

reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1275

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1275 of title 36, Code of Federal Regulations, as follows:

PART 1275—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

1. The authority citation for part 1275 is revised to read as follows:

Authority: 44 U.S.C. 2104, 2111 note.

2. Amend § 1275.64 by revising paragraph (d) to read as follows:

§ 1275.64 Reproduction of tape recordings of Presidential conversations.

* * * * *

(d) The reproduction for members of the public of the reference copies of the available tape recordings described in paragraph (a) of this section will be permitted as follows: Copies of tape recordings will be made available following the public release of the tape segments contemplated in § 1275.42(a). Effective as of April 20, 2001, NARA will allow members of the public to obtain copies of all tapes that have been made available to the public by that date and that subsequently become available as they are released. Such copying will be controlled by NARA or its designated contractor. The fees for the reproduction of the tape recordings under this section shall be those prescribed in the schedule set forth in part 1258 of this chapter.

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3. Amend § 1275.66 by revising paragraph (a) to read as follows:

§ 1275.66 Reproduction and authentication of other materials.

(a) Copying of materials, including tape recordings described in § 1275.64, may be done by NARA, by a contractor designated by NARA, or by researchers using self-service copiers or copying equipment.

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4. Amend Appendix A to Part 1275—Settlement Agreement, by revising the introductory paragraph to read as follows:

Appendix A to Part 1275—Settlement Agreement

Settlement Agreement filed April 12, 1996, in Stanley I. Kutler and Public Citizen v. John W. Carlin, Archivist of the United States, and William E. Griffin and John H. Taylor, Co-executors of Richard M. Nixon's Estate, Civil Action No. 92-0662-NHJ (D.D.C.) (Johnson, J.). By letter dated April 17, 2001, NARA and the Nixon estate agreed to waive paragraph 11 of this Settlement Agreement, such that the delay on public copying until January 1, 2003, of tapes not made publicly available before April 12, 1996, shall no longer apply. This change is reflected in 36 CFR 1275.64.

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Dated: February 8, 2002.

John W. Carlin,

Archivist of the United States.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA072-FOA, FRL-7158-1]

Proposed Finding of Failure To Attain; State of California, San Joaquin Valley Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to find that the San Joaquin Valley did not attain the 24-hour and annual particulate matter (PM-10) National Ambient Air Quality Standards (NAAQS) by the deadline mandated in the Clean Air Act (CAA), December 31, 2001. This proposed finding is based on monitored air quality data for the PM-10 NAAQS from 1999 through September 2001.

If EPA finalizes, after public notice and comment, the failure to attain finding, the San Joaquin Valley must submit by December 31, 2002, plan provisions that provide for attainment of the PM-10 air quality standards and that achieve percent annual reductions in PM-10 or PM-10 precursor emissions as required by CAA section 189(d).

DATES: Comments on the proposed action must be received on or before April 15, 2002.

ADDRESSES: Comments may be mailed to: Celia Bloomfield, Planning Office, (AIR-2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901; or to bloomfield.celia@epa.gov.

A copy of this proposed rule and related information are available in the

air programs section of EPA Region 9's Web site, <http://www.epa.gov/region09/air>. The docket for this rulemaking is available for inspection during normal business hours at EPA Region 9, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. A reasonable fee may be charged for copying parts of the docket. Please call (415) 947-4148 for assistance.

FOR FURTHER INFORMATION CONTACT:

Celia Bloomfield (415) 947-4148, Planning Office (AIR-2), Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; bloomfield.celia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 EPA revised the health-based national ambient air quality standards (NAAQS) (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM-10). At that time, EPA established two PM-10 standards. The annual PM-10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (ug/m³). The 24-hour PM-10 standard of 150 ug/m³ is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, Appendix K.

Breathing particulate matter can cause significant health effects, including an increase in respiratory illness and premature death.

The San Joaquin Valley, which is made up of 8 counties (Stockton County, Stanislaus County, Merced County, Madera County, Fresno County, Kings County, Tulare County, and Kern County), has had a PM-10 problem for more than a decade. The area violates both the 24-hour and annual PM-10 standards. Exceedances are recorded throughout the Valley but tend to peak in the fall and winter. (See Tables 1 and 2 below in Section II.B). The violations are caused by both primary particulates (dust) and secondary particulates (other pollutants that react in the atmosphere to form particulate matter).

On the date of enactment of the 1990 Clean Air Act Amendments (CAA or Act), PM-10 areas, including the San Joaquin Valley planning area, meeting the qualifications of section 107(d)(4)(B) of the amended Act, were designated nonattainment by operation of law. See 56 FR 11101 (March 15, 1991). EPA

codified the boundaries of the San Joaquin Valley PM-10 nonattainment area at 40 CFR 81.305.

Once an area is designated nonattainment for PM-10, section 188 of the CAA outlines the process for classifying the area and establishing the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM-10 nonattainment areas, including the San Joaquin Valley, were initially classified as moderate.

Section 188(b)(1) of the Act provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot "practicably" attain the PM-10 NAAQS by the moderate area attainment deadline, December 31, 1994. On January 8, 1993 (58 FR 3334, 3337), EPA made such a determination and reclassified the San Joaquin Valley nonattainment area as serious. As a serious PM-10 nonattainment area, the San Joaquin Valley acquired a new attainment deadline of December 31, 2001 (CAA section 188(c)(2)).

II. Proposed Finding of Failure To Attain

A. Clean Air Act Requirements for Attainment Findings

EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date (i.e., June 30, 2002), whether the San Joaquin Valley PM-10 nonattainment area has attained the annual and 24-hour NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's "air quality as of the attainment date," and section 188(b)(2) is consistent with this requirement. EPA determines whether an area's air quality is meeting the PM-10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into EPA's Aerometric Information Retrieval System (AIRS). These data are reviewed to determine the area's air quality status in accordance with EPA regulations at 40 CFR part 50, appendix K.

Pursuant to appendix K, attainment of the annual PM-10 NAAQS is achieved when the expected annual arithmetic mean PM-10 concentration is less than or equal to the level of the standard (50 $\mu\text{g}/\text{m}^3$). Attainment of the 24-hour PM-10 NAAQS is achieved when the expected number of exceedances of the 24-hour NAAQS (150 $\mu\text{g}/\text{m}^3$) per year at each monitoring site is less than or equal to one. A total of three consecutive years of clean air quality data is generally necessary to show attainment of the annual and 24-hour standards for PM-10. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, is comprised of all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

B. Ambient Air Monitoring Data

1. Annual PM-10 Standard

According to data currently in AIRS, three monitoring sites in the San Joaquin Valley are in violation of the annual PM-10 NAAQS. These data cover the period 1999 through September 30, 2001. While the nonattainment status of the Corcoran and Visalia monitors could still be affected by end of year data, even under the best case scenario (using values of 0.0 $\mu\text{g}/\text{m}^3$ for the sampling days in the last quarter of 2001), the Bakersfield Golden State Highway site would still register an annual arithmetic mean of 53 $\mu\text{g}/\text{m}^3$, which violates the annual NAAQS.¹

TABLE 1.—SAN JOAQUIN VALLEY MONITORING SITES THAT VIOLATE THE ANNUAL PM₁₀ NAAQS (1999–2001 *)

Site name	3 year annual mean** $\mu\text{g}/\text{m}^3$
Bakersfield—Golden State	***58
Corcoran	51
Visalia	51

* 2001 data available through September 30, 2001.

** The annual mean reported here is based on data through September 30, 2001. The actual 3 year mean could change based on a complete data set for calendar year 2001.

*** 3rd quarter 2001 data do not meet EPA data completeness requirements.

2. 24-Hour PM-10 Standard

According to 40 CFR part 50, the 24-hour PM-10 NAAQS is attained when the expected number of days per calendar year with a 24-hour average above 150 $\mu\text{g}/\text{m}^3$ is equal to or less than one. In the simplest case, the number of expected exceedances at a site is determined by recording the number of exceedances in each calendar year and then averaging them over the past three calendar years. This means that if a monitoring site has four or more observed or estimated exceedances in a three-year period then it is in violation of the 24-hour PM-10 NAAQS. Generally, if PM-10 sampling is scheduled less than every day, EPA requires the adjustment of observed exceedances to account for incomplete sampling. The method for adjusting the observed exceedances is described in 40 CFR part 50, appendix K, § 3.1.

In spite of the lack of data for the fourth quarter in 2001, there are ten monitoring sites in the San Joaquin Valley that are in violation of the 24-hour PM-10 NAAQS. The following table shows the number of estimated exceedances at the 10 sites after adjusting for incomplete sampling. All of the sites listed in Table 2 operate on a one in six day schedule. Table 2 lists the number of days over the standard in all three years as well as the three-year average. For each of these sites, the average number of exceedance days per year over the three-year period 1999–2001 exceeds one.

TABLE 2.—24-HOUR PM-10 AIR QUALITY IN THE SAN JOAQUIN VALLEY NONATTAINMENT AREA (1999–2001) *

Monitoring station	Estimated exceedance days 1999	Estimated exceedance days 2000	Estimated exceedance days 2001	Average number of expected exceedance days per year 1999–2001
Fresno East Drummond	8	0	6	4.7
Fresno First St	0	0	6	2

¹ The expected annual arithmetic mean is determined by averaging the annual arithmetic

mean PM-10 concentration for the past three calendar years. The procedure for calculating the

annual arithmetic mean is discussed in 40 CFR part 50, appendix K, § 4.0.

TABLE 2.—24-HOUR PM-10 AIR QUALITY IN THE SAN JOAQUIN VALLEY NONATTAINMENT AREA (1999–2001)*—Continued

Monitoring station	Estimated exceedance days 1999	Estimated exceedance days 2000	Estimated exceedance days 2001	Average number of expected exceedance days per year 1999–2001
Clovis	0	0	6	2
Bakersfield Golden State	6	0	12	6
Bakersfield California Ave	0	0	9	3
Oildale	3	0	6	3
Corcoran	6	0	6	4
Hanford	0	0	6	2
Turlock	11	0	0	3.7
Modesto	0	0	6	2

*Data available through September 2001.

III. Summary of Proposed Action

A. Proposed Finding of Failure to Attain

EPA is proposing a finding that the San Joaquin Valley did not attain the annual or 24-hour PM-10 NAAQS by the December 31, 2001 attainment deadline as discussed above in Section II.

B. SIP Consequences

Under section 189(d) of the Act, serious PM-10 nonattainment areas that fail to attain are required to submit within 12 months of the applicable attainment date, “plan revisions which provide for attainment of the PM-10 air quality standards and, from the date of such submission until attainment, for an annual reduction in PM-10 or PM-10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.” Since the applicable attainment date was December 31, 2001, the deadline for the 5 percent plan will be December 31, 2002 if EPA’s proposed finding of failure to attain is finalized.

IV. 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 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This proposed action in and of itself establishes no new requirements, it merely notes that the air quality in the San Joaquin Valley did not meet the federal health standards for PM-10 by the CAA deadline. 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 in and of itself establish new requirements, EPA believes that it is questionable whether a requirement to submit a SIP revision constitutes a federal mandate. The obligation for a State to revise its SIP arises out of sections 110(a), 179(d), and 189(d) of the CAA and is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for the condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)). Therefore, today’s proposed action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This 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 action does not

in and of itself create any new requirements 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, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant. Because this proposed finding of failure to attain is a factual determination based on air quality considerations, 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, Carbon monoxide, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 28, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

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