ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R09-OAR-2008-0306; FRL-]

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: Final rule.

SUMMARY: EPA is approving the State of California's request under the Clean Air Act (CAA or the Act) 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 (SJVAB) serious PM-10 nonattainment area and the East Kern serious PM-10 nonattainment area. EPA is also redesignating the SJVAB nonattainment area to attainment for the PM-10 national ambient air quality standard (NAAQS) and approving the PM-10 maintenance plan, motor vehicle emissions budgets and conformity trading mechanism for the area. EPA is

also excluding from use in determining that the area has attained the standard exceedances on July 4, 2007 and January 4, 2008 that EPA has concluded were caused by exceptional events. Finally, EPA is approving 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 CAA requirements under section 189(d) as necessary for the area.

DATE: This rule is effective on [Insert date 30 days from the date of publication in the Federal Register]. The motor vehicle emission budgets are effective on [Insert date of publication in the Federal Register

ADDRESSES: EPA has established docket number EPA-R09-OAR-2008-0306 for this action. The docket is available electronically at 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 April 25, 2008 (73 FR 22307), EPA proposed the following actions:

- Approval of the State of California’s request to revise the designation for the SJV serious PM-10 nonattainment area by splitting the area into two separate nonattainment

areas, the SJVAB serious PM-10 nonattainment area and the East Kern serious PM-10 nonattainment area.

- Redesignation of the SJVAB nonattainment area to attainment for the PM-10 NAAQS and approval of the maintenance plan, motor vehicle emissions budgets and conformity trading mechanism for the SJVAB area.
- Exclusion from use in determining that the SJVAB 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.
- Approval of enforceable commitments by the Kern County Air Pollution Control District (KCAPCD) and the California Air Resources Board (CARB) to install a PM-10 monitor in the East Kern nonattainment area and to address CAA requirements under section 189(d) as necessary for the East Kern area.

Subsequently, On May 23, 2008, EPA extended the public comment period for two weeks, until June 10, 2008. 73 FR 30029. EPA issued the extension in order to notify the public of a minor change in the motor vehicle emissions budgets and to provide the public with the opportunity to consider these technical corrections.

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.[1] EPA is required to approve or deny the revised designation within 18 months of receipt. On January 31, 2008, the State submitted to EPA a revised designation that involves a boundary change only and not a change in status (e.g., from "nonattainment," to "attainment" or "unclassifiable") of any area.

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 memorandum).

[1] 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).

The proposed rule provides a more detailed discussion of the background pertinent to this final action.

II. Public Comments and EPA Responses

EPA received one letter in support of EPA's proposed actions from the San Joaquin Valley Air Pollution Control District (SJVAPCD or the District) and two letters with adverse comments. As EPA sets forth in detail in its responses to comments below, in taking final action EPA has fully considered all data pertinent for regulatory use in determining attainment in the SJVAB area and EPA continues to believe that the area has attained the PM-10 standard. EPA has also determined that the State's request for redesignation and the maintenance plan for the SJVAB area meet the applicable requirements of the CAA. In addition, EPA is granting the State's request for a boundary revision for the area based on a multiplicity of factors. The available monitoring data for the East Kern area, while limited, also indicate that concentrations are well below the NAAQS. Thus, for the reasons set forth in the responses to comments below, as well as in the proposed rule, EPA is finalizing its proposed determinations as fully meeting the requirements of the CAA.

A. Area Has Attained

Comment 1: Earthjustice (EJ) states that the first condition that a nonattainment area must meet in order to be redesignated

to attainment under CAA section 107(d)(3)(E) is that EPA has determined that the area has actually attained the NAAQS. EJ alleges that the SJV nonattainment area has recorded multiple exceedances of the standard during the period that EPA is relying on to demonstrate attainment and that EPA is thus ignoring a serious air quality problem and the health impacts associated with it. EJ incorporates by reference and attaches its previous comments on EPA's attainment determination that claim the problem EPA is ignoring has existed for many years, is part of what led EPA to designate the SJV area nonattainment in the first place and is caused by ongoing human activity that is not reasonably controlled.

Response 1: The previous comments to which EJ refers in its June 10, 2008 comment letter on the proposed rule are contained in its August 18, 2006 comment letter with attachments A-H, October 26, 2007 comment letter, December 29, 2006 Petition for Reconsideration and March 21, 2007 Petition for Withdrawal, with attached declarations from Sarah Jackson and Jan Null. EJ raised the same issues as it raises here during EPA’s rulemakings regarding the 2006 determination of attainment for the SJV nonattainment area and 2008 affirmation of that determination. EPA fully responded to EJ’s comments at that time. See the final rules at 71 FR 63642 (October 30, 2006) and 73 FR 14687 (March 19, 2008). See also the proposed rules

for these actions at 71 FR 40952 (July 19, 2006) and 72 FR 49046 (August 27, 2007). As we explained in our responses to EJ's comments in the final rules, EPA believes that the SJV area has attained the PM-10 NAAQS and that the exceedances noted by EJ were properly excluded from consideration under the Agency's Exceptional Events Rule (EER)(72 FR 13560; March 22, 2007).

EJ subsequently filed petitions for review of the October 2006 and March 2008 final rules in the U.S. Court of Appeals for the Ninth Circuit. Latino Issues Forum, et al. v. EPA, Nos. 06-75831 and 08-71238.[2] In its opening brief in these cases, filed on June 16, 2008, EJ again raises these issues. In its brief in opposition, filed on September 3, 2008, EPA again responds to EJ's arguments. EJ was required to raise any issues regarding the 2006 attainment determination and 2008 affirmation of that determination during those rulemakings and in the Ninth Circuit in Latino Issues Forum and cannot relitigate the same issues here.

Moreover, in the proposed rule for today's final action we proposed to exclude under the EER data showing exceedances in the SJV nonattainment area on July 4, 2007 and January 8, 2008, and concluded that the area continued to attain the PM-10 standard through February 2008. We did not receive any adverse

[2] The Ninth Circuit has consolidated the two petitions for review.

comments on this aspect of our proposed rule. In this final action, for the reasons set forth in the proposed rule and in EPA's concurrence letters to which it refers, we are concurring with the State's flagging of those data as caused by fireworks and high wind exceptional events, and excluding those data from consideration in determining that the SJVAB area continues to attain the standard.

Finally, EPA is aware of PM-10 exceedances recorded on May 21, 2008 at the Corcoran and Bakersfield Federal Equivalent Method (FEM) monitors and the Corcoran Federal Reference Method (FRM) monitor, and on May 22, 2008 at the Corcoran FEM. On June 24, 2008, the District posted on its website documentation that these exceedances were caused by a natural event, i.e., high winds. The comment period ended on July 24, 2008 and no public comments were received. The documentation was submitted to EPA on August 12, 2008 and EPA has concurred that these exceedances should be flagged as exceptional events. Letter from Wayne Nastri, EPA to Mary D. Nichols, CARB, September 24, 2008.

EPA is not taking comment on whether the May 2008 exceedances should be excluded from the determination in this final rule that the SJVAB area continues to attain the PM-10 standard. The determination of whether an area has attained the PM-10 standard is based on the most recent three

consecutive calendar years of data. As mentioned above and in other EPA actions, the SJVAB area has attained the PM-10 standard based on data for the three-year period from 2003 through 2006 and the three-year period from 2005 through 2007. See 71 FR 63642 and 73 FR 14687. Because 2008 has not ended, EPA cannot determine whether the area has attained the standard based on the three-year period from 2006 through 2008. We can, however, determine with less than three years of data whether the SJVAB area has failed to attain in the period from 2006 to date. See 40 CFR part 50, appendix K, section 2.3(c) and 71 FR 63642, footnote 26.

Because the May 21 and 22, 2008 exceedances are the only exceedances at the Corcoran monitors since 2006 not excluded through notice and comment rulemaking from regulatory consideration, the expected number of exceedances recorded at the FRM monitor, based on the May 21 exceedance, is three and the expected number of exceedances recorded at the FEM monitor on May 21 and May 22 is two.[3] Similarly, because the May 21, 2008 exceedance is the only exceedance recorded at the Bakersfield monitor since 2006 not excluded from regulatory consideration through notice and comment rulemaking, the

[3] Note that the Corcoran FRM operates on a one-in-three day schedule and that EPA does not combine PM-10 data collected with different monitoring methods, i.e., FRMs and FEMs. See Memorandum from Gerald A. Emison, EPA, to EPA Regional Division Directors, "Revision to Policy on the Use of PM-10 Measurement Data," November 21, 1988 at 3.

expected number of exceedances at the Bakersfield monitor is one. Thus, even if EPA does not exclude the May 21 and 22, 2008 exceedances from regulatory consideration, the SJVAB area continues to attain the PM-10 NAAQS to date because both Corcoran and Bakersfield have an expected number of exceedances of less than or equal to one per year, averaged over the three year period 2005-2007 and through 2008 to date. All other monitors in the SJV area had an expected number of exceedances of less than or equal to one per year during these periods. EPA thus determines that the SJVAB area has attained the PM-10 NAAQS as required by section 107(d)(3)(E)(i).

B. Fully Approved SIP

Comment 2: EJ states that the second condition for redesignation under section CAA section 107(d)(3)(E) is that an area seeking redesignation must have a fully approved state implementation plan (SIP) and must satisfy all requirements that apply to the area and that the SJV nonattainment area does not have such a SIP. EJ argues that while EPA concedes that it has never approved contingency measures for the area and has instead suspended this requirement under the Agency's Clean Data Policy, neither the policy nor the cases EPA cites addresses PM-10 nonattainment areas and therefore do not square EPA's action with the mandate under CAA section 189(c) that such areas continue to achieve the milestones for emission

reductions in order to demonstrate reasonable further progress (RFP) "until the area is redesignated to attainment." EJ believes that because contingency measures are also necessary to ensure this progress is achieved, EPA cannot suspend the requirement for these measures. Citing Engine Mfrs. Ass'n v. EPA, 88 F.3d 1075, 1089 (D.C. Cir. 1996), EJ asserts that EPA does not have the authority to waive statutory requirements and circumvent redesignation provisions because it believes compliance with those requirements is unnecessary.

Response 2: In 2006 EPA approved the entire nonattainment plan for the SJV area,[4] including the CAA section 189(c)(1) reasonable further progress milestones, except for the CAA section 172(c)(9) contingency measures, on which EPA deferred action. 69 FR 30006 (May 26, 2004). EPA subsequently determined that the contingency measures requirement for the SJV area was suspended as a result of its October 2006 determination that the area has attained the PM-10 standard. 71 FR 63642, 63663. During that rulemaking, EJ raised the same issues with regard to EPA's Clean Data Policy[5] and statutory

[4] "2003 PM10 Plan, San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller" (2003 PM-10 Plan).

[5] EPA has long interpreted the CAA to provide that certain nonattainment area requirements, the purpose of which are to ensure attainment of the relevant NAAQS by the applicable deadline, will no longer apply once an area has attained that NAAQS, and for as long it continues to do so until it is redesignated to attainment status. While referred to as the

construction as it raises here. EPA responded to EJ's arguments in the final rule. See id. at 63643-63647. EJ again raises these issues in its opening brief in Latino Issues Forum. EPA again responds to EJ's arguments in its brief in opposition. EJ was required to raise any issues regarding the suspension of the contingency measures requirement during EPA's 2006 attainment determination rulemaking and in Latino Issues Forum. EJ did so and cannot relitigate the same issues here. Because EPA has approved SIP provisions submitted by California for the SJVAB area that address all applicable CAA requirements, EPA has concluded that the CAA section 107(d)(3)(E) requirement for a fully approved SIP has been met.

In addition, in the context of evaluating the area's eligibility for redesignation, there is a separate and additional justification for finding that the section 172(c)(9) contingency measures are not an applicable SIP requirement for

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Clean Data Policy, it is more accurately described as EPA's interpretations of the relevant provisions of Title I, Part D of the CAA. See Sierra Club v. EPA, 375 F.3d 537, 541-42 (7th Cir. 2004); Sierra Club v. EPA, 99 F.3d 1551, 1156-57 (10th Cir. 1996). EPA first set forth this interpretation in its "General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990," (General Preamble) thereafter reiterated it in several policy memoranda and since codified the policy with respect to ozone and PM-2.5 nonattainment areas. 57 FR 13498, 13564 (April 16, 1992), 40 CFR 51.918 (ozone) and 51.1004(c) (PM-2.5). EPA has applied the policy to numerous PM-10 nonattainment areas, including the SJV area. For an expanded description of the policy and our application of it, see Respondent EPA's Merits Brief in Latino Issues Forum at 7-8, 71 FR 40952, 40954 and 71 FR 63642, 63644.

purposes of redesignation. Prior to and independently of that policy, and specifically in the context of redesignations, EPA interpreted the contingency measure requirement as not applicable for purposes of redesignation. In the General Preamble EPA stated that:

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans ... provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

See also Calcagni memorandum at 6 (“The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.”). Thus, even if the contingency measure requirement had not previously been suspended, it would not apply for purposes of evaluating whether an area that has attained the standard qualifies for redesignation. EPA has enunciated and held this position since the General Preamble was published more than sixteen years ago and represents the Agency’s interpretation of what constitutes applicable requirements under section 107(d)(3)(E). The Courts

have recognized the scope of EPA's authority to interpret "applicable requirements" in the redesignation context. See Sierra Club v. EPA, 375 F.3d 537 (7th Cir. 2004).

C. Improvements in Air Quality Must be Due to Permanent and Enforceable Emission Reductions

Comment 3: EJ states that a 1992 guidance memorandum from John Calcagni lays out the steps that an area must take to show that the improvement in air quality is attributable to permanent and enforceable reductions in emissions, the third condition for redesignation to attainment under CAA section 107(d)(3)(E). EJ claims that this analysis should include estimating the percentage reductions achieved from the federal and state controls implemented in the area, taking into account permitted emission rates, production capacities and other related information. EJ states that EPA, banking on its waiver of all the violations during the period of interest, neglected to perform the proper analyses in the Calcagni memorandum and merely repeats the District's belief, based on four observations (comments 4 through 7 below), that the area is attaining the standard.

Response 3: As discussed in our proposed rule, the Calcagni memorandum states that the state must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable, and the improvement should

not be a result of temporary reductions (e.g., economic downturns or shutdowns) or unusually favorable meteorology. The Calcagni memorandum also states that 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. Our proposed rule discusses how each of these factors is addressed by the State in the "2007 PM10 Maintenance Plan and Request for Redesignation," September 20, 2007, SJVAPCD (2007 Plan). 73 FR 22307; 2008, footnote 8; 22311-22312.

In general, the 2007 Plan shows that there has been a significant improvement in PM-10 air quality since 1990, noting that there were 33 estimated exceedance days during 1990-1992 and 2.9 exceedance days during 2002-2004. This decrease in exceedance days (and emissions) occurred during a period of rapid economic growth in the SJVAB area as indicated by the increases in population and vehicle miles traveled (VMT). The 2007 Plan did not find any evidence of significant shutdowns that would cause the decline in exceedance days. The 2007 Plan analyzed the meteorology in the SJVAB area during 2003-2006 by comparing the average annual wind speeds, precipitation levels and stability levels to long-term averages and found that there

was no consistent pattern to show that there was favorable meteorology leading to the improvement in PM-10 levels during 2003-2006.

The 2007 Plan states that over 500 new rules and rule amendments have been adopted, reducing NOx and PM-10 emissions from a wide range of source categories, and it shows decreases in the overall emissions of NOx and PM-10 (which include all emissions from area sources as well as from permitted major sources) since 2000. A more detailed discussion of these analyses can be found in our proposed rule and in the 2007 Plan. EPA's analysis is based on the State's assessment and EPA continues to believe that the State has demonstrated that the improvement in PM-10 air quality in the SJVAB area is a result of permanent and enforceable reductions in emissions and has adequately addressed the provisions of the Calcagni memorandum.

Finally, as discussed in the response to comment 1 above, EPA has determined that the SJV area has attained the PM-10 standard. 71 FR 63642; 73 FR 14687. These determinations included EPA's concurrence with the State's and Santa Rosa Rancheria Tribe's conclusion that a number of exceedances were caused by exceptional events and thus should be excluded from regulatory consideration. Id. EJ seems to suggest that EPA's analyses should include these exceedances even though they have

been properly excluded from regulatory consideration. EPA disagrees.

Comment 4: EJ claims that the District provides a chart (2007 Plan at 24, Figure 2) showing a downward trend in air pollution levels that is completely misleading because it does not include EPA-acknowledged exceedances in 2004 and 2005, let alone the many exceedances EPA has ignored in its attainment determination.

Response 4: The District's chart (2007 Plan at 24, Figure 2) shows a long-term downward PM-10 trend from 1990 to 2006 for the SJVAB area by plotting the estimated exceedance days over the NAAQS. The estimated exceedance days in this chart are based on exceedances recorded with FRMs and not FEMs such as continuous beta attenuation monitors (BAMs). EPA believes that the District's chart is not misleading and provides a general picture of the long-term trend for PM-10 and that 1990 is a reasonable year to begin the analysis because that was the year the CAA was amended.

EJ's comment letter (page 4) includes a chart, "PM-10 Trend," that appears to revise the 2007 Plan's chart by adding the exceedances from BAMs that occurred in 2004 and 2005 and by removing the data for 1990 in order to show a less precipitous decline in PM-10 levels. However, even with the exclusion of the 1990 data and the addition of the exceedances from the

BAMs, EJ's "PM-10 Trend" chart still shows a decline in PM-10 levels.

Moreover, the 2007 Plan provides a summary in Table 10 of the declining annual average emissions inventories from 1990 through 2005 which is consistent with the District's trends chart. Table 10 shows PM-10 emissions decreasing by 46 tons per day (tpd) and NOx emissions decreasing by 228 tpd during this time period.

Finally, as discussed above, EPA has not ignored any recorded exceedances but rather has followed its regulations to exclude from regulatory consideration any exceedances that are caused by exceptional events. 73 FR 14687; response to comment 3 above. EPA also set forth in its 2006 attainment determination its conclusions as to prior monitored data. 71 FR 63642.

Comment 5: EJ claims that while the District asserts that growth in the SJV nonattainment area has been rapid since 1990 but that emissions have decreased, the sources of these claimed reductions do not support redesignation.

Response 5: See responses to comments 1, 3 and 4 above, and 7 and 8 below.

Comment 6: EJ alleges that the District and EPA conclude without justification that the District's meteorological analysis shows that favorable meteorology did not lead to the

improvements in air quality. Instead, EJ argues, the analysis shows that from 2004 to 2006, the SJV nonattainment area experienced some of the wettest years on record and that 2003 through 2006 experienced lower than average stability levels, which EPA and the District concede would lead to better dispersion conditions and lower PM-10 levels. As a result, EJ claims the data provided undercut any claim that the alleged air quality improvement is likely to be maintained.

Response 6: Our proposed rule summarizes the meteorological analysis provided in the 2007 Plan which includes an examination of the precipitation, temperature wind speeds and atmospheric stability during the period 2003 through 2006. The summary was based on data presented in Appendix C to the 2007 Plan. As EJ comments, there were some conditions that favored lower PM-10 levels; however, there were also conditions that favored higher PM-10 levels. Conditions that favored higher PM-10 levels included no variation in annual average wind speeds (which are generally quite low for the SJV area), warmer than average temperatures and two dry years ranking 98th and 112th in wetness (with the 1st year being the wettest year) during a 128 year period. Since there were conditions that both favored and did not favor higher PM-10 levels, the conclusion of the 2007 Plan and EPA’s analysis is that there

was no consistent pattern to show that attainment was a result of unusually favorable meteorology. 73 FR 22307, 22312.

Finally we note that the Calcagni memorandum makes clear that "[a]ttainment resulting from ... unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions." Calcagni memorandum at 4. Therefore EPA disagrees with EJ's comment that the meteorological data indicate that the air quality improvement will not likely be maintained.

In addition, EPA obtained available information on precipitation, average monthly temperatures and wind speeds for 2007 and compared the 2007 data to the averages presented in Appendix C to the 2007 Plan at Tables C-1, C-2 and C-3. (Atmospheric stability data for 2007 was not available.) The total precipitation for 2007 was 7.03 inches (http://www.wrh.noaa.gov/hnx/fat/normals/fatrnyr.htm) which is lower than the average precipitation of 10.13 inches for 1878 through 2006 (2007 Plan at Table C-1) and would favor higher PM-10 levels. The average monthly temperatures in degrees Celcius for 2007 were 4.6 for January, 9.5 for February, 14.3 for March, 15.9 for April, 20.7 for May, 24 for June, 26.3 for July, 26.3 for August, 21.7 for September, 16.1 for October, 11.9 for November and 5.5 for December. (http://www.weather.gov/climate/xmacis.php?wfo=hnx) When

compared to the average monthly temperatures from 1900 through 2005 (2007 Plan at Table C-2), the average temperatures for the months of March, May, June and August were higher in 2007 than average and would favor higher PM-10 levels. Finally, the average wind speed for 2007 was 3.7 miles per hour (mph) (http://www.cimis.water.ca.gov) which is consistent with the average wind speed of 3.72 mph for 1984 through 2006 (2007 Plan at Table C-3) and would favor high PM-10 levels. Since the available 2007 meteorological data favor higher PM-10 levels, EPA continues to believe that there is no consistent pattern that would establish that attainment has resulted from unusually favorable meteorology.

Comment 7: EJ disputes EPA's conclusion that improvements in air quality are the result of permanent and enforceable reductions in emissions from rules adopted by the District since 1992. EJ claims that most of these rules were adopted only in the last few years and therefore any trend in emission reductions that can be inferred from the chart provided by the District (2007 Plan at 24, Figure 2) cannot be attributed to these rules. EJ suggests that the drop in exceedance days between 1990 and 1992 might be due to a difference in the methodologies for measuring exceedances for the TSP and PM-10 standards. EJ provides its own chart, “PM-10 Trend,” adjusted to include the exceedance days that it says EPA has

acknowledged, that purports to show only minimal changes in the recurring pattern of PM-10 violations over the last 15 years.

Response 7: On July 1, 1987, EPA revised the NAAQS for particulate matter by replacing the standards for total suspended particulate matter (TSP) with new standards applying only to PM-10. 52 FR 24672. While PM-10 monitoring data have been collected since 1987 (see 71 FR 63642, 63653), the District and CARB have not reported TSP data to EPA's Air Quality System (AQS) database since 1989. Therefore any difference in measurement methodologies for the two pollutants could not be the cause of the drop in exceedance days between 1990 and 1992.

Since enactment of the 1990 CAA Amendments, the State has adopted and submitted several PM-10 plans. These include a moderate area plan under CAA section 189(a), a serious area plan under section 189(b) and a serious area plan under section 189(d) (i.e., the 2003 PM-10 Plan approved by EPA in 2004 and discussed above). The 2003 PM-10 Plan provides a summary of the many State, District and EPA rules adopted from 1990 through 2003. See 2003 PM-10 Plan at Tables 4-1, 4-2, 4-3 and 4-4. The 2003 PM-10 Plan also includes commitments for additional PM-10 and NOx measures, all of which were adopted by the District and State after 2003 and most of which have been approved by EPA. See response to comment 8 below.

The District's chart (2007 Plan, Figure 2) shows that PM-10 levels have declined from 1990 through 2006 while these PM-10 plans and rules have been adopted and implemented. We note that even EJ's own "PM-10 Trend" chart shows a general decrease in PM-10 levels since 1992 and since early 2000.

Furthermore, the 2007 Plan shows that significant reductions in PM-10 and NOx emissions occurred from the year 2000 to the year 2005, the time period during which the SJV area attained the PM-10 standard. NOx emissions have declined from 673 tpd in 2000 to 606 tpd in 2005 and PM-10 emissions have declined from 324 tpd in 2000 to 284 tpd in 2005. 2007 Plan; Staff Report, Air Resources Board, "Analysis of the San Joaquin Valley 2007 PM10 Maintenance Plan," (ARB Staff Report for 2007 Plan) Appendix B.[6]

As can be seen from the above discussion and our responses to previous comments, PM-10 exceedance days and PM-10 and NOx emission levels have declined while at the same time the SJV area has exhibited significant growth in population and vehicle miles traveled. 2007 Plan at 24, Figure 2 and at 26, Figures 3 and 4. Thus EPA continues to believe that it is reasonable to attribute the improvement in PM-10 air quality to the emission reductions from adopted rules that are permanent and enforceable.

[6] See footnote 2 of the proposed rule. 73 FR 22307, 22308.

Comment 8: EJ argues that the District's failure to estimate the tons or percent reduction from the baseline year achieved by its PM-10 control measures makes it difficult to assert that any improvements in air quality are the result of such controls. Further, while EPA claims that the District has adopted all of its rule commitments in the 2003 PM-10 Plan, only 2 of the 14 commitments have received EPA approval according to EJ. The maintenance plan identifies 8 additional rules, only 3 of which have been approved by EPA. EJ states that of the 22 rules the District identified during its PM-10 planning process to help reduce PM-10 in the SJV nonattainment area, only 5 are enforceable elements of the SIP.

Response 8: The 2007 Plan provides a summary of overall NOx and PM-10 emissions and shows that emissions have decreased from approximately 1177 tpd in 1990 to approximately 1000 tpd in 2000 to approximately 900 tpd in 2005 and estimates that they will continue to decrease to approximately 800 tpd in 2010. 2007 Plan at Table 10 and 73 FR 22307, 22312. These declining emissions levels have occurred as population and VMT have increased and are due to the emissions reductions from rules and control measures that have been adopted and implemented since 1990. 2007 Plan at 26 through 27 and 2003 PM-10 Plan at Tables 4-1, 4-2, 4-3 and 4-9.

The 2003 PM-10 Plan summarizes the numerous rules and control measures adopted by the SJVAPCD, the State and EPA prior to 2003. 2003 PM-10 Plan at Tables 4-1, 4-2 and 4-3. The 2003 PM-10 Plan also includes District commitments to achieve additional reductions. 2003 PM-10 Plan at Table 4-9. As discussed below, the commitments have all been converted to adopted rules. The emissions reductions from all of the 2003 PM-10 Plan's rules, control measures and adopted commitments are reflected in the 2007 Plan's emissions inventory. ARB Staff Report for 2007 Plan at Appendix B.

It is not clear what year EJ considers to be the baseline year; however, the 2007 Plan provides emissions inventories for the years 1990, 2000, 2005 and 2010 which include the estimated tpd of reductions achieved by the PM-10 rules, control measures and rules adopted pursuant to commitments. 2007 Plan at Table 10 and ARB Staff Report for 2007 Plan at Appendix B. Thus, EPA believes that the State and District have estimated the tpd reductions from several baseline years (1990, 2000 and 2005) achieved by its PM-10 control measures and have shown that the improvements in air quality are the result of such controls.

Regarding EJ's comment that only five of the 22 rules the District identified during its PM-10 planning process are enforceable elements of the SIP, EPA notes that this information was updated in the 2007 Plan. See "Errata, 2007

PM10 Maintenance Plan and Request for Redesignation," October 9, 2007, included in the 2007 Plan submittal to EPA. Table 1 below summarizes the EPA-approved rules from the 2003 PM-10 Plan commitments and provides the EPA approval dates for these rules as applicable. EPA has approved all but three of the submitted rules (Rules 4694, 4401 and 9510).

Table 1

Summary of EPA Actions on 2003 PM-10 Plan Commitments		
2003 PM-10 Plan Commitment[7] (pollutants covered by commitment)	**Adopted Rule Number and Title**	**EPA Action**
A. Agriculture (Conservation Management Practice Program) (PM-10, VOC)	4550-Conservation Management Practices	Approved 2/14/06, 71 FR 7683
B. Cotton Gins (PM-10)	4204-Cotton Gins	Approved 11/9/06, 71 FR 65740
C. Dryers (NOx)	4309-Dryers, Dehydrators, and Ovens	Approved 5/30/07, 72 FR 29886
D. Fugitive PM-10 (Regulation VIII) (PM-10)	8011-General Requirements 8021-Construction, Demo, Excavation 8031-Bulk Materials 8041-Carryout and Trackout	Approved 2/17/06, 71 FR 8461

[7] On May 26, 2004, EPA approved the 2003 PM-10 Plan including commitments for new District rules. See 2003 PM-10 Plan, Table 4-9 List of New District Commitments. The commitments for PM-10 and NOx reductions were approved as meeting BACM and the commitments for other pollutants (SOx, VOC) were approved as SIP strengthenings. See 69 FR 30006, 30035 and 69 FR 5412, 5423. The District subsequently amended the 2003 PM-10 Plan and revised Chapter 4 Control Strategy in May 2005; however, the amendments were not submitted to EPA. The EPA-approved commitments are those found in the version of the 2003 PM-10 Plan adopted by the District on December 18, 2003.

	8051-Open Areas 8061-Paved and Unpaved Roads 8071-Unpaved Vehicle/Equip Traffic Areas 8081-Agricultural Sources	
E. Glass-Melting Furnaces (SOx)	4354-Glass Melting Furnaces	Approved 8/1/07, 72 FR 41894
F. Gas-Fired Oilfield Steam Generators (Sox)	4406-Sulfur Compounds From Oilfield Steam Generators-Kern County	Not adopted by District
G. Indirect Source Review, and Indirect Source Mitigation Fee (NOx, PM-10)	9510-Indirect Source Review	Under EPA Review
H. Solid Fuel Boilers, Steam Generators, and Process Heaters (NOx, SOx)	4352-Solid Fuel Fired Boilers, Steam Generators, and Process Heaters	Approved 5/30/07, 72 FR 29886
I. Small Boilers, Steam Generators, and Process Heaters (NOx, SOx)	4307-Boilers, Steam Generators, and Process Heaters 2.0 to 5.0 mmBtu	Approved 5/30/07, 72 FR 29886
J. Water Heaters (Industrial, Commercial, and Institutional) (NOx)	4308-Boilers, Steam Generators, and Process Heaters 0.075 to 2.0 mmBtu	Approved 5/30/07, 72 FR 29886
K. Wineries (VOC)	4694-Wineries	Under EPA Review
L. Steam Enhanced Crude Oil Production Well Vents (VOC)	4401-Steam Enhanced Crude Oil Production Well Vents	Under EPA Review
M. Residential Space Heating (NOx)	4905-Natural Gas Fired, Fan-type, Residential Central Furnaces	Approved 5/30/07, 72 FR 29886
N. Agricultural Internal Combustion Engines	4702-Internal Combustion Engines Phase 2	Approved 1/10/08, 73 FR 1819

(PM-10, NOx)		
Residential Wood Combustion[8]	4901-Residential Wood Burning	Approved 9/30/03, 68 FR 56181

In addition to the rules in Table 1, the 2007 Plan cites reductions from additional rules that were not included in the 2003 PM-10 Plan's commitments. All of these additional rules have been adopted and submitted to EPA by the State and most have been approved by EPA. Table 2 below provides a summary of EPA actions on these additional rules based on the "Errata, 2007 PM10 Maintenance Plan and Request for Redesignation."

Table 2

Summary of EPA Action on Additional Rules Identified by 2007 Plan		
Rule #	**Rule Title**	**EPA Action**
4103	Open Burning (VOC & NOx)	Approved 4/11/06, 71 FR 18216
4305	Boilers, Steam Generators, and Process Heaters (NOx)	Approved 5/18/04, 69 FR 28061
4409 4451 & 4452	Components Serving Light Crude Oil or Gases at Production Facilities (VOC) Components at Petroleum Refineries (VOC)	Approved 3/23/06, 71 FR 14652
4570	Confined Animal Feeding Operations (VOC)	Under EPA Review
4604	Can and Coil Coating Operations (VOC)	Approved 5/19/06, 70 FR 28826
9310	School Bus Fleets (NOx)	Under EPA Review

[8] In its comment letter, EJ lists Residential Wood Combustion as a commitment from the 2003 PM-10 Plan; however, it was an adopted measure and not a commitment. We have included it in our Table for completeness in addressing EJ's comments.

Thus, contrary to EJ's comment, most of the rules identified in the 2007 Plan have been approved by EPA as federally enforceable elements of the SIP. EPA is continuing to process the remainder of the State's submitted rules.

Comment 9: EJ concludes that because the air quality improvements are premised on ignoring multiple violations of the PM-10 standard and fewer than one quarter of the rules the District relies on for reductions are an enforceable part of the SIP, EPA cannot reasonably attribute air quality improvements to permanent and enforceable emission reductions.

Response 9: See above responses to comments 1, 3, 4, 6, 7 and 8.

D. Area Has Met All Applicable CAA Section 110 and Part D Requirements

Comment 10: EJ asserts that the District fails to comply with CAA section 107(d)(3)(E) because it has not met all applicable requirements under section 110 and part D. EJ says that in addition to the contingency measure requirement, the District has not met the section 189(b)(1)(B) BACM requirement because BACM were required to be implemented by January 8, 1993 and EPA has still not approved most of the PM-10 rules relied on (as a result of the 2003 PM-10 Plan commitments) as being BACM-level controls.

Response 10: As noted above, in its October 30, 2006 attainment determination EPA suspended the 172(c)(9) contingency measure requirement and as a result it is no longer an applicable part D requirement. 71 FR 63642, 63663; 73 FR 22307, 22313. In any event, as set forth above (see response to comment 2), independent of its suspension, the contingency measure requirement is not an applicable requirement for purposes of redesignation.

With respect to the section 189(b)(1)(B) BACM requirement, as discussed in our proposed rule, EPA determined that this requirement was met for the SJV nonattainment area in our approval of the 2003 PM-10 Plan. See 69 FR 30006, 30035. ("EPA is approving the RACM/BACM demonstration for all significant PM-10 and NOx sources in the SJV as meeting the requirements of sections 189(a)(1)(C) and 189(b)(1)(B)"). In the 2003 PM-10 Plan the District addressed the BACM requirement by providing enforceable commitments to implement BACM rules in the future rather than already adopted rules. During the rulemaking on the 2003 PM-10 Plan, EJ argued that until the relevant BACM requirements are adopted and no longer subject to change in the rule development process for each of these source categories, EPA could not conclusively determine that the plan provides for the implementation of BACM/BACT for all significant sources of

PM-10 and PM-10 precursors. In rejecting that argument we stated that:

> [s]ection 189(b)(1)(B) requires that serious area PM-10 plans include '[p]rovisions to assure that the best available control measures for the control of PM-10 shall be implemented no later than 4 years after the date the area is classified (or reclassified) as a Serious Area.' Nothing in this language either requires a state to have adopted controls in place before a SIP revision can be approved into its PM-10 plan or forbids the adoption of an enforceable commitment to meet the statute's BACM [footnote omitted] requirement.

Id. at 30013. We further stated, in fully approving commitments as meeting the Act's BACM requirement that:

> [c]onsistent with this statutory language, EPA has historically determined that an enforceable commitment to adopt and implement BACM in a SIP meets this statutory requirement since it constitutes a 'provision to assure that BACM is implemented' by a fixed deadline. As a result, the commenters' complaint that '[b]y definition the plan fails to implement BACM/BACT for all source categories for which no developed control measures exist' has no merit since the statute itself does not impose such a requirement. Because the statute does not define what is

a 'provision to assure BACM is implemented,' EPA may adopt an interpretation reasonably accommodated to the purpose of the statutory provision. Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. at 842-44.

Id. at 30013-30014. In conclusion we stated that:

In accepting enforceable commitments to meet the requirements of section 189(b)(1)(B), however, EPA has required states to undertake an analysis to ensure that the regulation ultimately adopted pursuant to the commitment will represent a BACM level of control. As we describe in our proposed rule, a state must determine the technical and economic feasibility of potential control measures for each of the significant source categories. 69 FR 5412, 5418. Thus the measure that is the subject of a commitment must describe generally the type and level of control to be adopted.

Moreover, once the ultimate control measure is adopted and submitted to EPA, the Agency undertakes an additional evaluation to ensure that that measure meets the statute's BACM requirements. *See, e.g.*, the Arizona rulemakings in which EPA initially approved as RACM [footnote omitted] a requirement in a state statute to adopt and implement best management practices for agricultural operations and subsequently determined that the rules adopted pursuant to

the statute represented RACM/BACM. 64 FR 34726 (June 29, 1999); 66 FR 51869 (October 11, 2001); 67 FR 48718 (July 25, 2002).

Id. at 30014. EPA's interpretation and its full SIP approval of the BACM requirement was not challenged. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni memorandum at 3; Southwestern Pennsylvania Growth Alliance v. Browner, 144 F.3d. 984. 989-990 (6th Cir. 1998); and Wall v. EPA , 265 F.3d 526 (6TH Cir. 2001). Finally we note that EPA has approved many of the rules submitted by the State as meeting a BACM level of control. See the Federal Register notices listed in Tables 1 and 2 above in which we approve SJVAPCD PM-10 and NOx rules.

Comment 11: EJ also claims that the District has failed to submit to EPA a demonstration that the quantitative milestones as required by CAA section 189(c)(1) and (c)(2) and the section 189(d) 5 percent requirement have been met. EJ also claims that the District has not met its commitment to update and improve the 2003 PM-10 Plan by March 2006.

Response 11: CAA section 107(d)(3)(E)(v) requires that a state seeking redesignation of an area to attainment must have met all requirements applicable to the area under section 110 and part D. In interpreting this requirement EPA has stated that "any requirements that came due prior to submittal of the

redesignation request must be fully approved into the plan at or before the time EPA redesignates the area." Calcagni memorandum at 5. Sierra Club v. EPA, 375 F.3d 537 (7th Cir. 2004). EPA has approved the 2003 PM-10 Plan's RFP demonstration as meeting the requirements of 172(c)(2) and 189(c)(1) and has approved the plan as meeting the quantitative milestones requirement in section 189(c)(1). 69 FR 30006, 30034. Also, as we explained in our 2006 attainment finding, we believe that once an area attains the NAAQS the requirements of section 189(c)(2) with respect to milestones no longer applies under the Agency's Clean Data Policy. 71 FR 63642, 63646-63647. We also explained in that rulemaking the application of the Clean Data Policy to PM-10. See 71 FR 40952, 40954-40955 and 71 FR 63642, 63643-63645. Apart from the Clean Data Policy, for an area that has attained the standard and is eligible for redesignation, the requirements for milestone demonstrations under section 189(c) have no further meaning or function. Therefore the District was not required to submit milestone demonstrations pursuant to section 189(c).

In addition, EPA approved a commitment in the 2003 PM-10 Plan by the State to submit a SIP revision by March 31, 2006 based on a mid-course review to determine whether the level of emission reductions in the plan is sufficient to attain the PM-10 standards. 69 FR 30006, 30035. EPA approved this

commitment as part of the Plan's attainment demonstration. See 69 FR 5412, 5429. While the SJVAPCD adopted a mid-course review SIP addressing the quantitative milestone reporting requirement and mid-course review SIP commitment and submitted the SIP to the State, the State has not submitted the mid-course review SIP to EPA. Nevertheless, EPA's full approval of the attainment demonstration in the 2003 PM-10 Plan fully satisfies the requirement of CAA section 107(d)(3)(E)(v).

Moreover, EPA has determined that the SJV area attained the PM-10 standard in 2005, and continues to attain the standard. The mid-course review requirement is not a requirement under section 110 or Part D, and therefore is not an applicable CAA requirement for purposes of redesignation. Furthermore, even if it were, the requirement for a mid-course review was approved as part of the attainment demonstration. Therefore, because EPA has determined that the SJV area is attaining the PM-10 standard, a submission under the mid-course review provision would not be required for purposes of redesignation. 57 FR 13498, 13564; Clean Data Policy.

Comment 12: EJ claims that EPA misinterprets an October 14, 1994 memorandum from Mary Nichols, EPA, entitled "Part D NSR Requirements for Areas Requesting Redesignation to Attainment" as allowing the District to replace its new source review (NSR) program with a prevention of significant deterioration (PSD)

program. EJ quotes the memorandum as saying that "the part D program may be replaced by the corollary PSD program, if it is shown through the maintenance demonstration that the area will maintain without part D NSR." EJ asserts that here neither EPA nor the District has made any such demonstration and claims that this is especially worrisome in light of EPA's recent proposed approval of revisions to the District's NSR program exempting "so-called minor agricultural sources such as industrial dairy operations."

Response 12: First, the commenter overlooks the fact, enunciated in our proposed rule, that EPA has previously fully approved the NSR program for the SJV area. We also noted that EPA has recently proposed approval of some revisions to the NSR rule. 73 FR 22307, 22313. EJ's citation to the October 14, 1994 memorandum from Mary Nichols, EPA, entitled “Part D NSR Requirements for Areas Requesting Redesignation to Attainment” (Nichols memorandum) is misdirected. The Nichols memorandum's discussion of the need to demonstrate maintenance without fully approved NSR addressed the situation, not the case here, where an area's NSR rule has not been approved. Moreover, as our proposed rule explained, even though EPA previously approved the NSR rule, such approval is not a prerequisite to finalizing our approval of the State’s redesignation request. Id. If an area does not have a fully approved NSR program, it can still

be redesignated if it shows maintenance without NSR in effect. The 2003 PM-10 Plan and 2007 Plan do not rely on reductions from the area's NSR program. Nothing in the plans' inventories or estimated emissions reductions indicates any reliance on NSR program reductions. Thus, the SJVAB area will maintain the NAAQS without NSR. This is consistent with the provisions of the Nichols memorandum. Finally, we note that while the PSD requirements will apply once the area has been redesignated to attainment, the District's SIP-approved NSR rule will continue to apply with respect to PM-10 until EPA approves a revised NSR rule.

E. Maintenance Plan

Comment 13: EJ maintains that even if all of the other issues it has raised with respect to the redesignation were remedied, EPA cannot approve the redesignation request because the maintenance plan is flawed and cannot be approved. EJ concludes that EPA's decision to approve the maintenance plan without the requisite analysis and without meeting the basic requirements laid out in the Calcagni memorandum leaves little for EJ to comment upon and, as such, is the very definition of arbitrary and capricious. EJ believes that EPA's obligation is to provide not just its legal conclusions but the facts and rationale that support them.

Response 13: EPA disagrees. Our proposed rule lays out all of the requirements for maintenance plans found under the CAA and the Calcagni memorandum and sets forth the Agency's analysis of how the 2007 Plan meets each of those requirements. 73 FR 22307, 22313-22315. In addition, the 2007 Plan itself addresses in detail the requirements in the Calcagni memorandum. Thus EJ's contention that EPA's discussion of the maintenance plan left them "very little" to comment on is without basis.

Comment 14: EJ asserts that the 2005 emissions inventory is insufficient to identify the level of emissions in the area because the continuing PM-10 problem is the result of direct PM-10 emissions during the fall rather than secondary wintertime NOx emissions and the direct PM-10 inventory is expected to increase over the next 10 years. EJ states that EPA's claim that increasing direct PM-10 emissions are offset by a larger decrease in the NOx inventory demonstrates a lack of understanding of the PM-10 problem in the SJV nonattainment area because reducing secondarily formed PM-10 does nothing to reduce the ongoing direct PM-10 problems. EJ concludes that since the maintenance demonstration is based on an inventory that is insufficient to attain the NAAQS, EPA cannot find that the plan will maintain healthful air for 10 years following redesignation.

In a footnote to its comment above regarding the emissions inventory for the maintenance plan, EJ claims that prior to 2004 the District had never asked EPA to waive PM-10 data but in the past 4 years it has been asked to waive 11 separate events, 10 of them after the Agency's original attainment finding. EJ states that if windy days are this common EPA and the District must accept that the SJV nonattainment area has a windblown dust problem and they must do more to control it. EJ states that an event is only exceptional if it is not expected to recur on a regular basis.

Response 14: As discussed in our proposed rule, the Calcagni memorandum provides that a state should provide an attainment emissions inventory to identify the level of emissions in the area sufficient to attain the NAAQS and, where the state as here has made an adequate demonstration that air quality has improved as a result of the SIP (see above responses to comments 3 through 4 and 6 through 8), the attainment inventory will generally be an inventory of actual emissions at the time the area attained.

The 2007 Plan does exactly what the Calcagni memorandum recommends and selects the 2005 PM-10 and NOx inventories as the attainment emission inventories because the SJV area attained the standard in 2005. 73 FR 22307, 22314 and 71 FR 63642. The SJV area relies on reductions of both NOx (a PM-10

precursor) and directly emitted PM-10 sources to achieve attainment. 2003 PM-10 Plan at ES-9 through ES-10, Chapters 2, 4 and 5; 69 FR 5412, 5414 and 69 FR 30006, 30007. Analysis of ambient air quality data for the SJV area shows that it experiences the most frequent and severe exceedances from October through January during stagnant weather conditions (i.e., low wind speeds that are unable to disperse the PM-10).[9] Both direct PM-10 and secondary PM-10 (formed by reactions with NOx) occur during this time. October and November exceedances are dominated by direct PM-10 emissions and December and January are dominated by secondary PM-10 such as ammonium nitrate (formed when NOx reacts with ammonia and other components); however, the reduction of both direct PM-10 and NOx is necessary for reducing ambient PM-10 levels throughout the year. 2003 PM-10 Plan at ES-9 through ES-10 and 5-6 through 5-7. Thus, EPA's belief that the slight increase in PM-10 emissions of 284 tpd in 2005 to 290 tpd in 2020 is insignificant when compared to the substantial NOx decreases of 606 tpd in 2005 to 328 tpd in 2020 is based on an understanding that high PM-10 levels in the SJV area are caused by both direct PM-10 and precursor NOx emissions. In addition, consistent with the Calcagni memorandum, the modeled

[9] As discussed in our attainment affirmation and proposed rule, unusually high winds can also cause exceedances. 73 FR 14687 and 73 FR 22307, 22311.

maintenance demonstration is primarily based on modeling similar to the modeling used for the 2003 PM-10 Plan. 73 FR 22307, 22314. Finally, contrary to EJ's comments, there is no ongoing direct PM-10 problem in the SJVAB as we have determined that the area has attained the PM-10 standard. 71 FR 63642 and 73 FR 14687. See also response to comment 1.

EJ's comment in footnote 3 of its letter does not appear to be related to the inventory or any other provision of the maintenance plan in the 2007 Plan or the maintenance plan requirement of CAA section 107(d)(3)(E)(iv). Rather it appears to be an expansion of EJ's argument that the SJV area has not in fact attained the PM-10 standard. In this regard, see response to comment 1 above. Notwithstanding , EPA notes that not all of the exceptional event days in the past five years in the SJV area have been due to high winds. Of the eleven exceptional event days, seven were caused by high wind events and the remaining four by construction, improper monitor siting and fireworks.

Comment 15: EJ states that it is not clear whether the modeling takes into account the September 2004 and November 2005 exceedances EPA has conceded but if it does not then the modeling for the maintenance plan is flawed because it fails to include these higher values in its projections.

Response 15: As discussed in our proposed rule, 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. 73 FR 22307, 22314-22315. See also Calcagni memorandum at 9 and Wall v. EPA, 265 F.3d 426 (6th Cir. 2001). While only required to use one of these methods, the SJVAPCD showed both with emissions inventory and modeling that the area would maintain the standard for at least ten years after redesignation, in accordance with section 175A. For areas such as the SJV that used modeling for their attainment demonstrations, the same level of modeling should be used for the maintenance demonstrations. The 2007 Plan uses Chemical Mass Balance (CMB) and rollback to demonstrate maintenance of the 24-hour PM-10 standard until 2020 which is consistent with the modeling performed for the 2003 PM-10 Plan. 73 FR 22307, 22314; 2007 Plan at 6-11. The modeling involves selecting a representative day for each location, determining the speciation data for the site based on analysis of the monitoring filters and sources in the area and determining the emissions reductions that are necessary or that will be achieved due to emissions reductions from implemented rules.

The 2007 Plan's maintenance demonstration modeling was based on the highest episodes during the most recent attainment year at the time, 2006. The District selected representative peak winter days for each of the monitors in the SJVAB for modeling, and used the observed values from those days as the basis of its modeling exercise. In addition, fall episode days were included for several monitors. Table 2 of the 2007 Plan summarizes the episode values and the 2020 projections.

One of the objectives in determining appropriate representative episodes is to choose those days that are approximately as severe as the design value for the modeled pollutant. The design value is based on three years of monitoring data, or in this case, 2004 through 2006, and depends on the frequency and completeness of recorded values. In addition, for PM-10, the design values are generally based on FRM data, but FEM data can also be used; however, as noted in footnote 3 above, data from different monitoring instruments are not combined.

The representative days selected for modeling are consistent with the design values for the Corcoran and Bakersfield sites where the September 2004 and November 2005 values were measured. For the Corcoran FRM, the design value is 140 $\mu g/m^3$, based on a calculation that includes and explicitly

accounts for the 217 µg/m^3 measured in September 2004.[10] This value is very close to, and supports the selection of, the two representative high episode values in the 2007 Plan for Corcoran: a 136 µg/m^3 for the winter episode and a 137 µg/m^3 for the fall episode. The small differences between the design value of 140 µg/m^3 and the selected winter and fall episode values is not an issue because the projected maintenance levels are well below the 24-hour PM-10 standard of 150 µg/m^3. 2007 Plan at Table 2. The Bakersfield FEM does not have a complete set of data from 2004 through 2006, and therefore a design value for this time period cannot be calculated based on the FEM data. However, the 2004-2006 PM-10 design value for Bakersfield using the data collected with the FRM monitor would be 154 ug/m3.[11] This concentration is consistent with the values of 153 ug/m3 and 154 µg/m^3 measured during the representative modeled episodes included in the 2007 Plan for Bakersfield. Therefore, the September 2004 and November 2005

[10] If we assume that the September 2004 exceedance is not flagged, the highest recorded PM-10 values from 2004 through 2006 are: 1) 217 µg/m^3 on September 3, 2004; 2) 140 µg/m^3 on October 26, 2006; and 3) 139 µg/m^3 on October 15, 2004. Since the Corcoran FRM operates on a one-in-three day schedule, the design value is based on the second highest recorded PM-10 value, or 140 µg/m^3.

[11] The design value for Bakersfield is calculated using the FRM data set from 2004-2006. The design value in this case would be the highest non-flagged value for the three year period, 154 µg/m^3 measured on December 7, 2006.

exceedances to which EJ refers in its comment were taken into account in the 2007 Plan's maintenance demonstration modeling.

Comment 16: While EJ is glad that the District plans to continue operation of its PM-10 monitoring network, EJ is troubled that the District suggests in its 2008 "Ambient Air Monitoring Network Plan" that it may reduce the frequency of its monitoring. EJ hopes that the District will strengthen its network because EJ continues to believe that the current network does not adequately represent the west side communities and the near-highway areas of high concentration and that more monitoring is required.

Response 16: In 2003, EPA evaluated the adequacy of the monitoring network for the SJV area and concluded that it meets all the applicable statutory and regulatory requirements. See 69 FR 30006, 30033 and "Evaluation of the Adequacy of the Monitoring Network for the San Joaquin Valley, California for the Annual and 24-Hour PM-10 Standards," Bob Pallarino, EPA, September 22, 2003. We reaffirmed the adequacy of the network in our 2006 determination of attainment for the SJV area. 71 FR 63642, 63648-63658.

With regard specifically to monitoring frequency, EPA regulations require minimum frequencies for manual PM-10 and PM-2.5 samplers at designated state or local air monitoring stations (SLAMS) sites. See 40 CFR 58.12. On October 17, 2006

EPA revised its monitoring regulations to require air monitoring agencies to perform an assessment of their monitoring networks every five years according to guidance issued by EPA. See 71 FR 61299 and 40 CFR 58.10(d). The first monitoring network assessment required by this regulation must be submitted to EPA by July 1, 2010. Agencies are directed to make changes to their monitoring networks based in part on the results of these network assessments. Such an assessment in the SJVAB area may result in a requirement that the District increase the sampling frequency of certain PM-10 monitors sited to record the maximum concentrations of PM-10 pollution. See 40 CFR 58.12(e).

Most manual PM-10 samplers in the SJV monitoring network currently operate at the minimum required frequency of once every six days, except for Corcoran which operates manual PM-10 samplers once every three days. The District has exceeded this required sampling frequency by operating continuous FEM monitors, which produce a 24-hour average PM-10 concentration every day, at three locations in the SJVAB area, Tracy, Corcoran and Bakersfield. According to the District's 2008 "Ambient Air Monitoring Network Plan," the Corcoran and Bakersfield-Golden State Highway sites are two of the four PM-10 monitoring sites located to record the highest PM-10

concentrations in the SJVAB area.[12] Therefore, the District has already proactively increased the sampling frequency at two high concentration sites to the maximum frequency possible.

Comment 17: EJ believes that the contingency measure provision in the maintenance plan is much too weak and cannot be approved. EJ states that the provision relies first and foremost on trying to excuse any future violation under the EER and then, in the event of any post-redesignation violations, on seeing if there are any estimated reductions achieved that were not counted towards the attainment demonstration that can be used to "cover" the violation. EJ does not believe this approach makes sense because if an area is violating the standard, there are no "extra" reductions because all of the reductions are by definition not working. EJ believes that while EPA may accept this gaming in the context of RFP demonstrations such an approach would be illegal and arbitrary when real ambient violations are being monitored. EJ believes that the District should adopt the approach suggested in the Calcagni memorandum which sets indicators that trigger contingency provisions before a violation occurs which would avoid NAAQS violations and not just come up with on-paper "covers" for those violations.

[12] The other two sites are the Fresno-First Street site and the Stockton-Hazelton site.

Response 17: Under CAA section 175A(d), maintenance plans must contain "such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard." The Calcagni memorandum states that "EPA will review what constitutes a contingency plan on a case-by-case basis. At a minimum, it must require that the State will implement all measures contained in the Part D nonattainment plan for the area prior to redesignation...." Calcagni memorandum at 12-13. The memorandum also makes clear that a monitored violation of the standard is appropriate to serve as the indicator or trigger for contingency measures. Id. at 12.

EJ's statement that the contingency provisions of the 2007 Plan "relies first and foremost" on trying to excuse any future violation under the EER is misleading. The 2007 Plan selects an action level or trigger based on an exceedance of the PM-10 NAAQS of 155 micrograms per cubic meter ($\mu g/m^3$).[13] 2007 Plan at 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. In our proposed rule we explained why we

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

believe that an exceedance of 155 μg/m^3 is an appropriate trigger:

> 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.

73 FR 22307, 22315. Thus the contingency plan makes clear that determining whether an exceedance of the PM-10 standard is due to an exceptional event is part of determining whether a violation of the standard actually occurred, which would require corrective actions. In other words, we concluded that the 2007 Plan's action level or trigger, including the exclusion of exceedances caused by exceptional events, meets the statutory mandate that the contingency provisions "correct any violation of the standard." Because it is clearly part of the action level or trigger, and not the corrective actions to be undertaken in the event of a violation, it is not accurate to conclude, as EJ does, that the contingency plan relies "first and foremost" on the use of the EER. Moreover, since an exceedance, which is not necessarily a violation, triggers the

contingency measure provision, the provision may also be used to prevent violations of the NAAQS, and at a minimum provides for a violation that is determined not to be due to an exceptional event to trigger a measure.

Once the contingency plan is triggered, the District would determine the possible causes of the exceedance and determine if emissions reductions from adopted measures that are not needed to maintain the PM-10 NAAQS are available to serve as contingency measures. 2007 Plan at 16. EJ objects to the use of these excess reductions (i.e., those not relied on in the maintenance demonstration) when ambient concentrations are being monitored.

Initially we note that EPA has long approved contingency provisions that rely on reductions from measures that are already in place but are over and above those relied on in the attainment and RFP demonstrations under CAA section 172(c)(9). See, e.g., 62 FR 15844 (April 3, 1997); 62 FR 66279 (December 18, 1997); 66 FR 30811 (June 8, 2001); 66 FR 586 and 66 FR 634 (January 3, 2001). We discussed this interpretation of section 172(c)(9) in our final PM-2.5 implementation rule. See 72 FR 20586, 20642-20643 (April 25, 2007). This interpretation has also been upheld in LEAN v. EPA, 382 F.3d 575 (5th Cir. 2004), and the court in that case set forth in detail the reasoning

for accepting excess reductions from already adopted measures as contingency measures.

In addition to being triggered by a failure to meet RFP, contingency measures under section 172(c)(9) are triggered when EPA determines that an area has failed to attain a NAAQS. Determinations of whether an area has attained a NAAQS (see, e.g., section 188(b)(2); 71 FR 40952) are based on monitored concentrations. Likewise, here, a determination of whether the action level has been reached is based on monitored concentrations. Therefore our interpretation that excess emission reductions can appropriately serve as section 172(c)(9) contingency measures is equally applicable to section 175A(d) contingency measures.

Furthermore, section 172(c)(9) is considerably less flexible than section 175A(d) in that under the former provision contingency measures are required to be fully adopted measures that will take effect without further action by the state, whereas this is not a requirement in order for the maintenance plan to be approved. Moreover, section 175A(d) grants considerably more discretion to EPA in determining whether to accept contingency provisions in maintenance plans (maintenance plans must contain "such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard." (Emphasis

added). In addition, the Calcagni memorandum at 12-13 states that a contingency plan under section 175A(d) "[a]t a minimum must require that the State will implement all measures contained in the Part D nonattainment plan for the area prior to redesignation...." The 2007 Plan so provides and goes well beyond this minimum threshold.

The U.S. Court of Appeals for the Sixth Circuit addressed the issue of the adequacy of reductions from already adopted measures in the context of section 175A(d) contingency measures in a maintenance plan for Cuyahoga County, Ohio. Greenbaum v. EPA, 370 F.3d 527 (6th Cir. 2004).[14] There EPA had approved section 172(c)(9) contingency measures into the SIP in 1996 as part of the State's moderate area PM-10 nonattainment plan. In approving these measures EPA found that they provided for emission reductions following any prospective determination that the SIP failed to provide for timely attainment of the NAAQS. In 2000, Ohio submitted a redesignation request with a maintenance plan that included as section 175A(d) contingency provisions the already approved section 172(c)(9) contingency measures. Among other things, the petitioners argued that the CAA does not authorize EPA to use other measures outside the

[14] As early as 1995, EPA approved a maintenance plan under section 175A that included contingency provisions that relied in part on measures to be implemented prior to any post-redesignation NAAQS violation. See 60 FR 27028, 27029 (May 22, 1995).

maintenance plan to assure correction of a violation. In upholding EPA's approval of the redesignation, the court found that :

> [t]he Administrator has been granted broad discretion by Congress in determining what is 'necessary to assure' prompt correction. The EPA has approved Ohio's maintenance plan, concluding that its contingency measures provide a means to deal with likely violations. We do not believe that this determination is 'arbitrary, capricious, or manifestly contrary to the statute.' Chevron, 467 U.S. at 844.

The Sixth Circuit in Greenbaum further noted that Congress contemplated that contingency measures need not be sufficient to correct all violations and that EPA and the state could rely on a combination of factors to correct violations. See the extensive discussion of contingency measures in Greenbaum.

Here, the 2007 Plan looks first to emission reductions from adopted measures that are not needed to maintain the PM-10 NAAQS to serve as section 175A(d) contingency measures. If these emission reductions prove to be insufficient to correct the violation, the District commits to proceed with identifying control measures from feasibility studies such as those found

in its 2007 Ozone Plan and Proposed 2008 PM2.5 Plan[15] (see 2007 Ozone Plan at Table 6-2 and 2008 PM2.5 Plan at Table 6-4) and with prioritizing measures most relevant for reducing PM-10 emissions. 2007 Plan at 16-17. The SJVAPCD has also provided clarification that if additional control measures are necessary, the SJVAPCD will adopt and implement such measures. Letter from Seyed Sadredin, SJVAPCD, to Deborah Jordan, EPA, April 17, 2008. EPA believes that the 2007 Plan's contingency provisions which rely in part on emissions reductions from adopted measures not needed to maintain the PM-10 NAAQS to correct any PM-10 violation are consistent with the Agency's policies and with the statute. As the court in Greenbaum observed, Congress has expressly delegated to EPA the authority to determine what contingency measures are necessary. Here, EPA has determined that the contingency measures, which include both the potential for emission reductions from already adopted measures and from measures to be adopted, clearly are sufficient.

Finally, with respect to EJ's preference, suggested in the Calcagni memorandum, that the contingency plan for the SJVAB area set indicators that trigger contingency provisions before a violation occurs, we note again that the memorandum provides

[15] The 2008 PM2.5 Plan was adopted by the District on April 30, 2008, approved by the State on May 22, 2008 and submitted to EPA on June 30, 2008.

that contingency provisions are to be judged on a case by case basis. See also Greenbaum. With the exception of the minimum requirement mentioned above, the Calcagni memorandum is not prescriptive and allows for considerable latitude as to what constitutes an adequate contingency plan. The Calcagni memorandum itself provides that a violation of the standard is an appropriate trigger for contingency measures. Calcagni memorandum at 12. See also Greenbaum. It is a common practice in maintenance plans to provide that a violation will trigger the requirement for a contingency measure to be implemented. Moreover, as pointed out above, under the contingency measure provisions, a monitored exceedance of the standard that does not itself constitute a violation (e.g., at a continuous monitor or a one-in-three day FRM monitor) could trigger a contingency measure prior to a violation occurring.

F. Revision of Boundary Designation

Comment 18: EJ maintains that the portion of the San Joaquin Valley that EPA now proposes to split off was designated as part of the SJV nonattainment area because, as provided in CAA section 107(d)(1)(A), it was part of the geographic area "that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary air quality standard for that pollutant." EJ states that EPA makes no attempt to explain how circumstances have

changed to justify the removal of this portion of the designated nonattainment area. EJ notes that the SJV area includes other high-elevation areas that are located above the inversion layer and that whether a community is above or below the inversion layer is irrelevant because these areas are part of the Valley and part of the same air basin polluted by emissions generated in the Valley.

Response 18: As discussed in our proposed rule, on January 31, 2008 California requested a boundary redesignation splitting the SJV nonattainment area into two separate nonattainment areas, the SJVAB and East Kern. Section 107(d)(3)(D) of the CAA authorizes the State to submit to EPA a revised designation of any area and EPA is required to approve or deny it within 18 months of receipt of a complete State submittal. The type of revised designation that the State of California requested involves a boundary change only and does not involve a change in status (e.g., from “nonattainment” to “attainment” or “unclassifiable”) of any area. Our criteria for evaluating the State’s request are discussed in our proposed rule.

In general, the State has provided a compelling technical justification for splitting the nonattainment area which includes an evaluation of the differences in jurisdiction, geography, population and degree of urbanization, employment and traffic/commuting patterns, emissions and air quality. 73

FR 22307, 22308-22310. EJ notes that there are other high elevation areas in the SJV nonattainment area; however, the State has not made a request to revise any other boundaries. In addition, as discussed in our proposed rule, the SJVAB and East Kern areas are in separate air basins and do not have the same mix of air pollution sources. Id. EPA continues to believe that it should grant the State's request for a revised designation splitting the SJV nonattainment area into two PM-10 nonattainment areas, the SJVAB area and the East Kern area for the reasons set forth in the proposed rule and in this response.

Comment 19: A commenter states that while the proposal to separate the western portion of the KCAPCD is clear and compelling, the commenter is concerned about environmental justice issues for the East Kern area. The commenter states that if the purpose of the separation is to clean-up one area and ignore the other industrialized area with the State prison, then EPA is not following its ethics concerning environmental justice. The commenter states that communities with prisons serve as a target of environmental neglect and should not be abandoned from environmental laws and attainment requirements and should not be forgotten by EPA.

Response 19: EPA's final action to split the SJV nonattainment area into two nonattainment areas does not relax any

requirements. EPA is also approving enforceable commitments for the East Kern area that will ensure progress in meeting CAA requirements for the area. These commitments include the installation of a FRM/FEM[16] and submittal of a SIP addressing applicable CAA requirements if the monitor violates the PM-10 standard. 73 FR 22307, 22317. In the meantime, the existing data from the IMPROVE monitor, although not a FRM or FEM, do not indicate an air quality problem in East Kern – rather they show levels that are consistently significantly below the standard. See id. at 22310 ("... IMPROVE monitor has, since February 2000, consistently measured PM-10 concentrations far below the PM-10 standard.").

With respect to the commenter's concerns for fair treatment of the inhabitants of East Kern, EPA is taking steps to assure that the East Kern area will not be forgotten by EPA, and no community in that area will be "abandoned from environmental laws and attainment requirements." EPA is committed to meeting the goals of environmental justice and is equally concerned for the populations of both the SJVAB and East Kern areas. There is no basis for concluding that the

[16] Currently there is no FRM or 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. Pursuant to its commitment, CARB has purchased the new monitor and has secured permission from the Bureau of Land Management to install it next to the existing IMPROVE monitor.

population of East Kern is exposed to ongoing levels above the standard, and EPA and the State have worked to provide assurances that the area will be required to conduct more comprehensive monitoring and to adopt additional requirements if needed. Thus EPA recognizes the role of environmental justice and is observing its principles.

Comment 20: A commenter disagrees with the proposed rule's statement that the boundary redesignation makes sense because of the difference in chemical composition of PM-10 between the two areas. The commenter believes this is not a valid statement because there are no FRMs or FEMs in the East Kern area. Furthermore, the commenter states that the one IMPROVE monitor in the East Kern area is inadequate and the chemical composition of the SJVAB and East Kern should not be compared until there is an adequate monitoring system in East Kern. In addition, the commenter concludes that a reanalysis of reported data must be performed before considering attainment for the SJVAB.

Response 20: We based our conclusion that the SJVAB and East Kern should be separate nonattainment areas on multiple factors, only one of which relates to the difference in the types of air pollutants in the two areas. See 73 FR 22307, 22310. While the commenter is correct that there is no FRM or FEM in the East Kern area, as stated above, the State and the

District have committed to install an FRM/FEM in the East Kern area. Pending data from this new monitor, the IMPROVE monitor does provide useful information regarding the composition of PM-10 in the area. See id. and Attachments B and C to letter from James N. Goldstene, CARB, to Deborah Jordan, EPA, January 31, 2008. See also response to comment 19. The newly created East Kern area will retain its nonattainment designation until the State can demonstrate, following assessment of data from the new monitor, that all the applicable CAA requirements for redesignation of the East Kern area are met.

EPA does not agree that a reanalysis of the reported data must be performed before considering whether the SJVAB area has attained the PM-10 standard. As noted above, EPA has found that the SJVAB area has an adequate monitoring system on which to base such a determination. See 69 FR 30006, 30033, 71 FR 63642, 63648 and "Evaluation of the Adequacy of the Monitoring Network for the San Joaquin Valley, California for the Annual and 24-Hour PM-10 Standards," Bob Pallarino, EPA, September 22, 2003. To demonstrate attainment, an area must show that it meets the standard over a three-year period. The SJVAB area has demonstrated attainment over three separate 3-year periods –- 2003-2005, 2004-2006, and 2005-2007, and it continues to attain the standard.

G. Miscellaneous Comments

Comment 21: A commenter states that there are several gaps in evaluating the PM-10 data for the SJVAB from 1990 to 2004 and that given the cyclical nature of PM-10 the downward trend should be considered inconclusive until all yearly averages are taken into account as well as seasonally weighted averages.

The commenter also states that in the proposed rule's discussion of meteorological conditions a lower stability level would more likely lead to less dispersion and higher PM-10 values. The commenter believes the lower stability means the PM-10 levels were overestimated and provides information as to the unequal distribution in the surrounding community and who is bearing the brunt of the higher exposures.

Response 21: In our proposed rule we reference the expected PM-10 exceedances from 1990-1992, 1998-2000 and 2002-2004 to show that there has been a significant decline in NAAQS exceedances over the past 17 years, i.e., from 1990 through 2006. There are no data gaps; the 2007 Plan includes data for each year. 2007 Plan at 23-24, Figure 2. EPA believes that a 17 year period is sufficient to establish a trend that accounts for any cyclical changes in PM-10 data. In addition, an evaluation of the seasonal conditions causing PM-10 is provided in the 2003 PM-10 Plan. 2003 PM-10 Plan at ES-4 to ES-10 and Chapter 2.

EPA examined meteorological data, including information about atmospheric stability, wind speeds, precipitation and temperature in order to determine if there were any unusually favorable meteorological conditions that would cause PM-10 exceedances. EPA determined that overall there was no consistent pattern of favorable meteorology. 73 FR 22307, 22312; responses to comments 3 and 6 above.

For the SJVAB area, it has been determined that on an annual average basis, unstable conditions (or low stability) result in dispersion of pollutants and lower PM-10 levels and stable conditions (or high stability) result in a temperature inversion which keeps emissions at the surface and leads to higher PM-10 levels. 2007 Plan at Appendix C. During the attainment period of 2003 through 2006, the SJVAB area experienced somewhat low stability which allowed for dispersion of pollutants and lower PM-10 levels; however, as discussed in response to comment 6 above, based on the analysis of all the meteorological parameters, EPA determined that there was no overall pattern which favored improved PM-10 levels.

It is not completely clear to EPA what point the commenter is trying to make regarding stability. EPA acknowledges, however, that unstable conditions combined with other factors (e.g., emissions) in the SJV area can lead to high PM-10 levels on a daily basis, as has been seen with exceedances that occur during high wind events. Such exceedances however have been excluded from regulatory consideration under EPA's Exceptional Events Rule. 73 FR 22307, 22310-22311 and 73 FR 14687.

Comment 22: The SJVAPCD provided comments supporting EPA's proposed actions and also notes a minor typographical error for the proposed transportation conformity budgets found in Table 4 for Merced County for 2005. The SJVAPCD states that the budget should read 39.4 tons per day and not 39.2 tons per day.

Response 22: EPA appreciates the comments and has made the correction in today's final action.

III. Final Actions

For the reasons set forth in the proposed rule and in the responses to comments above, EPA is taking the final actions summarized below:

Having concluded that the State has addressed all the necessary requirements for a revised boundary designation, EPA is approving the State's request under section 107(d)(3)(D) to revise the boundary 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.

Having concluded that the CAA requirements of section 107(d)(3)(E) for redesignations and section 175A for maintenance plans have been met for the SJVAB area, EPA is approving the State's request to redesignate the newly created serious SJVAB nonattainment area to attainment for the PM-10 NAAQS and approving the 2007 maintenance plan for the area.

EPA is also approving the conformity trading mechanism for the SJVAB area and the motor vehicle emissions subarea budgets for the attainment year, 2005, and the maintenance year, 2020, found in Table 3 below. The 2005 attainment year budget replaces the current attainment budgets from the approved 2003 PM-10 Plan. These budgets will become effective upon publication of today's rule pursuant to section 93.118(f)(2)(iii)...."[17]

Table 3

Motor Vehicle Emissions Subarea Budgets (tons per day) 2007 Plan*

	2005		2020	
County	PM-10	NOx	PM-10	NOx
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	39.4	6.4	12.9
San Joaquin	9.1	42.6	10.6	17.0
Stanislaus	5.6	29.7	6.7	10.8
Tulare	7.3	25.1	9.4	10.9
Total	60.5	314.9	72.2	127.6

* The budgets are based on attainment and maintenance of the 24-hour PM-10 NAAQS. The annual standard was revoked on December 18, 2006. See 71 FR 61144.
** MVEBs in Table 3 are only for the SJVAB portion of Kern County.

[17] 40 CFR 93.118(f)(2) applies when EPA reviews the adequacy of an implementation plan simultaneously with EPA's approval or disapproval of the implementation plan, as is the case here. Subsection (f)(2)(iii) provides that "[i]f EPA makes an adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication date of EPA's approval in the Federal Register."

*** EPA's April 25 and May 23, 2008 proposed rules (73 FR 22307 and 73 FR 30029) incorrectly include 39.2 tons per day for the Merced 2005 NOx subarea budget. This was a typographical error. The number provided in the State's submittal of the 2007 Plan is 39.4 tons per day, which is reflected in Table 3 above.

EPA is excluding from use in determining that the SJVAB area 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, and is determining that the SJVAB area continues to attain the PM-10 standard.

Finally, EPA is approving commitments from KCAPCD and CARB to install a FRM or FEM in the newly created East Kern serious PM-10 nonattainment area and to address section 189(d) CAA requirements for the area in a SIP revision in the event the FRM or FEM records a violation of the PM-10 standard.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. 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 approves a revised boundary designation, a redesignation to attainment for the SJVAB, a maintenance plan for the SJVAB area, motor vehicle emissions budgets and conformity trading mechanism for the area

and commitments for the East Kern area, all of which were either requested or submitted by the State. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this 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 (Public Law 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 SJVAB. EPA has consulted with representatives of the 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 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 approves requests or submittals from the State and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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 approvals of a revised boundary designation, a redesignation to attainment for the SJVAB area, a maintenance plan for the SJVAB area, motor vehicle emissions budgets and conformity trading mechanism for the area and commitments for the East Kern area. It will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

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. 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 because it would be

inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication

of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

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.

AUTHORITY: 42 U.S.C. 7401 et seq.

____9/24/08 _ _
Dated:

/s/_____
Wayne Nastri,
Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Part 52 [AMENDED]

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

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart F – California

2. Section 52.220 is amended by adding paragraphs (c)(356) and (c)(357) to read as follows:

§ 52.220 Identification of plan.

(c) * * *

(356) The following plan was submitted on November 16, 2007, by the Governor’s Designee.

(i) Incorporation by reference

(A) San Joaquin Valley Air Pollution Control District

(*1*) 2007 PM10 Maintenance Plan and Request for Redesignation, adopted by the San Joaquin Valley Air Pollution Control District on September 20, 2007, updated and approved by the California Air Resources Board on October 25, 2007.

(357) The following commitments were submitted on February 29, 2008, by the Governor’s Designee:

(i) Incorporation by reference

(A) Kern County Air Pollution Control District

(*1*) Commitments for the installation and operation of a FRM or FEM PM-10 monitor and SIP development and submittal in Resolution No. 2008-001-02, adopted by the Air Pollution Control Board, Kern County Air Pollution Control District on February 27, 2008, approved by the California Air Resources Board on March 3, 2008; and Executive Order S-08-004 adopted by the California Air Resources Board on March 3, 2008.
* * * * *

Part 81, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Part 81 [AMENDED]

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

AUTHORITY: 42 U.S.C. 7401 et seq.

2. Section 81.305 of the “California-PM-10” table is amended by revising the entry for the “San Joaquin Valley planning area” as follows:

Section 81.305 California.

* * * * *

California—PM-10

Designated Area	Designation		Classification	
	Date	Type	Date	Type
East Kern That portion of Kern County which lies between the following two lines: ` 1) West and north of a line described as follows: Beginning at the southwest corner of section 31, T. 10 N 16 W and running east to the northwest boundary of the Rancho La Liebre Land Grant; then running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to R. 15 W. and R. 16 W., San Bernardino Base and Meridian; then north along the range line to the northwest corner of section 2, T. 32 S., R. 32 E., Mount Diablo Base and Meridian; then east along the township line common to T. 32 S. and T. 31 S.; then north along the range line common to R. 35 E. and R. 34 E.; then east along the township line common to T. 29 S. and T.	11/15/1990	Nonattainment	11/15/1990	Serious

28 S.; then north along the range line common to R. 36 E. and R. 35 E.; then east along the township line common to T. 28 S. and T. 27 S.; then north along the range line common to R. 37 E. and R. 36 E. to the Kern-Tulare County boundary. 2) East and south of a line of a line described as follows: Beginning at the southwest corner of section 31, T. 10 N 16 W and running north along the range line common to R. 16 W. and R. 17 W., San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Land Grant to the northwest corner of S. 3, T. 11 N., R. 17 W.; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of S. 34, T. 32 S., R. 30 E., Mount Diablo Base and Meridian; then north to the northwest corner of S. 35, T. 31 S., R. 30 E.; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of S. 18, T. 31 S., R. 31 E.; then east to the southeast corner of S. 13, T. 31 S., R. 31 E.; then north along the range line common to R. 31 E. and R. 32 E., Mount Diablo Base and Meridian, to the northwest corner of S. 6, T. 29 S., R. 32 E.; then east to the southwest corner of S. 31, T. 28 S., R. 32 E.; then north along the range line common to R. 31 E. and R.				

32 E. to the northwest corner of S. 6, T. 28 S., R. 32 E., then west to the southeast corner of S. 36, T. 27 S., R. 31 E., then north along the range line common to R. 31 E. and R. 32 E. to the Kern-Tulare County boundary.				
San Joaquin Valley Air Basin Fresno County, Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, Tulare County, and that portion of Kern County which lies west and north of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Libre Land Grant to the point of intersection with the range line common to R. 16 W. and R. 17 W., San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Land Grant to the northwest corner of S. 3, T. 11 N., R. 17 W.; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of S. 34, T. 32 S., R. 30 E., Mount Diablo Base and Meridian; then north to the northwest corner of S. 35, T. 31 S., R. 30 E.; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of S. 18, T. 31 S., R. 31 E.; then east to the southeast	[FEDERAL REGISTER OFFICE: Insert date 30 days from the date of publication in the Federal Register]	Attainment		

corner of S. 13, T. 31 S., R. 31 E.; then north along the range line common to R. 31 E. and R. 32 E., Mount Diablo Base and Meridian, to the northwest corner of S. 6, T. 29 S., R. 32 E.; then east to the southwest corner of S. 31, T. 28 S., R. 32 E.; then north along the range line common to R. 31 E. and R. 32 E. to the northwest corner of S. 6, T. 28 S., R. 32 E., then west to the southeast corner of S. 36, T. 27 S., R. 31 E., then north along the range line common to R. 31 E. and R. 32 E. to the Kern-Tulare County boundary.				