

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 81**

[CA 109-RECLAS; FRL-7800-5]

**Finding of Failure To Attain and Reclassification to Serious Nonattainment; Imperial Valley Planning Area; California; Particulate Matter of 10 Microns or Less****AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action under the Clean Air Act (CAA) to find that the Imperial Valley Planning Area (Imperial Valley), a moderate nonattainment area for particulate matter of 10 microns or less (PM-10), failed to attain the National Ambient Air Quality Standards (NAAQS) by the statutory deadline of December 31, 1994, and to reclassify the area as a serious PM-10 nonattainment area. Today's action is in response to a recent decision by the U.S. Court of Appeals for the Ninth Circuit that vacated EPA's earlier approval of Imperial County's demonstration that the Imperial Valley would have attained the NAAQS by December 31, 1994, but for emissions emanating from outside the United States, *i.e.*, Mexico. EPA's approval had the effect of allowing Imperial Valley to remain a moderate nonattainment area. In vacating that approval, the Court specifically directed EPA to reclassify Imperial Valley as a serious PM-10 nonattainment area.

**EFFECTIVE DATE:** This rule is effective on September 10, 2004.

**ADDRESSES:** You can inspect and copy the docket for this action at our Region IX office during normal business hours (*see* address below). Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you. The **Federal Register** notice is also available as an electronic file on EPA's Region 9 Web page at <http://www.epa.gov/region09/air>.

Planning Office (AIR-2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:** David Wampler, U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office (AIR-2), 75 Hawthorne Street, San Francisco, CA 94105; (415) 972-3975; [wampler.david@epa.gov](mailto:wampler.david@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, the words "we," "us," or "our" mean U.S. EPA.

**I. Background**

Imperial County is located in the southeastern corner of California. It has borders with Mexico to the south, Arizona to the east, and San Diego County to the west. Most of Imperial County falls within the Imperial Valley Planning Area (Imperial Valley). 40 CFR part 81.

Since the 1990 Amendments to the CAA, Imperial Valley has been classified as a moderate PM-10 nonattainment area. The CAA requires that moderate areas attain the PM-10 NAAQS by December 31, 1994. CAA section 188(c)(1). Moderate areas failing to attain the NAAQS by the prescribed attainment date must be reclassified as "serious" under CAA section 188(b)(2). However, CAA section 179(B)(d) provides that any area that establishes to the satisfaction of EPA that it would have attained the PM-10 NAAQS by the applicable attainment date but for emissions emanating from outside the United States, is not subject to the provisions of CAA section 182(b)(2), *i.e.*, reclassification to "serious" nonattainment.

The Imperial County Air Pollution Control District (ICAPCD) and the California Air Resources Board (CARB) submitted evidence that Imperial Valley would have attained the PM-10 NAAQS by the 1994 attainment date but for transport from Mexico. The primary information prepared by ICAPCD is the "Imperial County PM-10 Attainment Demonstration" (179B(d) demonstration) which CARB submitted to EPA on July 18, 2001.

On August 10, 2001, EPA published in the **Federal Register** a proposed rule that considered two alternatives. 66 FR 42187. Our first alternative proposed to find that the State of California had established to EPA's satisfaction that Imperial Valley would have attained the PM-10 NAAQS by the applicable CAA attainment date, December 31, 1994, but for emissions emanating from Mexico. Our second alternative proposed, based on monitored data during the years 1992-1994, to find that Imperial Valley did not attain the PM-10 NAAQS by its CAA mandated attainment date. This second proposal, if finalized, would have resulted in the area's reclassification to serious.

After consideration of the 179B(d) demonstration and the comments received on the proposal, on October 19, 2001, we finalized our first proposed alternative which found that Imperial Valley would have attained the PM-10

NAAQS by December 1994 but for PM-10 emissions emanating from Mexico. 66 FR 53106.

The Sierra Club petitioned for review of our October 2001 final action in the U.S. Court of Appeals for the Ninth Circuit. On October 9, 2003, the Court issued its opinion. *Sierra Club v. United States Environmental Protection Agency*, et al., 352 F.3d 1186. The Court rejected EPA's factual determination with respect to two days, January 19 and 25, 1993, on which PM-10 exceedances of the 24-hour PM-10 NAAQS occurred, finding that "[b]ased on the data and the reports in the record, there simply is no possibility that Mexican transport could have caused the observed PM-10 exceedances. \* \* \*" The effect of this conclusion is that the Imperial Valley had exceedances of the PM-10 NAAQS that preclude a finding that the area would have attained the NAAQS by 1994. The Court, concluding that further administrative proceedings with respect to the 1994 exceedances would serve no useful purpose, instructed EPA to reclassify Imperial Valley as a serious PM-10 nonattainment area.

On December 18, 2003, the Ninth Circuit denied a petition for rehearing by ICAPCD, an intervenor in the case, slightly revised its October 9, 2003, opinion, and granted ICAPCD's motion to stay the mandate until March 17, 2004, to permit ICAPCD to file a petition for a writ of certiorari in the U.S. Supreme Court. Imperial County did so on March 17, 2004. On June 21, 2004, the Supreme Court declined to hear the case. *Imperial County Air Pollution Control District v. Sierra Club, et al.*, 72 U.S.L.W. 3757. Thereafter the stay was lifted and the mandate issued.

**II. Final Action****A. Rule**

In response to the Ninth Circuit's October 9, 2003, opinion, and pursuant to CAA section 188(b)(2), EPA is finding that Imperial Valley failed to attain the PM-10 NAAQS by the statutory deadline of December 31, 1994, and is therefore reclassifying the area from a moderate to a serious PM-10 nonattainment area.<sup>1</sup> Today's final action applies to the entire Imperial Valley planning area which includes the Quechan Indian Tribe in the southeastern corner of the area, and the Torrez-Martinez Tribe in the northwestern corner of the area. EPA

<sup>1</sup> Note that as a result of the Court's opinion and order, we are not taking action on our August 10, 2001, alternative proposal to find that Imperial Valley failed to attain the PM-10 NAAQS by the moderate area statutory deadline. Instead we are adopting the Court's factual determination in today's final finding.

has contacted both Tribes to discuss the non-discretionary nature of this action and how the rulemaking may impact them.

All serious PM-10 nonattainment areas were required to attain the standards by no later than December 31, 2001, unless granted a one-time extension of up to five years. CAA section 188(c)(2) and (e). Elsewhere in this **Federal Register**, we are proposing to find that Imperial Valley failed to attain by December 31, 2001.

#### *B. Notice and Comment Under the Administrative Procedure Act*

While this rule constitutes final agency action, EPA finds good cause to forego prior notice and comment under the Administrative Procedure Act (APA), 5 U.S.C. 553(b). Notice and comment are unnecessary because no EPA judgment is involved in adopting the Ninth Circuit Court of Appeals' factual determination in *Sierra Club* that Imperial Valley failed to attain the PM-10 standards by December 31, 1994, and in carrying out the Court's order to reclassify the area from moderate to serious nonattainment. In short, EPA is simply implementing administratively a result that was compelled by the Court.

### III. Administrative Requirements

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. EPA has determined that the finding of failure to attain would not result in any of the effects identified in Executive Order 12866 sec. 3(f). Findings of failure to attain under section 188(b)(2) of the CAA are based solely upon air quality considerations and the subsequent nonattainment area reclassification must occur by operation of law in light of those air quality conditions. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose

a materially adverse impact on State, local, or tribal governments or communities. For the aforementioned reasons, this action is also not subject to Executive Order 32111, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). 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.*). These actions do 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) for the following reasons: (1) The finding of failure to attain is a factual determination based on air quality considerations; and (2) the resulting reclassification must occur by operation of law and will not impose any Federal intergovernmental mandate. Two Indian tribes have reservations located within the boundaries of Imperial County. EPA is responsible for the implementation of Federal Clean Air Act programs in Indian country, including reclassifications. EPA has notified the affected tribal officials and will be consulting with them, as provided for by Executive Order 13175 (65 FR 67249, November 9, 2000). Because EPA is required by Court Order to reclassify the Imperial Valley PM-10 planning area to serious nonattainment, and because reclassifications in and of themselves do not impose any Federal intergovernmental mandate, this rule also does not have Federalism implications as 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). These actions are also not subject to Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Rules*, (62 FR 19885, April 23, 1997), because they are not economically significant. As discussed above, findings of failure to attain under section 188(b)(2) of the CAA are based solely upon air quality considerations and the

subsequent nonattainment area reclassification must occur by operation of law in light of those air quality conditions. In this context, it would thus be inconsistent with applicable law for EPA, when it makes a finding of failure to attain to use voluntary consensus standards. 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. 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. 804(2).

#### List of Subjects in 40 CFR Part 81

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

Dated: August 3, 2004.

**Wayne Nastri**,

*Regional Administrator, Region IX.*

■ 40 CFR part 81 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. In § 81.305 amend the table for "California—PM-10" by revising the entry for "Imperial County, Imperial Valley Planning Area," to read as follows:

#### **§ 81.305 California.**

\* \* \* \* \*

CALIFORNIA—PM—10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Imperial County: Imperial Valley planning area .....	November 15, 1990 .....	Nonattainment .....	9/8/04	Serious.

\* \* \* \* \*  
 [FR Doc. 04-18378 Filed 8-10-04; 8:45 am]  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 112**  
**[OPA-2004-0003; FRL-7800-2]**  
**RIN 2050-AC62**

**Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or we) is today extending by eighteen months certain upcoming compliance dates for the July 2002 Spill Prevention Control and Countermeasure (SPCC or Plan) amendments. The dates affected by today's final rule are the date for a facility to amend its Plan and the date for a facility to implement that amended Plan in a manner that complies with the newly amended requirements (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). We are also amending the compliance deadline for onshore and offshore mobile facilities. In light of a recent partial settlement of litigation involving the July 2002 amendments, we are extending the compliance dates to, among other things, provide sufficient time for the regulated community to undertake the actions necessary to update (or prepare) their Plans. The final rule is also intended to alleviate the need for individual extension requests.

**DATES:** This final rule is effective August 11, 2004.

**ADDRESSES:** The docket for this rulemaking is located in the EPA Docket Center at 1301 Constitution Ave., NW., EPA West, Suite B-102, Washington, DC 20460. The docket number for the final rule is OPA-2004-0003. The docket is

contained in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202-566-0276. You may copy a maximum of 100 pages from any regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you \$0.15 for each page after 100. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA/CERCLA Call Center at 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, DC metropolitan area, call 703-412-9810 or TDD 703-412-3323. For more detailed information on specific aspects of this final rule, contact Hugo Paul Fleischman at 703-603-8769 ([fleischman.hugo@epa.gov](mailto:fleischman.hugo@epa.gov)); or Mark W. Howard at 703-603-8715 ([howard.markw@epa.gov](mailto:howard.markw@epa.gov)), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002, Mail Code 5203G.

**SUPPLEMENTARY INFORMATION:** This final rule concerns an eighteen-month extension of the current deadlines contained in 40 CFR 112.3(a) and (b), and an amendment of the compliance dates for 40 CFR 112.3(c). The contents of this preamble are as follows:

- I. General Information
- II. Entities Affected by This Final Rule
- III. Statutory Authority
- IV. Background
- V. Today's Action
- VI. Statutory and Executive Order Reviews

**I. General Information**

*Introduction.* For the reasons explained in Section V of this notice, the Environmental Protection Agency (EPA or we) is today extending by eighteen months the dates in 40 CFR 112.3(a) and (b) for a facility to amend and implement its Plan that complies with the newly amended requirements (or, in the case of a facility becoming

operational after August 16, 2002, prepare and implement a Plan in a manner that complies with the newly amended requirements). Today's rule extends these deadlines for eighteen months from the dates promulgated in the April 17, 2003, SPCC rule amendment. See 68 FR 18890. Since today's action extends the compliance dates, it is not necessary to file a request for an extension of time pursuant to § 112.3(f) beyond the existing compliance dates. If a facility owner or operator has already filed for an extension, such a request is invalidated by today's action. If an extension beyond the additional eighteen months is necessary, a request for an extension of time pursuant to § 112.3(f) must be submitted.

We are also amending the compliance deadlines in 40 CFR 112.3(c) for mobile facilities.

*How Can I Get Copies Of The Background Materials Supporting Today's Final Rule or Other Related Information?*

1. EPA has established an official public docket for this final rule under Docket ID No. OPA-2004-0003. The official public docket consists of the documents specifically referenced in this final rule and other information related to this final rule. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center located at 1301 Constitution Ave., NW., EPA West Building, Room B-102, Washington, DC 20004.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr>.

You may use EPA Dockets at <http://www.epa.gov/edocket/> to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in