



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2017-0426; FRL-9966-86-Region 9]

Finding of Failure to Submit State Implementation Plans Required for the 2008 8-Hour

Ozone NAAQS; California; Sacramento Metro

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action finding that the state of California has failed to submit State Implementation Plans (SIPs) to satisfy certain requirements of the Clean Air Act (CAA) for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS or “standards”). Under the CAA and EPA’s implementing regulations, states with nonattainment areas classified as Moderate, Serious, Severe or Extreme were required to submit by July 20, 2016, SIPs demonstrating reasonable further progress (RFP) and attainment of the 2008 8-hour ozone standard as expeditiously as practicable but no later than the applicable dates established in the implementing regulations. States were also required to submit contingency plans to be triggered if attainment or RFP milestones were not met. The EPA is by this action making a finding of failure to submit attainment demonstration, attainment demonstration contingency, RFP, and RFP contingency SIPs for the Sacramento Metro nonattainment area. If the EPA has not affirmatively found that the state has submitted the required plans within 18 months, the offset sanction applies in the area. If within 6 additional months the EPA has still not affirmatively determined that the state has submitted the required

plan, the highway funding sanction applies in the area. No later than 2 years after the EPA makes the finding, if the state has not submitted, and EPA has not approved, the required SIP, the EPA must promulgate a Federal Implementation Plan.

DATES: This action will be effective on [**Insert date 30 days after the date of publication in the Federal Register**].

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

Notice and Comment Under the Administrative Procedure 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 final agency action 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 submission or incomplete submissions, to meet the requirement. Thus, notice and public procedures are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

I. Background and Overview

A. Statutory Requirements

On March 27, 2008, the EPA issued its final action to revise the NAAQS for ozone to

establish new 8-hour standards.¹ In that action, the EPA promulgated identical revised primary and secondary ozone standards, designed to protect public health and welfare, of 0.075 parts per million (ppm).² Those standards are met when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm.³

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. For the ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation.⁴ Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's "design value," which represents air quality in the area for the most recent three years). The possible classifications for ozone nonattainment areas are Marginal, Moderate, Serious, Severe, and Extreme.⁵ Nonattainment areas with a "lower" classification have ozone levels that are closer to the standard than areas with a "higher" classification.⁶

On May 21, 2012 and June 11, 2012, the EPA issued rules designating areas throughout the country as nonattainment, attainment, or unclassifiable for the 2008 ozone NAAQS, effective July 20, 2012, and establishing classifications for the designated nonattainment areas.⁷ The Sacramento Metro⁸ area was designated nonattainment with a classification of Severe. Areas

¹ 73 FR 16436.

² Since the 2008 primary and secondary NAAQS for ozone are identical, for convenience, we refer to both as "the 2008 ozone NAAQS" or "the 2008 ozone standard."

³ 40 CFR 50.15.

⁴ CAA sections 107(d)(1) and 181(a)(1).

⁵ CAA section 181(a)(1).

⁶ See 40 CFR 51.1103 for the design value thresholds for each classification for the 2008 ozone NAAQS.

⁷ 77 FR 30088 (May 21, 2012) and 77 FR 34221 (June 11, 2012).

⁸ The Sacramento Metro area consists of Sacramento and Yolo counties and portions of El Dorado, Placer, Solano

designated nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning requirements of CAA section 182.

Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For a Marginal area, a state is required to submit a baseline emission inventory, a rule requiring emissions statements from stationary sources, and a Nonattainment New Source Review (NNSR) program for the relevant ozone standard.⁹ For each higher ozone nonattainment classification, a state needs to comply with all lower area classification requirements, plus additional emissions controls and more expansive NNSR offset requirements. For areas classified Serious and above, a state needs to comply with the Marginal and Moderate area requirements, plus additional submittal requirements, including: a demonstration (based on photochemical modeling) showing the area will attain by the applicable attainment date; a demonstration that the area will reduce emissions by certain prescribed percentages averaged over each consecutive 3-year period until the attainment date; and contingency plans that are triggered in the event that the attainment date or an RFP milestone is not met.¹⁰

On March 6, 2015, the EPA established a final implementation rule for the 2008 ozone

and Sutter counties. For a precise description of the geographic boundaries of the Sacramento Metro area, see 40 CFR 81.305. Sacramento County is under the jurisdiction of the Sacramento Metropolitan Air Quality Management District. Yolo County and the eastern portion of Solano County comprise the Yolo-Solano AQMD. Sutter County is part of the Feather River AQMD. The Placer County Air Pollution Control District and the El Dorado County AQMD have jurisdiction over their respective counties.

⁹ CAA section 182(a).

¹⁰ CAA sections 172(c)(9), 182(c)(2)(A) and (B), and 182(c)(9).

NAAQS (“2008 Ozone SIP Requirements Rule”).¹¹ The purpose of that action was to detail the requirements applicable to ozone nonattainment areas and provide specific deadlines for SIP submittals. For areas classified Serious and above, the required submission of SIP revisions providing for an attainment demonstration, RFP demonstrations, and attainment and RFP contingency measures was due 4 years after the effective date of area designation (*i.e.*, July 20, 2016).¹²

B. Consequences of Findings of Failure to Submit

For plan requirements under subpart D, title I of the CAA, such as those for ozone nonattainment areas, if the EPA finds that a state has failed to make the required SIP submittal or that a submitted SIP is incomplete, then CAA section 179(a) 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 2 years from the finding of failure to submit a complete SIP, if the affected state has not submitted, and the EPA has not approved, the required SIP submittal.

If the EPA has not affirmatively determined that a state has submitted a complete SIP addressing the deficiency that is the basis for the finding 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 area. If the EPA has not affirmatively determined that the state has submitted a complete SIP addressing the deficiency that is the basis for the finding within 6 months after the offset sanction is imposed,

¹¹ 80 FR 12264.

¹² 40 CFR 51.1108(b) and 40 CFR 51.1110.

then the highway funding sanction will apply in the affected nonattainment area, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. If the state does not make the required SIP submittal and the EPA does not take final action to approve the submittal within 2 years of the effective date of these findings, the EPA is required to promulgate a FIP, pursuant to CAA section 179(a) and 40 CFR 52.31 for the affected nonattainment area.

II. Final Action

We have yet to receive the required ozone SIP revision submittal from California for the Sacramento Metro area, and the submittal is more than six-months past due. The EPA is finding that California has failed to submit a SIP revision providing for an attainment demonstration, RFP demonstrations, and contingency measures (for attainment or RFP) for the 2008 ozone NAAQS for the Sacramento Metro area as required under subparts 1 and 2 of part D of title 1 of the CAA and the 2008 Ozone SIP Requirements Rule. The consequences of this finding is discussed above in section I.B. of this document.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning 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 SIPs under sections 172 and 182 which address the statutory requirements that apply to areas designated as nonattainment for the ozone 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. The rule is a finding that California has not submitted the necessary SIP revisions.

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 finds that California has failed to submit SIP revisions that satisfy certain nonattainment area planning requirements under sections 172 and 182 of the CAA for the 2008 ozone NAAQS for the Sacramento Metro area. No tribe is subject to the requirement to submit an implementation plan under section 172 or under subpart 2 of part D of Title I of the CAA. 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 is a finding that California has failed to submit certain SIP revisions that satisfy the nonattainment area planning requirements under sections 172 and 182 of the CAA for the 2008 ozone NAAQS for the Sacramento Metro area 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 California has failed to submit SIP revisions that satisfy certain nonattainment area planning requirements under sections 172 and 182 of the CAA for the 2008 ozone NAAQS for the Sacramento Metro area, this action does not directly affect the level of protection provided to human health or the environment.

J. Congressional Review Act (CRA)

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. 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 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 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 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* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: August 14, 2017.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

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