

costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

The Office of Management and Budget has waived review of this action from the requirements of Executive Order 12886.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, and Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: October 11, 1995.

Felicia Marcus,

Regional Administrator.

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40 CFR Part 52

[OH91-1-7265a; FRL-5401-6]

Approval and Promulgation of Implementation Plans; Ohio; Interim Final Determination That State has Corrected Deficiencies

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Interim final determination.

SUMMARY: In the proposed rule section of today's Federal Register, USEPA is proposing to approve revisions to Ohio's particulate matter plans for Cuyahoga County and the Steubenville area that the State submitted on November 3, 1995. The notice of proposed rulemaking further proposes to conclude that the deficiencies in these plans identified in rulemaking published on May 27, 1994, at 59 FR 27464, have now been remedied. Based on that proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiency for which a sanctions clock began on June 27, 1994. Pursuant to 40 CFR 52.31, this action will defer the application of the offset sanction and potentially defer the application of the highway sanction. Although this action is effective upon publication, EPA will take comment. USEPA will take final action on this determination at the time it takes final action on the State's submittal.

DATES: This interim final determination is effective January 23, 1996. Comments must be received by February 22, 1996.

ADDRESSES: Comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AE-17J), United

States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6067.

SUPPLEMENTARY INFORMATION:

I. Background

On May 27, 1994, at 59 FR 27464, USEPA published a limited disapproval in the Federal Register of Ohio's particulate matter plans for Cuyahoga County and the Steubenville area. USEPA's disapproval action started an 18-month clock for the application of the offset sanction (followed by the highway funding sanction 6 months later) under section 179 of the Clean Air Act. The State subsequently submitted revisions to the particulate matter plans on November 3, 1995. In the Proposed Rules section of today's Federal Register, USEPA is proposing full approval of the State submittal.

Based on the proposed approval, USEPA believes that it is more likely than not that the State has corrected the deficiencies underlying the original disapproval. Therefore, USEPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. Nevertheless, USEPA is providing the public with an opportunity to comment on this final action. If warranted, USEPA will reverse this determination, potentially in conjunction with repropose action on the State's submittal. In any case, USEPA plans final action on its determination of whether the deficiencies have been corrected in conjunction with final rulemaking on the State's submittal.

This action does not stop the sanctions clock that started for this area on June 27, 1994. However, this action will defer the application of the offsets sanction and will defer the application of the highway sanction. See 59 FR 39832 (August 4, 1994), codified at 40 CFR 52.31. If USEPA determines, as a result of public comment, that the State's submittal is not fully approvable and this final action was inappropriate, USEPA will either propose or take final action finding that the State has not corrected the original disapproval deficiency, at which time (subsequent to December 27, 1995) the offset sanction shall apply. Alternatively, if USEPA takes final action fully approving the State's submittal, such action will permanently stop the sanctions clock and will permanently lift any applied or

deferred sanctions. In the meantime, pending further rulemaking, the application of sanctions will be deferred.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the deficiencies that started the sanctions clock with respect to particulate matter plans for the Cuyahoga County and Steubenville nonattainment areas. Based on this action, application of the offset sanction and the highway sanction will be deferred until final action fully approving the State's submittal becomes effective or until USEPA takes action proposing or finally disapproving in whole or part the State submittal. If USEPA takes final action fully approving the State submittal, the sanctions clocks will be permanently stopped and any applied or deferred sanctions will be permanently lifted.

Because USEPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, USEPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.¹ 5 U.S.C. § 553(b)(B). USEPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. USEPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiency that started the sanctions clock. Therefore, it is not in the public interest to initially impose sanctions when the State has most likely done all that it can to correct the deficiency that triggered the sanctions clock. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiency prior to the rulemaking approving the State's submittal. Therefore, USEPA believes that it is necessary to use the interim final rulemaking process to temporarily defer sanctions while USEPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, USEPA is invoking the good cause exception to the 30-day notice requirement of the APA because the

¹ As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

purpose of this notice is to relieve a restriction. See 5 U.S.C. § 553(d)(1).

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This action temporarily relieves sources of an additional burden potentially placed on them by the sanctions provisions of the

Act. Therefore, I certify that it does not have an impact on any small entities.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector or to State, local, or tribal governments in the aggregate. This interim final determination temporarily relieves sources of an additional burden potentially placed on them by the sanctions provisions of the Act. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action.

USEPA has also determined that this action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Air Pollution control, Environmental protection, Intergovernmental relations, Particulate matter, Reporting and record keeping requirements.

Dated: December 13, 1995.

Gail C. Ginsberg,

Acting Regional Administrator.

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