



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0300; FRL-9947-35-Region 9]

Completeness Findings for 110(a)(2)(C) State Implementation Plan Pertaining to the Fine Particulate Matter (PM_{2.5}) NAAQS; California; El Dorado County Air Quality Management District and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a finding that the State of California has made a complete New Source Review (NSR) State Implementation Plan (SIP) submission for the El Dorado County Air Quality Management District (EDCAQMD) to address the permitting of emissions of particulate matter 2.5 micrometers (μm) in diameter and smaller (PM_{2.5}) from major sources in areas designated nonattainment for the 2006 PM_{2.5} National Ambient Air Quality Standards (NAAQS), as required by the Clean Air Act (CAA). In addition, the EPA is making a finding that the State of California has not made the necessary NSR SIP submission for the Yolo-Solano Air Quality Management District (YSAQMD) to address the permitting of PM_{2.5} emissions from major sources in areas designated nonattainment for the 2006 PM_{2.5} NAAQS, as required by the EPA no later than December 31, 2014. The EPA is making these findings in accordance with section 110 and part D of Title I of the CAA.

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

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SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedures Act, 5 *U.S.C. 553(b)(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 to meet the requirement by the statutory date. No additional fact gathering is necessary. Thus, notice and public procedure are unnecessary. The EPA finds this constitutes good cause under 5 *U.S.C. 553(b)(B)*.

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

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I. Background and Overview

A. Relevant PM_{2.5} NAAQS

On October 17, 2006, the EPA promulgated revisions to the NAAQS for PM_{2.5} with an effective date of December 18, 2006 (71 FR 61144). With these revisions, the EPA lowered the 24-hour NAAQS for PM_{2.5} from 65 µg/m³ to 35 µg/m³, and retained the existing annual PM_{2.5} NAAQS of 15 µg/m³. The EPA promulgated designations for the 2006 PM_{2.5} NAAQS that became effective on December 14, 2009, which designated certain areas within the jurisdiction of EDCAQMD and YSAQMD as nonattainment for the 2006 PM_{2.5} NAAQS (74 FR 58688, Nov. 13, 2009).

B. Revisions to the NSR Program to Implement the 2006 PM_{2.5} NAAQS

To implement the PM_{2.5} NAAQS for NSR purposes, the EPA issued a final rule that established the NSR permitting requirements for PM_{2.5}, entitled *Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})*, on May 16, 2008 (73 FR 28321). Among other things, the final rule amended the NSR regulations to establish the minimum elements for state and local agencies implementing a nonattainment NSR program for major sources for the PM_{2.5} NAAQS. The final rule required states to submit SIP revisions to address these requirements to the EPA by July 15, 2011.

In 2013, certain provisions of EPA's May 16, 2008 final rule were affected by a judicial decision, *Natural Resources Defense Council (NRDC) v. EPA*, 706 F.3d 428 (D.C. Cir. 2013), in which the U.S. Court of Appeals for the D.C. Circuit determined that the EPA must regulate PM_{2.5} in nonattainment areas under the particulate-matter-specific provisions of subpart 4 of part D of Title I of the CAA. As a partial response to this judicial decision, the EPA finalized a rulemaking on June 2, 2014 which, among other things, set a new date of December 31, 2014 for

states to submit SIP revisions to address applicable nonattainment SIP requirements for PM_{2.5}, pursuant to subpart 4 of part D of Title I of the CAA. 79 FR 31566. Accordingly, states are required to have submitted all elements of a nonattainment NSR SIP for the 2006 PM_{2.5} NAAQS to the EPA by no later than December 31, 2014.

II. This Action

A. Completeness Determination

The EPA is making a finding that the State of California submitted an NSR SIP revision for EDCAQMD to address NSR requirements for major sources in nonattainment areas for purposes of the 2006 PM_{2.5} NAAQS on March 21, 2016, which the EPA determined met the completeness criteria in 40 CFR part 51, appendix V, on March 30, 2016. This completeness finding establishes a 12-month deadline for EPA to take action upon such SIP submission in accordance with section 110(k).

B. Finding of Failure to Submit

The EPA is making a finding that, as of the date of signature for this document, the State of California has failed to submit the required NSR program SIP revision for YSAQMD to address NSR requirements for major sources in nonattainment areas for purposes of the 2006 PM_{2.5} NAAQS as required by December 31, 2014. This action will be effective on **[Insert date 30 days after publication in the Federal Register]**.

If the EPA finds that a state has failed to make a required SIP submission or that a submitted SIP submission is incomplete for elements of a part D, Title I plan for nonattainment areas as required under section 110(a)(2)(I), then CAA section 179(a) establishes specific consequences, including the 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 Federal Implementation Plan (FIP) no later than 2 years from the effective date of such finding of failure to submit, if the affected state has not submitted, and the EPA has not approved, the required SIP submission before that date.

In this case, if the EPA has not affirmatively determined that the State of California has made the required complete NSR program SIP submission for YSAQMD to address NSR requirements for major sources in nonattainment areas for purposes of the 2006 PM_{2.5} NAAQS within 18 months of the effective date of this rulemaking, then, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in the affected nonattainment areas. In addition, if the EPA has not affirmatively determined that the State has made such a complete submission within 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected nonattainment areas, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. The sanctions will not take effect, if, within 18 months after the effective date of this finding of failure to submit, the EPA finds that the State has made a complete SIP submission addressing the deficiency for which the finding was made. Additionally, if the State makes the required SIP submission and the EPA takes final action to approve the submission within 2 years of the effective date of this finding, the EPA is not required to promulgate a FIP for the affected nonattainment areas per CAA section 110(c).

III. 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. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA. This final rule does not establish any new information collection requirement apart from what is already required by law. This rule relates to the requirement in the CAA for states to submit nonattainment NSR SIPs for major sources to satisfy certain NSR requirements under the CAA for the PM_{2.5} NAAQS.

C. Regulatory Flexibility Act (RFA)

I certify that this rule 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 relates to the requirement in the CAA for states to submit nonattainment NSR SIPs for major sources to satisfy certain NSR requirements of the CAA for the PM_{2.5} NAAQS.

D. 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 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 rule addresses the requirement in the CAA for states to submit nonattainment NSR SIPs for major sources to satisfy certain NSR requirements under the CAA for the PM_{2.5} NAAQS. No tribe is subject to this requirement. 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 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 provides EPA’s finding that the State of California has failed to make a submission for YSAQMD that is required under the CAA to implement the PM_{2.5} NAAQS, and does not directly or disproportionately affect children.

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

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. In finding that the State of California has failed to submit a SIP to address certain basic permitting requirements for the PM_{2.5} NAAQS, for YSAQMD, this action does not directly affect the level of protection provided for human health or the environment.

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. 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 **[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 action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action.

List of Subjects in 40 CFR Part 52

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

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

Dated: May 26, 2016.

Alexis Strauss,
Acting Regional Administrator,
Region IX.

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