

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

**§ 52.21 [Amended]**

■ 2. In § 52.21, remove paragraph (i)(1)(xi).

[FR Doc. 2011-12089 Filed 5-17-11; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R09-OAR-2011-0372; FRL-9307-3]

**Interim Final Determination To Defer Sanctions, Sacramento Metro 1-Hour Ozone Nonattainment Area, California**

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

**ACTION:** Interim final rule.

**SUMMARY:** EPA is making an interim final determination to defer imposition of sanctions based on a proposed determination, published elsewhere in this **Federal Register**, that the State of California is no longer required to submit or implement a Clean Air Act (CAA) Section 185 fee program (Termination Determination) for the Sacramento Metro 1-hour Ozone nonattainment area (Sacramento Metro Area) to satisfy anti-backsliding requirements for the 1-hour Ozone standard.

**DATES:** This interim final determination is effective on May 18, 2011. However, comments will be accepted until June 17, 2011.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2011-0372, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and

should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material, large maps), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Lily Wong, EPA Region IX, (415) 947-4114, [wong.lily@epa.gov](mailto:wong.lily@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

**I. Background**

On January 5, 2010 (75 FR 232), we published a finding that the State of California failed to submit State Implementation Plans (SIPs) to satisfy CAA section 185 for three 1-hour Ozone nonattainment areas: Sacramento Metro Area, Southeast Desert, and Los Angeles-South Coast Air Basin. As discussed in our January 2010 action, the finding regarding the Sacramento Metro Area addressed the Yolo/Solano Air Quality Management District, Feather River Air Quality Management District, Placer County Air Pollution Control District and El Dorado County Air Quality Management District. It did not address the Sacramento Metropolitan Air Quality Management District. This finding started a sanctions clock for imposition of offset sanctions 18 months after January 5, 2010 and highway sanctions 6 months later, pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31.

On July 7, 2010 and in an update on April 13, 2011, the California Air Resources Board (CARB) submitted a request that EPA determine that the CAA section 185 obligation has been

terminated for the Sacramento Metro Area. This termination determination request was supported by data demonstrating that the Sacramento Metro Area has attained the 1-hour Ozone standard based on the most recent three years of complete, quality-assured and certified data (2007–2009), and that the improvement in air quality resulted from permanent and enforceable emissions reductions. In the Proposed Rules section of today’s **Federal Register**, we have proposed approval of this submittal. Based on today’s proposed approval, we are taking this final rulemaking action, effective on publication, to defer imposition of sanctions that were triggered by our January 5, 2010 finding of failure to submit for the Sacramento Metro Area based on a finding that it is more likely than not that the Sacramento Metro Area is no longer obligated to submit a 185 program.

EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed CAA section 185 termination determination for the Sacramento Metro Area, we would take final action proposing to deny or denying the termination determination request and lifting this deferral of the sanctions. If no comments are submitted that change our assessment, then with regard to the finding of failure to submit discussed previously, any imposed sanctions would no longer apply and any sanction clocks would be permanently terminated on the effective date of a final CAA section 185 termination determination.

**II. EPA Action**

We are making an interim final determination to defer CAA section 179 sanctions associated with the Sacramento Metro Area’s 1-hour Ozone CAA section 185 obligation based on our concurrent proposal to approve a CAA section 185 termination determination which would remove the obligation of the state to submit a section 185 SIP when finalized.

Because EPA has preliminarily determined that the State is not obligated to submit the SIP that was the basis of EPA’s finding of failure to submit, 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 is no longer obligated to submit the plan that was the basis for the finding that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State no longer is required to submit the plan prior to the rulemaking approving the State's termination determination. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to 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)).

Note that today's action has no impact on the January 5, 2010 (75 FR 232) findings regarding the Southeast Desert and the Los Angeles-South Coast Air Basin.

### III. Statutory and Executive Order Reviews

This action 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 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 therefore, and established an effective date of May 18, 2011. 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 July 18, 2011. 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, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements.

Dated: May 9, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60 and 63

[EPA-HQ-OAR-2002-0058; EPA-HQ-2003-0119; FRL-9308-6]

RIN 2060-AQ25; 2060-AO12

### Industrial, Commercial, and Institutional Boilers and Process Heaters and Commercial and Industrial Solid Waste Incineration Units

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

**ACTION:** Final rules; Delay of effective dates.

**SUMMARY:** The EPA is delaying the effective dates for the final rules titled "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters" and "Standards of Performance for New Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units" under the authority of the Administrative Procedure Act (APA) until the proceedings for judicial review of these rules are completed or the EPA completes its reconsideration of the rules, whichever is earlier.

**DATES:** The effective dates of the final rules published in the **Federal Register** on March 21, 2011 (76 FR 15608 and 76 FR 15704), are delayed until such time as judicial review is no longer pending or until the EPA completes its reconsideration of the rules, whichever is earlier. The Director of the **Federal Register** has reviewed certain