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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA-R09-OAR-2016-0494; FRL-9955-53-Region 9]****Findings of Failure To Attain the 1997 PM<sub>2.5</sub> Standards; California; San Joaquin Valley****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) has determined that the San Joaquin Valley nonattainment area failed to attain the 1997 annual and 24-hour fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards by the December 31, 2015 “Serious” area attainment date. As a result of this determination, the State of California is required to submit a revision to the California State Implementation Plan that, among other elements, provides for expeditious attainment of the 1997 PM<sub>2.5</sub> standards and for a five percent annual reduction in the emissions of direct PM<sub>2.5</sub> or a PM<sub>2.5</sub> plan precursor pollutant in the San Joaquin Valley.

**DATES:** This rule is effective December 23, 2016.

**ADDRESSES:** The EPA has established docket number EPA-R09-OAR-2016-0494 for this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Rory Mays, Air Planning Office (AIR-2), EPA Region IX, (415) 972-3227, [mays.rory@epa.gov](mailto:mays.rory@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

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**I. Background**

On October 6, 2016 (81 FR 69448), the EPA proposed to determine that the San Joaquin Valley Serious nonattainment area failed to attain the 1997 PM<sub>2.5</sub> national ambient air quality standards (NAAQS or “standards”) by the applicable attainment date of December 31, 2015, based on complete, quality-assured and certified ambient air quality data for the 2013 to 2015 monitoring period. The San Joaquin Valley PM<sub>2.5</sub> nonattainment area (or “the Valley”) covers San Joaquin County, Stanislaus County, Merced County, Madera County, Fresno County, Tulare County, Kings County, and the valley portion of Kern County (see 40 CFR 81.305 for the precise boundaries of the PM<sub>2.5</sub> nonattainment area).

As discussed further in our October 6, 2016 proposed rule, in 1997, the EPA established annual and 24-hour PM<sub>2.5</sub> standards of 15.0 micrograms per cubic meter (µg/m<sup>3</sup>) and 65 µg/m<sup>3</sup>, respectively (see 40 CFR 50.7). Since promulgation of the 1997 PM<sub>2.5</sub> NAAQS, the EPA has established more stringent PM<sub>2.5</sub> NAAQS but, for reasons given in the proposed rule, the 1997 PM<sub>2.5</sub> NAAQS remain in effect in the San Joaquin Valley and represent the standards for which today’s determinations are made. See pages 69448–69449 of the proposed rule.

Our proposed rule provided background information on: The effects of exposure to elevated levels of PM<sub>2.5</sub>; the designations and classifications of the San Joaquin Valley under the Clean Air Act (CAA or “Act”) for the 1997 PM<sub>2.5</sub> NAAQS; the plans developed by California to address nonattainment area requirements for San Joaquin Valley; the reclassification of the San Joaquin Valley from “Moderate” to “Serious” for the 1997 PM<sub>2.5</sub> NAAQS and the related extension of the applicable attainment date to December 31, 2015; the request by California to extend the December 31, 2015 attainment date for San Joaquin Valley under CAA section 188(e); and the denial of that request by the EPA. The EPA published its final denial of the State’s attainment date extension request on October 6, 2016 at 81 FR 69396.

In our October 6, 2016 proposed rule, we also described the following: The statutory basis (i.e., CAA sections 179(c)(1) and 188(b)(2)) for the obligation on the EPA to determine whether an area’s air quality meets the 1997 PM<sub>2.5</sub> NAAQS; the EPA regulations establishing the specific methods and

procedures to determine whether an area has attained the 1997 PM<sub>2.5</sub> NAAQS; and the PM<sub>2.5</sub> monitoring networks operated in the Valley by the California Air Resources Board and the San Joaquin Valley Unified Air Pollution Control District and related monitoring network plans. We also documented our previous review of the networks and network plans, the agencies’ annual certifications of ambient air monitoring data, and our determination that 15 of the 17 monitoring sites within the Valley produced valid design values for purposes of comparison with the 1997 PM<sub>2.5</sub> NAAQS.

Under EPA regulations in 40 CFR part 50, section 50.7 and in accordance with Appendix N, the 1997 annual PM<sub>2.5</sub> standards are met when the design value is less than or equal to 15.0 µg/m<sup>3</sup>, and the 1997 24-hour PM<sub>2.5</sub> standards are met when the design value is less than or equal to 65 µg/m<sup>3</sup>. More specifically, the design value for the annual PM<sub>2.5</sub> standards is the 3-year average of annual mean concentration, and the 1997 annual PM<sub>2.5</sub> NAAQS are met when the design value for the annual PM<sub>2.5</sub> standards at each eligible monitoring site is less than or equal to 15.0 µg/m<sup>3</sup>. With respect to the 24-hour PM<sub>2.5</sub> standards, the design value is the 3-year average of annual 98th percentile 24-hour average values recorded at each eligible monitoring site, and the 1997 24-hour PM<sub>2.5</sub> NAAQS are met when the design value for the 24-hour standards at each such monitoring site is less than or equal to 65 µg/m<sup>3</sup>.

In our proposed rule, to evaluate whether the San Joaquin Valley attained the 1997 PM<sub>2.5</sub> NAAQS by the December 31, 2015 attainment date, we determined the 2013–2015 design values at each of the 17 PM<sub>2.5</sub> monitoring sites for the 1997 annual and 24-hour PM<sub>2.5</sub> standards. See Tables 1 and 2 of our October 6, 2016 proposed rule. Based on the design values at the various sites, we found that eight sites, all in the central and southern San Joaquin Valley, did not meet the 1997 annual PM<sub>2.5</sub> NAAQS of 15.0 µg/m<sup>3</sup>, and that four sites, all in southwestern San Joaquin Valley, did not meet the 1997 24-hour PM<sub>2.5</sub> NAAQS of 65 µg/m<sup>3</sup> by the December 31, 2015 attainment date. The 2015 annual design value site, i.e., the site with the highest design value based on 2013–2015 data, is the Corcoran site with a 2015 annual PM<sub>2.5</sub> design value of 22.2 µg/m<sup>3</sup> and a 24-hour PM<sub>2.5</sub> design value of 79 µg/m<sup>3</sup>.

For the San Joaquin Valley to attain the 1997 PM<sub>2.5</sub> NAAQS by December 31, 2015, the 2015 design value (reflecting data from 2013–2015) at each eligible

monitoring site in the Valley must be equal to or less than 15.0  $\mu\text{g}/\text{m}^3$  for the annual standards and 65  $\mu\text{g}/\text{m}^3$  for the 24-hour standards. Since several sites for each averaging period had 2015 design values greater than those values, based on quality-assured and certified data for 2013–2015, we proposed to determine that the San Joaquin Valley failed to attain the 1997 annual and 24-hour  $\text{PM}_{2.5}$  standards by the December 31, 2015 attainment date. With today's action, we finalize this determination.

Finally, in our proposed rule, we described the CAA requirements that would apply if the EPA were to finalize the proposed finding of failure to attain. See our October 6, 2016 proposed rule for more information about the topics summarized above.

## II. Public Comments and Responses

Our October 6, 2016 proposed rule provided for a 30-day comment period. During this period, we received no comments.

## III. Final Action

Under CAA sections 179(c)(1) and 188(b)(2), and based on reasons set forth in our proposed rule and summarized above, the EPA is taking final action to determine that the San Joaquin Valley Serious nonattainment area failed to attain the 1997 annual and 24-hour  $\text{PM}_{2.5}$  NAAQS by the December 31, 2015 attainment date. This determination is based upon monitored air quality data from 2013 through 2015.

As a result of this final determination, the State of California is required under CAA sections 179(d) and 189(d) to submit, by December 31, 2016, a revision to the SIP for the San Joaquin Valley. The SIP revision must, among other elements, demonstrate expeditious attainment of the standards within the time period provided under CAA section 179(d), provide for annual reduction in the emissions of  $\text{PM}_{2.5}$  or a  $\text{PM}_{2.5}$  plan precursor pollutant within the area of not less than five percent until attainment,<sup>1</sup> demonstrate reasonable further progress, and include contingency measures. The requirement for a new attainment demonstration under CAA section 189(d) also triggers the requirement for the SIP revision for quantitative milestones under section 189(c) that are to be achieved every three years until redesignation to attainment.

The new attainment date is set by CAA section 179(d)(3), which relies

<sup>1</sup> 81 FR 58010 at 58100, 58158 (August 24, 2016). The EPA defines  $\text{PM}_{2.5}$  plan precursor as those  $\text{PM}_{2.5}$  precursors required to be regulated in the applicable attainment plan and/or nonattainment new source review program. 81 FR 58010 at 58152.

upon section 172(a)(2) to establish a new attainment date but with a different starting point than provided in section 172(a)(2). Under section 179(d)(3), the new attainment date is the date by which attainment can be achieved as expeditiously as practicable, but no later than five years from the publication date of the final determination of failure to attain. The EPA may extend the attainment date for a period no greater than 10 years from the final determination, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

## IV. Statutory and Executive Order Reviews

This final action in and of itself establishes no new requirements; it merely documents that air quality in the San Joaquin Valley did not meet the 1997  $\text{PM}_{2.5}$  standards by the CAA deadline. For that reason, this final action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian tribes and thus this action will not impose substantial direct costs on tribal governments or preempt tribal law. Nonetheless, the EPA has notified the tribes within the San Joaquin Valley  $\text{PM}_{2.5}$  nonattainment area of this final action.

The Congressional Review Act, 5 U.S.C. 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).

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 January 23, 2017. 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, Ammonia, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 14, 2016.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

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

### Subpart F—California

■ 2. Section 52.247 is amended by adding paragraph (h) to read as follows:

#### § 52.247 Control strategy and regulations: Fine Particle Matter.

\* \* \* \* \*

(h) *Determination of Failure to Attain:* Effective December 23, 2016, the EPA has determined that the San Joaquin Valley Serious PM<sub>2.5</sub> nonattainment area failed to attain the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS by the applicable attainment date of December 31, 2015. This determination triggers the requirements of CAA sections 179(d) and 189(d) for the State of California to submit a revision to the California SIP for the San Joaquin Valley to the EPA by December 31, 2016. The SIP revision must, among other elements, demonstrate expeditious attainment of the 1997 PM<sub>2.5</sub> NAAQS within the time period provided under CAA section 179(d) and that provides for annual reduction in the emissions of direct PM<sub>2.5</sub> or a PM<sub>2.5</sub> plan precursor pollutant within the area of not less than five percent until attainment.

[FR Doc. 2016–28100 Filed 11–22–16; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 62

[Docket ID: FEMA–2016–0012]

RIN 1660–AA86

#### National Flood Insurance Program (NFIP): Financial Assistance/Subsidy Arrangement

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is issuing this final rule to remove the copy of the Financial Assistance/Subsidy Arrangement (Arrangement) and the summary of the Financial Control Plan from the appendices of the National Flood Insurance Program (NFIP)

regulations. It is no longer necessary or appropriate to retain a contract, agreement, or any other arrangement between FEMA and private insurance companies in the Code of Federal Regulations.

**DATES:** This final rule is effective December 23, 2016.

**FOR FURTHER INFORMATION CONTACT:** Claudia Murphy, Director, Policyholder Services Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW., Washington, DC 20472, (202) 646–2775.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Regulatory History

The National Flood Insurance Act of 1968 (NFIA), as amended (42 U.S.C. 4001 *et seq.*), authorizes the Administrator of the Federal Emergency Management Agency (FEMA) to establish and carry out a National Flood Insurance Program (NFIP) to enable interested persons to purchase insurance against loss resulting from physical damage to or loss of real or personal property arising from flood in the United States. *See* 42 U.S.C. 4011(a). Under the NFIA, FEMA has the authority to undertake arrangements to carry out the NFIP through the facilities of the Federal government, utilizing, for the purposes of providing flood insurance coverage, insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, as fiscal agents of the United States. *See* 42 U.S.C. 4071. To this end, FEMA is authorized to “enter into any contracts, agreements, or other arrangements” with private insurance companies to utilize their facilities and services in administering the NFIP, and on such terms and conditions as may be agreed upon. *See* 42 U.S.C. 4081(a).

Pursuant to this authority, FEMA enters into a standard Financial Assistance/Subsidy Arrangement (Arrangement) with private sector property insurers, also known as Write Your Own (WYO) companies, to sell NFIP flood insurance policies under their own names and adjust and pay claims arising under the Standard Flood Insurance Policy (SFIP). Each Arrangement entered into by a WYO company must be in the form and substance of the standard Arrangement, a copy of which is in Title 44 of the Code of Federal Regulations (CFR) Part 62, Appendix A. *See* 44 CFR 62.23(a). Since the primary relationship between the Federal government and WYO companies is one of a fiduciary nature (that is, to ensure that any taxpayer

funds are appropriately expended), FEMA established “A Plan to Maintain Financial Control for Business Written Under the Write Your Own Program,” also known as the “Financial Control Plan.” *See* 42 U.S.C. 4071; 44 CFR 62.23(f), Part 62, App. B. To ensure financial and statistical control over the NFIP, as part of the Arrangement, WYO companies agree to adhere to the standards and requirements in the Financial Control Plan.

On May 23, 2016, FEMA published a proposed rule (81 FR 32261) proposing to remove the copy of the Arrangement in 44 CFR part 62, Appendix A, and the summary of the Financial Control Plan in 44 CFR part 62, Appendix B. In addition, FEMA proposed to make conforming amendments to remove citations to these appendices in 44 CFR 62.23.

FEMA proposed to remove the Arrangement from the NFIP regulations because it is no longer necessary to include a copy of the Arrangement in the CFR. FEMA originally included the Arrangement in the CFR to inform the public of the procedural details of the WYO Program. *See* 50 FR 16236 (April 25, 1985). There are now more efficient ways to inform the public of the procedural details of the WYO Program, and after more than 30 years of operation, the public is more familiar with the procedural details of the WYO Program and the flood insurance provided through WYO companies. Further, the NFIA does not require FEMA to include a copy of the Arrangement in the CFR. *See* 42 U.S.C. 4081. Finally, it is inappropriate to codify in regulation a contract, agreement, or other arrangement between FEMA and private insurance companies.

With the removal of the copy of the Arrangement from the NFIP regulations, FEMA and its industry partners can have flexibility to make operational adjustments and corrections to the Arrangement more quickly and efficiently. Although the rulemaking process plays an important role in agency policymaking, when this process is not required or necessary, the requirement to undergo rulemaking can unnecessarily slow down the operation of the NFIP by FEMA and its industry partners and can result in the use of alternate, less than ideal measures that result in business and operational inefficiencies.

FEMA also proposed to remove the summary of the Financial Control Plan in Appendix B, because this information is contained in either FEMA’s Financial