

Dated: April 1, 2004.

**Laura Yoshii,**

*Acting 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 paragraph (c)(323) to read as follows:

#### **§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(323) The following plan was submitted on November 30, 2001 by the Governor's designee.

(i) Incorporation by Reference

(A) Bay Area Air Quality Management District

(1) San Francisco Bay Area Ozone Attainment Plan for the 1-hour National Ozone Standard (Section 3: Emission Inventory; Section 5: Control Strategy, except subsection "Demonstrating Reasonable Further Progress"; Appendix B: Control Measure Descriptions; Appendix C: Reasonably Available Control Measure Analysis; Appendix E: Further Study Measure Descriptions); adopted on October 24, 2001.

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 52 and 81**

[CA 118-PLANa; FRL-7641-7]

#### **Approval and Promulgation of Implementation Plans, Finding of Attainment, and Designation of Areas for Air Quality Planning Purposes; 1-Hour Ozone Standard, East Kern County, CA**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is finding that East Kern County, California, has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is approving the East Kern County 1-hour ozone maintenance plan and motor vehicle emissions budgets as revisions

to the East Kern County portion of the California State Implementation Plan (SIP). Finally, EPA is redesignating the East Kern County area to attainment for the 1-hour ozone NAAQS.

**DATES:** This direct final rule is effective June 21, 2004, without further notice, unless we receive adverse comments by May 24, 2004. If EPA receives adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Please address your comments to: Dave Jesson, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 or submit comments at <http://www.regulations.gov>.

You can inspect copies of the docket for this action at EPA's Region IX office during normal business hours. You can also inspect copies of the submitted SIP revision at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, CA 95814  
Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301-2370

#### **FOR FURTHER INFORMATION CONTACT:**

Dave Jesson, EPA Region IX, (415) 972-3957, or [Jesson.David@epa.gov](mailto:Jesson.David@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document, "we," "us," and "our" refer to EPA.

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## **I. Background**

### *A. East Kern County Designation, Classification, SIP, and Attainment Status*

When the Clean Air Act (CAA) was amended in 1990, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS was classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem.<sup>1</sup> The East Kern County nonattainment area ("East Kern") was designated under CAA section 107 as part of the San Joaquin Valley nonattainment area, and was classified under CAA section 181 as serious for the 1-hour ozone NAAQS. See 40 CFR 81.305 and 56 FR 56694 (November 6, 1991), designating the entire Kern County as part of the "San Joaquin Valley Area" for ozone.

The Kern County Air Pollution Control District (KCAPCD) adopted a serious area plan, intended to demonstrate rate-of-progress (ROP) and attainment by the applicable deadline of November 15, 1999.<sup>2</sup> The California Air Resources Board (CARB) timely submitted the plan in 1994, along with the plan adopted by the San Joaquin Valley Unified Air Pollution Control District for the remainder of the San Joaquin Valley nonattainment area. We approved the ROP and attainment plans for the San Joaquin Valley, including the portion of the SIP applicable to Kern County, on January 8, 1997 (62 FR 1150).

<sup>1</sup> EPA's 1-hour ozone standard of 0.12 parts per million (ppm) was promulgated in 1979 (44 FR 8202, February 8, 1979). On July 18, 1997, we promulgated a revised ozone standard of 0.08 ppm, measured over an 8-hour period. In general, the 8-hour standard is more protective of public health and more stringent than the 1-hour standard. This action addresses only the 1-hour standard. Areas will be designated attainment or nonattainment of the 8-hour standard in 2004. Ground-level ozone can irritate the respiratory system, causing coughing, throat irritation, and uncomfortable sensations in the chest. Ozone can also reduce lung function and make it more difficult to breathe deeply, thereby limiting a person's normal activity. Finally, ozone can aggravate asthma and can inflame and damage the lining of the lungs, leading to permanent changes in lung function. More details on ozone's health effects and the ozone NAAQS can be found at the following Web site: [http://www.epa.gov/ttn/naaqs/standards/ozone/s\\_o3\\_index.html](http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html).

<sup>2</sup> "Rate-of-Progress and Attainment Demonstration Plans for the Kern County Air Pollution Control District," adopted on December 1, 1994, and submitted on December 28, 1994, by the Governor's designee. Since 1992, KCAPCD jurisdiction extends only to the desert (*i.e.*, eastern) portion of Kern County, while the western portion of the County lies within the jurisdiction of the multi-county San Joaquin Valley Unified Air Pollution Control District.

On November 8, 2001 (66 FR 56476), we took these actions: (1) We determined that the San Joaquin Valley had not attained the 1-hour ozone standard by the 1999 deadline, reclassified the area to severe, and set a deadline for submittal of a SIP addressing the severe area requirements for the area; and (2) we separated the eastern portion of Kern County from the San Joaquin Valley area and extended the attainment deadline for this new serious area from 1999 to 2001, pursuant to CAA section 181(a)(5).<sup>3</sup> In our rulemaking, we noted that, “if East Kern County does not record a violation in 2001, the area will be eligible for redesignation to attainment for the 1-hour ozone NAAQS, following submittal by the State and approval by EPA of a redesignation request and maintenance plan addressing the provisions of CAA section 175A.” 66 FR 56481.

East Kern attained the 1-hour ozone NAAQS in 2001 and continued to record levels below the NAAQS during 2002 and 2003. Attainment is achieved when the average number of expected exceedance days per year is 1.0 or less for each monitor during a 3-year period. See discussion in Section II.B.1., below.

On May 1, 2003, KCAPCD adopted the Ozone Attainment Demonstration, Maintenance Plan and Redesignation Request (“maintenance plan”) to address the CAA section 175A provisions relating to 1-hour ozone maintenance plans. On December 9, 2003, CARB adopted and submitted specified elements of the maintenance plan, and requested that we approve these elements and redesignate the area to attainment for the 1-hour ozone NAAQS. CARB specifically requested that we approve the following elements of the plan:

- (a) Appendix A containing ambient air quality data;
- (b) Appendix B containing emissions inventory data for the 1999 attainment year and future years demonstrating that

East Kern County’s future ozone precursor inventory will not exceed the 1999 attainment year inventory;

(c) Chapter 6 containing contingency measures; and

(d) Table 5–2 containing motor vehicle emissions budgets.

#### *B. Clean Air Act Provisions for Maintenance Plans*

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must provide for continued maintenance of the applicable NAAQS for at least 10 years after the area is redesignated to attainment (CAA section 175A(a)). To address the possibility of future NAAQS violations, the maintenance plan must contain contingency provisions that are adequate to assure prompt correction of a violation, and must include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area (CAA section 175A(d)).

We have issued maintenance plan and redesignation guidance, primarily in the “General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990” (“General Preamble,” 57 FR 13498, April 16, 1992); a September 4, 1992 memo from John Calcagni titled “Procedures for Processing Requests to Redesignate Areas to Attainment” (“Calcagni memo” available at: <http://www.epa.gov/ttn/naaqs/ozone/ozonetech/940904.pdf>); a September 17, 1993 memo from Michael H. Shapiro titled “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992”; and a November 30, 1993 memo from D. Kent Berry titled “Use of Actual Emissions in the Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas.”

The Calcagni memo provides that an ozone maintenance plan should address five elements: an attainment year emissions inventory (*i.e.*, an inventory reflecting actual emissions when the area recorded attainment, and thus a level of emissions sufficient to attain the 1-hour ozone NAAQS), a maintenance demonstration, provisions for continued operation of an appropriate air quality monitoring network, verification of continued maintenance, and contingency measures.

#### *C. Clean Air Act Provisions for Redesignation*

CAA section 107(d)(3)(E) allows for redesignation providing that: (1) We determine, at the time of redesignation, that the area has attained the NAAQS; (2) we have fully approved the applicable implementation plan for the area under section 110(k); (3) we determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal regulations, and other permanent and enforceable reductions; (4) we fully approve a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the State containing such area has met all nonattainment area requirements applicable to the area under section 110 and part D. We have provided guidance on redesignation in the General Preamble and in the guidance memos cited above.

## **II. EPA Review of the East Kern County Maintenance Plan and Redesignation Request and EPA Finding of Attainment**

### *A. Maintenance Plan*

As discussed above in Section I.A., CARB submitted the maintenance plan on December 9, 2003.<sup>4</sup> The plan consists of a single volume, including appendices on air quality data and projected emissions.

#### *1. Emissions Inventory*

The maintenance plan includes emissions inventories for Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO<sub>x</sub>) for 1990, 1999, 2001, 2005, 2010, 2015, and 2020. Emissions forecasts for future years take into account projected growth and changes in control factors, using established State methodologies.<sup>5</sup> The emissions inventories were updated in March 2003, and are presented as emissions in tons per summer day using the State’s most recent data for stationary, area, and mobile categories.

The inventories use current and accurate methodologies, emissions factors, and survey information. The onroad emissions inventories employ the new CARB motor vehicle emissions factor model, EMFAC2002, and the latest planning activity levels. On April 1, 2003 (68 FR 15720–15723), we

<sup>3</sup> As discussed in the proposed action (66 FR 27616, May 18, 2001), no exceedances of the 1-hour ozone standard were recorded in 1999 or 2000 in East Kern County. CAA section 181(a)(5) provides that, upon application by a state, EPA may extend the 1-hour ozone attainment deadline for up to two one-year periods if the state has complied with all requirements and commitments pertaining to the area in the applicable SIP, and no more than one exceedance of the NAAQS has occurred in the area in the year preceding the extension year. EPA approved the separation of East Kern County along the boundary proposed by CARB. This boundary is the same as the boundary between the jurisdictions of the Kern County and the San Joaquin Valley air districts, and generally follows the ridge line of the Sierra Nevada and Tehachapi Mountain Ranges. The precise description of the new boundary appears at 40 CFR 81.305.

<sup>4</sup> On December 18, 2003, we found that this submittal met the completeness criteria in 40 CFR 51 appendix V, including the requirement for proper public notice and adoption.

<sup>5</sup> The maintenance plan uses the term Reactive Organic Compounds (ROC) in place of the Federal terminology, VOC. The terms are essentially synonymous. Because VOC is the more common term, we use it in this notice.

published a **Federal Register** notice stating our conclusion that the EMFAC2002 emission factor model is acceptable for use in SIP development and transportation conformity. Because the inventories are current, accurate, and complete, we are approving them under CAA section 172(c)(3) and 175A.

2. Maintenance Demonstration

Original maintenance plans must show how the NAAQS will be maintained for the next 10 years following redesignation to attainment. This is generally performed by assuming that the emissions levels at the time attainment is achieved constitute a limit on the emissions that can be accommodated without violating the NAAQS. In the case of this plan, projected VOC and NO<sub>x</sub> emissions through 2015 show continued attainment, since emissions levels of both of the ozone precursors are below 2001 levels. Table 1 below shows baseline and projected summer day emissions levels.

TABLE 1.—EAST KERN COUNTY MAINTENANCE DEMONSTRATION  
[Annual average emissions in tons per day]

Year	VOC	NO <sub>x</sub>
1999 .....	14.44	36.48
2001 .....	13.80	36.55
2005 .....	13.01	36.37
2010 .....	12.02	35.42
2015 .....	12.58	36.49

Source: East Kern County Maintenance Plan, Appendix B

Maintenance is demonstrated since total emissions of the two ozone precursors decline from the attainment year inventories. Increasingly stringent California and Federal motor vehicle emissions standards and fleet turnover account for the bulk of the inventory reductions, and the remaining emissions reductions come from fully adopted, permanent, and enforceable State, local, and Federal regulations.

We are approving the maintenance demonstration under CAA section 175A(a), since the plan shows that emissions will remain below attainment levels due to the projected impact of fully adopted, permanent, and enforceable regulations.

3. Continued Ambient Monitoring

The maintenance plan needs to contain provisions for continued operation of an air quality monitoring network that meets the provisions of 40 CFR part 58 and will verify continued attainment. CARB's Executive Order G-03-057 includes a commitment that the State will "work with the Kern County Air Pollution Control District to ensure continued ozone air quality monitoring in the East Kern County nonattainment area, in accordance with 40 CFR Part 58, for at least ten years following redesignation of the area to attainment, in order to verify the attainment status of the area" (page 5 of the Executive Order). This CARB commitment meets the continued monitoring provision, and we are approving it under CAA section 175A.<sup>6</sup>

4. Verification of Continued Attainment

The maintenance plan needs to show how the responsible agencies will track progress, and the plan should specifically provide for periodic inventory updates. The KCAPCD will meet this obligation through triennial updates to the area's attainment plan for the more protective State 1-hour ozone standard, which are mandated by the California Clean Air Act. These updates include assessments of the effectiveness of the control strategy, corrections for deficiencies in meeting progress requirements under State law, new emissions inventory data and projections, and summaries of monitored air quality data. The triennial updates will meet our provisions for verification of continued attainment. We are approving this provision under CAA section 175A.

5. Contingency Provisions

CAA section 175A(d) provides that maintenance plans include contingency provisions "necessary to assure that the State will promptly correct any violation of the standard.\* \* \* Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area."

Table 6-1 of the maintenance plan lists KCAPCD contingency measures. These measures are listed below in Table 2, "Contingency Measures."

TABLE 2.—CONTINGENCY MEASURES SOURCE: EAST KERN COUNTY MAINTENANCE PLAN, TABLE 6-1

Rule	Title	Implementing agency	Ozone precursor
422.1 .....	Solid Waste Landfills .....	KCAPCD .....	VOC.
New .....	Coatings-Aircraft and Aerospace Exterior .....	KCAPCD .....	VOC.
New .....	Electronics Manufacturing .....	KCAPCD .....	VOC.
New .....	Commercial Charbroiling .....	KCAPCD .....	VOC.
425 .....	Stationary Gas Turbine Engines .....	KCAPCD .....	NO <sub>x</sub> .
425.3 .....	Portland Cement Kilns .....	KCAPCD .....	NO <sub>x</sub> .
425.1 .....	Hot Mix Asphalt Batch Plants—Combustion .....	KCAPCD .....	NO <sub>x</sub> .
425.2 .....	Industrial & Commercial Package Boilers .....	KCAPCD .....	NO <sub>x</sub> .
427 .....	Stationary Piston Engines .....	KCAPCD .....	NO <sub>x</sub> .
New .....	Natural Gas Combustion in External Combustion Devices .....	KCAPCD .....	NO <sub>x</sub> .

The CAA section 175A(d) and EPA's guidance on contingency provisions in maintenance plans do not require that the measures be fully adopted. The measures with rule numbers in Table 2 have been fully adopted, are now being

fully implemented, and will continue to deliver excess reductions beyond those required to bring the area into attainment.<sup>7</sup> These rules are not in fact contingent, but rather achieve emissions reductions beyond those needed for

continued maintenance and will be retained as part of the SIP. The measures indicated as "new" have not yet been adopted, but would be adopted and implemented as needed to ensure that any violation of the NAAQS that

<sup>6</sup>In addition, the Navy has indicated that it intends to continue operating its ozone monitor at the China Lake Naval Weapons Center.

<sup>7</sup>In previous rulemaking, we have approved as part of the SIP Rules 425, 425.1, 425.2, 425.3, and 427, but we have not yet taken action on Rule 422.1.

occurs after redesignation to attainment will be corrected promptly. We are approving the measures as meeting the requirements of CAA section 175A(d).

6. Motor Vehicle Emissions Budgets

Maintenance plan submittals must specify the maximum emissions of transportation-related precursors of ozone allowed in the last year of the maintenance period. The submittals must also demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with maintenance of the NAAQS. In order for us to find these emissions levels or "budgets" adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5), and be approvable under all pertinent SIP requirements.

The budgets defined by this and other plans when they are approved into the SIP or, in some cases, when the budgets are found to be adequate, are then used to determine the conformity of transportation plans, programs, and projects to the SIP, as described by CAA section 176(c)(3)(A). For more detail on this part of the conformity requirements, see 40 CFR 93.118. For transportation conformity purposes, the cap on emissions of transportation-related ozone precursors is known as the motor vehicle emissions budget. The budget must reflect all of the motor vehicle control measures contained in the maintenance demonstration (40 CFR 93.118(e)(4)(v)).

The motor vehicle emissions budgets are presented in Table 3 below, entitled "East Kern County Maintenance Plan Motor Vehicle Emissions Budgets," which is taken from Table 5-2.

TABLE 3.—EAST KERN COUNTY MAINTENANCE PLAN MOTOR VEHICLE EMISSIONS BUDGETS

[Emissions are shown in tons per summer day]

Budget year	NO <sub>x</sub>	VOC
2001 .....	8.1	4.8

<sup>8</sup> See generally 57 FR 13506 (April 16, 1992) and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; "Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas," February 3, 1994. While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same Clean Air Act requirements in section 181(b)(2).

TABLE 3.—EAST KERN COUNTY MAINTENANCE PLAN MOTOR VEHICLE EMISSIONS BUDGETS—Continued

[Emissions are shown in tons per summer day]

Budget year	NO <sub>x</sub>	VOC
2005 .....	7.1	3.9
2015 .....	4.0	2.1

The maintenance plan notes that "the budgets were slightly adjusted by adding one tenth of a ton to account for potential emission increases associated with recent state legislation affecting smog check requirements. Because these emissions budgets are expressed in tenths of a ton per day, onroad motor vehicle emissions estimates should be rounded up to the next tenth of a ton" in future conformity determinations. (Page 5-5 of the maintenance plan.)

Under our policy for reviewing the adequacy of motor vehicle emissions budget submissions, these budgets were posted on our transportation conformity Web site (<http://www.epa.gov/oms/traq>) for public comment. The public comment period on budget adequacy closed on January 16, 2004. We received no comments on the adequacy of the budgets.

As discussed above, the motor vehicle emissions portion of these budgets (*i.e.*, the evaporative and tailpipe emissions) was developed using EMFAC2002 and updated county-specific vehicle data, including the latest East Kern County planning assumptions on vehicle fleet and age distribution and activity levels. In this action, we are approving the motor vehicle emission budgets under CAA section 176(c)(2) because the budgets are consistent with the criteria of 40 CFR 93.118(e)(4) and (5), including consistency with the motor vehicle emissions inventory used in the maintenance demonstration.

B. Redesignation Provisions

1. Finding of Attainment of the 1-Hour Ozone NAAQS

The 1-hour ozone NAAQS is 0.12 ppm, not to be exceeded on average

<sup>9</sup> The fourth highest value is used as the design value because a monitor may record up to 3 exceedances of the standard in a 3-year period and still show attainment, since 3 exceedances over 3 years would average 1 day per year, the maximum allowed to show attainment of the 1-hour ozone standard. If the monitor records a fourth exceedance in that period, it would average more than 1 exceedance day per year and would no longer show attainment. Therefore, if a State can reduce the fourth highest ozone value to below the standard, thus preventing a fourth exceedance, then it can demonstrate attainment.

more than 1 day per year over any 3-year period at any monitor within the area. 40 CFR 50.9 and appendix H. Therefore, demonstrating that an area has attained the 1-hour standard requires calculating the average number of days over the standard per year at each monitor during the preceding 3-year period.<sup>8</sup>

For this proposal, we include Table 4 below, entitled "East Kern County 1-Hour Ozone Maximum Concentrations and Exceedance Days," showing attainment based on both the design value and the average number of exceedance days per year for the period 1999 through 2003. The design value is an ambient ozone concentration that indicates the severity of the ozone problem in an area and is used to determine the level of emission reductions needed to attain the standard, that is, it is the ozone level around which a State designs its control strategy for attaining the ozone standard. A monitor's design value is the fourth highest ambient concentration recorded at that monitor over the previous 3 years. An area's design value is the highest of the design values from the area's monitors.<sup>9</sup> Attainment is determined using all available, quality-assured air quality data for the 3-year period up to and including the attainment date.<sup>10</sup> Consequently, we used all of the quality-assured data available to determine whether the East Kern County area attained the 1-hour ozone standard. From the available air quality data, we have calculated the average number of days over the standard and the design value for each ozone monitor in the nonattainment area. It should be noted that not all data for the 4th quarter of 2003 have yet been quality assured and entered into EPA's Aerometric Information Retrieval System-Air Quality Subsystem (AIRS-AQS) database.

<sup>10</sup> All quality-assured available data include all data available from the state and local/national air monitoring (SLAMS/ NAMS) network as submitted to EPA's AIRS system and all data available to EPA from special purpose monitoring (SPM) sites that meet the requirements of 40 CFR 58.13. See Memorandum John Seitz, Director, OAQPS, to Regional Air Directors; "Agency Policy on the Use of Ozone Special Purpose Monitoring Data," August 22, 1997, available at: <http://www.epa.gov/ttn/amtic/files/ambient/criteria/spms3.pdf>.

TABLE 4.—EAST KERN COUNTY 1-HOUR OZONE MAXIMUM CONCENTRATIONS AND EXCEEDANCE DAYS

Monitor	1st maximum	2nd maximum	3rd maximum	4th maximum (design value)	Exceedances
Mojave:					
1999 .....	0.119	0.113	0.112	0.111	0
2000 .....	0.113	0.112	0.112	0.106	0
2001 .....	0.126	0.119	0.118	0.116	1
2002 .....	0.115	0.113	0.111	0.103	0
2003 .....	0.120	0.119	0.116	0.111	0
China Lake:					
1999 .....	0.104	0.083	0.082	0.080	0
2000 .....	0.100	0.094	0.093	0.091	0
2001 .....	0.089	0.087	0.086	0.085	0
2002 .....	0.101	0.093	0.092	0.091	0
2003 .....	0.095	0.089	0.084	0.083	0
Edwards AFB:					
1999 .....	0.114	0.111	0.111	0.110	0
2000 .....	0.123	0.117	0.115	0.114	0
2001 .....	0.117	0.110	0.109	0.108	0
2002 .....	0.081	0.080	0.079	0.078	0
2003 .....					

Monitor not operated

2003 data are preliminary. The China Lake and Edwards monitors are SPMs operated by the Navy and Air Force, respectively, but must be considered in determining attainment, per EPA's policy on use of ozone SPM data. See Memorandum dated August 22, 1997, from John Seitz to Regional Air Directors, entitled "Agency Policy on the Use of Ozone Special Purpose Monitoring Data" at <http://www.epa.gov/ttn/amtic/files/ambient/criteria/sprms3.pdf>.

Under CAA section 181(b)(2)(A), we must determine whether an ozone nonattainment area has attained the standard by the applicable attainment deadline. As discussed above in Section I.A., East Kern did not attain by the serious area deadline of 1999, but the area was granted two one-year attainment date extensions pursuant to CAA section 181(a)(5), thus moving the attainment deadline to 2001. 77 FR 56476 (November 8, 2001). From Table 4, it is apparent that no monitor in East Kern recorded more than 3 exceedances of the standard for the period 1999–2001. The highest design value at any monitor, and thus the design value for East Kern, for 1999–2001 is 0.116 ppm based on the highest 4th maximum concentration recorded in 2001 at the Mojave site. We are therefore finding under CAA section 181(b)(2)(A) that East Kern attained the 1-hour ozone standard by the applicable deadline of 2001.

Table 4 also shows that the highest design value at any monitor for the 3-year periods 2000–2002 and 2001–2003. As for the period 1999–2001, the design value for East Kern for both 2000–2002 and 2001–2003, is 0.116 ppm, based on the 4th maximum concentration recorded in 2001 at the Mojave site. During these 3-year periods, no monitor recorded more than 3 exceedances. Table 4 shows that the area has continued to maintain the standard through the most recent three-year period of 2001–2003, and East Kern has thus met this prerequisite to redesignation.

## 2. Fully Approved Implementation Plan under CAA Section 110(k)

Following adoption of the CAA of 1970, California has adopted and submitted and we have fully approved at various times provisions addressing the various SIP elements applicable in East Kern County. As previously mentioned, we fully approved the 1-hour ozone ROP and attainment plan applicable to Kern County on January 8, 1997 (62 FR 1150).

## 3. Improvement in Air Quality Due to Permanent and Enforceable Measures

Chapter 5 of the maintenance plan provides information on activity levels in the area, noting that there is a lack of significant historical change since 1990 and a lack of change in the future. The economy is heavily dependent upon the Naval Air Weapons Station and Edwards Air Force Base, along with related private industry aerospace activities. Mining is the other economic base. Gold and silver mining has diminished since 1992, while borax mining has remained constant. Growth is not projected in the industry as a whole. Just as attainment cannot be ascribed to unusually reduced activity levels, so it cannot be attributed to favorable meteorology. For example, immediately adjacent nonattainment areas experienced unfavorable meteorology in 2003 and dramatic increases in ozone concentrations, but the design value in East Kern County remained well below the 1-hour ozone NAAQS during the past year. Finally, the projected emissions inventory,

which shows a decline in total VOC and NO<sub>x</sub> emissions (see Table 1, above), takes credit only for reductions that are permanent and enforceable. We therefore conclude that attainment was not the result of unusual activity or meteorology, but rather the permanent and enforceable emissions control measures that continue in force at the State, local, and federal level. Examples of these measures are presented in Table 3–1 of the maintenance plan.

## 4. Fully Approved Maintenance Plan

In Section II.A., above, we are proposing to approve the maintenance plan as meeting the CAA section 175A provisions.

## 5. CAA Section 110 and Part D Provisions Satisfied

We approved the East Kern ozone attainment SIP on January 8, 1997 (62 FR 1150) with respect to CAA section 110 and Part D provisions applicable to a serious ozone nonattainment area. As noted above, we have approved other CAA section 110 SIP provisions applicable to East Kern County at various times in the past.

We have not approved the KCAPCD new source review (NSR) rule as meeting the part D requirements contained in CAA section 172(c)(5). However, consistent with EPA guidance, we are not requiring as a prerequisite to redesignation to attainment EPA's full approval of a part

D NSR program.<sup>11</sup> Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully-approved part D NSR program, so long as the program is not relied upon for maintenance. The East Kern maintenance plan does not rely on the NSR program and, therefore, the area will not need a part D NSR program to maintain the 1-hour ozone NAAQS.

### III. Public Comment and EPA Action

Under CAA section 181(b)(2)(A), we are finding that the East Kern area attained the 1-hour ozone NAAQS by the applicable attainment deadline of 2001. We are approving the East Kern County Maintenance Plan under CAA sections 175A and 110(k)(3). We are approving the 2001, 2005, and 2015 VOC and NO<sub>x</sub> motor vehicle emissions budgets in Table 5-2 of the maintenance plan under CAA sections 176(c)(2) as adequate for attainment and maintenance of the 1-hour ozone NAAQS and for transportation conformity purposes. Finally, we are redesignating East Kern County area to attainment for the 1-hour ozone standard under CAA section 107(d)(3)(E).

We do not think anyone will object to this approval and redesignation, so we are finalizing them without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted maintenance plan and request for redesignation to attainment. If we receive adverse comments by May 24, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 21, 2004. This will incorporate the maintenance plan into the federally enforceable SIP and redesignate the area to attainment of the 1-hour ozone NAAQS.

### 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 state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. 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 approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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 June 21, 2004. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

#### 40 CFR Part 81

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

Dated: March 19, 2004.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

<sup>11</sup> Memorandum from Mary D. Nichols entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," October 14, 1994.

**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 paragraph(c)(322)to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

(322) New and amended plan for the following agency was submitted on December 9, 2003, by the Governor’s designee.

- (i) Incorporation by reference.
- (A) Kern County Air Pollution Control District.
  - (1) East Kern County Ozone Attainment Demonstration, Maintenance Plan and Redesignation Request, adopted on May 1, 2003: Chapter 5—“Regional Forecast,” including emissions inventory summary (Table 5–1) and motor vehicle emissions budgets (Table 5–2); Chapter 6—“Emission Control Measures,” including

contingency measures (Table 6–1); and Appendix B—“Emission Inventories.”

**PART 81—[AMENDED]**

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

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

■ 2. In § 81.305, the California Ozone (1-Hour Standard) table is amended by revising the entry for the East Kern County area to read as follows:

**§ 81.305 California.**

\* \* \* \* \*

**CALIFORNIA—OZONE**  
[1-Hour Standard]

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * * * *				
East Kern County: That portion of Kern County that lies east and south of a line described below: Beginning at the Kern-Los Angeles County boundary and 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 Range 16 West and Range 17 West, 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 Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; 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 Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East, then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County Boundary.	6/21/04	Attainment ...		
* * * * *				

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

\* \* \* \* \*  
[FR Doc. 04–9036 Filed 4–21–04; 8:45 am]  
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 63 and 262**

[OA–2004–0001; FRL–7650–6]

RIN 2090–AA13

**National Environmental Performance Track Program**

AGENCY: Environmental Protection Agency (EPA)

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing regulations applicable only to members of EPA’s National Environmental Performance Track Program (Performance Track, or the Program). Today’s action includes a revision to the Resource Conservation and Recovery Act (RCRA) regulations to allow hazardous waste generators who are members of Performance Track up to 180 days, and in certain cases 270 days, to accumulate their hazardous waste without a RCRA permit or interim status; and simplified reporting requirements for facilities that are members of Performance Track and governed by Maximum Available

Control Technology (MACT) provisions of the Clean Air Act (CAA). Today’s final rule reflects EPA’s response to comments filed by the public, interested stakeholders and associations, the Performance Track Participants Association, and Performance Track members. These provisions are intended to serve as incentives for facility membership in the National Environmental Performance Track Program while ensuring the current level of environmental protection provided by the relevant RCRA and MACT provisions.

**DATES:** This final rule is effective on April 22, 2004.