

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen Dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Dated: March 25, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Accordingly, the addition of 40 CFR 52.2620(c)(30) and the amendment to 40 CFR 52.2622 are withdrawn as of April 1, 2002.

[FR Doc. 02-7772 Filed 3-29-02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52

[CA 255-0320b; FRL-7164-7]

Interim Final Determination That the State of California Has Conditionally Corrected Deficiencies and Stay of Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Based on a proposed conditional approval, EPA is making an interim final determination by this action that California has corrected the deficiencies for which a sanctions clock began on April 7, 2000. This action will stay the imposition of the offset sanction and defer the imposition of the highway sanction. Although this action is effective upon publication, we will take comment on the proposed rulemaking and publish a final rule taking into consideration any comments received. Elsewhere in today's **Federal Register**, EPA has published a proposed rulemaking conditionally approving the State of California's submittal of a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) PM-10 portion of the California State Implementation Plan (SIP). That proposed rulemaking provides the public with an opportunity to comment on EPA's action. We will consider any comments received before taking final action on the State's submittal.

DATES: This interim final determination is effective on April 1, 2002. Comments will be accepted until May 31, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations: Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814. San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX; (415) 947-4116.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On July 23, 1996, the State of California submitted a revision to the SJVUAPCD portion of the PM-10 SIP, for which we published a limited approval and limited disapproval on March 8, 2000 (65 FR 12118). Our disapproval action started an 18-month clock beginning on April 7, 2000, for the imposition of the offset sanction (followed by a highway sanction 6 months later). The State subsequently submitted revised SIP rules on December 6, 2001. In the Proposed Rules section of today's **Federal Register**, we have proposed conditional approval of the State's December 6, 2001, submittal. Based on that proposal, we believe that it is more likely than not that the State has corrected the original section 189(a) and section 110(a) disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies identified in the March 8, 2000, final action that started the clock for imposition of sanctions. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed conditional approval of the State's submittal, EPA determines that the State's submittal is not conditionally approvable and this final action was inappropriate, EPA will either propose

or take final action finding that the State has not corrected the original disapproval deficiencies. At that time, EPA will also issue an interim final determination or a final determination that the deficiencies have not been corrected. Until EPA takes such an action, the application of sanctions will continue to be deferred and/or stayed.

This action does not stop the sanctions clock that started for this area on April 7, 2000. However, this action will temporarily stay the imposition of the offsets sanction and will defer the imposition of the highway sanction until we finalize the conditional approval or withdraw it based on adverse comments. If we must withdraw the proposed conditional approval action based on adverse comments or we subsequently determine that the State, in fact, did not correct the disapproval deficiencies or subsequently does not fulfill the conditions of the conditional approval, the sanctions consequences described in the sanctions rule will apply (59 FR 39832, August 4, 1994, codified at 40 CFR 52.31).

II. EPA Action

We are making an interim final determination that the State has corrected the prior disapproval deficiencies that are associated with sanctions. Based on this action, imposition of the offset sanction will be stayed and imposition of the highway sanction will be deferred until we take action proposing or finally disapproving in whole or part the State submittal. After EPA has reviewed any comments, EPA will either finalize its conditional approval and issue a final determination to stay the offset sanction and defer the highway funding sanction, or EPA will withdraw this interim final determination and the sanctions will be reimposed in accordance with 40 CFR 51.31(d).

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)).¹ EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public

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.

interest. EPA 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 deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can 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 submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, 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. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely stays and defers federal sanctions. Accordingly, the administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule only stays an imposed sanction and defers the imposition of another, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). 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 (64 FR 43255, August 10, 1999), because it merely stays a sanction and defers another one, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885,

April 23, 1997), because it is not economically significant.

This rule does not contain technical standards, thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) 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). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 1, 2002. 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

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

Dated: March 20, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

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DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH73

Endangered and Threatened Wildlife and Plants; Re-opening of Comment Period on the Sacramento Splittail Final Rule; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; re-opening of comment period; correction.

SUMMARY: The re-opening of the comment period for the final rule on the Sacramento splittail (*Pogonichthys macrolepidotus*) was published on March 21, 2002. The comment period closing date was incorrectly published as October 15, 2002. The actual closing date is May 20, 2002. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this re-opened comment period, and will be fully considered in the final rule. We are re-opening the comment period to invite comments and to obtain peer review on the statistical analysis completed by us to re-analyze the available splittail abundance data. We are also inviting additional comments on the status of and factors affecting the species, as first solicited in the January 12, 2001 (66 FR 2828), comment period and re-solicited in the May 8, 2001 (66 FR 23181), and August 17, 2001 (66 FR 43145), re-openings of same.

DATES: We will accept public comments until May 20, 2002.

ADDRESSES:

Comment Submission: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W-2605, Sacramento, California 95825.
2. You may hand-deliver comments to our Sacramento Fish and Wildlife Office, during normal business hours, at the address given above.
3. You may send comments by electronic mail (e-mail) to: