

EPA-APPROVED IDAHO REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
620	Registration Fee	7/1/11, 4/2/08	3/19/13 [Insert page number where the document begins]	
622	General Provisions	7/1/11, 4/2/08	3/19/13 [Insert page number where the document begins]	
623	Public Notification	7/1/11, 4/2/08	3/19/13 [Insert page number where the document begins]	
624	Spot Burn, Baled Agricultural Residue Burn, and Propane Flaming Permits.	7/1/11	3/19/13 [Insert page number where the document begins]	

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[FR Doc. 2013-06198 Filed 3-18-13; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

[EPA-R09-OAR-2013-0135; FRL-9791-6]

**Designation of Areas for Air Quality Planning Purposes; State of California; Imperial Valley Planning Area for PM<sub>10</sub>; Clarification of Nonattainment Area Boundary**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is clarifying the description of the Imperial Valley planning area, an area designated as nonattainment for the national ambient air quality standard for particulate matter with an aerodynamic diameter of a nominal 10 microns or less (PM<sub>10</sub>). EPA is not changing the boundaries of the PM<sub>10</sub> area or the status of the area as a “serious” PM<sub>10</sub> nonattainment area but is clarifying the description of this partial county area in the Code of Federal Regulations.

**DATES:** This direct final rule is effective May 20, 2013, unless EPA receives adverse comment by April 18, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-

OAR-2013-0135 by one of the following methods:

1. Federal eRulemaking Portal, at [www.regulations.gov](http://www.regulations.gov), please follow the on-line instructions;
2. Email to [ward.laweeda@epa.gov](mailto:ward.laweeda@epa.gov); or
3. Mail or delivery to La Weeda Ward, Air Division (AIR-1), U.S. Environmental Protection Agency, Region 9, 600 Wilshire Blvd., Suite 1460, Los Angeles, CA 90017.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information you consider to be CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or email. [www.regulations.gov](http://www.regulations.gov) is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA, your email address will be automatically captured and included as part of the public comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** La Weeda Ward, Air Division (AIR-1), U.S. Environmental Protection Agency, Region 9, 600 Wilshire Blvd., Suite 1460, Los Angeles, CA 90017, telephone number (213) 244-1812, or email [ward.laweeda@epa.gov](mailto:ward.laweeda@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever “we”, “us” or “our” are used, we mean EPA.

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**I. Background**

EPA sets the National Ambient Air Quality Standards (NAAQS) for certain ambient air pollutants at levels required to protect public health and welfare. Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, or PM<sub>10</sub>, is one of these ambient air pollutants for which EPA has established health-based standards.

EPA revised the NAAQS for particulate matter on July 1, 1987 (52 FR 24633), replacing standards for total

suspended particulates (TSP less than 30 microns in diameter) that were set in 1971 with new standards applying only to particulate matter up to 10 microns in diameter (PM<sub>10</sub>). Simultaneously, EPA published revised requirements for state implementation plans (SIPs) to attain and maintain the standards (52 FR 24672, July 1, 1987). To focus Federal and State resources on implementing the PM<sub>10</sub> NAAQS first in those areas of the country believed to be violating the standards, EPA classified all areas of the Nation into one of three groups. Group I areas were those having a very high probability of violating the PM<sub>10</sub> standards based on ambient air quality data available for 1984 through 1987 for PM<sub>10</sub> and TSP. Group II areas had a moderate probability of violating the standards, and Group III areas were those believed to be currently attaining the standards.

A list of Group I and II areas in each State was published on August 7, 1987 (52 FR 29383). Within Imperial County,<sup>1</sup> EPA listed two areas, "Imperial Valley planning area" and "Yuma planning area,"<sup>2</sup> among the Group I areas. The remaining portions of any State not listed as Group I or II were classified in Group III.

On October 31, 1990 (55 FR 45799), EPA clarified the descriptions of several Group I and II areas of concern. In so doing, EPA did not clarify the description of the "Imperial Valley planning area" but did eliminate "Yuma planning area" as a Group I or II area of concern within Imperial County, California.

Under section 107(d)(4)(B) of the Clean Air Act (CAA or "Act"), as amended in 1990, certain areas were designated as nonattainment for PM<sub>10</sub> by operation of law upon enactment of the 1990 Amendments (i.e., November 15, 1990). These areas included all areas included in Group I in EPA's 1987 list (unless changed by EPA prior to the 1990 Amended Act) as well as certain Group II and III areas. The Imperial Valley planning area, as a former "Group I" area, was one of the areas designated as a PM<sub>10</sub> nonattainment area by operation of law effective November 15, 1990.

On March 15, 1991 (56 FR 11101), EPA announced all of those areas that were designated nonattainment for PM<sub>10</sub> by operation of law and announced that all of the nonattainment areas were

classified as "moderate," also effective November 15, 1990. The "Imperial Valley planning area" was one of the areas listed by EPA in March 1991 as an "initial" PM<sub>10</sub> nonattainment area. On November 6, 1991 (56 FR 56694), EPA codified the PM<sub>10</sub> nonattainment area designations, including the nonattainment area designation for "Imperial Valley planning area," in 40 CFR part 81.<sup>3</sup>

States with "moderate" PM<sub>10</sub> nonattainment areas were required under the CAA as amended in 1990 to revise their SIPs to provide for attainment of the PM<sub>10</sub> NAAQS no later than December 31, 1994. "Moderate" areas that failed to attain the PM<sub>10</sub> NAAQS by December 31, 1994 were subject to reclassification to "serious." Such reclassification would extend the applicable attainment date to December 31, 2001 but would require the SIP for the area to be further revised to meet more stringent requirements than had applied to "moderate" areas. On August 11, 2004 (69 FR 48792), EPA determined that the Imperial Valley planning area failed to attain the PM<sub>10</sub> NAAQS by December 31, 1994 and reclassified the area to "serious."

The listing of the "Imperial Valley planning area" in the PM<sub>10</sub> area designations table in 40 CFR 81.305 without further description has led to some confusion as to the precise boundaries of the designated nonattainment area, and the purpose of today's direct final rule is to clarify the description of the "Imperial Valley planning area" to eliminate such confusion. Specifically, we are clarifying in this action that the "Imperial Valley planning area" PM<sub>10</sub> nonattainment area is that portion of Imperial County that is defined as follows: Commencing at the southwest corner of Imperial County and extending north along the Imperial-San Diego County line to the northwest corner of Imperial County; then east along the Imperial-Riverside County line to the point of intersection of the eastern boundary line of Hydrologic Unit #18100200;<sup>4</sup> then southeasterly along the eastern boundary line of Hydrologic Unit #18100200 to the Imperial County-Mexico Border; then west along the Imperial County-Mexico Border to the point of the beginning.

For the purposes of this action, EPA reviewed the **Federal Register** documents listed above as well as EPA

memoranda and State planning documents. Based on that review, EPA confirmed the accuracy of the above description. Specifically, EPA found that:

- EPA's 1987 listing of two Group I areas within Imperial County, i.e., the "Imperial Valley planning area" and the "Yuma planning area," establishes that "Imperial Valley planning area" is a partial county area;

- The long-standing use of Hydrologic Units to describe other PM<sub>10</sub> area designations in desert areas of California (see, e.g., the PM<sub>10</sub> area designations in 40 CFR 81.305 for Coso Junction planning area, Owens Valley planning area, Trona planning area, and Indian Wells planning area) establishes precedent for the use of such units to describe the PM<sub>10</sub> area designation for "Imperial Valley planning area," which is also a California desert area;

- EPA staff memorandum dated July 17, 1991 describes the "Imperial Valley Study Area" boundary in terms of latitude and longitude that approximate the hydrologic unit boundary;

- EPA staff map, undated but believed to have been prepared in the early 1990s, illustrates the Imperial Valley planning area in terms of the northeastern boundary line for Hydrologic Unit #18100200;

- EPA map (dated May 1992) of PM<sub>10</sub> area designations within Region IX shows the Imperial Valley nonattainment area as covering that portion of the county east of a line that appears to approximate the northeastern boundary line for Hydrologic Unit #18100200; and

- A SIP submittal dated January 11, 1994 for the Imperial Valley planning area from the California Air Resources Board (CARB) to EPA includes a PM<sub>10</sub> plan that describes the nonattainment area as containing "most of Imperial County (approximately 80%) except for the portion east of the Chocolate Mountain Range" and includes a figure that illustrates the nonattainment area showing a northeastern boundary line that approximates the boundary for Hydrologic Unit #18100200.<sup>5</sup>

Through today's action, EPA is not changing the boundaries of the Imperial Valley planning area PM<sub>10</sub> nonattainment area, but is simply clarifying the boundaries of the existing PM<sub>10</sub> nonattainment area by providing a more detailed description herein and in 40 CFR 81.305. EPA is also not changing the status or classification of the Imperial Valley planning area PM<sub>10</sub> nonattainment area. As such, the area

<sup>1</sup> Imperial County is located in the southeastern corner of California. It borders Mexico to the south, Riverside County to the north, Arizona to the east, and San Diego County to the west. Imperial County lies within the Sonoran Desert.

<sup>2</sup> EPA also listed "Yuma planning area" as a Group I area within Yuma County, Arizona.

<sup>3</sup> California area designations are codified at 40 CFR 81.305.

<sup>4</sup> Within Imperial County, the northeastern boundary of Hydrologic Unit #18100200 generally follows the crestline of the Chocolate Mountains.

<sup>5</sup> See pages 1–2 and 1–3 of the Imperial Valley PM<sub>10</sub> Plan submitted by CARB on January 11, 1994.

remains designated as “nonattainment” for PM<sub>10</sub> and classified as “serious.”

## II. EPA’s Final Action

EPA is clarifying that the Imperial Valley planning area PM<sub>10</sub> nonattainment area is that portion of Imperial County that is defined as follows: Commencing at the southwest corner of Imperial County and extending north along the Imperial-San Diego County line to the northwest corner of Imperial County; then east along the Imperial-Riverside County line to the point of intersection of the eastern boundary line of Hydrologic Unit #18100200; then southeasterly along the eastern boundary line of Hydrologic Unit #18100200 to the Imperial County-Mexico Border; then west along the Imperial County-Mexico Border to the point of the beginning. EPA is not changing the boundaries of the PM<sub>10</sub> area or the status of the area as a “serious” PM<sub>10</sub> nonattainment area but is simply clarifying the description of this partial county area and amending the applicable table in 40 CFR 81.305 accordingly.

EPA is publishing this rule without prior proposal because we view this as a non-controversial action and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on May 20, 2013 without further notice unless we receive adverse comments by April 18, 2013. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now.

## III. Statutory and Executive Order Reviews

This action simply clarifies the description of an existing air quality planning area and would not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not “significant regulatory actions” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- 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);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the action simply clarifies the description of existing air quality planning area and thus will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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 action 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

### List of Subjects in 40 CFR Part 81

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

Dated: March 6, 2013.

**Jared Blumenfeld**,  
Regional Administrator, Region IX.

### PART 81—[AMENDED]

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

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

### Subpart C—[Section 107 Attainment Status Designations]

■ 2. Section 81.305 is amended in the table for “California-PM–10” by revising the entry for “Imperial County” to read as follows:

#### § 81.305 California.

\* \* \* \* \*

CALIFORNIA—PM<sub>10</sub>

Designated Area	Designation		Classification	
	Date	Type	Date	Type
* * Imperial County Imperial Valley planning area: That portion of Imperial County that is defined as follows: Commencing at the southwest corner of Imperial County and extending north along the Imperial-San Diego County line to the northwest corner of Imperial County; then east along the Imperial-Riverside County line to the point of intersection of the eastern boundary line of Hydrologic Unit #18100200; then southeasterly along the eastern boundary line of Hydrologic Unit #18100200 to the Imperial County-Mexico Border; then west along the Imperial County-Mexico Border to the point of the beginning. * *	11/15/90	Nonattainment	9/10/04	Serious

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 483, 488, 489, and 498**

[CMS-3230-F]

RIN 0938-AQ09

**Medicare and Medicaid Programs; Requirements for Long-Term Care (LTC) Facilities; Notice of Facility Closure**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts, with technical changes, the interim rule that published February 18, 2011. That interim rule revised the requirements that a long-term care (LTC) facility must meet in order to qualify to participate as a skilled nursing facility (SNF) in the Medicare program, or a nursing facility (NF) in the Medicaid program. The requirements implemented section 6113 of the Patient Protection and Affordable Care Act to ensure that, among other things, in the case of an LTC facility closure, individuals serving as administrators of a SNF or NF provide written notification of the impending closure and a plan for the relocation of residents at least 60 days prior to the

impending closure or, if the Secretary terminates the facility's participation in Medicare or Medicaid, not later than the date the Secretary determines appropriate.

**DATES:** Effective on April 18, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mary Collins, (410) 786-3189. Ronisha Davis, (410) 786-6882. Lisa Parker, (410) 786-4665.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Overview*

According to the Centers for Medicare & Medicaid Services (CMS) data, as of October 2011, there were 15,720 long-term care (LTC) facilities (commonly referred to as nursing homes) in the United States. These facilities are generally referred to as skilled nursing facilities (SNFs) in the Medicare program and as nursing facilities (NFs) in the Medicaid program. For the past decade, CMS Survey and Certification Tabulation of Certification and Survey Provider Enhanced Reporting (CASPER) data have shown a decline in the number of nursing homes, from 17,508 in 1999 to 15,720 in 2011. In 2010, there were 141 nursing home closures. In 2011, there were 90 closures.

LTC facility closures have implications related to access to care, the quality of care, availability of services, and the overall health of residents. Therefore, having an organized process that facilities must follow in the event of a nursing home closure will protect residents' health and safety, and make the transition as

smooth as possible for residents, as well as family members and facility staff.

On February 18, 2011, we published in the **Federal Register** an interim final rule with comment period, entitled "Requirements for Long-Term Care (LTC) Facilities; Notice of Facility Closure" (76 FR 9503). In that rule, we revised the current requirements for LTC facilities under the provisions of section 1128I(h) of the Social Security Act (the Act), as added by section 6113(a) of the Patient Protection and Affordable Care Act (Pub. L. 111-148, March 23, 2010)(Affordable Care Act). The new statutory provision requires us, among other things, to impose sanctions on the administrator of an LTC facility for failure to provide proper notice to specified parties, including CMS, that the facility is about to close.

*B. Legislative History and Statutory Background*

Sections 1819(b)(1)(A) of the Act for SNFs and 1919(b)(1)(A) of the Act for NFs both state that a SNF/NF must care for its residents in a manner and in an environment that will promote maintenance or enhancement of the quality of life of each resident.

Sections 1819(c)(2)(A)(vi) and 1919(c)(2)(A)(vi) of the Act state that in general, with certain specified exceptions, a SNF/NF must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility, except under specified circumstances, including, at clause (vi), when the facility ceases to operate.