**Supporting Statement for an Information Collection Request (ICR) Under the Paperwork Reduction Act (PRA)**

**Executive Summary**

**Identification of the Information Collection – Title and Numbers**

**Title**: Federal Implementation Plan for Contingency Measures for the Fine Particulate Matter Standards; San Joaquin Valley, in 40 CFR Part 52, Subpart F, § 52.249 (New) (Proposed Rule)

**EPA ICR Number: 2782.01**

**OMB Control Number is 2009-NEW**

**Docket ID Number**: EPA-R09-OAR-2023-0352

**Abstract**

This information collect request (ICR) covers information collection requirements in a Clean Air Act (CAA) Federal Implementation Plan (FIP) for contingency measures proposed by the United States Environmental Protection Agency (EPA or “Agency”) for the 1997 annual, 2006 24-hour, and 2012 annual fine particulate matter (PM2.5) national ambient air quality standards (NAAQS) in the San Joaquin Valley PM2.5 nonattainment area in California (40 CFR Part 52, Subpart F, § 52.249), herein referred to as the SJV FIP (See Attachment 1).

The EPA’s proposed FIP would revise an existing control measure in the San Joaquin Valley related to open area dust controls. The San Joaquin Valley Air Pollution Control District (“District”), the local agency with regulatory authority in the San Joaquin Valley nonattainment area, regulates open areas through its Rule 8051: Open Areas. Rule 8051 provides several dust control options for compliance. The EPA’s proposed FIP will include provisions to lower the existing applicability threshold of the rule for rural areas from 3.0 acres or larger with at least 1000 square feet of disturbed surface area to 1.0 acres or larger with the same square footage of disturbed surface area. The revisions to Rule 8051 will only take effect upon an EPA finding that the San Joaquin Valley nonattainment area has failed to attain the PM2.5 NAAQS by the applicable attainment date, failed to make reasonable further progress towards attainment, failed to submit a quantitative milestone report, or failed to meet a quantitative milestone. If the contingency measure is triggered, dust minimization control measures and recordkeeping and annual reporting will be required for the newly regulated parcels when owners or operators disturb the surface of the applicable rural open areas.

The potential respondents are owners or operators of open area parcels that range in size between 1.0 and 3.0 acres and which contain at least 1,000 square feet of disturbed surface area. In general, owners or operators that disturb the surface of applicable rural open areas will be required to maintain records of rule compliance consistent with the requirements applicable to owners or operators already subject to the rule, with two additional requirements. First, the EPA would add a requirement that owners and operators of rural open areas newly subject to the requirements of Rule 8051 pursuant to this FIP use two existing District forms for such recordkeeping, which the EPA intends to adapt for use in connection with this proposed FIP contingency measure. Second, while the EPA generally would apply the same record retention requirements found in the District rule to newly subject owners and operators – i.e., the requirement to maintain records for one year following project completion, except for owners/operators subject to Rule 2520, who must retain records for five years – the EPA would also add a requirement that the owners and operators of rural open areas who perform such recordkeeping pursuant to the FIP submit copies of the forms prepared during a calendar year to the EPA by March 31st of the following year. These records and reports are essential in determining compliance and are required of all sources subject to this proposed FIP that disturb the surface of applicable rural open areas.

**1. Need and Authority for the Collection**

CAA section 110(c)(1) authorizes and obligates the EPA to promulgate a FIP when the EPA finds that a state has failed to make a required submission or finds that the plan or plan revision submitted by the state does not satisfy the minimum completeness criteria set forth in 40 CFR part 51, Appendix V, or when the EPA disapproves a SIP submission in whole or in part, unless the state first makes a complete SIP submission that corrects the deficiency, and the EPA approves that submission, before the EPA promulgates such FIP.

In this proposed action, the EPA is proposing a FIP to meet the contingency measures requirement of section 172(c)(9) of the CAA for the San Joaquin Valley nonattainment area for the 1997 annual, 2006 24-hour, and 2012 annual PM2.5 NAAQS. States with designated nonattainment areas must submit, among other required nonattainment plan elements, contingency measures that would take effect upon determination by the EPA that an area has failed to attain the NAAQS by the applicable attainment date, failed to make reasonable further progress towards attainment, failed to submit a quantitative milestone report, or failed to meet a quantitative milestone. The EPA’s FIP obligation is based on the EPA’s determination on December 6, 2018 (83 FR 62720) that California failed to submit SIP revisions addressing certain nonattainment plan requirements (including contingency measures) for the 1997 annual and 24-hour PM2.5 NAAQS, the 2006 24-hour PM2.5 NAAQS, and 2012 annual PM2.5 NAAQS for the San Joaquin Valley PM2.5 nonattainment area.[[1]](#footnote-3)

As a result of that finding of failure to submit, the EPA was authorized and obligated to promulgate a FIP for all of those SIP requirements covered by the finding, except those for which the EPA has subsequently approved SIP submissions or that the EPA has subsequently found to be no longer applicable. CAA section 302(y) defines the term “Federal Implementation Plan” to mean a plan (or portion thereof) promulgated by the EPA to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a SIP, and which includes enforceable emission limitations or other control measures, means, or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances) and provides for attainment of the relevant NAAQS.

In promulgating regulations in a FIP, the EPA may rely on its authority under section 110(c) or under authority it has under other provisions of the CAA. Furthermore, there are two prongs to the EPA’s section 110(c) authority. The first is the EPA’s general FIP authority to act to cure a planning inadequacy in any way clearly not prohibited by statute by promulgating measures that neither the EPA nor the state otherwise has explicit power to issue, as long as no provision of the CAA or any other federal law clearly prohibits such measures. The second is the EPA’s authority to “stand in the shoes” of the state and exercise all authority that the state may exercise under the CAA.

The EPA’s proposed FIP would revise two existing control measures in the San Joaquin Valley, one for residential wood burning and the other for open area dust controls. The District regulates residential wood burning in its Rule 4901: Wood Burning Fireplaces and Wood Burning Heaters. The EPA has previously approved Rule 4901 into the California SIP.[[2]](#footnote-4) The EPA’s proposed FIP will include, as the first contingency measure, provisions to lower the wood burning curtailment threshold for all counties in the San Joaquin Valley PM2.5 nonattainment area to 12 µg/m3 for unregistered devices and to 35 µg/m3 for registered devices. The District’s Rule 4901 does not include any recordkeeping or reporting requirements, and the EPA’s proposed revisions to Rule 4901 will not add information collection activities. Therefore, the EPA’s proposed amendments to Rule 4901 will not impose an information collection burden under the Paperwork Reduction Act.

The second proposed contingency measure in this FIP would amend the existing District rule to reduce dust from open areas to extend the applicability to parcels in rural areas between 1.0 and 3.0 acres and which contain at least 1,000 square feet of disturbed surface area. The existing District rule includes requirements for recordkeeping to document actions taken to comply with its requirements when owners or operators disturb the surface of applicable rural open areas, and this FIP generally proposes to use the same recordkeeping requirements, with the added requirement to use EPA forms adapted from existing District forms, and to require annual reporting to the EPA of these records for these newly regulated areas. There are no monitoring requirements associated with this proposed FIP. These recordkeeping and reporting requirements are appropriate and necessary to track and ensure compliance with the dust control requirements of the contingency measure.

Section 114(a) of the CAA (see Attachment 2) states that the Administrator may require any owner or operator subject to any requirement of this Act to:

* establish and maintain such records;
* make such reports;
* install, use, and maintain such monitoring equipment,
* and use such audit procedures, or methods;
* sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods, and in such manner as the Administrator shall prescribe);
* keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;
* submit compliance certifications in accordance with Section 114(a)(3); and
* provide such other information as the Administrator may reasonably require.

**2. Practical Utility/Users of the Data**

These records and reports are necessary for the EPA Administrator (or the state or local agency if delegated), to: (1) confirm the compliance status of parcels subject to this rule; (2) identify which of the options for controlling dust are being implemented by owners or operators that disturb the surface of the parcels subject to this rule; and (3) ensure that the control requirements are being achieved. The information would be used by the EPA or state/local enforcement personnel to ensure that appropriate control methods are being properly applied. Based on the reported information, the EPA Administrator (or the delegated state or local agency) can decide which parcels, records, or processes should be inspected.

**3. Use of Technology**

The information collection does not currently involve the use of digital collection techniques or other forms of information technology. Dust minimization control measures and recordkeeping and annual reporting will be required for the newly regulated parcels when owners or operators operators disturb the surface of the applicable rural open areas. As proposed, the FIP would require regulated owners or operators, i.e, those with parcels in rural areas between 1.0 and 3.0 acres and which contain at least 1,000 square feet of disturbed surface area, to maintain records of rule compliance when they disturb the surface of the applicable rural open areas and to retain such records for one year, or five years for certain owners or operators. The proposed FIP would also require these owners or operators to use forms adapted from existing District forms for such recordkeeping, and to annually submit to the EPA by mail copies of these forms. Given the relatively simple nature of these records, submittal by mail may be less burdensome or impose the same burden as compared with submittal by electronic means. The EPA is reviewing options for submittal of the required records to the EPA through electronic means and will incorporate such options into the final rule if any such option is determined to be practicable and feasible and in accordance with applicable law before issuance of the final rule.

**4.** **Efforts to Identify Duplication**

This information collection will not impose duplicative recordkeeping or reporting requirements. Although the District currently regulates open areas in Rule 8051 and includes recordkeeping requirements, Rule 8051 does not currently apply to rural parcels smaller than 3.0 acres, and does not impose reporting requirements. This proposed FIP proposes to expand the applicability of Rule 8051 to rural parcels between 1.0 and 3.0 acres, and which contain at least 1,000 square feet of disturbed surface area, and proposes the same recordkeeping requirements as in Rule 8051 for these newly regulated parcels, with the additional requirement to use forms adapted from existing District forms to conduct such recordkeeping, and proposes new reporting requirements tied directly to the recordkeeping requirements for these parcels. Therefore, we have determined that these sources would not be subject to duplicative recordkeeping or reporting requirements because rural parcels between 1.0 and 3.0 acres are not regulated in the existing SIP-approved version of the District’s Rule 8051.

**5. Minimizing Burden on Small Entities**

We anticipate that a broad range of entities could be subject to this proposed rule. Information provided by the District regarding the applicability of Rule 8051 indicates that construction, oilfields, equipment and vehicle storage, and truck stops are major categories of source types likely to be subject to the District’s existing requirements for open areas, and are likely the same categories of sources that would be affected by the EPA’s proposed revisions to this rule. We expect that most of the potentially affected owners and operators would be small entities. Minimizing the information collection burden for all sizes of organizations is a continuing effort for the EPA. The impact on small entities was taken into consideration during the development of the regulation. The EPA has attempted to reduce the impact of this rule on small entities by providing compliance options and requiring minimal and straightforward recordkeeping and reporting requirements.

**6. Effects of Less Frequent Collection**

Owners or operators of the newly regulated open area parcels must record all specified information and maintain these records for one year, or, for certain owners or operators, five years, consistent with the records retention requirements for the sources currently subject to District Rule 8051. The required annual reporting frequency to the EPA has been established to minimize the burden on owners and operators of the newly regulated open area parcels and is consistent with the annual recordkeeping requirement. Reporting to the EPA less frequently would be inconsistent with this annual recordkeeping requirement and would undermine the effectiveness of the rule as it would result in an inability to promptly (1) confirm compliance status of parcels subject to this rule; (2) identify which of the options for controlling dust are being implemented by the owners or operators of parcels subject to this rule; and (3) ensure that the control requirements are being achieved.

**7. General Guidelines**

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

**8. Public Comment and Consultations**

**8a. Public Comment**

The EPA is soliciting comments via publication of the proposed rule, which will be considered while preparing the final rule and the associated ICR.

**8b. Consultations**

In developing the SJV FIP, the EPA reviewed existing state rules and industry standards, as well as consulted generally with the District and State. The Agency’s industry experts, including staff from the Office of Air Quality Planning and Standards, also provided expert advice throughout the development of the SJV FIP. The recordkeeping requirements in this rule that apply to the owners or operators of newly regulated parcels are the same as those applicable to the entities already regulated under District Rule 8051, with the addition of the requirement to use forms adapted from existing District forms for such recordkeeping, and the reporting requirements are tied directly to those recordkeeping requirements. The comment period for the proposed rule will provide an opportunity for the EPA to engage with potentially affected entities.

**9. Payments or Gifts to Respondents**

No payments or gifts are provided to respondents.

**10. Provisions for Protection of Information**

All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B--Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 28, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979; 50 FR 51654 (December 18, 1985).

**11. Justification for Sensitive Questions**

Questions of a sensitive nature are not included in this information collection.

**12. Estimate of Respondent Burden Hours and Labor Costs**

**12a. Respondents/NAICS Codes**

Potential respondents under the SJV FIP are any owner or operator in the San Joaquin Valley PM2.5 nonattainment area of a rural open area parcel of at least 1.0 acres in size but less than 3.0 acres in size and which contains at least 1,000 square feet of disturbed surface area. The rule’s control and associated recordkeeping and reporting requirements would be triggered when such owners or operators disturb the surface of applicable rural open areas. There are 10,638 rural open area parcels in the San Joaquin Valley PM2.5 nonattainment area between 1.0 and 3.0 acres in size. We anticipate that a broad range of entities could be subject to this proposed rule. Information provided by the District regarding the applicability of Rule 8051 indicates that construction, oilfields, equipment and vehicle storage, and truck stops are major categories of source types likely to be subject to the District’s existing requirements for open areas. The 2022 North American Industry Classification System (NAICS) code for these major cateogories of source types are:

* 236115, 236116, 236117, 236118, 236210, 236220, 237110, 237120, 237130, 237310, 237990, 238910, 238990 (Construction)
* 213111, 213112, 237120 (Oil and gas operations)
* 236220, 493110, 493190 (Equipment and Vehicle Storage)
* 447190 (Truck Stops).

**12b. Information Requested**

The following are the relevant rule provisions, which describe the data elements being requested in this information collection:

| **Recordkeeping and Reporting** | |
| --- | --- |
| Rural Open Areas Dust. The requirements of Rule 8051, “Open Areas,” as incorporated by reference in §52.220(c)(334)(i)(B)(2) and made a part of the San Joaquin Valley portion of the applicable implementation plan for the State of California, shall apply except as provided in paragraphs (a)(3)(i) and (ii) of this section. | 40 CFR 52.249(a)(3) |
| (i) The Applicability provision in Paragraph 2.0 is revised to the following:  This rule applies to any open area having 0.5 acres or more within urban areas, or 1.0 acres or more within rural areas; and contains at least 1,000 square feet of disturbed surface area. | 40 CFR 52.249(a)(3)(i) |
| (ii) The Recordkeeping provision in Paragraph 6.2 is revised to the following:  An owner/operator shall comply with the recordkeeping requirements specified in Rule 8011, “General Provisions,” as incorporated by reference in §52.220(c)(334)(i)(B)(2) and made a part of the San Joaquin Valley portion of the applicable implementation plan for the State of California, except that owners/operators of open areas of 1.0 acres or more to less than 3.0 acres within rural areas shall use forms made available by the EPA and shall submit copies of the forms prepared during a calendar year to the EPA by March 31st of the following year. | 40 CFR 52.249(a)(3)(ii) |
| (iii) Records that are required to be submitted under this rule must be sent to: U.S. EPA Region 9, Rules Section Manager, Air and Radiation Division (Air-3-2), 75 Hawthorne Street, San Francisco, CA 94105. | 40 CFR 52.249(a)(3)(iii) |

**12c. Respondent Activities**

| **Respondent Activities** |
| --- |
| Reviewing instructions. |
| Developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information. |
| Developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information. |
| Developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information. |
| Training personnel to be able to respond to a collection of information. |
| Completing and reviewing the collection of information. |
| Transmitting, or otherwise disclosing the information. |

**12d. Respondent Hour and Labor Burden**

Attachment 3 (EPA ICR Burden Calculation Tables) documents the computation of individual burdens for the recordkeeping and reporting requirements applicable to the respondents for the SJV FIP included in this ICR for each of the first three years. These burden and cost estimates assume that not all rural open area parcels between 1.0 and 3.0 acres in size will have a surface disturbance area of at least 1,000 square feet or disturb the surface each year, but that all 10,638 rural open area parcels between 1.0 and 3.0 acres in size will become subject to the recordkeeping and reporting requirements once over the 3-year ICR reporting period. Consistent with the District’s existing rule for open areas, the EPA’s proposed FIP allows the owner or operator of affected parcels to choose the dust minimization technique used, including application of water or longer-term options, such as application of gravel, trackout control devices, or dust suppressants. We anticipate that the longer-term options for dust suppression will be effective for multiple years, and therefore would not necessarily need to be reapplied annually. Therefore, we estimate that each rural open area parcel between 1.0 and 3.0 acres in size is likely to be subject to the recordkeeping and reporting requirements of this proposed FIP only once in the 3-year reporting period for this ICR. For simplicity, we assumed that triggering the recordkeeping and reporting requirements would be evenly distributed over the 3-year period for the 10,638 parcels. The table below contains a summary of the respondent burden hours and costs detailed in Attachment 3.

| **Year** | **Total Annual Labor Burden (hours)** | **Total Annual Labor Cost ($)** |
| --- | --- | --- |
| 1 | 3,546 | $360,923 |
| 2 | 3,546 | $360,923 |
| 3 | 3,546 | $360,923 |
| Total | 10,638 | $1,082,768 |
| 3-Year Average | 3,546 | $360,923 |

This ICR uses the following labor rates: $63.45 per hour for technical labor (Professional), $68.73 per hour for management labor, and $31.11 per hour for clerical labor. These rates are from the *Employer Costs for Employee Compensation* published by the Bureau of Labor and Statistics and represent the state of the industry in 2023 (Source: http://www.bls.gov/news.release/ecec.t02.htm). The total compensation rates, which include the base rate for wages and salaries, as well as benefits such as paid leave, insurance, and retirement savings, are: $133.25 per hour for technical labor, $144.33 per hour for management labor, and $69.32 per hour for clerical labor.

The bottom line respondent burden hours and costs, presented in Attachment 3, were calculated by adding person-hours per year down each column for technical, managerial, and clerical staff, and by adding down the cost column. The average annual burden for the recordkeeping and reporting requirements for the 3,546 parcels annually subject to the FIP is 3,546 person-hours, with an annual average cost of $360,923.

**13. Respondent Annual Cost (Non-Labor)**

The EPA is not proposing any monitoring requirements in the proposed SJV FIP. Therefore, there are no capital/startup or O&M costs associated with monitoring equipment. The recordkeeping and reporting requirements consist of documenting the dust minimization practice selected by the owner or operator when disturbing the surface of applicable parcels, using the appropriate 1-page form, and submitting a copy of that form annually to the EPA. The EPA intends to adapt the District’s Regulation VIII Recordkeeping Forms A and C for this purpose (see Attachment 4: Draft Forms for Recordkeeping). The respondent would determine and complete the appropriate form based on the selected dust minimization strategy (short-term dust controls, e.g., water application or long-term dust controls, e.g., application of gravel or organic dust suppressants). Given the simplicity of these requirements, and the minimal amount of file storage, postage, and copy services expected, we are not including any capital/startup or O&M costs associated with the recordkeeping and reporting requirements in this FIP.

**14. Agency Burden Estimates**

Because the information collection requirements were developed as an incidental part of a FIP development under Section 110 of the CAA, no costs can be attributed to the development of the information collection requirements. Examination of records to be maintained by the respondents will occur incidentally as part of the periodic inspection of sources that is part of the EPA’s overall compliance and enforcement program, and, therefore, is not attributable to the ICR. The only costs that the Federal Government will incur are user costs associated with the analysis of the reported information, as presented in Attachment 3 (EPA ICR Burden Calculation Tables). This cost is based on the average hourly labor rate as follows:

Managerial $95.46 (GS-14, Step 5, $59.66 + 60%)

Technical $71.28 (GS-13, Step 1, $44.55 + 60%)

Clerical $36.05 (GS-7, Step 3, $22.53 + 60%)

These rates are from the Office of Personnel Management (OPM), 2023 General Schedule, which includes locality rates of pay for EPA Region 9 employees in San Francisco, CA. The rates have been increased by 60 percent to account for the benefit packages available to government employees.

The average annual Federal Government cost is $93,870 for 886.5 hours for the SJV FIP. The bottom line Agency burden hours and costs presented in Attachment 3 were calculated by adding person-hours per year down each column for technical, managerial, and clerical staff, and by adding down the cost column. We assume Agency review and processing by technical staff.

**17. Display of OMB Control Number Expiration Date on Instruments**

The agency plans to display the expiration date for OMB approval of the information collection on all instruments.

**18. Certification Statement**

This information collection complies with all provisions of the Certification for Paperwork Reduction Act Submissions.

**List of Attachments**

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| Reference No. | Title |
| 1. | Proposed Rule |
| 2. | Section 114(a) of the Clean Air Act (42 U.S.C. § 7414(a)) |
| 3. | EPA ICR Burden Calculation Tables |
| 4. | Draft Forms for Recordkeeping |

1. The California Air Resources Board (CARB or “State”) is the state agency with regulatory authority in the San Joaquin Valley nonattainment area. [↑](#footnote-ref-3)
2. 85 FR 44206 (July 22, 2020). [↑](#footnote-ref-4)