

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 258-0397(B); FRL-7528-9]

#### Interim Final Determination That State of California Has Corrected Deficiencies and Stay and Deferral of Sanctions; San Francisco Bay Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final rule.

**SUMMARY:** Based on a proposed approval of revisions to the California State Implementation Plan (SIP) for the San Francisco Bay Area ozone nonattainment area, published elsewhere in today's **Federal Register**, EPA is making an interim final determination that California has corrected the deficiencies for which a sanctions clock began on October 22, 2001. This action will stay the imposition of the offset sanctions and defer the imposition of the highway sanction.

**DATES:** This interim final determination is effective on July 16, 2003. However, comments will be accepted until August 15, 2003.

**ADDRESSES:** Mail comments to Ginger Vagenas, Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You may inspect copies of the submitted plan at our Region IX office during normal business hours. The address is: Planning Office (AIR-2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You may also see copies of the submitted plan at the following locations:

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.  
California Air Resources Board, Public Information Office, 1001 "I" Street, Sacramento, CA 95814.

A copy of the plan is also available via the Internet at <http://www.baaqmd.gov/planning/2001sip/2001sip.htm>.

**FOR FURTHER INFORMATION CONTACT:** Ginger Vagenas, EPA Region IX, (415) 972-3964.

#### SUPPLEMENTARY INFORMATION:

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

#### I. Background

On September 20, 2001 (66 FR 48340), we published a partial approval and

partial disapproval of the San Francisco Bay Area's 1999 Ozone Attainment Plan (1999 Plan) as adopted by the Bay Area Air Quality Management District on June 16, 1999, the Association of Bay Area Governments on June 17, 1999, and the Metropolitan Transportation Commission on June 23, 1999. These agencies are known collectively as the co-lead agencies. The 1999 Plan was submitted to EPA by the State on August 12, 1999. We based our partial disapproval action on deficiencies in the submittal regarding the attainment<sup>1</sup> and reasonably available control measure (RACM) requirements of the Clean Air Act (CAA). CAA section 172(c)(1). This disapproval action started a sanctions clock for imposition of the offset sanction 18 months after October 22, 2001 and the highway sanction 6 months later, pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31.

On October 24, 2001, the co-lead agencies adopted the San Francisco Bay Area 2001 Ozone Attainment Plan (2001 Plan), which was in part intended to correct the deficiencies identified in our disapproval action. On November 30, 2001, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal. Based on today's this proposed approval, we believe that it is more likely than not that the State has corrected the attainment and RACM deficiencies. Therefore we are taking this final rulemaking action, effective on publication, to stay the imposition of the offset sanction and to defer the imposition of the highway sanction triggered by our September 20, 2001 disapproval.

EPA is providing the public with an opportunity to comment on this final action. If comments are submitted that change our assessment described in this final determination and the proposed approval of the attainment and RACM provisions of the 2001 Plan, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 52.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final approval of the attainment and RACM provisions of the 2001 Plan.

#### II. EPA Action

We are making an interim final determination that the State has

corrected the deficiencies that started the sanctions clock. Based on this action, the imposition of the offset sanction will be stayed and the imposition of the highway sanction will be deferred until we take final action to approve the attainment and RACM provisions of the 2001 Plan or we take final action to disapprove these provisions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's partial disapproval action of the 1999 Plan, 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)). 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.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public 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 stay and/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 notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

#### III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and

<sup>1</sup> In this final action, references to attainment include the associated motor vehicle emission budgets.

therefore is not subject to review by the Office of Management and Budget.

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

The administrator certifies that this action 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.*).

This rule 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).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does 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).

This rule is not subject to Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. § 272) do not apply to this rule because it imposes no standards.

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 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). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of July 16, 2003. 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 September 15, 2003. 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, Intergovernmental regulations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 7, 2003.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

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