

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: December 17, 2002.

L. John Iani,

Regional Administrator, Region 10.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV-040-0067; FRL-7440-5]

Approval and Promulgation of Implementation Plans; Nevada—Las Vegas Valley PM-10 Nonattainment Area; Serious Area Plan for Attainment of the Annual and 24-Hour PM-10 Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve provisions of the *PM-10 State Implementation Plan for Clark County*, June 2001, (Clark County plan) that address attainment of the annual and 24-hour PM-10 national ambient air quality standards. We also propose to grant Nevada's request to extend the Clean Air Act deadline for attaining the 24-hour PM-10 standard in the Las Vegas area from 2001 to 2006.

DATES: Comments on this proposal must be received in writing by February 21, 2003. Comments should be addressed to the contact listed below.

ADDRESSES: Comments should be mailed to: Karen Irwin, Office of Air Planning (AIR-2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

A copy of docket No. NV-01-03, containing the EPA technical support document (TSD) and other material relevant to this proposed action, is available for public inspection at EPA's

Region 9 office during normal business hours. We may charge you a reasonable fee for copying parts of the docket. Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR-2), 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the SIP materials are also available for inspection at the addresses listed below: Clark County Department of Air Quality Management, 500 S. Grand Central Pky, Las Vegas, Nevada 89155. Nevada Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada 89710.

Electronic Availability

This document and the TSD are also available as electronic files on EPA's Region 9 Web Page at <http://www.epa.gov/region09/air>.

FOR FURTHER INFORMATION CONTACT:

Karen Irwin, Office of Air Planning (AIR-2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 947-4116, email: irwin.karen@epa.gov.

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I. Summary of Today's Proposal

First, we propose to approve the provisions in the *PM-10 State Implementation Plan for Clark County*, submitted on July 25, 2001,¹ ("the Clark County serious area plan" or "Plan") that address attainment of the annual and 24-hour PM-10 standards.² Our proposed actions are based on our initial determination that the Clark County serious area plan complies with the Clean Air Act's (CAA or "the Act") requirements for serious PM-10 nonattainment area plans.

First, we propose to approve the following specific elements of the plan as they pertain to the standards:

- Demonstration that the plan provides for implementation of best available control measures (BACM);
- Emissions inventory;
- Demonstration of attainment of the annual standard by the CAA deadline of December 31, 2001 and demonstration that attainment of the 24-hour standard by December 31, 2001 is impracticable;
- Demonstration that attainment of the 24-hour standard will occur by the most expeditious alternative date practicable, in this case, December 31, 2006;
- Clark County fugitive dust rules (Sections 90 through 94 and portions of Section 0);
- Demonstration that the plan provides for reasonable further progress and quantitative milestones;
- Transportation conformity budget; and
- Contingency measures.

Second, we are proposing to grant Nevada's request to extend the attainment date for the 24-hour PM-10 standard from December 31, 2001 to December 31, 2006. We make this proposal based on our determination that the State has met the CAA's criteria for granting such extensions.

This preamble describes our proposed actions on the Clark County serious area

¹ On October 24, 2002, the Nevada Division of Environmental Protection submitted to EPA revised versions of Clark County sections 90 through 93, dated November 20, 2001, which supersede earlier versions submitted with the Plan. Also, on November 19, 2002, the Nevada Division of Environmental Protection submitted to EPA an amendment to the Clark County PM-10 Plan adopted by the Clark County Board of Commissioners on November 19, 2002.

² There are two separate national ambient air quality standards for PM-10, an annual standard of 50 µg/m³ and a 24-hour standard of 150 µg/m³.

plan and provides a summary of our evaluation of the plan. Our detailed evaluation of the Plan can be found in the TSD that accompanies this proposal. See "Technical Support Document Proposing Approval of the PM-10 State Implementation Plan for the Clark County Serious PM-10 Nonattainment Area Annual and 24-Hour PM-10 Standards," December 19, 2002. A copy of EPA's TSD can be downloaded from our website or obtained by calling or writing the contact person listed above.

II. Background to Today's Proposals

A. PM-10 Air Quality in the Las Vegas Area

The Las Vegas Valley Nonattainment Area, which coincides with Hydrographic Basin 212, is roughly 1,500 square miles in size and encompasses the City of Las Vegas, the City of North Las Vegas, the City of Henderson and the unincorporated areas of Clark County. The population of the area is approximately 1.15 million people and is expected to grow to 1.59 million by 2006.

The area violates both the annual³ and 24-hour PM-10 standards. In 1990, the area was designated nonattainment for PM-10 and classified as moderate. In 1993, because of continuing violations of both PM-10 standards, the area was reclassified to serious and required to provide for the implementation of BACM by February 8, 1997. 58 FR 3334 (January 8, 1993).

The principal contributors to elevated PM-10 levels in the Las Vegas area are fugitive dust sources such as disturbed vacant lots, construction sites, unpaved roads and paved road dust. Fugitive dust is particulate matter suspended in the air either by mechanical disturbance of the surface material or by wind action blowing across surfaces.

B. Previous Actions on Clark County PM-10 Plans

Clark County prepared and submitted a serious area PM-10 plan in 1997 that EPA proposed to disapprove, along with previously submitted plans. 65 FR 37324, June 14, 2000. On December 5, 2000, prior to EPA taking final action on its proposed disapproval, the State of Nevada withdrew the moderate and serious area plans for Clark County. On

³ However, in a June 2002 letter, the Clark County Department of Air Quality Management (DAQM) provides an analysis of PM-10 microscale sites that demonstrates attainment of the annual standard as forecasted in the Clark County Plan as of December 31, 2001. While EPA is proposing to approve the Plan's attainment demonstration for the annual standard under CAA section 189, our action does not include an official finding of attainment of the annual standard per CAA section 188.

January 5, 2001, EPA proceeded with a finding of nonsubmittal, effective as of December 20, 2000, which began the 18-month time clock for mandatory application of sanctions and 2-year time clock for promulgation of a federal implementation plan (FIP). 66 FR 1046. On June 19, 2001, the Clark County Board of Commissioners adopted a new serious area PM-10 plan titled "PM-10 State Implementation Plan for Clark County" ("Plan"), which was submitted to EPA on July 25, 2001. On January 31, 2002, EPA made a completeness finding on the Plan. We have also determined that the conformity budgets in the plan are adequate. 67 FR 1461, January 11, 2002. Our adequacy determination was effective on January 28, 2002.

III. The CAA's Planning Requirements for Serious PM-10 Nonattainment Areas

The Las Vegas area is a PM-10 nonattainment area that has been reclassified to serious because it failed to attain by the moderate area attainment date of December 31, 1994. Such an area must submit, within 18 months of the reclassification, revisions to its implementation plan that address the CAA requirements for serious PM-10 nonattainment areas. CAA section 189(b)(2). These requirements are:

(a) Assurances that the BACM, including best available control technology (BACT) for stationary sources, for the control of PM-10 shall be implemented no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B));⁴

(b) Assurances that BACT on major stationary sources of PM-10 precursors shall be implemented no later than 4 years after the area is reclassified except where EPA has determined that such sources do not contribute significantly to exceedences of the PM-10 standards (CAA section 189(e));

(c) A demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 2001 or where the State is seeking an extension of the attainment date under section 188(e), a

⁴ When a moderate area is reclassified to serious, the requirement to implement RACM in section 189(a)(1)(C) remains and is augmented by the requirement to implement BACM. Thus, a serious area PM-10 plan must, in addition to BACM, provide for the implementation of RACM as expeditiously as practicable to the extent that the RACM requirement has not been satisfied in the area's moderate area plan. However, to the extent that a serious nonattainment area plan provides for BACM, we interpret the BACM requirement as generally subsuming the RACM requirement (*i.e.* if we determine that the measures are indeed the "best available," we have necessarily concluded that they are "reasonably available").

demonstration that attainment by December 31, 2001 is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable (CAA sections 188(c)(2) and 189(b)(1)(A));

(d) Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by the applicable attainment date (CAA sections 172(c)(2) and 189(c)); and

(e) A comprehensive, accurate, and current inventory of actual emissions from all sources of PM-10 (CAA section 172(c)(3)).

Serious area PM-10 plans must also include contingency measures to be implemented if the area fails to make RFP or attain by its attainment deadline. These contingency measures are to take effect without further action by the State or the Administrator. CAA section 172(c)(9).

Furthermore, serious area PM-10 plans must meet the general requirements applicable to all SIPs including reasonable notice and public hearing under section 110(l), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280, and a description of enforcement methods as required by 40 CFR 51.111.

We have issued a General Preamble⁵ and Addendum to the General Preamble⁶ describing our preliminary views on how the Agency intends to review SIPs submitted to meet the CAA's requirements for PM-10 plans. The General Preamble mainly addresses the requirements for moderate areas and the Addendum, the requirements for serious areas.

BACM Requirement

The CAA does not define what level of control constitutes a BACM-level of control. In guidance, we have defined it to be, among other things, the maximum degree of emission reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic and environmental impacts. Addendum at 42010. This level of control is

⁵ "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

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

dependent on the deadline by which BACM must be implemented.⁷

We also considered a BACM-level control as going beyond existing RACM-level controls, such as expanding use of RACM (e.g., paving more miles of unpaved roads). Addendum at 42013. The word “best” implies that there should be a greater emphasis on the merits of the measure or technology alone and less flexibility in considering other factors. Additionally, we believe that BACM should emphasize prevention rather than remediation (e.g., preventing track out at construction sites rather than simply requiring clean up of tracked-out dirt). Addendum at 42013.

The stringency of a control measure is a function of both the measure’s applicability and its control requirement (i.e., what sources in the category are subject to the measure and what does the measure require the sources to do to reduce emissions).⁸ Both these elements must be specified before the measure’s level of control can be determined. Thus in setting a BACM, a state must specify both the measure’s control requirement and its applicability. The control requirement alone is not sufficient.

BACM must be applied to each significant (i.e., non-de minimis) source category. Addendum at 42011. In guidance, we have established a presumption that a “significant” source category is one that contributes 5 µg/m³ or more of PM–10 to a location of 24-hour violation and 1 µg/m³ or more for the annual standard. Addendum at 42011. However, whether the threshold should be lower than this in any particular area depends upon the specific facts of that area’s nonattainment problem. Specifically, it depends on whether requiring the application of BACM on source categories below a proposed de minimis level would meaningfully expedite attainment.

We have outlined in our guidance a multi-step process for identifying

⁷ We have long held that an otherwise available measure is not reasonable if it cannot be implemented on a schedule that will advance the attainment date. See, e.g., 57 FR 13498, 15560 (April 16, 1992). See also *Delaney v. EPA*, 898 F.2d 695 (9th Cir. 1990) which required the adoption of “all available control measures” to attain “as soon as possible” and not simply all available control measures. The most clear example of this is a measure that cannot be implemented until after the applicable attainment date.

⁸ An example: A measure requires all unpaved roads with average daily trips (ADT) over 150 be stabilized by either paving, graveling, or treating with chemical stabilizers. The control requirement here is “stabilize using one of these three methods: paving, graveling, or chemical stabilization” and the applicability is “all unpaved roads with ADT over 150.”

BACM. Addendum at 42010–42014. The steps are:

1. develop a detailed emissions inventory of PM–10 sources and source categories,
2. model to evaluate the impact on PM–10 concentrations over the standards of the various sources and source categories to determine which are significant,
3. identify potential BACM for significant source categories and evaluate their reasonableness, considering technological feasibility, costs, and energy and environmental impacts and
4. provide for the implementation of the BACM or provide a reasoned justification for rejecting any potential BACM.

When the process is complete, the individual measures⁹ should then be converted into a legally enforceable vehicle (e.g., a regulation or permit process). CAA sections 172(6) and 110(a)(2)(A). Also, the regulations or other measures should meet EPA’s criteria regarding the enforceability of SIPs and SIP revisions. General Preamble at 13541.

RACM Requirement

When a moderate area is reclassified to serious, the requirement to implement RACM in section 189(a)(1)(C) remains. Thus, a serious area PM–10 plan must also provide for the implementation of RACM as expeditiously as practicable to the extent that the RACM requirement has not been satisfied in the area’s moderate area plan.

However, we do not normally conduct a separate evaluation to determine if a serious area plan’s measures also meet the RACM requirements as interpreted by us in the General Preamble at 13540. This is because in our serious area guidance (Addendum at 42010), we interpret the BACM requirement, as generally subsuming the RACM requirement. Therefore, a separate analysis to determine if the measures represent a RACM level of control is generally not necessary. Our proposed approval of the Clark County Plan’s provisions relating to the implementation of BACM is also a finding that the plan provides for the implementation of RACM.

The Clean Air Act Requirements for Attainment Date Extensions

Section 188(e) of the Act allows us to extend the attainment date for a serious

⁹ Here our guidance refers to RACM, however, since BACM builds upon RACM, the same principles apply.

area for up to five years beyond 2001 if attainment by 2001 is impracticable. However, before we may grant an extension of the attainment date, the State must first:

1. Apply to us for an extension of the PM–10 attainment date beyond 2001,
2. Demonstrate that attainment by 2001 is impracticable,
3. Have complied with all requirements and commitments applying to the area in its implementation plan,
4. Demonstrate to our satisfaction that its serious area plan includes the most stringent measures that are included in the implementation plan of any state and/or are achieved in practice in any state and are feasible for the area, and
5. Submit a demonstration of attainment by the most expeditious alternative date practicable.

In determining whether to grant an extension and the appropriate length of the attainment date extension, we may consider:

1. The nature and extent of the nonattainment problem,
2. The types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and international transport),
3. The population exposed to concentrations in excess of the standard,
4. The presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and
5. The technological and economic feasibility of various control measures.

Under the Act, we may grant only one extension for an area and the extension cannot be for more than 5 years after 2001; that is, the extended attainment date can be no later than December 31, 2006.

IV. The Clark County Plan’s Compliance With the CAA’s Requirements for Serious PM–10 Nonattainment Areas

The following sections present a condensed discussion of our evaluation of the Clark County Plan’s compliance with the applicable CAA requirements for attaining the annual and 24-hour PM–10 standards. Our complete evaluation is found in the TSD for this proposal. A copy of the TSD can be downloaded from our website or obtained by calling or writing the contact person listed above.

A. Completeness of the SIP Submittal

CAA section 110(k)(1)(B) requires us to determine if a SIP submittal is complete within 60 days of its receipt. This completeness review allows us to quickly determine if the submittal

includes all the necessary items and information we need to take action on it. We make completeness determinations using criteria we have established in 40 CFR part 51, appendix V.

On January 5, 2001, we took final action to find that the State of Nevada had failed to make PM-10 nonattainment area SIP submittals required for the Las Vegas Valley Planning Area under the CAA. See 66 FR 1046 (January 5, 2001). That final action, which was effective as of December 20, 2000, triggered an 18-month clock for mandatory application of sanctions under section 179(a) of the Act and the implementing regulations set forth at 40 CFR 52.31. In our final action, we indicated that the State may "turn off" the sanctions clock through the submission of a complete SIP submittal.

Under section 110(k)(1)(B), if we do not make a completeness determination within six months of receipt of a SIP submittal, then the submittal shall be deemed complete by operation of law. We had not made this determination by January 25, 2002 (*i.e.*, six months from receipt); thus, the State's SIP submittal dated July 23, 2001 was deemed complete by operation of law effective January 25, 2002.

However, a SIP submittal that is deemed complete by operation of law does not stop a sanctions clock started by a finding by us under section 179(a) of the Act. To stop the sanctions clock, we must make an affirmative determination that the deficiency forming the basis of the finding (in this case, our finding of failure to submit required PM-10 plan elements) has been corrected. See 40 CFR 52.31(d)(1).

Therefore, we have reviewed the July 23, 2001 PM-10 submittal from the State of Nevada and affirmatively determined that it satisfies our completeness criteria set forth for such determinations in appendix V of 40 CFR part 51 and that it is thereby complete for the purposes of section 110(k)(1) of the Act. Furthermore, the State's submission of this complete plan corrects the deficiency forming the basis for our finding published in the **Federal Register** on January 5, 2001. We notified the State of our completeness determination by letter to NDEP on January 31, 2002, and our letter to NDEP permanently stops the sanctions clock as of that date.

B. Adequacy of the Transportation Conformity Budgets

CAA Section 176(c) requires that federally-funded or approved transportation plans, programs, and

projects in nonattainment areas "conform" to the area's air quality implementation plans. Conformity ensures that federal transportation actions do not worsen an area's air quality or interfere with its meeting the air quality standards. We have issued a conformity rule that establishes the criteria and procedures for determining whether or not transportation plans, programs, and projects conform to a SIP. See 40 CFR part 93, subpart A.

One of the primary tests for conformity is to show transportation plans and improvement programs will not cause motor vehicle emissions higher than the levels needed to make progress toward and meet the air quality standards. The motor vehicle emissions levels needed to make progress toward and meet the air quality standards are set in an area's attainment and/or RFP plans and are known as the "emissions budget for motor vehicles." Emissions budgets are established for specific years and specific pollutants. See 40 CFR 93.118(a).

Before an emissions budget in a submitted SIP revision can be used in a conformity determination, we must first determine that it is adequate. The criteria by which we determine adequacy of submitted emission budgets are outlined in our conformity rule in 40 CFR 93.118(e)(4). A finding of adequacy does not approve an emissions budget, it simply allows States to begin to use the budget in conformity determinations pending our action on the overall SIP.

The Clark County Plan establishes a mobile source emissions budget of 201.75 tons per day (tpd) for 2001 and an emissions budget of 141.41 tpd for 2006. This regional budget is applicable to both the annual and 24-hour PM-10 standards.

On November 9, 2001, we notified the State that we find adequate for transportation conformity purposes this motor vehicle emissions budget. Our adequacy determination was effective on January 28, 2002 and is documented in section C of the TSD. As a result of our adequacy finding, the Regional Transportation Commission (RTC) and the Federal Highway Administration (FHWA) are now required to use this budget in all conformity analyses.

As discussed later in this preamble, we are proposing to approve both the attainment and reasonable further progress demonstrations for the 24-hour standard in the Clark County Plan. An emissions budget was set at 155.77 tpd for the 2003 interim year, which is consistent with these demonstrations. We, therefore, propose to approve the motor vehicle emissions budget for the

annual and 24-hour PM-10 standards under CAA section 176(c).

C. Adequate Monitoring Network

We discuss the adequacy of the monitoring network in this preamble solely to support our finding that the plan appropriately evaluates the PM-10 problem in the Las Vegas area. Reliable ambient data is necessary to validate the base year air quality modeling which in turn is necessary to assure sound attainment demonstrations.

The CAA requires states to establish and operate air monitoring networks to compile data on ambient air quality for all criteria pollutants. CAA section 110(a)(2)(B)(i). Our regulations in 40 CFR part 58 establish specific regulatory requirements for operating air quality surveillance networks to measure ambient concentrations of PM-10, including measurement method requirements, network design, quality assurance procedures, and in the case of large urban areas, the minimum number of monitoring sites designated as National Air Monitoring Stations (NAMS).

Ambient networks, however, do not need to meet all our regulations to be found adequate to support air quality modeling. A good spatial distribution of sites, correct siting, and quality-assured and quality-controlled data are the most important factors for air quality modeling. Nonattainment area plans developed under title I, part D of the Clean Air Act are not, in general, required to address how the area's air quality network meets our monitoring regulations. These plans are submitted too infrequently to serve as the vehicle for assuring that monitoring networks remain current.

The DAQM operates 17 monitoring sites collecting PM-10 data in the Las Vegas area, about half of which are designated as special purpose monitors (SPMs) with the remaining monitors designated as NAMS or state/local monitoring stations. Table MON-2 in the TSD lists the names of the sites and their locations in the Las Vegas area as of July 2000. Many of the SPM sites operated by the DAQM are in fact long term sites that have been in operation longer than three years. EPA performed a technical system audit of the DAQM's ambient air monitoring program in August 2001. In this audit, EPA identified some concerns with how DAQM characterizes its monitoring networks in terms of site objectives, that at least two more NAMS sites are needed, and that the quality assurance program needs to be better defined and integrated into the daily functions of the air monitoring program. However, we

do not believe these deficiencies adversely affect our ability to determine the air quality status of the area.

The Las Vegas PM-10 network employs a large number of monitoring sites that are spread out over the Las Vegas valley. Given the nature of the emission sources, which are mostly local fugitive dust sources, and since PM-10 is a localized yet widespread pollutant, we believe a dense network such as DAQM operates is appropriate.

The 24-hour attainment demonstration in the Clark County plan relies, in part, on showing attainment at five specific monitoring sites. These sites were chosen based on the fact that they represent the worst case environments for a mix of PM-10 emission sources: East Flamingo site for its high traffic volume; Green Valley for its nearby highway construction and race tracks; J.D. Smith for its mixture of roadways, small point sources and construction sites; Craig Road for its light industrial facility and vacant land influences; and Pittman for its larger stationary sources, unpaved parking lots and unpaved roads. In 1997-1999 these sites cumulatively recorded 43 exceedences of the 24-hour PM-10 standard. They are also representative of similar areas in the Las Vegas area that may not have monitoring sites.

In conclusion, we believe the monitoring network operated by the DAQM in 1998 was adequate to support the technical evaluation of the PM-10 nonattainment problem for the Clark County Plan. The network utilizes EPA reference or equivalent method monitors and the DAQM performs routine precision and accuracy checks of the monitoring equipment and performs necessary maintenance when warranted.

D. Emissions Inventory

CAA section 172(c)(3) requires that nonattainment area plans include a comprehensive, accurate, and current inventory of actual emissions from all sources in the nonattainment area in the designated base year and a future attainment year. To meet this requirement, Clark County prepared a 1998 base year annual emissions inventory for the entire nonattainment area. See Clark County Plan, Chapter 3, Table 3-1. Emissions inventories for the baseline and future years for both the annual and 24-hour standards are necessary prerequisites to meet requirements for BACM and demonstration of attainment per CAA section 189(b). In the Las Vegas Valley, both regional and microscale modeling inventories are needed to accurately reflect the sources that are contributing

to ambient levels of the 24-hour PM-10 standard. By design and need, the microscale inventory includes only sources within a small area around a monitor rather than all sources within the entire nonattainment area.

For the attainment demonstration, the Clark County Plan relies upon regional annual and 24-hour emissions inventories associated with a portion of the entire PM-10 nonattainment area titled the "BLM Disposal Area". See Clark County Plan, Chapter 3, section 3.3 and Appendix E. All lands controlled by the federal government outside the BLM disposal area are to remain in their native state and the boundary can only be changed by an act of the United States Congress.

Approximately 99 percent of the nonattainment area resides within the BLM Disposal Area and nearly all anthropogenic sources within the nonattainment area occur within the BLM Disposal Area, making it the appropriate focus for the attainment demonstration. We address the modeling used in the attainment demonstration later in this notice. The rules adopted by Clark County to address sources within the BLM Disposal Area equally apply to the entire PM-10 nonattainment area.

The Plan contains two 1998 BLM Disposal Area emissions inventories for the annual standard: a valley-wide inventory and a microscale inventory for the area surrounding the J.D. Smith monitoring station, which was the only site that measured a violation of the annual NAAQS. For the 24-hour standard, the Plan contains a base year emissions inventory for the design day (December 21, 1998), which is scaled from the annual valley-wide inventory with additional wind erosion emissions factored in due to specific meteorological conditions.

Clark County also prepared future year PM-10 inventories comparing an "uncontrolled" scenario to a scenario assuming application of control measures adopted by Clark County as BACM. The Plan contains uncontrolled 2001 and 2006 annual valley-wide emissions inventories and a 2006 uncontrolled valley-wide 24-hour inventory. Emissions inventories were also developed for each of the five microscale sites. These microscale inventories are specialized modeling inventories and are not intended to satisfy the CAA section 172(c)(3) requirement.¹⁰

¹⁰ The microscale inventories include only sources within a small area surrounding each monitor rather than all sources within the entire nonattainment area, the requirement in CAA section 172(c)(3).

The following fugitive dust source categories make up 97 percent and 99 percent of PM-10 emissions in the base year annual valley-wide and 24-hour BLM Disposal Area inventories for the Las Vegas Valley, respectively: vacant land, construction, paved roads and unpaved roads. The inventory includes only primary PM-10 as chemical mass balance receptor modeling showed that secondary and condensable particulate formation contribute less than significant amounts to ambient PM-10 concentrations. Clark County Plan, Chapter 4, section 4.2.1.

In our review of the Plan, we found that the emissions estimates for all of the source categories are based on emissions factors and methodologies recommended by EPA, or are derived from a specific study or data collected from a source category in the area (e.g., vacant lots). We propose to find that the inventory projections methodologies and calculations rely upon reasonable assumptions and provide a sufficient basis upon which to assess control measure impacts on future PM-10 air quality in the Las Vegas area. Clark County has also included commitments in the Plan to improve and update the emissions inventories in future years.

E. Contribution of PM-10 Exceedences of Major Sources of PM-10 Precursors

CAA section 189(e) requires BACT to be applied to major stationary sources of PM-10 precursors if these sources contribute significantly to PM-10 exceedences in the area. Clark County determined that stationary sources, including sand and gravel operations, natural gas-fired utility power plants, asphalt concrete plants, industrial processes, and other sources cumulatively contribute less than 1 µg/m³ of the design day concentration, placing them below the 5 µg/m³ significance threshold for the 24-hour standard. Design day micro-inventory concentrations from stationary source emissions were higher in some cases (3.74 µg/m³ and 3.53 µg/m³ at the Pittman and Craig Road monitoring sites, respectively), but were still below the threshold of presumed significance for this source category. Therefore, BACT is not required to be applied to stationary sources per CAA section 189(e).

F. Implementation of Best Available Control Measures

CAA section 189(b)(1)(B) requires that a serious area PM-10 plan provide for the implementation of BACM within four years of reclassification to serious. Under our applicable guidance, BACM must be applied to each significant area-

wide source category. Addendum at 42011. As discussed in section III of this preamble, we have established a four-step process for evaluating BACM in serious area PM-10 plans.

Steps 1 and 2: Determination of Significant Sources

The first step in the BACM analysis is to develop a detailed emissions inventory of PM-10 sources and source categories that can be used in modeling to determine their impact on ambient air quality. Addendum at 42012. The second step is to use this inventory in air quality modeling to evaluate the impact on PM-10 concentrations over the standards of the various sources and source categories to determine which are significant.

The development of the detailed emissions inventory is discussed in the preceding section and in the TSD. We propose to find that the baseline emissions inventory contains a sufficient level of detail to enable appropriate evaluation of the Plan's control measures for BACM purposes. The determination of source significance is based primarily on the J.D. Smith annual inventory and the 24-hour micro-inventories at the five representative sites, supplemented by reviews of the 1998 valley-wide 24-hour emissions inventory, the 1998 valley-wide annual emissions inventory, and Chemical Mass Balance modeling. Clark County Plan, Chapter 4, pg. 4-1.

From these evaluations, the Clark County Plan identifies the following sources as significant with respect to the annual standard:

1. Disturbed vacant land/unpaved parking lots
2. Construction (including highway construction)
3. Paved roads
4. Unpaved roads

The same source categories are deemed significant for the 24-hour standard, with the additional category of:

5. Race tracks

Clark County determined that the following source categories are not significant for both standards:

1. Stationary point sources (sand and gravel operations, utilities—natural gas, asphalt concrete manufacture, industrial processes, other)
2. Some stationary area sources (small point sources, fuel combustion sources, residential wood combustion, open burning, farming operations)
3. Nonroad mobile sources (airport support equipment, commercial equipment, construction and mining equipment, lawn and garden

equipment, railroad equipment, airport emissions)

4. Onroad mobile vehicle exhaust and other emissions
5. Secondary aerosol particulate

Emissions from the proposed *de minimis* categories are a small percentage (3% collectively) of the total 1998 BLM Disposal Area annual and 24-hour PM-10 emissions inventories. The minimal contribution of the proposed *de minimis* source categories to the inventory supports that, both individually and collectively, they have a minor impact on elevated annual and 24-hour PM-10 levels in the Clark County nonattainment area.

For the 24-hour standard, the Clark County Plan demonstrates that its selection of significant source categories is appropriate by showing that controls on the *de minimis* source categories would not result in attainment of the 24-hour standard by 2001. See Clark County Plan, Chapter 7, section 7.4.

We propose to find that the Clark County Plan has not excluded any source categories that should be considered significant from its list of significant source categories. The Plan presents acceptable modeling to evaluate the impact of various PM-10 sources and source categories on PM-10 levels and to derive a comprehensive list of significant source categories.

Step 3: Identification of Potential BACM

In preparing the list of candidate BACM, Clark County reviewed our guidance documents on BACM, other EPA documents on PM-10 control, as well as PM-10 plans from other serious PM-10 areas in the United States. Clark County also evaluated controls proposed during public comment.

The Clark County plan appropriately screened the list of candidate BACM to eliminate measures that did not apply to significant source categories in the area, or were technologically infeasible for the area because they would not reduce PM-10 emissions. The Clark County Plan also provides cost-effectiveness estimates for each of the candidate BACM.

We propose to find that the Clark County Plan identified and evaluated potential BACM for the Las Vegas area consistent with our guidance. As we will discuss below in our evaluations of the implementation of BACM for each significant source category, we do not believe that the Clark County plan left out any candidate BACM.

Step 4: Implementation of RACM¹¹ and BACM and Inclusion of MSM for Each Significant Source Category

In the following sections, we review the results of the Clark County Plan's BACM analysis and adopted measures. The same control measures apply to BACM determinations for both the annual and 24-hour PM-10 standards. We also present our evaluation of the Plan's provisions for including MSM alongside our evaluation of BACM implementation for each significant source category.

Clark County adopted sections 90 through 94 and section 0 on November 16, 2000. Sections 90 through 93 were subsequently revised by the DAQM on November 20, 2001. Clark County submitted these revised rules to EPA on October 24, 2002 for our action in place of the sections 90 through 93 adopted on November 16, 2000. These rules address the significant sources identified in the Plan, along with SIP commitments for unpaved roads and unpaved road shoulders contained in Chapter 4 of the Plan.

Clark County has also committed to increase its staffing levels to enhance compliance and enforcement of these rules to assure that the emission reductions necessary for expeditious attainment are achieved. This commitment is an important component of our proposed finding that the Clark County Plan provides for implementation of BACM and inclusion of MSM.

We also have evaluated the rules for enforceability and consistency with applicable CAA requirements for SIP revisions in section 110 and Part D and EPA rulemaking policy.

a. Disturbed Vacant Land

This category includes windblown fugitive dust emissions from disturbed surfaces of vacant land. On vacant land, fugitive dust emissions are caused by virtually any activity which disturbs an otherwise naturally stable parcel of land, including earth-moving activities, material dumping, weed abatement, and vehicle traffic. Wind erosion from disturbed vacant land accounts for 45 percent of total PM-10 emissions in the 1998 24-hour BLM Disposal Area inventory and 39 percent of total PM-10 emissions in the 1998 annual BLM Disposal Area valley-wide inventory,

¹¹ Because the RACM demonstration is subsumed in the BACM demonstration, a separate analysis to determine if the measures represent a RACM level of control is not necessary. Our proposed approval of the Clark County Plan's provisions relating to the implementation of BACM is also a finding that the plan provides for the implementation of RACM.

making it the largest source of PM-10 in the Las Vegas area.

The suggested measures for controlling emissions from disturbed vacant land fall into one of two categories: preventing motor vehicle disturbance of vacant land, and stabilizing vacant land.¹² We propose to find that the Clark County Plan evaluates a comprehensive set of potential controls for disturbed vacant land including the potential MSM from other States.

Clark County implemented both access prevention and surface stabilization with specific requirements in section 90 "Fugitive Dust From Open Areas and Vacant Lots". Section 90 requires prevention of motor vehicles (including off-road vehicles), where there is evidence of such use, on open areas and vacant lots greater than or equal to 5,000 square feet by installation of barriers or other effective traffic control measures and stabilization of motor-vehicle disturbed surfaces on such lots. Also, where 5,000 square feet or more of cumulative disturbed surface exists (from any activity) all disturbed areas must be stabilized using water, dust palliatives or gravel. When discing or blading areas of 5,000 square feet or more, water must be applied before and during operations and the disturbed surface stabilized afterwards.

The requirements apply to public and private vacant land alike. Clark County determined that less than one percent of vacant land within the BLM Disposal Boundary¹³ consists of parcels smaller than 5,000 square feet, thus the requirements provide a stringent threshold of applicability. Section 90 contains appropriate performance standards and test methods for surface stability,¹⁴ recordkeeping requirements, and otherwise meets EPA's enforceability criteria.

Clark County has also made a SIP commitment to adopt a requirement for dust management plans on large tracts

¹² Constructing windbreaks was also identified but deemed less stringent than surface stabilization. Therefore, the benefits of applying this potential BACM are subsumed in the more stringent emission reductions associated with surface stabilization. In addition, Clark County identified weed abatement on vacant land as a separate category. Since this pertains to "surface stabilization" we include it under that category; however, weed abatement by discing and blading also generates emissions as the activity is being conducted, therefore, Clark County has adopted separate requirements for weed abatement in its vacant lot rule.

¹³ We note that section 90 requirements apply throughout the entire PM-10 nonattainment area.

¹⁴ Standards include a visible crust determination, 20% cover of nonerodible elements, or a threshold friction velocity (corrected for nonerodible elements) of 100 cm/sec or higher.

(i.e., 10,000 acres or more) of government owned land.¹⁵

Section 90 vacant lot requirements became effective on January 1, 2001. We propose to find that the Clark County Plan provides for the implementation of vacant lot measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 90 requirements are of equivalent or greater stringency than those adopted or in practice in other areas.

We, therefore, propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for disturbed vacant land. We also propose approval of section 90 into the SIP in accordance with CAA section 110 and the requirements of CAA Title I, part D.

b. Unpaved Parking Lots

This category includes emissions from re-entrained road dust from vehicle traffic on unpaved parking lots and windblown dust entrained from the disturbed surface of unpaved parking lots. Windblown emissions from unpaved parking lots are included in the disturbed vacant land category in the 1998 base year valley-wide and BLM Disposal Area emissions inventories. The extent of unpaved parking lots affected by the controls in adopted Rule 92 has not been determined (or credited) on a valley-wide inventory basis,¹⁶ but instead only with respect to the microscale inventories.

There are two principal ways to control emissions from unpaved parking lots, both of which Clark County identified: prohibit unpaved parking lots or stabilize existing lots. We propose to find that the Clark County Plan evaluates a comprehensive set of potential controls for unpaved parking lots including the potential MSM from other States.

Clark County adopted requirements to stabilize existing unpaved parking lots in section 92 "Fugitive Dust From Unpaved Parking Lots." Clark County also adopted a SIP commitment to modify section 92 to prohibit new unpaved parking lots with limited exceptions.¹⁷ Therefore, both potential BACM have or will shortly be adopted.¹⁸

¹⁵ Clark County submitted a SIP amendment that establishes a revised deadline of March 31, 2003 for the section 90 and other rule revisions.

¹⁶ See Clark County Plan, Chapter 4, subsection 4.5.2.2.5.

¹⁷ Clark County submitted a SIP amendment that establishes a revised deadline of March 31, 2003 for the section 92 and other rule revisions.

¹⁸ Adoption of a requirement prohibiting new unpaved parking lots, in addition to the section 92

Section 92 requires that all unpaved parking lots greater than or equal to 5,000 square feet be stabilized by application of paving, dust palliatives, or a combination of dust palliatives in the travel lanes and two inches of gravel. Lots used intermittently (thirty-five days per year or less), must be stabilized according to section 92 standards only on days of use. On days of inactivity, however, such lots are subject to section 90 standards.

The section 92 requirements apply to both public and private unpaved parking lots. The analysis Clark County used to assess the percentage of vacant land parcels smaller than 5,000 square feet in the BLM Disposal Area applies to unpaved parking lots as well. Section 92 contains appropriate performance standards and test methods for surface stability and opacity,¹⁹ recordkeeping requirements, and otherwise meets EPA's enforceability criteria.

Section 92 unpaved parking lot requirements became effective on January 1, 2001. We propose to find that the Clark County Plan provides for the implementation of unpaved parking lot measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 92 requirements are more stringent than those adopted or in practice in other areas. We, therefore, propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for unpaved parking lots. We also propose SIP approval of section 92 per CAA section 110 and Part D.

c. Construction Sites

Sources of fugitive dust emissions at construction sites include land clearing, earthmoving, excavating, construction, demolition, material handling, bulk material storage and/or transporting operations, material track out or spillage onto paved roads (which we have addressed in the paved road section), and vehicle use and movement on site (e.g., the operation of any equipment on unpaved surfaces, unpaved roads and

stabilization requirements, collectively fulfill BACM and MSM. However, since the section 92 surface stabilization requirements apply to both new and existing unpaved parking lots, the requirement that new lots be paved provides only incremental emission reductions beyond measures already adopted and, therefore, is not critical in our determination that measures for this source category have been adopted as expeditiously as practicable.

¹⁹ Both a 20% opacity standard according to a modified EPA Reference Method 9 and a silt content standard of 8% or alternatively, a silt loading standard of 0.33 oz/sq. ft., apply.

unpaved parking areas). Windblown emissions from disturbed areas and inactive storage piles on construction sites are also a source of PM-10. Construction operations, which are mostly earthmoving, represent approximately 37 percent of the 24-hour BLM Disposal Area emissions (not including trackout emissions).

The suggested measures in the Clark County Plan for controlling emissions from construction sites include a detailed list of controls encompassing a great variety of dust-generating activities, performance standards, enforcement-related measures,²⁰ and new measures not implemented in other areas. The measures considered include all sources of active dust generation and windblown dust on construction sites. We propose to find that the Clark County Plan evaluates a comprehensive set of potential controls for construction sites emissions including the potential MSM from other States.

Clark County adopted requirements pertaining to construction sites in Section 94 "Permitting and Dust Control for Construction Activities" on November 16, 2000. As part of this action, Clark County also adopted a "Section 94 Handbook," along with relevant tables of contents, definitions, articles, tables, indexes, examples and appendices.²¹ Together these documents make up the required control measures applicable to construction sites. Section 94 establishes the basic requirements for construction site dust control permits and other standards while the Section 94 Handbook lays forth more specific requirements for each dust-generating source.

Dust control permits are required prior to soil disturbance for all sites greater than ¼ acre, mechanized trenching greater than 100 feet in length, and mechanical demolition of structures greater than 1,000 square feet. However, all sites with construction activities regardless of size are subject to the requirements of section 94 and the Section 94 Handbook. Dust control permits must contain a "Dust Mitigation Plan" that employs the Section 94 Handbook Best Management Practices (BMPs). The Section 94 Handbook requirements are not only activity-specific and designed to be placed into dust control permits in a phase-specific manner, but are also specific to the type of soil at a particular site or location and

the soil's potential to emit fugitive dust. Therefore, each Dust Mitigation Plan must incorporate the appropriate BMPs per the Section 94 Handbook according to soil type parameters.²² Sites 10 acres or greater must provide a more detailed project description and site plan according to a "Site Specific Dust Mitigation Plan".

The Section 94 Handbook establishes a specific performance standard (*i.e.*, Control Requirement) that must be met for each identified construction activity.²³ Multiple Control Requirements apply for each construction activity. A menu of control measure options is provided, one or more of which must be specifically identified in the Dust Mitigation Plan to meet each applicable Control Requirement for the activity. The control measures identified in the Dust Mitigation Plan are subject to review and approval by the DAQM as part of the dust control permit.

Specific requirements include a 20 percent opacity standard for active earthmoving operations and construction traffic. Also, all construction activities are prohibited from creating a visible plume that extends more than 100 yards from the point of origin. Construction site trackout is addressed by both a requirement to install and maintain trackout control devices at all traffic access/exit points and a requirement that trackout be cleaned up immediately (within one hour of discovery) if it extends a cumulative distance of 50 feet or more. In addition, all trackout must be cleaned up by the end of the work day or evening shift. To prevent emissions during bulk material transport and handling, truck loads must be covered on public roads and a 20 percent opacity limit applies during truck loading and unloading. Truck loads of bulk materials on site must either be covered, maintain three to six inches of freeboard, or maintain optimum moisture content of soils. All inactive disturbed soil areas must meet surface stabilization standards,

²² Five soil type categories are included that take into account both silt content and optimum moisture content: high, moderately high, moderately low, low and slight. The high and moderately high soils generally require that a surfactant mixture with water or tackifier mixture with water, respectively, be applied for effective dust control.

²³ Construction activities with specific BMPs include trenching, truck loading, screening, landscaping, paving/subgrade preparation, disturbed inactive surfaces, track out control, staging, equipment, and material storage areas, construction traffic, crushing, abrasive blasting, soil and rock blasting, stockpiles, importing bulk materials, backfilling, clearing and grubbing, clearing forms, cut and fill and demolition.

including stockpiles and parking areas.²⁴ Unpaved haul roads must comply with both a 20% opacity standard²⁵ and a surface stabilization standard.²⁶ In high wind conditions, owners/operators must cease all construction activities if fugitive dust exceeds 20 percent opacity but must continue operation of water trucks and pulls except under specific circumstances. Sites with greater than 50 acres of actively disturbed soil are required to employ a responsible person to monitor dust control at the site.²⁷

Section 94 and the Section 94 Handbook and other documents adopted by reference contain appropriate performance standards and test methods for opacity and surface stability, recordkeeping requirements, and otherwise meet EPA's enforceability criteria. Although the opacity standard per the test method included in section 94 is the best currently available to assess the opacity of emissions from the variety of construction activities generating fugitive dust, it may not be sufficient in all field circumstances to control intermittently-occurring dust plumes to BACM levels. Therefore, Clark County has adopted a SIP commitment to fund additional research to develop an acceptable alternative test method and revise section 94 accordingly. See Chapter 4 of the Plan, section 4.8.2.7. We consider this commitment as factoring into our determination that the Plan provides for BACM/MSM.

Section 94 construction site requirements became effective on January 1, 2001. We propose to find that the Clark County Plan provides for the implementation of construction site measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 94 and section 94 Handbook requirements are of equivalent or greater stringency than those adopted or in practice in other areas.

We, therefore, propose to find that the Clark County Plan provides for the

²⁴ Surfaces must comply with a visible crust standard per the test method in section 94 but may also comply with other surface stability standards in section 90.

²⁵ A modified EPA Reference Method 9 applies, found in section 91.

²⁶ A 6 percent silt content and/or 0.33 oz per square foot silt loading standard applies.

²⁷ This requirement was newly developed by Clark County and serves the dual purpose of improving compliance of larger sites by active monitoring of dust control-related efforts, but also encourages owners/operators to keep the total amount of disturbed surface under 50 acres as a preventative measure.

²⁰ We do not consider improved enforcement a BACM but rather a method of implementing BACM.

²¹ The Section 94 Handbook and associated documents are explicitly adopted as part of section 94 per subsection 94.3.1 of the rule.

implementation BACM and for the inclusion of MSM for construction sites. We also propose SIP approval of section 94 and the section 94 Handbook and referenced documents per CAA section 110 and part D.

d. Paved Road Dust

Paved road dust is fugitive dust that is deposited on a paved roadway and then re-entrained into the air by the action of tires grinding on the roadway. Dust can be deposited on the roadway from being blown onto the road from disturbed areas, tracked onto the road from unpaved shoulders, unpaved roads, or other unpaved access points, stirred up from unpaved shoulders by wind currents created from traffic movement, spilled onto the road by haul trucks, and carried onto the road by water runoff or erosion. Paved road dust constitutes 26 percent of the 1998 valley-wide annual BLM Disposal Area emissions, thus is the second largest source of valley-wide PM-10 in the Las Vegas area. Paved road dust accounts for 13 percent of the overall 24-hour BLM Disposal Area 1998 inventory.

The suggested measures for controlling emissions from paved road dust fall into two categories: Preventing deposition of material onto a roadway, and cleaning material off the roadway.²⁸ The Clark County Plan includes ten potential BACM for paved road dust that fall under one of these two categories. We believe this list is complete and propose to find that the Clark County Plan evaluates a comprehensive set of potential controls for paved road dust including the potential MSM from other States.

Clark County adopted requirements for paved road shoulders and PM-10 efficient street sweeping requirements in section 93 "Fugitive Dust from Paved Roads and Street Sweeping Equipment". Clark County adopted SIP commitments to stabilize existing unpaved road shoulders and require use of vacuum crack seal equipment. See Clark County Plan, Chapter 4, sections 4.8.3.2 and 4.8.2.9.²⁹ Measures to prevent construction site trackout onto paved roads from truck tires and material

²⁸ Reductions in vehicle miles traveled and vehicle trips are also candidate transportation control measures (TCMs) that could have positive impacts on reducing paved road dust. However, these measures are more appropriate for areas addressing significant on-road mobile source emissions and would not impact paved road dust on the same magnitude as measures directed towards preventing or removing deposition. TCMs are separately addressed and included in Clark County's Carbon Monoxide Plan, adopted on August 1, 2000.

²⁹ Clark County submitted a SIP amendment that establishes a revised deadline of March 31, 2003 for the section 93 and other rule revisions.

transport are included in section 94 and the section 94 Handbook (construction activity regulations). For other measures³⁰, Clark County provided documentation of ongoing programs in place.³¹

The paved road measures relied upon for emissions reductions towards demonstrating attainment include stabilizing unpaved road shoulders, preventing trackout from construction sites, and reducing deposition from other fugitive dust sources subject to control per sections 90 through 94. The remaining measures are either already factored into the baseline or are not credited with emissions reductions towards the attainment demonstration.³²

Section 93 requires owners/operators using street sweeping equipment or services on paved roads or parking lots to acquire or contract to acquire only certified PM-10 efficient street sweeping equipment³³ after January 1, 2001. We note this requirement applies to both private operators and government agencies.

For new or modified road shoulders, section 93 requires four feet of paved or stabilized shoulder on each side of the paved travel section or construction of curbing adjacent to the paved travel lane.³⁴ Medians must also be stabilized.

For existing unpaved road shoulders, section 93 requires stabilization within 365 days following initial discovery that the road fails to meet the stabilization standards and other requirements that apply to new/modified paved road shoulders. The stringency of this provision is necessarily enhanced by the SIP commitment in the Plan which lays forth the program and definitive dates by which all unstabilized shoulders will be identified and stabilized by public agencies in the Valley. Clark County indicates that shoulder improvements will be prioritized by each entity for their respective jurisdictions based upon emissions estimates. To

³⁰ Prevention of storm water drainage deposits, cleanup of material spills and erosion-caused deposits, and routine sweeping of paved roads.

³¹ See Clark County Plan, Appendix J and Chapter 4, pg. 4-69.

³² For example, a large portion of the publicly-owned street sweeping fleet already consisted of PM-10 efficient street sweepers in 1998 and routine sweeping programs were already in place.

³³ This refers to a street sweeper which has been certified by the South Coast Air Quality Management District (SCAQMD) to comply with the performance standards in SCAQMD's Rule 1186 according to test methods specified in Rule 1186.

³⁴ Clark County has made a SIP commitment to strengthen this provision to provide for eight feet of stabilized shoulder adjacent to the paved travel section on roads with 3,000 vehicles per day or more. The new SIP commitment date of March 31, 2003 applies per Clark County's SIP amendment.

implement the program, Plans will be completed by February 15, 2002, and at a minimum, funds will be obligated to improve 33 miles of paved road shoulders by the end of 2003, with all shoulders to be stabilized by the end of 2006. Annual updates on the progress of stabilizing shoulders will be submitted to Clark County and EPA. In a June 28, 2002 letter, the DAQM indicates that the respective public entities have submitted initial plans for stabilizing shoulders and initiated programs to begin stabilization.

Section 93, paved road requirements, became effective on January 1, 2001. The SIP commitment by governmental entities to stabilize 33 miles of unpaved shoulders by the end of 2003 and all shoulders by the end of 2006 allows time for public works agencies to complete an inventory of the unpaved shoulders in their respective jurisdictions and adopt schedules under capital improvement programs to stabilize shoulders each year using Congestion Management Air Quality (CMAQ) funds. Other measures have ongoing implementation schedules because they are part of an on-going capital improvement program, e.g., storm water drainage projects. Therefore, we propose to find that the Clark County Plan provides for the implementation of paved road measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 93 requirements and SIP commitments contained in the Plan are of equivalent or greater stringency than those adopted or in practice in other areas.

We, therefore, propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for paved road dust.

e. Unpaved Roads

This category includes re-entrained dust from vehicle travel on unpaved roads and windblown emissions from unpaved roads. There are three categories of unpaved roads in the Clark County nonattainment area: Publicly-owned/maintained roads, privately-owned roads, and unpaved haul/access roads associated with construction sites or industrial facilities. We have addressed the latter category in the discussion of construction site measures (section IV.D.3.c) of this document.

There are three ways to control fugitive dust emissions from unpaved roads: surface treatment to reduce dust from unpaved roads and alleys, traffic reduction/speed control plans for unpaved roads, and prohibition of

unpaved haul roads. All three are identified and evaluated in the Clark County Plan. We believe this list is complete and propose to find that the Clark County Plan evaluates a comprehensive set of potential BACM and MSM for unpaved roads.

Clark County did not implement traffic reduction/speed control on public and private roads in the Valley.³⁵ This is because the County determined that reducing traffic on public and private unpaved roads is not as stringent a measure as paving or other means of surface stabilization. Speed control is difficult to enforce compared to road paving, which can be readily verified and results in greater emissions reductions. Thus, the benefits of applying this potential BACM are subsumed in the more stringent emission reductions associated with surface stabilization.

Clark County adopted requirements to stabilize existing unpaved roads and alleys and to prohibit new unpaved roads in public thoroughfares in section 91 "Fugitive Dust From Unpaved Roads, Unpaved Alleys and Unpaved Easement Roads." Also, Clark County adopted a SIP commitment for County and City Public Works agencies to pave unpaved roads subject to section 91.³⁶

Section 91 requires all existing unpaved roads that receive 150 vehicle trips per day or more to be paved or treated with dust palliatives on the following schedule: 1/3 of the total by June 2001, two-thirds of the total by June 2002, and any remaining roads by June 1, 2003. Section 91 prohibits construction of new unpaved roads or alleys in public thoroughfares after June 22, 2000 unless the unpaved road is an interim component of an active paving project.

Section 91 requirements apply to both public and private roads. Clark County estimates that approximately 64 miles of the 259-mile total base year inventory of publicly-owned and maintained unpaved roads have 150 or more average daily vehicle trips (ADT). The unpaved roads inventory was developed by the respective Public Works departments after extensive review of the existing road network. Given that higher ADT unpaved roads proportionately contribute greater emissions than lower ADT roads, the 64 miles constitute 66% of emissions from the total inventoried road network. The SIP commitment for unpaved roads made by County and City Public Works

agencies not only goes beyond the section 93 requirements in that it ensures roads will receive the maximum emissions reductions possible through paving, but further enhances coverage in that the City of Las Vegas makes an additional commitment to pave all unpaved roads within its jurisdiction by the end of 2006. We also note that the SIP commitment concerning paved road shoulders³⁷ indicates that shoulder improvements and road paving for unpaved roads with less than 150 ADT will be prioritized by each entity for their respective jurisdictions based upon emissions estimates. Thus, road paving efforts by jurisdictions may very well go beyond the requirements in section 91 depending on the availability of CMAQ dollars. Section 91 contains specific reporting requirements for the responsible jurisdictions and the SIP commitment for unpaved roads provides for annual progress updates to be provided to the DAQM and EPA.

While the miles of privately owned unpaved roads have not been fully inventoried in detail, a total of 45 miles of private roads were identified by various municipalities and the County, none of which were determined to have traffic volumes greater than 50 ADT. Clark County included a SIP commitment in the Plan to develop an improved inventory of both public and private unpaved roads.³⁸

Section 91 also contains requirements that address the prospect of vehicle traffic increases on unpaved roads that are currently below the 150 ADT threshold but in the future exceed it. Any existing unpaved roads which equal or exceed 150 ADT after June 1, 2003 are subject to control according to section 91 within 365 calendar days following initial discovery that vehicular traffic equals or exceeds 150.

Section 91 contains appropriate performance standards and test methods for surface stability and opacity,³⁹ recordkeeping requirements, and otherwise meets EPA's enforceability criteria.

Section 91 unpaved road requirements prohibit new unpaved roads as of June 22, 2000. Clark County indicates that the CMAQ funding obligated by the responsible government agencies (totaling over \$25 million) will support completing approximately one-

third of the total paving requirement in section 91 for each year from 2001 to 2003.⁴⁰ Moreover, we note in a June 28, 2002 letter from the DAQM that the responsible jurisdictions have exceeded the section 91 required one-third increment of road paving by June 2001 and have reported paving 86 percent, or a total of 55 of the 64-mile public road inventory receiving 150 ADT or more. This demonstrates the commitment of Clark County governmental entities to implement control measures expeditiously. We propose to find that the Clark County Plan provides for the implementation of unpaved road measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 91 requirements and SIP commitments for unpaved roads are equally or more stringent than those adopted or in practice in other areas.

We, therefore, propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for unpaved roads. We also propose SIP approval of section 91 per CAA section 110 and part D.

f. Race Tracks

Race track emissions are both actively generated from use by offroad vehicles, *e.g.*, dirt bikes and all-terrain vehicles (ATVs), and windblown from disturbed surfaces following use. Clark County determined that race track emissions are only significant with respect to the 24-hour standard. Race track emissions that were found to have significant impacts at two micro-inventory sites were associated with unauthorized ATV use on a vacant parcel.⁴¹

Clark County did not prepare a separate BACM analysis for race tracks. Rather, Clark County implements its strategy for race tracks through section 90 controls for disturbed vacant land and open areas. We note that there are three potential BACM for control of dirt race tracks: Prohibit race tracks, treat the surface of race tracks with dust suppressants or palliatives, and establish wind breaks around the circumference of tracks. Of these potential BACM, Section 90 controls address the first two. Establishing wind breaks has not been adopted, but this measure is not as stringent as prohibiting race tracks and surface treatment of disturbed areas.

Clark County determined that section 90 requirements effectively prohibit dirt race tracks because it is not possible to

³⁵ However, traffic reduction/speed control is included in the Section 94 Handbook as a BMP for unpaved haul/access construction site roads.

³⁶ See Chapter 4, section 4.8.3.1 of the Plan.

³⁷ See Chapter 4, section 4.8.3.2 of the Plan.

³⁸ See Chapter 4, section 4.8.2.3 of the Plan.

³⁹ Where paving is not conducted (this would only apply to roads that are not included in the SIP commitment by Public Works entities), both a 20% opacity standard according to a modified EPA Reference Method 9 and a silt content standard of 6% or alternatively, a silt loading standard of 0.33 oz/sq. ft., apply.

⁴⁰ See Chapter 7, pg. 7-4 of the Plan.

⁴¹ See Chapter 4, pg. 4-81 of the Plan.

operate off-road vehicles, including dirt bikes and ATVs, on open areas/vacant lots and remain in compliance with the regulation. Where motor vehicle trespass is occurring on vacant lots greater than 5,000 square feet, owners must take steps to prevent trespass and stabilize the surface. Even if motor vehicle use is authorized, where over 5,000 cumulative square feet of surface has been disturbed, owners/operators must apply dust palliative (other than water) or gravel. These requirements would apply to any public or private lands where offroad racing occurs.

The one public entity in Clark County that can effectively authorize use of public land for offroad racing events is the Bureau of Land Management. Clark County indicates that BLM is currently working to establish offroad racing courses outside the nonattainment area. The DAQM's policy prohibiting issuance of permits for offroad race tracks within the nonattainment area is described in a letter dated September 5, 2002 from the DAQM to the BLM and in letters from the DAQM to other public agencies dated September 9, 2002.

Clark County did not conduct a MSM evaluation specific to race tracks. Rather, the MSM evaluation for section 90 applies. We propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for race tracks.

g. Section 0

Section 0 was revised by Clark County at the same time sections 90 through 94 were originally adopted (November 16, 2000). The section 0 definitions that concern fugitive dust sources are integrally linked to the requirements found in sections 90 through 94. However, section 0 also contains definitions that are not pertinent to sections 90 through 94. For the purposes of this action, we have only evaluated the definitions concerning fugitive dust sources per section 90 through 94 requirements and are proposing to approve only these sections into the SIP, rather than the entire section 0.

The individual sections of section 0, November 16, 2000, we are proposing to approve into the Nevada PM-10 SIP include the following:

- Section 0.25 "Best Management Practices"
- Section 0.33 "Commercial and Residential Construction"
- Section 0.36 "Construction Activity"
- Section 0.37 "Control Measure"
- Section 0.43 "Disturbed Surface Area"
- Section 0.45 "Dust Palliative"
- Section 0.46 "Dust Suppressant"

- Section 0.47 "Easement"
- Section 0.48 "Easement Holder"
- Section 0.51 "Emergency"
- Section 0.58 "EPA or Administrator"
- Section 0.65 "Flood Control Construction"
- Section 0.70 "Fugitive Dust"
- Section 0.81 "Hearing Officer"
- Section 0.84 "Highway Construction"
- Section 0.110 "Nonroad Easement"
- Section 0.111 "Normal Farm Cultural Practice"
- Section 0.114 "Offroad Vehicle"
- Section 0.117 "Open Areas and Vacant Lots"
- Section 0.120 "Owner and/or Operator"
- Section 0.127 "Pave"
- Section 0.132 "PM-10 Nonattainment Area"
- Section 0.133 "PM-10"
- Section 0.140 "Public Road"
- Section 0.141 "Reclaimed Water"
- Section 0.147 "Road Easement"
- Section 0.162 "Trench"
- Section 0.164 "Unpaved Parking Lot"
- Section 0.166 "Vacant Lot"

The current Nevada SIP contains a definitions rule titled "Section 1—Definitions" submitted on November 17, 1981 and approved into the SIP by EPA on June 21, 1982. Our proposed incorporation of the specified section 0 definitions into the SIP would upgrade the SIP by adding several new definitions and by replacing two of the existing section 1 definitions. These two definitions include section 0.70 "Fugitive Dust" and section 0.114 "Offroad Vehicle", which would replace subsection 1.35 and subsection 1.64 of section 1, respectively.

G. Applicable SIP Rules

In addition to section 1, the applicable SIP-approved fugitive dust rules that apply in Clark County include section 41 "Fugitive Dust" (submitted on July 24, 1979 and approved by EPA on August 27, 1981) and section 17 "Permission to Disturb Topsoil" (submitted on July 24, 1979 and approved by EPA on August 27, 1981). Revisions to section 17 were submitted on November 17, 1981 and approved by EPA on June 18, 1982.

We are proposing to revise the Nevada PM-10 SIP to incorporate sections 90, 91, 92, 93 (as adopted on November 20, 2001) and section 94 (including the Section 94 Handbook and other referenced documents) (as adopted on November 16, 2000) of the Clark County Regulations. We are proposing to replace SIP-approved Clark County section 17. We are also proposing to add certain portions of Section 0 (as adopted on November 16, 2000) to the existing SIP-approved section 1, and replace two

definitions in section 1, as previously identified in this notice.

CAA section 110(l) prohibits approval of SIP revisions that would interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act. As discussed in other sections of this document, we are proposing to approve the expeditious attainment and RFP demonstrations in the PM-10 State Implementation Plan for Clark County. These demonstrations are in large part dependent on approval of sections 90, 91, 92, 93, and 94 (including Handbook) and Clark County SIP commitments. Therefore, our proposed approval of these rules and SIP commitments will not adversely affect the Plan's provisions for expeditious attainment and RFP. These SIP revisions also satisfy all other applicable CAA requirements including implementation of BACM and the inclusion of MSM.

H. General SIP Requirements and Enforcement of Fugitive Dust Rules

Section 110(a)(2)(E)(i) of the Clean Air Act requires that the implementation plan provide necessary assurances that the State (or the general purpose local government) will have adequate personnel, funding and authority under State law. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (51.230–51.232) and for resources in 40 CFR 51.280.

States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. SIPs must also describe the resources that are available or will be available to the State and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal.

Section 110(a)(2)(C) of the Act requires SIPs to include a program to provide for the enforcement of SIP measures. The implementing regulation for this section is found at 40 CFR 51.111(a) and requires control strategies to include a description of enforcement methods including (1) procedures for monitoring compliance with each of the selected control measures, (2) procedures for handling violations, and (3) the designation of the agency responsible for enforcement.

Section 110(a)(2)(E)(iii) of the Act requires SIPs to include necessary assurances that where a State has relied on a local or regional government, agency or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring

adequate implementation of the such plan provision.

With respect to CAA section 110(a)(2)(E)(iii), the State of Nevada has ultimate responsibility for ensuring the adequate implementation of the Clark County air quality program according to NRS 445B.520. This statute allows the State Environmental Commission to supersede a County's program when the Commission determines that a local air quality program is inadequate.

The principal control measures in the Clark County Plan are the adopted requirements in sections 90 through 94 and the Plan's SIP commitments for unpaved shoulders and roads.

1. Staffing

Clark County has committed to increase its enforcement staffing and thus enhance enforcement efforts. See Chapter 4, section 4.8.1 and appendix H, Resolution 02-00, July 27, 2001, of the Clark County Plan. Specifically, Clark County committed to hire 15 additional staff by December 31, 2001 to implement and enforce sections 90 through 94, including several enforcement officers, clerical and other support positions. Prior to the fulfillment of this SIP commitment, compliance for fugitive dust sources (per sections 17 and 41 of the Clark County Regulations) was being handled by 11 people total, seven (7) of which were field enforcement officers conducting inspections.

The DAQM has provided us with the status of its SIP commitments.⁴² First, the DAQM met its commitment by hiring 15 new staff into the compliance division, 12 of which were hired as field enforcement officers to conduct inspections and handle cases for construction sites and vacant lots. The DAQM then exceeded its SIP commitment by hiring an additional seven (7) field enforcement officers in 2002. The Compliance Division now consists of a total of 44 positions, with 22 field enforcement officers who spend approximately 90 percent of their time on fugitive dust issues. The increased level of effort specifically being targeted towards fugitive dust sources is evidenced by the significant number of inspections and corrective action orders concerning fugitive dust sources in 2001 and 2002, which we address in subsequent paragraphs.

We address below other program areas that are key to improving compliance and which we believe form a solid program for the effectiveness of

the County's efforts to control fugitive dust.

2. Inspection Program

Clark County's enforcement staff utilizes the county Geographic Information System (GISMO) to obtain detailed aerial photographs to locate and identify large parcels of vacant land to inspect and characterize. The DAQM continues to expand the existing vacant land program by identifying and systematically inspecting the problem areas and the larger parcels.

In calendar years 2001 and 2002 (as of September) combined, Clark County has conducted over 4,000 vacant land inspections. The Compliance Division has a member on staff who coordinates all activities and concerns with two government agency large vacant landowners, the Bureau of Land Management and the Bureau of Reclamation—in order to ensure close cooperation with these agencies.

In calendar years 2001 and 2002 (as of September) combined, Clark County has conducted over 5,000 construction site inspections. Complaints are given priority for inspection; however, enforcement officers also inspect construction sites within their assigned area on a routine basis, including non-permitted construction activities as they are encountered in the field.

3. Enforcement Program

Clark County relies upon two options for handling noncompliant sources: issuing a Corrective Action Order (CAO) or a Notice of Violation (NOV). In 2001, the County issued 1,316 CAOs and as of September 2002 has issued 1,775 CAOs. In 2001, the County issued 57 NOVs and as of September 2002 has issued 133 NOVs. The penalties assessed for the two years combined amount to \$719,372. CAOs are generally written for infractions that are not substantial enough to warrant a NOV, allowing source owners/operators a first-time chance to comply. NOVs are issued for more serious violations. Should owners/operators fail to comply with a CAO, it becomes a NOV with associated penalties.

Section 7 provides that the Hearing Board Officers be selected by the District Board of Health and have the authority to levy penalties for alleged violations in accordance with section 9 of Clark County regulations, which contains the minimum penalties for violations of fugitive dust requirements. The minimum penalty for limiting visible emissions is \$2,000. The minimum penalty for not complying with other control measure provisions is \$1,000. Minimum penalties for failing to

comply with administrative requirements related to permit conditions is \$500 and \$250 for other administrative requirements. Clark County compared these minimum penalties for dust violations to those of other air regulatory agencies and found that they were among the highest in the nation.

4. Public Outreach/Education

Public outreach and education consists of staff training, educating the regulated parties, developing good working relationships with other involved parties such as the cities, and making the program more understandable. Increased education of both inspectors and the regulated industry increases compliance.

Public outreach efforts in which Clark County has engaged to improve compliance for construction sites include publishing and distributing a manual that summarizes the section 94 and section 94 Handbook requirements in an easy-to-comprehend format. Also, dust control classes and educational workshops are regularly offered by the DAQM's Compliance Division. The construction site superintendent or designated on-site representative and water truck and water pull drivers for each construction project are required per section 94 to have successfully completed a Dust Control Class and all individuals required to attend must successfully complete the Dust Control Class at least once every three years. In addition, as of 2002, the DAQM has conducted a special training effort per the section 94 requirement for a responsible person to monitor dust (*i.e.* "Dust Control Monitor") on sites with more than 50 acres of disturbed surface. To date, two Dust Control Monitor classes have been held with over 90 participants.

In order to increase awareness among vacant lot owners/operators of the disturbed vacant lot requirements, Clark County prepared and distributed a brochure summarizing the section 90 requirements to over 40,000 vacant landowners.

5. Program Evaluation and Tracking

Clark County tracks the number of inspections, CAOs, NOVs, penalties assessed and penalties collected for fugitive dust and other sources and provides quarterly reports containing this information to EPA.

Clark County tracks progress of government agencies on their unpaved road and paved road SIP commitments through a PM-10 SIP Implementation Working Group and an Unpaved Road Ad Hoc Committee. These groups are

⁴² See June 28, 2002 letter and attached RFP Report and October 1, 2002 letter from the DAQM to EPA.

comprised of DAQM planning and compliance staff and staff from the County and City public works agencies. Unpaved road paving is documented using an extranet site and the unimproved shoulders program will be reviewed through submittal of annual reports to the DAQM.⁴³ Also, the Public Works Departments in Clark County routinely track paved road performance and maintenance by checking the condition of paved roads in their respective jurisdictions.

6. Conclusion

We propose to find that the Clark County PM-10 Plan adequately provides for the enforcement of the principal measures relied on for attainment and that Clark County has provided adequate descriptions of its enforcement methods as required by our regulations.

We also propose to find that the implementing agencies for the Clark County Plan have adequate resources for implementing their respective commitments that are included in the submitted Plan and that the Plan adequately describes the resources that are available or will be available to the State and local agencies to carry out the Plan, both now and over the next 5 years.

I. Demonstration of Attainment and Attainment Date Extension

The Clark County Plan contains an analysis that demonstrates attainment of the annual PM-10 standard by December 31, 2001. Clark County predicted that an annual reduction of 5.66 percent, equivalent to 9,657 tons valley-wide and 303 tons for the J.D. Smith micro-inventory area, is needed to attain the annual 50 $\mu\text{g}/\text{m}^3$ standard, given an estimated uncontrolled concentration of 53 $\mu\text{g}/\text{m}^3$. The valley-wide rollback modeling predicts annual PM-10 concentrations to be 46.2 $\mu\text{g}/\text{m}^3$ in 2001. The corresponding microinventory projection for J.D. Smith, the exceeding site, is 48.5 $\mu\text{g}/\text{m}^3$, also less than 50 $\mu\text{g}/\text{m}^3$. Together, these demonstrate attainment of the annual PM-10 standard by 2001. We propose to find this demonstration adequate. The adequacy of the demonstration is further supported by information provided by the DAQM to EPA⁴⁴ indicating that the three-year annual average (1999-2001) of the microscale sites is below the 50 $\mu\text{g}/\text{m}^3$ standard.

Clark County has requested an extension of the attainment date for the

24-hour 150 $\mu\text{g}/\text{m}^3$ PM-10 standard. Section 188(e) of the Act allows us to extend the attainment date for a serious area for up to five years beyond 2001 if attainment by 2001 is impracticable. However, before we may grant an extension of the attainment date, the State must first:

1. Apply to us for an extension of the PM-10 attainment date beyond 2001,
2. Demonstrate that attainment by 2001 is impracticable,
3. Have complied with all requirements and commitments applying to the area in its implementation plan,
4. Demonstrate to our satisfaction that its serious area plan includes the most stringent measures that are included in the implementation plan of any state and/or are achieved in practice in any state and are feasible for the area, and
5. Submit a demonstration of attainment by the most expeditious alternative date practicable.

We evaluate the Clark County serious area plan's compliance with each of these requirements below.

1. Apply for an Extension

The documentation supporting Clark County's extension request is found in Chapter 7 of the Plan. This extension request is an integral part of the Clark County Plan and was subject to public hearing along with the rest of the plan, including the demonstration that the area will attain the 24-hour standard by the earliest alternative date practicable.

2. Demonstrate the Impracticability of Attainment by December 31, 2001

Clark County's determination that demonstrating attainment of the 24-hour standard by 2001 is impracticable is primarily based upon the need for increased enforcement staffing, which could not be completed until the end of 2001. Clark County conservatively assumes that the rule effectiveness of its regulations in 2001 is half of what it will need to be in 2006 to demonstrate attainment of the 24-hour standard.

Also, with respect to the unpaved roads schedule, Clark County indicates that the maximum benefit that will be realized at the end of 2003 from the appropriated CMAQ funding cannot practically be achieved earlier due to funding limitations each year. Notwithstanding, we note from the DAQM's June 2002 RFP Report that the responsible entities have exceeded the Section 91 required 33 percent paving of roads subject to the rule by 2001 and reported paving 86 percent, or a total of 55 of the 64 mile inventory of unpaved roads with 150 vehicle trips per day.

With respect to improvements to paved road shoulders, Clark County has committed to stabilize 33 miles of paved road shoulders by the end of 2003 using appropriated CMAQ funds and all shoulders by 2006. The remaining shoulders have a later implementation date given that new CMAQ funds will need to be appropriated and first committed towards the carbon monoxide transportation demand management program. Thus, earlier implementation would be impracticable.

The modeled valley-wide 24-hour value for 2001 is 209 $\mu\text{g}/\text{m}^3$. Although this is a significant reduction from the projected design day value of 281 $\mu\text{g}/\text{m}^3$, it still falls far short of the 150 $\mu\text{g}/\text{m}^3$ standard.

Thus, we propose to find that Clark County has demonstrated the impracticability of meeting the 24-hour standard by 2001.

3. Complied With Commitments and Requirements in the SIP

All measures upon which Clark County is relying to meet the applicable CAA requirements for a Serious Area PM-10 plan are included or referenced in the current June 2001 Plan, as amended by Clark County in November 2002.

4. Include the Most Stringent Measures

Clark County identified candidate MSM in the context of its analysis to identify potential BACM, generally finding that control measures being implemented in other PM-10 serious nonattainment areas in the western U.S. were the most stringent controls implemented by others for the types of fugitive PM-10 sources requiring control in the Las Vegas Valley.

In the Clark County Plan, after a comprehensive list of candidate MSM was developed, each measure was screened against the corresponding Clark County measure to identify those with more restrictive emission limitations, more extensive lists of affected sources, fewer exemptions, and/or one or more substantive regulatory provisions not found in the Clark County measure. Clark County includes a measure-by-measure MSM comparison in Chapter 6 of the Plan.

Based on our analysis of the Clark County Plan, we propose to find that it demonstrates to our satisfaction inclusion of the most stringent measures that are included in the implementation plan of any State, or are achieved in practice in any State, and can be feasibly implemented in the Clark County area.

⁴³ Appendix L, pg. L-12 of the Plan.

⁴⁴ June 28, 2002 letter from the DAQM to EPA with attached June 2002 Reasonable Further Progress Report.

5. Demonstrate Expedient Attainment

For the reasons discussed below, we propose to find that the Clark County Plan demonstrates attainment by the earliest date practicable after December 31, 2001 as required by CAA section 189(b)(1)(A)(ii). We also propose to find that: The attainment demonstration relies on control measures that either are approved or have been proposed for approval and meet our SIP enforceability criteria; the emissions estimates credited to these measures in the attainment demonstration are reasonable; and the measures are being implemented on a schedule that is as expeditious as practicable and will result in attainment by the earliest practicable date.

a. Air Quality Modeling

The attainment demonstration for the 24-hour standard in the Clark County Plan is divided into two parts, a microscale analysis and a regional analysis. The microscale part evaluates 24-hour exceedences at five monitoring sites in the Las Vegas. The regional part evaluates 24-hour levels throughout the rest of the Clark County nonattainment area.

Clark County relies upon an emissions "rollback" model for the attainment demonstrations. EPA's guidelines⁴⁵ allow the need for case-by-case approaches in circumstances when recommended dispersion models are not available or applicable and where area sources are the predominant component of PM-10. To predict future concentration, the current concentration is reduced or "rolled back" by the same fractional amount that emissions are reduced. In recognition of the special characteristics of fugitive dust-dominated areas, we believe an attainment demonstration based on proportional rollback of one or more microinventories is a reasonable approach and is consistent with EPA guidance, as long as the microinventory areas are representative of worst case conditions, and the resulting emission controls are applied throughout the area.

We have evaluated the five microinventory areas mentioned previously in this document and find that they contain varying source category mixes and span a range of conditions that occur in the Las Vegas Valley. By showing that the chosen microinventory areas are representative of conditions leading to PM-10 NAAQS exceedences, and by then applying the controls shown to be needed in these

microareas to the entire nonattainment area, Clark County has followed an acceptable procedure for demonstrating attainment.

b. Control Measures Relied on for Attainment

For demonstrating attainment of the annual and 24-hour PM-10 standards, the Clark County Plan relies on reductions in directly-emitted PM-10 from the following measures: Section 90 controls for disturbed vacant land, section 92 controls for unpaved parking lots,⁴⁶ section 94 (including Handbook) controls for construction sites, section 91 and government agency SIP commitment controls for unpaved roads, and section 93 and government agency SIP commitment controls for unpaved road shoulders (within the paved road dust category).

For the 24-hour attainment demonstration, Clark County models controlled valley-wide future concentrations for the years 2001 and 2006 as well as controlled 2006 concentrations at each of the five microscale sites. We have evaluated the emissions reductions credited to each measure in the attainment demonstrations to ensure they are reasonable. Three factors considered include:

1. Emissions reductions from controls applied (*e.g.* percent reduction achieved through paving or chemical stabilization);

2. Rule penetration (*i.e.* percentage of sources within the total source category that the rule or measure will impact); and

3. Rule effectiveness (*i.e.* the expected rate of compliance with a rule or measure).

We find that the emission reduction estimates for each source category are consistent with available research on the applicable control methods, rule penetration estimates are reasonable based on emissions inventory data, and rule effectiveness estimates are reasonable given the schedule for adoption of measures and other factors. Emissions reductions credited based on these estimates are appropriately

⁴⁶ Emission reductions for section 92 controls were only specifically calculated for the two microscale areas that included unpaved parking as opposed to a valley-wide basis. These microscale areas play a role in the 24-hour but not annual attainment demonstration. Clark County did not prepare a separate valley-wide inventory for unpaved parking lots apart from the disturbed vacant land inventory. Thus, reductions attributable to the section 92 controls are only implicitly assumed, for purposes of the annual attainment demonstration, within the larger valley-wide emission reductions anticipated from disturbed vacant land.

applied in the attainment demonstrations. For more information on the quantification of emission reductions, we refer to the TSD associated with this rulemaking.

We are also proposing that the measures relied on for attainment are being expeditiously implemented. Section 90, 91, 92, 93 and 94 requirements all applied well before adoption of the Clark County Plan in June 2001. While Clark County has revised the original SIP commitment deadline for adopting certain revisions to its fugitive dust regulations to March 31, 2003, these revisions provide incremental reductions above an already-adopted baseline that should achieve substantial immediate reductions. Therefore, we believe the extension is reasonable and does not impact our finding that the Plan provides for expeditious implementation of measures. Finally, Clark County's SIP commitment for hiring additional staff to implement and enforce fugitive dust controls was established with an expeditious timeframe for all positions to be filled by the end of 2001. Clark County has not only met, but exceeded this commitment.

6. Other Factors That EPA May Consider

CAA section 188(e) lists five additional factors that we may consider in deciding whether to grant an extension and the length of that extension. These include: (1) The nature and extent of the nonattainment problem; (2) the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and international transport); (3) the population exposed to concentrations in excess of the standard; (4) the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area; and (5) the technological and economic feasibility of various control measures.

In evaluating these factors, we have focused on the nature and extent of the nonattainment area problem, the types of sources contributing to the problem, and the ability of the County to control these sources. Fugitive dust sources dominate the emissions inventory in the Clark County PM-10 nonattainment area. Controls for these sources are well known (paving, wetting surfaces, etc.) and have been adopted; however, the number of sources and nature of sources make education, outreach and enhanced enforcement necessary to assure full compliance with those controls. In addition, costs for paving roads and stabilizing shoulders necessary to

⁴⁵ Guideline On Air Quality Models, 2001, sections 7.2.1 and 7.2.2.

reduce PM-10 emissions are high and funds are only available over a number of years. These factors generally support a longer time frame for attainment.

7. Conclusion on Extension Request

Based on our review of the Clark County Plan and our proposed determination that it meets the requirements necessary for granting an extension of the attainment date under CAA section 188(e), we are proposing to grant a five-year extension of the attainment date for the 24-hour PM-10 standard in the Clark County PM-10 serious nonattainment area from December 31, 2001 to December 31, 2006.

J. Reasonable Further Progress and Quantitative Milestones

CAA section 172(c)(2) requires nonattainment plans to provide for reasonable further progress (RFP). Section 171(1) of the Act defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D of title I) or may reasonable be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date."

CAA section 189(c) also requires PM-10 plans demonstrating attainment to contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP. These quantitative milestones should consist of elements that allow progress to be quantified or measured. Addendum at 42016.

Clark County identified milestone achievement dates of 2003 and 2006 with respect to the 24-hour standard. The milestones have been addressed by quantifying emission reductions which result from the implementation of the committed control measures after predicted growth has occurred. Emissions by 2003 are projected to be reduced substantially to 276.48 tons per day, with 77.23 additional tons per day reductions occurring between 2003 and 2006, resulting in 199.25 tons per day. Clark County indicates that total emissions under 210.70 tons per day should result in attainment of the 24-hour standard. RFP Reports are due at the end of 2003 and 2006, which correspond with Clark County's milestone achievement dates.

The milestones for the 24-hour standard are based on reasonable assumptions that are consistent with the implementation schedules for the measures in the plan and with the RFP demonstrations. For these reasons, we

propose to find that the Plan meets the quantitative milestone requirement in CAA section 189(c)(1).

K. Contingency Measures

Section 172(c)(9) of the Clean Air Act requires that implementation plans provide for the implementation of specific measures to be undertaken if the area fails to make RFP or attain by its attainment deadline. These contingency measures are to take effect without further action by the State or the Administrator. The Act does not specify how many contingency measures are necessary nor does it specify the level of emission reductions they must produce.

The purpose of contingency measures is to ensure that additional emission reductions beyond those relied on in the attainment and RFP demonstrations are available if there is a failure to make RFP or attain by the applicable attainment date. These additional emission reductions will assure continued progress towards attainment while the SIP is being revised to fully correct the failure. To ensure this continued progress, we recommend that contingency measures provide emission reductions equivalent of one year's average increment of RFP. Addendum at 42016.

The following contingency measures were adopted by Clark County Health District Board of Health Resolution #03-00 on July 27, 2000.

1. Reduce the threshold for site-specific dust mitigation plan requirements for construction activities from ten acres to five acres;
2. Require paving/stabilization of all unpaved roads with ≥ 100 average daily vehicle trips;
3. Provide for at least two additional field enforcement officers above and beyond those staff increases committed to in the State Implementation Plan;
4. Increase minimum penalties for violations of Air Quality Regulations for fugitive dust; and
5. Reduce the size threshold for requiring a dust control monitor (coordinator) at construction sites.

Clark County describes that the entire set of contingency measures will be automatically implemented if Clark County fails to meet the projected 2003 emissions reduction milestone. We note that Clark County has already implemented Contingency Measure 3 for field enforcement officer staff increases above and beyond the staff increases committed to in the Plan. Clark County estimates the emissions reduction benefit from the contingency measures to be 1,373 tons per year in

total. This annual reduction exceeds the annual average increment of RFP.

The contingency measures identified in the Plan have been adopted but are not credited in the attainment, RFP or milestone demonstrations for the 24-hour standard and are not necessary to demonstrate expeditious attainment of the standard.

Therefore, we propose to find that the Plan provides for the implementation of contingency measures for the 24-hour standard as required by CAA section 172(c)(9). This proposal is based on our analysis that these contingency measures comply with applicable CAA requirements and EPA policy.

L. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed 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). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have 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), nor will it 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), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power

and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: January 9, 2003

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03-1145 Filed 1-21-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH118-1b; FRL-7428-4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve, as a revision to the Ohio State Implementation Plan (SIP), the remaining portions of the Ohio Environmental Protection Agency's (OEPA) regulations for Prevention of Significant Deterioration (PSD) provisions for attainment areas. EPA had previously conditionally approved Ohio's prior SIP submission on October 10, 2001. Today's proposed final approval of changes in the plan

correcting minor deficiencies cited in EPA's original conditional approval, is based on Ohio's July 18, 2002, submission of revisions to the Ohio Administrative Code (OAC). In its July 2002 submittal, Ohio also made additional revisions to the OAC that were not addressed in EPA's October 10, 2001 conditional approval.

Recently, EPA announced new regulations regarding changes to the preconstruction permit program under EPA's efforts regarding "New Source Review Reform." Today's approval of Ohio's SIP submission does not address EPA's new rules but is limited to portions of Ohio's preconstruction permit program under the existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any requirements that EPA may promulgate as part of New Source Review Reform.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this action must be received by February 21, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Permits and Grants Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Genevieve Damico at (312) 353-4761 before visiting the Region 5 office.

Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Environmental Engineer, Permits and Grants Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4761.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" are used we mean the EPA.

- I. What action is EPA taking today?
- II. Where can I find more information about this proposal and corresponding direct final rule?

I. What Action Is EPA Taking Today?

The EPA is proposing to approve, as a revision to the SIP, the remaining portions of the Ohio Environmental Protection Agency's (OEPA) PSD provisions for attainment areas. EPA had previously conditionally approved Ohio's prior SIP submission on October 10, 2001 (66 FR 51570). Today's proposed final approval of EPA's original conditional approval is based on Ohio's July 18, 2002, submission of the revisions to the OAC. In its July 2002 submittal, Ohio also made additional revisions to OAC 3745-31-01, -02, -03, -05, and -07 that were not addressed in EPA's October 10, 2001 conditional approval.

Recently, EPA announced new regulations regarding changes to the preconstruction permit program under EPA's efforts regarding "New Source Review Reform". See <http://www.epa.gov/nsr/>. Today's approval of Ohio's SIP submission does not address EPA's new rules but is limited to portions of Ohio's preconstruction permit program under the existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any requirements that EPA may promulgate as part of New Source Review Reform.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules and regulations section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: December 13, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

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