Anyone interested in attending the meeting should check the website for new material on a regular basis prior to the meetings.

The materials that are available on the website are also available at: Air and Radiation Docket and Information Center, Docket Number A–2001–31, U.S. EPA, 401 M Street, SW., Room M–1500 (Mail Code 6102), Washington, DC 20460. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 02–6491 Filed 3–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA073–FON; FRL–7157–9]

Finding of Failure To Submit a Required State Implementation Plan for Particulate Matter, California—San Joaquin Valley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to find that California failed to make a particulate matter (PM–10) nonattainment area state implementation plan (SIP) submittal required for the San Joaquin Valley Planning Area under the Clean Air Act (CAA or Act). The San Joaquin Planning Area is a serious PM–10 nonattainment area. Under 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 State of California submitted a serious area plan for the San Joaquin Valley in 1997. On February 26, 2002, prior to action on the plan by EPA, the State withdrew the submittal from the Agency's consideration. As a result of that withdrawal, EPA is today finding that California failed to make the PM–10 nonattainment area SIP submittal required for the San Joaquin Valley Planning Area under the Act.

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 February 28, 2002.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield, U. S. Environmental Protection Agency, Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 947–4148.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Planning Requirements

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the PM–10 NAAQS.[1] Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q (1991). On the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas, including the San Joaquin Valley planning area, meeting the qualifications of section 107(d)(4)(B) of the amended Act, were designated nonattainment by operation of law. See 56 FR 11101 (March 15, 1991). EPA codified the boundaries of the San Joaquin Valley PM–10 nonattainment area at 40 CFR 81.305.

Once an area is designated nonattainment for PM–10, section 188 of the CAA outlines the process for classifying the area and establishing the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including the San Joaquin Valley, were initially classified as moderate.

Section 188(b)(1) of the Act 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 the moderate area attainment deadline, December 31, 1994. On January 8, 1993 (58 FR 3334, 3337), EPA made such a determination and reclassified the San Joaquin Valley nonattainment area as serious.

In accordance with section 189(b)(2) of the Act, SIP revisions for the San Joaquin Valley addressing the requirements for serious PM–10 nonattainment areas in section 189(b) and (c) of the Act were required to be submitted by August 8, 1994 and 1994 and February 8, 1997.

The serious area PM–10 requirements, as they pertain to the San Joaquin Valley nonattainment area, include: [2]

(a) A comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant, here, PM–10 and its precursors (CAA section 172(c)(3));

(b) 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));

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

(d) Provisions to assure that the best available control measures (BACM), including best available control technology (BACT), shall be implemented no later than four years after the reclassification of the area to a serious nonattainment area (CAA section 189(b)(1)(B).

B. California's Serious Area PM–10 SIP Submittals for the San Joaquin Valley

The State of California submitted on October 12, 1994 the ''San Joaquin Valley PM–10 BACM SIP Submittal'' to EPA as a proposed revision to the California PM–10 SIP. On July 17, 1997, CARB submitted to EPA the serious area ''PM–10 Attainment Demonstration Plan'' (Serious PM–10 Plan). The 1997 Plan incorporated and superseded the 1994 San Joaquin Valley PM–10 BACM SIP (1997 Plan, p. 1–1).

II. EPA Actions Relating to the San Joaquin Valley PM–10 Nonattainment Area

As discussed further in section III below, EPA intended to propose to

[1] EPA revised the NAAQS for PM–10 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.

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

[2] EPA has concluded that certain moderate area PM–10 requirements continue to apply after an area has been reclassified to serious. For a more detailed discussion of the planning requirements applicable to the San Joaquin Valley and the relationship between the moderate area and serious area requirements after reclassification of the area to serious, see, e.g., 65 FR 37324 (June 14, 2000).

disapprove the Serious PM–10 Plan for the San Joaquin Valley by March 1, 2002. However, just as the Agency was preparing the proposed disapproval notice for signature by the Regional Administrator and publication in the **Federal Register**, the State notified EPA that it had withdrawn the Plan from consideration by the Agency. See letter (with enclosures) from Michael Kenny, Executive Officer, California Air Resources Board, to Wayne Nastri, Regional Administrator, EPA Region 9, faxed to EPA on February 26, 2002. As a result, EPA is unable to move forward with its proposed plan disapproval.

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 because withdrawal of a plan is tantamount to failing to submit it.

If California has not made the required complete submittal (in this case resubmittal) within 18 months of the effective date of today's 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] 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 applicable serious area PM–10 requirements for the San Joaquin Valley.

In addition, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a) unless EPA takes final action to approve the submittal within 2 years of EPA's finding.

In a separate action, EPA is today also proposing to find that the San Joaquin Valley failed to attain the PM–10 NAAQS by the statutory deadline, December 31, 2001. EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date (i.e., June 30, 2002), whether the area has attained the annual and 24-hour NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's ''air quality as of the attainment date,'' and section 188(b)(2) is consistent with this requirement. Under CAA section 189(d), serious PM–10 nonattainment areas that fail to attain are required to submit within 12 months of the applicable attainment date, ''plan revisions which provide for attainment of the PM–10 air quality standards and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.''

III. Ongoing Planning Efforts in the San Joaquin Valley

As noted above, California now has an obligation to develop and submit a new PM–10 attainment plan for the San Joaquin Valley. In order to assist in these efforts, we outline below some of the bases on which we intended to disapprove the Serious PM–10 Plan:[4]

(a) The emissions inventory is neither accurate nor comprehensive because, among other reasons, it contains no emissions for ammonia, a PM–10 precursor that contributes to PM–10 exceedances; the inventory combines together in one category a number of sources that constitute 83% of the total primary PM–10 inventory; the inventory is not representative of a number of areas in the Valley; and there is no supporting documentation for the motor vehicle emissions;

(b) The Plan does not provide for attainment of the annual standard by December 31, 2001 as evidenced by NAAQS exceedances cited in our proposed finding of failure to attain. For the 24-hour standard, the State in the Plan sought an extension of the attainment deadline to December 31, 2006 pursuant to CAA section 188(e), but did not provide the supporting documentation required by that section;

(c) The Plan does not meet the requirements of CAA section 189(b)(1)(B) and EPA guidance for best available control measures (BACM): the Plan does not provide for BACM for each significant source category; it does not document the State's selection of BACM; and the Plan's BACM commitments are not being met; and

(d) The Plan does not provide for quantitative milestones to be achieved every three years until the area is redesignated attainment and does not demonstrate reasonable further progress (RFP) toward attainment by December 31, 2001.

Efforts are underway by the State and local air district to develop a plan that will bring clean air to Valley residents as quickly as possible. EPA is committed to working closely with the State and local regulators, the regulated community, and the public to ensure that such plan is technically sound and protective of public health.

IV. Final Action

A. Rule

EPA is today making a finding that the State of California failed to submit a SIP revision addressing the CAA's serious area PM–10 requirements to attain the 24-hour and annual PM–10 NAAQS for the San Joaquin Valley PM–10 nonattainment area.

B. Effective Date Under the Administrative Procedures Act

Today's action will be effective on February 28, 2002. Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), an 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.

[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.''

[4] EPA's review of the 1997 Plan is based on section 189 of the CAA; EPA guidance, known as the ''General Preamble,'' which describes EPA's preliminary views on how the Agency intends to review SIPs and SIP revisions submitted under title I of the Act, and an Addendum to the General Preamble (''Addendum'') describing the Agency's preliminary views on how it intends to review SIPs and SIP revisions containing serious area PM–10 plan provisions. See ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992) and ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).

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

This final agency action 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).

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 Fed. Reg. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, as specified in Executive Order 13132, because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies 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 small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the

aggregate, or to the private sector. 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. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

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. 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).

J. Petitions for 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 May 17, 2002. 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).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: February 28, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–6270 Filed 3–15–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Parts 1001, 1003, 1005 and 1008

RIN 0991–AB09

Medicare and Federal Health Care Programs: Fraud and Abuse; Revisions and Technical Corrections

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule sets forth several revisions and technical corrections to the OIG regulations pertaining to fraud and abuse in Federal health care programs. This rule contains revisions and clarifications with respect to the definition of the term ''item or service,'' the reinstatement procedures relating to exclusions resulting from a default on health education or scholarship obligations, the factors considered in determining civil money penalty amounts for patient dumping violations, and several other matters. In addition, this rule makes a number of minor technical corrections to the current regulations in order to clarify various issues and inadvertent errors appearing in the OIG's existing regulatory authorities.

EFFECTIVE DATE: These regulations are effective on April 17, 2002.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, Office of Counsel to the Inspector General, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Inspector General's (OIG's) exclusion authorities are intended to protect the Federal health care programs and their beneficiaries from untrustworthy health care providers, i.e., individuals and entities whose behavior has demonstrated that they pose a risk to program beneficiaries or to the integrity of these programs. These authorities encompass both mandatory exclusions (section 1128(a) of the Social Security Act (the Act)) and permissive exclusions (section 1128(b) of the Act). The *mandatory* exclusion authorities require the OIG to exclude from program participation any individual or entity convicted of a ''program-related'' crime; patient abuse or neglect; or certain felonies related to health care delivery, governmental health care programs or controlled substances. Mandatory exclusions must be imposed for a minimum 5-year period. The *permissive* authorities do not require the imposition of an exclusion, and may either be (1) ''derivative'' exclusions that are based on actions previously taken by a court or other law enforcement or regulatory agencies, or (2) ''non-derivative'' exclusions that are based on OIG-initiated determinations of misconduct, e.g., poor quality care or submission of false claims for Medicare or Medicaid payment. With certain exceptions, there are no specified minimum periods of exclusion under these permissive authorities.

In addition, as an administrative remedy to remedy health care fraud and abuse, section 1128A of the Act allows the OIG to seek civil money penalties (CMPs), assessments and exclusions against those engaged in filing false claims (and certain other offenses) against the Department's programs and beneficiaries. Since enactment in 1981, the CMP provisions have been expanded to apply to numerous types of fraud and abuse activities related to Medicare and other Federal health care programs. Providers who may be subject to any of the OIG's administrative sanctions have full due process rights, including administrative hearings and appeals to the Federal courts.

On October 20, 2000, the OIG published a proposed rule in the **Federal Register** (65 FR 63035) that proposed several revisions and technical corrections to the OIG regulations codified in 42 CFR chapter V.

II. Summary of the Proposed Rule, Response to Public Comments and Provisions of the Final Rule

In response to the proposed rule, the OIG received a total of 6 timely-filed public comments from organizations, associations and other interested parties. Set forth below is a brief explanation of the intended revisions set forth in the proposed rule, a summary of the comments received and a response to those concerns, and a description of the final changes and