ENVIRONMENTAL PROTECTION AGENCY


Interim Final Determination To Defer Sanctions; California; Los Angeles-South Coast Air Basin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination to defer the imposition of offset and highway sanctions in the Los Angeles-South Coast air basin (“South Coast”) based on a proposed approval of revisions to the South Coast portion of the California State Implementation Plan (SIP) published elsewhere in this Federal Register. The revisions concern Clean Air Act (CAA) reasonably available control measures/reasonably available control technology (RACM/RACT) and reasonable further progress (RFP) requirements for the 2006 24-hour fine particulate matter (PM_2.5) national ambient air quality standards (NAAQS) in the South Coast.

DATES: This interim final determination is effective on October 10, 2017. However, comments will be accepted until November 9, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2015–0204 at http://www.regulations.gov, or via email to Wienke Tax, Air Planning Office, at tax.wienke@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure 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 http://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 947–4192, tax.wienke@epa.gov.

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

I. Background

On April 14, 2016 (80 FR 23025), we published a final action to partially approve and partially disapprove SIP revisions submitted by California to address CAA Moderate area attainment plan requirements for the 2006 24-hour PM_2.5 NAAQS in the South Coast nonattainment area (“2012 PM_2.5 Plan”). As part of that action, we disapproved two elements of the 2012 PM_2.5 Plan because they did not fully meet the requirements for RACM/RACT-level controls under sections 189(a)(1)(C) and 172(c)(1) of the CAA and thus also did not meet the requirement for RFP under section 172(c)(2) of the CAA. This disapproval action became effective on May 16, 2016, and started a sanctions clock for imposition of offset sanctions 18 months after May 16, 2016, and high.
2017 RACT Supplement, because we believe these SIP submissions correct the deficiencies identified in our April 14, 2016 partial disapproval action. Based on today’s proposed approval, we are taking this interim final rulemaking action, effective on publication, to defer the imposition of the offset sanctions and highway sanctions triggered by our April 14, 2016 partial disapproval.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed full approval of the RACM/RACT and RFP demonstrations in the 2012 PM$_{2.5}$ Plan, we would take subsequent final action to reimpose sanctions pursuant to 40 CFR 52.31(d). If no comments are submitted that change our assessment, we will take final action to approve the RACM/RACT and RFP demonstrations in the 2012 PM$_{2.5}$ Plan, and all sanctions and sanction clocks related to the May 16, 2016 disapproval action with respect to these elements of the 2012 PM$_{2.5}$ Plan will be permanently terminated on the effective date of the final approval.

II. EPA Action

We are making an interim final determination to defer the imposition of CAA section 179 sanctions associated with our partial disapproval of the 2012 PM$_{2.5}$ Plan based on our concurrent proposal to determine that our prior approvals of the District’s revised RECLAIM rules and 2017 RACT Supplement correct the deficiencies that initiated sanctions clocks.

Because the EPA has preliminarily determined that the State has corrected the deficiencies previously identified in the EPA’s partial disapproval action, 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 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 State’s revised RECLAIM rules and 2017 RACT Supplement and, through a separate action, is proposing to find that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions when the State has most likely taken appropriate action to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State’s actual submission addressing those deficiencies.

Therefore, the EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvalability of the State’s submission addressing the deficiencies. 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 action is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers federal sanctions and imposes no additional requirements. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 Clean Air Act; 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, the SIP is not approved to 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. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2).

The EPA has made such good cause finding, including the reasons therefore, and established an effective date of October 10, 2017. EPA will submit a report containing this rule 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 rule is not a “major rule” as defined by 5 U.S.C. 804(2).

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 December 11, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia,
I. Background

In our notice of proposed rulemaking published on July 28, 2017 (82 FR 35153), the EPA proposed to approve revisions to Article 33–15 Air Pollution Control rules of the North Dakota Administrative Code submitted by the State of North Dakota on January 28, 2013, and April 22, 2014. In this rulemaking, we are taking final action on a revision submitted in the January 28, 2013 submittal to revise significance levels. The North Dakota State Health Council adopted those amendments on August 14, 2012 (effective January 1, 2013). In addition, we are also taking final action on a revision that was included in the April 22, 2014 submittal to add EPA Reference Method 22 for determining opacity for limits expressed as zero percent opacity. The North Dakota State Health Council adopted those amendments on February 11, 2014 (effective April 1, 2014). The reasons for our approval are provided in detail in the proposed rule.

II. Response to Comments

We received no comments on our proposed rule.

III. Final Action

For the reasons expressed in the proposed rule, the EPA is approving revisions to sections of the State’s Air Pollution Control rules from the January 28, 2013, and April 22, 2014 submittals. A summary of the revisions in Table 1.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of North Dakota Air Pollution Control rules described in the amendments set forth to 40 CFR part 52 below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 8 Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.1

V. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action merely approves some state law as meeting federal requirements; this final action does not impose additional requirements beyond those imposed by state law. 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, Oct. 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); and
• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, Aug. 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); and
• Is not a significant regulatory action subject to Executive Order 13212 (66 FR 28351, May 22, 1997).

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