



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0373; FRL-8715-02-R9]

Finding of Failure to Submit a State Implementation Plan to Meet the 1987 24-Hour PM₁₀ Standard; Moderate Area Requirements; West Pinal County; Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a finding that Arizona has not submitted a required revision to the Arizona State Implementation Plan (SIP) for the West Pinal County nonattainment area addressing Clean Air Act (CAA) requirements for a Moderate area attainment plan, related rules, and other analyses needed to attain the 1987 24-hour particulate matter (PM₁₀) National Ambient Air Quality Standard (NAAQS) by December 31, 2018. Under the CAA, Arizona was required to submit a moderate area PM₁₀ attainment plan for West Pinal County no later than January 2, 2014, and the State did so on December 21, 2015. On May 17, 2021, Arizona withdrew its Moderate area attainment plan submission. This finding establishes a deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address these CAA requirements 24 months from the effective date of this finding. The CAA also provides for the imposition of sanctions if Arizona does not submit the required attainment plan within timeframes specified by the CAA.

DATES: This finding is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The EPA has established a docket for this action identified by the following identification number, EPA-R09-OAR-2021-0373. Generally, documents in the docket for this action are available electronically at the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the FOR FURTHER INFORMATION CONTACT section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the FOR FURTHER INFORMATION CONTACT section.

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, EPA Region IX, (415) 947-4111, wamsley.jerry@epa.gov.

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that an agency may issue a rule without providing notice and an opportunity for public comment when that agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The EPA has determined that there is good cause for issuing this finding without prior proposal and opportunity for comment because there is little or no judgment involved for the EPA to make a finding of failure to submit SIPs or elements of SIPs required by the CAA, where states have not submitted a required SIP revision by the date specified by statute, made incomplete submissions, or, as in this case, withdrawn an existing submission. In such circumstances, EPA finds that notice and public procedures are unnecessary and that this constitutes good cause under 5 U.S.C. 553(b)(B).

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

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I. Background and Statutory Requirements

A. The PM₁₀ NAAQS and the EPA's Nonattainment Redesignation of West Pinal County

The EPA sets the 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 PM₁₀, is one of the ambient air pollutants for which the EPA has established health-based standards. The EPA revised the NAAQS (or “standards”) for particulate matter on July 1, 1987, replacing the standards for total suspended particulates (TSP less than 30 microns in diameter) with new standards applying only to particulate matter up to 10 microns in diameter.¹ An area attains the 24-hour PM₁₀ standard of 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) when the expected number of days per calendar year, averaged over a three year period, with a 24-hour concentration exceeding the standard (referred to as an exceedance), is equal to or less than one.² On January 13, 2013, the EPA announced that it was again retaining the 24-hour PM₁₀ NAAQS as a 24-hour standard of 150 $\mu\text{g}/\text{m}^3$.³

On October 14, 2009, consistent with Section 107(d)(3)(A) of the CAA, the EPA notified the Governor of Arizona and the leaders of four Tribes with areas of Indian country either entirely or partly within Pinal County that the designation for Pinal County and nearby areas contributing to monitored violations of the PM₁₀ NAAQS should be revised.⁴ The EPA's initiation of the redesignation process for Pinal County was based upon our review of 2006-2008

¹ 53 FR 24634 (July 1, 1987). The 1987 PM₁₀ standards included a 24-hour (150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)) and an annual standard (50 $\mu\text{g}/\text{m}^3$). In 2006, the EPA revoked the annual standard; see 71 FR 61144 (October 17, 2006) and 40 CFR 50.6.

² An exceedance is defined as a daily value that is above the level of the 24-hour standard, 150 $\mu\text{g}/\text{m}^3$, after rounding to the nearest 10 $\mu\text{g}/\text{m}^3$ (i.e., values ending in five or greater are to be rounded up). Consequently, a recorded value of 154 $\mu\text{g}/\text{m}^3$ would not be an exceedance because it would be rounded to 150 $\mu\text{g}/\text{m}^3$; whereas, a recorded value of 155 $\mu\text{g}/\text{m}^3$ would be an exceedance because it would be rounded to 160 $\mu\text{g}/\text{m}^3$. See 40 CFR part 50, appendix K, section 1.0.

³ 78 FR 3806 (January 13, 2013).

⁴ Letter from Laura Yoshii, Acting Regional Administrator, to Governor of Arizona Jan Brewer dated October 14, 2009. By letters dated December 30, 2009, the EPA notified the tribal leaders of the Ak-Chin Indian Community, Gila River Indian Community, and San Carlos Apache Tribe. The EPA notified Tohono O'odham Nation by letter dated September 21, 2010.

ambient PM₁₀ monitoring data from monitoring stations within the county showing widespread, frequent, and, in some cases, severe violations of the PM₁₀ NAAQS.

On May 31, 2012, EPA redesignated part of Pinal County from unclassifiable to nonattainment for the 24-hour PM₁₀ NAAQS, creating the West Pinal County PM₁₀ nonattainment area.⁵ The EPA's nonattainment redesignation of West Pinal County was based on ambient PM₁₀ data collected from 2007 to 2009.⁶ Our redesignation of West Pinal County to nonattainment for the PM₁₀ NAAQS was effective on July 2, 2012. Consequently, under section 188(c)(1) of the CAA, Arizona was required to submit an implementation plan providing for West Pinal County's attainment of the PM₁₀ NAAQS as expeditiously as practicable, but no later than the close of the sixth calendar year after redesignation, or December 31, 2018. As specified in our May 31, 2012 rulemaking, the Moderate area PM₁₀ attainment plan for West Pinal County was due on January 2, 2014, 18 months after the effective date of the redesignation, as required by section 189(a)(2)(B) of the CAA.

On December 21, 2015, Arizona submitted "The 2015 West Pinal Moderate PM₁₀ Nonattainment Area SIP" (Moderate Area Plan) with related rules and analyses for West Pinal County.⁷ The submission included rules regulating PM₁₀ emissions from construction sites, crop operations, animal operations, irrigation districts, and general fugitive dust. On May 1, 2017, the EPA approved the submitted rules regulating PM₁₀ emissions from construction sites, crop operations, irrigation districts, and general fugitive dust, but did not act on the remainder of the submission.⁸

On June 24, 2020, the EPA determined that the West Pinal County nonattainment area had not attained the 1987 24-hour PM₁₀ NAAQS by the latest permissible December 31, 2018

⁵ For the boundaries of the West Pinal County PM₁₀ nonattainment area, see 40 CFR 81.303. Also, for a detailed discussion of these boundaries, see our final rule at 77 FR 32024 (May 31, 2012) and proposed rule at 75 FR 60680 (October 1, 2010). No areas of Indian country are located in the West Pinal PM₁₀ nonattainment area.

⁶ 75 FR 60680 (October 1, 2010).

⁷ Letter dated December 21, 2015 from Eric C. Massey, Director, Air Quality Division, ADEQ to Jared Blumenfeld, Regional Administrator, EPA Region IX.

⁸ 82 FR 20267 (May 1, 2017).

attainment date and reclassified the area from Moderate to Serious.⁹ The EPA's finding of failure to attain the NAAQS by the required date and concomitant reclassification established an 18-month deadline for Arizona to submit a Serious area attainment plan for the West Pinal County PM₁₀ nonattainment area by January 24, 2022.

On January 8, 2021, the EPA proposed a partial approval and partial disapproval of the Moderate Area Plan, proposing to disapprove all elements of the attainment plan, except the emissions inventories.¹⁰ Subsequently, on February 26, 2021, we proposed a limited approval and limited disapproval of statutory provisions and rules that govern particulate matter emissions from agricultural activity that Arizona submitted with the plan.¹¹

On May 17, 2021, ADEQ withdrew all submitted portions of the Moderate Area Plan that the EPA had not approved previously into the SIP.¹² In addition to the required attainment plan, Arizona's withdrawal action included the agricultural dust regulations that the EPA had not already approved into the SIP. Because Arizona has withdrawn the submission, the State has failed to meet its obligation to submit an attainment plan for the Moderate area attainment plan requirements for the West Pinal County PM₁₀ nonattainment area, providing the basis for this finding.

B. CAA Moderate PM₁₀ Nonattainment Area Requirements for West Pinal County

Areas redesignated as nonattainment are subject to the applicable requirements of part D, title I of the CAA and are classified as Moderate by operation of law, consistent with section 188(a) of the CAA. Within 18 months of the effective date of the redesignation, i.e., by January 2, 2014, Arizona was required to submit an attainment plan to the EPA providing for how the State will meet the PM₁₀ NAAQS within the West Pinal County nonattainment area no later than December 31, 2018. Among other things, this Moderate area attainment plan must contain

⁹ 85 FR 37756 (June 24, 2020).

¹⁰ 86 FR 1347 (January 8, 2021).

¹¹ 86 FR 11681 (February 26, 2021).

¹² Letter from Daniel Czecholinski, Arizona Department of Environmental Quality, to Deborah Jordan, EPA Region IX, dated May 17, 2021.

statutorily mandated elements and, according to the CAA and EPA guidance, address the following requirements: (1) an approved permit program for construction of new and modified major stationary sources;¹³ (2) a demonstration that the plan provides for attainment by no later than the applicable Moderate area attainment date or a demonstration that attainment by that date is impracticable;¹⁴ (3) provisions for the implementation of reasonably available control measures (RACM) and reasonably available control technology (RACT);¹⁵ (4) quantitative milestones that will be used to evaluate compliance with the requirement to demonstrate reasonable further progress (RFP);¹⁶ (5) evaluation and regulation of PM₁₀ precursors;¹⁷ (6) a description of the expected annual incremental reductions in emissions that will demonstrate RFP;¹⁸ (7) emissions inventories, as necessary;¹⁹ (8) other control measures besides RACM and RACT as may be needed for attainment;²⁰ (9) contingency measures;²¹ and (10) a motor vehicle emissions budget for the purpose of determining the conformity of transportation programs and plans developed by state transportation agencies.²² With Arizona's May 17, 2021 withdrawal action, the State has failed to meet its obligation to submit nine of the ten required Moderate area attainment plan elements; today's action does not affect ADEQ's permit program governing the construction and operation of new and modified major stationary sources of PM₁₀ within the West Pinal County nonattainment area.²³

¹³ CAA section 189(a)(1)(A).

¹⁴ CAA section 189(a)(1)(B).

¹⁵ CAA section 189(a)(1)(C).

¹⁶ CAA section 189(c).

¹⁷ CAA section 189(e).

¹⁸ CAA section 172(c)(2).

¹⁹ CAA section 172(c)(3).

²⁰ CAA section 172(c)(6).

²¹ CAA section 172(c)(9).

²² 40 CFR 93.102(b)(1).

²³ For a discussion of our action on Arizona's submittal to meet CAA section 189(a)(1)(A), see 80 FR 67319 (November 2, 2015).

By this action, the EPA is finding that Arizona failed to submit the nine required PM₁₀ Moderate Area attainment plan elements for the West Pinal County PM₁₀ nonattainment area listed above. As noted, Arizona has submitted a major source PM₁₀ permitting program including West Pinal County and that element is not a subject of this finding.

C. Consequences of this Finding that Arizona Failed to Submit a PM₁₀ Implementation Plan for West Pinal County

The EPA is finding that Arizona has failed to make a required Moderate area attainment plan submission for the 1987 PM₁₀ NAAQS for the West Pinal County area, except for the permit program required under section 189(a)(1)(A). With this finding, section 179 of the CAA starts a sanctions clock and a FIP clock. Section 179(a) of the CAA specifies the consequences for a state if the EPA finds that a state has failed to make a required SIP submission, if the EPA has determined that a submitted SIP is incomplete, or if the EPA has disapproved a SIP submission. If the EPA has not affirmatively determined that Arizona has made complete submissions of the required nonattainment SIP elements within 18 months of the effective date of this action, then the offset sanction identified in section 179(b)(2) will apply to West Pinal County, pursuant to section 179(a) and (b) and 40 CFR 52.31. If the EPA has not affirmatively determined that Arizona has made a complete SIP submission for West Pinal County within six months after imposition of this offset sanction, then the highway funding sanction will be imposed, as required under section 179(b)(1) of the CAA and 40 CFR 52.31.

Arizona may avoid these sanctions by taking timely action to remedy this finding. The 18-month clock governing the Act's imposition of sanctions on Arizona will stop and sanctions will not take effect if the EPA finds that the State has made a complete SIP submission for the Moderate area attainment plan requirements for the West Pinal County area within 18 months of the date of this finding. Similarly, the EPA is not required to promulgate a FIP if Arizona makes the required SIP submission and the EPA takes final action to approve the submission within two

years of the finding of failure to submit a required SIP. In sum, the CAA does not require sanctions or a FIP if the State and the EPA take timely action to remedy this finding.

As discussed previously, the EPA determined that West Pinal County did not meet the PM₁₀ NAAQS by December 31, 2018, causing West Pinal County to be reclassified, by operation of law, from a Moderate to a Serious PM₁₀ nonattainment area. With this reclassification of West Pinal County to Serious, Arizona is required to submit, by January 24, 2022, a nonattainment plan SIP revision that complies with the statutory and regulatory requirements for Serious PM₁₀ nonattainment plans and that demonstrates attainment of the PM₁₀ NAAQS as expeditiously as practicable, but no later than December 31, 2022. Although reclassification of West Pinal County from Moderate to Serious does not eliminate Arizona's obligation to meet Moderate area nonattainment plan requirements, the EPA anticipates that Arizona's submission of an approvable Serious area nonattainment plan would also satisfy the State's Moderate area nonattainment plan obligations.²⁴ Therefore, should Arizona submit a complete Serious area attainment plan for the West Pinal County PM₁₀ nonattainment area, the sanction clocks associated with this finding of failure to submit would stop. Similarly, should Arizona submit, and the EPA subsequently approve, a Serious area attainment plan for the West Pinal County PM₁₀ nonattainment area, such a final approval action would stop the FIP clock associated with this finding of failure to submit the Moderate area implementation plan elements.

II. Final Action

The EPA finds that Arizona has not submitted a revision to the Arizona SIP addressing CAA requirements for a Moderate area attainment plan, related rules, and other analyses, for the West Pinal County PM₁₀ nonattainment area. Under provisions of the CAA, Arizona was required to submit a Moderate area PM₁₀ implementation plan for West Pinal County no later than January 2, 2014. Although Arizona submitted a Moderate area PM₁₀ attainment plan, related

²⁴ See section 189(b)(1), specifying that Serious Area plan requirements include “the provisions submitted to meet the requirements of paragraph (a)(1) [of section 189] (relating to Moderate Areas).”

rules, and analyses, on December 21, 2015, the State withdrew this submittal on May 17, 2021, giving rise to this finding.

This finding of failure to submit the required Moderate area PM₁₀ attainment plan establishes a deadline, 24 months after the effective date of this finding, for EPA to promulgate a FIP to address the CAA requirements for a Moderate area PM₁₀ attainment plan, unless prior to this deadline, Arizona submits and the EPA approves the State's Moderate area PM₁₀ attainment plan as meeting all the requirements of the CAA. The CAA also provides for the imposition of emissions offset sanctions 18 months from the effective date of this finding and highway funding sanctions 24 months from the effective date of this finding, if Arizona does not submit the required complete Moderate area PM₁₀ attainment plan before these deadlines.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will 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.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because this action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. There are no areas of Indian country located in the West Pinal PM₁₀ nonattainment area. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. *National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. *Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA lacks the discretionary authority to address environmental justice in this action.

K. *Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. *Petitions for Judicial Review*

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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. 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 in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: July 8, 2021.

Elizabeth Adams,
Acting Regional Administrator,
Region IX.

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