

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: September 27, 2001.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(144) to read as follows:

##### § 52.770 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(144) On August 20, 2001 and September 19, 2001, Indiana submitted a plan in response to Phase I of the NO<sub>x</sub> SIP Call. The plan includes Indiana's Phase I NO<sub>x</sub> Budget Demonstration and supporting documentation including initial unit allocations and two new rules: 326 IAC 10-3 and 326 IAC 10-4.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 10; Ozone rules, Rule 3: Nitrogen Oxide Reduction Program for Specific Source Categories (326 IAC 10-3). Adopted June 6, 2001. Submitted August 20, 2001 and September 19, 2001. State effective September 16, 2001.

(B) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 10; Ozone rules, Rule 4: Nitrogen Oxides Budget Trading Program (326 IAC 10-4). Adopted June 6, 2001. Submitted August 20, 2001 and September 19, 2001. State effective September 16, 2001.

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 81

[CA-059-RECL, FRL-7093-4]

#### Clean Air Act Reclassification, San Joaquin Valley Nonattainment Area; Designation of East Kern County Nonattainment Area and Extension of Attainment Date; California; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** EPA is taking final action to change the boundary for the San Joaquin Valley (SJV) serious ozone nonattainment area by separating out the eastern portion of Kern County into its own nonattainment area. EPA is extending the attainment deadline for the new East Kern County serious ozone nonattainment area from November 15, 1999 to November 15, 2001.

EPA is taking final action to find that the SJV area did not attain the 1-hour

ozone national ambient air quality standard (NAAQS) by the November 15, 1999 Clean Air Act (CAA) deadline. As a result, the SJV ozone nonattainment area with its revised boundaries is reclassified by operation of law as a severe area. The State must submit by May 31, 2002, a severe area ozone nonattainment plan for the SJV (now excluding the East Kern County ozone nonattainment area) that provides for the attainment of the ozone NAAQS as expeditiously as practicable, but no later than November 15, 2005. This plan must meet the specific provisions of CAA section 182(d).

EPA is taking final action to find that the approved serious area ozone State Implementation Plan (SIP) for the SJV has not been fully implemented. As a result of this finding, the State must adopt and implement the specified measures by November 15, 2002 or be subject to sanctions pursuant to sections 179(a) and (b) of the CAA. This finding and any potential sanctions do not apply to the newly established East Kern County ozone nonattainment area, where the SIP is being fully implemented.

**EFFECTIVE DATE:** December 10, 2001.

**ADDRESSES:** The rulemaking docket is available for inspection during normal business hours in the Air Docket, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. This rule and the Technical Support Documents for the proposed actions are also available in the air programs section of EPA Region 9's website, <http://www.epa.gov/region09/air>.

**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, or [ungvarsky.john@epa.gov](mailto:ungvarsky.john@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

On June 19, 2000, EPA proposed to find that the SJV serious ozone nonattainment area did not attain the 1-hour ozone NAAQS by November 15, 1999, the attainment deadline for serious ozone nonattainment areas under CAA section 181(a). 65 FR 37926. The current SJV nonattainment area includes the counties of San Joaquin, Kern, Fresno, Kings, Madera, Merced, Stanislaus and Tulare. 40 CFR 81.301. EPA also proposed to find that the SJV SIP had not been fully implemented, because the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) had failed to adopt and implement six measures by the deadlines in the SIP.

During the public comment period for the proposal, EPA received comments requesting that EPA remove the eastern portion of Kern County from the SJV ozone nonattainment area and designate it a separate ozone nonattainment area. On August 28, 2000, the California Air Resources Board (CARB) formally requested that EPA create a separate ozone nonattainment area for East Kern County and grant this area two 1-year attainment date extensions.

EPA found the State's request compelling and, on May 18, 2001, issued a reproposal to revise the SJV ozone nonattainment area by changing its boundaries to remove eastern Kern County.<sup>1</sup> 66 FR 27616. In order to reflect this proposed boundary change, EPA repropoed the Agency's finding that the remaining portion of SJV did not attain the ozone NAAQS by the statutory deadline and, accordingly, would be reclassified by operation of law as a severe ozone nonattainment area if EPA finalized the finding. EPA proposed that the East Kern County ozone nonattainment area would keep its serious classification because the area had not recorded more than one exceedance of the ozone NAAQS over the past two years and the East Kern County area otherwise qualified for two 1-year extensions of the November 15, 1999 attainment deadline pursuant to CAA section 181(a)(5). EPA therefore proposed that the attainment deadline for East Kern County ozone nonattainment area be extended to November 15, 2001.

## II. Response to Public Comments and Final Action

In this document, EPA is responding to comments submitted in response to the initial proposal (65 FR 37926) and the reproposal (66 FR 27616).

### A. Establishment of East Kern County as a Separate Ozone Nonattainment Area With a Serious Ozone Nonattainment Area Classification and an Extended Attainment Date

As discussed in the reproposal, the public comments submitted in response to the initial proposal supported removal of East Kern County from the SJV ozone nonattainment area and establishment of this new area as a serious ozone nonattainment area with an extended attainment deadline. No

<sup>1</sup> The new boundary line requested by the State is the same as the current boundary between the Kern County and San Joaquin Valley air districts and generally follows the ridge line of the Sierra Nevada and Tehachapi Mountain Ranges. The precise description of the new boundary appears at the end of this notice in the revision to 40 CFR part 81.

commenters on either the initial proposal or the reproposal opposed these actions. Therefore, for the reasons set forth in the reproposal (66 FR 27617–27620), EPA is today taking final action to grant the State's requests: (1) To split the SJV ozone nonattainment area into two separate ozone nonattainment areas pursuant to CAA section 107(d)(3)(D); (2) to retain for the new East Kern County ozone nonattainment area the serious nonattainment area ozone classification; and (3) to grant two 1-year attainment date extensions pursuant to CAA section 181(a)(5), thus establishing an attainment deadline of November 15, 2001.

### B. Finding of Failure To Attain for the San Joaquin Valley Ozone Nonattainment Area

EPA received no comments opposing the Agency's finding that the SJV ozone nonattainment area failed to attain the 1-hour ozone standard by the November 15, 1999 deadline. Accordingly, and for the reasons set forth in the proposals (65 FR 37927–37928 and 66 FR 27617), EPA is today issuing the final finding under CAA section 181(b)(2)(A).

### C. Attainment Deadline for the San Joaquin Valley Ozone Nonattainment Area

As a consequence of EPA's finding of failure to attain, the SJV ozone nonattainment area is reclassified by operation of law to severe. The CAA provides that severe ozone nonattainment areas must attain the ozone NAAQS as expeditiously as practicable, but no later than 15 years after enactment of the 1990 CAA Amendments, or November 15, 2005. CAA section 181(a)(2) also establishes a "severe 17" classification for areas with a 1988 ozone design value between 0.190 parts per million (ppm) and 0.280 ppm.<sup>2</sup> Areas meeting this criterion are required to attain the ozone NAAQS as expeditiously as practicable but no later than 17 years after enactment of the 1990 CAA Amendments (i.e., by November 15, 2007).

In the reproposal, EPA noted that the design value for the SJV ozone nonattainment area is 0.161 ppm. 66 FR 27617. Although this value is below the CAA criterion for the severe-17 classification, EPA referenced a State

<sup>2</sup> The 1-hour ozone NAAQS is 0.12 ppm. A monitor's design value is the fourth highest ambient concentration recorded at that monitor over the previous three-year period. An area's design value is the highest of the design values from the area's monitors. A design value is one indication of the severity of the ozone problem in an area. It is also used in determining the level of emission reductions needed to attain the standard.

suggestion that attainment by 2005 may not be possible for the SJV ozone nonattainment area, given the area's air quality problem. Accordingly, EPA solicited comment on the viability of the 2005 deadline, and on any legal, policy, and technical rationale for allowing a 2007 attainment deadline.

### 1. Comments Supporting a 2007 Attainment Deadline

State legislators, local governments, CARB, and SJVUAPCD provided the following arguments in support of a severe-17 classification.

(a) It is not feasible to attain by 2005 based on preliminary photochemical modeling which identifies the need for an additional 150 tons per day (tpd) of the two principal ozone precursors—volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>). This is a 30 percent reduction in ozone precursors beyond projected 2005 levels with all adopted controls. CARB observed that the only extreme ozone nonattainment area in the country, the South Coast (metropolitan Los Angeles) area, requires the same 150 tpd reduction of VOC emissions to attain but is allowed, by its CAA classification, until 2010 to achieve these reductions.

(b) SJV's design value is higher than the design value for all other areas in the country with a 2005 attainment deadline. In addition, the magnitude of the attainment task is reflected in the number of days over the standard. SJV has not only a higher design value but also a greater number of days over the standard compared to other areas with a 2007 deadline. Although the 1990 CAA Amendments based classifications solely on design value, it is relevant to consider the fact that SJV had at that time the third highest number of exceedance days in the country. SJV has already achieved larger emissions reductions than have any areas that are assigned a 2007 date, both in the percentage of emissions reduced and the actual tons of emissions reduced. SJV has achieved these reductions but has not been able to reduce its design value. This makes clear that SJV has one of the most severe ozone problems in the country, requiring additional time to achieve the NAAQS.

(c) Any new controls would have to be implemented by 2003, which is the first year that counts towards a 2005 attainment date. The SJV area already has in place stringent controls. More time is needed for technology advancements in order to implement the measures required to bring SJV into attainment. More time will also decrease the impact of new controls on businesses.

(d) Additional time is also critically needed to achieve mobile source fleet turnover to meet more stringent standards, and to secure and distribute incentive funding to support replacement of older vehicles. The problem is greater because State incentive money to retrofit engines is being diverted to buy emissions offsets for new electricity generators required to meet the energy crisis.

(e) New State and federal controls on heavy-duty trucks, low emission vehicles, and reformulation of diesel fuel will be much more effective in 2007 than in 2005 due to phase-in schedules, since many of these controls go into effect in 2004 and the penetration rate in the first two years is extremely low.

(f) A 2007 deadline meets the CAA requirement for attainment as expeditiously as practicable based on SJV's air quality, emission reduction, and control strategy issues.

(g) The SJV ozone nonattainment area is greatly impacted by pollution from the San Francisco Bay Area. Assuming that the Bay Area is granted a 2006 attainment date, the SJV's attainment date should be later.

(h) Emissions reductions from post-2003 federal Congestion Mitigation and Air Quality (CMAQ) transportation funding will be needed for attainment, and these funds cannot be secured until the Transportation Equity Act is reauthorized, which is expected in 2004.

(i) Smart Growth policies have the potential to reduce emissions but require more time for implementation than would be available assuming a 2005 attainment deadline.

(j) Sources under federal control are a significant fraction of the SJV emission inventory, especially interstate trucks, farm and construction equipment, and locomotives, and the problem is exacerbated by the fact that the sources are particularly active in the harvest (and smog) season. Given the scale of reductions needed for attainment, the federal government must reduce its share of the inventory. Like California, EPA will need to consider not just new standards but also retrofits and accelerated turnover of the existing fleet. As a regulatory partner, EPA would agree that a 2005 date does not allow sufficient time to accomplish these necessary reductions. The SJV attainment problem is compounded by the presence of two major transportation corridors (Interstate 5 and Freeway 99) and by EPA's failure to enforce adequately the existing national standard for heavy-duty engines and failure to act in a timely manner on the manufacturers' consent degree, resulting

in a significant increase in NO<sub>x</sub> emissions.

(k) EPA has sufficient authority and discretion under CAA sections 172 and 181 to set a 2007 deadline, based on the severity of nonattainment, and the availability and feasibility of control measures.

## 2. Comments Supporting a 2005 Attainment Deadline

The Center on Race, Poverty & the Environment (CRPE) and Earthjustice Legal Defense Fund submitted comments opposing the 2007 attainment deadline. These groups stated that EPA lacks the authority to grant an extension of the attainment deadline from 2005 to 2007. The 2005 deadline is explicit in the CAA and so EPA has no administrative discretion to grant an extension beyond that date. In addition to being patently illegal, granting the 2007 deadline would force the millions of Valley residents to breathe dangerous levels of smog at least two years longer than necessary. This 2007 extension would result in human suffering and medical costs far in excess of the temporarily-avoided compliance costs. Granting the SJVUAPCD additional time when it is not implementing its own inadequate plan would reward and perpetuate further inaction. In contrast to the SJVUAPCD, other agencies (such as the South Coast Air Quality Management District) have adopted stringent controls and are on a trajectory to attain the ozone NAAQS, so technical arguments for delaying full implementation of public health protections in the SJV should not be taken seriously.

## 3. EPA Response to Comments and Final Action

EPA agrees with many of the comments supporting the difficulty of developing a plan to demonstrate attainment of the NAAQS by the 2005 date. This deadline presents a remarkable challenge for an area with SJV's characteristics: meteorology and topography providing diverse conditions favorable to the formation of ozone; large numbers of small emissions sources already subject, in many cases, to stringent controls and, in other cases, capable of further control only through costly retrofit, rebuild, or replacement programs; substantial mobile source and process emissions sources associated with the area's dominant agricultural economy and therefore operating at peak levels during the ozone season; and large interstate transportation emissions from truck and rail operations that are not generally susceptible to control at local and state levels.

Equitable considerations suggest that a 2007 attainment deadline might be at least as appropriate for the SJV ozone nonattainment area as for other areas that were assigned severe-17 classifications in accordance with the provisions of 1990 CAA Amendments.

EPA has concluded, however, that the CAA does not provide the Agency authority to set a 2007 attainment deadline for the SJV ozone nonattainment area based on these considerations. When EPA finds that an ozone nonattainment area failed to attain the ozone standard by its attainment date pursuant to section 181(b)(2), that section provides that the area "shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—(i) the next higher classification for the area, or (ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B)." The phrase "in accordance with table 1" prevents EPA from providing a 2007 attainment date for the SJV in this action because, for the severe area class, table 1 establishes an attainment date of "15 years after enactment [*i.e.*, 2005]." CAA 181(a). The 2007 attainment deadline is set forth not in table 1 but in CAA section 181(a)(2), which states: "Notwithstanding table 1, in the case of a severe area with a 1988 ozone design value between 0.190 and 0.280 ppm, the attainment date shall be 17 years (in lieu of 15 years) after the date of enactment of the Clean Air Act Amendments of 1990." Thus, the 2007 attainment date is not provided for in Table 1, which is what Congress required EPA to act in accordance with when an area is reclassified pursuant to section 181(b). Consequently, EPA does not believe that it has the authority to provide the SJV with a 2007 attainment date in this action. However, under section 181(b)(3) of the Act, the State may request a reclassification and receive a 2010 attainment deadline in order to have the additional time the State believes is necessary to attain ozone NAAQS.

Although EPA cannot agree with the State and other commenters that the Agency has the discretion to grant the State's request for a 2007 attainment deadline, EPA does agree that attainment by 2005 requires emission reductions from all quarters, and EPA intends to work closely with the State and local agencies to explore opportunities for the federal government to contribute additional controls or other assistance to advance attainment in the SJV ozone nonattainment area.

*D. Deadline for Submittal of a Revised SIP Addressing the CAA Provisions for Severe Ozone Nonattainment Areas*

1. EPA's Proposal

EPA's initial proposed finding of failure to attain, proposed that the State be required to submit a severe area SIP revision no later than 18 months from the effective date of the area's reclassification. 65 FR 37928. However, EPA also proposed that the SJVUAPCD be required to submit a revised new source review (NSR) rule within 180 days of the final date of the reclassification, in order to ensure that the District's definitions of "Major Source" and "Distance Offset Ratio" reflect the severe area requirements. 65 FR 37928-37929.

EPA's reproposal noted that CAA section 182(i) authorizes EPA to adjust applicable deadlines as appropriate. EPA proposed a SIP submittal deadline of May 31, 2002, in order to ensure that control measures are put in place as quickly as possible and there is ample time for the measures to take effect before the attainment deadline. The reproposal stated that this deadline is reasonable given the advance notice provided by our initial proposal, issued on June 19, 2000, and the planning efforts already underway at State and local levels. 66 FR 27617.

2. Public Comments

No commenters on the initial proposal addressed the SIP submittal deadline issue. In response to the reproposal, EPA received four comments. The San Joaquin Valley Transportation Planning Agencies Director's Association (TPA) and Tulare County Association of Governments (TCAG) requested that the deadline be changed to August 31, 2002, in order to allow the revised SIP to incorporate updated transportation planning assumptions. TPA also noted that the reproposal's May 31, 2002 deadline is inconsistent with EPA's policy of allowing 18 months for SIP development. The Western States Petroleum Association (WSPA) requested a six-month extension of the SIP submittal deadline for the following reasons: The May 31, 2002 deadline would not allow enough time for the regulatory review process necessary for new District rules; WSPA has serious concerns about basing a control strategy on a single design-day ozone episode; the Central California Ozone Study (CCOS) is now available but has yet to be fully considered; the SIP needs to focus more on mobile source reduction strategies because previous significant stationary source reductions have not

resulted in a corresponding improvement in air quality. Earthjustice supported EPA's May 31, 2002 deadline, noting that this date affords ample time to prepare the revision since it is 30 months after the area's November 15, 1999 attainment deadline.

3. EPA Response to Comments and Final Action

EPA agrees with TPA and TCAG that the revised SIP should include updated transportation emissions and the latest planning assumptions. However, the commenters submitted no evidence demonstrating that these updates cannot be completed in time to be incorporated in a SIP submitted by May 31, 2002. EPA believes that the transportation plan and emissions updates can, in fact, be prepared on this schedule. EPA is also concerned that the SIP needs to be prepared no later than this date in order to provide a reasonable opportunity for the State, local agencies, and affected public to meet the SIP emission reduction milestone requirements for 2002 under CAA section 182(c)(2)(B).

Regarding the WSPA comments, neither the District nor the State commented that the May 31, 2002 deadline would present any of the problems suggested by WSPA. EPA announcements concerning the pending reclassification began in late 1999 and became official in June 2000. This has given the responsible agencies adequate time to plan their rulemaking calendars. EPA acknowledged in its June 2000 proposal that the results from CCOS may not be fully available to meet the SIP deadlines. The planning process is dynamic and new information will continue to be developed even after the CCOS information is available; the State always has the option of revising its SIP based on new information. Regarding mobile sources versus stationary sources, EPA relies on the state to develop a control strategy that takes into account the mix of sources affecting the area. EPA is therefore not extending the SIP deadline, both because neither the State nor the local air pollution control agencies requested the additional time, and because the six-month delay would further postpone reductions and planning efforts necessary for air quality improvements in the SJV.

Therefore, EPA is using the authority provided in the CAA to finalize May 31, 2002, as the SIP submittal deadline. By this date, the State must submit a plan addressing all of the severe area requirements.

As noted in the initial proposal, CAA 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. Pursuant to CAA section 182(i), EPA proposed to adjust this date to coincide with the submittal deadline for the rest of the severe area requirements. EPA is here finalizing that proposal and establishing May 31, 2002, as the deadline for submitting the emissions fee rule responsive to CAA sections 182(d)(3) and 185.

In the initial proposal, EPA proposed to require that the more stringent severe-area NSR rule, which includes a higher offset ratio and lower applicability level, must be submitted no later than 180 days from the effective date of the SJV area's reclassification to severe. Since this 180-day deadline would now approximate the May 31, 2002 deadline set for the comprehensive severe area plan, EPA is not finalizing the proposed 180-day deadline for the NSR rule revision. Instead, the State will be required to submit by May 31, 2002, a revised NSR rule meeting the severe area provisions of CAA section 182(d).

*E. Adoption and Implementation of Reasonably Available Control Technology (RACT) Rules*

EPA's initial proposal indicated that the revised severe ozone SIP for SJV needed to meet the RACT requirement for sources subject to the new lower major source applicability cutoff of 25 tons per year (tpy), pursuant to CAA section 182(d). As discussed above, the initial proposal set the deadline for submitting the severe ozone SIP as 18 months from the effective date of the reclassification of the SJV to severe, and the reproposal set the deadline as May 31, 2002. In response to the initial proposal, SJVUAPCD indicated that "the District should be able to adopt RACT rules shortly before the 18-month sanction deadline."<sup>3</sup> EPA presumes that this comment indicates that the District expected to be able to meet the rule adoption deadline in the reproposal, which is more than 23 months after the initial proposal was published. EPA is finalizing the May 31, 2002 SIP deadline as applicable to the RACT rule revisions provided in CAA section 182(d) for major stationary sources at the severe area applicability level of 25 tpy.

SJVUAPCD's comment on the initial proposal indicated that the District would set the final RACT compliance dates to coincide with the 2005 attainment date, "in order to allow as much time as possible for source operators to install controls." Under CAA section 172(c)(1), nonattainment

<sup>3</sup> Letter from David L. Crow, SJVUAPCD APCO/ Executive Officer, to John Ungvarsky, EPA, dated August 24, 2000.

plans must “provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) \* \* \*.” The SJVUAPCD’s RACT compliance schedule should be as expeditious as practicable, both to address this fundamental CAA provision and to speed progress in public health protection. EPA cannot approve RACT compliance schedules that are not as expeditious as practicable but are rather designed to allow as much time as possible for source operators to install controls. Given that the District has known about this RACT requirement since EPA’s June 19, 2000 proposal, EPA does not believe that 2005 represents expeditious implementation of the RACT requirement. Neither the State nor District has provided a compelling reason why the new RACT rules could not be implemented prior to 2005. Accordingly, EPA is finalizing the May 31, 2002 deadline for submittal of new RACT rules, and EPA strongly encourages the District to implement the rules within 18 months of the effective date of the reclassification.

#### F. Transportation Conformity Budgets

##### 1. EPA’s Proposal

EPA’s initial proposal indicated that the revised SJV attainment demonstration may establish motor vehicle emissions budgets for subareas within the region if the modeling in the SIP shows that attainment will result when all subarea budgets are met. The initial proposal further stated that there would be no allowance for shifting of growth from one subarea to another. 65 FR 37929.

##### 2. Public Comments

In response to the initial proposal, CARB supported a single budget as providing better alignment with the new region wide attainment demonstration, while providing greater flexibility by allowing higher than expected emissions in one portion of the valley to be offset by lower emissions in the rest of the region. On the other hand, several of the SJV transportation planning agencies, TPA, and SJVUAPCD endorsed the establishment of separate budgets for each subarea, with trading allowed between subareas so long as the total of all subarea budgets does not exceed the region wide total emission budget. SJVUAPCD further indicated that the new SJV SIP will address the

maximum amount of emissions that can be traded and the distance over which these emissions are traded, and a requirement that all subareas not included in a trade should have currently valid conformity findings for their Regional Transportation Plan and Transportation Improvement Programs.

##### 3. EPA Response to Public Comments and Final Action

EPA appreciates the complexity of transportation planning in a vast nonattainment area where the responsibility for preparing, adopting, and amending transportation plans and programs is assigned to 8 separate councils of government. The State and local agencies may elect to address the CAA section 176(c) transportation conformity provisions by means of either a region wide budget or separate budgets for subareas. EPA intends to work with all involved parties to ensure that the SIP’s budget (or budgets) and conformity provisions provide needed flexibility without jeopardizing the attainment demonstration or the integrity of the regional and local transportation planning processes. In this final action, EPA cautions that subarea budgets must be fully documented and that the budgets and future conformity determinations must be consistent with the region wide attainment demonstration. A significant shift in growth from one subarea to another may therefore require a new modeled attainment demonstration with revised subarea budgets.

#### G. Nonimplementation Finding

##### 1. EPA’s Proposal

The initial proposal included a proposed nonimplementation finding, based on the failure of the SJVUAPCD to meet its SIP commitments to adopt and implement 6 rules to achieve specified emissions reductions totaling 8.09 tpd of VOC emissions. Because the proposed nonimplementation finding is based on a failure of the SJVUAPCD to adopt and implement regulations, the finding would apply to western Kern County (which is under the jurisdiction of the SJVUAPCD) but not to East Kern County, which is under the jurisdiction of the Kern County Air Pollution Control District. 65 FR 37930, footnote 12. 65 FR 37929–31. The rules and associated emission reductions are listed in Table 1 below. EPA proposed that the rules should be adopted and implemented as expeditiously as practicable but implementation should be no later than November 15, 2002, the first rate of progress milestone under the severe area provisions of the CAA. EPA

proposed that the 2 to 1 offset sanction in CAA section 179(b)(2) would apply if SJVUAPCD failed to adopt the 6 measures within 18 months of the effective date of the final finding. EPA further proposed that the highway approval and funding sanction would apply under CAA section 179(b)(1) if SJVUAPCD did not correct the deficiencies within 6 months after the offset sanction is imposed.

##### 2. Public Comments

CRPE commented that an implementation deadline of November 15, 2002, is too late and this delay will unnecessarily threaten the health of San Joaquin Valley residents. EPA should require actual implementation of the rules before the end of the 18 month period. EPA should impose the highway sanctions first, in order to motivate the political forces that will have to be harnessed in order to adopt the rules. EPA should also determine that SJVUAPCD has failed to implement the SIP because the District has excluded agricultural operations from its NSR rule.

SJVUAPCD and CARB commented that the District should be allowed the flexibility to correct the nonimplementation by achieving the 8.09 tpd of VOC emissions through any combination of the six control measures in the SIP or newly identified substitute measures. ARB stated that there has been a substantial change in the inventory for several of the rule categories, and SJVUAPCD indicated that the 8.09 tpd of VOC reductions might be achieved by implementing fewer than the six delinquent rules.<sup>4</sup> SJVUAPCD requested the EPA extend the implementation deadline to May 15, 2003, in order to allow source operators time to get controls in place but still achieve the reductions before the beginning of the 2003 ozone season.

##### 3. EPA Response to Comments and Final Action

EPA agrees with CRPE that prompt remedy to the nonimplementation is important, but EPA believes that it may be unreasonable to require the SJVUAPCD and affected sources to implement the delinquent measures more quickly than EPA proposed. EPA

<sup>4</sup> Of the six measures EPA identified, one measure (i.e., Rule 4662—Organic Solvent Degreasing) has been adopted by the District and three measures (i.e., Rule 4601—Architectural Coatings, Rule 4623—Organic Liquid Storage, and Rule 4663—Organic Solvent Waste) are scheduled for adoption by the District in late 2001 or early 2002. The other two measures (i.e., Rule 4692—Commercial Charbroiling and Rule 4411—Oil Production Well Cellars) are not scheduled for adoption by the District at this time.

disagrees with CRPE that the agricultural operations exemption in the SJVUAPCD NSR rule constitutes SIP nonimplementation, since the exemption, although inconsistent with CAA provisions, does not evince a failure to carry out provisions in the approved SIP. Finally, EPA sees no compelling need to reverse the presumptive order of sanction implementation, and therefore the Agency intends to follow the sequence set in 40 CFR 52.31: the offset sanction at the 18th month and the highway sanction at the 24th month following the finding.

EPA believes that the SJVUAPCD is obliged by its existing SIP to meet the specific requirements of its commitments. However, CARB and the District have the opportunity to amend the SIP by showing that reasonable further progress and other requirements of the CAA can be met with a revised schedule of controls and associated emission reductions. This is especially the case where emissions inventory changes after the original control measure commitment show that far less actual emission reductions can be achieved by controls on individual source categories. However, in view of the magnitude of the emission reductions needed for attainment, SJVUAPCD is not free to abandon or postpone any control measure that continues to be available, even though the original SIP's cumulative emission reduction commitment could be met

without implementing the measure. EPA therefore finalizes the proposed nonimplementation finding and sets November 15, 2002, as the outside date for adoption and implementation of the delinquent control measures.

**III. Summary of the Final Action and the State's SIP Responsibilities.**

*A. East Kern County*

EPA is taking final action to split the SJV ozone nonattainment area into two separate ozone nonattainment areas pursuant to CAA section 107(d)(3)(D). EPA is retaining for the new East Kern County ozone nonattainment area the serious nonattainment area ozone classification but granting two 1-year attainment date extensions pursuant to CAA section 181(a)(5), thus establishing an attainment deadline of November 15, 2001. If East Kern County does not record a violation in 2001, the area will be eligible for redesignation to attainment for the 1-hour ozone NAAQS, following submittal by the State and approval by EPA of a redesignation request and maintenance plan addressing the provisions of CAA section 175A.

*B. San Joaquin Valley*

Pursuant to CAA section 181(b)(2), EPA is finalizing its finding that the SJV area failed to attain the 1-hour ozone NAAQS by the statutory deadline. By operation of law, the area is reclassified to severe and is therefore required, under CAA section 181(a)(1), to attain

the NAAQS as expeditiously as practicable but no later than November 15, 2005. Under CAA section 182(i), the State must submit a SIP addressing the severe area requirements. EPA is establishing May 31, 2002, as the deadline for the submission of the severe area requirements. Under CAA section 182(d), severe area plans must meet all requirements for serious area plans plus the requirements for severe areas, including, but not limited to: (1) A 25 tpy major stationary source threshold; (2) additional reasonably available control technology (RACT) rules for sources subject to the new lower major source applicability cutoff; (3) an NSR rule requiring offsets of at least 1.3 to 1; (4) a rate of progress in creditable emission reductions of ozone precursors of at least 3 percent per year from 2000 until the attainment year; (5) a fee requirement for major sources should the area fail to attain by 2005; and (6) a demonstration of attainment as expeditiously as practicable but no later than November 15, 2005. The more stringent RACT provisions must be scheduled for implementation as expeditiously as practicable, and EPA strongly encourages an implementation deadline of no later than 18 months after the effective date of the reclassification to severe.

Upon the effective date of EPA's finding of failure to implement the SIP, SJVUAPCD has until November 15, 2002 to adopt and implement the six delinquent measures shown in Table 1.

TABLE 1.—DELINQUENT RULE COMMITMENTS IN THE SAN JOAQUIN VALLEY SIP

Rule No.	Rule title	Emission reductions in tpd VOC
4601 .....	Architectural Coatings .....	1.51
4662 .....	Organic Solvent Degreasing .....	2.44
4692 .....	Commercial Charbroiling .....	0.39
4623 .....	Organic Liquid Storage .....	3.0
4411 .....	Oil Production Well Cellars .....	0.56
4663 .....	Organic Solvent Waste .....	0.19

If SJVUAPCD has not adopted the measures listed in Table 1 with implementation deadlines of on or before November 15, 2002, the 2 to 1 offset sanction in CAA section 179(b)(2) would apply after 18 months of the effective date of the finding. If the deficiencies have still not been corrected six months after the offset sanction is imposed, then the highway approval and funding sanction would apply under CAA section 179(b)(1).

**IV. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

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 Executive Order 12866 sec. 3(f). As discussed above, findings of failure to attain under section 188(b)(2) of the CAA are based solely upon air quality considerations and the subsequent

nonattainment area reclassification must occur by operation of law in light of those air quality conditions. These actions 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 if the State does not adopt the rules to which it has committed under its own State plan, and therefore the finding does not adversely affect entities.

The designation of East Kern County as a new, separate nonattainment area with a serious classification and the attainment date extensions will not impose any new requirements on any sectors of the economy because the area is already classified as serious.

For the aforementioned reasons, this action is also not subject to Executive Order 32111, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

These actions do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) for the following reasons: (1) The finding of failure to attain is a factual determination based on air quality considerations; (2) the resulting reclassification must occur by operation of law and will not impose any federal intergovernmental mandate; (3) the designation of East Kern County as a separate nonattainment area with a serious classification will not impose any new requirements on any sectors of the economy; and (4) the finding of nonimplementation does not impose any new federal mandates but rather obliges the State to adopt rules to which it has committed under its State plan.

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). For these same reasons, this rule 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). These actions are also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because they are not economically significant.

As discussed above, findings of failure to attain under section 188(b)(2) of the CAA are based solely upon air quality considerations and the subsequent nonattainment area reclassification must occur by operation of law in light of those air quality conditions. In addition, the finding of failure to implement the SIP merely ensures the implementation of already existing requirements to which the State has committed under its own plan, and therefore the finding does not adversely affect entities. In this context, it would thus be inconsistent with applicable law for EPA, when it makes a finding of failure to attain and finding of failure to implement the SIP, to use voluntary consensus standards. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 81

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

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

Dated: October 23, 2001.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.305 the "California-ozone" table is amended as follows:

a. By adding "East Kern County" as a designated area immediately before the entry for "San Joaquin Valley Area"; and

b. By revising the entry for "San Joaquin Valley Area."

**§ 81.305 California.**

\* \* \* \* \*

CALIFORNIA—OZONE  
[1-hour standard]

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
<p>* * *</p> <p>East Kern County</p> <p>That portion of Kern County that lies east and south of a line described below: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East, then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East; then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.</p>	12/10/01	Nonattainment .....	12/10/2001	Serious. <sup>2</sup>
<p>San Joaquin Valley Area:</p> <p>Fresno County .....</p>	11/15/90	Nonattainment .....	12/10/2001	Severe-15.



CALIFORNIA—OZONE—Continued  
[1-hour standard]

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Kern County (part) That portion of Kern County that lies west and north of a line described below: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.	11/15/90	Nonattainment .....	12/10/2001	Severe-15.
Kings County .....	11/15/90	Nonattainment .....	12/10/2001	Severe-15.
Madera County .....	11/15/90	Nonattainment .....	12/10/2001	Severe-15.
Merced County .....	11/15/90	Nonattainment .....	12/10/2001	Severe-15.
San Joaquin County .....	11/15/90	Nonattainment .....	12/10/2001	Severe-15.
Stanislaus County .....	11/15/90	Nonattainment .....	12/10/2001	Severe-15.
Tulare County .....	11/15/90	Nonattainment .....	12/10/2001	Severe-15.
* * *	*	*	*	*

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

<sup>2</sup> Attainment date is extended to November 15, 2001.

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BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[FRL-7088-3]

**National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List**

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

**ACTION:** Direct Final Deletion of the ICG Iselin Railroad Yard Site from the National Priorities List (NPL).

**SUMMARY:** EPA Region 4 announces the deletion of the ICG Iselin Railroad Yard

Site (site) from the NPL and requests public comment on this action. The NPL constitutes appendix B to part 300 of the National and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. The EPA has determined that the site poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, no further remedial measures pursuant to CERCLA is warranted.

**DATES:** This “direct final” action will be effective January 7, 2002, unless EPA receives significant adverse or critical comments by December 10, 2001. If adverse comments are received, EPA

will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to Robert West, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303, (404) 562-8806, west.robert@epa.gov. Comprehensive information on this site is available through the public docket which is available for viewing at the site information repositories at the following locations: U.S. EPA Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303; and the Jackson-Madison County Library, 433 East Lafayette, Jackson, TN 38305, (901) 423-0225.

**FOR FURTHER INFORMATION CONTACT:** Robert West, Remedial Project Manager,