

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 December 20, 2023. However, comments will be accepted until January 19, 2024.

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](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from

[Regulations.gov](https://www.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 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

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

³ 88 FR 45276.

⁴ 86 FR 67343 (November 26, 2021).

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”) 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 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 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 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 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 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 µg/m³ 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 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 PM_{2.5} NAAQS and the 2012 annual 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 February 20, 2024. 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 12–19–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 231213–0302]

RIN 0648–BK57

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Coast Guard's Alaska Facility Maintenance and Repair Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; notification of issuance of Letter of Authorization.

SUMMARY: NMFS, upon request from the United States Coast Guard (Coast Guard), hereby issues regulations to govern the unintentional taking of marine mammals incidental to maintenance and repair at facilities in Alaska, over the course of 5 years (2023–2028). These regulations, which allow for the issuance of a Letter of Authorization (LOA) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective from March 1, 2024, through February 28, 2029.

ADDRESSES: A copy of the Coast Guard's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-coast-guards-alaska-facility-maintenance-and-repair>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Cara Hotchkin, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

We received an application from the Coast Guard requesting 5-year regulations and authorization to take multiple species of marine mammals. This rule establishes a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the Coast Guard's construction activities related to maintenance and repair at facilities in Alaska.

Legal Authority for the Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to 5 years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the “least practicable adverse impact” on the affected species or stocks and their habitat (see the discussion below in the *Mitigation* section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this final rule containing 5-year regulations, and for any subsequent Letters of Authorization (LOAs). As directed by this legal authority, this final rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Regulations

Following is a summary of the major provisions of this rule regarding Coast Guard construction activities. These measures include:

- Required monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities;
- Shutdown of construction activities under certain circumstances to avoid injury of marine mammals; and
- Soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power.

Background

The MMPA prohibits the “take” of marine mammals, with certain

exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as “mitigation”); and requirements pertaining to the mitigation, monitoring, and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On March 15, 2021, NMFS received an application from the Coast Guard requesting authorization for take of marine mammals incidental to construction activities related to maintenance and repair at eight Coast Guard facilities in Alaska. On November 24, 2021 (86 FR 67023), we published a notice of receipt of the Coast Guard's application in the **Federal Register**, requesting comments and information related to the request for 30 days. We received no public comments. Following additional review, we determined the application was adequate and complete on January 19, 2022. On August 12, 2022, the Coast Guard submitted a modification to their application (to include vibratory driving of composite piles as part of the specified activity). This revised application was deemed adequate and complete on August 31, 2022. On April 28, 2023, we published the proposed rule in the **Federal Register** (88 FR 26432), incorporating the changes submitted by the Coast Guard in August 2022, and requested comments and