In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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, 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 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 June 21, 2004. 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, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: March 8, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(260)(i)(C) and (321)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(260) * * *

(i) * * *

(C) Kern County Air Pollution Control District.

(*1*) Rule 208, originally adopted on April 18, 1972, amended on September 17, 1998.

* * * * *

(321) * * *

(i) * * *

(B) Kern County Air Pollution Control District.

(*1*) Rules 108 and 417, originally adopted on April 18, 1972, amended on July 24, 2003.

* * * * *

[FR Doc. 04–9038 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA258–0442(B); FRL–7645–8]

Interim Final Action to Stay and Defer Sanctions Based on Attainment of the 1-hour Ozone Standard for the San Francisco Bay Area, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is taking interim final action to stay and defer the imposition of, respectively, offset and highway sanctions under the Clean Air Act (CAA) based on a finding that the San Francisco Bay Area (Bay Area) has attained the 1-hour ozone national ambient air quality standard (NAAQS). The finding of attainment is published elsewhere in today's **Federal Register.**

DATES: This interim final rule is effective on April 22, 2004. However, comments will be accepted until May 24, 2004.

ADDRESSES: Send comments to Ginger Vagenas, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to *vagenas.ginger@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect copies of the public comments and the attainment finding docket (number C258–0442(B)) at our Region IX office during normal business hours by appointment. The Region IX office is located at the following address: Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, (415) 972–3964, *vagenas.ginger@epa.gov.*

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

I. Background

On September 20, 2001 (effective October 22, 2001, 66 FR 48340), we published a partial approval and partial disapproval of the San Francisco Bay Area 1999 ozone attainment plan (1999 Plan) as submitted by the State on August 13, 1999. The plan was adopted locally by the Bay Area Air Quality Management District on June 16, 1999, by the Metropolitan Transportation Commission on June 17, 1999, and by the Association of Bay Area Governments on June 23, 1999. These agencies are referred to collectively as the co-lead agencies. We based our disapproval action on deficiencies in the attainment assessment, the motor vehicle emissions budgets, and the reasonably available control measure (RACM) demonstration. The disapproval action started a sanctions clock for imposition of offset sanctions 18 months after October 22, 2001, and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On October 24, 2001, the co-lead agencies adopted the San Francisco Bay Area 2001 Ozone Attainment Plan (2001 Plan) that was intended in part to correct the deficiencies identified in our partial disapproval action. On November 30, 2001, the State submitted the 2001 Plan to EPA. On July 16, 2003, we proposed approval of this submittal because we believed it corrected the deficiencies identified in our September 20, 2001, disapproval action. (68 FR 42174). Based on that proposed

approval, we took final rulemaking action to stay the imposition of the offset sanction and defer the imposition of the highway sanction that were triggered by our September 20, 2001, disapproval. 68 FR 42172, July 16, 2003. Elsewhere in today's **Federal Register** we are taking final action to approve the RACM demonstration and motor vehicle emissions budgets in the 2001 Plan. Therefore the sanctions clocks associated with our disapproval of those elements in the 1999 Plan are terminated.

On October 31, 2003, we published a proposed finding that the Bay Area had attained the 1-hour ozone NAAQS. 68 FR 62041. In that notice we explained that, when an area has attained the standard, certain CAA planning requirements designed to bring the area into attainment (including the requirement for an attainment demonstration) are no longer applicable and that, as a result, the State would no longer be required to submit SIP revisions to meet them. We also explained that if we subsequently determine that the Bay Area has violated the 1-hour ozone standard (prior to a redesignation to attainment [1]), the basis for the determination that the area need not make these SIP revisions would no longer exist.

II. EPA Action

Based on today's final finding that the Bay Area has attained the 1-hour ozone NAAQS, we are taking this final rulemaking action, effective on publication, to stay and defer imposition of CAA section 179 sanctions that were triggered by our September 20, 2001, disapproval of the attainment assessment in the 1999 Plan. As noted above, the requirement for an attainment demonstration is not eliminated; rather, it is only suspended for so long as the area continues to attain the standard. Should the Bay Area violate the 1-hour standard, EPA will revoke the finding of attainment and there will once again be an attainment demonstration requirement for the area. This stay and deferral of sanctions will therefore remain in effect only until such time as EPA revokes the finding of attainment and the subsequent planning process takes its course. Alternatively, if EPA redesignates the area to attainment status, the requirement for an attainment demonstration will be eliminated, and the sanctions associated with the earlier disapproval will be terminated.

EPA believes that notice-and-comment rulemaking on the stay and deferral of sanctions before the effective date of this action is impracticable and contrary to the public interest. We have determined through notice-and-comment rulemaking that the Bay Area has attained the 1-hour ozone NAAQS and that the requirement to submit an attainment demonstration has been suspended. Given the State is no longer subject to the requirement to correct the deficiency that triggered the sanctions clocks in the first place, it is not in the public interest to reimpose the offset sanction or initially impose highway sanctions. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to provide a continuous stay and deferral of sanctions during the time prior to redesignation, so long as the area continues to attain the standard. 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. If comments are submitted that change our assessment described in this final determination we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a redesignation to attainment, should redesignation occur.

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)).

In summary, as a result of this action, the imposition of the offset sanction will continue to be stayed and the imposition of the highway sanction will continue to be deferred until we either redesignate the Bay Area to attainment or revoke our finding of attainment and the ensuing planning process takes its course.

III. Statutory and Executive Order Reviews

This action stays and 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 (Public Law 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

[1] The redesignation of an area to attainment under CAA section 107(d)(3) is a separate process from a finding of attainment. A finding that an area has attained the 1-hour ozone standard does not redesignate the area to attainment for the 1-hour standard, nor does it guarantee a future redesignation to attainment.

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 therefor, and established an effective date of April 22, 2004. 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 June 21, 2004. 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, Intergovernmental regulations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 1, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 04–9140 Filed 4–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA258–0442(A); FRL–7645–7]

Determination of Attainment of the 1-Hour Ozone Standard; Determination Regarding Applicability of Certain Clean Air Act Requirements; Approval and Promulgation of Ozone Attainment Plan; San Francisco Bay Area, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the San Francisco Bay Area (Bay Area) ozone nonattainment area has attained the 1-hour ozone national ambient air quality standard (NAAQS) by the deadline required by the Clean Air Act (CAA), September 20, 2006. Based on this determination, we are also determining that the CAA's requirements for reasonable further progress and attainment demonstrations and for contingency measures for the 1-hour ozone standard are not applicable to the area for so long as the Bay Area continues to attain the 1-hour ozone standard.

In addition, EPA is approving the following elements of the 2001 ozone attainment plan for the Bay Area (2001 Plan): Emissions inventory, reasonably available control measures (RACM); commitments to adopt and implement specific control measures; motor vehicle emissions budgets (MVEBs); and commitments for further study measures.

In 2001, EPA disapproved certain components of the 1999 ozone attainment plan for the Bay Area: The RACM demonstration, the attainment demonstration, and the MVEBs. Because of this disapproval the 2 to 1 offset sanction under CAA section 179(b)(2) was imposed in the Bay Area on April 22, 2003. Based on the proposed approval of these elements of the 2001 Plan, EPA made an interim final determination that resulted in a stay of the offset sanction and deferral of the highway sanction. EPA's approval of RACM and the MVEBs in the 2001 Plan terminates the sanctions clock for those plan elements.

Based on the attainment determination for the Bay Area, elsewhere in this **Federal Register** EPA is taking interim final action to stay the offset sanction and defer the highway sanction triggered by the attainment demonstration disapproval for as long as the area continues to attain the 1-hour ozone standard because that plan requirement has been suspended.

DATES: Effective Date: This rule is effective on May 24, 2004.

ADDRESSES: You can inspect copies of the administrative record (docket number CA258–0442(A)) for this action at EPA's Region 9 office during normal business hours by appointment. The address is U.S. EPA Region IX—Air Division, 75 Hawthorne Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, (415) 972–3964, *vagenas.ginger@epa.gov.*

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

Table of Contents

I. Background

Upon enactment of the Clean Air Act Amendments of 1990, the Bay Area was classified as a moderate nonattainment area for the 1-hour ozone NAAQS. 56 FR 56694 (November 6, 1991). EPA redesignated the Bay Area to attainment in 1995, based on then current air quality data (60 FR 27029, May 22, 1995), and subsequently redesignated the area back to nonattainment without classification on July 10, 1998 (63 FR 37258), following renewed violations of the 1-hour ozone standard. Upon the Bay Area's redesignation to nonattainment, we required the State to submit a state implementation plan (SIP) addressing applicable CAA provisions, including a demonstration of attainment as expeditiously as practicable but no later than November 15, 2000.

The Bay Area Air Quality Management District (District or BAAQMD), along with its co-lead agencies—the Metropolitan Transportation Commission and the