Issued in Fort Worth, Texas, on June 9, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

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BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ092–002; FRL–6718–9]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the Annual PM–10 Standard; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the comment period for its proposed action to approve provisions of the Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County (Phoenix) Nonattainment Area, February 2000, and the control measures on which it relies, that address the annual PM–10 national ambient air quality standard. As part of this proposal, we also proposed to grant Arizona's request to extend the Clean Air Act deadline for attaining the annual PM–10 standard in the Phoenix area from 2001 to 2006 and to approve two particulate matter rules adopted by the Maricopa County Environmental Services Department and Maricopa County's Residential Woodburning Restrictions Ordinance.

DATES: Any comments on this proposal must arrive by July 3, 2000.

ADDRESSES: Mail comments to Frances Wicher, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Air Planning Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1248.

SUPPLEMENTARY INFORMATION: On April 13, 2000, we proposed to approve the serious area air quality plan for attainment of the annual PM–10 standard in the Phoenix, Arizona, metropolitan area. The proposed actions are based on our initial determination that this plan complies with the Clean Air Act's requirements for attainment of the annual PM–10 standard in serious PM–10 nonattainment areas.

Specifically, we proposed to approve the following elements of the plan as they apply to the annual PM–10 standard:

- The base year emissions inventory of PM–10 sources,
- The demonstration that the plan provides for implementation of reasonably available control measures (RACM) and best available control measures (BACM),
- The demonstration that attainment of the PM–10 annual standard by the Clean Air Act deadline of December 31, 2001 is impracticable,
- The demonstration that attainment of the PM–10 annual standard will occur by the most expeditious alternative date practicable, in this case, December 31, 2006,
- The demonstration that the plan provides for reasonable further progress and quantitative milestones,
- The demonstration that the plan includes to our satisfaction the most stringent measures found in the implementation plan of another state or are achieved in practice in another state, and can feasibly be implemented in the area,
- The demonstration that major sources of PM–10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations of the annual PM–10 standard, and
- The transportation conformity budget.

We also proposed to grant Arizona's request to extend the attainment date for the annual PM–10 standard from December 31, 2001 to December 31, 2006.

Finally, we are proposing to approve Maricopa County's fugitive dust rules, Rules 310 and 301.01, and its residential woodburning restriction ordinance.

The proposal action provided a 60 day public comment period that ended on June 12, 2000. In response to a request from City of Tempe, Arizona, we are reopening the comment period for an additional 14 days.

Dated: June 10, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–15394 Filed 6–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–019–FOI, FRL–6719–2]

Clean Air Act Reclassification and Finding of Failure to Implement a State Implementation Plan; California, San Joaquin Valley Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to find that the San Joaquin Valley serious ozone nonattainment area did not attain the 1-hour ozone national ambient air quality standard by November 15, 1999, the Clean Air Act's (CAA) attainment deadline for serious ozone nonattainment areas. If EPA makes final this proposed finding, the San Joaquin Valley nonattainment area will be reclassified by operation of law to severe.

EPA also proposes to find that the approved serious area ozone State Implementation Plan for the San Joaquin Valley nonattainment area has not been fully implemented. If EPA makes final this proposed nonimplementation finding, the San Joaquin Valley Unified Air Pollution Control District will have to correct the specified deficiencies within 18 months of the final finding or be subject to sanctions pursuant to section 179(b) of the CAA.

DATES: Comments on these proposed actions must be received by July 19, 2000.

ADDRESSES: Comments may be mailed to: John Ungvarsky, Planning Office (AIR–2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; ungvarsky.john@epa.gov.

Copies of the proposed rule, the technical support document for this rulemaking, and EPA policies governing nonattainment and nonimplementation findings are contained in the docket for this rulemaking. The docket is available for inspection during normal business hours at the address listed above. A copy of this proposed rule and the TSD are also available in the air programs section of EPA Region 9's website, *http://www.epa.gov/region09.*

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Planning Office (AIR–2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1286.

SUPPLEMENTARY INFORMATION:

I. The Proposed Finding of Failure To Attain

A. The San Joaquin Valley's Current Status for the 1-Hour Ozone Standard

The San Joaquin Valley ozone nonattainment area includes the southern portion of California's central valley and the eastern part of Kern County that is located in the Southeast Desert Air Basin. The local air pollution control agency for the Valley portion of the nonattainment area is the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and for eastern Kern, the Kern County Air Pollution Control District (KCAPCD). The area is currently classified as serious for the 1-hour ozone national ambient air quality standard (NAAQS). 40 CFR § 81.305.

When the Clean Air Act (CAA) Amendments were enacted in 1990, each area of the Country that was designated nonattainment for the 1-hour ozone standard, including the San Joaquin Valley, was classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' or ''extreme'' depending on the severity of the area's air quality problem. CAA sections 107(d)(1)(C) and 181(a). Based on its air quality during the 1987–1989 period, the San Joaquin Valley nonattainment area was initially classified as serious with an attainment date of no later than November 15, 1999. See 56 FR 56694 (November 6, 1991) and CAA section 181(a)(1).

B. Clean Air Act Requirements for Attainment Findings

Under CAA section 181(b)(2)(A), we must determine within six months of the applicable attainment date whether an ozone nonattainment area has attained the 1-hour ozone standard. If we find that a serious area has not attained the standard and does not qualify for an extension, it is reclassified by operation of law to severe.[1] CAA section 181(b)(2)(A) requires us to base our determination of attainment or failure to attain on the area's design value as of its applicable attainment date, which for the San Joaquin Valley nonattainment area is November 15, 1999.

The 1-hour ozone NAAQS is 0.12 ppm not to be exceeded on average more than one day per year over any three year period. 40 CFR § 50.9 and Appendix H. Under our policies, we determine if an area has attained the one-hour standard by calculating, at each monitor, the average number of days over the standard per year during the preceding three year period.[2] 40 CFR part 50, Appendix H. This means that if an area has four or more exceedances at a single monitor during a 3-year period, the average number of exceedance days per year exceeds one and the area has not attained the standard. For this proposal, we have based our determination of whether the San Joaquin Valley nonattainment area attained the 1-hour ozone standard by November 15, 1999 on both the area's design value and the average number of exceedance days per year during the 1997 to 1999 period.

The effect of a reclassification to severe on the San Joaquin Valley nonattainment area is to set a new attainment deadline for the area of November 15, 2005 and to require the State to submit a new attainment plan that meets the CAA's requirements for severe ozone nonattainment areas. CAA sections 181(a) and 182(i). Under section 182(i), we may set the submittal deadlines for these new planning requirements.

C. The San Joaquin Valley Nonattainment Area Failed to Attain by its CAA Deadline

Table 1 lists each monitoring site in the San Joaquin Valley nonattainment area that experienced 4 or more days over the standard in the period 1997 to 1999. For each of these monitors, the table lists the number of days over the standard, average number of days per year over the standard, and the design value during the 1997 to 1999 period. For each of these sites, the average number of exceedance days per year over the 3-year period 1997–1999 exceeds one. The area's design value, which is the highest design value among the area's monitors, is 0.161 at the Clovis monitor. Because the average number of exceedance days per year for 1997–99 exceeds one and the area's design value is above the 1-hour ozone standard of 0.12 ppm, we are proposing the find that the San Joaquin Valley serious ozone nonattainment area failed to attain by its applicable CAA deadline of November 15, 1999.

TABLE 1.—OZONE AIR QUALITY IN THE SAN JOAQUIN VALLEY NONATTAINMENT AREA (1997–1999)

Monitoring site	Number of days over the standard 1997–1999	Average number of exceedance days per year	Site design value (ppm)
Fresno—4706 E. Drummond	12	4.0	0.137
Fresno—3425 N. First	20	6.7	0.146
Fresno—Sierra Skypark#2	15	5.0	0.141
Parlier	36	12.0	0.145
Clovis	40	13.3	0.161
Edison	27	8.3	0.154
Maricopa (97–98 only)	8	4	0.137
Arvin	28	6.3	0.137
Hanford	7	2.3	0.128
Turlock	4	1.3	0.127
Visalia	8	2.7	0.127
Merced	5	1.7	0.132

[1] If a state does not have the clean data necessary to show attainment of the 1-hour standard but does have clean air in the year immediately preceding the attainment date and has fully implemented its applicable SIP, it may apply to us, under CAA section 181(a)(5), for a one-year extension of the attainment date. We do not discuss this provision further in today's proposal because California did not apply for an extension of the attainment date for the San Joaquin Valley nonattainment area, the area did not have the requisite clean air data, and, as we propose to find, the State has not implemented its applicable SIP.

[2] See generally 57 FR 13506 (April 16, 1992) and *Memorandum* from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; ''Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas,'' February 3, 1994. While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same Clean Air Act requirements in section 181(b)(2).

TABLE 1.—OZONE AIR QUALITY IN THE SAN JOAQUIN VALLEY NONATTAINMENT AREA (1997–1999)—Continued

Monitoring site	Number of days over the standard 1997–1999	Average number of exceedance days per year	Site design value (ppm)
Edwards [3]	6	2.0	0.139

D. Failure To Attain Triggers Reclassification to Severe Nonattainment and Required Submittal of a Severe Area Plan

Under section 181(a)(1) of the Act, the attainment deadline for serious ozone nonattainment areas reclassified to severe under section 181(b)(2) is as expeditiously as practicable but no later than November 15, 2005. Under section 182(i), such areas are required to submit SIP revisions addressing the severe area requirements for the 1-hour ozone NAAQS. These requirements are found in CAA section 182(d). Section 182(i) further provides that we may adjust the CAA deadlines for submitting these severe area SIP requirements.

Pursuant to section 182(i), we intend to require submittal of the severe area SIP revisions no later than 18 months from the effective date of the area's reclassification. We believe that an 18-month schedule is appropriate because of the complexities of developing a revised attainment and rate of progress plan for the area and then preparing a new, severe area plan. Furthermore, it allows the San Joaquin Valley to incorporate into the federally-required severe area plan elements of the California Clean Air Act-mandated revisions to its state plan that are due in December 2000.[4]

Under section 182(d), severe area plans are required to meet all the requirements for serious area plans plus the requirements for severe areas, including, but not limited to: (1) a 25 ton per year major stationary source threshold; (2) additional reasonably available control technology (RACT) rules for sources subject to the new lower major source applicability cutoff; (3) a new source review (NSR) offset requirement of at least 1.3 to 1; (4) a rate of progress in emission reductions of ozone precursors of at least 3 percent per year from 2000 until the attainment year; and (5) a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) [5] should the area fail to attain by 2005.[6] We have issued a ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' that sets forth our preliminary views on these section 182 requirements and how we will act on SIPs submitted under Title I. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

The San Joaquin Valley's severe area plan must also contain adopted regulations, and/or enforceable commitments to adopt and implement control measures in regulatory form by specified dates, sufficient to make the required rate of progress and to attain the 1-hour ozone NAAQS as expeditiously as practicable but no later than November 15, 2005. It is the responsibility of the California Air Resources Board (CARB) and the air districts to determine the appropriate mix of measures. Nevertheless, for the SJVUAPCD, we strongly suggest that consideration be given to including in the revised plan measures for source categories where CARB has identified the current San Joaquin Valley requirements as not meeting the State's ''all feasible measures'' criteria. These source categories are: Restaurants, Chain Driven Charbroilers; Stationary IC Engines; Bakery Ovens; Fugitive Emissions of VOC from Oil and Gas Production and Processing Facilities; Refineries; Chemical Plants and Pipeline Transfer Stations; Refinery Boilers (also Small Industrial, Institutional and Commercial Boilers, Steam Generators and Process Heaters); Adhesives and Sealants; Automotive Refinishing; Pleasure Craft Coating Operations; Stationary Gas Turbines; and Polymeric Foam Product Manufacturing.[7]

The new attainment demonstration should be based on the best information available. Currently, there is a comprehensive ozone study being undertaken in the Central Valley, called the Central California Ozone Study (CCOS). While we realize that the results from CCOS may not be completed in time to develop a new air quality model for use in the severe area plan, the State should, to the extent possible, use available new data from CCOS to improve the performance of the existing model.

Two of the new severe area SIP requirements, the 25 ton per year (tpy) major source cutoff for VOC and NO_X and the NSR offset ratio of 1.3:1, will require revisions to existing SJVUAPCD and KCAQMD regulations. We discuss the timeframes for these revisions below.

1. San Joaquin Valley Unified APCD

We propose that San Joaquin Valley Rule 2201, which implements the federal NSR program, must be revised within 180 days of the final date of the reclassification to ensure that the District's definitions of ''Major Source'' and ''Distance Offset Ratio'' reflect the new severe area requirements.[8] We

[3] The Edwards monitor is a special purpose monitor (SPM) operated by the Air Force on Edwards Air Force Base in eastern Kern County. Under applicable Agency policy, we make attainment determinations for ozone nonattainment areas using all available, quality-assured air quality data including any available quality-assured data from SPM sites that meet the requirements of 40 CFR § 58.13. See *Memorandum* John Seitz, Director, OAQPS, to Regional Air Directors; ''Agency Policy on the Use of Ozone Special Purpose Monitoring Data,'' August 22, 1997. We have evaluated the Edwards site and its quality assurance information and have determined that its data are valid for this attainment determination and therefore should be used in making the finding of nonanttainment.

[4] Under the California Clean Air Act, air districts must submit a progress report and plan revision to the State every three years. The deadline for the next triennial update is December 2000. (See California Health & Safety Code Sections 40924(b) and 40925(a).)

[5] Ozone is not emitted directly into the air, but is formed through the photochemical reaction of NO_X and VOCs.

[6] Section 182(d)(3) sets a deadline of December 31, 2000 to submit the plan revision requiring fees for major sources should the area fail to attain. This date can be adjusted pursuant to CAA section 182(i). We propose to adjust this date to coincide with the submittal deadline for the rest of the severe area plan requirements.

[7] The CCAA requires that California air districts develop attainment plans that achieve a five percent per year reduction in each nonattainment pollutant (or its precursors) or that rely on the implementation of all feasible measures to reach attainment (California Health & Safety Code Section 40914). CARB continually evaluates State air plans against the all feasible measures criteria. CARB's most recent evaluation of the San Joaquin Valley's compliance with the all feasible measures provision of the CCAA was released in the October 8, 1999 staff report entitled ''Public hearing to Consider Approval of the San Joaquin Valley Unified Air Pollution Control District's Triennial Progress Report and Plan Revision 1995–1997 Under the California Clean Air Act.''

[8] Section 182(i) of the CAA allows EPA to adjust any applicable deadlines ''* * * to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.''

propose to set the deadline to complete and submit such rule revisions at 180 days because it is consistent with the 6 month time frame we gave Sacramento to revise its NSR rule following a reclassification to severe [9] and with the time frame provided for similar changes in the Title V operating permits arena (40 CFR part 70.4(i)). See below. If SJVUAPCD fails to submit NSR rule revisions that address the new severe area requirements within the 180-day deadline, we will start a sanctions clock pursuant to CAA section 179(a)(1) for failure to submit a required SIP revision.

San Joaquin Valley Rule 2520, which implements the federal Title V operating permits program, must also be revised within 180 days of the final date of the reclassification to ensure that the District's definition of ''major source'' (and hence, Title V applicability) reflects the lower VOC and NO_X threshold (40 CFR part 70.4(i)). Since the District's definition of ''Major Source'' in Rule 2520 references the District's NSR definition of ''New and Modified Stationary Source,'' the necessary revision could be accomplished simply by modifying NSR Rule 2201. If the required revision is not made within 180 days, then the San Joaquin Valley will be subject to the sanctions provisions outlined in 40 CFR sections 70.10(a)(1)(i) and (ii).

The lowering of the major source threshold from 50 tpy to 25 tpy will make sources previously considered nonmajor to become major, thereby subjecting them to Title V. These newly major sources must submit Title V permit applications within one year of the date that the SJVUAPCD makes the required revision to Rule 2520. The District then has 18 months from receipt of a complete application to take final action on each permit application (40 CFR part 70.7(a)(2)). We recognize that the new lower threshold of 25 tpy is expected to result in an almost doubling of Title V sources in the San Joaquin Valley. We will work with the District in meeting the 18-month permit issuance deadline and will evaluate their progress at that time.

2. Kern County APCD

We propose that Kern County Rule 210.1, which implements the federal NSR program, must be revised within 180 days of the final date of the reclassification to ensure that the District's definition of ''Major Source'' reflects the new severe area requirements. We propose to set the deadline to complete and submit such rule revisions at 180 days because it is consistent with the 6 month time frame we gave Sacramento to revise its NSR rule following a reclassification to severe and with the time frame provided for similar changes in the Title V operating permits arena (40 CFR part 70.4(i)). (See below.) If KCAPCD fails to submit NSR rule revisions that address the new severe area requirements within the 180-day deadline, we will start a sanctions clock pursuant to CAA section 179(a)(1) for failure to submit a required SIP revision.[10]

Kern County Rule 201.1, which implements the federal Title V operating permits program, must also be revised within 180 days of the final date of the reclassification to ensure that the District's definition of ''major source'' (and hence, Title V applicability) reflects the lower VOC and NO_X threshold (40 CFR part 70.4(i)). If the required revision is not made within 180 days, then KCAPCD will be subject to the sanctions provisions outlined in 40 CFR sections 70.10(a)(1)(i) and (ii).

The lowering of the major source threshold from 50 tpy to 25 tpy will make sources previously considered nonmajor become major, thereby subjecting them to Title V. These newly major sources must submit Title V permit applications within one year of the date that KCAPCD makes the required revision to Rule 210.1. The District then has 18 months from receipt of a complete application to take final action on each permit application (40 CFR part 70.7(a)(2)). We recognize that the new lower threshold of 25 tpy will likely increase the number of Title V sources in eastern Kern County. We will work with the District in meeting the 18-month permit issuance deadline and will evaluate its progress at that time.

E. Transportation Conformity Implications of Reclassification

The ozone reclassification would not immediately affect the transportation conformity budgets in the San Joaquin Valley. The existing approved VOC and NOx serious attainment budgets limit emissions of ozone precursors for the attainment year 1999. Currently, since no future year ozone budgets have been developed, these budgets apply to all future years. However, once new severe area budgets are submitted and have been determined adequate, those severe budgets would set emission caps for any milestone years (2002), the new attainment year (2005), and all years beyond the attainment year. The serious budgets would only apply for the year 1999 and all subsequent years until the new milestone or attainment budget dates.

Establishing new severe budgets in the San Joaquin Valley is particularly challenging because there are eight separate transportation agencies within the nonattainment boundary. The severe area SIP should clearly identify and precisely quantify conformity budgets for any milestone years (2002), the attainment year (2005), and, if desired, future years. To be adequate, the severe attainment demonstration must also contain emissions and air dispersion modeling that show motor vehicle emissions at the budget levels will achieve the required rate of progress milestones and timely attainment (taking into consideration all emission sources and growth). The modeling should be done for all years that establish conformity budgets. The data (vehicle miles traveled [VMT]) for the modeling and the budgets should be established in consultation with appropriate local, state and federal agencies to assure that the latest estimates of growth are incorporated into the SIP.

The attainment demonstration may establish emissions budgets for subareas within the region only if the modeling in the SIP demonstrates that, when all subarea budgets are considered, the area will still result in attainment of the standard. Establishment of subarea budgets, however, must be fully supported in the SIP documentation since development of the subarea budgets would allow individual subareas (*e.g.,* counties) to complete separate conformity determinations. In addition, the subarea budgets would limit growth of emissions in each individual area—there would be no allowance for shifting of growth from one subarea to another subarea within the nonattainment area.

II. The Proposed Nonimplementation Finding

A. San Joaquin Valley Serious Area Ozone Nonattainment Plan

The CAA required California to submit a serious area ozone SIP for the San Joaquin Valley that demonstrated a minimum rate of progress towards attainment and attainment of the 1-hour ozone NAAQS as expeditiously as practicable but no later than November 15, 1999. CAA sections 181(a) and 182(c). The deadline for the submittal of this SIP was November 15, 1994. CAA section 182(c)(2).

[9] Letter from David P. Howekamp, Director of the Air & Toxics Division, EPA Region IX, to James Boyd, Executive Officer, CARB, dated June 8, 1995.

[10] Kern County Rule 210.1 already requires an offset ratio of 1:1.3, so the District does not have to revise the rule to meet this CAA requirement for severe areas.

On November 15, 1994, the California Air Resources Board (CARB) submitted ''The 1994 California State Implementation Plan for Ozone,'' a comprehensive ozone plan for the State of California that included a local nonattainment plan developed for the San Joaquin Valley by the SJVUAPCD (1994 San Joaquin Valley plan).

B. EPA's Approval of the San Joaquin Valley Serious Area Ozone Plan

In order to be approved, the 1994 San Joaquin Valley plan had to meet the requirements for serious ozone nonattainment areas in CAA section 182(c). We reviewed the 1994 San Joaquin Valley plan against these requirements and approved it as part of the California Ozone SIP on January 8, 1997. Among other things, the plan demonstrated that, through a combination of State and local control measures, the San Joaquin Valley would attain the 1-hour ozone standard by November 15, 1999. For a detailed discussion of our approval, please refer to the proposed and final rulemakings published in the **Federal Register** on March 18, 1996 (61 FR 10920) and January 8, 1997 (62 FR 1150).

C. CAA Requirements for Plan Implementation and NAAQS Attainment

Following our approval of a nonattainment plan, the plan must be implemented to assure that the necessary progress toward and attainment of the relevant air quality standard by the applicable deadline. CAA section 179(a)(4).

Under CAA section 179(a)(4), we have the discretionary authority to make a finding of nonimplementation if we determine that a state has failed to implement any requirement of an approved plan or approved part of a plan. If we make a final finding of nonimplementation after public notice and comment, the State must correct the failure to implement within 18 months or sanctions will be applied to the area pursuant to CAA sections 179(a) and (b).

D. Proposed Finding of Failure To Implement the 1994 San Joaquin Valley Plan

In its most basic sense, plan implementation means that the control (and other) measures relied on for attainment are being adopted, are in effect, and are achieving their specified emissions reductions. Plan implementation can also apply to any other requirement in a plan such as a requirement for a reasonable further progress demonstration. When a requirement in a plan has a future date associated with it, there can be no failure to implement that requirement until the date associated with it has passed.

The 1994 San Joaquin Valley plan identifies 20 local stationary and area source control measures or control measure revisions and several transportation control measures that together were projected to achieve a 31.9 ton per day (tpd) reduction in volatile organic compounds (VOCs) and a 37.2 tpd reduction in nitrogen oxides (NO_X).[11] These measures were to be adopted by the SJVUAPCD. We are proposing to find that the SJVUAPCD has failed to implement the 1994 San Joaquin Valley plan because the deadlines in the plan for adopting and implementing six of the 20 measures (see list in Table 2) have passed and the measures have not been adopted or implemented. These six measures were projected to achieve a total of 8.09 tpd reductions in VOC emissions in 1999.[11]

TABLE 2.—IMPLEMENTATION DEFICIENCIES IN THE 1994 SAN JOAQUIN VALLEY PLAN

Control measure title	Date when rule was required to be adopted	Date when rule was required to be implemented	Projected emissions reductions
Rule 4601 Architectural Coatings	1Q/96	1Q/98	1.51 tpd VOC.
Rule 4662 Organic Solvent Degreasing	1Q/96	1Q/98	2.44 tpd VOC.
Rule 4692 Commercial Charbroiling	2Q/96	2Q/98	0.39 tpd VOC.
Rule 4623 Organic Liquid Storage	3Q/95	3Q/98*	3.0 tpd VOC.
Rule 4411 Oil Production Well Cellars	2Q/96	2Q/98	0.56 tpd VOC.
Rule 4663 Organic Solvent Waste	2Q/96	2Q/98	0.19 tpd VOC.

The SIP indicated that implementation of this Rule could extend beyond 1999.

If we make final this proposed nonimplementation finding, SJVUAPCD must correct the implementation deficiencies in order to stop sanction clocks triggered by the finding under CAA section 179(a). In order to correct the implementation deficiencies and stop the sanction clocks, SJVUAPCD must adopt as rules and implement the measures listed in Table 2 in a manner that will achieve in total the 8.09 tpd of emissions reductions specified in the SIP for them. SJVUAPCD must adopt these rules as expeditiously as practicable. Additionally, it must also provide for the implementation of the rules as expeditiously as practicable but implementation should be no later than November 15, 2002, the first rate of progress milestone.

E. Sanction Clocks for the Failure To Implement

Under CAA section 179(a)(4), if we make a finding that a requirement of an approved plan is not being implemented, then the deficiency identified in the finding must be corrected within 18 months or sanctions will be applied. There are two types of sanctions: (1) Highway sanctions (CAA section 179(b)(1)) and (2) offset sanctions (CAA section 179(b)(2)).

Under these sanction provisions, if SJVUAPCD has not adopted the measures listed in Table 2 with implementation deadlines of on or before November 15, 2002 within 18 months of the effective date of a final finding, the 2 to 1 offset sanction in CAA section 179(b) will apply to that portion of the San Joaquin Valley nonattainment area under the jurisdiction of the SJVUAPCD.[12] This sanction requires a company that is constructing a new or modifying an existing facility over a certain size to reduce emissions in the area by 2 tons of VOCs or NO_x for every new ton of

[11] See Table 4–1 in ''The Ozone Attainment Demonstration Plan,'' SJVAPCD, adopted November 14, 1994.

[12] As noted before, the SJV nonattainment area also includes eastern Kern County which is under the separate jurisdiction of the Kern County APCD. Because we are proposing no sanctionable findings applicable to the area under the jurisdiction of the KCAPCD, any sanctions that go into effect in the rest of the SJV nonattainment area because of this proposed nonimplementation finding will not apply to eastern Kern County. We note that a finding of failure to attain pursuant to CAA section 181(b)(1)(A) is not sanctionable under the Act.

VOC or NOx the new/modified facility will emit.

If the SJVUAPCD still has not corrected the deficiencies six months after the offset sanction is imposed, then the highway approval and funding sanction will apply in the San Joaquin Valley portion of nonattainment area. This sanction prohibits the U.S. Department of Transportation from approving or funding all but a few specific types of transportation projects.

The order of sanctions, offsets sanctions first then highway sanctions, is set in EPA's regulations at 40 CFR 52.31. If sanctions have been imposed, they will be lifted when we determine, after an opportunity for public comment, that the implementation deficiencies have been corrected.

III. Summary of EPA Proposals

We propose to find that the San Joaquin Valley ozone nonattainment area has failed to attain the federal 1-hour ozone standard by its CAA deadline of November 15, 1999. If we make final this finding, the San Joaquin Valley nonattainment area will be reclassified by operation of law to severe and California must submit to EPA, within 18 months of the effective date of the finding, a severe area nonattainment plan that provides for the attainment of the federal 1-hour ozone standard as expeditiously as practicable, but no later than November 15, 2005 and meets the requirements of CAA section 182(d).

We also propose to find that the SJVUAPCD has failed to fully implement the approved 1994 San Joaquin Valley ozone plan. If we make final this finding, in order to avoid CAA sanctions, SJVUAPCD must adopt within 18 months the six measures listed in Table 2 of this preamble and provide for their implementation as expeditiously as practicable but no later than November 15, 2002. These measures must be sufficient to achieve an 8.09 tpd reduction in VOC. If sanctions are imposed, they will be terminated once we find that all the deficiencies have been corrected.

IV. Administrative Requirements

A. Executive Order 12866 (E.O. 12866)

Under E.O. 12866, (58 FR 51735, October 4, 1993), EPA is required to determine whether today's proposal is a ''significant regulatory action'' within the meaning of the E.O., and therefore should be subject to OMB review, economic analysis, and the requirements of the E.O. See E.O. 12866, sec. 6(a)(3). The E.O. defines, in sec. 3(f), a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may meet at least 1 of 4 criteria identified in section 3(f), including, (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that neither the finding of failure to attain, nor the finding of nonimplementation, would result in any of the effects identified in E.O. 12866 sec. 3(f). As discussed above, findings of failure to attain under section 181(b)(2) of the Act are based upon air quality considerations, and reclassifications must occur by operation of law in light of certain air quality conditions. These findings do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. Similarly, the finding of failure to implement the SIP merely ensures the implementation of already existing requirements by creating the potential for the imposition of sanctions and therefore does not adversely affect entities.

B. Executive Order 13132

Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, ''Federalism,'' and 12875, ''Enhancing the Intergovernmental Partnership.'' Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

These proposed findings will not have substantial direct effects on California, on the relationship between the national government and California, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

EPA is proposing two actions: a finding that the San Joaquin Valley ozone nonattainment area has failed to attain the ozone NAAQS by the statutory deadline and a finding that the San Joaquin Valley ozone plan, adopted by the State and approved by EPA, has not been fully implemented. Findings of failure to attain under section 181(b)(2) of the Act are based upon air quality considerations, and reclassifications must occur by operation of law in light of certain air quality conditions. These findings do not, in and of themselves, impose any new requirements. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. A finding of nonimplementation has no direct effects on the State; there is simply a potential for the imposition of sanctions if the State does not adopt the rules to which it has committed under its own State plan. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997),

applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. These proposed findings are not subject to E.O. 13045 because they do not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's proposed findings do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rulemaking.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. These proposed findings will not have a significant impact on a substantial number of small entities for the reasons set forth in section VI.B. above. Therefore, because these proposed findings do not create any new requirements, I certify that they will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed findings do not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector for the reasons set forth in section IV.B. above. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from these actions.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

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

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

Dated: June 7, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–6718–8]

RIN 2050–AE53

Land Disposal Restrictions: Advance Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is giving advance notice of issues and potential directions we are considering for improving the Land Disposal Restrictions (LDR) program for treating hazardous waste under the Resource Conservation and Recovery Act (RCRA). These issues and directions arise from a number of internal and external sources, including the participants at two LDR roundtable meetings. We are requesting comments on all of these issues, directions, and options. In some cases we are requesting additional data that will allow us to better evaluate possible changes to the LDR regulations.

DATES: To make sure we consider your comments we must receive them by September 18, 2000.

ADDRESSES: If you wish to comment on this advanced notice of proposed rulemaking (ANPRM), you must send an original and two copies of the comments referencing Docket Number F–2000–LRRP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, or (2) if using special delivery, such as overnight express service. Hand deliveries of comments should be made to the Arlington, VA address listed below. You may also submit comments electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. You should