

I. CAA PM-10 Planning Requirements for the San Joaquin Valley

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the PM-10 NAAQS.¹ Public Law 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 81.305.²

Once an area is designated nonattainment for PM-10, section 188 of the CAA outlines the process for classifying the area and establishes the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM-10 nonattainment areas, including 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 3337), EPA made such a determination and reclassified the San Joaquin Valley planning area as serious.

The attainment deadline for the San Joaquin Valley is December 31, 2001. Section 189(b)(2) of the Act required the submission of SIP revisions addressing CAA sections 189(b) and (c) by August 8, 1994 and February 8, 1997. California made these required serious area submittals for the San Joaquin Valley and withdrew them on February 26, 2002. EPA then made a finding of failure to submit (67 FR 11925).

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, averaged over a three year period, is equal to or less than 50 micrograms per cubic meter (ug/m³). The 24-hour PM-10 standard of 150 ug/m³ 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.

² The San Joaquin Valley PM-10 planning area includes the following counties in California's central valley: Fresno, Kern, Kings, Tulare, San Joaquin, Stanislaus, Madera and Merced.

On July 23, 2002, EPA finalized a finding of failure to attain the annual and 24-hour PM-10 standards for the Valley by December 31, 2001 (67 FR 48039). For serious areas failing to meet their applicable attainment deadlines, section 189(d) of the CAA requires states to "submit within 12 months after 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 of 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 the area." The 5% PM-10 attainment plan for the San Joaquin Valley was due on December 31, 2002. EPA has not yet received such a submittal from the State.

II. Final Action

A. Finding of Failure To Submit Required SIP Revisions

If California does not submit the required plan revisions 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 submittal 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 addressing the 5% attainment 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.

B. Effective Date Under the Administrative Procedures Act

This final action is effective on March 7, 2003. Under the Administrative Procedures Act (APA), 5 U.S.C.

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."

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 SIP revisions that are 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.

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. 553(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).

III. Statutory and Executive Officer Reviews

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 FR 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