

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R09-OAR-2006-0583, FRL-8234-1]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of California; PM-10; Determination of Attainment for the San Joaquin Valley Nonattainment Area; Determination Regarding Applicability of Certain Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing its determination that the San Joaquin Valley nonattainment area (SJV or the Valley) in California has attained the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). This determination is based upon monitored air quality data for the PM-10 NAAQS during the years 2003–2005. The SJV continues to attain the PM-10 NAAQS in 2006 based on the latest available quality assured data. EPA is also finalizing its determination that, because the SJV has attained the PM-10 NAAQS, certain Clean Air Act (CAA or the Act) requirements are not applicable for as long as the SJV continues to attain the PM-10 NAAQS.

DATES: *Effective Date:* This rule is effective October 30, 2006.

ADDRESSES: You can inspect copies of the docket for this action at EPA's Region IX office during normal business hours by appointment at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW. (Mail Code 6102T), Washington, DC 20460.

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SUPPLEMENTARY INFORMATION:

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

Table of Contents

- I. Summary of Proposed and Final Actions
- II. Public Comments and EPA Responses
 - A. Environmental Justice
 - B. The Clean Data Policy
 - C. New Particulate Matter (PM) NAAQS
 - D. EPA Policy on Special Purpose Monitoring Data

- E. Adequacy of the SJV Monitoring Network
- F. Data Not Included in Determining Attainment
 - 1. Data From September 3, 2004 High Wind Event
 - 2. Data From BAM and TEOM Monitors
- G. Representativeness of Data
- H. Other Comments
- III. Final Action
- IV. Effective Date of This Final Action
- V. Statutory and Executive Order Reviews

I. Summary of Proposed and Final Actions

On July 19, 2006, EPA proposed to determine that the SJV has attained the 24-hour and annual NAAQS for PM-10 (71 FR 40952).¹ The proposed determination was based upon monitored air quality data during the years 2003–2005 which indicated that there were no violations during that time. This data is summarized in table 1 in the proposed rule. 71 FR at 40953–54. EPA also based its proposed determination on monitored air quality data indicating the area continued to attain in 2006. EPA also proposed to determine that certain Clean Air Act (CAA or the Act) requirements were not applicable for as long as the SJV continued to attain the PM-10 NAAQS. Specifically, for the SJV, EPA proposed to determine that the CAA section 172(c)(9) contingency measure requirement for the area is suspended. For a more detailed discussion of the related background for the SJV and of the proposal, please refer to the proposed rule.

In this notice EPA is finalizing its determination that the SJV has attained the NAAQS, based upon three years of complete, quality-assured monitored air quality data for 2003–2005, and based upon its determination that the area continues to attain the PM-10 NAAQS in 2006 based on quality assured data submitted to EPA's AQS Database through July 31, 2006. See AQS Report AMP350 titled “SJV PM-10 SLAMS Raw Data Report January 2003–July 2006” included in the docket for this notice. In finalizing its determination, EPA has also reviewed preliminary monitoring data for monitors in the SJV that has become available since July 31, 2006.

EPA learned recently of preliminary data indicating that exceedances of the standard were monitored on September

22, 2006 at State and Local Air Monitoring Station (SLAMS) monitors in Corcoran (215 µg/m³), Bakersfield-Golden State Hwy. (157 µg/m³), and Oildale (162 µg/m³).² The California Air Resources Board (CARB) and the San Joaquin Valley Air Pollution Control District (District) have informed EPA that, based on preliminary analysis, they believe that these exceedances are due to high wind and wildfire natural events. CARB notified EPA that it intends to flag these data as caused by natural events and to request that EPA concur with these flags. As such the data would not be included for consideration in a determination of attainment for the SJV, pursuant to EPA's Natural Events Policy.³ Because these data, which were collected using manual reference method samplers, are preliminary and have not been quality-assured, and because EPA believes that they may qualify as caused by natural events, and thus be excluded from consideration in an attainment determination, EPA is proceeding to finalize its determination that the area is in attainment. If, after the data is quality-assured, and after further evaluating CARB's request with respect to these data, EPA determines that the data do not qualify for exclusion under EPA's natural events policy, and EPA further believes that if included that they would establish that the area is in violation of the NAAQS, EPA will proceed with appropriate rulemaking action to withdraw its determination of attainment.

EPA is also finalizing its determination that, because the SJV has attained the PM-10 NAAQS, certain requirements, and specifically the contingency measure requirement of section 172(c)(9) of the Clean Air Act, do not apply to the SJV area for so long as the area continues to attain the NAAQS.

II. Public Comments and EPA Responses

EPA received one comment letter in support of our proposal from the District stating that the determination is a result of “nearly two decades of intense efforts to reduce emissions of PM-10 and its precursors.” The District also states that

² 24-hour PM-10 exceedances were also recorded on September 22, 2006 with the automated equivalent (Beta Attenuation Mass/Tapered Element Oscillating Microbalance) PM-10 analyzers operated at the Bakersfield-Golden and Corcoran sites, as well as the Beta Attenuation Mass monitor at the Tracy site. See response to comment 15 below.

³ EPA's NEP Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation to Regional Air Directors, “Areas Affected by PM-10 Natural Events”, May 30, 1996.

¹ On September 21, 2006, EPA signed a final rule revoking the annual PM-10 standard. That revocation will be effective 60 days from publication of the rule in the **Federal Register**. Since the revocation will not be effective until after our attainment determination for the SJV, we are taking final action determining that the area has attained both the annual and 24-hour PM-10 standard.

“emissions of PM-10 and its precursors have decreased by about 24% since 1990” which is significant given the population growth. Finally the District states that this determination “does not in any way imply or allow the District or CARB to relax air quality strategies” and will allow the District to better dedicate resources for upcoming plans that will focus on PM-2.5 and ozone attainment.

EPA received one adverse comment letter from Earthjustice, representing Medical Advocates for Healthy Air, Sierra Club, Latino Issues Forum, Steven and Michele Kirsch Foundation, the Center for Biological Diversity, El Comité para el Bienestar de Earlimart/The Committee for the Well Being of Earlimart, Fresno Metro Ministry and the Coalition for Clean Air. EPA also received approximately 2000 adverse comment letters from individual citizens. Many of these comments were form letters that contained identical comments. EPA addresses all of the specific comments raised by Earthjustice in its responses to comments numbers 1 to 24. EPA is responding to many of the individual citizens’ comments in responses to comments numbers 25 and 26 and in the context of the responses to Earthjustice, since they raised many of the same issues.

A. Environmental Justice

Comment 1: EPA received comments arguing that its process for making this determination did not adequately consider EPA’s environmental justice mission: “[t]o achieve equal environmental protection so no segment of the population, regardless of race, ethnicity, culture or income bears an undue burden of environmental pollution and to ensure that the benefits of environmental protection are shared by everyone.” The principal environmental justice commenter, Earthjustice, argues that most sources of PM-10 pollution in the Valley are located in agricultural areas where population densities are low, but percentages of minority and low-income residents are high. The comment claims that EPA has not adequately investigated whether such areas, particularly in the western part of the Valley, are in attainment and is not adequately monitoring those areas. Without more thorough investigation and monitoring of air quality in the western part of the Valley, the comment concludes, EPA cannot “carry out its environmental justice mandate.”

Response: EPA is committed to environmental justice, and a November 2005 memorandum by Administrator

Johnson has reiterated EPA’s “ongoing commitment to ensure environmental justice for all people, regardless of race, color, national origin, or income.” EPA believes that this attainment determination is fully consistent with that commitment, and ensures environmental protection for all residents of the Valley, including residents of the western part of the Valley, and regardless of race, color, national origin, or income.

The gist of the environmental justice argument is that EPA has not adequately investigated and analyzed air quality in minority and low-income communities in the western part of the Valley. Although that is framed as an environmental justice argument, it is really a challenge to the adequacy of the legal basis for EPA’s determination that the entire Valley is in attainment. As explained more fully elsewhere, EPA has an adequate factual and legal basis for that determination, and has assessed air quality through monitored data that is representative of all areas of the Valley, including the west side, minority and low income communities addressed in the comment. Thus, the commenter is mistaken in claiming that EPA failed to investigate those areas adequately, or that such a purported failure prevented the Agency from adequately implementing environmental justice.

Similarly, EPA rejects claims that the monitoring conducted by the State and District is deficient. As explained more fully elsewhere, the District’s monitoring network provides for adequate and accurate assessments of air quality throughout the Valley, including minority and low income communities in the western area.

Comment 2: Commenters, principally Earthjustice, assert that low income and minority populations were not provided an adequate opportunity to comment on the rule. Earthjustice asserts that “the concerned people of the Valley” sought an “opportunity to be heard,” and unsuccessfully requested that EPA hold a hearing. That comment also points out that many west side residents “do not speak English, do not own computers, and do not have the time or expertise to draft public comments.”

Response: EPA believes that interested parties were given adequate opportunities to comment on the proposed determination of attainment. Section 553(c) of the Administrative Procedure Act (APA), which governs informal rulemaking actions, such as determinations of attainment, does not require EPA to provide for a hearing. Section 553 (c) states that:

The agency shall give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation.

EPA does not, as a matter of standard practice, conduct hearings on determinations of attainment. EPA does not believe a hearing was needed in this case, or would have been an appropriate use of the Agency’s limited resources. EPA also does not agree with the commenters’ implicit suggestion that, without a hearing, Valley residents had no forum for expressing their concerns.

EPA believes that the opportunity to provide written comments was sufficient for providing input from the public. That gave interested parties an opportunity to present data, views and arguments through written comments. No showing has been made that the opportunity to provide written comments precluded meaningful public participation. To the contrary, EPA received comments that identified and expansively discussed the concerns of minority and low income communities in the Valley. Thus, EPA does not agree with the suggestion that Valley residents, or anyone else, did not have adequate input into Agency decision making.

B. The Clean Data Policy

Comment 3: The commenter contends that EPA cannot use its Clean Data Policy to exempt the District from subpart 4 requirements. The commenter notes that EPA cites to two EPA memoranda incorporated into EPA’s Phase 2 8-hour ozone implementation rule, and relies on other attainment findings and redesignations that interpret the Clean Data Policy to justify waiving CAA requirements for PM-10 areas. The commenter argues that EPA provides none of its own analysis for proposing that the attainment determination will relieve the District of the obligation to comply with CAA requirements for reasonably available control measures (“RACM”), attainment demonstrations, reasonable further progress (“RFP”) and contingency measures. The commenter also alleges that EPA improperly expands the Clean Data Policy by claiming that the District will no longer be subject to the RACM requirements of the Act. The commenter further contends that even if one were to accept EPA’s argument, it would not apply to the SJV because as a serious PM-10 nonattainment area the Valley is subject to the BACM requirements of section 189(b)(1)(B). The commenter notes that EPA’s Addendum to the General Preamble makes clear that unlike RACM, determinations of BACM

are not tied to what is necessary for attainment. The commenter points out that the proposal correctly omits BACM from the list of CAA requirements waived under the Clean Data Policy, but requests that the final rule should be explicit that the BACM requirement is maintained.

Response: As noted in the proposal, EPA has previously approved all of the serious area PM-10 attainment plan requirements for the SJV except for the contingency measure requirements of CAA section 172(c)(9). See 69 FR 30006 (May 26, 2004) approving the 2003 PM-10 Plan for the SJV. In that action, EPA approved the RFP, attainment and RACM/BACM demonstrations for the SJV. Thus the issue of whether these requirements should be suspended is not before us, except insofar as our reasoning for why the contingency measures requirement is suspended rests on the rationale for suspending the attainment demonstration and RFP requirements. Nevertheless, as explained below, EPA believes that once the area attains the standards the RFP, attainment and RACM demonstrations would not be needed even though they have already been approved.

That said, EPA is correct in applying the Clean Data Policy in its determination of attainment in the SJV, and affirms the Agency's interpretation of subparts 1 and 4 of part D of the CAA. As EPA noted in its proposal, the Clean Data Policy has been applied in the context of the 1-hour and 8-hour ozone standards as well as in a number of PM-10 rulemakings. EPA's discussion of the application of the Clean Data Policy is set forth at length in its proposed rulemaking on Weirton, West Virginia 71 FR 27440, 27443–27445 (May 11, 2006), as well as in the memoranda and rulemakings cited therein. As we explained in that notice, the reasons for relieving an area that has attained the relevant standard of certain part D, subpart 1 and 2 obligations, apply equally as well to part D, subpart 4, which contains specific attainment demonstration and RFP provisions for PM-10 nonattainment areas.

EPA's analysis of the Clean Data Policy as it applies to PM-10 areas was contained in the documents cited in the proposal. Contrary to commenter's contention, the fact that EPA's analysis was provided in prior memoranda and rulemakings does not detract from the fact that it is EPA's own analysis. Indeed, EPA's consistency in the application of its interpretation lends it added weight. We reiterate here that EPA's analysis of its legal interpretation can be found in its "Final Rule to Implement the 8-hour Ozone National

Ambient Air Quality Standard—Phase 2" (Phase 2 Final Rule) 70 FR 71612, 71645–71646 (November 29, 2005) and the rulemakings and memoranda cited therein, the May 10, 1995 memorandum from John S. Seitz, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," the December 14, 2004 memorandum from Stephen D. Page, entitled, "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards," and rulemakings concerning the application of the policy to PM-10 areas—71 FR 6352, 6354 (February 8, 2006); 71 FR 13021, 13024 (March 14, 2006); and 71 FR 27440, 27443–27444 (May 11, 2006).

Furthermore, three U.S. Circuit Courts of Appeals have upheld EPA rulemakings applying EPA's interpretation of subparts 1 and 2 with respect to clean data for ozone. *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, No. 04–73032 (9th Cir. June 28, 2005) (Memorandum Opinion). EPA has also set forth its legal rationale for the Clean Data Policy in briefs filed in these cases, and hereby incorporates those briefs insofar as relevant here. See *Sierra Club v. EPA*, No. 95–9541 (10th Cir.), *Sierra Club v. EPA*, No. 03–2839, 03–3329 (7th Cir.), *Our Children's Earth Foundation v. EPA*, No. 04–73032 (9th Cir.).⁴

As EPA noted in those memoranda and rulemakings, EPA believes it is reasonable to interpret the provisions regarding attainment demonstrations, reasonable further progress, RACM requirements, contingency measures, and other related requirements as being suspended and as not requiring further submissions to achieve attainment for so long as the area is in fact attaining the standards. Under the policy, EPA is not granting an exemption from any applicable requirements under part D. Rather, EPA has interpreted these provisions as not requiring submissions for so long as the area remains in attainment with the standard. This is not a waiver of requirements that by their terms apply; it is a determination that certain requirements are written so as to be operative only if the area is not attaining the standards. Thus, in making its determination of attainment, EPA is also concluding that certain subpart 4 and subpart 1 requirements are no longer applicable for so long as the area remains in attainment.

⁴ These briefs are in the docket for this rulemaking.

With respect to the requirement for attainment demonstrations, EPA believes that the statutory requirement for an attainment demonstration—a SIP revision which identifies the level of future reductions needed to achieve the NAAQS and any additional adopted measures needed to achieve these reductions "is written so as to be inapplicable once the NAAQS is attained. Section 189(a)(1)(B) requires that the plan provide for "a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date. * * *" Section 189(b)(1) further requires that serious PM-10 nonattainment areas submit:

(A) A demonstration (including air quality modeling)—

(i) that the plan provides for attainment of the national ambient air quality standard by the applicable attainment date, or (ii) for any area for which the State is seeking, pursuant to section 188(e), an extension of the attainment date beyond the date set forth in section 188(c), that attainment by that date would be impracticable, and that the plan provides for attainment by the most expeditious alternative date practicable.

If an area is already monitoring attainment, EPA believes that Congress intended no requirement for an area to make a further submission containing additional measures to achieve attainment. Since the SJV area is already in attainment, there is no need for it to submit a plan demonstrating how the area will reach attainment had it not already done so. This is consistent with the interpretation of the section 172(c)(1) attainment demonstration requirement that EPA provided in the General Preamble and the Page memorandum, and of the section 182(b) and (c) requirements set forth in the Seitz memorandum. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." 57 FR at 13564.

We note that the commenter offered no specific critique of EPA's interpretation of the Clean Data Policy with regard to the attainment demonstration requirement. In addition, EPA's conclusion is consistent with the rule of statutory construction that statutes should be construed to avoid absurd results and favor public convenience. Because the SJV has already reached attainment based on existing measures, no additional measures to demonstrate attainment are required. Thus, under the language of section 172(c)(1), section 189(a)(1)(B) and section 189(b)(1), an attainment

demonstration would be the empty set. EPA therefore believes that, in the context of evaluating whether the contingency measure requirement is suspended, because the SJV area is attaining the standard, the attainment demonstration requirement would also be suspended for so long as the area remains in attainment, had it not already been approved.

As for the suspension of the RACM requirement, it does not have significance in the context of the SJV, because, as the commenter notes, BACM, which goes beyond RACM, has already been approved for the SJV, and BACM would not be suspended by the determination of attainment because as petitioner notes the BACM requirement is not tied to attainment needs. Thus EPA need not further address whether the requirement for RACM is suspended in accordance with the Clean Data Policy.

Comment 4: The commenter alleges that EPA relies heavily on the proposed redesignation of Weirton, West Virginia, to provide the analysis for waiving the RFP requirements for PM-10 areas. The requirements for PM-10 areas are found in CAA section 189(c)(1). The commenter argues that EPA's analysis ignores the plain language of the CAA. The commenter claims that the decisions in *Our Children's Earth Foundation v. EPA*, No. 04-73032 (9th Cir. June 28, 2005) (Memorandum Opinion) and *Sierra Club v. EPA*, 99 F.3d 1551, 1555 (10th Cir. 1996) upheld EPA's interpretation based on the Court's finding of ambiguity in the statutory language in sections 172(c)(1), (2), and (9) and section 182(b)(1)(A)(I). The commenter asserts that, unlike those provisions, the language of section 189(c)(1) is perfectly clear. The commenter contends that milestones are to be set to show reasonable further progress and an area is required to submit revisions demonstrating that it has achieved those milestones every three years until the area is "redesignated." The commenter concludes that there is no ambiguity and that appeals to policy objections cannot rewrite clear language into something ambiguous.

The commenter adds that references in the Weirton notice to other provisions in section 189 are unavailing. Section 189(c)(3) requires areas that fail to achieve a milestone to submit revisions to assure the next milestone will be met. The commenter asserts that this obligation continues through the final milestone. Where there is "no next milestone" the final revision must ensure that the area will attain the NAAQS. The commenter states that

nothing in these requirements is internally inconsistent or prevents areas from complying with the plain language of section 189(c)(2).

The commenter contends that arguments that this amounts to "overcontrol" are without merit. The commenter argues that a key distinction between a finding of attainment and redesignation is that a redesignation requires EPA to find that "the improvement in air quality is due to permanent and enforceable reductions in emissions." CAA section 107(d)(3)(E)(iii). The commenter argues that since EPA is not making such a finding, it is rational for Congress to have insisted that an area continue to reduce emissions until that showing can be made and the area can be redesignated.

Response: EPA's interpretation does not "waive" requirements nor does it ignore the plain language of the statute. With respect to RFP, it has been EPA's longstanding interpretation that the general provisions of part D, subpart 1 of the Act (sections 171 and 172) do not require the submission of SIP revisions concerning RFP for areas already attaining the ozone NAAQS. In the General Preamble, we stated:

[R]equirements for RFP will not apply in evaluating a request for redesignation to attainment, since, at a minimum, the air quality data for the area must show that the area has already attained. A showing that the State will make RFP toward attainment will, therefore, have no meaning at that point.

57 FR at 13564. EPA believes that the same reasoning applies to the PM-10 provisions of part D, subpart 4.

Section 171(1) (section 7501 (1)) states that for purposes of part D of title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of assuring attainment of the applicable national ambient air quality standard by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of sections 182(b) and (c), or the specific RFP requirements for PM-10 areas of part D, subpart 4, section 189(c)(1), the stated purpose of RFP is to ensure progress towards attainment by the applicable attainment date. Section 189(c)(1) states that:

Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated to attainment and which demonstrates reasonable further progress, as defined in

section 7501a(1) of this title, toward attainment by the applicable date.

Although this section states that revisions shall contain milestones to be achieved "until the area is redesignated to attainment," it further specifies that these are milestones that "demonstrate reasonable further progress, as defined in section 7501(1) of this title, toward attainment by the attainment date." They are also to be included in "plan revisions demonstrating attainment." Thus such milestones have the purpose of showing reasonable further progress "toward attainment by the applicable date," as defined in section 171. It is therefore clear from the language of the statute that once the area has attained the standard, no further milestones are necessary or meaningful. By definition, the "reasonable further progress" provision requires only such reductions in emissions as are necessary to attain the NAAQS by the attainment date. This interpretation is supported by language in section 189(c)(3), which mandates that a state that fails to achieve a milestone must submit a plan that assures that the state achieve the next milestone or attain the NAAQS if there is no next milestone. Section 189(c)(3) assumes that the requirement to submit and achieve milestones does not continue after attainment of the NAAQS. Thus, once attainment has been reached, there are no further milestones to be achieved, even though the area has not yet been redesignated to attainment, for so long as the area remains in attainment. The commenter is therefore incorrect in asserting that section 189(c)(1) is "perfectly clear" in requiring additional RFP milestones after attainment has been reached.

In the General Preamble, we noted with respect to section 189(c) that "the purpose of the milestone requirement is to 'provide for emission reductions adequate to achieve the standards by the applicable attainment date' (H.R. Rep. No. 490 101st Cong., 2d Sess. 267 (1990))." 57 FR 13539 (April 16, 1992). If an area has in fact attained the standards, the stated purpose of the RFP requirement will already have been fulfilled—the only milestones that are required are those that demonstrate reasonable further progress toward attainment, as defined by section 171. Thus we believe that it is a distinction without a difference that section 189(c)(1) speaks of the RFP requirement as one to be achieved until an area is "redesignated to attainment," as contrasted to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone nonattainment area RFP requirements in

sections 182(b)(1) or 182(c)(2), which refer to the RFP requirements as applying until the "attainment date," since section 189(c)(1) makes clear that the milestones that are to be achieved are those that demonstrate RFP toward attainment by the applicable attainment date, and since section 189(c)(1) defines RFP by reference to section 171(1) of the Act. Reference to section 171(1) makes clear that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2), the PM-specific RFP requirements may only be required "for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." 42 U.S.C. 7501(1). EPA interprets the RFP requirements, in light of the language of section 189(c)(1) and the definition of RFP in section 171(1) incorporated therein, to be a requirement that no longer applies so long as the standard has been attained.

Similarly, the requirements of section 189(c)(2) with respect to milestones no longer apply so long as an area has attained the standard. Section 189(c)(2) provides in relevant part that:

Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration * * * that the milestone has been met.

Where the area has attained the standard and there are no further milestones, there is no further requirement to make a submission showing that such milestones have been met. As noted above, this is consistent with the position that EPA took with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 Seitz memorandum with respect to the requirements of sections 182(b) and (c). In the May 10, 1995 Seitz memorandum EPA also noted that section 182(g), the milestone requirement of Subpart 2, which is analogous to provisions in section 189(c), is suspended upon a determination that an area has attained. The memorandum, also citing additional provisions related to attainment demonstration and RFP requirements, stated

Inasmuch as each of these requirements is linked with the attainment demonstration or RFP requirements of section 182(b)(1) or 182(c)(2), if an area is not subject to the requirement to submit the underlying attainment demonstration or RFP plan, it need not submit the related SIP submission either.

1995 Seitz memorandum at 5.

That the requirements for redesignation of an area require EPA to find that the improvement in air quality is due to permanent and enforceable emission controls does not undermine EPA's interpretation that when EPA determines an area is in attainment, the requirement for further emission reductions beyond that necessary for attainment is suspended for so long as the area remains in attainment. EPA does not contend that a determination of attainment is equivalent to a redesignation, which requires additional showings beyond the fact of attainment before changing the designation of an area from nonattainment to attainment. A determination of attainment merely suspends certain requirements for so long as the area remains in attainment. That permanent emission reductions are required for a redesignation does not indicate that Congress intended an area to keep reducing emissions beyond the attainment level until an area is redesignated. There is no statutory support for the proposition that an area must keep reducing emissions below the level needed for attainment until that area is redesignated. EPA's construction of the statute recognizes the public interest in reducing burdens on states and sources within states associated with adopting and implementing additional control measures that are no longer necessary to attain the NAAQS. EPA has construed the statutory provisions as not requiring certain additional emission reductions above and beyond what was needed to attain the NAAQS.

EPA again notes that it has already approved a demonstration of reasonable further progress for the SJV. In the context of considering whether a determination of attainment suspends the contingency measures requirement of section 172(c)(9), however, EPA concludes that the RFP requirements of sections 172(c)(2) and 189(c) would also be suspended for so long as the SJV remains in attainment, had they not already been approved.

Comment 5: The commenter contends that contingency measures are needed to ensure both reasonable further progress and attainment. Waiver of the requirement for these measures in section 172(c)(9) was premised on the argument that the RFP requirement of section 172(c)(2) was tied to attainment and thus with an attainment finding there was no longer a purpose for contingency measures. The commenter asserts that because the RFP requirements of section 189(c)(2) cannot be waived for PM-10 nonattainment areas, the contingency measure requirements of section 172(c)(9)

continue to have purpose. The commenter claims that they are needed as interim, stop gap measures to protect public health pending the SIP revisions required under section 189(c)(3). See 59 FR 42015.

Response: CAA Section 172(c)(9) provides that SIPs in nonattainment areas:

Shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State [or EPA].

This requirement is referred to as "the contingency measures" requirement, and is inextricably tied to the attainment and reasonable further progress requirements. Where sufficient progress has been made based on existing controls so that an area has already achieved attainment by the attainment date, it has no need to rely on "contingency measures" to come into attainment by the attainment date, or to assure progress towards attainment.

We have thus interpreted the contingency measures requirement of sections 172(c)(9) (and 182(c))(9) in subpart 2 of part D) as no longer applying when an area has attained the standard because those "contingency measures are directed at ensuring RFP and attainment by the applicable date." 57 FR at 13564; May 10, 1995 Seitz memo at 5-6. As explained at length in the responses to comments above and in the memoranda and rulemakings cited above, the requirements for RFP and attainment demonstrations no longer apply once an area has attained the standard. Thus it follows that the requirement for contingency measures to be triggered in the event RFP or attainment is not reached is also suspended for as long as the area attains the standard. As EPA stated in its Addendum to the General Preamble for Serious PM-10 Areas, "[s]ection 172(c)(9) requires that SIP's provide for the implementation of specific measures to be undertaken if the Administrator finds that the nonattainment area has failed to make RFP toward attainment or to attain the primary NAAQS by the applicable statutory deadline." 59 FR 42014-42015 (August 16, 1994). Where the area has attained the standards, as EPA has shown in responses to comments above, the attainment demonstration requirements and RFP requirement under section 189(c)(1) and (2) are suspended, and thus the

contingency measure requirements of section 172(c)(9) are also suspended.

The commenter is incorrect in its assertion that the RFP provisions under section 189 remain applicable despite a determination that the area has attained the standards. As EPA has demonstrated in its response to comment 4 above, once the area has attained the standards, the RFP milestone requirements in section 189 are suspended for so long as the area remains in attainment. Thus no contingency measures are required to assure those requirements are met. Because EPA is finalizing its determination that the SJV area has attained the standards, it is also finalizing its determination that the requirement for contingency measures under section 172(c)(9) is suspended for so long as the area remains in attainment.

C. New Particulate Matter (PM) NAAQS

Comment 6: The commenter argues that the most troubling implications of EPA's proposed finding is EPA's proposal to revoke the PM-10 standards altogether and eliminate monitors in areas that are found to be in attainment. The commenter contends that the reasonableness of EPA's Clean Data Policy is premised in part on the assurance of the Clean Air Act that EPA will eventually demonstrate that air quality has been permanently resolved due to the controls being implemented and that contingency measures will be in place as part of a plan to maintain clean air once an area has been redesignated to attainment. The commenter argues that under EPA's then current proposal for coarse PM, these assurances will be eliminated. The commenter states that EPA proposes to revoke the PM-10 standard "everywhere except in areas where there is at least one monitor that is located in an urbanized area with a minimum population of 100,000 people and that violates the 24-hour PM-10 standard based on the most recent three years of data." 71 FR at 2674. The commenter further states that, with the proposed attainment finding, EPA is making the determination that the PM-10 standard will be revoked in the Valley without the Act's protections. The commenter is also concerned about the potential for EPA to refuse to consider data collected by monitors in rural areas. The commenter believes that EPA should provide an explanation as to why its determination is reasonable when there will be no safety net to recover from the decision if EPA is wrong.

Response: The commenter's concerns are misplaced. First, EPA's responses to

comments above indicate that its decision is reasonable, in accordance with its prior interpretations of the CAA, and in accordance with the statute. EPA reiterates that a determination of attainment results merely in a suspension of requirements for so long as the area remains in attainment. If the area violates the standard, then the requirements and protections of the Act again apply to ensure that the area attains and makes reasonable further progress towards attainment.

Second, as noted above, on September 21, 2006, the EPA Administrator signed a final rulemaking which, among other things, revoked only the annual PM-10 standard, but left intact the 24-hour PM-10 NAAQS. The EPA did not finalize its proposal to revoke the 24-hour PM-10 NAAQS. The final rulemaking did not revoke any designations under the 24-hour PM-10 standard, and all requirements for the 24-hour standard and all designations under that standard remain in place. Based on the most recent three years of data, all areas that monitored nonattainment for the annual standard also monitored nonattainment for the 24-hour standard. Thus the commenter is incorrect in contending that the determination of attainment would relieve the SJV of the protections of the PM-10 NAAQS. Should EPA determine that the SJV violates the 24-hour PM-10 NAAQS, it would again become subject to any requirements that had been suspended during its period of attainment. In addition, the area would still retain the incentive to be redesignated to attainment for the 24-hour PM-10 NAAQS in order to be relieved of nonattainment NSR offset requirements and to avoid further attainment planning requirements should the area monitor a violation of the standard in the future, and the provisions for a maintenance plan pursuant to CAA sections 107(d)(3)(E) and 175A would still apply to any redesignation request. Thus these assurances of and motivation for continued attainment are not eliminated, and the "safety net" cited by the commenter remains in place.

The commenter also cites to a portion of the proposed rule on Ambient Air Monitoring which discusses a five-part suitability test to determine whether potential PM-10-2.5 monitoring sites were suitable for comparison to the proposed NAAQS. 71 FR 2710, 2736 (January 17, 2006). In the final monitoring rule signed September 27, 2006 and available at <http://www.epa.gov/air/particles/actions.html>, EPA is not adopting the five-part

suitability test or the proposed PM-10-2.5 monitoring network design. EPA had proposed the five-part suitability test along with certain minimum monitoring requirements and monitor placement criteria for the primary purpose of determining compliance with the proposed PM-10-2.5 particulate NAAQS. EPA proposed as the indicator for the NAAQS any ambient mix of PM-10-2.5 that is dominated by resuspended dust from high-density traffic on paved roads and PM generated by industrial sources and construction sources, but excluded any ambient mix of PM-10-2.5 that is dominated by rural windblown dust and soils and PM generated by agricultural and mining sources. The proposed level for the PM-10-2.5 NAAQS was selected so as to be of equal stringency to the 24 hour PM-10 NAAQS. However, in its recent rule revising the NAAQS EPA stated that it is not adopting the proposed PM-10-2.5 standard and instead, will be retaining the current 24 hour PM-10 standard. Therefore, EPA also did not adopt the proposed PM-10-2.5 monitoring network design, including the five-part suitability test to which the commenter cites above. Thus the commenter's concerns about this aspect of the rule have not been realized.

D. EPA Policy on Special Purpose Monitoring Data

Comment 7: The commenter states that EPA's use of an August 22, 1997 memorandum from John Seitz on the use of special purpose monitoring data is based on an illogical reading and is an insufficient substitution for a reasoned determination. The commenter states that nothing in the CAA provides for this intermediate step of an attainment determination to be made independently of a redesignation under CAA section 107(d)(3)(E). The commenter contends that to the extent such a determination can be defended, it is subject to the rational basis standard of the Administrative Procedures Act. The commenter cites language from the 1997 Seitz memorandum that discusses the types of data EPA must consider before redesignating an area from nonattainment to attainment and concludes that the Agency cannot reasonably ignore data that falls short of specific part 58 requirements without explaining why those requirements undermine the validity of the data.

Response: The commenter contends that an "attainment determination is a beast of EPA's own creation" and that it must be defended on a rational basis. In fact, attainment determinations have a basis in the statute: see e.g., section

107(d)(3)(E)(i), as well as sections 179(c), 188(b)(2) and 181(b)(2), but there is nothing that restricts EPA to making determinations of attainment in the context solely of those provisions. Indeed, as noted earlier, both the 9th and 10th U.S. Circuit Courts of Appeals have upheld EPA's authority to make attainment determinations outside the context of redesignation proceedings, and have also upheld EPA's interpretation of the statutory consequences of such determinations. *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996), *Our Children's Earth Foundation v. EPA*, No. 04-73032 (9th Cir. June 28, 2005 (memorandum opinion)). Nothing in the Act compels EPA to wait until an area meets all the requirements for redesignation before EPA makes a determination that the area is in attainment with the standard with the effect that the requirements for certain statutory provisions relating to attainment are suspended by their own terms. Indeed, section 179(c) of the Act requires EPA to make an attainment determination within six months after an area's applicable attainment date whether or not EPA has made a finding with respect to redesignation. EPA's interpretation of the Act's provisions not to require, once attainment has been reached, certain plan submissions whose purpose is to assure attainment, is not at odds with the requirements for redesignation. EPA's rationale for issuing attainment determinations is set forth at length in the responses to comments on the Clean Data Policy, above. In making determinations of attainment, which are subject to notice and comment rulemaking, EPA is governed by the Clean Air Act and its regulations.

Similarly, in identifying the data that should be considered in making a determination of attainment, EPA is subject to regulatory provisions that set forth criteria defining what constitutes an adequate monitoring schedule, methodology, and quality assurance for data that will justify reliance upon it. 40 CFR 58.14 applies to Special Purpose Monitors (SPMs), and requires that if intended to be used for purposes of demonstrating attainment or nonattainment, they must meet the requirements for State and Local Air Monitoring Stations (SLAMS) set forth in 40 CFR 58.13 and 58.22 as well as in appendices A and E of part 58. While EPA cited to the Seitz memorandum in its proposal, EPA is not, as commenters contend, hiding behind a non-binding policy memorandum. Rather, that memorandum cited to the regulations applicable to data from special purpose

monitors intended for use in attainment determinations. These regulations are designed to ensure that the data is accurate and reliable enough to be the basis for a formal determination as to whether an area has attained the relevant standard. The 1997 Seitz memorandum states that "[the] Agency policy on the use of special purpose monitoring data for any regulatory purpose, with the exception of fine particulate matter data (PM-2.5) is that all quality assured and valid data meeting 40 CFR part 58 requirements must be considered within the regulatory process." 1997 Seitz memorandum at 1. EPA's regulations under 40 CFR part 58 provide for quality assurance and control requirements to ensure that regulatory decisions are based on reliable and accurate information.

Conversely, it follows that data that does not meet these quality assurance criteria should not be considered, since basing regulatory decisions on data that has not been shown to be reliable would not further the public interest nor be consistent with EPA regulations on special purpose monitors. See 40 CFR 58.14. As set forth below in other responses to comments, EPA's decision to consider data from monitors that meets quality assurance criteria and its concomitant decision to exclude data that does not meet these criteria is based on its regulations, has a rational basis, and is designed to result in determinations that reflect accurate and reliable data.

Here, the data from certain SPMs did not meet the quality assurance requirements of part 58, and therefore were not included for consideration in the determination of attainment. If in the future additional data that has been quality assured demonstrate that the area is in fact not attaining the standard, EPA will withdraw its determination of attainment. Until that time, there is no compelling reason for EPA not to proceed with an attainment finding based on all quality assured data where such data demonstrates that the SJV has attained the PM-10 standard.

In EPA's Revisions to Ambient Air Monitoring Regulations, a final rule signed on September 27, 2006, EPA issued revised regulations concerning SPMs, and clarified that data from such monitors would not be used for attainment/nonattainment determinations if the monitors had not met the requirements of appendix A.

Section 58.20(b) of the revised regulation provides in part:

[a]ny SPM data collected by an air monitoring agency using a Federal reference

method (FRM), Federal equivalent method (FEM), or approved regional method (ARM) must meet the requirements of section 58.11, section 58.12, and appendix A to this part or an approved alternative to appendix A to this part * * *

Section 58.20 (c) provides that:

[a]ll data from an SPM using an FRM, FEM or ARM which has operated for more than 24 months is eligible for comparison to the relevant NAAQS, subject to the conditions of section 58.30, unless the air monitoring agency demonstrates that the data came from a particular period during which the requirements of appendix A or an approved alternative, appendix C, or appendix E were not met in practice.

Thus EPA's new monitoring regulations make plain that SPM data from a period during which appendix A is not complied with are not eligible for comparison to the NAAQS and EPA action in this case is consistent with that requirement.

E. Adequacy of the SJV Monitoring Network

One commenter and numerous individual citizens raised a number of issues regarding the adequacy of the PM-10 monitoring network in the SJV. In a final rule approving the serious area PM-10 attainment plan for the SJV, EPA evaluated the adequacy of this network and concluded that it meets all applicable statutory and regulatory requirements and is adequate to support the technical evaluation of the PM-10 nonattainment problem in the plan. 69 FR 30006, 30032-30033. EPA supported this conclusion in a technical support document accompanying the final rule, "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 Region 9, Air Division; September 22, 2003 (2003 TSD). Nevertheless, EPA responds below to the specific comments raised regarding the network in connection with its proposed attainment determination for the SJV.

Comment 8: The commenter states that CAA Section 110(a)(2)(B) requires States to establish appropriate air monitoring networks and that appendix D of 40 CFR part 58 identifies a minimum of six objectives that a SLAMS network should be designed to meet, as well as spatial representativeness criteria in developing the network. The District fails to address all six criteria in its annual Monitoring Network Reports (leaving out monitoring for regional pollutant transport and for impacts on rural and remote places) and the existing monitors represent only two of the six spatial

scales established in the regulations when three are required. Since the District fails to meet these basic requirements, EPA should address the adequacy of the monitoring network before making an attainment determination, including whether system audits were conducted as required by 40 CFR 58.2.5 (sic). EPA's only evaluation of the network was in the 2003 TSD in which EPA identified several deficiencies in the Valley's PM-10 monitoring network but signed off on the network in spite of the deficiencies.

Response: Pollutant monitoring networks are designed to serve a number of purposes. While the primary purpose of a monitoring network is to determine an area's attainment status with regard to the NAAQS, there are a variety of other purposes networks serve, including determining maximum concentration locations; determining the effectiveness of air pollution control programs; evaluating the effects of air pollution levels on public health; tracking the progress of SIPs; providing dispersion modeling support; developing responsible, cost-effective control strategies; reconciling emission inventories; and developing air quality trends.⁵

The six monitoring objectives⁶ in EPA's regulations were developed to assist in designing monitoring networks to meet these various objectives. Clearly, monitoring to "determine the welfare-related impacts in more rural and remote areas (such as visibility impairment and effects on vegetation)" or monitoring to assess regional transport of pollution are not directly related to determining whether or not an area is in attainment of the NAAQS. These are important objectives in terms of maximizing the utility of the monitoring network. However, when determining whether the SJV is attaining the PM-10 NAAQS, it is more important to demonstrate that the PM-10 network has monitors sited to capture the maximum concentrations expected to occur in the Valley and the representative concentrations of PM-10

throughout the area that the population of the SJV are breathing. As discussed in the 2003 TSD, the SJV PM-10 SLAMS network meets the two primary and most important objectives by siting most of its monitors to assess representative concentrations in areas of high population and monitoring in the area where the maximum PM-10 concentrations are expected to occur. Thus the fact that the District did not address the two objectives above is not a significant factor in determining whether the SJV is in attainment of the PM-10 NAAQS.

The commenter states that EPA regulations at 40 CFR part 58, appendix D, require networks to use at least three spatial scales⁷ in establishing a monitoring network. However, the regulations do not in fact require the use of any minimum number of spatial scales for PM-10 SLAMS or National Air Monitoring Station (NAMS)⁸ networks. Section 1 of appendix D discusses the relationship between monitoring objectives and spatial scales of representativeness. As our regulations state in this section, "[p]roper siting of a monitoring station requires precise specification of the monitoring objective which usually includes a desired spatial scale of representativeness."

Table 1 of appendix D "illustrates the four basic monitoring objectives and the scales of representativeness that are *generally most appropriate for that objective.*" Emphasis added. Appendix D, section 1, table 1. It is clear from this language that EPA did not intend to dictate specific spatial scales for each objective. However, it is important to ensure that the spatial scale of the site is appropriate for the monitoring objective that site is intended to meet. For example, a site that is intended to represent typical population exposure should be a neighborhood or urban scale site, not a microscale site. While a microscale site can be used to monitor for highest concentration, a middle or neighborhood scale site would also satisfy this monitoring objective.⁹

With respect to the system audit programs described in 40 CFR part 58, appendix A, section 2.5, it is important to note that this type of audit, commonly referred to as a technical system audit (TSA, is a qualitative review of an agency's overall air monitoring operations designed to determine whether what the monitoring organization says is going to be performed in its quality management plan, quality assurance project plan, and standard operating procedures are performed as specified. A TSA is required to be "on site" in the sense of taking place at the monitoring organization facilities, either at one or more locations where monitoring activities are performed or where monitoring-related documents and records are kept, but it need not involve a visit to an actual monitoring site. When a discrepancy is identified, EPA asks the monitoring organization to correct the discrepancy and tracks the monitoring organization's efforts until the correction is made. Significantly, EPA does not disqualify any data already collected based on the results of a TSA, although the monitoring organization in principle might do so itself. See "Quality Assurance Handbook for Air Pollutant Measurement Systems, Volume II, Part 1, section 15 (EPA-454/R-98-004, August 1998) and "EPA Requirements for Quality Assurance Project Plans" (EPA/240/B-01/003 March 2001) at B-4.

In contrast, the measurement quality checks described in appendix A, sections 3.1, 3.2, 3.3 and 3.4, are quality control checks in which quantitative data generated by quality control samplers or independent standards are compared against the routine monitors operated by the air monitoring agency in order to evaluate instrument performance or laboratory procedures. Id. at B-3. When determining whether data generated by air quality monitors can be considered to be valid and accurate for the purpose of determining whether an area has attained the NAAQS, measurement quality checks are critical.

As a mechanism for helping to ensure that data generated by air quality monitors is valid and accurate and thus suitable for determining whether an area has attained the NAAQS, it is the measurement quality checks that are most important. These checks create an incentive for continuous attention to

⁵ "SLAMS/NAMS/PAMS Network Review Guidance" EPA-454/R-98/003, March 1998, section 1.0.

⁶ The six monitoring objectives as discussed in 40 CFR part 58, appendix D, section 1 are (1) to determine highest concentrations expected to occur in the area covered by the network; (2) to determine representative concentrations in areas of high population density; (3) to determine the impact on ambient pollution levels of significant sources or source categories; (4) to determine general background concentrations; (5) to determine the extent of regional transport among populated areas; and in support of the secondary standards; and (6) to determine the welfare-related impacts in more rural and remote areas (such as visibility impairment and effects on vegetation).

⁷ See 40 CFR part 58, appendix D, section 1, for a discussion of spatial scales and their applicability in monitoring network design.

⁸ The NAMS area subset of the SLAMS ambient air quality monitoring network.

⁹ While Table 6 in 40 CFR part 58, appendix D, section 5 could be interpreted to mean that three spatial scales are required for PM-10 NAMS sites, EPA's purpose here was to summarize the spatial scales which would be appropriate for NAMS sites, i.e. microscale, middle scale, and neighborhood scale sites are appropriate scales for PM-10 NAMS sites, but urban and regional scale sites are not. This is because the objectives for NAMS sites are to monitor in areas where the pollutant concentration and population exposure are expected to be the highest. Furthermore, EPA's recently signed rule revising the monitoring regulations at 40 CFR part

58, reiterates EPA's intention that urban and regional scales are not appropriate for PM-10 monitoring and the most important spatial scales for monitoring PM-10 are the middle and neighborhood scales.

proper operation and maintenance of each monitor, can identify problems with specific monitors so that the problems can be corrected, and provide a basis for the monitoring organization to disqualify data already collected if specific audit findings are found to be outside of acceptable limits. EPA discusses these evaluations with respect to the SJV monitoring network below in response to comment 13.

EPA Regional Offices are required by appendix A to perform TSAs of State reporting organizations once every three years. A reporting organization, as defined in 40 CFR part 58, appendix A, section 3.0.2, is a State, subordinate organization within a State, or other organization that is responsible for a set of stations that monitors the same pollutant and for which data quality assessments can be pooled. States must define one or more reporting organizations for each pollutant such that each monitoring station in the State SLAMS network is included in one, and only one, reporting organization.

California has designated four reporting organizations within the State: CARB, the South Coast Air Quality Management District, the Bay Area Air Quality Management District, and the San Diego Air Pollution Control District. All other air quality districts in the State, including the San Joaquin Valley Air Pollution Control District, are included in the CARB reporting organization. CARB and the Districts in its reporting organization represent one of the largest and most experienced air quality reporting organizations in the nation.

EPA has audited certain aspects of the CARB monitoring program recently. EPA's Office of Air Quality Planning and Standards (OAQPS) performed measurement quality checks and TSAs of the CARB PM laboratories in October 2002 and March 2004. These evaluations and audits confirmed that the laboratories used by CARB and the San Joaquin Valley Air Pollution Control District for weighing PM filters were operating consistently with appendix A requirements. No deficiencies for the PM lab were noted. Overall good laboratory practices were observed during this TSA. See Technical Memorandum on CARB Laboratory Audit to Jim Homolya, EPA, OAQPS, from Michael S. Clark, National Air and Radiation Environmental Laboratory, February 26, 2003 and Technical Memorandum on CARB Laboratory Audit to Jim Homolya, EPA, OAQPS, from Eric Boswell, National Air and Radiation Environmental Laboratory, dated April 22, 2004. Moreover, CARB Quality Assurance

Section also conducts its own internal audits of the PM laboratory.

In October 2004, EPA Region 9 performed a technical evaluation of the CARB 'Through-the-Probe' (TTP) audit program for gaseous pollutants to establish system equivalence between the CARB and EPA TTP programs and to independently review the CARB TTP program. See "Review of California Air Resources Board's 'Through-the-Probe' Audit Program", October 6-7, 2004. The TTP audit is a procedure for performing measurement quality checks of gaseous analyzers and is the primary tool used by CARB to fulfill its audit responsibility for these types of analyzers in 40 CFR part 58, appendix A, section 3.2. While EPA's audit of the CARB TTP program focused on gaseous pollutant performance audits, the audit served as an on-site TSA with respect to CARB's corrective action procedures used by CARB following a performance audit failure of a PM-10 monitor, as CARB's corrective action procedures are common to all pollutants including PM-10. We have since evaluated the CARB TTP program three additional times in June 2005, October 2005 and April 2006. See memorandums to Catherine Brown, USEPA Region 9 from Kevin Woodruff, ESAT TTP Task Manager, dated July 8, 2005, May 8, 2006, and May 18, 2006.

CARB has conducted its own TSA-like assessment of the District's monitoring program. CARB's oversight includes routine annual performance audits of PM-10 SLAMS monitors, verification that sites meet EPA siting criteria and periodic assessments of the District's air monitoring program. See the CARB's Annual Data Quality Reports and the San Joaquin Valley Air Pollution Control District Program Review, Report of Findings and Recommendations, by CARB Stationary Source Division, October 2005. Audit information for individual monitoring stations in the CARB reporting organization is available at the CARB Web site <http://www.arb.ca.gov/qaweb/>. The Web site includes maps of each site, site photographs, and a detailed survey of the physical parameters and conditions at each site. These activities, while performed by CARB, are very similar to the field operation portion of EPA's TSAs.

Region 9 continues to keep informed of CARB and its Districts' monitoring program developments through our ability to review revisions to quality assurance (QA) documents and the other information described above on the CARB QA Web site. EPA believes that these activities as well as the on-site activities described above, EPA's

evaluation in the 2003 TSD, and the performance audits described below, can and should be considered to substantially meet the requirements of appendix A and are sufficient to ensure that the data produced by the PM-10 SLAMS network operating in the SJV is adequate for EPA to base our finding of attainment.

Furthermore, the District and CARB annually certify that the data in EPA's Air Quality System (AQS) database is correct and accurate. EPA also annually reviews the precision and accuracy data (precision and accuracy data are discussed in more detail in the response to comment 13 below) submitted along with the PM-10 concentration data by CARB and the District.

As stated above, in the 2003 TSD EPA determined that the PM-10 monitoring network for the SJV, which includes monitors operated by both CARB and the District, meets all applicable statutory and regulatory requirements. EPA Region 9 uses the following four criteria to evaluate whether agencies operate approvable networks: (1) The SLAMS network used EPA approved samplers to collect data, (2) the agency has a quality assurance plan in place that meets EPA requirements, (3) the agency operates the required number of monitoring sites designated as NAMS, and (4) the monitoring network is designed in accordance with the requirements of 40 CFR part 58, appendices D and E. These criteria are based on requirements in 40 CFR part 58 and on EPA guidance documents.¹⁰

The only deficiency in The District's PM-10 network that EPA has identified relates to the number of sites designated as NAMS. In the 2003 TSD at 5, we stated:

According to EPA regulations, the [District] should have a minimum of 11 sites designated as NAMS sites, based on the average PM-10 concentrations during the years 1999-2001 and the 2000 census population data. * * * The number of monitoring sites in the [SJV] designated as NAMS is less than that required in EPA regulations. However * * * EPA has been de-emphasizing the difference between NAMS and SLAMS sites. * * * EPA is planning to revise the regulations at 40 CFR part 58, Appendix D, which discusses the NAMS requirement, to eliminate the designation of sites as either NAMS or SLAMS.

¹⁰ These guidance documents include "PM-10 SIP Development Guideline", EPA-450/2-86-001, June 1987; "Network Design and Optimum Site Exposure Criteria for Particulate Matter", EPA-450/4-87-009/ May 1987; "Guidance For Network Design and Optimum Site Exposure For PM-2.5 and PM-10", EPA-454/R-99-022, December 1997; "SLAMS/NAMS/PAMS Network Review Guidance", EPA-454/R-98-003, March 1998.

In footnote 3 in the 2003 TSD, EPA explained that:

EPA, in partnership with State and local air agencies, has been developing a National Monitoring strategy which no longer makes a distinction between NAMS and SLAMS sites. The strategy, once codified in EPA regulations, will simply establish a certain minimum number of monitoring sites in a metropolitan area, still based on population and pollutant concentration severity. The current network in the [SVJ] will easily meet these minimum requirements.

At the time we evaluated the SJV PM-10 monitoring network, we believed, in light of the de-emphasis on the difference between NAMS and SLAMS sites, that it would be unreasonable to find the network inadequate because of this technical deficiency which EPA was planning to eliminate. In fact, in our final Ambient Air Monitoring rule signed on September 27, 2006 that amends 40 CFR part 58 we did eliminate the NAMS designation requirement completely. Elimination of the NAMS requirement does not affect the number of monitors operating in the PM-10 network. Sites designated as NAMS simply convert to SLAMS sites. Based on the above, we believe the data produced by the SLAMS network is technically sound and can be used to determine the SJV's attainment status. EPA wants to emphasize, however, that the action today is simply an assessment of the data collected at the District's PM-10 monitoring stations from 2003–2005, and continuing into 2006. This attainment determination does not preclude any future assessments of the PM-10 monitoring network, addition of new monitoring sites, or shut down of any existing sites.

Comment 9: The commenter states that the monitoring network does not meet the basic objectives laid out by federal regulation and leaves vast portions of the Valley completely unmonitored. The commenter asserts that EPA must address this deficiency before making an attainment determination. The commenter states that the majority of the PM-10 monitoring takes place along the Highway 99 corridor which captures most of the SJV's major urban centers, but entirely overlooks the eastern and western portions of the SJV. The western portion of the SJV should be of particular concern to the District and EPA as it is an area of widespread poverty and environmental injustice, as well as being an area of intense agricultural activity.

Response: We disagree with the commenter's contention that the network fails to meet the basic monitoring objectives described in 40

CFR part 58, appendix D, section 1. EPA regulations do not prescribe the size of an area's PM-10 monitoring network or the exact placement of monitors. 40 CFR part 58, appendix D, section 1, "SLAMS Monitoring Objectives and Spatial Scales" states:

It should be noted that this appendix contains no criteria for determining the total number of stations in SLAMS networks * * *. The optimum size of a particular SLAMS network involves trade offs among data needs and available resources that EPA believes can best be resolved during the network design process.¹¹

It is unreasonable and cost prohibitive to require a monitoring agency to operate a monitoring station in every location expected to have high levels of a particular pollutant. The District operates SLAMS in a variety of areas that represent typical emission scenarios in the SJV including urban areas of dense population, industrial areas, and rural areas dominated by agricultural emission sources. See 2003 TSD at 5.

The monitoring network in the SJV has both neighborhood and middle scale sites. As stated previously in this notice (see response to comment 8 and footnote 7), these spatial scales are the most important in monitoring for PM-10. Monitoring sites that are representative of middle scale impacts cannot only represent the area immediately around the monitoring site but also areas of similar emission characteristics. Similarly, neighborhood scale sites can represent not only the immediate neighborhood but also neighborhoods of similar types in the city or area. Furthermore, neighborhood stations provide the most relevant information about trends and compliance with standards because they often represent conditions in areas where people commonly live and work for periods comparable to those specified in the NAAQS. See 40 CFR part 58, appendix D, sections 2.8.0.4 and 2.8.0.5.

Most of the monitors in the SJV network are neighborhood scale sites with the objective of assessing population exposure. Since the majority of the SJV's population resides in urbanized areas along the Highway 99 corridor and since many of the emission sources are mobile or traffic-related, we believe this is an appropriate focus of the monitoring network. 2003 TSD at page 5.

The District also monitors in locations in addition to the Highway 99 locations,

e.g. Corcoran, Taft, and Hanford.¹² Thus, the District network does represent the source types that make up the majority of emission sources in the western and eastern portions of the SJV. The monitoring locations at Corcoran and Hanford are both rural locations surrounded by agricultural sources of PM-10. Since it is not feasible for the District to monitor in every rural location, these sites can be viewed as representative of other unmonitored locations in the Valley.

Comment 10: The commenter points out that back in the 1990s, there were at least four monitoring sites in what can be considered the rural west side. These sites, located at Los Banos, Five Points, Kern Wildlife Refuge, and Kettleman City, were all shut down in the mid-1990s with little or no explanation, consultation with EPA or public notification, as required by 40 CFR 58.26(e). These monitors were mentioned in passing in the District's 1994 Air Monitoring Network Report as "not necessary" and "resource intensive" and were to be closed to "redirect resources." The commenter notes that the Five Points monitor monitored sizeable violations until 1993, the year it disappeared from the District's network.

Response: The public notification requirement in 40 CFR 58.26(e) cited by the commenter was part of the monitoring regulation revisions made to implement the PM-2.5 NAAQS (62 FR 38833 (July 18, 1997)) and applies only to that pollutant:

After 3 years following September 16, 1997 or once a monitoring area has been determined to violate the NAAQS, then changes to an MPA monitoring network affecting the valuating locations shall require public review and notification.

"MPA" stands for "Monitoring Planning Area" and "means a contiguous geographic area * * * having a common area that is used for planning monitoring locations for PM 2.5" Emphasis added. 40 CFR 58.1.

Moreover, EPA generally defers to a State or local agency's judgment in determining which SLAMS to operate in a network as long as the overall monitoring objectives in our regulations are being met. However, EPA would object if an agency discontinued a design value site or a site with unique source characteristics that is violating the NAAQS.

In 1993–1994 the District and CARB operated 18 monitoring sites in the

¹¹ See also "SLAMS/NAMS/PAMS Network Review Guidance" EPA-454/R-98/003, March 1998, section 2.1.2.

¹² See "State and Local Air Monitoring Network Report—2005" San Joaquin Valley Unified Air Pollution Control District. Planning Division, August 2005.

Valley. Three sites were shut down at the end of 1993: Los Banos, Kern Wildlife Refuge, and Five Points. Los Banos and Kern Wildlife Refuge were never in violation of the PM-10 NAAQS so the District's decision to shut them down for any of the reasons cited by the commenter would not have been questioned by EPA.

The Kettleman City monitor continued to run until 1996. This monitor did record 5 exceedances of the 24-hour PM-10 NAAQS during the period 1990 to 1993 but was in attainment of the PM-10 NAAQS from 1994 to 1996 when it was discontinued.

While Five Points was a violating monitor, it was not unique in that there were other monitors in the Valley that operated in areas subject to the same type of agricultural emission sources. In the year that it was shut down there were significantly higher and more frequent exceedances of the NAAQS at the Corcoran monitoring site. Consequently, there was no restriction preventing the District from discontinuing it. In addition, because this site was in a largely uninhabited area it was not as useful as other sites in the network for assessing population exposure to PM-10 air pollution.

The Corcoran monitoring site has always been one of the highest-reading sites¹³ in the District's PM-10 network and that site has run continuously¹⁴ since the PM-10 NAAQS has been in existence. The Corcoran site is very similar to the Five Points site in terms of the surrounding land use (agricultural). During the period 1986 to 1993 the Five Points site recorded six exceedances of the 24-hour NAAQS,

and only one year that exceeded the annual NAAQS (1988 with a 52 $\mu\text{g}/\text{m}^3$). In comparison, during the same time period, Corcoran showed 21 observed exceedances of the 24-hour NAAQS and exceeded the annual NAAQS every year during that time period (the maximum annual concentration was 70.2 $\mu\text{g}/\text{m}^3$ in 1991). The Corcoran site also monitors in an area where there is greater population, which makes it a more desirable site.

Comment 11: The commenter and other individual citizens state that the unmonitored (since mid-1990s) west side of Highway 99 is a large area of the SJV where monitoring is needed in order to understand the impacts of PM-10 pollution on the rural communities affected by intense agricultural operations and to fulfill federal monitoring objectives.

Response: As stated previously, the District does monitor in areas of intense agricultural activity that are similar to and thus representative of conditions in other rural communities, including the western portion of the District. There may be site-specific reasons to monitor on the west side of the Valley for reasons beyond measuring attainment of the NAAQS, e.g. reporting more specific air quality information for people living and working in the western portion of the Valley for other health-related purposes. However, EPA believes that for the purposes of determining attainment, the current monitoring network, since it meets the requirements and objectives of the federal monitoring regulations, is representative of conditions throughout the Valley and thus is adequate for making an attainment determination.

Comment 12: The commenter asserts that while the District claims that PM-10 levels in the SJV have greatly improved, these improvements come from a monitoring network that has gotten significantly smaller. In 1993, the commenter claims that there were 22 sites monitoring for PM-10 across a wider swath of the SJV, while today there are only 15 sites concentrated along Highway 99. Given this narrow slice of the SJV under surveillance, it is unreasonable for EPA to declare the area in attainment of PM-10 without first making a meaningful evaluation of the adequacy of the monitoring network.

Response: As stated above, EPA evaluated the SJV PM-10 monitoring network in 2003 and found it to be adequate under EPA regulations and guidance. 2003 TSD. That said, the District's claim that PM-10 levels in the Valley have improved is correct. The improvement in air quality is clearly evident from an examination of the air

quality data for the last 19 years. The document "United States Environmental Protection Agency Quicklook Criteria Parameters" dated October 5, 2006 provides a summary of PM-10 data collected in the SJV since 1987.

While the monitoring network has seen a reduction in the number of sites over this time period, from a high of 23 monitoring sites in 1990 to the current 15 sites that have made up the District network since 1999, most monitoring networks evolve over time and vary in size. Most of the sites shut down by the District during the past 19 years were in attainment of the PM-10 NAAQS for the previous three years. Some discontinued sites were replaced by new, nearby sites (Fresno, Drummond replaced Fresno, Olive; Fresno, 1st Street replaced Fresno, Cal State; Bakersfield, California Ave. replaced Bakersfield, Chester Street; Taft College replaced Taft, 10th Street; Corcoran, Patterson replaced Corcoran, Van Dorsten; Hanford, Irwin replaced Hanford, Lacey; Merced, M Street replaced Merced, E Street; Modesto, 14th Street replaced Modesto, City Center).¹⁵ Some sites were shut down and not replaced (Fresno Five Points, Kern Wildlife Refuge, Kettleman City, Madera Library, Madera Health Dept., Los Banos, Modesto I street, Crows Landing). Generally these sites were in attainment of the PM-10 NAAQS.¹⁶ Other new sites were established where previously there were no monitors. (Fresno, Clovis; Bakersfield, Golden State Hwy.; Stockton, Wagner; Turlock). The following table summarizes the monitoring sites in the Valley that have been operational over the past 19 years and illustrates that the monitors in the current network are not less representative of air quality throughout the SJV than the network that existed in 1993.

¹⁵ CARB recommends that Districts perform "parallel monitoring" when proposing to relocate a monitoring site. While parallel monitoring is not a required activity when relocating a site, parallel monitoring data is often the best way to determine if important monitoring objectives for the existing site will be satisfactorily continued at the replacement site. See the document "Site Relocation and Parallel Monitoring Guidelines" June 1997, California Air Monitoring and Technical Advisory Committee.

¹⁶ Two sites shut down were in violation of the 24-hour PM-10 NAAQS. Fresno Five Points, which was discontinued in 1993, had recorded a single exceedance of 190 $\mu\text{g}/\text{m}^3$ in 1993, but had no exceedances in 1991 and 1992. Crows Landing in Stanislaus County, which was discontinued in 1991, had a single exceedance in 1990 of 180 $\mu\text{g}/\text{m}^3$, but recorded no exceedances in 1989 or 1991.

¹³ The Corcoran site has had multiple PM-10 monitoring instruments in operation during its history, including three federal reference method (FRM) high volume samplers, a beta attenuation mass (BAM) analyzer, and a tapered element oscillating microbalance (TEOM) analyzer. At present, the site operates three FRM high volume samplers and a TEOM analyzer. The BAM and TEOM analyzers are not FRMs but have been designated as federal equivalent method (FEM) monitors by EPA. Two of the three FRM samplers have been designated by the District as the primary, or SLAMS, samplers for the Corcoran monitoring site. The third FRM is operated for quality control purposes.

FRMs are manual samplers that pull air through a filter for 24 hours (midnight to midnight). The filters are then weighed in a lab and a PM concentration is calculated based on the mass increase of the filter and the volume of air drawn through it. The two primary FRMs operate on a staggered one in six day schedule such that a sample is collected once every three days.

¹⁴ The original Corcoran site was located on Van Dorsten Avenue and ran from 1986 to 1998. The current Corcoran site at Patterson Avenue began monitoring in 1997 and continues at this time. The Patterson Avenue site is approximately 1.1 miles north of the Van Dorsten Avenue site and has similar site characteristics.

Site	Year																		
	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05
Fresno Olive	X	X	X	X															
Fresno Drummond			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Fresno 1st St				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Fresno Cal State	X	X	X	X															
Fresno Five Points	X	X	X	X	X	X	X												
Fresno Clovis					X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Bakersfield Chester	X	X	X	X	X	X	X	X											
Bakersfield Golden								X	X	X	X	X	X	X	X	X	X	X	X
Bakersfield CA Ave								X	X	X	X	X	X	X	X	X	X	X	X
Oildale	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Kern Wildlife Refuge			X	X	X	X	X												
Taft 10th Street	X	X	X	X															
Taft College				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Cocoran Van Dorsten	X	X	X	X	X	X	X	X	X	X	X	X							
Corcoran Patterson										X	X	X	X	X	X	X	X	X	X
Hanford Lacey	X	X	X	X	X	X	X												
Hanford Irwin							X	X	X	X	X	X	X	X	X	X	X	X	X
Kettleman City	X	X	X	X	X	X	X	X	X	X									
Madera Library	X		X	X	X	X	X	X	X	X									
Madera Health Dept.			X	X															
Los Banos		X	X	X	X	X	X												
Merced E Street		X	X	X	X	X	X	X	X	X									
Merced M Street													X	X	X	X	X	X	X
Stockton Hazelton	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Stockton Wagner										X	X	X	X	X	X	X	X	X	X
Modesto I Street			X	X	X	X	X	X	X	X	X	X							
Modesto City Center	X	X	X	X															
Modesto 14th Street			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Turlock								X	X	X	X	X	X	X	X	X	X	X	X
Crows Landing		X	X	X	X														
Visalia	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

X indicates the site was operational in that year.
Source: EPA's AQS Database.

Comment 13: The commenter states that, in addition to their failure to demonstrate the adequacy of the network, EPA and the District have also failed to provide records attesting to the proper functioning and maintenance of the particular monitors used to

determine attainment. While EPA uses claims of improper maintenance to ignore data from continuous monitors, it never establishes that the data it is considering is in fact reliable and comes from a properly maintained network. The commenter further claims that the

record before EPA fails to demonstrate that the network complies with 40 CFR part 58 and therefore EPA must collect additional information as required by regulations and provide it to the public before it can cherry pick the data to be used for the attainment determination.

Response: Contrary to the commenter's contention, the FRM data on which EPA is basing its attainment decision is reliable and from instruments that are properly functioning and maintained in accordance with 40 CFR 58 and its appendices. EPA's confidence in the data is based on records submitted by the State that demonstrate that the network operations which produced the data meet, or in some cases exceed, the requirements in our regulations at 40 CFR part 58.

EPA and its regulations provide for different types of requirements to assure the quality of data, depending upon the types of equipment used to measure PM-10. There are two categories of instruments that can be used to measure PM-10 concentrations in the ambient air, manual reference method samplers and automated equivalent method or continuous analyzers.¹⁷

A manual reference method sampler provides a 24 hour average concentration value for PM-10 in the ambient air. A manual reference method sampler uses a filter medium through which ambient air is drawn at a near constant flow rate for a period of 24 hours (midnight to midnight). This flow rate through the filter is an important parameter and must be recorded accurately. Monitoring the actual flow rate to verify that the designed flow rate is being maintained during the 24-hour period is important because the inlet of the sampler will ensure the needed separation of particles 10 microns or less in diameter from larger particles only if the proper flow rate is maintained. Also, the flow rate measurement provides us with the total volume of air drawn through the filter during the 24-hour period. The total volume of air is needed to calculate the PM-10 concentration.

The filters used in PM-10 manual reference method samplers are weighed in a laboratory before they are installed in the sampler and weighed again after air has been drawn through the sampler for 24 hours. The pre-sampled mass of the filter is subtracted from the post-sampled mass and the result is the total mass of PM-10 collected. This total mass is divided by the total volume of air to determine the 24 hour average PM-10 concentration. In the best case a manual sampler can provide a 24 hour average concentration in about two days

from the day a sample was collected. In practice and depending on a number of factors (e.g. how many filters the lab has to process, the distance between the laboratory and the monitoring site, on what day of the week a sample was taken) processing the filters in a laboratory and calculating the concentration can take a few weeks, on average.

Automated equivalent methods or continuous analyzers, such as Beta Attenuation Mass (BAM) or Tapered Element Oscillating Microbalance (TEOM) monitors, use one of two alternative measurement approaches (beta ray attenuation or mass-dependent oscillation frequency) to avoid the need to collect PM-10 on a filter medium that must subsequently be weighed in a laboratory. Continuous analyzers report PM-10 concentrations over short intervals in near real time. The analyzers can be (and typically are) configured to report the average 24 hour PM-10 concentration just as a manual reference method does.

As discussed elsewhere in this action, the SJV PM-10 SLAMS network consists of 15 monitoring sites using manual reference method samplers. These samplers operate on a once every six day schedule except for the site at Corcoran, which operates once every three days because it has two samplers operating on staggered once every six day schedules. Corcoran's sampling frequency is twice that of other sites in the SJV PM-10 SLAMS network because it is historically the highest reading PM-10 site in the network.

One of the goals in any data collection effort is to be able to quantify measurement uncertainty. Measurement uncertainties are the errors associated with the ambient air monitoring agency, including errors associated with the field, preparation and laboratory measurement phases. At each measurement phase, errors can occur, that in most cases are additive. Air quality monitoring agencies aim to control measurement uncertainty to an acceptable level through the use of various quality control and evaluation techniques. Two of the primary checks used to evaluate measurement uncertainty are precision and accuracy checks. We will discuss each of these procedures below in more detail. An important point to understand is that in addition to allowing an evaluation of the uncertainty in the data that has been collected, these checks can reveal equipment or procedural problems that can be corrected. They can also lead a monitoring agency to disqualify or withdraw data collected in a period before a check revealed a problem, on

the reasonable assumption that the data was affected by the problem.

EPA regulations at 40 CFR part 58, appendix A, section 3.0.1 states that "All ambient monitoring methods or analyzers used in SLAMS shall be tested periodically, as described in this section, to quantitatively assess the quality of the SLAMS data." Precision checks are a measurement of mutual agreement among individual measurements of the same property usually under prescribed similar conditions, expressed generally in terms of standard deviation. There are different ways to determine the precision of PM-10 monitoring networks depending on whether the network utilizes manual reference methods or automated equivalent methods. Precision checks of manual and automated methods are addressed in 40 CFR part 58, Appendix A, sections 3.3 and 3.1, respectively.

The SJV PM-10 SLAMS network is a subset of the larger California PM-10 SLAMS network.¹⁸ Section 3.3 of Appendix A discusses how to establish the precision of a PM-10 network made up of manual method samplers, which applies to the SJV PM-10 SLAMS network. The requirement is to operate a certain number of collocated monitoring sites, i.e., duplicate samplers, depending on the total number of samplers in the network: 1 collocated site for networks consisting of up to five sites, 2 collocated sites for networks consisting of 6 to 20 sites, and 3 collocated sites for networks of 20 or more sites. These collocated samplers must run on the same days as the primary samplers and must be run on at least a once every six days schedule.

The California State PM-10 SLAMS network consists of 97 monitoring sites and has five collocated sites located at Bakersfield, Visalia, Taft, Corcoran, and Sacramento. The first four of these listed collocated monitoring sites are located in the SJV. If the SJV PM-10 network was evaluated separately from the rest of the State network, EPA regulations would only require two collocated precision sites. From this perspective, there are twice the number of collocated precision sites as required by EPA regulations. Each of these samplers will produce a pair of concentrations on a

¹⁷ All equipment designated by EPA as approved for NAAQS comparisons can be found in the document "List of Designated Reference and Equivalent Methods", USEPA, National Exposure Research Laboratory, July 26, 2006 available at the Web site <http://www.epa.gov/ttn/amtic/files/ambient/criteria/ref0706.pdf>.

¹⁸ For the purposes of EPA quality assurance requirements, the California PM-10 SLAMS network is defined as those PM-10 monitors designated as SLAMS in the CARB document "California State and Local Air Monitoring Network Plan—2005" Planning and Technical Support Division, Air Quality Branch, October 2006 with the exception of PM-10 SLAMS monitors operated by the South Coast AQMD, the Bay Area AQMD, and the San Diego APCD.

given sampling day.¹⁹ These concentrations must be greater than 20 $\mu\text{g}/\text{m}^3$ in order to be used in determining the precision of the network. According to the CARB QA manual, if concentrations are below 80 $\mu\text{g}/\text{m}^3$, the two paired values must be within 5 $\mu\text{g}/\text{m}^3$ of each other, or further investigation and corrective action are required. If the concentrations are greater than 80 $\mu\text{g}/\text{m}^3$ they must be within ± 7 percent of each other.²⁰ These acceptance criteria are consistent with EPA criteria in the guidance document "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II: Part 1, Ambient Air Quality Monitoring Program Quality System Development", (EPA-454/R-98-004, August 1998).

EPA's QA guidance cited above provides a target for the system-wide precision performance, taken across all pairs of collocated data. EPA regulations at 40 CFR part 58, appendix A section 5.3 requires 95 percent upper and lower probability limits be used to evaluate the collocated data. The target given in the guidance for the 95th percentile upper and lower limits for reporting organizations is 15 percent. The annual precision summary statistics for the CARB PM-10 SLAMS network meet these requirements as shown in the AQS Report "P/A Reporting Organization Summary, AMP 240."

Establishing precision for automated equivalent method analyzers, such as BAM or TEOM monitors, consists of performing a bi-weekly one point precision check of an analyzer's operational flow rate. See 40 CFR part 58, appendix A, section 3.1. The check is made using a flow rate transfer standard. The actual flow rate measured by the transfer standard and the indicated flow rate of the analyzer (the flow rate as measured by the analyzer's own flow rate meter) are reported to the AQS database. In the case of the

automated equivalent analyzers operated by the District as special purpose monitors rather than as SLAMS monitors, these precision checks were not made in accordance with Appendix A section 3.1 and therefore EPA cannot have the same confidence in these data as we have in the SLAMS data. Without performing the precision checks, the District may have overlooked operational problems and allowed them to affect the data from the special purpose monitors, and without the precision check data we have no way to evaluate the acceptability of the data.

The other primary data quality control (QC) check for proper operation and maintenance of a monitor is the accuracy check. As with the precision checks, there are two different procedures for determining the accuracy of PM-10 monitors depending on whether we are checking a manual reference method or an automated equivalent (continuous) analyzer. These two procedures are addressed in 40 CFR part 58, Appendix A, sections 3.4 and 3.2 respectively.

For the SJV PM-10 SLAMS network that used manual reference method samplers, the procedures in section 3.4 are used to determine accuracy. The procedure entails auditing the flow rate of each sampler annually such that 25 percent of the network²¹ is audited each calendar quarter. An independent auditor (i.e., not the person who regularly operates the sampler) using dedicated equipment (i.e., not the flow meter built into the sampler) audits the flow rate of the sampler and reports the actual flow rate and the indicated (sampler) flow rate. Two measurement quality parameters are calculated from these measurements: The percent difference in the flow rate measurements by the sampler's own flow rate meter and the auditor's dedicated flow rate meter, and the percent difference between the actual

flow rate created by the sampler and the flow rate it was designed to have. Percent differences beyond acceptance limits can cause an incorrect measurement of PM-10 concentrations. As the QA oversight agency, CARB's QA section performs the accuracy audits of the SJV PM-10 SLAMS network. These accuracy audits were performed by CARB as required by EPA regulations, and showed that the monitors were operating within the accepted control limits, i.e., the flow rates had not deviated enough from their design flow rates to require any corrective action on the part of the CARB or District monitoring staff. The results of the accuracy checks performed by CARB were submitted to EPA and are shown in the AQS Report "P/A Reporting Organization Summary, AMP 240." The following table summarizes the accuracy results for the individual audits of the PM-10 monitors in the SJV. The table shows the date of each audit (one per year) the differences in the flow rate measurement by the sampler's own flow rate meter (% Diff.) and the difference between the actual flow rate created by the sampler and the flow rate it was designed to have (% Diff. Design). This information shows that the monitors operated in the SJV PM-10 SLAMS network are performing within the acceptance criteria established by EPA in its QA guidance, which sets a target confidence interval for the 95th percentile upper and lower limits aggregated across the reporting organization of 20 percent, over a three year period. The CARB PM-10 SLAMS network easily meets this target based on the small differences shown in the table below. CARB's performance of these audits at the required frequencies and subsequent submittal of the results of the audits to EPA's AQS database meets the requirements of 40 CFR part 58, appendix A, section 3.4.

	Audit date	Sampler ID	% Diff.	% Diff. design
Bakersfield-Golden	6/4/2003	4121	0.0	-6.8
	7/13/2004	2456	6.8	-4.3
	10/5/2005	4121	5.3	-5.7
Clovis	6/18/2003	7380	-2.2	0.7
	7/29/2004	4040	-2.9	3.0
	11/7/2005	4040	0.3	-0.5

¹⁹ Because it operates on a one in three day sampling schedule and is also a collocated precision site, the Corcoran monitoring site has three manual reference method samplers in operation, two that run concurrently and a third

that runs on the staggered one in six day schedule that enables the site to produce data every three days.

²⁰ State of California Air Resources Board, Air Monitoring Quality Assurance, Volume I, Quality

Assurance Plan, Monitoring and Laboratory Division, June 2005.

²¹ In this case, 25 percent of the network applies to the California State PM-10 SLAMS network not the SJV PM-10 SLAMS network.

	Audit date	Sampler ID	% Diff.	% Diff. design
Corcoran-Patterson	2/4/2003	1885	-2.6	7.0
	2/4/2003	4645	2.0	-2.0
	2/4/2003	4120	-8.0	3.0
	3/11/2004	1885	-0.7	0.5
	3/11/2004	4645	1.3	-1.5
	3/11/2004	4120	-0.7	0.5
	1/26/2005	1885	0.0	-0.7
	1/26/2005	4645	0.3	-1.0
	1/26/2005	4120	0.0	0.0
Fresno—Drummond	2/19/2003	4069	1.8	-2.2
	2/25/2004	4069	-2.3	-0.7
	3/1/2005	4069	4.3	-1.0
Hanford	2/4/2003	3048	-8.7	-2.5
	3/10/2004	1884	2.5	-1.3
	1/25/2005	1884	0.0	-3.8
Merced-M St.	3/4/2003	4756	-5.3	7.5
	2/26/2004	4756	2.8	-3.5
	1/25/2005	4756	6.8	-8.0
Stockton—Wagner—Holt	6/18/2003	3519	0.0	0.5
	12/16/2004	3519	0.3	-2.2
	11/28/2005	3519	4.8	-7.0
Taft	2/3/2003	8008	-11.7	7.2
	2/3/2003	7787	-5.4	6.5
	3/15/2004	8008	-9.0	-2.2
	3/15/2004	7787	-4.3	9.5
	3/14/2005	8008	5.2	-4.0
	3/14/2005	7787	3.6	-2.5
Turlock	3/11/2003	4161	-1.0	-1.8
	3/2/2004	4161	-8.5	6.3
	2/24/2005	3519	0.0	-3.8
Bakersfield-CA	3/11/2003	20018176	-0.2	2.0
	3/11/2003	20018177	0.0	2.2
	3/16/2004	20018176	-2.2	3.8
	3/16/2004	20018177	-2.2	3.8
	3/8/2005	20018176	0.3	-0.3
	3/8/2005	20018177	1.0	-0.7
Fresno-First	6/16/2003	20018504	1.0	2.5
	7/28/2004	7660	-1.7	4.3
	7/26/2005	7660	0.7	1.5
Modesto-14th St	3/3/2003	20003727	-1.3	-3.0
	3/3/2004	20003727	-2.0	2.5
	2/23/2005	20003727	0.5	0.0
Oildale	3/12/2003	20004244	1.8	-0.3
	3/17/2004	20004244	-1.0	2.8
	3/10/2005	20004244	1.0	-1.0
Stockton-Hazelton	11/19/2003	20004282	1.0	0.5
	12/16/2004	20004282	0.5	0.0
	12/1/2005	20004282	0.8	-1.8
Visalia	6/12/2003	7471	0.0	1.3
	6/12/2003	7678	1.3	0.0
	7/27/2004	7471	-1.7	4.7
	7/27/2004	7678	-1.4	4.3
	7/28/2005	7471	0.5	2.2
	7/28/2005	7678	2.8	0.0

The accuracy audit for the automated equivalent analyzer is similar to that for manual reference methods. See 40 CFR part 58, appendix A, section 3.2.2. Like the audit performed for the manual reference methods the audit required for automated analyzers is a field audit. However, as discussed in this notice, no accuracy audits of the automated analyzers operated by the District were performed, and therefore EPA cannot assess the accuracy of these monitors. Because the flow-related components of the manual reference method samplers

and of the automated equivalent analyzers are different in design and materials, the good performance of the manual samplers cannot be extrapolated to the automated analyzers.

Additionally, annual certifications of quality control standards (e.g., a flow rate meter) are critical in order to insure that the checks and measurements being made are traceable to National Institute of Standards and Technology (NIST) standards. See 40 CFR part 58, appendix A, section 2.3.3. This certification is achieved by transferring the accuracy or

authority of a primary standard to a field-usable standard. Also, calibrations of the internal flow rate meters of PM-10 samplers, which are generally performed annually or after sampler repairs, also ensure that these meters are functioning correctly. The following table lists the calibration dates of the internal flow rate meters of the SLAMS monitors in the SJV network. Calibrations of the flow rate meters are usually performed when a sampler is first installed at a site or after repair. While EPA regulations and guidance do

not specify a frequency for performing calibrations of flow rate meters, performing them annually regardless of whether the instrument required it demonstrates a good operation practice by the District and CARB.

	Sample ID	Cal. date
Bakersfield-Golden	4121	2/27/2003
	2456	5/25/2004
	4121	12/15/2004
Clovis	7380	3/13/2003
	4040	7/27/2004
	4040	10/6/2005
Corcoran-Patterson	1885	10/28/2002
	4645	1/30/2003
	4120	10/28/2002
	1885	11/12/2003
	4645	12/9/2003
	4120	12/9/2003
	1885	10/5/2004
	4645	1/5/2005
	4120	9/2/2004
Fresno-Drummond	4069	11/12/2002
	4069	2/24/2004
	4069	12/21/2004
Hanford	3048	10/14/2002
	1884	10/15/2003
	1884	8/4/2004
Merced-M St	4756	10/9/2002
	4756	2/10/2004
	4756	12/9/2004
Stockton-Wagner—Holt	3519	2/20/2003
	3519	9/10/2004
	3519	7/20/2005
Taft	8008	11/19/2002
	7787	10/25/2002
	8008	2/26/2004
	7778	2/26/2004
	8008	8/18/2004
	7778	8/18/2004
Turlock	4161	1/23/2003
	4161	7/16/2003
	3519	2/23/2005
Bakersfield—CA	20018176	3/7/2002
	20018177	3/7/2002
	20018176	3/9/2004
	20018177	3/9/2004
	20018176	6/3/2004
	20018177	6/16/2004
Fresno—First	20018504	6/13/2003
	7660	1/21/2004
	7660	2/28/2005
Modesto—14th St	20003727	1/17/2003
	20003727	2/10/2004
	20003727	2/11/2005
Oildale	20004244	2/27/2003
	20004244	1/8/2004
	20004244	1/31/2005
Stockton—Hazelton	20004282	11/12/2003
	20004282	12/9/2004
	20004282	11/9/2005
Visalia	7471	5/20/2003
	7678	5/20/2003
	7471	5/20/2003
	7678	5/20/2003
	7471	11/24/2004
	7678	11/24/2004

As detailed above, CARB has certified and submitted quarterly ²² to EPA's AQS database, all the supporting QA data for the SJV SLAMS PM-10 network, including data collected by the collocated precision network and all required audit data. This data shows that the operation and maintenance of the SLAMS network met the requirements of sections 3.3 and 3.4 of Appendix A Part 58. By contrast the required number of precision checks and independent flow rate audits were not performed on the automated equivalent (BAM and TEOM) method monitors pursuant to sections 3.1.2 and 3.2.2 nor was data on the precision checks that were performed on the BAM monitors submitted to the AQS database as required by 40 CFR part 58, appendix A, section 4.1.²³ Thus EPA is not, as the commenter contends, "cherry picking" data, but rather relying for its determination on data that has met the requirements for reliability under its regulations.

F. Data Not Included in Determining Attainment

1. Data From September 3, 2004 High Wind Event

Comment 14: The commenter questions the validity of waiving the September 3, 2004 exceedance as a Natural Events Action Plan (NEAP) ²⁴ event and states that there is no technical basis for ignoring the exceedance and that best available control measures (BACM) were not being implemented for the largest sources of dust in the Valley on that date. The commenter notes that removal of the flag puts the Valley right at the limit of violations allowed under the NAAQS and should make EPA wary to

find the PM-10 problem solved in the Valley.

Response: The exceedance in question occurred at the Corcoran-Patterson Avenue monitoring site. EPA notes in its proposed rule that "[t]his exceedance was flagged by CARB as a high wind natural event [and] EPA concurred with CARB's request to exclude this data from consideration in attainment findings on July 7, 2005." However, "even if EPA had not concurred with the exclusion of this data, the Corcoran site would still attain the 24-hour NAAQS because the expected number of exceedances ²⁵ is less than or equal to one per year, averaged over the three year period 2003–2005." 71 FR 40952, 40954. In other words, EPA believes that it need not address here the issue of whether or not the September 3, 2004 exceedance should be flagged, because in any event the SJV would still be attaining the PM-10 standards. In addition, whether the SJV is "at the limit" of exceedances allowed under the NAAQS is not a criterion for making an attainment determination. Areas are either attaining or not attaining. EPA found that the area would still be attaining even if this exceedance were included, and on that basis determined that the area was in attainment. As noted above, EPA believes that preliminary data indicating a September 22, 2006 exceedance at the Corcoran monitor should also not be included in this attainment determination for the reasons stated previously relating to quality assured data and natural events.

Nevertheless, EPA notes that the attainment determination does not mean the air quality problem is solved in the SJV. In order to be redesignated as a PM-10 attainment area, the District and

CARB will need to address CAA section 107(d)(3)(E) requirements. In addition, the SJV is nonattainment for the PM-2.5 and 8-hour ozone standards and will need to achieve substantial further reductions in pollution levels to attain these NAAQS. The commenter's implicit concern is that EPA's action will somehow allow the SJV to relax its efforts to reduce air pollution; however, EPA does not believe that is the case.

2. Data From BAM and TEOM Monitors

Comment 15: The commenter states that there are four Beta Attenuation Mass (BAM) monitors (designated by EPA as federal equivalent methods and also referred to as "special purpose monitors") in the Valley that monitor PM-10 concentrations and that two of these monitors (Bakersfield-Golden State Highway and Corcoran-Patterson Avenue) have recorded multiple exceedances of the Federal PM-10 standard from 2003 to 2005. The commenter states that all valid data from special purpose monitors must be considered within the regulatory process and that EPA's rationale (that the District did not perform quality control checks every two weeks and that CARB did not perform independent field audits of the BAM sampler) for not considering data from the Corcoran BAM monitor is not adequate.

Response: The District and CARB have operated automated equivalent (continuous) method monitors in the SJV at a number of PM-10 SLAMS sites. The following table summarizes the type (BAM or TEOM), location and history of operation of the PM-10 continuous monitors operated in the Valley.

Monitoring site	BAM operational period	TEOM operational period
Bakersfield Golden State Hwy	7/28/2005–8/8/2006	8/27/2006–Present.
Corcoran	Before 1/1/2003–7/22/06	1/1/2003–3/31/2005. 8/24/2006–Present.
Fresno 1st Street	Before 1/1/2003–Present	Before 1/1/2003–Present.
Stockton	NA	Before 1/1/2003–June 28, 2005.
Tracy	10/25/2005–9/26/2006	10/1/2006–Present.

²² EPA regulations require the submittal of precision and accuracy data on a quarterly basis, as it does for the pollutant concentration data. See 40 CFR 58.35 and 40 CFR part 58, appendix A, section 4.1.

²³ The District did perform some precision checks of the BAM monitor at Corcoran but these were considerably fewer than required in EPA regulations. See response to comment 15. Section 3.1.2 requires the checks to be performed at a designated frequency and the data submitted to the AQS database.

²⁴ See memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation to Regional Air Directors, "Areas Affected by PM-10 Natural Events," May 30, 1996.

²⁵ EPA determines attainment of the 24 hour PM-10 NAAQS based on the number of "expected" exceedances in a given year. Because most manual PM-10 samplers do not operate every day but on a one in six day schedule, EPA regulations at 40 CFR part 50, Appendix K require an adjustment to the observed or actual number of exceedances to account for days that are not sampled. In the simplest case, when a monitor operating once every

six days, with 100% data capture, records a single observed exceedance, that exceedance would be adjusted to six expected exceedances. In the specific case of the Corcoran monitoring site and its one in three day schedule, EPA calculated the expected exceedances, based on the single observed exceedance on September 3, 2004, to be three over a three year period which averages to one exceedance per year. This expected exceedance rate of one per year shows that the Corcoran site is still in attainment of the 24-hour NAAQS. See 40 CFR part 50, Appendix K, section 3.1 for a complete discussion on how EPA adjusts data.

EPA regulations at 40 CFR part 50, appendix K, section 2.3 address the data requirements that must be met in order for EPA to determine the attainment status of a particular monitoring site. In general EPA needs three years worth of monitoring data in order to declare a site in attainment of the NAAQS. Of the four BAM monitors operated in the Valley, only Fresno 1st Street and Corcoran have been in operation long enough to have accumulated three years of data.²⁶ The Bakersfield-Golden State Highway site operated a BAM monitor from July 28, 2005 to August 8, 2006. The BAM was replaced by a TEOM monitor on August 27, 2006. The Tracy site operated a BAM monitor from October 26, 2005 to September 26, 2006. The Tracy BAM was replaced by a TEOM monitor on October 1, 2006. EPA's attainment determination is based on three complete years of data from 2003–2005. Therefore, the data from these BAM and TEOM monitors at Bakersfield Golden State Highway and Tracy cannot be used to determine that these sites are in attainment.

Furthermore, the BAM monitor at Tracy did not record any exceedances of the 24-hour PM₁₀ NAAQS in 2005, though an exceedance was recorded on September 22, 2006 (160 µg/m³). The Bakersfield-Golden State Highway automated equivalent monitors recorded three exceedances of the NAAQS during their operation, a value of 156 µg/m³ on November 22, 2005 and a value of 180 µg/m³ on November 23, 2005 (recorded on BAM monitors). Another exceedance (169 µg/m³) was recorded by the Bakersfield-Golden State Highway TEOM on September 22, 2006.²⁷ Under 40 CFR 50.6, “[t]he standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 µg/m³ * * * is equal or less than one.” Therefore, because neither the Tracy nor the Bakersfield-Golden State Highway BAM monitor has averaged more than one exceedance per year, the exceedances recorded at these monitors do not show that the area is in violation of the 24-hour NAAQS. Even if the Bakersfield-Golden State Highway BAM

and TEOM data are considered together (and even if they were quality-assured data not subject to natural events), the exceedances recorded at these monitors would not show that the area is in violation of the standard. See Responses 18 and 19.

Automated equivalent analyzers are also operated at the Fresno 1st site and the Corcoran site. See table on BAM and TEOM operating histories above. The Fresno 1st site has operated both a BAM monitor and a TEOM monitor for long enough that there is a three year data set for both analyzers. Neither the BAM nor the TEOM operated at Fresno 1st Street recorded any exceedances of the 24-hour NAAQS during the 2003–2005 period, and both continue to show attainment through October 11, 2006.

The Corcoran site operated both a BAM monitor and a TEOM monitor during its history. See the table above on BAM and TEOM operating histories. The automated equivalent analyzers operated at the Corcoran site did record exceedances²⁸ as summarized in the following table:

CORCORAN AUTOMATED EQUIVALENT ANALYZER—PM₁₀ EXCEEDANCES 2003–2006

Date (type of analyzer)	Concentration (µg/m ³)
10/10/2003 (BAM)	182
10/18/2003 (BAM)	156
10/21/2003 (BAM)	157
10/28/2003 (BAM)	158
9/3/2004 (BAM)	*217
11/21/2005 (BAM)	166
11/22/2005 (BAM)	177
11/23/2005 (BAM)	185
11/26/2005 (BAM)	166
2/27/2006 (BAM)	179
9/22/2006 (TEOM)	**261

*The manual reference method monitor at Corcoran also recorded an exceedance of the NAAQS on this day that the State flagged as a high wind event under EPA's Natural Events Policy.

**As noted previously the District and CARB have informed EPA that they believe that exceedances recorded on September 22, 2006 are due to high wind and wildfire natural events.

However, the data was not considered by EPA in its attainment determination because the District did not perform the flow rate checks of the BAM monitors as required by EPA regulations at 40 CFR part 58, appendix A, section 3.1.2 and CARB did not perform independent flow rate audits as required by 40 CFR

part 58 appendix A, section 3.2.2. See Response to comments 7 and 13 above.²⁹

In determining which data to use in regulatory actions, EPA needs to determine whether the data meets our basic requirements. If it does not then we cannot use the data in regulatory

decisions. During the three-year period of 2003–2005, the District only performed 10 of the 78 required bi-weekly flow rate checks and CARB never performed an independent audit of the BAM monitor's flow rate, which is required annually. While the commenter implies that this is a minor

²⁶ While it is necessary to have three years of representative monitoring data to demonstrate that a monitor is attaining the standard, 40 CFR part 50, appendix K, section 2.3(c) states that there are less stringent data requirements for showing that a monitor has failed to attain. Since the 24-hour PM₁₀ standard is violated once a monitor averages more than one expected exceedance per year (averaged over three years), a monitor with four or more observed or expected exceedances has violated the 24-hour NAAQS even if there is less

than three years of data (four exceedances divided by three years is greater than one per year).

²⁷ As noted previously the District and CARB have informed EPA that they believe that exceedances recorded on September 22, 2006 are due to high wind and wildfire natural events.

²⁸ An exceedance is defined as a daily value that is above the level of the 24-hour standard (150 µg/m³) after rounding to the nearest 10 µg/m³ (i.e. values ending in 5 or greater are to be rounded up. See 40 CFR part 50, appendix K, section 1.0.

²⁹ Under 40 CFR 58.14, because the District did not intend that data from these continuous monitors would be used for determining attainment or nonattainment, flow rate checks and audits were not required to be conducted. See May 8, 2006 letter to Wayne Nastri, Regional Administrator, EPA Region 9, from Catherine Witherspoon, Executive Officer, CARB with attached letter dated April 24, 2006 to Catherine Witherspoon, Executive Officer, CARB from Seyed Sadredin, Executive Director/Air Pollution Control Officer, San Joaquin Valley Air Pollution Control District.

deficiency, EPA believes the lack of QA/QC raises significant questions about the reliability of the Corcoran BAM monitor data and therefore concluded that it would not be appropriate to rely on data from this monitor that did not meet our regulatory requirements.

Comment 16: The commenter states that EPA cannot ignore the Corcoran BAM monitor data due to the lack of precision check of the flow meter. The commenter states that 40 CFR part 58, appendix A, section 3.1.2.2 offers an alternative procedure at section 3.1.2.2.1 for complying with the section 3.1.2 requirement for a precision check of the operational flow rate of the analyzer. The alternative procedure involves checking the BAM monitor's internal flow meter (vs. using an external flow rate transfer standard) and requires an external audit of the flow rate at least every six months, records of the past three audits showing that the flow meter is stable, and no indication of improper operation. Section 3.1.2.2.2 even allows for the precision check to be carried out remotely. The commenter states that EPA has not analyzed whether the District properly maintained the Corcoran-Patterson Avenue BAM monitor in accordance with section 3.1.2.2 and that the District's maintenance records show regular weekly maintenance, including checks of the on-screen flow rate, and also show regular external flow audits.

Response: As stated above, there are two routine quality assurance checks that need to be made to monitoring instruments to ensure that the data they are producing is reliable. One of these is a precision check. The precision check for automated PM-10 analyzers, of which the BAM monitor is one, is addressed in 40 CFR part 58, appendix A, section 3.1.2. See response to comment 13. This section requires a one-point precision check to be performed at least once every two weeks. There are two procedures that can be used to satisfy this requirement. The standard procedure is explained in section 3.1.2.1 of appendix A and the alternative procedure is explained in section 3.1.2.2 of appendix A. One of our reasons for not using data from the Corcoran BAM monitor is that the District did not perform the precision checks of its BAM monitor and submit the resulting QA data to the AQS database. The District performed neither the standard procedure nor the alternative procedure.

The commenter implies that EPA rejected the Corcoran BAM monitor data even though the District had performed the sanctioned alternative procedure. This is not true. EPA reviewed all the

maintenance records from the Corcoran-Patterson Avenue site and found that neither precision check was being performed. While the operator did check the BAM monitor's internal flow rate indicator routinely, the other requirements of 40 CFR part 58, appendix A, section 3.1.2.2 were not being met, i.e., the flow rate meter was not audited every six months and there was no documentation that the flow meter is stable, verifiable, and accurate to ± 4 percent (sections 3.1.2.2.1.1, 3.1.2.2.1.2, 3.1.2.2.1.3). See also response to comment 13 above. As stated in that response the precision check is one of the critical measurement quality checks that are needed to ensure that the device is performing as designed.

Comment 17: The commenter states that EPA also cannot dismiss the Corcoran BAM data because CARB did not perform independent field audits as described in section 3.2.2 without explaining why these audits are important in determining the reasonableness of the data. Moreover, the commenter also states that EPA must demonstrate that the FRM monitors were appropriately audited or explain why it is reasonable for the FRM monitors to not be audited while excluding the BAM monitor data due to this oversight. EPA needs a compelling rational basis for continuing to exclude all of the BAM data or EPA must consider the data in determining the Valley's attainment status.

Response: Regular audits of monitoring equipment are important in establishing the validity and accuracy of the data collected by an agency. Section 2.11.7.0 of EPA's QA Guidance document "Quality Assurance Handbook," Volume II, Part II, September 1997, states that:

[t]he primary goal of an auditing program is to identify system errors that may result in suspect or invalid data. The efficiency of the monitoring system (i.e., labor input vs. valid data output) is contingent upon effective quality assurance (QA) activities. This true assessment of the accuracy and efficiency of the PM-10 measurement system can only be achieved by conducting an audit under the following guidelines:

- Without special preparation or adjustment of the system to be audited.
- By an individual with a thorough knowledge of the instrument or process being evaluated, but not by the routine operator.
- With accurate, calibrated NIST-traceable transfer standards that are completely independent of those used for routine calibration and QC flow checks.
- With complete documentation of audit information for submission to the operating agency. The audit information includes, but is not limited to, types of instruments and audit transfer standards, instrument model

and serial numbers, transfer-standard traceability, calibration information, and collected audit data.

The audit procedures described in this section produce two quantitative estimates of a PM-10 sampler's performance: The audit flow-rate percentage difference and the design flow-rate percentage difference. The audit flow-rate percentage difference determines the accuracy of the sampler's indicated flow rate by comparing it with a flow rate from the audit transfer standard. The design flow-rate percentage difference determines how closely the sampler's flow rate matches the inlet design flow rate under normal operational conditions.

It is not clear to EPA why the commenter believes the FRM monitoring network operations do not meet EPA requirements. As discussed previously, the PM-10 SLAMS monitoring network meets EPA's QA requirements, including the requirement for independent field audits. See also Response to Comment 13 above.

Comment 18: The commenter states that neither EPA nor the District addresses the violations recorded at the Bakersfield BAM monitor. No attempt is made to discredit the data coming from that BAM monitor and no rational basis is provided by EPA for completely disregarding those data.

Response: The Bakersfield Golden State Highway BAM monitor never recorded any violations of the NAAQS. As explained above, the Bakersfield Golden State Highway automated equivalent method analyzers recorded three exceedances since the District began operation of these monitors at the site in July 28, 2005 while sampling every day. According to 40 CFR part 50, appendix K, this does not constitute a violation of the NAAQS and therefore we did not discuss it in our proposal. Since there are no violations at this BAM monitor, EPA did not need to determine whether the data was usable in making the attainment determination for the SJV. See response to comment 15.

Comment 19: The commenter states that EPA does not justify ignoring data from the three tapered element oscillating microbalance (TEOM) monitors that were operated in the Valley during the 2003–2005 time period.

Response: The three TEOM monitors operated during the 2003–2005 period were located at Fresno 1st Street, Stockton Hazelton Street, and Corcoran Patterson Avenue. The TEOMs at Fresno and Stockton were operated by CARB as special purpose monitors that supplement the SLAMS high volume FRM samplers. The Corcoran TEOM was operated by the District, also as a special purpose monitor. In addition, as

discussed in response to comment 15 above, the District now operates TEOMs at its Tracy, Bakersfield-Golden State Hwy. and Corcoran monitoring sites.

CARB has submitted and certified the TEOM data from the Stockton site to EPA's AQS database up to the date June 28, 2005, which is when CARB discontinued the operation of this TEOM. During the 2003 to 2005 period, the TEOM at Stockton recorded a single exceedance of the 24-hour NAAQS. Because of its everyday sampling schedule, this single exceedance at Stockton does not constitute a violation of the NAAQS. See response to comment 15.

No data from any other TEOMs operating in the San Joaquin Valley PM-10 network has been submitted to AQS. However, EPA has obtained data from these TEOMs from 2003–2005 as well as a portion of 2006 and these data show no violations of the PM-10 NAAQS have been recorded for this period.

As discussed above in response to comment 15 EPA is aware of TEOMs currently operating at four monitoring sites in the San Joaquin PM-10 network: Bakersfield-Golden State Highway, Corcoran, Fresno 1st Street and Tracy. Two of these TEOMs, Fresno and Tracy,³⁰ recorded no exceedances of the NAAQS. Two other TEOMs, Bakersfield and Corcoran, recorded exceedances on September 22, 2006, which, as noted above, is a date associated with a high wind and fire event. This is the only exceedance day we are aware of for these TEOMs. All data EPA has received from the District and CARB collected by BAMs and TEOMs have been included in the Docket. Thus, in sum these TEOM monitors would not show that the area is in violation of the standard.

Comment 20: The commenter states that EPA must also consider all publicly available data, including “data available from other sources including those special purpose monitors operated by third parties” (1997 Seitz memo) and that EPA has not made any assertion regarding data from third party monitors. If such data exists, EPA must consider it or must explain why it is reasonable to exclude this information.

Response: The commenter has not provided any data from any so-called “third party monitors.” Nor is EPA aware of any data available from third parties that meets our regulatory requirements and could be used in this action.

Comment 21: The commenter maintains that “[t]hese continuous

monitors demonstrate an ongoing PM-10 problem in the Valley” and that monitoring professionals within EPA and CARB know that these monitors provide the most accurate, realistic picture of Valley air quality. These monitors are used for detailed air quality studies, public health alerts, and modeling in the State implementation plan. In fact, CARB performed a comparison study of BAM technology versus FRM technology and found that, far from the dramatic picture the District paints of wildly inaccurate monitor readings, BAM monitors enjoy “good precision” and may actually capture certain semi-volatile pollutants that FRM monitors do not.

Response: The CARB study cited by the commenter is one that compared PM-2.5 BAM and PM-2.5 FRM performance. PM-2.5 is a different pollutant from PM-10 even though both are based on particulates, but the type of particles that make up PM-10 versus PM-2.5 can be very different. The issue for EPA is not what type of equipment was used by the State or District to collect PM-10 data, but whether the data and the monitors used to collect it met EPA's quality assurance requirements.

The BAM monitor is a designated Federal equivalent method for PM-10. If the District had performed the appropriate QA procedures, as discussed elsewhere in this action, EPA would have considered the BAM data when making our attainment finding.

Comment 22: If EPA now wants to ignore and dismiss this data, EPA needs to provide a reasonable explanation, not hide behind technicalities it picks and chooses in order to support its political agenda. EPA's proposal provides none of the necessary technical analysis needed to give this reasonable basis. As a result, commenters are unable to provide meaningful comment on that basis. EPA must prepare a supplemental notice of proposed rulemaking to provide the missing analysis.

Response: EPA did provide a reasonable explanation for not using the BAM data in its decision to find that the SJV has attained the PM-10 NAAQS. As set forth in the proposal to this action, the BAM data did not meet our QA/QC requirements. The SLAMS data from the FRM network met our requirements. Thus EPA believes it does not need to prepare a supplemental notice of proposed rulemaking because the substance of its analysis was adequately included in its proposal.

G. Representativeness of Data

Comment 23: The commenter states that “EPA should determine whether

conditions of [the] last three years are typical” or “whether conditions during this period are representative of normal conditions for the Valley.” The commenter points to a 1997 progress report and statements made by the District recommending caution regarding any improvements in monitored PM-10 levels in the SJV. The commenter also cites a Pittsburgh-Beaver Valley, Pennsylvania area rule (61 FR 28061, 28063) in which EPA revoked an attainment determination and pointed to the varied number of exceedances over the preceding years and the failure of the area to adequately reduce emissions as grounds for not dismissing new data indicating a continued pollution problem. Finally, the commenter notes that the District recently argued to EPA and the Ninth Circuit Court of Appeals that there was absolutely no way the SJV could attain the PM-10 standard by 2006, further emphasizing the need to evaluate whether the conditions of the last few years are an anomaly.

Response: The requirement to determine that clean air is the result of permanent and enforceable emissions reductions is a criterion for the redesignation of an area to attainment under CAA section 107(d)(3)(E).³¹ This criterion need not be met for a determination of attainment or for the suspension of the associated RFP, attainment demonstration, and/or contingency measure requirements.

That aside, we believe that the attainment determination itself addresses in part the concern about unusually favorable meteorological conditions. We have long recognized that yearly variations in meteorological conditions can have a profound effect on ambient PM-10 concentrations. In setting the PM-10 standards in 1987, we changed the form of the 24-hour and annual standards to a statistical form which is based on exceedances and annual averages over 3 consecutive years. EPA stated that “[t]he problem of

³¹ The redesignation of an area to attainment under CAA section 107(d)(3)(E) is a separate process from a finding of attainment. Unlike an attainment finding where we need only determine that the area has had the prerequisite number of clean years, a redesignation requires multiple determinations. Under section 107(d)(3)(E) these determinations are: (1) We must determine, at the time of the redesignation, that the area has attained the relevant NAAQS; (2) The state must have a fully approved SIP for the area; (3) We must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal regulations and other permanent and enforceable reductions; (4) We must have fully approved a maintenance plan for the area under section 175A; (5) The state must have met all the nonattainment area requirements applicable to the area.

³⁰ The Tracy TEOM began monitoring on October 1, 2006.

year-to-year variability is * * * reduced by averaging three years of data.” See proposed and final actions promulgating the PM-10 standards at 49 FR 10408, 10413 (March 20, 1984) and 52 FR 24635, 24639–24641 (July 1, 1987).

In the case of the Pittsburgh-Beaver Valley, Pennsylvania area rule (61 FR 28061, 28063), EPA revoked an attainment determination due to violations of the ozone NAAQS that occurred after the determination was made. In response to a comment suggesting that EPA should ignore the violations due to year-to-year variability, EPA stated that “[b]ecause the area has not adequately reduced its VOC and NO_x emissions, it is subject to ozone exceedances whenever meteorological conditions are conducive to ozone formation.” The commenter on our proposed attainment determination for the SJV implies that because EPA recognizes year-to-year variability in data and that both the SJV and the Pittsburgh-Beaver Valley areas had variable data over the years, EPA should address whether conditions were typical or normal before making the attainment determination for SJV. However, the SJV has 3 recent years (2003–2005) of clean data whereas the Pittsburgh-Beaver Valley area did not have clean data at the time of the attainment determination revocation.

The 2003 PM-10 Plan demonstrates attainment of the PM-10 standards by 2010. 69 FR 30006. The 2003 PM-10 Plan’s attainment demonstration is based on air quality modeling of emissions reductions from State and District measures. As such it is a prediction of what ambient conditions will be in the future. In contrast, as discussed above, a determination of attainment, based on monitored air quality data, reflects actual ambient conditions over a three year period. Given the margin of error in air quality modeling, particularly for PM-10, a disparity between modeling and monitored data is not unusual. While, as stated above, the three year requirement does to a certain extent address anomalous meteorological conditions, an analysis of whether “* * * the improvements in air quality are due to permanent and enforceable reductions in emissions * * *” is primarily addressed as a prerequisite for redesignation of an area to attainment under CAA section 107(d)(3)(E) to ensure that reductions will remain in place even where weather variations occur.

Finally, the commenter also points to statements made in a SJV 1997 PM-10 progress report in which the District discusses the favorable meteorological

conditions (i.e., rain) during 1993–1998 which may or may not have led to fewer PM-10 exceedances. However, our PM-10 attainment determination is based on the years 2003–2005. Again, whether or not 2003–2005 was a period of normal conditions and whether the SJV could continue to demonstrate attainment under all predicted weather conditions is a criterion that must be addressed in connection with a redesignation, but not for an attainment determination.

Comment 24: The commenter contends that EPA’s decision is not reasonable, and that EPA has never attempted to make an attainment determination based on so few years of monitoring and in the face of such countervailing evidence. The commenter further contends that EPA is motivated by a desire to avoid legal deadlines.

Response: As set forth above, in responses to comments, EPA believes that its decision is a reasonable one, based on three complete years of quality-assured data, and supported by the evidence. Moreover, the commenter is wrong in alleging that EPA has never before based a determination of attainment on three years of data. EPA has in numerous instances done so. See, for example, 60 FR 37366 (July 20, 1995) (Grand Rapids), 66 FR 1925 (January 10, 2001) and 66 FR 53094 (October 19, 2001) (Pittsburgh-Beaver Valley), 66 FR 27583 (May 17, 2001) and 66 FR 53655 (October 23, 2001) (Louisville), 68 FR 25418, 25429 (May 12, 2003) (St. Louis), 69 FR 21717 (April 22, 2004) (Bay Area). The commenter’s speculation as to EPA’s motivation is irrelevant. EPA’s determination that the SJV area has attained the standards is, as shown elsewhere in this notice, supported by quality assured data and in compliance with statutory and regulatory requirements.

H. Other Comments

Comment 25: Approximately two thousand commenters sent letters (all via e-mail except one via postcard) to EPA stating that they are concerned about the attainment determination. All commenters were specifically concerned about the air quality in the Valley, about a monitoring network that reads only once every six days and does not account for the agriculture-heavy west side and about EPA ignoring violations from monitors. Commenters were also concerned that the finding would relieve EPA and the District of obligations to continue to address the particulate matter problem and air pollution problems in general. Many commenters provided personal accounts of health issues (e.g., asthma, difficulty

breathing, hospital visits, use of inhalers) while living in the San Joaquin Valley.

Response: As noted above, the comments of individual citizens raised many of the same issues set forth in the comments of Earthjustice, and EPA has addressed those comments in the context of its responses to Earthjustice. Like the commenters, EPA is concerned about the air quality of the SJV and the health of its residents. The SJV is a nonattainment area for ozone as well as for PM-10 and PM-2.5. In general in the SJV, ozone is a summertime problem and PM is a fall and wintertime problem. EPA has invested significant resources in developing clean air plans and measures to reduce the air pollution in the SJV to levels considered safe by Federal standards. EPA’s determination that the SJV has attained the PM-10 standards does not in any way relieve the District, State, or EPA of any of the strategies currently in place to achieve cleaner air.³² CARB and the District have stated this in their request for an attainment determination (May 8, 2006 letter to Wayne Nastri, Regional Administrator, EPA Region 9, from Catherine Witherspoon, Executive Officer, CARB) and the District has restated it in its comment letter in connection with this rulemaking (August 14, 2006 letter to Doris Lo, EPA Region 9, from Seyed Sadredin, Executive Director/Air Pollution Control Officer, San Joaquin Valley Unified Air Pollution Control District). The measures and commitments approved by EPA in the 2003 PM-10 Plan continue to be implemented, and EPA expects more strategies and measures that will lead to further reductions as the District and CARB develop plans to meet the more stringent PM-2.5 NAAQS and the 8-hour ozone standard.

Furthermore, while some monitors may only take ambient air quality readings once every six days, the data from these monitors is adjusted to account for the days that are not monitored. Thus, as a simplified example, if a one in six day monitor records an exceedance of the PM-10 NAAQS, that exceedance must be multiplied by six to account for the days it did not monitor. In addition, EPA disagrees with the commenter’s assertion that the agricultural sources of the western side of the Valley are not accounted for. The Corcoran monitoring

³² In addition, CARB or the District cannot revise their SIP to drop any SIP-approved strategies unless they can demonstrate that the revision will not “* * * interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement * * *” of the Act. See section 110(l) of the CAA.

site does monitor emissions from agricultural sources and is thus representative of air quality levels in the western portion of the Valley. In addition, the agricultural regulations for the SJV are applicable to sources throughout the Valley, including those in the western portion of the SJV. Finally, EPA does not ignore actual violations, but as discussed in response to comments above, certain data purporting to show exceedances of the PM-10 standard may be excluded in determining whether an actual violation has occurred for various reasons, including the need to assure that data are reliable and accurate.

Comment 26: One commenter sent pictures of dust from combines on an agricultural field and stated that incentives were needed to help keep the dust on the ground. The commenter also discussed dusty conditions during the almond and cotton harvest in November 2005 throughout the SJV. The commenter is a farmer and believes that farmers are doing a good job of keeping dust (laden with pesticides and other residues) on the ground during the growing season because it benefits the farmer, but that there are no incentives for controlling the dust from roads. Finally, the commenter is concerned that even with the new NAAQS in the future, the attainment determination will lead to relaxation of enforcement and monitoring when more progressive and innovative steps are needed.

Response: The SJV has requirements that control dust from agricultural sources such as those discussed by the commenter. See District Rules 4550 and 8081. These requirements cover almond, cotton and other types of farming operations in the SJV and include measures that reduce dust from roads. The new more stringent PM-2.5 standards will lead to additional measures; however, even without these new standards, because the 24-hour PM-10 standard remains in effect, the enforcement of measures to reduce PM-10 and monitoring of PM-10 will still be required (see also above response to comment 14).

III. Final Action

Based on 2003–2005 quality-assured data meeting the requirements of 40 CFR part 50, appendix K, as well as data showing continued attainment, EPA is finalizing its determination that the SJV has attained the 24-hour and annual PM-10 NAAQS. The SJV continues to attain the PM-10 NAAQS in 2006 based on all available quality assured data. This action does not constitute a redesignation to attainment under CAA section 107(d)(3), because we do not yet

have an approved maintenance plan as required under section 175(A) of the CAA or a determination that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remains serious nonattainment for this area until such time as California meets the CAA requirements for redesignation of the SJV to attainment.

Consistent with the Agency's Clean Data Policy and its interpretation that the attainment determination suspends certain requirements as set forth in detail above, EPA is also finalizing its finding that the contingency measure requirements of CAA section 172(c)(9) no longer apply to the San Joaquin Valley PM-10 nonattainment area for so long as the area continues to attain the PM-10 NAAQS. If we subsequently determine, after notice and comment rulemaking in the **Federal Register**, that the area has violated the standard (prior to a redesignation to attainment), the requirement for contingency measures would once again be applicable.

IV. Effective Date of This Final Action

The EPA finds that there is good cause for this action to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of this action, which is a determination, based on air quality data, that certain Act requirements do not apply for so long as the area continues to attain the standard. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1) which provides that rulemaking actions may become effective less than 30 days after publication if the rule “grants or recognizes an exemption or relieves a restriction” and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.”

V. 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 makes a determination based on air quality data, suspends certain requirements, and imposes no additional requirements. 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 (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 makes a determination based on air quality data and suspends certain requirements, 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.

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 Act. 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).

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 December 29, 2006. 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, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

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

Dated: October 17, 2006.

Laura Yoshii,

Acting Regional Administrator, Region 9.

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