

zone except vessels that are engaged in the following operations: enforcement of laws, service of aids to navigation, and emergency response.

(d) *Enforcement periods.* This section will be enforced from December 8, 2017, through February 28, 2018. Enforcement will generally be between the hours of 5 a.m. and 7 p.m., Monday through Sunday, while the zone is in effect.

Dated: December 8, 2017.

Scott E. Anderson,

Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.

[FR Doc. 2017-26935 Filed 12-13-17; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2017-0677; FRL-9971-88-Region 10]

Finding of Failure To Submit a Section 110 State Implementation Plan for Interstate Transport for the 2012 Annual National Ambient Air Quality Standards for Fine Particles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action finding that Washington State failed to submit an infrastructure State Implementation Plan (SIP) to satisfy certain interstate transport requirements of the Clean Air Act (CAA) with respect to the 2012 annual fine particles (PM_{2.5}) national ambient air quality standard (NAAQS). Specifically, these requirements pertain to significant contribution to nonattainment, or interference with maintenance, of the 2012 annual PM_{2.5} NAAQS in other states. This finding of failure to submit establishes a 2-year deadline for the EPA to promulgate a Federal Implementation Plan (FIP) to address the interstate transport SIP requirements pertaining to significant contribution to nonattainment and interference with maintenance unless, prior to the EPA promulgating a FIP, the state submits, and the EPA approves, a SIP that meets these requirements.

DATES: This final rule is effective on January 16, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2017-0677. All documents in the dockets are listed on <http://www.regulations.gov>. 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, will be publicly available only in hard copy. Publicly-available docket materials are available at <http://www.regulations.gov> or in hard copy at the EPA Region 10, Office of Air and Waste, 1200 Sixth Avenue, Seattle, Washington, 98101. The EPA requests that if at all possible, you contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, Air Planning Unit, Office of Air and Waste (OAW-150), EPA, Region 10, 1200 Sixth Ave., Suite 900, Seattle, Washington 98101; (206) 553-0256; hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Notice and Comment Under the Administrative Procedures Act (APA)

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions or incomplete submissions, to meet the requirement. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

B. How is the Preamble organized?

II. Background and Overview

A. Interstate Transport SIPs

CAA section 110(a) imposes an obligation upon states to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years

following the promulgation of that NAAQS. Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. The EPA refers to this type of SIP submission as the “infrastructure” SIP because it ensures that states can implement, maintain and enforce the air standards. Within these requirements, section 110(a)(2)(D)(i) contains requirements to address interstate transport of NAAQS pollutants. A SIP revision submitted for this sub-section is referred to as an “interstate transport SIP.” In turn, section 110(a)(2)(D)(i)(I) requires that such a plan contain adequate provisions to prohibit emissions from the state that will contribute significantly to nonattainment of the NAAQS in any other state (“prong 1”) or interfere with maintenance of the NAAQS in any other state (“prong 2”). Interstate transport prongs 1 and 2, also called the “good neighbor” provisions, are the requirements relevant to this finding.

Pursuant to CAA section 110(k)(1)(B), the EPA must determine no later than 6 months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established per section 110(k)(1)(A). The EPA refers to the determination that a state has not submitted a SIP submission that meets the minimum completeness criteria as a “finding of failure to submit.” If the EPA finds a state has failed to submit a SIP to meet its statutory obligation to address section 110(a)(2)(D)(i)(I), pursuant to section 110(c)(1) the EPA has not only the authority, but the obligation, to promulgate a FIP within 2 years to address the CAA requirement. This finding therefore starts a 2-year clock for promulgation by the EPA of a FIP, in accordance with section 110(c)(1), unless prior to such promulgation the state submits, and the EPA approves, a submittal from the state to meet the requirements of section 110(a)(2)(D)(i)(I) for the 2012 annual PM_{2.5} NAAQS. The EPA will work with the state subject to this finding of failure to submit and provide assistance as necessary to help the state develop an approvable submittal in a timely manner. The EPA notes this action does not start a mandatory sanctions clock pursuant to CAA section 179 because this finding of failure to submit does not pertain to a part D plan for nonattainment areas required under section 110(a)(2)(I) or a SIP call pursuant section 110(k)(5).

B. Background on the 2012 Annual PM_{2.5} NAAQS

On December 14, 2012, the EPA promulgated a revised primary annual PM_{2.5} NAAQS to provide increased protection of public health and welfare from fine particle pollution.¹ In that action, the EPA revised the primary annual PM_{2.5} standard, strengthening it from 15.0 micrograms per cubic meter (µg/m³) to 12.0 µg/m³, which is attained when the 3-year average of the annual arithmetic means does not exceed 12.0 µg/m³. Infrastructure SIPs addressing the revised standard were due on December 14, 2015.

III. Finding of Failure To Submit for Washington State

To date, Washington State has not submitted a good neighbor SIP for the 2012 annual PM_{2.5} NAAQS. Accordingly, the EPA is issuing a finding that Washington State has failed to submit a SIP addressing the requirements of section 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C. 7410(a)(2)(D)(i)(I) (prongs 1–2), for the 2012 annual PM_{2.5} NAAQS.

IV. Environmental Justice Considerations

This notice is making a procedural finding that Washington State has failed to submit a SIP to address CAA section 110(a)(2)(D)(i)(I) for the 2012 annual PM_{2.5} NAAQS. The EPA did not conduct an environmental analysis for this rule because this rule would not directly affect the air emissions from particular sources. Because this rule will not directly affect the air emissions from particular sources, it does not affect the level of protection provided to human health or the environment. Therefore, this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

V. Statutory and Executive Order Reviews

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. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because it is not a significant regulatory action under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* This final rule does not establish any new information collection requirement apart from what is already required by law.

D. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b).

E. Unfunded Mandates Reform Act of 1995 (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 implements mandates specifically and explicitly set forth in the CAA under section 110(a) without the exercise of any policy discretion by the EPA.

F. 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This rule responds to the requirement in the CAA for states to submit SIPs under section 110(a) to address CAA section 110(a)(2)(D)(i)(I) for the 2012 annual PM_{2.5} NAAQS. No tribe is subject to the requirement to submit an implementation plan under section 110(a) within 3 years of promulgation of a new or revised NAAQS. Thus, Executive Order 13175 does not apply to this action.

H. 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 concern an environmental health risk or safety risk.

I. 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.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. The EPA’s evaluation of environmental justice considerations is contained in section IV of this document.

L. 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).

M. Petitions for Judicial Review

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 February 12, 2018. 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

¹ 78 FR 3086; January 15, 2013.

enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Interstate transport, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: November 30, 2017.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2017-26894 Filed 12-13-17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2017-0580; FRL-9972-02-Region 9]

Contingency Measures for the 1997 PM_{2.5} Standards; California; San Joaquin Valley; Correction of Deficiency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or “Agency”) is taking final action to determine that the deficiency that formed the basis for a disapproval of the contingency measures submitted for the San Joaquin Valley nonattainment area for the 1997 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) has been corrected. The effect of this action is to permanently stop the sanctions clocks triggered by the disapproval.

DATES: This final rule is effective December 14, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2017-0580. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed on the website, 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.

FOR FURTHER INFORMATION CONTACT: Rory Mays, EPA Region IX, (415) 972-3227, mays.rory@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, whenever “we,” “us,” or “our” is used, we mean the EPA.

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- II. Public Comments and EPA Responses
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I. Proposed Action

On October 23, 2017 (82 FR 48944) (herein “proposed rule”), we proposed to determine that the deficiency that formed the basis for a disapproval of the contingency measures submitted for the San Joaquin Valley¹ nonattainment area for the 1997 PM_{2.5} NAAQS (“1997 PM_{2.5} standards”)² has been corrected. We did so based on the Agency’s approval of California regulations establishing standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines (herein, “waiver measures”) into the California State Implementation Plan (SIP), and a finding that the purposes of the contingency measure requirement, as applicable to the San Joaquin Valley based on its initial designation as a nonattainment area for the 1997 PM_{2.5} standards, have been fulfilled.

Our proposed rule provides a detailed background section that describes the relevant NAAQS, area designations, the relevant SIP submittal requirements, and the relevant SIP revisions submitted and either approved or disapproved by the EPA under Clean Air Act (CAA or “Act”) section 110.

In short, under CAA section 172(c)(9), SIPs for areas designated as nonattainment for a NAAQS must be revised to provide for the implementation of specific measures (“contingency measures”) to take effect if the area fails to make reasonable further progress (RFP) or fails to attain by the applicable attainment date. The EPA disapproved the contingency measure element of a set of SIP revisions collectively referred to as the “2008 PM_{2.5} Plan,” which was developed and submitted by California

¹ The San Joaquin Valley PM_{2.5} nonattainment area is located in the southern half of California’s central valley and includes all of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, and Kings counties, and the valley portion of Kern County. See 40 CFR 81.305.

² The EPA promulgated the 1997 PM_{2.5} NAAQS at 62 FR 38652 (July 18, 1997).

to address SIP requirements triggered by the designation of the San Joaquin Valley as a nonattainment area for the 1997 PM_{2.5} NAAQS.³

In response to the EPA’s disapproval of the contingency measure element of the 2008 PM_{2.5} Plan, California submitted a SIP revision referred to as the “2013 Contingency Measure SIP.” The 2013 Contingency Measure SIP primarily relied upon California’s waiver measures, *i.e.*, California mobile source regulations that had been waived or authorized by the EPA under CAA section 209, to provide post-attainment year emissions reductions equivalent to one year’s worth of RFP.⁴

The EPA approved,⁵ but later disapproved,⁶ the 2013 Contingency Measure SIP in the wake of a court decision⁷ that undermined the basis for the EPA’s approval. The court decision at issue held that waiver measures must be approved into the SIP if California relies upon them to meet CAA SIP requirements, thereby rejecting the EPA’s longstanding practice allowing California SIP credit for waiver measures notwithstanding their absence from the SIP. Our disapproval of the 2013 Contingency Measure SIP became effective on June 13, 2016, and started a sanctions clock for imposition of offset sanctions 18 months after June 13, 2016, and highway sanctions 6 months later, pursuant to CAA section 179 and our regulations at 40 CFR 52.31, unless the State submits and the EPA approves, prior to the implementation of the sanctions, a SIP submission that corrects the deficiencies identified in the disapproval action.⁸

Since the disapproval of the 2013 Contingency Measure SIP, we have approved the waiver measures as

³ 76 FR 69896 (November 9, 2011) (final action on the 2008 PM_{2.5} Plan).

⁴ One year’s worth of RFP is the yardstick the EPA has cited historically as the approximate quantity of emissions reductions that contingency measures should provide to satisfy CAA section 172(c)(9). See, *e.g.*, 81 FR 58010, at 58066 (August 24, 2016) (final rule implementing the PM_{2.5} NAAQS).

⁵ 79 FR 29327 (May 22, 2014) (final action approving the 2013 Contingency Measure SIP).

⁶ 81 FR 29498 (May 12, 2016) (final action disapproving the 2013 Contingency Measure SIP).

⁷ *Committee for a Better Arvin v. EPA*, 786 F.3d 1169 (9th Cir. 2015) (“*Committee for a Better Arvin*”) (partially granting and partially denying petition for review).

⁸ The offset sanction applies to New Source Review (NSR) permits for new major stationary sources or major modifications proposed in a nonattainment area, and it increases the ratio of emissions reductions (*i.e.*, offsets) to increased emissions from the new or modified source, which must be obtained to receive an NSR permit, to 2 to 1. The highway sanction prohibits, with certain exceptions, the U.S. Department of Transportation from approving or funding transportation projects in a nonattainment area.