



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0630; FRL-11617-01-R9]

Finding of Failure to Submit State Implementation Plan Submissions for the 2012 Fine Particulate Matter National Ambient Air Quality Standards; California; Los Angeles-South Coast Air Basin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to find that California has failed to submit state implementation plan (SIP) elements required under the Clean Air Act (CAA or “Act”) to implement the 2012 national ambient air quality standards (NAAQS) for fine particulate matter (PM_{2.5}) (“2012 PM_{2.5} NAAQS”) in the Los Angeles-South Coast Air Basin (“South Coast”). California was required to submit a SIP that meets the Serious area plan requirements for a reasonable further progress demonstration, quantitative milestones, an attainment demonstration, and contingency measures for the 2012 PM_{2.5} NAAQS by December 31, 2023. The State submitted the required SIP elements, but subsequently withdrew its submission. If the EPA has not affirmatively found that the State has submitted a complete SIP to correct these deficiencies within 18 months of this finding, the offset sanctions will apply in the area. If within six additional months the EPA has still not affirmatively determined that the State has submitted a complete SIP to correct the deficiencies, the highway funding sanction will apply in the area. No later than two years after the EPA makes this finding, if the State has not submitted and the EPA has not approved each of the required SIP elements, the EPA must promulgate a Federal implementation plan (FIP) to address the remaining requirements.

DATES: The effective date of this action is [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2023-0630. All documents in the docket are listed on the <https://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 a disability 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: Ginger Vagenas, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3964 or by email at vagenas.ginger@epa.gov.

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedure Act (APA), 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 public interest. The EPA has determined that there is a 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, made incomplete submissions, or, as in this case, withdrawn an existing submission by the date specified by the statute. In such circumstances, the 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

Airborne particulate matter (PM) can be composed of a complex mixture of particles in both solid and liquid form. Particulate matter can be of different sizes, commonly referred to as “coarse” and “fine” particles. Fine particles, in general terms, are PM with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers. For this reason, particles of this size are referred to as PM_{2.5}.

Under section 109 of the Act, the EPA is required to establish primary (health-based) and secondary (welfare-based) NAAQS for each pollutant for which the EPA has issued air quality criteria. The EPA first promulgated annual and 24-hour NAAQS for PM_{2.5} in July 1997¹ and then revised the 24-hour PM_{2.5} NAAQS in October 2006.² Most recently, on December 14, 2012, the EPA revised the primary annual PM_{2.5} standard by lowering the level from 15.0 to 12.0 micrograms per cubic meter of air ($\mu\text{g}/\text{m}^3$) to provide increased protection against health effects associated with long- and short-term PM_{2.5} exposures. The EPA did not revise the secondary annual PM_{2.5} standard, which remains at 15.0 $\mu\text{g}/\text{m}^3$.³ In addition, the EPA retained the level and form of the primary and secondary 24-hour PM_{2.5} standards to continue to provide supplemental protection against health and welfare effects associated with short-term PM_{2.5} exposures.

Promulgation of a revised NAAQS triggers a requirement for the EPA to designate areas of the country as nonattainment, attainment, or unclassifiable for the standards. As prescribed by CAA section 188(a), areas designated as nonattainment for a PM_{2.5} NAAQS are initially

¹ 62 FR 38652 (July 18, 1997).

² 71 FR 61143 (October 17, 2006).

³ 78 FR 3086 (January 15, 2013).

classified as Moderate. The designation and initial classification for the South Coast as Moderate nonattainment for the 2012 PM_{2.5} NAAQS became effective on April 15, 2015.⁴

Nonattainment areas for PM_{2.5} are subject to the general nonattainment area planning requirements of CAA section 172 and to the PM-specific planning requirements of CAA sections 188–189. On August 24, 2016, the EPA established a final implementation rule (“PM_{2.5} SIP Requirements Rule”) outlining the attainment planning and control requirements for current and future PM_{2.5} NAAQS.⁵ The PM_{2.5} SIP Requirements Rule also established the due date for Moderate area PM_{2.5} SIP submissions as no later than 18 months from the effective date of area designations.⁶ Accordingly, the areas designated as nonattainment for the 2012 PM_{2.5} NAAQS (with an effective date of April 15, 2015) were required to submit Moderate area attainment plans to EPA no later than October 15, 2016.

On April 27, 2017, California submitted the “Final 2016 Air Quality Management Plan” (“2016 Plan”), as adopted on March 3, 2017, by the Governing Board for the South Coast Air Quality Management District (SCAQMD or “District”) to the EPA to address CAA requirements associated with the 2012 PM_{2.5} standard.⁷ The 2016 Plan included a demonstration, consistent with the requirements of CAA section 189(a)(1)(B), that attainment of the 2012 PM_{2.5} standard by the December 31, 2021, Moderate area attainment date was impracticable, despite the implementation of required control measures.⁸ The 2016 Plan also included a request that the EPA reclassify the nonattainment area from Moderate to Serious, and included a Serious area attainment demonstration, an emissions inventory, attainment related plan elements, and control measure provisions.⁹ Effective December 9, 2020, we approved or conditionally approved the portions of the 2016 Plan that addressed the CAA Moderate area requirements for the 2012

⁴ 80 FR 2206 (January 15, 2015).

⁵ Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements; Final rule; 81 FR 58010 (August 24, 2016).

⁶ 40 CFR 51.1003(a)(1).

⁷ 85 FR 71264 (November 9, 2020). For additional background, see the associated proposed rulemaking at 85 FR 40026 (July 2, 2020).

⁸ Id. at 71266.

⁹ Id. at 71268.

PM_{2.5} NAAQS in the South Coast nonattainment area and reclassified the South Coast as a Serious nonattainment area under CAA section 188(b)(1).¹⁰

Our final action on the 2016 Plan's Moderate area requirements and reclassification of the nonattainment area to Serious also noted that the submitted 2016 Plan included Serious area planning elements for the 2012 PM_{2.5} NAAQS and stated that we would evaluate and act on them through subsequent rulemakings as appropriate.¹¹ At the same time, our final action explained that our reclassification of the South Coast nonattainment area from Moderate to Serious for the 2012 PM_{2.5} NAAQS triggered statutory and regulatory timelines for submittal of Serious area planning elements. Specifically, we stated that section 189(b)(2) of the CAA requires a state to submit the required best available control measure (BACM) provisions no later than 18 months after the effective date of final reclassification (i.e., June 9, 2022). Because an effective BACM evaluation requires an up-to-date emissions inventory and an evaluation of the precursor pollutants that must be controlled to provide for expeditious attainment, we also required the State to submit the emissions inventory required under CAA section 172(c)(3) and any optional precursor demonstrations by this same date. In addition, we established a deadline of December 31, 2023, for the submittal of the attainment demonstration and all other attainment-related plan elements.¹²

On March 29, 2023, the State of California and the District notified the EPA of their determination that the portions of the 2016 Plan relating to Serious area planning elements for the 2012 PM_{2.5} NAAQS were no longer appropriate for inclusion in the SIP and requested that

¹⁰ 85 FR 71264.

¹¹ Id. at 71268.

¹² 85 FR 71268. The Serious area SIP elements for the 2012 PM_{2.5} NAAQS include provisions to assure that best available control measures (including best available control technology) shall be implemented no later than four years after the area is reclassified, a base year emissions inventory, an attainment projected emissions inventory, an attainment demonstration with air quality modeling, a reasonable further progress (RFP) demonstration, quantitative milestones, contingency measures, and a nonattainment new source review (NNSR) program with the major source threshold set at 70 tons per year. CAA section 189(b).

those portions of the submittal be considered withdrawn.^{13,14} Shortly thereafter, we issued a finding that California had failed to submit the BACM and emissions inventory (EI) plan elements that were due on June 9, 2022.¹⁵ The remaining plan elements, which were due on December 31, 2023, are the subject of this action.

II. Consequences of Findings of Failure to Submit

For plan requirements under part D, title I of the CAA, such as those for PM_{2.5} nonattainment areas, if the EPA finds that a state has failed to make the required SIP submission, then CAA section 179 establishes specific consequences, including the eventual imposition of mandatory sanctions for the affected area. Additionally, such a finding triggers an obligation under CAA section 110(c) for the EPA to promulgate a FIP no later than two years from the effective date of the finding, if the affected state has not submitted, and the EPA has not approved, the required SIP submissions.

If the EPA has not affirmatively determined that a state has submitted a complete SIP addressing the deficiency that is the basis for these findings within 18 months of the effective date of this rulemaking, pursuant to CAA sections 179(a) and (b) and 40 CFR 52.31, the emissions offset sanction identified in CAA section 179(b)(2) will apply to the affected nonattainment area. If the EPA has not affirmatively determined that the state has submitted a complete SIP addressing the deficiency that is the basis for these findings within six months after the offset sanction is imposed, the highway funding sanction will apply in the affected nonattainment area, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. The State must make the required SIP submission and the EPA must take final action to approve the submission within two years of the effective date of this finding; otherwise, the EPA is required

¹³ Letter dated March 8, 2023, from Sarah Rees, Ph.D., Deputy Executive Officer, Planning, Rule Development & Implementation, South Coast Air Quality Management District to Michael Benjamin, D. Env., Chief, Air Quality Planning and Science Division, California Air Resources Board.

¹⁴ Letter dated March 29, 2023, from Michael Benjamin, Chief, Air Quality Planning and Science Division, California Air Resources Board to Martha Guzman, Regional Administrator, EPA Region IX.

¹⁵ 88 FR 34093 (May 26, 2023), effective June 26, 2023.

to promulgate a FIP to address the relevant requirements. This is required pursuant to CAA section 110(c) for the affected nonattainment area.

Based upon the withdrawal of the Serious area plan elements submitted with the 2016 Plan as described in section I of this rulemaking, the EPA is finding that California has failed to make the following required submittals for the 2012 PM_{2.5} NAAQS for the South Coast nonattainment area: (1) reasonable further progress demonstration, (2) quantitative milestones, (3) attainment demonstration, and (4) contingency measures. These required elements were due on December 31, 2023. With this finding, section 179 of the CAA starts sanctions clocks and a FIP clock. California may avoid these sanctions by taking timely action to remedy this finding. The clock governing the CAA's imposition of sanctions for these areas will stop and sanctions will not take effect if the EPA finds that the State has made a complete SIP submission addressing the reasonable further progress demonstration, quantitative milestones, attainment demonstration, and contingency measures requirements for this area within 18 months of the date of this finding. Similarly, the EPA is not required to promulgate a FIP if California makes the required SIP submissions and the EPA takes final action to approve the submissions within two years of this 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.

III. Final Action

In this action, the EPA is finding that California has failed to submit certain Serious area SIP elements for the 2012 PM_{2.5} NAAQS required under subpart 4 of part D of title I of the CAA. Specifically, following the March 2023 withdrawal, the EPA finds that California failed to submit the elements that were due no later than December 31, 2023, including an attainment demonstration, a reasonable further progress plan, quantitative milestones, and contingency measures. The consequences of this finding are discussed in Section II of this action.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders.gov>.

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 provisions of the PRA because it 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: Consultation and 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 compliance costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health 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 Advancement Act (NTTAA)

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 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action because the EPA is performing a non-discretionary duty to find that a required State submission was not timely submitted, and there is no information in the record inconsistent with the stated goals of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

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 action 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 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 procedures, Air pollution control, Approval and promulgation of implementation plans, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: January 23, 2024.

Martha Guzman Aceves,
Regional Administrator,
Region IX.