not apply to this rule. Consistent with EPA policy, EPA nonetheless consulted with representatives of tribal governments early in the process of developing this proposal to permit them to have meaningful and timely input into its development. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

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 proposed action merely corrects the description of a nonattainment area to exclude land that did not contribute to the nonattainment problem and was under a different regulatory jurisdiction and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This 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.

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

List of Subjects

40 CFR Part 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.

Dated: November 16, 2004.

Michael F. Gearheard,

Acting Regional Administrator, Region 10.

[FR Doc. 04–26295 Filed 11–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket #: WA–04–006; FRL–7842–7]

Approval and Promulgation of State Implementation Plans and Designation: Washington; Yakima PM–10 Nonattainment Area Limited Maintenance Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On June 15, 2004, the State of Washington submitted a Limited Maintenance Plan (LMP) for the Yakima nonattainment area (NAA) for approval and concurrently requested that EPA redesignate the Yakima nonattainment area to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). In this action, the EPA proposes to approve the LMP for the Yakima NAA in Washington and grant a request by the State to redesignate the area from nonattainment to attainment. In a concurrent notice of proposed rulemaking published today, EPA is proposing to correct the boundary of the Yakima NAA to exclude a small portion that lies within the exterior boundary of the Yakama Indian Reservation. The State Implementation Plan (SIP) that we are proposing to approve with this action does not extend to lands which are within the boundaries of the Yakama Indian Nation.

DATES: Written comments must be received by December 29, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. WA–04–006, by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *r10.aircom@epa.gov.*

C. Fax: (206) 553–0110.

D. Mail: Office of Air Waste and Toxics, Environmental Protection Agency, Attn: Gina Bonifacino, Mailcode: OAWT–107, 1200 Sixth Avenue, Seattle, WA 98101.

E. Hand Delivery: Environmental Protection Agency Region 10, Attn: Gina Bonifacino (OAWT–107), 1200 Sixth Avenue, Seattle, WA 98101, 9th floor. Such deliveries are only accepted during EPA's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket WA No. WA–04–006. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Publicly available docket materials are available in hard copy at EPA Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the file, as it exists on the date of proposal, is also available for public viewing at EPA's Washington Operations Office at EPA Region 10, 300 Desmond Dr. SE., Suite 102, Lacey, WA 98503.

EPA is open Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your review of records.

FOR FURTHER INFORMATION CONTACT: Gina Bonifacino, Office of Air, Waste and

Toxics, Region 10, OAWT–107, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101; phone: (206) 553–2970; fax number: (206) 553–0110; e-mail address: *bonifacino.gina@epa.gov*.

SUPPLEMENTARY INFORMATION:

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

Table of Contents

I. Background

A. What National Ambient Air Quality Standards (NAAQS) Are Considered in Today's Rulemaking?

Particulate matter with an aerodynamic diameter less than or equal to a nominal ten microns (PM–10) is the pollutant subject to this action. The NAAQS are safety thresholds for certain ambient air pollutants set to protect public health and welfare. PM–10 is among the ambient air pollutants for which we have established such a health-based standard. PM–10 causes adverse health effects by penetrating deep in the lung, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable. On July 1, 1987, (52 FR 24634) we revised the NAAQS for particulate matter with an indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. *See* 40 CFR 50.6. The annual primary PM–10 standard is 50 $\mu g/m^3$ as an annual arithmetic mean. The 24-hour primary PM–10 standard is 150 $\mu g/m^3$ with no more than one expected exceedance per year. The secondary PM–10 standards, promulgated to protect against adverse welfare effects, are identical to the primary standards.

B. What Is a State Implementation Plan (SIP)?

The Clean Air Act (the Act) requires states to attain and maintain ambient air quality equal to or better than the NAAQS. Section 107(d)(1)(A)(i) of the Clean Air Act defines nonattainment area as any area that does not meet (or that contributes to ambient air quality in the nearby area that does not meet) the national primary or secondary ambient air quality standard for that pollutant.

The states' plans for attaining and maintaining the NAAQS are outlined in the State Implementation Plan (SIP). The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. Each state currently has a SIP in place, and the Act requires that states make SIP revisions periodically as necessary to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) A current, accurate and comprehensive inventory of emission sources; (2) statutes and regulations adopted by the state legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date.

The state must make the SIP and subsequent revisions available for public review and comment through a public hearing, it must be adopted by the state, and submitted to EPA by the Governor or her designee. EPA takes federal action on the SIP thus rendering the rules and regulations federally enforceable. The approved SIP is the state's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

C. What Is the Background of the SIP for the Yakima Area?

On August 7, 1987 (52 FR 29383), EPA identified the Yakima area as a PM–10 ''Group I'' area of concern, *i.e.*, an area with a 95% or greater likelihood of violating the PM–10 NAAQS and requiring substantial SIP revisions. The Yakima area was subsequently designated as a moderate PM–10 nonattainment area upon enactment of the Clean Air Act Amendments of 1990 by operation of law (November 15, 1990).

States containing initial moderate PM–10 nonattainment areas were required to submit, by November 15, 1991, a nonattainment area SIP that implemented reasonably available control measures (RACM) by December 10, 1993, and demonstrate whether it was practicable to attain the PM–10 NAAQS by December 31, 1994.

On November 7, 1995, EPA published a **Federal Register** notice proposing limited approval and limited disapproval of the nonattainment area SIP submitted by the State of Washington for the Yakima nonattainment area (NAA) (60 FR 56129). The purpose of this nonattainment area SIP was to bring about attainment of the PM–10 NAAQS in Yakima. The November 7, 1995 **Federal Register** proposal provided information on requirements for PM–10 nonattainment area SIPs and the history of this rulemaking action.

The State submitted additional SIP revisions on November 3, 1995 [1], and December 27, 1995 that addressed EPA concerns identified in the November 7, 1995 proposal. The submittals included a demonstration of attainment, a maintenance demonstration and quantitative milestone report, the implementation of RACM through an

[1] The timing of this submittal did not permit EPA action prior to the November 7, 1995 **Federal Register** notice.

amended set of YRCAA regulations, and the enforceability of the local regulations. On February 2, 1998 (63 FR 5270), EPA fully approved the Yakima NAA SIP. In the final approval, EPA clarified that the SIP, as approved, did not extend to lands which are within the boundaries of the Yakama Indian Nation.

On June 15, 2004, the State submitted a Limited Maintenance Plan for the Yakima area for approval and requested that EPA redesignate the Yakima nonattainment area to attainment for the National Ambient Air Quality Standards (NAAQS) for PM–10. In today's action, EPA proposes to approve the Limited Maintenance Plan (LMP) for the Yakima area in Washington and approve the request by the State to redesignate the area from nonattainment to attainment for PM–10. In a concurrent notice of proposed rulemaking published today, EPA is proposing to correct the boundary of the Yakima NAA to exclude a small portion that lies within the exterior boundary of the Yakama Indian Reservation. Therefore, the SIP that we are proposing to approve with this action does not extend to lands which are within the boundaries of the Yakama Indian Nation.

D. What Are the Air Quality Characteristics of the Yakima NAA?

The Yakima NAA is a rectangular shaped area covering approximately 70 square miles. For a legal description of the boundaries *see* 40 CFR 81.348, as proposed to be amended in today's notice of proposed rulemaking. The Yakima NAA includes the three cities of Yakima, Selah and Union Gap, which form a single developed area. The cities are in the generally flat area of the river valleys and are surrounded by heights and ridges. One major stationary source (Boise Cascade sawmill) and several small stationary sources lie within the nonattainment area. The rest of the nonattainment area consists of agricultural lands, mainly orchards and open land. The northeast corner of the nonattainment area includes a small part of the Yakima Training Center Military Reservation.

An analysis of PM–10 monitoring data indicates that the highest PM–10 levels generally occur during weekdays from November through January. The primary emission sources are wood stoves used for home heating and re-suspended road dust from either paved or unpaved roads.

E. How Can a Nonattainment Area Be Redesignated to Attainment?

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the Clean Air Act (the Act), and the General Preamble to Title I (57 FR 13498) provide the criteria for redesignation. These criteria are further clarified in a policy and guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards dated September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment.* The criteria for redesignation are:

(1) The Administrator determines that the area has attained the applicable NAAQS;

(2) The Administrator has fully approved the applicable SIP for the area under section 110(k) of the Act;

(3) The State containing the area has met all requirements applicable to the area under section 110 and part D of the Act;

(4) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions; and

(5) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the Act.

F. What Is the Limited Maintenance Plan (LMP) Option for PM–10 Nonattainment Areas Seeking Redesignation to Attainment and How Can an Area Qualify for This Option?

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM–10 nonattainment areas seeking redesignation to attainment (Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled ''Limited Maintenance Plan Option for Moderate PM–10 Nonattainment Areas'', hereafter the Wegman memo). This policy contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard 10 years into the future. Thus, EPA has already provided the maintenance demonstration for areas that meet the air quality criteria outlined in the policy. It follows that future year emission inventories for these areas, and some of the standard analyses to determine transportation conformity with the SIP are no longer necessary.

To qualify for the LMP option, the area should have attained the PM–10 NAAQS, and the average annual PM–10 design value for the area, based upon the most recent 5 years of air quality data at all monitors in the area, should be at or below 40 $\mu g/m^3$, and the 24 hour design value should be at or below 98 $\mu g/m^3$. In addition, the area should expect only limited growth in on-road motor vehicle PM–10 emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test.

The Wegman memo also identifies core provisions that must be included the LMP. These provisions include an attainment year emission inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

G. How Is Conformity Treated Under the LMP Option?

The transportation conformity rule (40 CFR parts 51 and 93) and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While EPA's Limited Maintenance Plan policy does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the Limited Maintenance Plan policy, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the PM–10 NAAQS would result. For transportation conformity purposes, EPA would conclude that emissions in these areas need not be capped for the maintenance period and therefore a regional emissions analysis would not be required. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the ''budget test'' specified in section 93.158 (a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited.

II. Review of the Washington State Submittal Addressing the Requirements for Redesignation and Limited Maintenance Plans

A. Has the State Demonstrated That the Yakima NAA Has Attained the Applicable NAAQS?

States must demonstrate that an area has attained the PM–10 NAAQS through analysis of ambient air quality data from an ambient air monitoring network representing peak PM–10 concentrations. The data should be stored in the EPA Air Quality System (AQS) database.

The 24-hour PM–10 NAAQS is 150 μg/m^3. An area has attained the 24-hour standard when the average number of expected exceedences per year is less than or equal to one, when averaged over a three-year period (40 CFR 50.6). To make this determination, three consecutive years of complete ambient air quality data must be collected in accordance with federal requirements (40 CFR part 58, including appendices).

Based on data that has been quality assured by the Washington Department of Ecology and stored in the AQS database, there have been no exceedences of the 24-hour PM–10 NAAQS in the Yakima NAA since 1991 and the number of days exceeding the annual PM–10 standard over the three year period 2000–2003 is zero. Thus, the expected number of days exceeding the 24 standard is zero, and the Yakima NAA has attained the 24-hour PM–10 NAAQS.

The annual PM–10 NAAQS is 50 μg/m^3. To determine attainment, the standard is compared to the expected annual mean, which is the average of the weighted annual mean for three consecutive years. Appendix G of the Yakima Limited Maintenance Plan lists annual weighted means for each year between 2000 through 2003. The weighted annual mean for each year is below 50 μg/m^3 at all monitoring sites (range: 22.7–26.0 μg/m^3). Thus, the three year weighted annual mean is below 50 μg/m3. The Yakima NAA has attained the annual PM–10 NAAQS.

B. Does the Yakima NAA Have a Fully Approved SIP Under Section 110(k) of the Clean Air Act (The Act)?

In order to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area.

EPA approved Washington's nonattainment plan for the Yakima area on February 2, 1998 (63 FR 5270). Thus, the area has a fully approved nonattainment area SIP under section 110(k) of the Act.

C. Has the State Met All Applicable Requirements Under Section 110 and Part D of the Act?

Section 107(d)(3)(E)(v) of the Act requires that a state containing a nonattainment area must meet all applicable requirements under section 110 and Part D of the Act. EPA interprets this to mean the state must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation request. The following is a summary of how Washington meets these requirements.

(1) Clean Air Act Section 110 Requirements

Section 110(a)(2) of the Act contains general requirements for nonattainment plans. These requirements include, but are not limited to, submittal of a SIP that has been adopted by the State after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling; and provisions for public and local agency participation. *See* the General Preamble for further explanation of these requirements. 57 FR 13498 (April 16, 1992).

For purposes of redesignation, EPA review of the Washington SIP shows that the state has satisfied all requirements under section 110(a)(2) of the Act. Further, in 40 CFR 52.2473, EPA has approved Washington's plan for the attainment and maintenance of the national standards under Section 110.

(2) Part D Requirements

Part D contains general requirements applicable to all areas designated nonattainment.

The general requirements are followed by a series of subparts specific to each pollutant. All PM–10 nonattainment areas must meet the general provisions of Subpart 1and the specific PM–10 provisions in Subpart 4, ''Additional Provisions for Particulate Matter Nonattainment Areas.'' The following paragraphs discuss these requirements as they apply to the Yakima area.

(3) Subpart 1, Section 172(c)

Subpart 1, section 172(c) contains general requirements for nonattainment area plans. A thorough discussion of these requirements may be found in the General Preamble. *See* 57 FR 13538 (April 16, 1992). The requirements for reasonable further progress, identification of certain emissions increases and other measures needed for attainment were satisfied with the approved PM–10 nonattainment plan for the Yakima area. *See* 63 FR 5271 (February 2, 1998).

(4) Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the Act requires a comprehensive, accurate, current inventory of actual emissions from all sources in the Yakima PM–10 nonattainment area. Washington included an emissions inventory for the calendar year 2000 with its submittal of the LMP for the Yakima area. The requirement for a current, accurate and comprehensive emission inventory is satisfied by the inventory contained in the LMP.

(5) Section 172(c)(5)—New Source Review (NSR)

The Clean Air Act Amendments of 1990 contained revisions to the new source review (NSR) program requirements for the construction and operation of new and modified major stationary sources located in nonattainment areas. The Act requires states to amend their SIPS to reflect these revisions, but does not require submittal of this element along with the other SIP elements. The Act established June 30, 1992 as the submittal date for the revised NSR programs (Section 189 of the Act). In the Yakima Area, the requirements of the Part D NSR program will be replaced by the Prevention of Significant Deterioration (PSD) program and the maintenance area NSR program upon effective date of redesignation. The Part D NSR rules for PM_{10} nonattainment areas in Washington were approved by EPA on June 2, 1995. *See* 60 FR 28726. The federal PSD regulations found at 40 CFR 52.21 are the PSD rules in effect for Washington. *See* 40 CFR 52.2497.

(6) Section 172(c)(7) Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accord with 40 CFR part 58 to verify attainment status of the area. The State of Washington currently operates two PM–10 federal reference monitors and a real

time tapered element oscillating microbalance (TEOM) PM–10 monitor on the roof of the Central Washington Comprehensive Mental Health Building. These monitors are operating in accord with 40 CFR part 58. The State has committed to continued operation of the monitoring network.

(7) Section 172 (c)(9) Contingency Measures

The Clean Air Act requires that contingency measures take effect if the area fails to meet reasonable further progress requirements or fails to attain the NAAQS by the applicable attainment date. Since the Yakima area attained the NAAQS for PM–10 by the applicable attainment date of December 31, 1994, contingency measures are no longer required under Section 172(c)(9) of the Act. However, contingency provisions are required for maintenance plans under Section 175(a)(d). Washington provided contingency measures in their Limited Maintenance Plan. These measures are described in section II H of this notice.

(8) Part D Subpart 4

Part D Subpart 4, Section 189(a), (c) and (e) requirements apply to any moderate nonattainment area before the area can be redesignated to attainment. The requirements which were applicable prior to the submission of the request to redesignate the area must be fully approved into the SIP before redesignating the area to attainment. These requirements include:

(a) Provisions to assure that RACM was implemented by December 10, 1993;

(b) Either a demonstration that the plan provided for attainment as expeditiously as practicable but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable;

(c) Quantitative milestones which were achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

(d) Provisions to assure 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.

These provisions were fully approved into the SIP upon EPA approval of the PM–10 nonattainment area plan for the Yakima area on February 2, 1998 (63 FR 5270).

D. Has the State Demonstrated That the Air Quality Improvement Is Due to Permanent and Enforceable Reductions?

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual enforceable emission reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic.

EPA believes that areas that qualify for the LMP will meet the NAAQS, even under worst case meteorological conditions. Under the Limited Maintenance Plan policy, the maintenance demonstration is presumed to be satisfied if an area meets the qualifying criteria.

Thus, Washington has demonstrated that the air quality improvements in the Yakima area are the result of permanent emission reductions and not a result of either economic trends or meteorology by qualifying for the Limited Maintenance Plan. A description of the LMP qualifying criteria and how the Yakima area meets these criteria is provided in the following section.

E. Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?

In this action, we are proposing to fully approve the maintenance plan as allowed by the LMP guidance described in section F. below.

F. Has the State Demonstrated That the Yakima NAA Qualifies for the LMP Option?

The Wegman memo explains the requirements for an area to qualify for the LMP option. First, the area should be attaining the NAAQS. Appendix G and sections 2.3 and 2.5 of the plan summarize quality assured ambient monitoring data showing that the Yakima area has continued to meet both the 24-hour and annual PM–10 NAAQS for the period 2000–2003. As stated in Section IV A, EPA has determined that the Yakima area is in attainment of the PM–10 NAAQS.

Second, the design values for the past 5 years must be at or below the margin of safety levels identified in the LMP option. EPA review of AQS data confirms that design values at Yakima monitors for the years 1998–2003 fall below 98 $\mu g/m^3$(daily) and 40 $\mu g/m^3$ (annual).

Third, the area must meet the motor vehicle regional emissions analysis test in the LMP option. Appendix B of the plan demonstrates that when adjusted for future on-road mobile emissions,Yakima passes a motor vehicle emissions analysis test with a design value of 95 $\mu g/m^3$. This value is less than the margin of safety value 98 $\mu g/m^3$.

The State has shown that the area qualifies for the Limited Mmaintenance Plan policy as described in the Wegman memo. For the reasons explained below, we are proposing to approve the LMP.

G. Does the State Have an Approved Attainment Plan That Includes an Emissions Inventory Which Can Be Used To Demonstrate Attainment of the NAAQS?

The attainment plan for the Yakima area that was approved in 1998 includes an emissions inventory which was used to demonstrate attainment of the NAAQS (63 FR 5270).

H. Does the LMP Include an Assurance of Continued Operation of an Appropriate EPA-Approved Air Quality Monitoring Network in Accordance With 40 CFR Part 58?

In section 5.3 of the LMP, the Yakima Regional Clean Area Authority states that it will continue to operate its monitoring network to meet EPA requirements.

I. Does the Plan Meet the Clean Air Act Requirements for Contingency Provisions?

Section 175A of the Act states that a maintenance plan must include contingency measures, as necessary, to promptly correct any violation of the NAAQS which may occur after redesignation of the area to attainment. As explained in the Wegman memo, these contingency measures do not have to be fully adopted at the time of redesignation.

The Yakima PM–10 Limited Maintenance Plan contains a three-part contingency strategy. The first part is the activation event, the second is evaluation and reporting of the cause of the event and course of action, and the third part consists of mitigation measures. This strategy is described below.

(1) Activation Event

Contingency measures will be activated in the event of a violation of the PM–10 NAAQS, a quality assured PM–10 federal reference monitor value of 120 $\mu g/m^3$ or greater in any October 15th to March 1st season or, an annual LMP average PM–10 design value that

exceeds 40 μg/m^3 for the annual and 98 μg/m^3 for the 24 hour PM–10 NAAQS.

(2) Evaluation and Reporting

Upon activation, the Yakima Regional Clean Air Authority will convene a meeting of the representatives from the agencies which prepared the LMP (see Appendix I of the LMP) to evaluate the following:

(a) Air quality trends before and during the event(s);

(b) Weather conditions that caused or aggravated the event(s);

(c) Normal and unusual emissions occurring prior to and during the event(s);

(d) The effectiveness of the existing controls in reducing the magnitude and/or duration of the event(s);

(e) Any changes in the LMP, monitoring network, and/or public information strategies to provide early notice to the public about possible future high monitor values; and

(f) The need for additional voluntary or regulatory controls to reduce future emissions.

In addition, if the assessment team recommends additional control strategies or rules, the team will evaluate and rank the following possible additional strategies:

(a) Early burn bans based on monitor values, weather forecasts and atmospheric models;

(b) Additional public education or voluntary control programs;

(c) Increased compliance assistance patrols during 1st stage burn bans; and

(d) Any other strategy which will reduce late fall and winter smoke and road dust emissions.

The assessment report will be submitted to the Authority Board within 120 days of the high value monitor event or the LMP design value recalculation. The local actions that result from this report will be the discretion of the Board.

(3) Mitigation Measures

Mitigation measures will reduce PM–10 levels in addition to existing and planned control and contingency measures. These measures, in Section 5.71 of the LMP, include area source mitigation measures such as unpaved road and dust abatement programs, mobile source and transportation system mitigation measures such as voluntary diesel exhaust system retrofit programs, and public information mitigation measures such as using news releases through print or radio media to inform the public of rising CO and or PM–10 levels and to request voluntary reductions in outdoor and agricultural burning, wood stove use and trip reductions. We conclude that these measures and commitments meet the requirement for contingency provisions of CAA Section 175A(d).

J. Has the State Met Conformity Requirements?

(1) Transportation Conformity

Under the Limited Maintenance Plan policy, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result.

While areas with maintenance plans approved under the Limited Maintenance Plan option are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the State will still need to document and ensure that: (a) Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113; (b) transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108; (c) the MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105; (d) conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104; (e) the latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111; (6) projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and (7) project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

(2) General Conformity

For Federal actions which are required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that ''the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP.'' 40 CFR 93.158(a)(5)(i)(A).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the State and local air quality agencies. These emissions budgets are unlike and are not to be confused with those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels. Washington has not chosen to include specific emissions allocations for federal projects that would be subject to the provisions of general conformity.

III. Statutory and Executive Order Review

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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed 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 merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects

40 CFR Part 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.

Dated: November 16, 2004.

Michael F. Gearheard,

Acting Regional Administrator, Region 10.

[FR Doc. 04–26296 Filed 11–26–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 870 and 872

RIN 1029–AC47

Coal Production Fees and Fee Allocation

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In response to a request from the trustees of the United Mine Workers of America Combined Benefit Fund, we are extending the comment period for the proposed rule published in the September 17, 2004, **Federal Register** concerning fees and fee allocations under the abandoned mine reclamation program provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act).

DATES: *Electronic or written comments:* We will accept written comments on the proposed rule until 4:30 p.m., Eastern time, on December 16, 2004.

ADDRESSES: If you wish to comment on the proposed rule, you may submit your comments by any of the following methods to the address indicted:

- *E-mail: osmregs@osmre.gov.* Please include docket number 1029–AC47 in the subject line of the message.
- *Mail/Hand-Delivery/Courier:* Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 210, 1951 Constitution Avenue, NW., Washington, DC 20240. Please identify the comments as pertaining to docket number 1029–AC47.
- *Federal e-Rulemaking Portal: http// www.regulations.gov.* Follow the instructions provided at *http:// www.regulations.gov* under the ''How to Comment'' heading for this rule.

FOR FURTHER INFORMATION CONTACT: Dennis Rice, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240. Telephone: (202) 208–2829. E-mail address: *drice@osmre.gov.* You will find additional information concerning OSM, fees on coal production, and Abandoned Mine Reclamation Fund, and abandoned mine reclamation in general on our home page at *http://www.osmre.gov.*

SUPPLEMENTARY INFORMATION: On September 17, 2004, we published a proposed rule setting forth procedures and criteria for the establishment of fees under section 402(b) of SMCRA. That section of the Act provides that, when the rates set forth in section 402(a) of the Act expire, the fee for coal produced after that date ''shall be established at a rate to continue to provide for the deposit referred to in subsection (h) [of section 402 of SMCRA].'' Section 402(h) requires the annual transfer of certain estimated Abandoned Mine Reclamation Fund earnings to the United Mine Workers of America Combined Benefit Fund. The proposed rule also contained revisions to the regulations governing allocation and disposition of fee collections and other Abandoned Mine Reclamation Fund income. For a full explanation of the proposed rule, please refer to the rule text and preamble published at 69 FR 56132–56144.

At the time the rule was published, the fee rates set forth in section 402(a) of the Act would have expired on September 30, 2004. However, a continuing resolution enacted on September 30, 2004, extended those rates through November 20, 2004. See section 125 of Public Law 108–309. Further continuing resolutions or appropriations legislation may provide for additional extensions of the statutory rates or revisions thereof.

The comment period on the proposed rule was originally scheduled to close on November 16, 2004. However, by letter dated November 10, 2004, the trustees of the United Mine Workers of America Combined Benefit Fund requested a 30-day extension of that deadline. We are granting that request, which means that all interested persons may submit electronic or written comments until December 16, 2004, in accordance with the instructions provided in **DATES** and **ADDRESSES** above and in Part X of the preamble to the September 17, 2004, rule (*see* 69 FR 56140).

Dated: November 18, 2004.

Jeffrey D. Jarrett,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 04–26195 Filed 11–26–04; 8:45 am]

BILLING CODE 4310–05–M