without the permission of the Coast Guard Patrol Commander.

(c) *Effective Date.* The third week in October. The exact dates and times for this event will be determined annually.

11. Add § 100.918 to read as follows:

§ 100.918 Detroit APBA Gold Cup, Detroit, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of the Detroit River, Belle Isle, Michigan, bound on the west by the Belle Isle Bridge (position 42°20′20″ N, 083°00′00″ W to 42°20′24″ N, 083°59′45″ W), and on the east by a north-south line drawn through Waterworks Intake Crib Light (Light List Number 8350; position 42°21′06″ N, 082°58′00″ W) (NAD 83).

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Effective Date.* The first or second week in June. The exact dates and times for this event will be determined annually.

12. Add § 100.919 to read as follows:

§ 100.919 International Bay City River Roar, Bay City, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of the Saginaw River bounded on the north by the Liberty Bridge, located at 43°36.3′ N, 083°53.4′ W, and bounded on the south by the Veterans Memorial Bridge, located at 43°35.8′ N, 083°53.6′ W. (NAD 83).

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Effective Date.* The third or fourth week in June. The exact dates and times for this event will be determined annually.

13. Add § 100.920 to read as follows:

§ 100.920 Tug Across the River, Detroit, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of the Detroit River, Detroit, Michigan, bounded on the south by the International boundary, on the west by 083°03′ W, on the east by 083°02′ W, and on the north by the U.S. shoreline (DATUM: NAD 83). This position is located on the Detroit River in front of Hart Plaza, Detroit, MI.

(b) *Special Local Regulations.* The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Effective Date.* The third or fourth week in June. The exact dates and times for this event will be determined annually.

Dated: April 4, 2008.

John E. Crowley, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. E8–8864 Filed 4–24–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2008–0306; FRL–8558–7]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of California; PM–10; Revision of Designation; Redesignation of the San Joaquin Valley Air Basin PM–10 Nonattainment Area to Attainment; Approval of PM–10 Maintenance Plan for the San Joaquin Valley Air Basin; Approval of Commitments for the East Kern PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State of California's request to revise the designation for the San Joaquin Valley (SJV) serious nonattainment area for particulate matter of ten microns or less (PM–10) (SJV nonattainment area) by splitting the area into two separate nonattainment areas: The San Joaquin Valley Air Basin serious PM–10 nonattainment area and the East Kern serious PM–10 nonattainment area. EPA is also proposing to redesignate the SJVAB nonattainment area to attainment for the PM–10 national ambient air quality standard (NAAQS) and proposing to approve the PM–10 maintenance plan, motor vehicle emissions budgets and conformity trading mechanism for the area. EPA is also proposing to exclude from use in determining that the area has attained the standard two exceedances that EPA has concluded were caused by exceptional events that occurred on July 4, 2007 and January 4, 2008. Finally, EPA is proposing to approve enforceable commitments by the Kern County Air Pollution Control District and the California Air Resources Board to install a PM–10 monitor in the East Kern nonattainment area and to address Clean Air Act requirements under section 189(d) as necessary for the area.

DATES: Any comments must arrive by *May 27, 2008.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0306, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: lo.doris@epa.gov.*
3. *Mail or deliver:* Doris Lo (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

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

SUPPLEMENTARY INFORMATION: Throughout this document, ''we'' ''us'' and ''our'' refer to EPA.

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I. Background

On May 26, 2004, EPA approved the serious area PM–10 plan for the SJV nonattainment area, ''2003 PM10 Plan, San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller'' submitted by the State on August 19, 2003 and amendments to that plan submitted on December 30, 2003 (collectively, 2003 Plan). See 69 FR 30006; 40 CFR 81.305. This plan provided for, among other things, the implementation of best available control measures (BACM). In addition, since the SJV nonattainment area had failed to meet its original serious area attainment deadline of December 31, 2001, the State was required under section 189(d) of the Clean Air Act (CAA or the Act) to submit a plan that provided for an annual reduction in PM–10 or PM–10 precursors of not less than five percent until attainment. A detailed discussion of the history of PM–10 planning in the SJV nonattainment area and of EPA's approval of the 2003 Plan can be found in its proposed and final actions and the associated dockets. 69 FR 5412 (February 4, 2004); 69 FR 30006.

On October 30, 2006, EPA determined that the SJV nonattainment area had attained the 24-hour PM–10 standard [1] based on air quality data from 2003 through 2005. In this action we noted that there were several exceedances of the PM–10 standard that were likely due to exceptional events which EPA would address in subsequent actions. 71 FR 63642. Subsequently EPA issued a final action affirming that the PM–10 standard has been attained in the SJV nonattainment area based on air quality data from 2004 through 2006. 73 FR 14687 (March 19, 2008).

On November 16, 2007, the State submitted to EPA the ''2007 PM10 Maintenance Plan and Request for Redesignation,'' September 20, 2007, for the San Joaquin Valley Air Pollution Control District (SJVAPCD or the District) (2007 Plan).[2] On January 31, 2008, the State submitted a request to split the existing SJV serious PM–10 nonattainment area into two separate nonattainment areas: (1) The San Joaquin Valley Air Basin and (2) the western portion of the Kern County Air Pollution Control District (KCAPCD). Letter from James N. Goldstene, California Air Resources Board (CARB), to Deborah Jordan, EPA, with attachments, January 31, 2008 (Goldstene letter).

On February 29, 2008, the State submitted enforceable commitments by CARB and the KCAPCD to monitor for PM–10 in the western portion of the KCAPCD and to address CAA State Implementation Plan (SIP) requirements for this area as necessary. Letter from James N. Goldstene, CARB, to Wayne Nastri, EPA, with enclosures, February 29, 2008.

Finally, on January 23, 2008, the State submitted to EPA the ''Exceptional Event Documentation, PM10, Fireworks, Bakersfield, CA, July 4, 2007'' and on April 15, 2008, the State submitted to EPA the ''Natural Event Documentation, Bakersfield, California, January 4, 2008.''

II. Summary of EPA's Proposed Actions

First, EPA is proposing to grant the State's request to split the existing SJV nonattainment area into two separate nonattainment areas. EPA is then proposing to grant the State's request to redesignate the portion of the SJV nonattainment area located in the San Joaquin Valley Air Basin to attainment for the PM–10 standard and to approve the PM–10 maintenance plan, motor vehicle emissions budgets and conformity trading mechanism for the area. EPA is also proposing to exclude from use in determining that the area has attained the PM–10 standard data showing exceedances caused by exceptional events that occurred on July 4, 2007 and January 4, 2008. Finally, EPA is proposing to approve commitments by CARB and the KCAPCD to monitor for PM–10 in the western portion of the KCAPCD and to address CAA SIP requirements for the area as necessary.

III. Proposed Revised Boundary Designation

A. State's Submittal

As stated above, on January 31, 2008, the State submitted a request to EPA to split the existing SJV PM–10 nonattainment area into two separate nonattainment areas: (1) The San Joaquin Valley Air Basin and (2) the western portion of the KCAPCD. The State's submittal states that ''[t]his change will address the inconsistency between California's adopted air basin boundary for the San Joaquin Valley and the boundary U.S. EPA is using for PM10 planning.'' The State's submittal includes information about jurisdiction, geography, population and degree of urbanization, employment and traffic/commuting patterns, and emissions and air quality which supports the revised boundary designation. See Goldstene letter.

B. EPA's Evaluation of Request To Revise Boundary Designation

The existing SJV nonattainment area includes the entire counties of San Joaquin, Fresno, Kings, Madera, Merced, Stanislaus and Tulare and part of Kern County. The part of Kern County in the existing SJV nonattainment area is a region that straddles the Sierra Nevada and Tehachapi mountains and is located in two separate air basins: the SJV Air Basin and the Mojave Desert Air Basin (MDAB). The dividing line between

[1] The level of the national primary 24-hour ambient air quality standard for particulate matter is 150 micrograms per cubic meter (μg/m^3). The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m^3, as determined in accordance with appendix K to 40 CFR part 50, is equal to or less than one. See 40 CFR 50.6.

[2] The SJVAPCD District adopted the 2007 Plan on September 20, 2007 and submitted it to the State on September 21, 2007. The State ''* * * updated the attainment inventory * * * to reflect emission reductions achieved by ARB adopted measures that had not been accounted for'' before submitting the 2007 Plan to EPA on November 16, 2007. (Staff Report, Analysis of the San Joaquin Valley 2007 PM10 Maintenance Plan, Air Resources Board, Release Date: October 12, 2007 (ARB Staff Report), pp. 7–8 and Appendix B). Thus the applicable emissions inventories in the 2007 Plan are found in the ARB Staff Report.

these two air basins coincides with the jurisdictional boundary between the KCAPCD and the SJVAPCD. This dividing line also coincides with the boundary that we are today proposing to draw between the two nonattainment areas which we are proposing to designate as the SJV Air Basin (SJVAB) PM–10 nonattainment area and the East Kern PM–10 nonattainment area.[3] Thus, if we finalize the revision to the boundary designation, the SJVAB nonattainment area will include only those areas that are in the SJV Air Basin (i.e., all of the seven counties mentioned above and the part of Kern County that is under the jurisdiction of the SJVAPCD) and the East Kern PM–10 nonattainment area will include the part of Kern County that is currently in the existing SJV nonattainment area, is in the MDAB and is under the jurisdiction of the KCAPCD.[4] Together, these two new PM–10 nonattainment areas will cover the same geographic area as the original SJV PM–10 nonattainment area.

Under section 107(d)(3)(D) of the CAA, the Governor of any state may, on the Governor's own motion, submit to EPA a revised designation of any area or portion thereof within the state.[5] EPA is required to approve or deny a submittal of a revised designation within 18 months of receipt. The type of revised designation that the State of California submitted on January 31, 2008 involves a boundary change only and does not involve a change in status (e.g., from ''nonattainment,'' to ''attainment'' or ''unclassifiable'') of any area.

In determining whether to approve or deny a state's submittal of a request for a revised boundary designation under section 107(d)(3)(D), EPA uses the same factors Congress directed EPA to consider when the Agency initiates a revision to a designation of an area on its own motion under section 107(d)(3)(A). These factors include ''air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.'' In addition, because the State's revised designation involves nonattainment areas, we also take into account CAA section 107(d)(1)(A), which provides that nonattainment areas are to include the geographic area that does not meet, or that contributes to ambient air quality in a nearby area that does not meet, the NAAQS for a given pollutant.

California has provided a compelling technical justification as to why the proposed SJVAB and East Kern nonattainment areas should be designated as separate PM–10 planning areas. A summary of the State's reasoning follows:

Jurisdiction. The proposed SJVAB area is under the jurisdiction of the SJVAPCD and the proposed East Kern area is under the jurisdiction of the KCAPCD. The proposed revised designation will align the boundary along these jurisdictional lines. This realignment will make the air quality planning and implementation process more efficient and straightforward since the local air pollution control agencies, SJVAPCD and KCAPCD, can only adopt and implement plans and rules in the area for which they have jurisdiction.

Geography. The East Kern area is in the MDAB, a different air basin than the SJVAB area; it is separated from the SJVAB area by the Sierra Nevada and Tehachapi Mountain Ranges at elevations up to 7,500 feet. The Kern River Valley and the Cummings Valley in the East Kern area are located at approximately 2600 feet and 3800 feet, respectively. These elevations are comparable to other areas in the MDAB and much higher than the average elevation in the western portion of Kern County in the SJVAB which is between 450 and 500 feet. Eastern Kern County, which includes the proposed East Kern nonattainment area, is a vast arid desert while the SJVAB portion of Kern County is part of the urbanized, agricultural, and industrial SJV. The mountains surrounding the SJVAB form a bowl trapping air pollutants in the SJVAB, but the East Kern area is located above the inversion layer which traps air pollutants in the SJVAB and thus, experiences different weather from the SJVAB.

Population and Degree of Urbanization. There are no major or fast growing population centers in eastern Kern County. Eastern Kern County covers approximately 3800 square miles, with a total population of approximately 131,000 (in 2005) and a low population density of approximately 35 persons per square mile. In the last decade (1995–2005), population increased by 15,000 persons. The Kern River Valley and Cummings Valley, which are in the East Kern area, are sparsely populated; the greater Lake Isabella region in the Kern River Valley has approximately 15,000 inhabitants; and the west Tehachapi area in the Cummings Valley has approximately 13,000 inhabitants. In contrast, the western portion of Kern County in the SJVAB extends over 4400 square miles, includes the urban Bakersfield area, housed 640,000 persons (in 2005), and has a population density of approximately 145 persons per square mile, which is four times the population density of eastern Kern County. In the last decade, the total population in western Kern County grew by 136,000 persons, nine times the population growth in eastern Kern County.

Employment and Traffic/Commuting Patterns. Eastern Kern County, which includes the proposed East Kern nonattainment area, is not strongly integrated economically with western Kern County. People tend to live and work in eastern Kern County, and because of its geographic isolation there is no convenient commute to cities outside the region. The economy of western Kern is largely based on the oil and agricultural industries. The primary employer in eastern Kern County is the Tehachapi State Prison. Due to the geographic isolation, there is no convenient commute to cities outside the area. In 2005, vehicles traveled approximately 5.1 million miles per day throughout eastern Kern County. In contrast, in western Kern County vehicles traveled approximately 19.8 million miles per day, close to 4 times the average travel in eastern Kern County. Also, eastern Kern residents are not dependent on western Kern for economic activities such as employment, shopping, or other services. There are no significant commute patterns from eastern Kern County into the SJVAB, the MDAB, or the South Coast Air Basin or vice versa.

Emissions. There are only a handful of major emission sources in eastern Kern County, which includes the proposed East Kern area, and projected source and industrial growth is minimal. Total primary PM–10 emissions as well as nitrogen oxide emissions (NO_X), the main precursor of secondary PM–10 in the area, are declining. Major sources of primary PM–10 include the Tehachapi State Prison (11.5 tons per year (tpy) in 2005), followed by two aggregate operations (9.7 tpy and 8.5 tpy); the two largest NO_X sources are the Tehachapi State Prison (12.8 tpy) and two natural gas pumps that lift water to Tehachapi (14.8 tpy and 12.2 tpy). In contrast, western Kern County houses 35 major sources of primary PM–10 with emissions over 10 tpy and 47 major sources of NO_X with emissions over 10 tpy. Compared to the entire SJV PM–10 nonattainment area, sources in all of eastern Kern County contributed only eight percent of the direct PM–10

[3] We are proposing to call the new area ''East Kern'' because it is the eastern part of Kern County that is currently within the existing SJV nonattainment area.

[4] The KCAPCD's jurisdiction also includes the remaining part of Kern County which extends eastward beyond the proposed East Kern area.

[5] Boundary changes are an inherent part of a designation or redesignation of an area under the CAA. See CAA section 107(d)(1)(B)(ii).

emissions and eight percent of the NO_X emissions in 2005.

Air Quality. The chemical composition of PM–10 in eastern Kern County, which includes the proposed East Kern area, differs significantly from the PM–10 chemical composition in the SJVAB area. While dust is the main component of PM–10 in eastern Kern County, NO_X has been determined to be the only significant precursor for the SJVAB area. 69 FR 30006. Currently there is no Federal Reference Method (FRM) or Federal Equivalent Method (FEM) monitoring of PM–10 in the East Kern area. However, there is an Interagency Monitoring of Protected Visual Environments (IMPROVE) monitor located in the Kern River Valley. This IMPROVE monitor has, since February 2000, consistently measured PM–10 concentrations far below the PM–10 standard. A summary of the maximum PM–10 daily values at the IMPROVE monitor is provided in Table 1 below.

TABLE 1.—SUMMARY OF MAXIMUM PM–10 DAILY VALUES FOR THE DOMELANDS IMPROVE MONITOR (μg/m³)

Year	1st max	2nd max	3rd max	4th max
2001	33	33	32	32
2002	109	53	49	49
2003	66	42	37	37
2004	52	50	47	45
2005	21	14	6	5
2006	39	36	35	34

Source: IMPROVE Web site, *http://vista.cira.colostate.edu/improve/Default.htm*

Based on the factors set forth above, EPA has considered the State's request in accordance with the criteria listed in CAA section 107(d)(3)(A). We find that the State has sufficiently demonstrated that the SJVAB and East Kern should be separate nonattainment areas because they lie in separate air basins, are under different local jurisdictions, have different population densities and growth levels, do not share commute patterns, have different emissions sources and have different types of air pollutants. Pursuant to CAA section 107(d)(3)(D), EPA is therefore proposing to approve the State's request to revise the boundary designation of the existing SJV PM–10 nonattainment area by splitting the area into two separate PM–10 nonattainment areas, the SJVAB and East Kern.

As explained below, we are further proposing to redesignate the SJVAB to attainment for PM–10. Pending further air quality monitoring and until such time as the East Kern nonattainment area meets the CAA requirements for redesignation, the East Kern area would be classified as a serious PM–10 nonattainment area. Thus the East Kern nonattainment area would retain the classification and nonattainment designation that applied to it when it was part of the SJV nonattainment area and would likewise retain the attainment determination applicable to that area. In order to address the serious area PM–10 statutory requirements, KCAPCD and CARB have made the enforceable commitments discussed in section V. below.

IV. Proposed Redesignation of the SJVAB to Attainment for the PM–10 Standard

On November 16, 2007, the State submitted to EPA the 2007 Plan which addresses PM–10 maintenance plan requirements and includes a discussion of how the SJVAB (i.e., the portion of the current nonattainment area under the jurisdiction of the SJVAPCD) meets the CAA redesignation requirements.

Section 107(d)(3)(E) of the CAA states that an area can be redesignated to attainment if the following conditions are met:

(1) EPA has determined that the area has attained the NAAQS.

(2) The applicable implementation plan has been fully approved by EPA under section 110(k) of the CAA.

(3) EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

(4) The State has met all applicable requirements for the area under section 110 and Part D of the CAA.

(5) EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A of the CAA.

These requirements are discussed in more detail in a September 4, 1992 EPA Memorandum, ''Procedures for Processing Request to Redesignate Areas to Attainment, John Calcagni, Director, Air Quality Management Division'' (Calcagni memo). We discuss how these requirements are met for the SJVAB in detail below.

A. EPA Has Determined That the Area Has Attained the NAAQS

The Calcagni memo states that there are two components involved in meeting this requirement. The first component relies on an analysis of quality-assured ambient air quality data and an ambient air monitoring network that is representative of the area of highest concentrations. For PM–10 in the SJVAB, EPA has reviewed the ambient air quality data and determined and affirmed that the PM–10 NAAQS has been attained for the years 2003 through 2006. See 71 FR 40952, 71 FR 63642, 72 FR 49046 and 73 FR 14687. These determinations also discuss the adequacy of the monitoring network for the SJVAB.

EPA has also evaluated the air quality data in EPA's Air Quality System (AQS) database for 2007 and through February 2008. This data has been included in the docket for this proposed rule. A summary of the 2005–2007 data is provided in Table 2 below.

TABLE 2.—SUMMARY OF 2005—2007 PM–10 ATTAINMENT STATISTICS

[Based on Federal Reference Method PM–10 monitors]

Monitoring site	Observed three year 24-hour maximum (μg/m³)	Estimated 24-hour exceedance days	Attainment status
Fresno-Drummond	132	0	Attainment.
Fresno-1st Street	117	0	Attainment.

TABLE 2.—SUMMARY OF 2005—2007 PM–10 ATTAINMENT STATISTICS—Continued

[Based on Federal Reference Method PM–10 monitors]

Monitoring site	Observed three year 24-hour maximum (μg/m³)	Estimated 24-hour exceedance days	Attainment status
Clovis	116	0	Attainment.
Bakersfield-Golden State Highway	154	0	Attainment.
Bakersfield-California Ave	153	0	Attainment.
Oildale	145	0	Attainment.
Corcoran	140	0	Attainment.
Hanford	142	0	Attainment.
Merced	94	0	Attainment.
Stockton-Hazelton	82	0	Attainment.
Stockton-Wagner	69	0	Attainment.
Modesto	96	0	Attainment.
Turlock	97	0	Attainment.
Visalia	141	0	Attainment.

Source: EPA Air Quality System (AQS) Database.

One exceedance of the PM–10 standard was recorded at the Bakersfield-Golden FEM [6] on July 4, 2007. The State has flagged this exceedance as being caused by an exceptional event, fourth of July fireworks celebrations. EPA has reviewed the documentation for this event and has concurred with the State's request. Letter from Wayne Nastri, EPA, to Mary D. Nichols, California Environmental Protection Agency, April 21, 2008. For 2008, one exceedance of the PM–10 standard was recorded also at the Bakersfield-Golden federal equivalent monitor [7] on January 4. The State has flagged this exceedance as being caused by an exceptional event, high winds. EPA has reviewed the documentation for this event and has concurred with the State's request. Letter from Wayne Nastri, EPA, to Mary D. Nichols, California Environmental Protection Agency, April 21, 2008.

Under EPA's Exceptional Events Rule, the Agency may exclude data from regulatory determinations related to exceedances or violations of the NAAQS if the state adequately demonstrates that an exceptional event caused the exceedance or violation. 40 CFR Sections 50.1, 50.14. Therefore, for the reasons set forth in the concurrence letters, EPA is proposing to exclude data showing exceedances on July 4, 2007 and January 4, 2008 in determining whether the SJVAB has continued to attain the PM–10 standard in 2007 and through February 2008. The concurrence letters explain how the State has met its burden to demonstrate that these exceedances qualify as exceptional events. Thus, EPA believes that according to the ambient air monitoring data for the SJVAB, the PM–10 NAAQS has been attained.

The second component that may be included in the showing that a PM–10 area has met the requirement that the NAAQS has been attained involves an analysis using air quality modeling. This component is addressed under the maintenance plan requirements discussion below.

B. The Applicable Implementation Plan Has Been Fully Approved by EPA Under Section 110(k) of the CAA

The Calcagni memo states that the SIP for the area must be fully approved under section 110(k) of the CAA and must satisfy all requirements that apply to the area. Section 107(d)(3)(E)(ii). As stated above, on August 19, 2003 and December 30, 2003, the State submitted the 2003 Plan. This plan addressed all applicable requirements for the SJV serious PM–10 nonattainment area. On May 24, 2004, EPA approved all components of the 2003 Plan except for the plan's contingency measures. EPA may rely on prior SIP approvals in approving a redesignation request. See Calcagni memo, p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998), *Wall* v. *EPA,* 265 F.3d 526 (6th Cir. 2001). The contingency measure requirement under CAA section 172(c)(9) was subsequently suspended on October 30, 2006 pursuant to EPA's determination of attainment under its Clean Data Policy. See 71 FR 63642, 63663. Thus, since contingency measures are no longer a required element for the SJVAB, all applicable requirements have been approved under 110(k) of the CAA. See also section IV.D. below.

C. EPA Has Determined That the Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions

The Calcagni memo states that the state must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable, (CAA section 107(d)(3)(E)(iii)) and the improvement should not be a result of temporary reductions (e.g., economic downturns or shutdowns) or unusually favorable meteorology. In making this showing, the state should estimate the emission reductions from adopted and implemented Federal, State and local control measures, and consider the emission rates, production capacities, and other related information to show that the air quality improvements are the result of implemented controls.

The 2007 Plan provides a discussion and comparison of the air quality, meteorology and emissions trends since 1990. See 2007 Plan, pp. 23–28. First, the 2007 Plan discusses the significant improvements in PM–10 air quality since 1990, noting that from 1990 to 1992 there were 33 estimated exceedance days, from 1998 to 2000 there were 5.9 exceedance days and from 2002 to 2004 there were 2.9 exceedance days. Id. Next the 2007 Plan states that this improvement has occurred while air quality plans and regulations have been adopted and notes that in the late 1980's, before the adoption of plans and regulations, "* * * it was not uncommon to have 50

[6] The Bakersfield-Golden monitoring site includes a special purpose FEM known as a Tapered Element Oscillating Microbalance (TEOM) continuous automated analyzer. The exceedances on July 4, 2007 and January 4, 2008 were recorded on the TEOM. Data are collected at the site using both a TEOM, which provides continuous PM–10 data for public reporting purposes, and a high-volume FRM. The FRM operates at a less than everyday schedule, as allowed by EPA regulations, and was not operating on July 4, 2007 or January 4, 2008.

[7] See footnote 6 above.

or more estimated annual exceedances of the 24-hour PM10 standard [with] peak measurements well above 250 micrograms per cubic meter (μg/m³), and annual averages of 80 μg/m³.'' Id.

The 2007 Plan also states that since 1990 the Valley has experienced rapid economic growth, citing to increases in population and vehicle miles traveled (2007 Plan, p. 26, Figure 3), while at the same time the PM–10 and PM–10 precursor emissions were decreasing (2007 Plan, p. 26, Figure 4). The 2007 Plan also did not find any major sector-wide shutdowns, identifying at most ''* * * about 2 tons per day of PM–10 reductions from shutdowns during the attainment period of interest.'' 2007 Plan, p. 25. Thus, it does not appear that the air quality improvements were due to any economic downturns or shutdowns.

The 2007 Plan also provides an analysis of the meteorological conditions, including wind speeds, precipitation, temperature and atmospheric stability, to determine if there were any favorable meteorological conditions that may have led to the improvement in air quality during 2003–2006. 2007 Plan, p. 27 and Appendix C. The 2007 Plan found that compared to long-term averages, the period from 2003 to 2006 had: No variation in average annual wind speeds; a higher than average level of precipitation with two dry years (2003 and 2004) and two wet years (2005 and 2006); warmer than average temperatures; and a lower than average stability level. The higher than average precipitation would favor lower PM–10 levels, but it is important to note that 2003 and 2004 were in fact dry years, ranking 98th and 122nd in wetness over a period of 128 years (1878 to 2006). The higher than average temperature could have increased the potential for high PM–10 levels, but the higher stability level could have decreased the potential by providing more dispersion. The 2007 Plan concludes that these analyses indicate that there is no consistent pattern to show that there was favorable meteorology leading to the improvement in PM–10 levels during 2003 to 2006. *Id.*

The 2007 Plan further states that the SJVAPCD has adopted over 500 new rules and amendments since 1992, many of which are for the purpose of reducing PM–10 or PM–10 precursor emissions. The 2007 Plan shows that all of the rules and commitments in the 2003 Plan have been adopted by the SJVAPCD and many of them have been approved by EPA and are thus federally enforceable. The SJVAPCD has adopted rules which control NO_X and PM–10 emissions from cotton gins, boilers, steam generators, and process heaters, agricultural sources, dryers, dehydrators and ovens, glass melting furnaces, fugitive dust sources, open burning and other source categories. 2007 Plan, p. 27 and Appendix B. In addition, the State has adopted measures to meet its commitments in the 2003 Plan to achieve 10 tons per day (tpd) of NO_X reductions and 0.5 tpd of PM–10 reductions. 2007 Plan, p. 17. The air quality improvements described above can be attributed to the reductions in NO_X and PM–10 emissions achieved by these measures.

The 2007 Plan shows decreases in the emissions inventories for the SJVAB from approximately 1000 tpd in 2000 to approximately 900 tpd in 2005 and to approximately 800 tpd in 2010. ARB Staff Report, Appendix B. As discussed further in Section E.1. below, the emissions inventories are a summary of all source categories in the SJVAB and are developed based on information about emission rates, production capacities, and other source-related information. The emissions inventories in the 2007 Plan also include reductions from adopted and implemented Federal, State and local control measures. ARB Staff Report, Appendix B.

EPA believes that the 2007 Plan has demonstrated that the improvement in PM–10 air quality for the SJVAB is a result of permanent and enforceable reductions in emissions and the improvement is not a result of temporary reductions or unusually favorable meteorology. The fact that, as discussed above, there were no economic downturns, shutdowns or meteorology impacting air quality and that the number of exceedance days and the estimated emissions have decreased over time while the population and vehicle miles traveled in the SJVAB have increased shows that the improvement in air quality can reasonably be attributed to the adoption of air quality plans and regulations during this time.

D. The State Has Met All Applicable Requirements for the Area Under Section 110 and Part D of the CAA

The Calcagni memo states that a state must meet those requirements of section 110 and part D of the CAA that were applicable prior to the submittal of the redesignation request. CAA section 107(d)(3)(E)(v).

1. Basic SIP Requirements Under CAA Section 110

The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirement for Prevention of Significant Deterioration (PSD); provisions for the implementation of part D requirements for New Source Review (NSR) permit programs; provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

On numerous occasions over the past 35 years, CARB and the SJVAPCD have submitted and we have approved provisions addressing the basic CAA section 110 provisions. There are no outstanding or disapproved applicable section 110 SIP submittals with respect to the State and the SJVAPCD.[8] We propose to conclude that CARB and SJVAPCD have met all SIP requirements for the SJVAB area applicable for purposes of redesignation under section 110 of the CAA (General SIP Requirements).

Moreover, we note that SIPs must be fully approved only with respect to applicable requirements for purposes of redesignation in accordance with CAA section 107(d)(3)(E)(ii). Thus, for example, CAA section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of

[8] The applicable California SIP for the SJV nonattainment area can be found at: *http://yosemite.epa.gov/r9/r9sips.nsf/Casips?readform&count=100&state=California.*

redesignation. The State will still be subject to these requirements after the SJVAB area is redesignated. The section 110 and part D requirements, which are linked to a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of the conformity SIP requirement for redesignations. See Reading, Pennsylvania proposed and final rulemakings at 61 FR 53174–53176 (October 10, 1996), 62 FR 24816 (May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking at 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking at 60 FR 62748 (December 7, 1995). See also the discussion of this issue in the Cincinnati redesignation at 65 FR 37890 (June 19, 2000), and in the Pittsburgh redesignation at 66 FR 50399 (October 19, 2001). EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation.

2. SIP Requirements Under Part D

Subparts 1 and 4 of part D, title 1 of the CAA contain air quality planning requirements for PM–10 nonattainment areas. Subpart 1 of part D contains general requirements for areas designated as nonattainment. Subpart 4 of part D contains specific planning and scheduling requirements for particulate matter nonattainment areas. Subpart 4 of part D, section 189(a), (b) and (c) requirements apply to moderate and serious PM–10 nonattainment areas and 189(d) applies to areas which failed to attain by their serious area deadline. These requirements include: (1) An approved permit program for construction of new and modified major stationary sources; (2) provisions to ensure that reasonably available control technology (RACT) and reasonably available control measures (RACM) are implemented; (3) provisions to ensure that best available control measures (BACM) are implemented; (4) quantitative milestones to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by the applicable attainment date; (5) provisions to ensure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determined that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area; and(6) a demonstration of attainment and an annual PM–10 or PM–10 precursor reduction of not less than five percent from the most recent emission inventory until attainment.

In addition to these specific requirements for serious PM–10 nonattainment areas, nonattainment areas must also meet the general planning requirements in subpart 1, section 172(c). These requirements include, among other things, provisions for the implementation of RACT, RFP, emissions inventories, and contingency measures.

For the SJVAB, EPA determined that these requirements were met in its approval of the 2003 Plan with the exception of the contingency measure requirement that was subsequently suspended by the determination of attainment in accordance with EPA's Clean Data Policy and the NSR permit program for construction of new and modified major stationary sources. 69 FR 30006 and 71 FR 63642.

EPA fully approved SJVAPCD NSR rules 2020 and 2201 on May 17, 2004 (69 FR 27837). Recently we proposed to: (1) Correct aspects of that approval, and (2) approve revisions to the NSR rules that explicitly exempt certain small or minor agricultural sources from permitting requirements. 73 FR 9260 (February 20, 2008). In this proposed rulemaking, we stated that ''we believe that the adoption of the proposed revisions in place of the SIP as proposed to be corrected would not result in any change in emissions, any change in air quality, or any change in the area's ability to attain or maintain the NAAQS. Accordingly, we conclude that this SIP revision, if approved, will not interfere with any applicable requirements for attainment and reasonable further progress or any other applicable requirement of the CAA and is approvable under section 110(l).'' 73 FR 9265.

Although the SJVAPCD NSR program has been approved, and we have proposed approval of revisions to the rule, we also note that final approval of the NSR revisions is not a necessary prerequisite to finalizing our proposed approval of the State's redesignation request. EPA has determined in past redesignations that a NSR program does not have to be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D NSR Requirements or Areas Requesting Redesignation to Attainment.'' See the more detailed explanations in the following redesignation rulemakings: Detroit, MI (60 FR 12467–12468, March 7, 1996); Cleveland-Akron-Lorrain, OH (61 FR 20458, 20469–20470, May 7, 1996); Louisville, KY (66 FR 53665, 53669, October 23, 2001); Grand Rapids, MI (61 FR 31831, 31836–31837, June 21, 1996).

The requirements of the PSD program will apply once the area has been redesignated. Thus, new major sources with significant PM–10 emissions and major modifications of PM–10 at major sources as defined under 40 CFR 52.21 will be required to obtain a PSD permit. Currently, EPA is the PSD permitting authority in the SJVAB under a Federal implementation plan. See 40 CFR 52.270. However, the SJVAPCD can implement the Federal PSD program through a delegation agreement with EPA or, assuming that the SJVAPCD makes necessary modifications to its PSD rules, under an EPA-approved rule.

With respect to the conformity requirement, section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects ''conform'' to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA*, 265f 3d 426 (6th Cir. 2001), upholding this interpretation. See, also, 60 FR 62748 (December 7, 1995).

Thus, EPA concludes that the State has met all requirements applicable under section 110 and part D for the SJVAB for purposes of redesignation. CAA Section 107(d)(3)(E)(v).

E. EPA Has Fully Approved a Maintenance Plan, Including a Contingency Plan, for the Area Under Section 175A of the CAA

Section 175A of the CAA provides the requirements for maintenance plans. These requirements are further clarified in the Calcagni memo. The provisions to be included in maintenance plans are:

(1) An attainment emissions inventory to identify the level of emissions in the area sufficient to attain the NAAQS;

(2) A demonstration of maintenance of the NAAQS for 10 years after redesignation;

(3) Verification of continued attainment through operation of an appropriate air quality monitoring network; and

(4) Contingency provisions that EPA deems necessary to assure that the State will promptly correct any violation of the NAAQS that occurs after redesignation of the area. We discuss how these requirements are met for the SJVAB below.

1. An Attainment Emissions Inventory To Identify the Level of Emissions in the Area Sufficient To Attain the NAAQS

Section 172(c)(3) of the CAA requires all plan submittals to include a comprehensive, accurate, and current inventory of actual emissions from all sources in the nonattainment area. In demonstrating maintenance in accordance with CAA section 175A and the Calcagni memo, the state should provide an attainment emissions inventory to identify the level of emissions in the area sufficient to attain the NAAQS. Where the state has made an adequate demonstration that air quality has improved as a result of the SIP, the attainment inventory will generally be an inventory of actual emissions at the time the area attained the standard. EPA's primary guidance in evaluating these inventories is the document entitled, ''PM–10 Emissions Inventory Requirements,'' EPA, OAQPS, EPA–454/R–94–033 (September 1994) which can be found at: *http://www.epa.gov/ttn/chief/eidocs/pm10eir.pdf.*

The 2007 Plan includes detailed emissions inventories for NO_X, directly emitted PM–10, volatile organic compounds (VOC) and oxides of sulfur (SO_X).[9] The emissions inventories are projected from a 2002 baseyear inventory because it was the most comprehensive inventory available. The baseyear inventory meets the CAA requirement for a comprehensive, accurate and current inventory and is used as the basis for forecasting future year inventories.

The 2007 Plan includes projected inventories for 2005, 2010 and 2020 for NO_X, PM–10, VOC and SO_X. The baseyear and projected year inventories all include a detailed breakdown of the stationary and mobile source emissions categories. The emissions for each of the categories are estimated based on the best available information on number of sources, size of sources, growth, control measures, emissions factors, and other criteria.

The 2007 Plan selects the 2005 PM–10 and NO_X inventories as the attainment emission inventories because the SJV nonattainment area first attained the PM–10 standard during 2003–2005 (and continues to attain the standard through February 2008). 2007 Plan, pp. 5–6. The 2007 Plan also includes inventories for VOC and SOx; however, EPA has determined that NO_X is the only significant PM–10 precursor for the SJV nonattainment area and thus the proposed SJVAB. 69 FR 30006. Table 3 summarizes the 2007 Plan's NO_X and PM–10 emissions.

TABLE 3.—ANNUAL PM–10 AND NO_X EMISSIONS (TONS PER DAY) 2007 PLAN (ARB STAFF REPORT, APPENDIX B)

	2005	2010	2020
PM–10	284	282	290
NO_X	606	521	328

The NO_X emission inventory continues to be reduced substantially in the future. While the PM–10 emission inventory is projected to increase slightly in 2020, we believe the increase is insignificant when compared to the substantial NO_X decreases. See 2007 Plan, pp. 5–6 and Appendix B of the ARB Staff Report.

EPA believes that the selection of 2005 for the attainment year inventory and 2020 for the maintenance year inventory is appropriate since the SJVAB was determined to have attained the PM–10 NAAQS in 2005. We have reviewed the 2007 Plan's attainment year and maintenance year emissions inventories and determined that they are accurate and comprehensive and meet the requirements of EPA guidance and the CAA.

2. A Demonstration of Maintenance of the NAAQS for 10 Years After Redesignation

Section 175A of the CAA requires a demonstration of maintenance of the NAAQS for 10 years after designation. A state may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future anticipated mix of sources and emission rates will not cause a violation of the NAAQS. Under the Act, the showing should be based on the same level of modeling used for the attainment demonstration required as part of the approved attainment plan.

Consistent with EPA's modeling guidance (The Guideline on Air Quality Models (GAQM), 40 CFR part 51, Appendix W and the PM–10 SIP Development Guideline (PMSDG), EPA 450/2–86–001, June 1987), the 2003 Plan's attainment demonstration was based on the use of two receptor models: Chemical Mass Balance (CMB) and rollback. 69 FR 5412, 5424–5425 and 69 FR 30006. The 2007 Plan also uses CMB and rollback to demonstrate maintenance of the 24-hour PM–10 standard until 2020.[10] See 2007 Plan, pp. 6–11. The results of the modeling show that all monitoring sites in the SJVAB nonattainment area will be below the NAAQS in 2020, with the highest projected value of 134 $\mu g/m^3$ at Bakersfield-Golden and Corcoran. See 2007 Plan, Table 2.

In addition to the modeling for the maintenance plan, the 2007 Plan shows that total annual emissions of NO_X will decrease from 606 tpd in 2005 to 521 tpd in 2010 and 328 tpd in 2020 and total annual emissions of PM–10 will decrease from 284 tpd in 2005 to 282 tpd in 2010 and slightly increase to 290 tpd in 2020. As discussed above, the emissions inventories meet EPA

[9] The 2007 Plan's emissions inventories are found in Appendix B of the ARB Staff Report. As mentioned above and in the ARB Staff Report, the State ''* * * updated the attainment inventory * * * to reflect emission reductions achieved by ARB adopted measures that had not been accounted for'' before submitting the 2007 Plan to EPA on November 16, 2007.

[10] The 2007 Plan also includes a maintenance demonstration for the annual PM–10 standard; however, the annual PM–10 standard was revoked effective December 18, 2006. 71 FR 61144 (October 17, 2006). Therefore we do not address this demonstration here.

requirements and the general decline in inventories provides assurance that the SJVAB will maintain its attainment levels through 2020.

Based on our review of the information presented in the 2007 Plan, we believe that the State has met EPA requirements for demonstrating maintenance of the PM–10 standard for the SJVAB.

3. Verification of Continued Attainment Through Operation of an Appropriate Air Quality Monitoring Network

In demonstrating maintenance, continued attainment of the NAAQS can be verified through operation of an appropriate air quality monitoring network. The Calcagni memo states that the maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. The memo also states that states should ensure that they have the legal authority to implement and enforce all measures necessary to attain and to maintain the NAAQS. Finally, the memo states that the state submittal should indicate how it will track the progress of the maintenance plan (e.g., with periodic emissions inventory updates or modeling input updates) and monitor the triggers for contingency measures.

In the 2007 Plan the SJVAPCD commits to continued operation of its air quality monitoring network for verification of attainment. See 2007 Plan, pp. 12–13. The SJVAPCD's authority to continue operating after redesignation to attainment is provided for in the California Health and Safety Code sections 40150 and 40161. *Id.* at 15. The SJVAPCD also plans to verify continued attainment of the PM–10 standard through an annual report to its Board which will include, among other things, tracking of adoption and implementation of control measures, tracking of air quality data and comparison of predicted versus current emissions reductions estimates. *Id.* As discussed further below, since the SJVAPCD has selected a contingency measure trigger that is based on ambient air quality levels, the continued operation of the monitoring network and tracking of its data will provide adequate notice of when contingency measures are needed.

4. Contingency Provisions to Promptly Correct Any Violation of the NAAQS That Occurs After Redesignation of the Area

Contingency provisions are required under section 175A of the CAA. These contingency measures are distinguished from those generally required for nonattainment areas under section 172(c)(9) in that they are not required to be fully adopted measures that will take effect without further action by the State in order for the maintenance plan to be approved. The Calcagni memo states that the contingency provisions of the maintenance plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the state. The memo also states that the contingency provisions should identify indicators or triggers which will be used to determine when the contingency measures need to be implemented. While the memo suggests inventory or monitoring indicators, it states that contingency provisions will be evaluated on a case-by-case basis. Finally, the Calcagni memo states that the contingency provisions must require the state to implement all measures contained in the part D nonattainment plan for the area prior to redesignation.

The 2007 Plan selects an action level or trigger based on an exceedance of the PM–10 NAAQS of 155 μg/m^3.[11] See 2007 Plan, p. 16. In addition, the District may also consider other factors such as a succession of values just below but near the level of the PM–10 standard. *Id.* EPA believes that an exceedance of 155 μg/m^3 is an appropriate trigger level. The SJVAB has several continuous PM–10 monitors, and a single measurement of 155 μg/m^3 at one of these monitors would not constitute a violation of the PM–10 NAAQS. Even if a measurement of 155 μg/m^3 is recorded at a one-in-six day FEM, a violation is not necessarily being recorded as the State might need to evaluate the possibility that the measurement is due to an exceptional event.

The 2007 Plan states that if the SJVAB monitors an exceedance of 155 μg/m^3, the District commits to take appropriate action within 18 months of the exceedance date. This action will first involve a determination of whether the exceedance was due to an exceptional event in accordance with EPA's Exceptional Events Rule and an analysis of what caused the exceedance and the necessary controls to address it. *Id.* If the exceedance is not due to an exceptional event, the District commits to determine the possible causes of the exceedance and to determine if emissions reductions from adopted measures that are not needed to maintain the PM–10 NAAQS are available to serve as contingency measures. These measures can be found in the SJVAPCD's 2007 Ozone Plan (April 30, 2007) and the SJVAPCD's Proposed 2008 PM2.5 Plan (March 13, 2008) and include more stringent controls on open burning, gas turbines, boilers, glass melting, residential water heaters, wood burning fireplaces and heaters and commercial charbroiling. See Table 6–1 of SJVAPCD's 2007 Ozone Plan and Table 6–3 of SJVAPCD's Proposed 2008 PM2.5 Plan.

If there are no reductions available from adopted measures, the District commits in the 2007 Plan to proceed with identifying control measures from feasibility studies such as those found in its 2007 Ozone Plan and Proposed 2008 PM2.5 Plan (see Table 6–2 of 2007 Ozone Plan and Table 6–5 of Proposed PM2.5 Plan) and prioritize measures most relevant for reducing PM–10 emissions. 2007 Plan, pp. 16–17. The SJVAPCD has also provided clarification that if additional control measures are necessary, the SJVAPCD will adopt and implement the control measures within the 18-month timeframe for appropriate action. Letter from Seyed Sadredin, SJVAPCD, to Deborah Jordan, EPA, April 17, 2008.

Finally, the 2007 Plan states that the State, District and local governments have adopted and implemented all measures in the 2003 Plan. 2007 Plan, p. 17 and Appendix B.

Based on the discussion above and EPA's review of the 2007 Plan, we believe the plan adequately addresses the contingency measure requirement under section 175A of the CAA.

Conclusion

Based on our review of the 2007 Plan, and for the reasons discussed above, we conclude that the CAA section 107(d)(3)(E) requirements for redesignation to attainment and an approvable maintenance plan for the SJVAB have been met. We are therefore proposing to approve the 2007 Plan as meeting the requirements of section 175A of the CAA and proposing to redesignate the SJVAB nonattainment area to attainment for the PM–10 NAAQS.

F. Transportation Conformity and Motor Vehicle Emissions Budgets

Under section 176(c) of the CAA, transportation plans, programs and projects in the nonattainment or maintenance areas that are funded or

[11] An exceedance is defined as a daily value that is above the level of the 24-hour standard (150 μg/m^3) after rounding to the nearest 10 μg/m^3 (i.e. values ending in 5 or greater are to be rounded up). Thus, a recorded value of 154 μg/m^3 would not be an exceedance since it would be rounded to 150 μg/m^3 whereas a recorded value of 155 μg/m^3 would be an exceedance since it would be rounded to 160 μg/m^3. See 40 CFR part 50, appendix K, section 1.0.

approved under title 23 U.S.C. and the Federal Transit Laws (49 U.S.C. Chapter 53) must conform to the applicable SIP. In short, a transportation plan and program are deemed to conform to the applicable SIP if the emissions resulting from the implementation of that transportation plan and program are less than or equal to the motor vehicle emissions budget (MVEB) established in the SIP for the attainment year, maintenance year and other analysis years. See, generally, 40 CFR part 93.

The 2007 Plan provides for attainment year MVEBs for 2005 and maintenance year MVEBs for 2020.[12] The 2005 attainment year MVEBs will replace the current MVEBs for 2008 and 2010 from the 2003 Plan. See 40 CFR 93.118(a).

Before an emissions budget in a submitted SIP revision may be used in a conformity determination, we must first determine that it is adequate. The criteria by which we determine whether a SIP's motor vehicle emissions budgets are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have described our process for determining the adequacy of submitted SIP budgets in the preamble to revisions to EPA's conformity regulations. 69 FR 40004 (July 1, 2004). Applicability of emission trading between conformity budgets for conformity purposes is described in 40 CFR 93.124(b).

1. CARB Methodology for Estimating PM–10 in the Emissions Budgets

CARB's mobile source emission model, EMFAC2007, was used to estimate direct PM–10 and NO_X emissions from motor vehicles in the 2007 Plan. EMFAC2007 was approved by EPA on January 18, 2007 (72 FR 733464), for use in SIPs and transportation conformity analyses. EMFAC2007 produces emissions for a wide range of motor vehicles (passenger cars, trucks, motorcycles, buses and motor homes) for calendar years out to 2040. Particulate emissions include tire and brake wear as well as vehicle exhaust and evaporative emissions.

The methodology used in the 2007 Plan to estimate fugitive dust (*e.g.*, paved and unpaved road emissions) is consistent with the methods previously approved in EPA's action on the 2003 Plan. 69 FR 30006 and 69 FR 5412, 5414. No further action is required to approve these methodologies for use in future transportation conformity determinations in the SJVAB.

2. Adequacy of the 2007 Plan's Budgets

The 2007 Plan includes county by county subarea motor vehicle emissions budgets for 2005 and 2020 for direct PM–10 and NO_X. The 2007 Plan budgets are first summarized in Table 6, ''Revised Motor Vehicle Emission Budgets for the Attainment Year, (tons per average annual day),'' and in Table 7, ''Motor Vehicle Emission Budgets for Maintenance of PM10 NAAQS, (tons per average annual day),'' of the 2007 Plan; however, these estimates were updated by CARB, based on updated vehicle activity data, and the updated budgets were included in the ARB Staff Report (p. 12) as part of the 2007 Plan submittal to EPA. Thus, the budgets found on page 12 of ARB Staff Report supercede the budgets in Tables 6 and 7 of the locally adopted 2007 Plan. See November 16, 2007 submittal letter from James N. Goldstene, CARB, to Wayne Nastri, EPA, enclosure ''V. Updated transportation conformity budgets and supporting documentation.'' Table 4 below reflects the updated and submitted transportation conformity budgets for the 2007 Plan. The direct PM–10 budgets include emissions of re-entrained dust from motor vehicle travel on paved and unpaved roads, vehicular exhaust, vehicle brake and tire wear, and emissions from highway and transit project construction. The emissions budgets for NO_X include only exhaust from on-road vehicles. Since the 2007 Plan does not consider VOC to be a significant contributor to the PM–10 nonattainment problem, in accordance with 40 CFR 93.102(b)(2)(iii), no VOC budgets are included. Additional details regarding the budgets are presented in the 2007 Plan, Appendix D, ''Detailed Conformity Calculations.''

Based on our evaluation of the criteria outlined in section 93.118(e)(4) of the conformity rule, EPA proposes to find the PM–10 and NO_X motor vehicle emissions budgets contained in the 2007 Plan (and in Table 4 below) adequate and proposes to approve them. EPA proposes to approve the budgets because they come from a SIP which EPA concludes demonstrates timely attainment and maintenance and the budgets are consistent with all of the control measures assumed in the attainment demonstration and maintenance plan. We also find adequate and propose to approve the individual county level subarea budgets for NO_X and PM–10, as shown in Table 4 below, consistent with section 93.124(d), which allows for a nonattainment area with more than one Metropolitan Planning Organization (MPO) to establish subarea emission budgets for each MPO or make a collective conformity determination for the entire nonattainment area. Note that, if an individual MPO cannot show conformity to its individual county budget, then the remaining MPOs in the SJVAB cannot make any new conformity determinations.[13] If approved, the 2005 and 2020 motor vehicle emissions budgets must be used for transportation conformity purposes. As mentioned earlier, the county subarea motor vehicle emissions budgets that EPA is proposing to approve are listed in Table 4 below.

TABLE 4.—MOTOR VEHICLE EMISSIONS SUBAREA BUDGETS (TONS PER DAY) 2007 PM–10 PLAN *

County	2005		2020	
	PM–10	NO_x	PM–10	NO_x
Fresno	13.5	59.2	16.1	23.2
Kern **	12.1	88.3	14.7	39.5
Kings	3.1	16.7	3.6	6.8
Madera	3.6	13.9	4.7	6.5
Merced	6.2	39.2	6.5	13.9
San Joaquin	9.1	42.6	10.6	16.7
Stanislaus	5.6	29.7	6.7	10.7

[12] See footnotes 2 and 9 above.

[13] CAA section 176(c) states that conformity applies to SIPs in nonattainment and maintenance areas, rather than individual metropolitan planning areas within a single state. When subarea budgets area created for each MPO, the sum of the subarea budgets equals the total amount of emissions the area can have from the transportation sector and still attain and maintain the NAAQS. When one subarea lapses, then the other MPOs cannot show that their planned transportation activities would conform to the SIP for the whole area until the lapse is resolved. See ''Companion Guidance for the July 1, 2004, Final Transportation Conformity Rule: Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards'' (EPA 420–B–04–012).

TABLE 4.—MOTOR VEHICLE EMISSIONS SUBAREA BUDGETS (TONS PER DAY) 2007 PM–10 PLAN *—Continued

County	2005		2020	
	PM–10	NO_x	PM–10	NO_x
Tulare	7.3	25.1	9.3	10.1
Total	60.5	314.7	72.2	127.4

* The budgets are based on attainment and maintenance of the 24-hour PM–10 NAAQS.
** MVEBs in Table 2 are only for the SJVAB portion of Kern County.

3. Trading Mechanism

Transportation conformity is demonstrated for each county in the SJVAB when emissions for both PM–10 and NO_X are estimated to be below the motor vehicle emission budgets for each pollutant for all analysis years. However, for analysis years beyond 2010, in our prior approval of the 2003 Plan, we approved a trading mechanism that allows emissions to be traded from NO_X to PM–10 budgets. 69 FR 30006 and 69 FR 5412, 5414.

The trading mechanism specified that if, after including reductions from additional measures, the direct PM–10 budget still cannot be met, an MPO could adjust (*i.e.*, increase) its PM–10 subarea budget by trading from its NO_X budget. This trade from the NO_X subarea budget to the PM–10 subarea budget can only occur if the estimated emissions of NO_X from the planned transportation network are less than the NO_X subarea budget for a given analysis year. The 1.5 tpd NO_X to 1 tpd PM–10 ratio would be used, as follows, to determine the NO_X reductions needed to offset the excess direct PM–10 emissions:

(PM–10 estimate—PM–10 budget) * 1.5 = tpd of NO_X reductions needed to offset excess PM–10

A subarea has demonstrated conformity if, after trading, the estimates of NO_X and PM–10 emissions from the planned transportation network are at or below the adjusted NO_X and direct PM–10 budgets. For every analysis year, and in each subsequent conformity determination, the transportation agency must repeat these steps to determine whether the budgets can be met, or whether they need to be adjusted using this trading mechanism.

The 2007 Plan requests that this trading mechanism remain unchanged, but available for use after 2005, the revised attainment year. Since the first analysis year, for conformity purposes, will be 2010, EPA is proposing to continue to approve use of the trading mechanism for conformity analysis years after 2005. As stated in the 2003 Plan approval (69 FR 5412, 5414–5417; 69 FR 30006), EPA continues to believe that trading mechanisms cannot be reviewed through the adequacy process, and instead need full EPA approval before they can be used.

V. Proposed Commitments for East Kern

In order to address CAA requirements for the East Kern nonattainment area, the State submitted on February 29, 2008 enforceable commitments to install a FRM/FEM in East Kern and if a violation is recorded to submit the appropriate SIP. Specifically, the State submitted a resolution approved by the Governing Board of the KCAPCD on February 27, 2008 committing to, with assistance from the State, install a FRM/FEM. Kern County Air Pollution Control Board Resolution 2008–001–02. Further, the resolution states that the KCAPCD will develop for submittal through the State to EPA, a serious nonattainment area SIP that meets the requirements of CAA section 189 in the event of a violation of the PM–10 standard. Id. On March 3, 2008, CARB's Executive Officer issued Executive Order S–08–004 approving as a SIP revision the KCAPCD commitments and committing to submit a SIP addressing section 189 in the event that the area violates the PM–10 standard. Given the low concentrations recorded at the IMPROVE monitor and the relatively minimal expected growth, we believe this is a reasonable approach for the area.

VI. Proposed Actions

Based on our review of the State's request, EPA believes the State has addressed all the necessary requirements for a revised designation and is proposing to approve the State's request under section 107(d)(3)(D) to revise the designation for the SJV PM–10 nonattainment area by splitting the area into two separate serious PM–10 nonattainment areas, the SJVAB PM–10 nonattainment area and the East Kern PM–10 nonattainment area. Also, based on EPA's review of the 2007 Plan submitted by the State, EPA believes that the CAA requirements under section 107(d)(3)(E) for redesignations and section 175A for maintenance plans have been met for the SJVAB and EPA is therefore proposing to redesignate the newly created serious SJVAB nonattainment area to attainment for the PM–10 NAAQS and to approve the SJVAPCD's PM–10 maintenance plan, budgets and conformity trading mechanism for the area. EPA is also proposing to exclude from use in determining that the SJVAB has attained the PM–10 NAAQS two exceedances that it has concluded were caused by exceptional events on July 4, 2007 and January 4, 2008. Finally, EPA is proposing to approve commitments from KCAPCD and CARB to install a FRM/FED in the newly created East Kern serious PM–10 nonattainment area and to address section 189(d) CAA requirements for it in the event the FRM/FED records a violation of the PM–10 standard.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to approve a revised boundary designation, a redesignation to attainment for the SJVAB, a maintenance plan for the SJVAB, motor vehicle emissions budgets and conformity trading mechanism for the area and commitments for East Kern, all of which are either requested or submitted by the State, and does not impose any additional requirements. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' Seven Indian tribes have reservations located within the boundaries of the proposed SJVAB. EPA plans to consult with representatives of the seven Tribes and will continue to work with the Tribes, as provided for in Executive Order 13175. Accordingly, EPA has addressed Executive Order 13175 to the extent that it applies to this action. This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action merely proposes to approve requests or submittals from the State and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency actions by directing agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. Today's action involves proposed approvals of a revised boundary designation, a redesignation to attainment for the SJVAB, a maintenance plan for the SJVAB, motor vehicle emissions budgets and conformity trading mechanism for the area and commitments for East Kern. It will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Parts 52

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

40 CFR Part 81

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

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

Dated: April 21, 2008.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E8–9139 Filed 4–24–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 79

[EPA–HQ–OAR–2007–0071; FRL–8557–7]

RIN 2060–AN94

Regulation of Fuels and Fuel Additives: Revised Definition of Substantially Similar Rule for Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interpretive rule.

SUMMARY: EPA is proposing to revise an interpretive rule defining the term ''substantially similar'' for unleaded gasoline as that phrase is used in section 211(f) of the Clean Air Act (the Act). To meet the current definition, fuel or fuel additives must possess, at the time of manufacture, all of the physical and chemical characteristics of an unleaded gasoline as specified in ASTM Standard D 4814–88 for at least one of the Seasonal and Geographical Volatility Classes specified in the standard. EPA proposes to amend the definition to allow some additional flexibility for the vapor/liquid ratio specification for fuel introduced into commerce in the state of Alaska. In the ''Rules and Regulations'' section of this **Federal Register**, we are amending the ''substantially similar'' definition as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments must be received by May 27, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0071, by mail to Air and Radiation Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jaimee Dong, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Office of Air and Radiation, Environmental Protection Agency, Mail Code 6406J, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: (202) 343–9672; fax number: (202) 343–2800; e-mail address: *Dong.Jaimee@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Issuing This Proposed Rule?

This document proposes to revise the ''substantially similar'' interpretive rule. EPA is not statutorily obligated to conduct notice and comment rulemaking when amending this interpretive rule. *See APA section 553(b)(A); CAA section 307(d).* However, as it has done when previously amending this rule, EPA desires to provide an opportunity for the public to comment on this amendment. We have published a direct final rule amending the ''substantially similar'' interpretive rule in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this action include those involved with the production or importation of unleaded gasoline for use in Alaska. Categories and entities affected by this action include: