

[FR Doc. 05-16933 Filed 8-25-05; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[TX 126-1-7690; FRL-7960-4]

**Approval and Promulgation of Air Quality Implementation Plans; Texas; Dallas-Fort Worth Voluntary Mobile Emission Reduction Program**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Texas. This revision approves the Dallas-Fort Worth (DFW) Voluntary Mobile Emission Reduction Program (VMEP) which is relied upon to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the DFW nonattainment area.

**DATES:** This rule is effective on September 26, 2005.

**ADDRESSES:** Copies of the documents relevant to this action are in the official file which is available at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

Copies of any State submittals and EPA's technical support document are also available for public inspection at the State Air Agency listed below

during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Sandra Rennie, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7367; fax number 214-665-7263; e-mail address *rennie.sandra@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

**Outline of Topics**

- I. What Action Is EPA Taking and Why?
- II. What Are the Federal Requirements?
- III. What Is the Background for This Action?
- IV. What Did the State Submit?
- V. What Does the DFW VMEP Include?
- VI. What Comments Did EPA Receive in Response to the January 18, 2001, Proposed Rule?
- VII. EPA's Final Rulemaking Action
- VIII. Statutory and Executive Order Reviews

**I. What Action Is EPA Taking and Why?**

We are approving the DFW VMEP into the Texas SIP. We are taking this action because the State submitted a SIP revision that relies on the VMEP to achieve the NAAQS in the DFW ozone nonattainment area.

**II. What Are the Federal Requirements?**

Section 172 of the Act provides the general requirements for nonattainment plans. Section 172(c)(6) and section 110 require SIPs to include enforceable emission limitations, and such other control measures, means or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment date. Today's action involves approval of one of a collection of controls adopted by the State to achieve the ozone standard in the DFW nonattainment area as required under section 172. EPA approval of this SIP revision is governed by section 110 of the Act.

**III. What Is the Background for This Action?**

In the **Federal Register** published on January 18, 2001 (66 FR 4756) we proposed to approve a Voluntary Mobile Emissions Reduction Program (VMEP) in nine counties (including the DFW 4-county area) as local initiatives. The counties are Collin, Dallas, Denton, and Tarrant along with the surrounding counties of Ellis, Johnson, Kaufman, Parker, and Rockwall.

Voluntary mobile source strategies that attempt to complement existing regulatory programs through voluntary, non-regulatory changes in local transportation activities or changes in in-use vehicle and engine composition constitute the VMEP. EPA concludes that the Clean Air Act allows SIP credit for new approaches to reducing mobile source emissions. This flexible approach is consistent with section 110. Up to 3% of the total future year emissions reductions required to attain the appropriate NAAQS may be claimed under the VMEP policy.<sup>1</sup>

Specifically, the guidance suggests key points be considered for approval of credits. The credits should be quantifiable, surplus, enforceable, permanent, and adequately supported. The State must timely assess and backfill any shortfall pursuant to enforceable commitments in the SIP in the event that the projected emission reductions are not achieved. In addition, VMEPs must be consistent with attainment of the standard and with the Rate of Progress requirements and not interfere with other Clean Air Act requirements.

**IV. What Did the State Submit?**

The State submitted program descriptions that projected emission reductions attributable to each specific voluntary program. These program descriptions were included in the DFW 1-hour ozone SIP revision submitted April 25, 2000.

**V. What Does the DFW VMEP Include?**

The following Table lists the programs and projected credits. Programs submitted with no credit assigned are also listed.

**VOLUNTARY MOBILE EMISSION REDUCTION PROGRAMS AND CREDITS CLAIMED**

Program type	VOC benefits (tons per day)	NO <sub>x</sub> benefits (tons per day)
Alternative Fuel Program .....	0.18	0.18
Employee Trip Reduction .....	0.29	0.53
Public Education Campaign/Ozone Season Fare Reduction .....	0.08	0.15

<sup>1</sup> Memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation,

dated October 24, 1997, entitled "Guidance on Incorporating Voluntary Mobile Source Emission

Reduction Programs in State Implementation Plans (SIPs)."

VOLUNTARY MOBILE EMISSION REDUCTION PROGRAMS AND CREDITS CLAIMED—Continued

Program type	VOC benefits (tons per day)	NO <sub>x</sub> benefits (tons per day)
Tier II Locomotive Engines .....	0–0.6	0–3.0
Vehicle Retirement Program/Vehicle Maintenance* .....	0.56	0.77
Sustainable Development .....	.....	.....
Non-Road Ozone Season Reductions .....	.....	.....
Off-Road Heavy Duty Diesel Engine Retrofits .....	.....	.....
<b>Total Benefits (tpd) .....</b>	<b>1.11–1.71</b>	<b>1.63–4.63</b>

\*Emission benefits quantified for the Vehicle Retirement Program only. Emission benefits for Vehicle Maintenance are credited in the Vehicle Inspection and Maintenance Program.

The State commits to evaluating each program to validate estimated credits, to evaluating and reporting on the program implementation and results, and to timely remedy any credit shortfall. The State also commits to additional Transportation Control Measures (TCMs) that can be substituted for any shortfall in credit from the estimated credits for VMEP. These include Signal Improvements and Freeway Corridor Management.

EPA's analysis of all the VMEP measures shows that each creditable measure could be quantified. The reductions are surplus by not being substitutes for mandatory, required emission reductions. The SIP with voluntary measures is enforceable because the state has committed to fill any shortfall in credit, thus any enforcement will be against the State. The reductions will continue at least for as long as the time period in which they are used by a SIP demonstration, so they are considered permanent. Each measure is adequately supported by personnel and program resources for implementation. The State's goal is 5.0 tons per day of NO<sub>x</sub> benefit from the VMEP program.

**VI. What Comments Did EPA Receive in Response to the January 18, 2001, Proposed Rule?**

Comments were submitted by the Natural Resources Defense Council (NRDC).

*Comment:* The NRDC supports the objectives of the voluntary initiatives identified in the proposal. They hope that greater employment of these measures will promote greater public awareness of the area's severe air pollution problems and that these measures will bring about emissions reductions that will lead to healthy air.

*Response:* We appreciate the positive comments about the voluntary initiatives in the VMEP.

*Comment:* EPA's VMEP guidance document is not consistent with the Clean Air Act (CAA).

*Response:* In the final decision on October 28, 2003, by the United States Court of Appeals, Fifth Circuit, the Court said EPA's VMEP policy is a reasonable interpretation of the statute. [*See BCCA Appeal Group v. EPA*, 355 F.3 817 (5th Cir. 2003)]. EPA determined and the Court agreed, " \* \* \* that Texas had made the required commitments to monitor, assess, report, and remedy any credit shortfall from the VMEP measures in accordance with EPA guidance and that these commitments satisfied the enforceability requirements of the CAA." *Id.*, at 847. Therefore, the VMEP guidance, which is part of the VMEP policy is consistent with the CAA.

*Comment:* EPA's proposed approval of VMEP Measures for SIP credit is unlawful. The identified voluntary measures, or any voluntary measures do not provide the certainty, enforceability, quantifiability, replicability, permanency, and accountability required for SIP attainment demonstrations.

*Response:* EPA disagrees with the comment, and continues to believe that the voluntary measures proposed by Texas for inclusion in the SIP are approvable under the Act. EPA acknowledges that by themselves the measures would not be approvable, because as noted by the commenter they are not enforceable against the entities producing the emissions reductions and thus do not meet the enforceability requirement of section 110(a)(2)(A). However, EPA did not propose to approve the measures by themselves. EPA proposed to approve them only in conjunction with an enforceable commitment by the state of Texas to monitor implementation of the voluntary measures, determine whether the anticipated reductions from the measures were in fact achieved, and if not to either alter the program such that the requisite reductions will be achieved, adopt substitute measures, or demonstrate that the attainment and maintenance goals of the ozone SIP can

still be met without the reductions from these measures. Thus, EPA did not propose to approve voluntary measures as satisfying the enforceability requirements of section 110. Rather, EPA proposed to approve the voluntary programs into the SIP as part of the overall attainment plan, and proposed to approve the state's enforceable commitment to monitor, assess, and rectify any shortfall as meeting the enforceability requirements of the Act.

EPA continues to believe that this approach is a proper means of encouraging implementation of innovative mobile source control measures while providing an enforceable SIP backstop measure. Ideally, the voluntary measures will produce the estimated emissions reductions without need for any state backfill or Federal or citizen enforcement. However, should any shortfall result, Texas will be bound by the enforceable SIP commitment to rectify the problem and supply the necessary emissions reductions. Both EPA and private citizens retain all of their rights under sections 113 and 304 to bring appropriate enforcement pressure to bear against the state should Texas fail to monitor, assess or fill any shortfall in emissions reductions resulting from implementation of the voluntary measures in the SIP. Contrary to the commenter's allegations, the emissions reductions associated with the voluntary measures in the Dallas SIP are required to be achieved; it is however the state and not the individuals implementing the voluntary measures who must ultimately produce them.

*Comment:* The commenter raises numerous arguments concerning the unenforceability of the voluntary measures, which will be addressed below. However, the commenter makes no mention of the enforceable State commitment other than to refer to it as insufficient. This statement without further explanation does not give EPA any guidance on the alleged inadequacy

of the commitment nor how the commenter would have EPA improve upon it.

*Response:* EPA continues to maintain that the commitment is approvable as meeting the enforceability requirements of the Act. In the past, EPA has often approved enforceable state commitments to take future actions under the SIP, and these actions have been enforced by courts against states that have failed to comply with those commitments. *See, Trustees for Alaska v. Fink*, 17 F.3d 1209 (9th Cir. 1994); *Coalition Against Columbus Center v. City of New York*, 967 F.2d 764 (2d Cir. 1992); *Citizens for a Better Environment v. Deukmejian*, 731 F.Supp. 1448, reconsideration granted in part, 746 F.Supp. 976 (N.D. Cal. 1990); *American Lung Ass'n of New Jersey v. Keane*, 871 F.2d 319 (3d Cir. 1989); *NRDC v. New York State Department of Environmental Conservation*, 668 F.Supp. 848 (S.D.N.Y. 1987); *Council of Commuter Organizations v. Gorsuch*, 683 F.2d 648 (2d Cir. 1982) and *Friends of the Earth v. EPA*, 499 F.2d-1118 (2d Cir. 1974). EPA believes that the Texas commitments associated with the voluntary measures portion of the SIP are similarly enforceable and thus approvable.

*Comment:* The commenter alleges that the Act requires all control measures to be enforceable against individual polluters and not just against states.

*Response:* Many mobile source control measures are enforceable only against the state or local transit operator, and not the individual entities actually producing the emissions reductions, e.g., state obligations to establish vehicle inspection and maintenance programs or to purchase buses or expand transit systems. The Clean Air Act does not require Federal enforcement capability against individual vehicle owners or transit users prior to approval of such programs into the SIP.<sup>2</sup>

*Comment:* The commenter alleges that the public cannot adequately monitor implementation of the voluntary measures nor determine whether the emissions reductions are achieved.

*Response:* Texas is required by its enforceable commitment to do just that, and will make such assessments available to the public in the normal course of administrative practice. The

VMEP measures adopted by the state covering the Dallas-Fort Worth nonattainment area are available to the public on the agency's Web site. Citizens may check on the measures enacted by the TCEQ at the following link: <http://www.tnrcc.state.tx.us/oprd/sips/sipdfw.html>.

Paper copies are also available upon request by contacting Ms. Kelly Keel of the Air Quality Planning and Implementation Division at the TCEQ's Chief Engineer's Office. Ms Keel may be reached at 512-239-3607 or [kkeel@tceq.state.tx.us](mailto:kkeel@tceq.state.tx.us).

Because VMEP measures are local initiatives, citizens may check on the implementation of each measure by contacting the region's transportation planners, the North Central Texas Council of Governments (NCTCOG). VMEP measures are proposed and implemented by local sponsors.

*Comment:* The commenter also claims that the state itself has raised concerns about the emissions reductions that will be achieved from these measures.

*Response:* Such concerns may be valid, but notwithstanding Texas has made a commitment to fill any shortfall in emissions, which both EPA and citizens can enforce under the Act. The State relies on reports from the NCTCOG regarding implementation of each VMEP measure. The TCEQ has received no reports from the NCTCOG regarding problems with implementing the VMEP measures enacted in the SIP. Therefore, the State does not believe there is a gap that needs to be backfilled with other emission reduction measures.

*Comment:* The commenter makes various arguments about the unacceptability of the voluntary measures program stemming from the stationary source permitting program under Title V of the Act.

*Response:* Title V is totally irrelevant to these mobile source programs. The voluntary measures program Texas has included in the Dallas SIP applies only to mobile sources that are not subject to regulation under the Title V stationary source permitting program.

*Comment:* The commenter also argues that EPA can not alter its past interpretations without completing notice-and-comment rulemaking.

*Response:* EPA believes that this action is consistent with its past interpretations that enforceable state commitments to take future action are approvable SIP measures. For example, see EPA actions approving California plans at 62 FR 1150 (January 8, 1997) and 65 FR 18903 (April 10, 2000), and the Houston Attainment Demonstration at 66 FR 57160 (November 14, 2001). In

addition, this action is consistent with the guidance cited in section IV of this document that EPA issued in 1997 indicating its belief that voluntary programs could be approved in conjunction with enforceable state commitments to fill any resultant shortfall. The individual SIP approval actions implementing the VMEP guidance constitute the notice-and-comment rulemaking required to effectuate action under the guidance. Thus, this SIP rulemaking satisfies both CAA and APA rulemaking requirements with respect to final interpretations of the Act consistent with the guidance.

*Comment:* The commenter alleges that EPA may not alter interpretations of the Administrator through SIP rulemaking signed by the Regional Administrator.

*Response:* The Administrator has properly delegated the authority for SIP rulemakings to the Regional Administrators under Delegation 7-10 dated May 6, 1997, and section 301(a)(1) of the Act. Thus, the Regional Administrators are authorized to act for the Administrator with respect to all matters pertaining to SIP approvals, including interpretations of the Act relevant to a given SIP approval. Additionally, as we stated in the previous response, this action is consistent with EPA's past interpretations that enforceable state commitments to take future action are approvable SIP measures. Compliance with voluntary programs is ensured through the enforceable state commitments to fill any resultant shortfall.

*Comment:* The commenter questions the 3% limit on voluntary measures, arguing that this limit itself implicitly acknowledges that such measures are not approvable.

*Response:* EPA did not impose the 3% limit because it believed the measures to be suspect, but rather, as noted in the VMEP guidance, based this decision on the innovative nature of the measures and the agency's lack of experience both with implementation and calculating appropriate credit for such measures. Therefore, EPA created the 3% limit as a policy matter, indicating in the guidance that it did not think it would be appropriate to approve a greater percentage while the agency begins to implement the program. EPA further indicated that it would reassess the limit after several years of experience with the program. Since all VMEP measures would be approved only with enforceable state commitments to fill any resultant shortfall, EPA felt confident that including voluntary programs up to 3% of required emissions reductions in SIPs would not jeopardize attainment

<sup>2</sup> The Act does require that enhanced I/M programs include state enforcement through denial of vehicle registration without proof of compliance with inspection requirements. However, the enforceable SIP requirement is to develop a program that includes registration denial, and any enforcement would be against the state for failing to deny registration. The Act does not contemplate enforcement actions against individual vehicle owners attempting to register their vehicles.

and maintenance goals during initial implementation under the policy. Further, EPA did not indicate that 3% of required emissions reductions could be considered *de minimis*, as the commenter implies. EPA agrees with the commenter that it should not conclude in advance that any given percentage of emissions reduction could be considered *per se de minimis* for all areas and types of SIPs. Any conclusion about the *de minimis* nature of required emission reductions should be made in light of the specific circumstances of the areas and CAA requirements at issue. Therefore, all of the commenter's arguments relating to the availability of a *de minimis* exemption and the need for notice-and-comment rulemaking to effectuate it are not relevant to EPA's approval of the voluntary measures in the Dallas SIP.

*Comment:* NRDC claims the record is insufficient to support our credit claims.

*Response:* EPA reviewed the documentation for each measure of the VMEP. We found that for each measure the documentation was acceptable to demonstrate that the criteria for approval were met. For each measure the State was able to show that the measure plus the State commitment was quantifiable, surplus, enforceable, permanent, and adequately supported. In addition this SIP contained a firm commitment to cover any shortfall by supplementing additional TCMs that are in addition to those already credited to the SIP.

*Comment:* In its conclusion the commenter refers in passing to delays that may result from identifying and rectifying emissions shortfalls.

*Response:* EPA acknowledges that reductions will be somewhat delayed where states must first monitor and assess implementation and subsequently implement corrections. For this reason EPA indicated in the VMEP guidance that states should fill any shortfalls in a timely fashion. EPA issued a companion voluntary measures policy for stationary sources.<sup>3</sup> In that policy EPA indicated that where voluntary measures were included in attainment or rate of progress SIPs, any shortfalls would have to be filled prior to the relevant attainment or progress milestone date. EPA believes this is an appropriate interpretation of the requirement to fill shortfalls in a timely fashion under the VMEP policy. Similarly, the same process is described

in the recently issued umbrella policy for use of voluntary measures in SIPs.<sup>4</sup>

#### VII. EPA's Final Rulemaking Action

The DFW VMEP meets the criteria for credit in the SIP. The State has shown that the credits are quantifiable, surplus, enforceable, permanent, adequately supported, and consistent with the SIP and the Act. We are granting final approval of the VMEP into the DFW SIP.

#### VIII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 action 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 approves 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 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 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 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 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 25, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

<sup>3</sup>Memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, dated January 19, 2001, entitled "Stationary Source Voluntary Measures Final Policy."

<sup>4</sup>"Incorporating Voluntary Measures in a State Implementation Plan," September 2004.

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 12, 2005.  
**Richard E. Greene,**  
*Regional Administrator, Region 6.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart SS—Texas**

■ 2. In § 52.2270, the table in paragraph (e) entitled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding one new entry to the end of the table to read as follows:

**§ 52.2270 Identification of plan.**

\* \* \* \* \*  
 (e) \* \* \*

**EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Voluntary Mobile Emission Program.	Dallas/Fort Worth, TX .....	4/25/00	8/26/05, [Insert FR page number where document begins].	

[FR Doc. 05–17030 Filed 8–25–05; 8:45 am]  
**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[R10–OAR–2005–WA–0005; FRL–7959–6]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Wallula, WA, Area**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is taking final action to approve a PM<sub>10</sub> State Implementation Plan (SIP) maintenance plan revision for the Wallula, Washington nonattainment area and to redesignate the area from nonattainment to attainment. PM<sub>10</sub> air pollution is suspended particulate matter with a nominal diameter less than or equal to a nominal ten micrometers. We are approving the maintenance plan revision and redesignation request because the State has adequately demonstrated that the control measures being implemented in the Wallula area will result in maintenance of the PM<sub>10</sub> National Ambient Air Quality Standards and that all other requirements of the Clean Air Act for redesignation to attainment have been met.

**DATES:** Effective September 26, 2005.

**ADDRESSES:** Copies of the State’s request and other supporting information used in developing this action are available for inspection during normal business

hours at the following locations: EPA, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

**FOR FURTHER INFORMATION CONTACT:** Donna Deneen, Office of Air, Waste, and Toxics (AWT–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553–6706.

**SUPPLEMENTARY INFORMATION:**

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- II. What Comments Did We Receive on the Proposed Action?
- III. What Is Our Final Action?
- IV. Statutory and Executive Order Reviews

**I. What Is the Background of This Rulemaking?**

On July 1, 2005, we proposed to approve a State Implementation Plan (SIP) maintenance plan revision and redesignation request, dated March 29, 2005, from the Director of the Washington State Department of Ecology (Ecology) for the Wallula PM–10 nonattainment area. 70 FR 38073. We proposed our approval based on the State’s demonstration that the control measures being implemented in the Wallula area would result in maintenance of the PM<sub>10</sub> National Ambient Air Quality Standards and that all other Clean Air Act requirements for redesignation to attainment have been met. See the proposed action for a full description of how the maintenance

plan and redesignation request meet Clean Air Act requirements.

**II. What Comments Did We Receive on the Proposed Action?**

EPA provided a 30-day review and comment period on the proposal published in the **Federal Register** on July 1, 2005 (70 FR 38073). We received no comments on our proposed rulemaking.

**III. What Is Our Final Action?**

We are taking final action to approve the Wallula PM<sub>10</sub> maintenance plan and redesignate the Wallula nonattainment area to attainment for PM<sub>10</sub>.

**IV. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 action 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 approves 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