ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0862; FRL–8763–5]

Finding of Failure To Submit a Required State Implementation Plan Revision for 1-Hour Ozone Standard, California—San Joaquin Valley—Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finding that California has failed to submit, for the San Joaquin Valley extreme 1-hour ozone nonattainment area, a State Implementation Plan (SIP) revision required by Clean Air Act (CAA) sections 172(c)(1), 182(b)(2) and 182(f). These CAA sections require that SIPs provide for the implementation of reasonably available control technology on major stationary sources of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) as well as certain other sources. Under the CAA, this finding triggers the 18-month time clock for mandatory application of sanctions and 2-year time clock for a federal implementation plan.

DATES: *Effective Date:* This rule is effective on January 21, 2009.

ADDRESSES: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the Regional Office location (*e.g.*, copyrighted material). 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: Andrew Steckel, EPA Region IX, (415) 947–4115, *steckel.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Background

A. The San Joaquin Valley's 1-Hour Ozone Classification and Planning Requirements

The San Joaquin Valley 1-hour ozone nonattainment area (SJV) includes the following counties in California's central valley: San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and part of Kern. 40 CFR 81.305. When the CAA was amended in 1990, each area of the country that was designated nonattainment for the 1-hour ozone national ambient air quality standard (NAAQS), including the SJV, was classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe'' or ''extreme'' depending on the severity of the area's air quality problem. CAA sections 107(d)(1)(C) and 181(a). Each successive classification carries with it increasingly stringent requirements that build on the previous classification's requirements.

Based on its air quality during the 1987–1989 period, the SJV was initially classified as serious with an attainment date of no later than November 15, 1999. See 56 FR 56694 (November 6, 1991) and CAA section 181(a)(1). On November 8, 2001, the SJV was reclassified as severe (effective December 10, 2001) for failure to attain the 1-hour ozone standard by the serious area attainment date. 66 FR 56476. CAA section 181(a) and (b)(2).

On January 9, 2004, California requested that EPA reclassify the SJV from severe to extreme for the 1-hour ozone standard under the Act's voluntary reclassification provisions in section 181(b)(3). See letter from Catherine Witherspoon, ARB, to Wayne Nastri, EPA, January 9, 2004. On April 16, 2004, we granted the State's request. 69 FR 20550. In that action, we required the State to submit by November 15, 2004 an extreme area plan for the SJV [1] that provides for the attainment of the 1-hour ozone standard as expeditiously as practicable, but no later than November 15, 2010. We also stated that the plan must meet the specific provisions of CAA section 182(e). Under section 182(e), extreme area plans are required to meet the requirements for severe area plans and the additional requirements for extreme areas.[2]

Among these requirements are the provisions for the implementation of reasonably available control technology (RACT) in sections 172(c)(1) and 182(b)(2). At a minimum, the CAA requires RACT for major VOC sources and for VOC source categories for which EPA has issued Control Techniques Guideline (CTG) documents. For extreme areas, such as the SJV, CAA section 182(e) defines a major source as a stationary source that emits or has the potential to emit 10 tons per year of VOC. CAA section 182(f) requires that RACT also apply to major stationary sources of NO_X.

B. The San Joaquin Valley's 1-Hour Ozone RACT Provisions

The SJV Air Pollution Control District (SJVAPCD or the District) adopted the ''Extreme Ozone Attainment Demonstration Plan'' on October 8, 2004 and amended it on October 20, 2005 to, among other things, substitute for the original chapter a new ''Chapter 4: Control Strategy'' which includes the 1-hour ozone RACT provisions. The State submitted the plan and amendment on November 15, 2004 and March 6, 2006, respectively. See letters from Catherine Witherspoon, ARB, to Wayne Nastri, EPA, November 15, 2004 and March 6, 2006. The plan and amendment, collectively, will be referred to as the ''2004 SIP'' in this rule.

Section 4.2.5 of the 2004 SIP identified four specific source categories where further analysis and new or modified rules might be needed to meet the RACT requirements for sources down to the 10 tpy emissions level. The District concluded that only these categories would need additional work because its existing rules were already sufficiently stringent. As discussed below, the State withdrew the RACT provisions of the 2004 SIP in September, 2008.[3]

C. The San Joaquin Valley's 8-Hour Ozone Classification and Anti-Backsliding Requirements

In an April 30, 2004 final rule, EPA designated and classified areas of the country under the more protective 8-hour ozone standard codified in 40 CFR 50.10. The SJV was designated nonattainment and classified under title 1, part D, subpart 2 of the CAA as serious for the 8-hour standard. 69 FR 23858. On the same date, EPA also issued a final rule entitled ''Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1'' (Phase 1 Rule). 69 FR 23951. Among other matters, this rule revoked the 1-hour ozone standard in the SJV (as well as in most other areas of the country), effective June 15, 2005. See 40 CFR 50.9(b); 69 FR 23951, 23996 and 70 FR 44470 (August 3, 2005). The Phase 1 Rule also set forth anti-backsliding principles to ensure continued progress toward attainment of the 8-hour ozone standard by

[1] There are several tribal areas in the SJV. Because California has not been approved to administer any CAA programs in Indian country, the requirement to submit a revised SIP did not include these tribal areas.

[2] The CAA specifically excludes certain serious area requirements from the extreme area requirements, *e.g.*, the section 182(c)(6), (7) and (8) provisions for new source review.

[3] On October 16, 2008 we proposed to approve the balance of the 2004 SIP as well as additional documents comprising the State's 1-hour ozone plan for the SJV. See 73 FR 61381.

identifying which 1-hour ozone requirements remain applicable after revocation of that standard. One of the requirements retained, and thus continues to apply to the SJV, is the requirement to implement RACT. See 40 CFR 51.905(a)(1)(i) and 51.900(f)(1).[4]

On November 29, 2005, EPA issued the ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2'' (Phase 2 Rule). 70 FR 71612. For areas classified under subpart 2, such as the SJV, the Phase 2 rule required submittal of a RACT SIP for the 8-hour standard by September 15, 2006. See 40 CFR 51.912(a). It also required submittal for subpart 2 areas of full attainment and rate of progress plans by June 15, 2007. See 40 CFR 51.908(a) and 51.910(a).

D. The San Joaquin Valley's 8-Hour Ozone RACT SIP

The District adopted on August 17, 2006 and the State submitted as a SIP revision on January 31, 2007, an 8-hour ozone RACT demonstration addressing sources down to the 25 tpy level. See letter from Catherine Witherspoon, ARB, to Deborah Jordan, EPA, January 31, 2007. SJVAPCD also requested a voluntary reclassification to extreme for the 8-hour standard as allowed by CAA section 181(b)(3) and 40 CFR 51.903(b). On November 16, 2007, California submitted the District's 2007 8-hour ozone plan. See letter from James Goldstene, ARB, to Wayne Nastri, EPA. The State also concurred with the District's request for a voluntary reclassification to extreme. Once granted, the major source threshold under the 8-hour standard will drop to 10 tpy of either VOC or NO_X and thus be the same for both the 1-hour and 8-hour ozone standards.[5]

In September 2008, the District began a comprehensive reevaluation of its rules to determine their compliance with the RACT requirements. This reevaluation is in part to address issues that EPA has raised regarding the District's 2006 8-hour ozone RACT SIP and in part to assure that the rules cover sources in the SJV down to the extreme area major source threshold of 10 tpy. See letter from Andrew Steckel, EPA, to George Heinen, SJVAPCD, May 6, 2008. The District's intent is to take any needed rule revisions to its Board for adoption by Spring, 2009. See letter from Deborah Jordan, EPA, to Seyed Sadredin, SJVAPCD, September 9, 2008.

E. Withdrawal of the 1-Hour Ozone RACT Provisions

On September 5, 2008, the State formally withdrew the RACT portion of the 2004 SIP, specifically section 4.2.5, indicating that the District would satisfy its continuing RACT obligation for the 1-hour ozone standard with a revised 8-hour ozone RACT SIP that it is currently developing. Letter from James N. Goldstene, ARB, to Wayne Nastri, EPA, with enclosures, September 5, 2008. As stated above, we have proposed approval of the balance of the SIP revisions submitted by the State to address the 1-hour ozone standard for the SJV. See 73 FR 61381.

II. Final Action

A. Finding of Failure To Submit Required SIP Revision

As a result of the withdrawal of section 4.2.5 of the 2004 SIP, we are today making a finding that California has failed to submit a SIP revision providing for the implementation of RACT as required by CAA sections 172(c)(1), 182(b)(2) and 182(f) in the San Joaquin Valley extreme 1-hour ozone nonattainment area.

If California does not submit a complete plan revision, including all required RACT rules and a supporting RACT demonstration, to meet CAA sections 172(c)(1), 182(b)(2) and 182(f) within 18 months of the effective date of today's finding, the offset sanction identified in CAA section 179(b) will be applied in the affected area. Section 179(b) and 40 CFR 52.31. 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.[6] The State can end these sanction clocks or lift any imposed sanctions by making a complete submittal addressing the RACT requirements for the San Joaquin Valley 1-hour ozone extreme area.

In addition to the sanctions, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan addressing the 1-hour ozone RACT requirements in the SJV no later than 2 years after today's finding unless we approve the State's RACT submittal within that time.

B. Effective Date under the Administrative Procedures Act

Today's action will be effective on January 21, 2009. Under the Administrative Procedures Act (APA), 5 U.S.C. 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 specify an earlier effective date. This action concerns a required CAA submittal that is already overdue. We have previously cautioned California that the SIP submittal was overdue and that we were considering taking this action. In addition, this action simply starts a ''clock'' that will not result in sanctions against the State for 18 months, and that the State may ''turn off'' by making 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 is a final action that is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided by the CAA to make findings of failure to submit, 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, we invoke the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a non-substantive finding of failure to submit SIPs required by the CAA. Furthermore, notice and comment would be contrary to the public interest because it would divert EPA resources from the critical substantive review of complete SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

V. Administrative Requirements

A. Executive Orders

This final action is not a ''significant regulatory action'' as defined in Executive Order 12866 ''Regulatory Planning and Review'' (58 FR 51735

[4] These provisions were not affected by the decision of the U.S. Court of Appeals for the District of Columbia Circuit vacating portions of EPA's Phase 1 Rule. See *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2006) as clarified in *South Coast Air Quality Management Dist.* v. *EPA*, 489 F.3d 1295 (D.C. Cir. 2007).

[5] Under CAA section 181(b)(3), we must grant a state's voluntary request to ''bump up'' an ozone nonattainment area in that state to a higher classification. The bump-up is effective only after EPA publishes a rule in the **Federal Register** formally granting the request. We are in the process of preparing that rule.

[6] 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.''

(October 4, 1993)) and therefore not subject to review under this Executive Order.

This final action is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

This final action 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 as defined in Executive Order 12866 and because we have no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

This final action is not subject to Executive Order 13132, ''Federalism'' (64 FR 43255 (August 10, 1999)). It will not have substantial direct effects on the State, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government. The CAA established the scheme whereby states take the lead in developing plans to meet the NAAQS and the Federal Government acts as a backstop where states fail to take the required actions. This rule will not modify the relationship of the State and EPA for purposes of developing programs to implement the NAAQS.

This final action is not subject to Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249 (November 6, 2000)). It will not have substantial direct effects on tribal governments, 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.

B. Federal Acts

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This final rule is not subject to the RFA because it was not subject to notice and comment rulemaking under the APA or any other statute. In addition we have invoked the ''good cause'' exception to notice and comment rulemaking under 5 U.S.C. 553(b) for this rule.

Under section 202 of the Unfunded Mandates Reform Act of 1995, we must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Today's action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The CAA provision discussed in this rule requires states to submit SIPs, and this rule merely provides a finding that California has not met that requirement. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272) directs EPA to use ''voluntary consensus standards'' (VCS) in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards that are developed or adopted by VCS bodies. This action does not involve technical standards; therefore, we did not consider the use of any VCS.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, 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. 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) and will be effective January 21, 2009.

C. Petitions for Judicial Review

Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 23, 2009. 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 CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovermental relations, Ozone, Volatile organic compounds.

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

Dated: January 8, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–1107 Filed 1–16–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 08–2125]

Amendment of the Commission's Rules, Concerning Commission Organization, Practice and Procedure, Frequency Allocations and Radio Treaty Matters; General Rules and Regulations, Tariffs, Miscellaneous Rules Relating to Common Carriers, Radio Broadcast Services, and Stations in the Maritime Services

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: In this document, we correct an inadvertent error by adding the text of two previously removed rules concerning attachment of charges and payment of charges, and correcting the typographical errors previously published.

DATES: Effective January 21, 2009.

FOR FURTHER INFORMATION CONTACT: Warren Firschein, Office of Managing Director at (202) 418–0844.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Erratum, DA 08–2125, released on September 19, 2008.

On January 25, 2008, the Managing Director released an *Order,* DA 08–122, in the above-captioned proceeding and it was published in the **Federal Register** at 73 FR 9017, February 19, 2008. This Erratum corrects an inadvertent error by reinserting two rules that were eliminated and correcting typographical errors in the Appendix. Accordingly, this Erratum corrects the final regulations by revising these sections of the Order as indicated below.

Note: All references to §§ 1.1110 through §§ 1.1119 in the Commission's rules, which are now renumbered as §§ 1.1112 through