



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2014-0636; FRL-9948-24-Region 9]**

**Designation of Areas for Air Quality Planning Purposes; California; San Joaquin Valley;  
Reclassification as Serious Nonattainment for the 2006 PM<sub>2.5</sub> NAAQS; Correction**

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

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This document corrects a paragraph designation error that occurred in a January 20, 2016, final rule pertaining to the Environmental Protection Agency's (EPA's) reclassification of the San Joaquin Valley in California from Moderate to Serious for the 2006 PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS). The paragraph designation in that rulemaking conflicts with a paragraph designation in a different final rule. The EPA, therefore, is correcting the erroneous paragraph designation.

**DATES:** This correcting amendment is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Wienke Tax, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 947-4192, [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

**SUPPLEMENTARY INFORMATION:** The EPA published a final rule document on January 20, 2016 (81 FR 2993) to reclassify the San Joaquin Valley Moderate nonattainment area, including areas of Indian country within it, as a Serious nonattainment area for the 2006 PM<sub>2.5</sub> NAAQS. In the January 20, 2016 document, the EPA included amendatory instructions that added paragraph (e) to 40 CFR 52.247. 81 FR 2993, at 3000 (column 2). However, in a separate

final rule published on January 13, 2016 (81 FR 1514), the EPA also included amendatory instructions that added paragraph (e) to 40 CFR 52.247. 81 FR 1514, at 1520 (column 2). As such, the amendments to 40 CFR 52.247 in the two final rules are in conflict and cannot be implemented together. The January 20, 2016 final rule should have included amendatory instructions adding paragraph (f), rather than (e). This document corrects that error.

The EPA has determined that this action falls under the “good cause” exemption in section 553(b)(B) of the Administrative Procedure Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary or contrary to the public interest. Public notice and comment for this action are unnecessary because the underlying rule for which this correcting amendment has been prepared was already subject to a 30-day comment period and because the error addressed herein does not change the regulatory language in the rule. It only changes the paragraph designation for the relevant regulatory language. Thus, no purpose would be served by additional public notice and comment, and additional public notice and comment is unnecessary.

The EPA also finds that there is good cause under APA section 553(d)(3) for the correction in the amendatory instructions and related paragraph designation to become effective on the date of publication. Section 553(d)(3) of the APA 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.” 5 U.S.C. 553(d)(3). The EPA finds that resolving the conflict in the amendatory instructions in the two relevant final rules does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule eliminates the confusion caused by designating two paragraphs in 40 CFR 52.247 as paragraph (e). For these reasons, the EPA finds good cause under APA section 553(d)(3) for the correction

in the amendatory instructions associated with the January 20, 2016 final rule to become effective on the date of publication of this final rule.

### **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). Because the agency has made a “good cause” finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section, above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does 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), nor will it 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 by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not

economically significant. In addition, this rule does not involve technical standards, thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, the EPA has made such a good cause finding, including the reasons therefore, and established an effective date of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The 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).

### **Correction**

In final rule FR Doc. 2016-00739, published in the **Federal Register** on January 20, 2016 (81 FR 2993), make the following correction:

On page 3000, in the second column, remove amendatory instruction 3.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference,  
Intergovernmental relations, Particulate matter.

Dated: June 14, 2016.

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 -- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

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

2. Section 52.247 is amended by adding paragraph (f) to read as follows:

**§ 52.247 Control Strategy and regulations: Fine Particle Matter.**

\* \* \* \* \*

(f) By August 21, 2017, California must adopt and submit a Serious Area plan to provide for attainment of the 2006 PM<sub>2.5</sub> NAAQS in the San Joaquin Valley PM<sub>2.5</sub> nonattainment area. The Serious Area plan must include emissions inventories, an attainment demonstration, best available control measures, a reasonable further progress plan, quantitative milestones, contingency measures, and such other measures as may be necessary or appropriate to provide for attainment of the 2006 PM<sub>2.5</sub> NAAQS by the applicable attainment date, in accordance with the requirements of subparts 1 and 4 of part D, title I of the Clean Air Act.

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