

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 relations, Interstate transport, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: November 30, 2017.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, Region 10.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2017-0580; FRL-9972-02-Region 9]

#### Contingency Measures for the 1997 PM<sub>2.5</sub> Standards; California; San Joaquin Valley; Correction of Deficiency

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or “Agency”) is taking final action to determine that the deficiency that formed the basis for a disapproval of the contingency measures submitted for the San Joaquin Valley nonattainment area for the 1997 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS) has been corrected. The effect of this action is to permanently stop the sanctions clocks triggered by the disapproval.

**DATES:** This final rule is effective December 14, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2017-0580. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed on the website, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER**

**INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Rory Mays, EPA Region IX, (415) 972-3227, [mays.rory@epa.gov](mailto:mays.rory@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, whenever “we,” “us,” or “our” is used, we mean the EPA.

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#### I. Proposed Action

On October 23, 2017 (82 FR 48944) (herein “proposed rule”), we proposed to determine that the deficiency that formed the basis for a disapproval of the contingency measures submitted for the San Joaquin Valley<sup>1</sup> nonattainment area for the 1997 PM<sub>2.5</sub> NAAQS (“1997 PM<sub>2.5</sub> standards”)<sup>2</sup> has been corrected. We did so based on the Agency’s approval of California regulations establishing standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines (herein, “waiver measures”) into the California State Implementation Plan (SIP), and a finding that the purposes of the contingency measure requirement, as applicable to the San Joaquin Valley based on its initial designation as a nonattainment area for the 1997 PM<sub>2.5</sub> standards, have been fulfilled.

Our proposed rule provides a detailed background section that describes the relevant NAAQS, area designations, the relevant SIP submittal requirements, and the relevant SIP revisions submitted and either approved or disapproved by the EPA under Clean Air Act (CAA or “Act”) section 110.

In short, under CAA section 172(c)(9), SIPs for areas designated as nonattainment for a NAAQS must be revised to provide for the implementation of specific measures (“contingency measures”) to take effect if the area fails to make reasonable further progress (RFP) or fails to attain by the applicable attainment date. The EPA disapproved the contingency measure element of a set of SIP revisions collectively referred to as the “2008 PM<sub>2.5</sub> Plan,” which was developed and submitted by California

to address SIP requirements triggered by the designation of the San Joaquin Valley as a nonattainment area for the 1997 PM<sub>2.5</sub> NAAQS.<sup>3</sup>

In response to the EPA’s disapproval of the contingency measure element of the 2008 PM<sub>2.5</sub> Plan, California submitted a SIP revision referred to as the “2013 Contingency Measure SIP.” The 2013 Contingency Measure SIP primarily relied upon California’s waiver measures, *i.e.*, California mobile source regulations that had been waived or authorized by the EPA under CAA section 209, to provide post-attainment year emissions reductions equivalent to one year’s worth of RFP.<sup>4</sup>

The EPA approved,<sup>5</sup> but later disapproved,<sup>6</sup> the 2013 Contingency Measure SIP in the wake of a court decision<sup>7</sup> that undermined the basis for the EPA’s approval. The court decision at issue held that waiver measures must be approved into the SIP if California relies upon them to meet CAA SIP requirements, thereby rejecting the EPA’s longstanding practice allowing California SIP credit for waiver measures notwithstanding their absence from the SIP. Our disapproval of the 2013 Contingency Measure SIP became effective on June 13, 2016, and started a sanctions clock for imposition of offset sanctions 18 months after June 13, 2016, and highway sanctions 6 months later, pursuant to CAA section 179 and our regulations at 40 CFR 52.31, unless the State submits and the EPA approves, prior to the implementation of the sanctions, a SIP submission that corrects the deficiencies identified in the disapproval action.<sup>8</sup>

Since the disapproval of the 2013 Contingency Measure SIP, we have approved the waiver measures as

<sup>3</sup> 76 FR 69896 (November 9, 2011) (final action on the 2008 PM<sub>2.5</sub> Plan).

<sup>4</sup> One year’s worth of RFP is the yardstick the EPA has cited historically as the approximate quantity of emissions reductions that contingency measures should provide to satisfy CAA section 172(c)(9). *See, e.g.*, 81 FR 58010, at 58066 (August 24, 2016) (final rule implementing the PM<sub>2.5</sub> NAAQS).

<sup>5</sup> 79 FR 29327 (May 22, 2014) (final action approving the 2013 Contingency Measure SIP).

<sup>6</sup> 81 FR 29498 (May 12, 2016) (final action disapproving the 2013 Contingency Measure SIP).

<sup>7</sup> *Committee for a Better Arvin v. EPA*, 786 F.3d 1169 (9th Cir. 2015) (“*Committee for a Better Arvin*”) (partially granting and partially denying petition for review).

<sup>8</sup> The offset sanction applies to New Source Review (NSR) permits for new major stationary sources or major modifications proposed in a nonattainment area, and it increases the ratio of emissions reductions (*i.e.*, offsets) to increased emissions from the new or modified source, which must be obtained to receive an NSR permit, to 2 to 1. The highway sanction prohibits, with certain exceptions, the U.S. Department of Transportation from approving or funding transportation projects in a nonattainment area.

<sup>1</sup> The San Joaquin Valley PM<sub>2.5</sub> nonattainment area is located in the southern half of California’s central valley and includes all of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, and Kings counties, and the valley portion of Kern County. *See* 40 CFR 81.305.

<sup>2</sup> The EPA promulgated the 1997 PM<sub>2.5</sub> NAAQS at 62 FR 38652 (July 18, 1997).

revisions to the California SIP,<sup>9</sup> and our approval of them as part of the SIP addresses the specific deficiency that formed the basis of our May 12, 2016 disapproval of the 2013 Contingency Measure SIP. Moreover, since the 2014 attainment year (for the 2008 PM<sub>2.5</sub> Plan), the waiver measures and related vehicle fleet turnover have achieved post-attainment year emission reductions equivalent to approximately one year's worth of RFP as calculated for the 2008 PM<sub>2.5</sub> Plan. The waiver measures have thus provided for sufficient progress towards attainment of the 1997 PM<sub>2.5</sub> standards while a new attainment plan is being prepared.<sup>10</sup> Therefore, in our proposed rule we found that the purposes of the contingency measure requirement, as applicable to the San Joaquin Valley based on the area's designation in 2005 for the 1997 PM<sub>2.5</sub> NAAQS, have been fulfilled, and we proposed to determine that the deficiency that formed the basis for the disapproval of the 2013 Contingency Measure SIP has been corrected. We are finalizing this determination in today's action.

For a more detailed discussion of the regulatory context and rationale for our action, please see the proposed rule.

## II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period which ended on November 22, 2017. During this period, we received no comments.

## III. Final Action

For the reasons given in our proposed rule and summarized herein, the EPA is making a final determination that the deficiency that formed the basis of our disapproval of the 2013 Contingency Measure SIP for the San Joaquin Valley for the 1997 PM<sub>2.5</sub> NAAQS has been corrected by the approval of the waiver measures as a revision to the California SIP and the finding that the waiver measures have achieved post-2014 attainment year emissions reductions sufficient to fulfill the purposes of the contingency measure requirement in CAA section 172(c)(9). This final determination permanently stops the sanctions clocks triggered by our disapproval of the 2013 Contingency Measure SIP. See CAA section 179(a) and 40 CFR 52.31(d)(5).

<sup>9</sup> 81 FR 39424 (June 16, 2016) and 82 FR 14446 (March 21, 2017).

<sup>10</sup> In response to the EPA's determination of failure to attain the 1997 PM<sub>2.5</sub> NAAQS, 81 FR 84481 (November 23, 2016), the San Joaquin Valley Unified Air Pollution Control District and California Air Resources Board are preparing a new attainment plan with contingency measures for the 1997 PM<sub>2.5</sub> NAAQS for the San Joaquin Valley.

In accordance with 5 U.S.C. 553(d), the EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of the determination made herein that a deficiency in a previous SIP approval has been corrected. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rulemaking, however, does not create any new regulatory requirement such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule makes a determination that has the effect of permanently stopping sanctions clocks triggered by a previous SIP disapproval action. For these reasons, the EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

## IV. Statutory and Executive Order Reviews

This action is a determination that a deficiency that is the basis for sanctions has been corrected and imposes no additional requirements. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), 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).

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. The EPA will submit a report containing this action 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 action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a 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 relations, Nitrogen oxides, Sulfur oxides, Particulate matter.

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

Dated: December 4, 2017.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2017-26899 Filed 12-13-17; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 46 CFR Part 67

[USCG-2016-0531]

#### Vessel Documentation Regulations— Technical Amendments

##### Correction

In rule document 2017-20023 beginning on page 43858 in the issue of Wednesday, September 20, 2017, make the following correction:

##### § 67.3 [Corrected]

■ In § 67.3, on page 43863, in the third column, in the sixth through eighth lines, “redesignate paragraphs (a) and (b) as paragraphs (1) and (2);” should read “redesignate paragraphs (a) through (c) as paragraphs (1) through (3);”.

[FR Doc. C1-2017-20023 Filed 12-13-17; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WT Docket No. 17-79; FCC 17-153]

#### Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission (Commission) eliminates historic preservation review of replacement utility poles that support

communications equipment, subject to conditions that ensure no effects on historic properties. The Commission also consolidates historic preservation requirements in a single new rule.

**DATES:** Effective January 16, 2018.

#### FOR FURTHER INFORMATION CONTACT:

David Sieradzki, *David.Sieradzki@fcc.gov*, of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, 202-418-1368.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Report and Order in WT Docket No. 17-79; FCC 17-153, adopted November 16, 2017, and released on November 17, 2017. The document is available for download at [http://fjallfoss.fcc.gov/edocs\\_public/](http://fjallfoss.fcc.gov/edocs_public/). The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

#### I. Streamlining the Historic Preservation Review Process

1. Enhancing the nation’s wireless infrastructure is essential to meeting the exploding demand for robust mobile services and delivering the next generation of applications using transformative new network technologies. Review of deployment proposals pursuant to Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108, generally serves the public policy objective of preserving the nation’s historic heritage. Not all infrastructure deployments, however, have the potential to affect historic properties. Where such potential effects do not exist, requiring an individual historic preservation review can impose needless burdens and slow infrastructure deployment.

2. Section 106 of the NHPA, 54 U.S.C. 306108, requires federal agencies to take into account the effect (if any) of their proposed undertakings on historic properties before proceeding with such undertakings. Agencies are responsible for deciding whether or not particular types of activities qualify as undertakings under the definitions in the regulations of the Advisory Council on Historic Preservation (ACHP). *See* 36 CFR 800.3(a), 800.16(y). Where an agency determines that a type of activity

has no potential to affect historic properties under any circumstances, the agency may unilaterally eliminate the review process for such undertakings. 36 CFR 800.3(a)(1).

3. In 2004, the Commission, the ACHP, and the National Conference of State Historic Preservation Officers agreed to the establishment of the *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings 2004 NPA*. 47 CFR part 1. Of particular relevance here, the 2004 NPA excludes the construction of replacement structures from historic preservation review under defined conditions, but only if the structure being replaced meets the definition of a “tower,” meaning that it was constructed for the sole or primary purpose of supporting Commission-authorized antennas. *See* 47 CFR part 1, Appendix C, section III.B. A structure that does not qualify as a tower, such as a pole that initially was erected to support electric utility lines, does not fall within the exclusion under the 2004 NPA even if it is later used to support Commission-authorized antennas. Consequently, if such a pole must be replaced to support a communications antenna and no other exclusion applies, the pole replacement is subject to review.

4. In the Notice of Proposed Rulemaking in the present proceeding, the Commission initiated a broad examination of the regulatory impediments to wireless network infrastructure investment and deployment, and how we may remove or reduce such impediments, consistent with the law and the public interest, in order to promote the rapid deployment of advanced wireless broadband service to all Americans. *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment*, 32 FCC Rcd 3330 (2017) (2017 *Wireless Infrastructure NPRM*); *see also* Proposed Rule, 82 FR 21761 (May 10, 2017). The Commission specifically sought comment on whether to expand the categories of undertakings that are excluded from historic preservation review to include pole replacements, and whether such a step would facilitate wireless facility siting while creating no or foreseeably minimal potential for adverse impacts to historic properties. The Commission asked whether the construction of replacement poles should be excluded from Section 106 review, provided that the replacement pole is not substantially larger than the pole it is replacing, and solicited input on whether any additional conditions would be appropriate.