions in emissions will be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstration should be based upon the same level of modeling.

Because of the contribution of precursors to the formation of PM<sub>10</sub> in the Ada County/Boise, Idaho area, a dispersion model that could account for PM<sub>10</sub> formation chemistry was necessary to demonstrate whether maintenance of the 24-hour standard would be achieved in the future. After evaluation of three different dispersion models, the State selected, and EPA agreed to, the selection of CAMx as an appropriate model to use for this projection. It was later shown to meet verification testing criteria.

To demonstrate attainment, Idaho used the model with meteorological conditions corresponding to a period of air stagnation experienced in 1991 in the Ada County/Boise, Idaho area. We believe that Idaho appropriately selected this event because it corresponded with one of the area's highest PM<sub>10</sub> episodes. The

meteorological conditions for this period, in combination with emissions projected for future years 2010, 2015, and 2020 (reflecting control measures approved under the 1991 PM<sub>10</sub> SIP and newly issued Tier II operating permits for twelve industrial sources), resulted in modeling results showing no exceedances of the 24-hour PM<sub>10</sub> standard of 150 ug/m<sup>3</sup>. Thus, these results demonstrate maintenance of the 24-hour NAAQS for PM<sub>10</sub> in the Ada County/Boise, Idaho area for at least ten years after redesignation to attainment.

For the PM<sub>10</sub> annual standard, Idaho used a speciated linear rollback technique for the demonstration. This analysis indicates that the annual PM<sub>10</sub> standard also is not expected to exceed the annual PM<sub>10</sub> standard for at least ten years after redesignation to attainment.

After review and analysis of the attainment demonstration, EPA has concluded that the plan is adequate to maintain the PM<sub>10</sub> standards for at least ten years from designation of the Ada County/Boise, Idaho area to attainment. See the Technical Support Document accompanying this notice for further detail.

*18. How Will the State Monitor Air Quality To Verify Continued Attainment?*

Once an area has been redesignated, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. In its submission, Idaho DEQ commits to continue to operate and maintain the network of PM<sub>10</sub> monitoring stations necessary to verify ongoing compliance with the PM<sub>10</sub> NAAQS in the Ada County/Boise, Idaho area.

*19. What Contingency Measures Will the State Rely Upon to Correct Any Future Violation of the NAAQS?*

Section 175A of the Act also requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation. These contingency measures are distinguished from those generally required for nonattainment areas under Section 172(c)(9), which are discussed above. At a minimum, the contingency measures must include a commitment that the State will implement all measures contained in the nonattainment SIP prior to redesignation.

The maintenance plan explains how the contingency plan requirements are being met. First, the plan explains that the contingency measures used for meeting contingency requirements in the 1991 PM<sub>10</sub> SIP are being carried over to the maintenance plan. In the 1991 PM<sub>10</sub> SIP, these measures (the mandatory residential wood burning ban control measures and a fugitive road dust reduction agreement) qualified as contingency measures because they provided for more than the total contingency measure reductions necessary to demonstrate attainment with the NAAQS. 61 FR 27022. In the maintenance plan, these measures continue to provide for more than the total reductions necessary to demonstrate attainment with the NAAQS since neither the mandatory burn ban nor the fugitive road dust reduction agreement were relied on fully to demonstrate maintenance of the NAAQS.

The maintenance plan also identifies a list of additional measures that are being developed or can be implemented in Ada and/or Canyon counties if there is a measured exceedance of the federal PM<sub>10</sub> standards. These additional measures, which are listed below, are in various stages of implementation and development.<sup>4</sup>

1. Adopt local ordinances that require the covering of all loads of material that may have the potential to contribute to particulate matter pollution.

2. Adopt local ordinances that require no track-out onto paved roads from sites.

3. Adopt local ordinances that require no burning of household garbage.

4. Eliminate local permits that allow any kind of uncontrolled, outdoor burning not specifically allowed under Idaho State law.

5. Expand the existing Vehicle Inspection and Maintenance Program to include the testing of all registered vehicles in Ada County.

6. Expand mandatory burning restrictions to include clean burning woodstoves during air quality alerts.

7. Eliminate local ordinances that prohibit the construction of any unpaved private roads, driveways or parking lots.

See the TSD accompanying this notice for additional information on the status of each of the above measures.

By carrying over all the control and contingency measures from the 1991 PM<sub>10</sub> SIP, the State has not removed or

reduced the stringency of the control measures relied on to demonstrate attainment in the 1991 PM<sub>10</sub> SIP. Therefore, the State meets the requirement to implement all measures contained in the nonattainment SIP prior to redesignation. In light of the control measures and contingency measures carried over from the 1991 PM<sub>10</sub> SIP, the development and implementation of the additional measures listed above, and the new control measures (*i.e.*, the Tier II operating permits) relied on for demonstrating maintenance of the NAAQS, we believe the State meets the requirements for contingency measures in the maintenance plan.

#### 20. How Does This Action Affect Transportation Conformity?

Under Section 176(c) of the Act, transportation plans, programs, and projects in nonattainment or maintenance areas that are funded or approved under the Federal Transit Act, must conform to the applicable SIPs. In short, a transportation plan is deemed to conform to the applicable SIP if the emissions resulting from implementation of that transportation plan are less than or equal to the motor vehicle emission level established in the SIP for the maintenance year and other analysis years.

In this maintenance plan, procedures for estimating motor vehicle emissions are well documented. Accordingly, we propose to approve the following motor vehicle emissions budgets (MVEB) for PM<sub>10</sub> and its precursors for use in conformity determinations for PM<sub>10</sub> on future Transportation Improvement Programs and Regional Transportation Plans. These mobile source emissions represent a combination of vehicle exhaust, tire wear, and road dust.

#### ADA COUNTY/BOISE, IDAHO AREA MOTOR VEHICLE EMISSIONS BUDGET

Year	PM <sub>10</sub> (tons/ day)	NO <sub>x</sub> (tons/ day)	VOC (tons/ day)
1999 .....	153.0	21.0	10.4
2010 .....	153.0	11.2	6.1
2015 .....	153.0	7.8	5.0

The motor vehicle emissions budget applies as a ceiling on emissions in the year for which it is defined, and for all subsequent years until another year for which a different budget is defined or until a SIP revision modifies the budget. Thus, the 1999 MVEB will apply for any conformity horizon year through 2009, and the 2010 MVEB will apply for any conformity horizon year from 2010 through 2014, and the 2015 MVEB will

apply for all subsequent years. The TSD summarizes how the PM<sub>10</sub> motor vehicle emissions budget meets the criteria contained in the conformity rule (40 CFR 93.118(e)(4)).

## II. How Can Comments Be Made on This Rulemaking?

### A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under ID-02-003. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is available for public viewing at the Office of Air Quality (OAQ-107), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. A copy of the file, as it exists on the date of proposal, is available for public viewing at EPA's Idaho Operations Office at EPA Region 10, Idaho Operations Office, 1435 N. Orchard St., Boise, ID 83706. EPA requests contacting the contact listed in the "For Further Information Contact" section to schedule your inspection. EPA's official hours of business are Monday through Friday, 8:30 AM to 4:30 PM, excluding Federal Holidays.

2. *Copies of the State submission and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency.* State of Idaho Department of Environmental Quality, 1445 North Orchard, Boise, ID 83706-2239.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the *Regulation.gov* Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains

<sup>4</sup> For the purposes of section 175A, the 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.

copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

#### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking ID-02-003" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* You may send comments by electronic mail (e-mail) to [r10.aircom@epa.gov](mailto:r10.aircom@epa.gov), please including the text "Public comment on proposed rulemaking ID-2002-003" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through *Regulations.gov*, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are

included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* You may use *Regulation.gov* as an alternative method to submit electronic comments to EPA. Go directly to *Regulations.gov* at <http://www.regulations.gov>, then select Environmental Protection Agency at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Donna Deneen, Office of Air Quality, (OAQ-107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Please include the text "Public comment on proposed rulemaking ID-02-003" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Donna Deneen, Office of Air Quality, (OAQ-107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

#### *C. How Should I Submit CBI to the EPA?*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA to be CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). EPA will not disclose information so marked except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the

outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### *D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

### **III. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to 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 action merely proposes to approve 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 thus 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, National parks, Wilderness areas.

Dated: July 23, 2003.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, EPA, Region 10.*

[FR Doc. 03-19355 Filed 7-29-03; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 223

[Docket No. 030725185-3185-01;  
I.D.071403B]

**RIN 0648-AR34**

#### Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The National Marine Fisheries Service (NMFS) proposes to amend the regulations that require most shrimp trawlers to use Turtle Excluder Devices (TEDs) in the southeastern Atlantic, including the Gulf of Mexico, to reduce the incidental capture of endangered and threatened sea turtles during shrimp trawling. Specifically, NMFS proposes to allow the use of a specific design of a hooped hard TED ("the Coulon TED") that is capable of releasing large loggerhead and green turtles as well as leatherback turtles.

**DATES:** Written comments (see **ADDRESSES**) will be accepted through August 14, 2003.

**ADDRESSES:** Written comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, by regular mail to 1315 East-West Highway, Silver Spring, MD 20910 or by fax to 301-713-0376. Comments will not be accepted if submitted via e-mail or the Internet.

#### FOR FURTHER INFORMATION CONTACT:

Robert Hoffman (ph. 727-570-5312, fax 727-570-5517, e-mail

Robert.Hoffman@noaa.gov), or Barbara A. Schroeder (ph. 301-713-1401, fax 301-713-0376, e-mail [Barbara.Schroeder@noaa.gov](mailto:Barbara.Schroeder@noaa.gov)).

#### SUPPLEMENTARY INFORMATION:

## Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken and killed as a result of trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR part 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic Area, Gulf Area, and summer flounder sea turtle protection area) to have a NMFS-approved Turtle Excluder Device ("TED") installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED the Parker soft TED. Hooped hard TEDs are currently approved for use only in the inshore waters of the Atlantic. Effective August 21, 2003, hooped hard TEDs will be approved for use in inshore waters of the Gulf Area as well.

TEDs incorporate an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (55 FR 41092, October 9, 1990). Most approved hard TEDs are described in the regulations (50 CFR 223.207 (a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.