



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0477; FRL-11532-02-R9]

Interim Final Determination to Stay or Defer Sanctions; California; San Joaquin Valley

Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the State of California has submitted revisions to the California State Implementation Plan (SIP) that satisfy the requirements under the Clean Air Act (CAA or “Act”) for nonattainment areas classified as “Serious” for the 1997 annual fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS), and for contingency measures for the 2006 24-hour PM_{2.5} NAAQS and the 2012 annual PM_{2.5} NAAQS, in the San Joaquin Valley (SJV) nonattainment area. This determination is based on a proposed approval, published on July 14, 2023, of SIP revisions addressing the Serious area requirements for the 1997 annual PM_{2.5} NAAQS (except contingency measures) and on proposed approvals, published elsewhere in this issue of the *Federal Register*, of SIP revisions addressing the contingency measure requirements for the 1997 annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 2012 annual PM_{2.5} NAAQS. The effect of this interim final determination is to stay the application of the offset sanction and to defer the application of the highway sanction that were triggered by previous EPA actions that included disapproval of the certain Serious area SIP elements submitted for the San Joaquin Valley for the 1997 annual PM_{2.5} NAAQS (including the contingency measure element), and disapproval of the contingency measure SIP elements for the 2006 24-hour PM_{2.5} NAAQS and the 2012 annual PM_{2.5} NAAQS.

DATES: This interim final determination is effective on [INSERT DATE OF PUBLICATION]

IN THE FEDERAL REGISTER]. However, comments will be accepted until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0477 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute.

Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. 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: Rory Mays, Planning and Analysis Branch (AIR-2), Air and Radiation Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3227, or by email at mays.rory@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

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I. Background

On November 26, 2021, the EPA took final action to approve in part and disapprove in part portions of SIP revisions submitted by the California Air Resources Board (CARB) to address CAA requirements for the 1997 annual PM_{2.5} NAAQS in the San Joaquin Valley PM_{2.5} nonattainment area.¹ Specifically, the EPA approved the 2013 base year emissions inventories but disapproved the attainment demonstration and related elements, including the comprehensive precursor demonstration, five percent annual emissions reductions demonstration, best available control measures demonstration, reasonable further progress demonstration, quantitative milestones, contingency measures, and motor vehicle emissions budgets. In our November 26, 2021 action, we determined that while the SIP revisions met the requirements for base year inventories, the SIP revisions did not meet the applicable requirements for the other listed plan elements under title I, part D, of the Act and the EPA's implementing regulations for Serious PM_{2.5} nonattainment areas that are subject to CAA section 189(d). Pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31, this partial disapproval action started an 18-month clock for the application of the offset sanction and a 24-month clock for the application of the highway sanction, beginning on the effective date of our November 26, 2021 action (i.e., December 27, 2021), unless the State submits, and the EPA approves, a SIP revision or revisions that address the deficiencies that formed the basis for the partial disapproval prior to the expiration of the sanctions clocks. Application of the offset sanction has been in effect since June 27, 2023, and the clock for the highway sanction will expire on December 27, 2023.

On November 8, 2021, CARB submitted the "Attainment Plan Revision for the 1997 Annual PM_{2.5} Standard" (herein referred to as the "15 µg/m³ SIP Revision") to amend the previously disapproved SIP revisions and to address all CAA requirements for the 1997 annual

¹ 86 FR 67329.

PM_{2.5} NAAQS except for contingency measures.² On July 14, 2023, the EPA proposed approval of the relevant SIP revisions, including the 15 µg/m³ SIP Revision, that address all the applicable requirements for the 1997 annual PM_{2.5} NAAQS in the San Joaquin Valley that had been the subject of our November 26, 2021 final partial disapproval action, except for the contingency measure requirements.³ On December 5, 2023, the EPA Region IX Regional Administrator signed a final rule taking action to approve the SIP revisions that the EPA had proposed to approve on July 14, 2023.

Also on November 26, 2021, the EPA published a separate final rule to approve in part and disapprove in part portions of SIP revisions submitted by CARB to address CAA requirements for the 2006 24-hour PM_{2.5} NAAQS and the 2012 annual PM_{2.5} NAAQS in the San Joaquin Valley.⁴ Specifically, we approved all but the contingency measure element of the SIP revisions as they pertained to the Moderate area plan requirements for the 2012 PM_{2.5} NAAQS, and we disapproved the contingency measure elements for the 2006 24-hour PM_{2.5} NAAQS and the 2012 annual PM_{2.5} NAAQS. Like our final action on the Serious area plan for the 1997 annual PM_{2.5} NAAQS, pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31, our partial disapproval action started an 18-month clock for the application of the offset sanction and a 24-month clock for the application of the highway sanction, beginning on the effective date of our November 26, 2021 action (i.e., December 27, 2021), unless the State submits, and the EPA approves, a SIP revision or revisions that address the deficiencies that formed the basis for the disapproval prior to the expiration of the sanctions clocks. Application of the offset sanction has been in effect since June 27, 2023, and the clock for the highway sanction will expire on December 27, 2023.

On June 8, 2023, CARB submitted SIP revisions (herein referred to as the “SJV PM_{2.5} Contingency Measure SIP” and the “Residential Wood Burning Contingency Measure”)

² 88 FR 45276, 45278-45279 (July 14, 2023).

³ 88 FR 45276.

⁴ 86 FR 67343 (November 26, 2021).

addressing the contingency measure requirements for the 1997 annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 2012 annual PM_{2.5} NAAQS for the San Joaquin Valley. The Residential Wood Burning Contingency Measure would, following a triggering event, expand the residential wood burning curtailment restrictions if certain determinations are made by the EPA. On October 16, 2023, CARB supplemented the SJV PM_{2.5} Contingency Measure SIP with the submission of a second PM_{2.5} contingency measure (referred to herein as the “Rural Open Areas Contingency Measure”) that would, following a triggering event, expand applicability of certain fugitive dust controls if triggered by a contingency event. In addition, on November 13, 2023, CARB submitted a state-wide contingency measure SIP revision, including provisions for PM_{2.5} contingency measures in the San Joaquin Valley (herein referred to as the “Smog Check Contingency Measure”) that would, following a triggering event, reduce the model-year vehicle exemption in the State’s vehicle inspection and maintenance program (referred to as the “Smog Check” program) by one year.

In the Proposed Rules section of this issue of the *Federal Register*, we have proposed approval of the SJV PM_{2.5} Contingency Measure SIP, the Residential Wood Burning Contingency Measure, and the Rural Open Areas Contingency Measure, and, in a separate rulemaking, we have proposed approval of the Smog Check Contingency Measure. Based on our July 14, 2023 proposed approval action with respect to the Serious area SIP elements for the San Joaquin Valley for the 1997 annual PM_{2.5} NAAQS (other than the contingency measure element), and on the proposed approval actions in this issue of the *Federal Register* with respect to the contingency measure SIP and related contingency measures, we are taking this final rulemaking action, effective upon publication, to stay application of the offset sanction and defer application of the highway sanction that were triggered by the EPA’s November 26, 2021 disapprovals of the Serious area plan for the 1997 annual PM_{2.5} NAAQS, including the contingency measure element, and the contingency measure elements for the 2006 24-hour PM_{2.5} NAAQS and the 2012 annual PM_{2.5} NAAQS. We are doing so because we find that the

submissions of the 15 $\mu\text{g}/\text{m}^3$ SIP Revision, the SJV $\text{PM}_{2.5}$ Contingency Measure SIP, the Residential Wood Burning Contingency Measure, the Rural Open Areas Contingency Measure, and the Smog Check Contingency Measure correct the deficiencies that triggered such sanctions.

The EPA is providing the public with an opportunity to comment on this stay of the offset sanction and deferral of the highway sanction. If comments are submitted that change our assessment, as described in this final determination and in our proposed approvals of the SJV $\text{PM}_{2.5}$ Contingency Measure SIP, the Residential Wood Burning Contingency Measure, the Rural Open Areas Contingency Measure, and the Smog Check Contingency Measure, with respect to the deficiencies identified as the basis for our disapprovals of the contingency measure elements, we will take final action proposing to lift this stay of the offset sanction and deferral of the highway sanction under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our November 26, 2021 final actions will be permanently terminated on the effective date of our final approvals of the SJV $\text{PM}_{2.5}$ Contingency Measure SIP, the Residential Wood Burning Contingency Measure, the Rural Open Areas Contingency Measure, and the Smog Check Contingency Measure.

All sanctions and any sanctions clocks associated with the Serious area SIP elements for the 1997 annual $\text{PM}_{2.5}$ NAAQS for the San Joaquin Valley (except the contingency measures element) will be permanently terminated on the effective date of the final approval of the 15 $\mu\text{g}/\text{m}^3$ SIP Revision, which was signed by the EPA Region IX Regional Administrator on December 5, 2023.

II. EPA Action

We are making an interim final determination to stay the application of the offset sanction and to defer the application of the highway sanction associated with our November 26, 2021 disapprovals of certain Serious area plan elements for the 1997 annual $\text{PM}_{2.5}$ NAAQS for the San Joaquin Valley (including the contingency measure element) and of the contingency measure elements for the 2006 24-hour $\text{PM}_{2.5}$ NAAQS and the 2012 annual $\text{PM}_{2.5}$ NAAQS for

the San Joaquin Valley. This determination is based on our concurrent proposals to approve the SJV PM_{2.5} Contingency Measure SIP, the Residential Wood Burning Contingency Measure, the Rural Open Areas Contingency Measure, and the Smog Check Contingency Measure, and our July 14, 2023 proposed approval of the 15 µg/m³ SIP Revision, which resolve the deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that the submissions of the 15 µg/m³ SIP Revision, the SJV PM_{2.5} Contingency Measure SIP, the Residential Wood Burning Contingency Measure, the Rural Open Areas Contingency Measure, and the Smog Check Contingency Measure, address the deficiencies identified in the November 26, 2021 partial disapproval actions and are fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with an opportunity to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the submissions of the 15 µg/m³ SIP Revision, the SJV PM_{2.5} Contingency Measure SIP, Residential Wood Burning Contingency Measure, the Rural Open Areas Contingency Measure, and the Smog Check Contingency Measure and, through its proposed actions, is indicating that it is more likely than not that they correct the deficiencies that were the basis for the actions that started the sanctions clocks. Therefore, it is not in the public interest to apply sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to stay the application of the offset sanction and defer the application of the highway sanction while we complete our rulemaking process on the approvability of the CARB's submissions of SIP revisions intended to address the Serious area plan elements for the San Joaquin Valley for the 1997 annual PM_{2.5} NAAQS

(including contingency measures) and the contingency measure requirements for the 2006 24-hour PM_{2.5} NAAQS and the 2012 annual PM_{2.5} NAAQS. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this document is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays or defers application of sanctions and imposes no additional requirements.

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. This action stays or defers application of sanctions and imposes no new requirements.

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. This action stays or defers application of sanctions and imposes no new requirements.

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. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

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: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action stays or defers application of sanctions and imposes no new requirements. In addition, 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. 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 concern an environmental health risk or safety risk.

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

This rulemaking does not involve technical standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse

human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations. The EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations, and/or Indigenous peoples. This action stays or defers application of sanctions in accordance with CAA regulatory provisions and imposes no additional requirements. Although this action does not concern human health or environmental conditions, the EPA identifies and addresses environmental justice concerns by promoting meaningful involvement in this action through providing the public with an opportunity to comment on this stay of the offset sanction and the deferral of the highway sanction as well as the opportunity to comment on our proposed approvals of the submissions of the SJV PM_{2.5} Contingency Measure SIP, Residential Wood Burning Contingency Measure, the Rural Open Areas Contingency Measure, and the Smog Check Contingency Measure in the Proposed Rules section of this *Federal Register*.

K. Congressional Review Act (CRA)

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA 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 comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this action as discussed in section II of this preamble, including the basis for that finding.

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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the EPA Administrator of this action does not affect the finality of

this action for the purpose of judicial review nor does it extend the time within which 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 CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: December 12, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

[FR Doc. 2023-27687 Filed: 12/19/2023 8:45 am; Publication Date: 12/20/2023]