ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL—5883–7]

Final Rule Making a Finding of Failure to Submit a Required State Implementation Plan for Particulate Matter, California—Owens Valley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action in making a finding, under the Clean Air Act (CAA or Act), that California failed to make a particulate matter (PM–10) nonattainment area state implementation plan (SIP) submittal required for the Owens Valley Planning Area under the Act. Under certain provisions of the Act, states are required to submit SIPs providing for, among other things, reasonable further progress and attainment of the PM–10 national ambient air quality standards (NAAQS) in areas classified as serious. The deadline for submittal of this plan for the Owens Valley Planning Area was February 8, 1997.

This action triggers the 18-month time clock for mandatory application of sanctions and 2-year time clock for a federal implementation plan (FIP) under the Act. This action is consistent with the CAA mechanism for assuring SIP submissions.

EFFECTIVE DATE: This action is effective as of August 20, 1997.

FOR FURTHER INFORMATION CONTACT: Larry Biland, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9 (AIR–2), 75 Hawthorne Street, San Francisco, California, 94105–3901, telephone (415) 744–1227.

SUPPLEMENTARY INFORMATION:

I. Background

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the PM–10 NAAQS.[1] Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C., 7401–7671q (1991). On the date of enactment of the Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the amended Act were designated nonattainment by operation of law. These areas included all former Group I areas identified in 52 FR 29383 (August 7, 1987) and clarified in 55 FR 45799 (October 31, 1980), and any other areas violating the PM–10 NAAQS prior to January 1, 1989. The Owens Valley Planning Area (Owens Valley) was identified in the August 7, 1987, **Federal Register** notice (52 FR 29384). A **Federal Register** notice announcing all areas designated nonattainment for PM–10 at enactment of the 1990 amendments was published on March 15, 1991 (56 FR 11101). The boundaries of the Owens Valley nonattainment area (Hydrologic Unit #18090103) were set forth in a November 6, 1991, **Federal Register** notice (56 FR 56694, codified for the State of California at 40 CFR 81.305).

Once an area is designated nonattainment, section 188 of the amended Act outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including Owens Valley, were initially classified as moderate by operation of law. Section 188(b)(1) of the Act further provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot ''practicably'' attain the PM–10 NAAQS by this attainment date.

Air monitoring of the Owens Valley during the past 18 years has measured the highest PM–10 pollution in the United States, the result of water-gathering activities by the City of Los Angeles. California submitted a moderate area PM–10 SIP for Owens Valley on January 9, 1992. Based on this submittal, EPA determined on January 8, 1993, that Owens Valley could not practicably attain by the applicable attainment deadline for moderate areas (December 31, 1994, per section 188(c)(1) of the Act), and reclassified Owens Valley as serious (58 FR 3334).[2] In accordance with section 189 (b)(2) of the Act, the applicable deadline for submittal of a SIP for Owens Valley addressing the requirements for serious PM–10 nonattainment areas in section 189 (b) and (c) of the Act (58 FR 3340) is February 8, 1997 (4 years after the effective date of the reclassification).

These requirements, as they pertain to the Owens Valley nonattainment area, include:

(a) A demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 2001, or an alternative demonstration that attainment by that date would be impracticable and that the plan provides for attainment by the most expeditious alternative date practicable (CAA Section 189(b)(1)(A) (i) and (ii); and

(b) Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress toward attainment by December 31, 2001 (CAA section 189(c)).

Notwithstanding significant efforts by the Great Basin Unified Air Pollution Control District and the California Air Resources Board to work with the City of Los Angeles to reach a mutually acceptable solution, the State has failed to meet the February 8, 1997 deadline for the required SIP submission. EPA is therefore compelled to find that the State of California has failed to make the required SIP submission for the Owens Valley PM–10 nonattainment area.

The CAA establishes specific consequences if EPA finds that a state has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provision. Section 179(a) sets forth four findings that form the basis for application of a sanction. The first finding, that a State has failed to submit a plan required under the CAA, is the finding relevant to this rulemaking.

If California has not made the required complete submittal within 18 months of the effective date of today's

[1] EPA revised the NAAQS for particulate matter on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (ug/m^3). The 24-hour PM–10 standard of 150 ug/m^3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, Appendix K.

On July 18, 1997, EPA reaffirmed the annual PM–10 standard, and slightly revised the 24-hour PM–10 standard (62 FR 38651). The revised 24-hour PM–10 standard is attained if the 99th percentile of the distribution of the 24-hour results over 3 years does not exceed 150 ug/m^3 at each monitor within an area. On July 18, 1997, EPA also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5).

This finding applies to the outstanding obligation of the State to submit for the Owens Valley Planning Area a plan addressing the 24-hour and annual PM–10 standards, as originally promulgated.

Breathing particulate matter can cause significant health effects, including an increase in respiratory illness and premature death.

[2] In reclassifying the Owens area, EPA observed that: ''Ambient PM–10 levels in Owens Valley are among the highest in the country. In 1989, for instance, the highest 24-hour PM–10 concentration observed in the area was 1861 micrograms per cubic meter (ug/m^3) in contrast to the NAAQS of 150 ug/m^3. The PM–10 SIP for Owens Valley includes an analysis of wind direction and wind speed on days when PM–10 levels are high, which indicates that the major source causing violations of the PM–10 NAAQS in this area is Owens Dry Lake. Owens Dry Lake covers approximately 110 square miles near the south end of the planning area. Approximately 60 square miles of the lake is dry.'' (58 FR 3337)

rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made a complete submission 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31.[3] In addition, CAA section 110(c) provides that EPA must promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a).

The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete submittal of a plan addressing the serious area PM–10 requirements for Owens Valley. In addition, EPA will not promulgate a FIP if the State makes the required SIP submittal and EPA takes final action to approve the submittal within 2 years of EPA's findings (section 110(c)(1) of the Act). EPA encourages the responsible parties to continue working together on a solution which can cancel out the potential sanctions and FIP.

II. Final Action

A. Rule

Today, EPA is making a finding of failure to submit for the Owens Valley PM–10 nonattainment area, due to failure of the State to submit a SIP revision addressing the serious area PM–10 requirements of the CAA.

B. Effective Date Under the Administrative Procedures Act

EPA has issued this action as a rulemaking because the Agency has treated this type of action as rulemaking in the past. However, EPA believes that it would have the authority to issue this action in an informal adjudication, and is considering which administrative process—rulemaking or informal adjudication—is appropriate for future actions of this kind.

Because EPA is issuing this action as a rulemaking, the Administrative Procedures Act (APA) applies.

Today's action will be effective on August 20, 1997. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. Today's action concerns a SIP submission that is already overdue and the State has been aware of applicable provisions of the CAA relating to overdue SIPs. In addition, today's action simply starts a ''clock'' that will not result in sanctions for 18 months, and that the State may ''turn off'' through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This notice is a final agency action, but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

D. Executive Order 12866

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

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

As discussed in section II.F. below, findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that today's action does not have a significant impact on small entities.

F. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') signed into law on March 22, 1995, EPA 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.

In addition, under the Unfunded Mandates Act, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed, under section 203, a small government agency plan.

EPA has determined that today's action is not a Federal mandate. The CAA provision discussed in this notice requires states to submit SIPs. This notice merely provides a finding that California has not met that requirement. This notice does not, by itself, require any particular action by any State, local, or tribal government, or by the private sector.

For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

G. SBREFA Notice

Under section 801(a)(1)(A) of the APA as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

As noted above, EPA is issuing this action as rulemaking. There is a question as to whether this action is a rule of ''particular applicability,'' under section 804(3)(A) of the APA as amended by SBREFA—and thus exempt from the Congressional submission requirements—because this rule applies only to a named state. In this case, EPA has decided to submit this rule to Congress, but will continue to consider

[3] In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: the offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, ''Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.''

the issue of the scope of the exemption for rules of ''particular applicability.''

H. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

J. Judicial Review

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the appropriate circuit by October 27, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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) of the Act.

Dated: August 20, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–22948 Filed 8–27–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5883–3]

RIN 2060–AH48

Regulation of Fuels and Fuel Additives: Baseline Requirements for Gasoline Produced by Foreign Refiners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revises the requirements for imported conventional gasoline. The Agency has revised the rules for conventional gasoline (59 FR 7716, February 16, 1994) to allow a foreign refiner to choose to petition EPA to establish an individual baseline reflecting the quality and quantity of gasoline produced at a foreign refinery in 1990 that was shipped to the United States. The foreign refiner is required to meet the same requirements relating to the establishment and use of individual refinery baselines as are met by domestic refiners. This final action also includes additional requirements that address issues that are unique to refiners and refineries located outside the United States, namely those related to tracking the movement of gasoline from the refinery to the United States border, monitoring compliance with the requirements applicable to foreign refiners, and imposition of appropriate sanctions for violations. EPA will monitor the quality of imported conventional gasoline, and if it exceeds a specified benchmark, EPA will apply appropriate remedial action. Under this final action, the baseline for gasoline imported from refiners without an individual baseline would be adjusted to remedy the exceedance.

EPA believes this final rulemaking is consistent with the Agency's commitment to fully protect public health and the environment, and with the U.S. commitment to comply with its obligations under the World Trade Organization agreement.

DATES: This final rule is effective August 27, 1997.

ADDRESSES: Materials relevant to the final rule have been placed in Public Docket A–97–26 at the address below. Additional materials can be found in Public Dockets A–91–02 and A–92–12, A–94–25 and A–96–33 located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. The docket may be inspected from 8 a.m. until 5:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Karen Smith, Fuels and Energy Division, U.S. EPA (6406J), 401 M Street, SW., Washington, DC 20460, Telephone: (202) 233–9674.

SUPPLEMENTARY INFORMATION:

Availability on the TTNBSS

Copies of this final rule are available electronically from the EPA Internet Web site and via dial-up modem on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Both services are free of charge, except for your existing cost of Internet connectivity or the cost of the phone call to TTN. Users are able to access and download files on their first call using a personal computer per the following information. The official **Federal Register** version is made available on the day of publication on the primary Internet sites listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below and on the TTN BBS.

Internet (Web)

http://www.epa.gov/docs/fedrgstr/EPA–AIR/

(either select desired date or use Search feature)

http://www.epa.gov/OMSWWW/

(look in What's New or under the specific rulemaking topic)

TTNBBS: The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PHι 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, 9600, or 14400 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(T) Gateway to TTN Technical Areas (Bulletin Boards)

(M) OMS—Mobile Sources Information

(Alerts display a chronological list of recent documents)

(K) Rulemaking and Reporting

At this point, choose the topic (e.g, Fuels) and subtopic (e.g., Reformulated Gasoline) of the rulemaking, and the system will list all available files in the chosen category in date order with brief descriptions. To download a file, type the letter ''D'' and hit your Enter key. Then select a transfer protocol that is supported by the terminal software on your own computer, and pick the appropriate command on your own software to receive the file using that same protocol. After getting the files you want onto your computer, you can quit the TTN BBS with the ''G''oodbye command.

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

Regulated Entities

Entities regulated by this action are those foreign refiners and importers which produce, import or distribute gasoline for sale in the United States. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Foreign Refiners, Importers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be