

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: June 13, 2006.

**Andrew M. Gaydosh,**

*Acting Regional Administrator, Region 8.*

[FR Doc. E6-11345 Filed 7-18-06; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R09-OAR-2006-0583; FRL-8199-6]

#### Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of California; PM-10; Determination of Attainment for the San Joaquin Valley Nonattainment Area; Determination Regarding Applicability of Certain Clean Air Act Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the San Joaquin Valley nonattainment area (SJV) in California has attained 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). This proposed determination is based upon monitored air quality data for the PM-10 NAAQS during the years 2003-2005. The SJV continues to attain the PM-10 NAAQS in 2006; no exceedances of the 24 hour NAAQS have been recorded at any of the SJV monitoring sites from January 1, 2006 through March 31, 2006. EPA is also proposing to determine that, because the SJV has attained the PM-10 NAAQS, certain Clean Air Act (CAA or the Act) requirements are not applicable for as long as the SJV continues to attain the PM-10 NAAQS.

**DATES:** Written comments must be received on or before August 18, 2006.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2006-0583, by one of the following methods:

(1) Federal eRulemaking portal: <http://www.regulations.gov>. Follow the on-line instructions.

(2) E-mail: [lo.doris@epa.gov](mailto:lo.doris@epa.gov).

(3) Mail or deliver: Doris Lo (AIR-2), U.S. Environmental Protection Agency

Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](http://www.regulations.gov) is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

**FOR FURTHER INFORMATION CONTACT:** Doris Lo, EPA Region IX, (415) 972-3959, [lo.doris@epa.gov](mailto:lo.doris@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever “we,” “us,” or “our” are used, we mean EPA.

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#### I. Background

##### A. The NAAQS for PM-10

Particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (PM-10) is the subject of this action. The NAAQS are

limits for certain ambient air pollutants set by EPA to protect public health and welfare. PM-10 is among the ambient air pollutants for which EPA has established a health-based standard.

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. The 24-hour primary PM-10 standard is 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) with no more than one expected exceedance per year. The annual primary PM-10 standard is 50  $\mu\text{g}/\text{m}^3$  as an annual arithmetic mean. The secondary PM-10 standards, promulgated to protect against adverse welfare effects, are identical to the primary standards. See 40 CFR 50.6.

##### B. Designation, Classification and Air Quality Planning for PM-10 in the SJV

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the PM-10 NAAQS. On the date of enactment of the 1990 Clean Air Act Amendments, PM-10 areas, including the SJV, meeting the qualifications of section 107(d)(4)(B) of the amended Act, were designated nonattainment by operation of law. See 56 FR 11101 (March 15, 1991). EPA codified the boundaries of the SJV at 40 CFR 81.305.<sup>1</sup>

Once an area is designated nonattainment for PM-10, section 188 of the CAA outlines the process for classifying the area and establishes the area’s initial attainment deadline. In accordance with section 188(a), at the time of designation, all PM-10 nonattainment areas, including the SJV, were initially classified as moderate nonattainment. On December 24, 1991, California submitted a moderate area PM-10 Plan for the SJV which demonstrated that the area could not attain the PM-10 NAAQS by the moderate area attainment date, December 31, 1994.

Section 188(b)(1) of the Act provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot “practicably” attain the PM-10 NAAQS by that deadline. On January 8, 1993 (58 FR 3337), EPA made such a determination and reclassified the SJV as serious.

On August 19, 2003, the State of California submitted the “2003 PM-10

<sup>1</sup> The San Joaquin Valley PM-10 nonattainment area includes the following counties in California’s central valley: Fresno, western portion of Kern, Kings, Tulare, San Joaquin, Stanislaus, Madera and Merced.

Plan, San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller” and submitted Amendments to that plan on December 30, 2003 (collectively, 2003 PM-10 Plan). The State submitted the 2003 PM-10 Plan to address, among other CAA requirements, those of section 189(d) following EPA’s determination that the SJV failed to meet its serious area attainment deadline of December 31, 2001. See 67 FR 48039 (July 23, 2002). On May 26, 2006, EPA approved the 2003 PM-10 Plan except for the section 172(c)(9) contingency measure requirement. The approved elements include emissions inventories as meeting the requirements of 172(c)(3), a demonstration of best available control measures for all significant source categories as meeting the requirements of section 189(b)(1)(B), a demonstration of attainment by December 31, 2010 as meeting the requirements of sections 179(d)(3) and 189(d), and a demonstration of reasonable further progress as meeting the requirements of sections 172(c)(2) and 189(c)(1). A more detailed discussion of the history of air quality planning and the contents of the approved plan can be found in EPA’s proposed and final actions at 69 FR 5412 (February 4, 2004) and 69 FR 30006.

### C. Attainment Determinations

On May 8, 2006, the State requested that EPA find that the SJV has attained the PM-10 standards based on the area’s air quality for 2003–2005. See letter from Catherine Witherspoon, California Air Resources Board (CARB), to Wayne Natri, EPA Region 9, May 8, 2006

(Witherspoon Letter). Generally, we will determine whether an area’s air quality meets the PM-10 NAAQS for purposes of sections 179(c)(1) and 188(b)(2) based upon data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) in the nonattainment area and entered into the EPA’s Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to AQS. Heads of monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in AQS when determining the attainment status of areas. See 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendix A. We will also consider air quality data from other air monitoring stations in the nonattainment area even if they have not been entered into the AQS if the stations meet the federal monitoring requirements for SLAMS. See August 22, 1997 Memorandum “Agency Policy on the Use of Special Purpose Monitoring Data,” from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Directors (Seitz Memo). All data are reviewed to determine the area’s air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

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  $\mu\text{g}/\text{m}^3$ . 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  $\mu\text{g}/\text{m}^3$ . The 24-hour standard is attained when the expected number of days per year with levels above 150  $\mu\text{g}/\text{m}^3$  (averaged over a three-year period) is less than or equal to one. Three consecutive years of air quality data are necessary to show attainment of the 24-hour and annual standards for PM-10. See 40 CFR part 50, appendix K. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, includes all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

### II. Proposed Attainment Determination for the SJV

The SJV has 15 SLAMS sites operated by the San Joaquin Valley Unified Air Pollution Control District (District or SJVUAPCD) and CARB. These monitoring stations are located throughout the SJV.<sup>2</sup> The District and CARB measure ambient (24-hour-average) PM-10 concentrations in the SJV at a frequency of once every six days, except at the Corcoran SLAMS site which operates on a one in three day schedule.<sup>3</sup>

Table 1 summarizes the PM-10 data collected in the SJV from 2003–2005 and reported by CARB to the AQS database. As shown in Table 1, no exceedances of the 24-hour PM-10 NAAQS of 150  $\mu\text{g}/\text{m}^3$  were measured in SJV during the 2003–2005 period and the annual-average PM-10 concentrations measured during that period were below the corresponding standard of 50  $\mu\text{g}/\text{m}^3$ .

TABLE 1.—SAN JOAQUIN VALLEY SLAMS NETWORK PM-10 DATA 2003–2005

Monitoring site	24 hour average		3 year annual arithmetic average ( $\mu\text{g}/\text{m}^3$ )
	Maximum ( $\mu\text{g}/\text{m}^3$ )	Expected number of exceedances	
Bakersfield—California Ave .....	110	0	44
Bakersfield—Golden State Hwy .....	136	0	46
Clovis .....	87	0	34
Corcoran* .....	150	0	44
Fresno—Drummond .....	102	0	41
Fresno First St. ....	106	0	33
Hanford .....	140	0	43
Merced .....	74	0	29
Modesto .....	93	0	29
Oildale .....	107	0	42
Stockton—Hazelton .....	88	0	29
Stockton—Wagner/Holt .....	68	0	22
Taft .....	96	0	31

<sup>2</sup> EPA evaluated the adequacy of the SJV monitoring network in connection with its approval of the 2003 PM-10 Plan. See 69 FR at 30032–30033 and “Evaluation of the Adequacy of the Monitoring Network for the San Joaquin Valley, California for the Annual and 24-Hour PM-10 Standards,” Bob Pallarino, EPA Region 9, September 22, 2003.

<sup>3</sup> Most PM-10 monitoring sites utilize a manual sampler, designated as a Federal Reference Method (FRM), operated on a once every six day schedule. These samplers draw ambient air through a quartz fiber filter which is weighed before and after sampling in order to determine the mass of PM-10 that is collected after the 24-hour run period. At

Corcoran two manual FRM samplers are operated on a staggered once every six day schedule that enables the District to collect a 24-hour PM-10 sample every three days.

TABLE 1.—SAN JOAQUIN VALLEY SLAMS NETWORK PM-10 DATA 2003-2005—Continued

Monitoring site	24 hour average		3 year annual arithmetic average (µg/m <sup>3</sup> )
	Maximum (µg/m <sup>3</sup> )	Expected number of exceedances	
Turlock .....	87	0	30
Visalia .....	122	0	43

Source: U.S. EPA AQS Database.

\* The Federal Reference Monitor at Corcoran did record an exceedance of the 24 hour PM-10 NAAQS on September 3, 2004 (217 µg/m<sup>3</sup>). This exceedance was flagged by CARB as a high wind natural event. EPA concurred with CARB's request to exclude this data from consideration in attainment findings on July 7, 2005.

See May 30, 1996 Memorandum "Areas Affected by PM-10 Natural Events," from Mary D. Nichols, Assistant Administrator for Air and Radiation, to the Regional Air Directors. Moreover, even if EPA had not concurred with the exclusion of this data, the Corcoran site would still attain the 24-hour NAAQS because the expected number of exceedances is less than or equal to one per year, averaged over the three year period 2003-2005.

As noted above, the 24-hour PM-10 standard is attained when the expected number of days per year with levels above 150 µg/m<sup>3</sup> (averaged over a three-year period) is less than or equal to one. As can be seen from Table 1, there were no exceedances of the 24-hour PM-10 NAAQS for the 2003-2005 period and thus the expected number of days per year with levels above 150 µg/m<sup>3</sup> (averaged over that three-year period) is zero. Thus we propose to find that the SJV has attained the 24-hour PM-10 NAAQS. Also as noted above, 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 µg/m<sup>3</sup>. Our review of the data for calendar years 2003-2005 reveals that none of the 15 SLAMS sites averaged greater than 50 µg/m<sup>3</sup>. Thus we propose to find that the SJV has attained the annual PM-10 NAAQS. The SJV continues to attain the PM-10 NAAQS based on data collected through March 31, 2006.<sup>4</sup>

EPA is aware that the District operates a beta attenuation mass (BAM) special purpose monitor at the Corcoran monitoring site to support the District's daily air quality forecasts. This BAM monitor has recorded a sufficient number of PM-10 concentrations above 150 µg/m<sup>3</sup> during the years 2003-2005 to prevent EPA from making a finding of attainment if the data were suitable for use in an attainment determination. However, in the Seitz Memo, EPA stated that "[t]he Agency policy on the use of all special purpose monitoring data for any regulatory purpose, with the exception of fine particulate matter data (PM-2.5), is all quality-assured and valid data meeting 40 CFR 58 requirements must be considered within the regulatory process." Seitz Memo, p.1. With respect to the Corcoran BAM

monitor, EPA has determined that the District did not perform quality control checks of the sampler every two weeks (see 40 CFR part 58, appendix A, section 3.1.2). Nor did CARB perform independent field audits of the BAM sampler as described in 40 CFR part 58, appendix A, section 3.2.2. See pp. 5-6 of attachment ("Supporting Information for the San Joaquin Valley PM-10 Attainment Determination Request") to letter from Seyed Sadredin, SJVUAPCD, to Catherine Witherspoon, CARB, April 24, 2006, attached to Witherspoon Letter. Therefore the BAM data are not valid for use in a determination of whether the SJV has attained the PM-10 standards and, as a result, we have not considered them.

**III. Applicability of Clean Air Act Planning Requirements**

The air quality planning requirements for PM-10 nonattainment areas are set out in subparts 1 and 4 of title I of the Act. EPA has issued a General Preamble<sup>5</sup> and Addendum to the General Preamble<sup>6</sup> describing our preliminary views on how the Agency intends to review state implementation plans (SIPs) submitted to meet the CAA's requirements for PM-10 plans. These documents provide detailed discussions of our interpretation of the title I requirements.

In nonattainment areas where monitored data demonstrate that the NAAQS have already been achieved, EPA has determined that certain requirements of part D, subparts 1 and 2 of the Act do not apply. Therefore we do not require certain submissions for

an area that has attained the NAAQS. These include reasonable further progress (RFP) requirements, attainment demonstrations, RACM, and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS.

This interpretation of the CAA is known as the Clean Data Policy and is the subject of two EPA memoranda. EPA also finalized the statutory interpretation set forth in the policy in a final rule, 40 CFR 51.918, as part of its "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2" (Phase 2 Final Rule). See discussion in the preamble to the rule at 70 FR 71612, 71645-46 (November 29, 2005).

EPA believes that the legal bases set forth in detail in our Phase 2 Final rule, our May 10, 1995 memorandum from John S. Seitz, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," and our December 14, 2004 memorandum from Stephen D. Page entitled "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards" are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM-10. Our interpretation that an area that is attaining the standards is relieved of obligations to demonstrate RFP and to provide an attainment demonstration, RACM and contingency measures pursuant to part D of the CAA, pertains whether the standard is PM-10, ozone or PM-2.5.<sup>7</sup> For detailed discussions of this interpretation with respect to the CAA's PM-10 requirements for RFP,

<sup>4</sup> If EPA makes a final determination of attainment, the Agency will consider the most current data available at that time.

<sup>5</sup> "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992), as supplemented at 57 FR 18070 (April 28, 1992).

<sup>6</sup> "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994).

<sup>7</sup> Three U.S. Circuit Courts of Appeals have upheld EPA rulemakings applying its interpretation of subparts 1 and 2 with respect to ozone. *Sierra Club v. EPA*, 99F.3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, N. 04-73032 (9th Cir. June 28, 2005) (memorandum opinion).

attainment demonstrations, RACM and contingency measures, see 71 FR 6352, 6354 (February 8, 2006); 71 FR 13021, 13024 (March 14, 2006); and 71 FR 27440, 27443–27444 (May 11, 2006). We are relying on these discussions here. We also discuss our interpretation with respect to contingency measures below.

As set forth in Section I of this proposed rule, we have previously approved all of the serious area PM–10 attainment plan requirements for the SJV except for the contingency measure requirements of CAA section 172(c)(9). Section 172(c)(9) requires that part D nonattainment area plans “provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.”

EPA has determined that these contingency measure requirements of CAA section 172(c)(9) no longer apply when an area has attained the standard because those “contingency measures are directed at ensuring RFP and attainment by the applicable date.” (57 FR at 13564); May 10, 1995 memorandum at 5–6. As explained at length in the memoranda and rulemakings cited above, the requirements for RFP and attainment demonstrations no longer apply once an area has attained the standard, since their purpose—to achieve attainment by the applicable attainment date—will already have been fulfilled. Thus it follows that the requirement for contingency measures is also suspended for as long as the area attains the standard. Consequently, we propose that any final finding that the SJV has attained the PM–10 NAAQS would also suspend the contingency measure requirements for the SJV.

Consistent with our Clean Data Policy, we propose that this suspension exist only for as long as the area continues to monitor attainment of the standards. If the SJV experiences a violation of the PM–10 NAAQS in the future, the basis for the contingency measure requirement being suspended would no longer exist. In that event, we would notify the State that we have determined that the area is no longer attaining the PM–10 standards and provide notice to the public in the **Federal Register**.

#### IV. EPA’s Proposed Action

Based on quality-assured data meeting the requirements of 40 CFR part 50, appendix K, we propose to determine that the SJV has attained the PM–10 NAAQS. This proposed action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3), because we would not yet have approved a maintenance plan as required under section 175(A) of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 would remain serious nonattainment for this area until such time as California meets the CAA requirements for redesignation of the SJV to attainment.

Consistent with the Agency’s Clean Data Policy, EPA also proposes to find that the contingency measure requirements of CAA section 172(c)(9) would no longer apply to the San Joaquin Valley PM–10 nonattainment area.

#### V. 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 action merely proposes a determination based on air quality data and does not impose any additional requirements. 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 proposed rule does not impose any additional enforceable duty, 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 97249, November 9, 2000). This proposed 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 makes a determination based on air quality data and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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.

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, Particulate matter, Reporting and recordkeeping requirements.

##### 40 CFR Part 81

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

Dated: July 6, 2006.

**Jane Diamond,**

*Acting Regional Administrator, Region 9.*

[FR Doc. E6–11450 Filed 7–18–06; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket No. FEMA–B–7463]

#### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities