

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R09-OAR-2010-0172; FRL-9153-3]

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

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing its determination that the Coso Junction nonattainment area (CJNA) has attained the 24-hour National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). This determination is based upon quality-assured and certified air quality monitoring data for the PM-10 NAAQS from 2006–2008. In addition, reported data in EPA's Air Quality System (AQS) show that the CJNA continued to attain the PM-10 NAAQS through 2009 and preliminary data available to date for 2010 show that the CJNA continues to attain. Also, EPA is finalizing its determination that, because the CJNA has attained the PM-10 NAAQS, the State's obligation to make submissions to meet certain Clean Air Act (CAA or the Act) requirements is not applicable for as long as the CJNA continues to attain the PM-10 NAAQS.

**DATES:** *Effective Date:* This rule is effective on June 18, 2010.

**ADDRESSES:** You may inspect the supporting information for this action, identified by docket number EPA-R09-OAR-2010-0172, by one of the following methods:

- Federal eRulemaking portal, <http://www.regulations.gov>, please follow the on-line instructions; or,
- Visit our regional office at, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Docket:* The index to the docket for this action is available electronically at <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., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

**FOR FURTHER INFORMATION CONTACT:** Jerry Wamsley, EPA Region IX, (415) 947–4111, [Wamsley.Jerry@epa.gov](mailto:Wamsley.Jerry@epa.gov).

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

#### Table of Contents

- I. Summary of Proposed Actions
- II. Public Comments and EPA Responses
- III. Additional Preliminary Air Quality Data Since Proposed Rule
- IV. EPA's Final Action
- V. Statutory and Executive Order Reviews

#### I. Summary of Proposed Actions

On March 23, 2010, EPA proposed to determine that the CJNA has attained the 24-hour NAAQS for PM-10 (75 FR 13710). Our proposed determination was based on complete, quality-assured and certified data gathered at established state and local air monitoring stations (SLAMS) in the nonattainment area and entered into the EPA AQS database for the period 2006–2008. In addition, EPA found that quality-assured AQS data showed that the CJNA continued to attain through 2009 and that preliminary data then available for 2010 showed no exceedances of the 24-hour PM-10 NAAQS. *Id.*

EPA also proposed, under its Clean Data Policy, to determine that the obligation to submit certain CAA requirements was not applicable for as long as the CJNA continued to attain the PM-10 NAAQS. Specifically, we proposed that the State's obligation to submit the following CAA requirements would be suspended if EPA finalized its rulemaking: The part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the reasonably available control measure (RACM) provisions of 189(a)(1)(C), the reasonable further progress (RFP) provisions established by section 189(c)(1), and the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act.

For a more detailed discussion of our proposed action, including background topics, such as development of the PM-10 NAAQS, the designation, classification and air quality planning history for the CJNA; our Clean Data Policy; and our general requirements for

making attainment determinations, please refer to our proposed rule.

#### II. Public Comments and EPA Responses

EPA provided for a 30-day public comment period on our proposed action. This period ended on April 22, 2010. We received no comments.

#### III. Additional Preliminary Air Quality Data Since Proposed Rule

Subsequent to our proposal, and after the close of the comment period, the Great Basin Unified Air Pollution Control District (GBUAPCD) informed EPA that preliminary data showed two exceedances of the 24-hour PM-10 standard were recorded at the CJNA monitor in March 2010, one on March 9, 2010 (222 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ )) and another on March 18, 2010 (157  $\mu\text{g}/\text{m}^3$ ). See May 4, 2010 e-mail from Duane Ono, Deputy Air Pollution Control Officer, GBUAPCD, to Doris Lo, Environmental Protection Specialist, EPA, with [CosoJunction2010\\_MetAndTEOM.xlsx](#) attachment. The preliminary air quality data for the first quarter of 2010 (January through March), which contain these exceedances, have not been verified through the GBUAPCD's data validation process, nor have they been entered into EPA's AQS database. The GBUAPCD is still in the process of reviewing the first quarter data which does not have to be submitted into the AQS database until June 30, 2010. See 52 FR 24634 and 40 CFR 58.16(b).

The preliminary 24-hour concentrations for March 9 and 18, if confirmed after quality assurance and control procedures are completed, would exceed the 24-hour PM-10 standard of 154  $\mu\text{g}/\text{m}^3$ . 40 CFR 50.6.<sup>1</sup> The District has also indicated that it may flag the March 9, 2010 exceedance for possible exclusion from consideration in a determination of attainment.

The determination of whether an area has attained the PM-10 standard is based on the most recent three consecutive calendar years of quality-assured data. As discussed above and in our proposed rule, the CJNA has attained the PM-10 standard based on complete, quality-assured and certified data for the three-year period 2006–2008

<sup>1</sup> An exceedance is defined as a daily value that is above the level of the 24-hour standard (150  $\mu\text{g}/\text{m}^3$ ) after rounding to the nearest 10  $\mu\text{g}/\text{m}^3$  (i.e., values ending in 5 or greater are to be rounded up). Thus, a recorded value of 154  $\mu\text{g}/\text{m}^3$  would not be an exceedance since it would be rounded down to 150  $\mu\text{g}/\text{m}^3$  whereas a recorded value of 155  $\mu\text{g}/\text{m}^3$  would be an exceedance since it would be rounded up to 160  $\mu\text{g}/\text{m}^3$ . See 40 CFR part 50, appendix K, section 1.0.

and data in AQS for the period 2007–2009. 75 FR 13710, 13712. These quality-assured data show that the CJNA monitor has an expected number of exceedances of less than or equal to one per year, averaged over the three-year period.

Because 2010 has not ended, EPA cannot determine whether the area has attained the standard based on the three-year period from 2008 through 2010. We can, however, determine with less than three years of data whether the CJNA has failed to attain in the period from 2008 to date. See 40 CFR part 50, appendix K, section 2.3(c).<sup>2</sup>

In 2008 there were no exceedances of the PM–10 NAAQS and in 2009 there was one exceedance on December 22, 2009. 75 FR 13710. If we include the preliminary data showing two additional exceedances in March 2010, the expected number of exceedances at the CJNA monitor during the period from 2008 through 2010 would be three. Thus, even with two additional exceedances in March 2010, the CJNA continues to attain the PM–10 NAAQS to date because the CJNA monitor has an expected number of exceedances of less than or equal to one per year, averaged over the three-year period from 2008 through 2010.<sup>3</sup>

While to date the CJNA continues to attain, EPA will continue to assess the attainment status of the CJNA as additional data are received, reviewed, and entered into the AQS database.

#### IV. EPA's Final Action

Based on a three-year period (2006–2008) of complete, quality-assured and certified data meeting the requirements of 40 CFR part 50, appendix K, EPA is finalizing its determination that the CJNA has attained the 24-hour PM–10 NAAQS. In addition, EPA's determination is based on reported data in EPA's AQS database for 2009 showing that the CJNA continued to attain the PM–10 NAAQS for the period 2007–2009, and available preliminary data to date for 2010 that are consistent with continued attainment.

<sup>2</sup> While it is necessary to have three years of representative monitoring data to demonstrate that a monitor is attaining the standard, 40 CFR part 50, appendix K, section 2.3(c) states that there are less stringent data requirements for showing that a monitor has failed to attain. Since the 24-hour PM–10 standard is violated once a monitor averages more than one expected exceedance per year (averaged over three years), a monitor with four or more observed or expected exceedances has violated the 24-hour NAAQS even if there are fewer than three years of data (four exceedances divided by three years is greater than one per year).

<sup>3</sup> The status of the preliminary exceedances may change after the data validation process is concluded and after any flagging issues are addressed.

This determination of attainment of the PM–10 NAAQS for the CJNA does not constitute a redesignation to attainment under CAA section 107(d)(3) because we have neither approved a maintenance plan as required under section 175(A) of the CAA, nor determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remains moderate nonattainment for the CJNA until such time as California meets the CAA requirements for redesignation of the CJNA to attainment.

EPA is also finalizing its determination that, because the CJNA is attaining the NAAQS, the obligation to submit the following CAA requirements is not applicable for so long as the area continues to attain the PM–10 standard: The part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of 189(a)(1)(C), the RFP provisions established by section 189(c)(1), and the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act. Subsequently, if we determine after notice and comment rulemaking in the **Federal Register** that the CJNA has violated the standard (prior to a redesignation to attainment), these requirements would once again become applicable.

#### V. Statutory and Executive Order Reviews

This final action makes a determination of attainment based on air quality and results in the suspension of certain Federal requirements, and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the final action does not apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects****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: May 13, 2010.

**Jared Blumenfeld,**

*Regional Administrator, Region 9.*

[FR Doc. 2010-12093 Filed 5-18-10; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 212, 222, and 252**

**RIN 0750-AG70**

**Defense Federal Acquisition Regulation Supplement; Restrictions on the Use of Mandatory Arbitration Agreements (DFARS Case 2010-D004)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD is issuing an interim rule to implement section 8116 of the DoD Appropriations Act for Fiscal Year 2010. Section 8116 restricts the use of mandatory arbitration agreements when using funds appropriated or otherwise made available by this DoD Appropriations Act to award contracts that exceed \$1 million. It allows the Secretary of Defense to waive applicability to a particular contractor or subcontractor, if determined necessary to avoid harm to national security.

**DATES:** *Effective date:* May 19, 2010.

*Comment date:* Comments on this interim rule should be submitted in writing to the address shown below on or before July 19, 2010, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2010-D004, using any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2010-D004 in the subject line of the message.

*Fax:* 703-602-0350.

*Mail:* Defense Acquisition Regulations System, Attn: Mr. Julian E. Thrash, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Julian E. Thrash, 703-602-0310.

**SUPPLEMENTARY INFORMATION:****A. Background**

Section 8116 of the DoD Appropriations Act for Fiscal Year 2010 (FY 10) (Pub. L. 111-118) prohibits the use of funds appropriated or otherwise made available by the FY 10 DoD Appropriations Act for any contract (including task or delivery orders and bilateral modifications adding new work) in excess of \$1 million, if the contractor restricts its employees to arbitration for claims under title VII of the Civil Rights Act of 1964, or tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention, hereinafter the "covered areas."

This rule does not apply to the acquisition of commercial items, including commercially available off-the-shelf items. After June 17, 2010, section 8116(b) requires the contractor to certify compliance by subcontractors.

Additionally, enforcement of this rule does not affect the enforcement of other aspects of an agreement that is not related to the covered areas.

This rule allows the Secretary of Defense to waive applicability to a particular contract or subcontract, if determined necessary to avoid harm to national security.

The following examples are provided to help determine applicability:

- A new order that exceeds \$1 million using funds appropriated or otherwise made available by the FY 10 DoD Appropriations Act, placed against an indefinite-delivery/indefinite-quantity contract for an applicable item or service, is covered by this restriction, regardless of whether the basic indefinite-delivery/indefinite-quantity contract was covered.

- A funding modification adding more than \$1 million of funds appropriated or otherwise made available by the FY 10 DoD Appropriations Act to a contract that does not contain the clause at 252.222-7006 or 252.222-7999 (Deviation), is not covered.

- A bilateral modification adding new work that uses funds appropriated or otherwise made available by the FY 10 DoD Appropriations Act in excess of \$1 million is covered.

- The award of a new order using funds appropriated or otherwise made available by the FY 10 DoD Appropriations Act with a value of \$700,000 is not covered, since the value is under \$1 million.

- A contract valued at \$1.5 million awarded today, and only \$10,000 in funds appropriated or otherwise made available by the FY 10 DoD Appropriations Act will be obligated, with the remaining balance being FY 11 funding, is not covered, because the total value of funds appropriated or otherwise made available by the FY 10 DoD Appropriations Act is less than \$1 million.

- An entity or firm that does not have a contract in excess of \$1 million appropriated or otherwise made available by the FY 10 DoD Appropriations Act is not affected by the clause. The term "contractor" is narrowly applied only to the entity that has the contract. Unless a parent or subsidiary corporation is a party to the contract, it is not affected.

Contracting officers will modify existing contracts, on a bilateral basis, if using funds appropriated or otherwise made available by the FY 10 DoD Appropriations Act, when such funds will be used for bilateral modifications adding new work or orders that exceed \$1 million and are issued after the effective date of this interim rule. In the event that a contractor refuses to accept such a modification, the contractor will not be eligible for receipt of funds appropriated or otherwise made available by the FY 10 DoD Appropriations Act on such modifications or orders.

This is a significant regulatory action and, therefore, was subject to review under section (6)b of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule.

**B. Regulatory Flexibility Act**

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of this rule is to implement section 8116 of the DoD Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118). The clause at 252.222-7006, Restrictions on the Use of Mandatory Arbitration Agreements, prohibits the use of funds appropriated