

with subject-matter jurisdiction may, for a reasonable period upon a showing of sufficient cause, extend the time for any party's response.

(5) The General Counsel or his or her designee shall render the Office of the General Counsel's decision on the matter. The decision will be premised on the reasonableness factors of paragraph (e) of this section, the standards of paragraph (f) of this section, the limitation on direct payment of paragraph (h)(1)(i) of this section, the claims file, the parties' submissions, and all relevant factors. The decision may address the issue of fee eligibility if no other agency of original jurisdiction has made a determination on that issue.

(6) The Office of the General Counsel's decision is a final adjudicative action that may only be appealed to the Board of Veterans' Appeals. Unless a party files a Notice of Disagreement with the Office of the General Counsel's decision, the parties must allocate any excess payment in accordance with the decision not later than the expiration of the time within which the Office of the General Counsel's decision may be appealed to the Board of Veterans' Appeals.

(j) *Failure to comply.* In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 to terminate the agent's or attorney's accreditation to practice before VA.

(k) *Appeals.* Except as otherwise provided in this section, appeals shall be initiated and processed using the procedures in 38 CFR part 20 applicable to appeals under the modernized system.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2024-0338; FRL-12118-03-R9]

Interim Final Determination To Stay or Defer Sanctions; California; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the State of

California has submitted revisions to the California State Implementation Plan (SIP) that correct the deficiency prompting the partial disapproval of previous SIP submissions addressing the requirements under the Clean Air Act (CAA or "Act") for contingency measures for the 2008 ozone national ambient air quality standards (NAAQS or "standards") for the San Joaquin Valley ozone nonattainment area. This determination is based upon a proposed conditional approval, published elsewhere in this issue of the **Federal Register**, of SIP revisions addressing the contingency measure requirements for the 2008 ozone NAAQS for the San Joaquin Valley. The effect of this interim final determination is to stay the application of the offset sanction and to defer the application of the highway sanction that were triggered by the EPA's previous partial disapproval of SIP revisions submitted to address the contingency measure requirements for the 2008 ozone NAAQS for this area.

DATES: This interim final determination is effective on October 25, 2024. However, comments will be accepted on or before November 25, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2024-0338 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please

contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT:

Andrew Ledezma, Air Planning Office (ARD-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3985, or by email at Ledezma.Andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

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

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I. Background

In March 2019, the EPA took final action to approve, or conditionally approve, certain state implementation plan (SIP) revisions submitted by the State of California to meet CAA requirements for the 2008 ozone NAAQS in the San Joaquin Valley, California, ozone nonattainment area.¹ Specifically, the EPA approved the base year emissions inventory, reasonable further progress (RFP) demonstration, and motor vehicle emissions budgets, and conditionally approved the contingency measure element for the 2008 ozone NAAQS. We justified a conditional approval of the contingency measure element, even though the contingency measure itself would only achieve a small fraction of the recommended amount for contingency measures, on the basis of a surplus in emissions reductions that could be anticipated from already-implemented measures in the milestone years and year after the attainment year and a commitment by the State to achieve additional emissions reductions by the attainment year in the San Joaquin Valley that would reduce the chances that additional contingency measures would be needed for failure to attain the 2008 ozone NAAQS by the applicable attainment date.²

Our final conditional approval of the contingency measure element was the subject of a legal challenge and, in a 2021 Ninth Circuit decision in the *Association of Irrigated Residents v. EPA* case, the Court remanded the conditional approval action back to the Agency.³ In so doing, the Court found that, by taking into account the emissions reductions from already-implemented measures to find that the contingency measure would suffice to

¹ 84 FR 11198 (March 25, 2019).

² 83 FR 61346, at 61357 (November 29, 2018) (proposed conditional approval), finalized at 84 FR 11198, at 11205-11206.

³ *Association of Irrigated Residents v. EPA*, 10 F.4th 937 (9th Cir. 2021).

meet the applicable requirement, the EPA was circumventing the court's 2016 holding in *Bahr v. EPA*.⁴ The Court also held that the EPA could not avoid the need for robust contingency measures by assuming that they will not be needed.⁵

In October 2022, in light of the *Association of Irrigated Residents v. EPA* decision, the EPA took final action to withdraw our previous conditional approval and to partially disapprove the contingency measure element submitted to address the contingency measure requirements for the San Joaquin Valley for the 2008 ozone NAAQS.⁶ We did so because we found that, if we did not take into account surplus emissions reductions or the State's commitment to achieve additional emissions reductions in San Joaquin Valley by the attainment year, then the one contingency measure that was included in the contingency measure element would have had to shoulder the entire burden of achieving the recommended amount for contingency measures (if triggered) but would have only achieved a small fraction of the recommended amount.⁷ The effective date of our final partial disapproval action was November 2, 2022.

Pursuant to section 179 of the CAA and 40 CFR 52.31, the EPA's partial disapproval of the contingency measure element triggered sanctions clocks. More specifically, and as explained in our final partial disapproval action, under 40 CFR 52.31, the offset sanction in CAA section 179(b)(2) would be imposed 18 months after November 2, 2022, and the highway funding sanction in CAA section 179(b)(1) would be imposed six months after the offset sanction was imposed, unless the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadlines.⁸

In April 2024, in response to our final partial disapproval, the State of California adopted and submitted the "Ozone Contingency Measure State Implementation Plan Revision for the 2008 and 2015 8-Hour Ozone Standards" (April 25, 2024) ("2024 SJV Ozone Contingency Measure Plan") to

the EPA as a revision to the California SIP.⁹ In the Proposed Rules section of this issue of the **Federal Register**, we have proposed to conditionally approve the 2024 SJV Ozone Contingency Measure Plan for the 2008 ozone NAAQS for the San Joaquin Valley ozone nonattainment area. Based on the proposed conditional approval action in this issue of the **Federal Register** with respect to the contingency measure element, we are taking this final rulemaking action, effective upon publication, to stay application of the offset sanction and defer application of the highway sanction that were triggered by the EPA's October 3, 2022 partial disapproval of the contingency measure element for the San Joaquin Valley 2008 ozone nonattainment area.¹⁰ We are doing so because we find that it is more likely than not that the 2024 SJV Ozone Contingency Measure Plan corrects the deficiencies that triggered such sanctions, when considered with two contingency measures that EPA has approved in separate rulemaking actions¹¹ and commitments to adopt and submit five additional contingency measures for the San Joaquin Valley ozone nonattainment area.

The EPA is providing the public with an opportunity to comment on this stay of the offset sanction and deferral of the highway sanction. If comments are submitted that change our assessment, as described in this interim final determination and in our proposed conditional approval, that the 2024 SJV Ozone Contingency Measure Plan meets the contingency measure requirements for the 2008 ozone NAAQS for the San Joaquin Valley nonattainment area, we will take final action to lift this stay of the offset sanction and deferral of the highway sanction under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our October 3, 2022 final action will continue to be stayed or deferred unless and until the conditional approval converts to a

disapproval or the EPA proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill the commitment in the conditionally-approved plan, at which time the sanctions would reapply.¹² Any sanction clock triggered by the October 2022 partial disapproval would be permanently stopped and sanctions applied, stayed, or deferred would be permanently lifted upon a final EPA finding that the deficiency forming the basis of the finding has been corrected.¹³

II. EPA Evaluation and Action

We are making an interim final determination under 40 CFR 52.31(d)(2)(ii) to stay the application of the offset sanction and to defer the application of the highway sanction associated with our October 3, 2022 final action partially disapproving the contingency measure element for the 2008 ozone NAAQS for the San Joaquin Valley nonattainment area. This determination is based on a concurrent proposal to conditionally approve the 2024 SJV Ozone Contingency Measure Plan as meeting the 2008 ozone contingency measure requirement, which, if fully approved, would correct the deficiencies that triggered sanctions under section 179 of the CAA.

The EPA has preliminarily determined that the submission of the 2024 SJV Ozone Contingency Measure Plan more likely than not adequately addresses the deficiencies identified in the October 3, 2022 partial disapproval, when considered together with previously approved contingency measures and commitments to adopt and submit additional contingency measures in accordance with the commitments in the State's commitment letter. As we are proposing conditional approval, relief from sanctions should be provided as quickly as possible.

Therefore, the 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, the EPA is still providing the public with an opportunity to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public

⁴ Id., at 946. The reference to "*Bahr v. EPA*" is to *Bahr v. EPA*, 836 F.3d 1218, at 1235–1237 (9th Cir. 2016). Under the *Bahr* holding, contingency measures under CAA sections 172(c)(9) and 182(c)(9) must be designed so as to be implemented prospectively; already-implemented control measures may not serve as contingency measures even if they provide emissions reductions beyond those needed for any other CAA purpose.

⁵ Id. at 947.

⁶ 87 FR 59688 (October 3, 2022).

⁷ Id. at 59690.

⁸ Id.

⁹ The California Air Resources Board (CARB) submitted the San Joaquin Valley Unified Air Pollution Control District's 2024 SJV Ozone Contingency Measure Plan electronically on April 29, 2024 as an attachment to a letter dated April 26, 2024 from Stephen S. Cliff, Ph.D., Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX.

¹⁰ See 40 CFR 52.31(d)(2)(ii).

¹¹ The two existing contingency measures for the 2008 ozone NAAQS for the San Joaquin Valley relate to architectural coatings and the California smog check program. The EPA approved these contingency measures at 87 FR 78544 (December 22, 2022) (architectural coatings contingency measure) and 89 FR 56222 (July 9, 2024) (smog check contingency measure).

¹² See 40 CFR 52.31(d)(3)(ii).

¹³ See 40 CFR 52.31(d)(5).

interest. The EPA has reviewed the 2024 SJV Ozone Contingency Measure Plan and, through its proposed action, is indicating that it is more likely than not that the Plan corrects the deficiencies that were the basis for the partial disapproval that started the sanctions clocks. Therefore, it is not in the public interest to apply sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to stay the application of the offset sanction and defer the application of the highway sanction while the EPA completes our rulemaking process to take final action on the 2024 SJV Ozone Contingency Measure Plan. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this document is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays or defers application of sanctions and imposes no additional requirements.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action stays or defers application of sanctions and imposes no new requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action stays or defers application of sanctions and imposes no new requirements.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It 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.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action stays or defers application of sanctions and imposes no new requirements. In addition, this action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations. The EPA believes that this type of action does not concern human health or environmental

conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations, and/or Indigenous peoples. This action stays or defers application of sanctions in accordance with CAA regulatory provisions and imposes no additional requirements.

K. Congressional Review Act (CRA)

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this action as discussed in section II of this preamble, including the basis for that finding.

L. Petitions for Judicial Review

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 December 24, 2024. Filing a petition for reconsideration by the EPA Administrator of this action does not affect the finality of this action 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 CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 16, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

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