

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[AZ092-002; FRL-6575-2]

#### Interim Final Determination that State has Corrected the Plan Deficiency and Stay of Sanctions; Phoenix PM-10 Nonattainment Area, Arizona

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

**ACTION:** Interim final determination.

**SUMMARY:** Elsewhere in today's **Federal Register**, EPA is proposing to approve under the Clean Air Act (CAA) provisions of the *Revised MAG 1999 Serious Area Particulate Plan for PM-10 for the Maricopa County (Phoenix, Arizona) Nonattainment Area* (MAG plan), February 2000, and control measures on which it relies, that address the annual particulate matter (PM-10) national ambient air quality standard. Based on this proposed approval, we are making an interim final determination that the State of Arizona has corrected the deficiencies in the PM-10 state implementation plan for the Phoenix area for which a sanctions clock began on September 2, 1998. This action will stay the imposition of the offset sanction and defer the imposition of the highway sanction. Although this action is effective upon publication, we will take comment and will publish a final rule taking into consideration any comments received on this interim final determination.

**DATES:** This interim final determination is effective April 13, 2000.

Comments must be received by June 12, 2000.

**ADDRESSES:** Written comments must be submitted to Frances Wicher at the Region 9 office listed below.

A copy of docket No. AZ-MA-00-001, containing material relevant to this action and our proposed approval of the MAG plan, is available for public inspection at EPA's Region 9 office during normal business hours.

A copy of the docket is also available for inspection at:

Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012, (602) 207-2217.

Maricopa Association of Governments, 302 North 1st Street, Phoenix, Arizona 85003, (602) 254-6300.

#### Electronic Availability

This document, our proposed approval of the MAG plan and the

Technical Support Document (TSD) for the approval, are also available as an electronic file on EPA's Region 9 Web Page at <http://www.epa.gov/region09/air>.

#### FOR FURTHER INFORMATION CONTACT:

Frances Wicher, Office of Air Planning, AIR-2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1248, Email: [wicher.frances@epa.gov](mailto:wicher.frances@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 3, 1998, we disapproved the provisions for implementing reasonably available control measure (RACM) for the annual standard in the 1991 MAG Moderate Area PM-10 Plan because the plan failed to implement RACM for a number of significant sources of PM-10. We also disapproved the attainment demonstration because the failure to implement RACM meant the plan no longer conclusively demonstrated that attainment of the PM-10 standard by the end of 1994, the moderate area attainment date, was impracticable. 63 FR 41326.

Our 1998 disapprovals started sanction clocks under CAA section 179(a). Under section 179(a), once we disapprove a state plan provision because it fails to meet a CAA requirement, a State has 18 months to correct the deficiency that resulted in the disapproval before the first of two sanctions goes into place.<sup>1</sup> If the state still has not corrected the deficiency with 24 months, the second sanction goes into place. The offset sanction was imposed in the Phoenix nonattainment area on March 2, 2000. It will be followed by the imposition of a second sanction, highway funding and approval limitations, on September 2, 2000 if we do not defer or stop the sanction clock.

On February 16, 2000, Arizona submitted the revised MAG serious area PM-10 plan, *Revised MAG 1999 Serious Area Particulate Plan for PM-10 for the Maricopa County (Phoenix, Arizona) Nonattainment Area*, February 2000. In the Proposed Rule section of today's **Federal Register**, we are proposing to approve the plan's provisions for the implementation of RACM and the

<sup>1</sup> The two CAA sanctions are a limitation on certain highway approvals and funding and an increase in the offset ratio to 2 to 1 for any major new stationary source or major modification. See CAA section 179(b). Our sanction regulations provide that the first sanction to be imposed is the offset ratio unless we have established at the time of the disapproval that the highway sanction will be first. 40 CFR 52.31(d).

attainment demonstration as they pertain to the annual standard.<sup>2</sup>

Based on our proposed approval of the annual standard provisions in the MAG plan elsewhere in today's **Federal Register**, we believe that it is more likely than not that Arizona has corrected the original deficiencies that prompted our disapprovals. Therefore, we are taking this interim final rulemaking action finding that the State has corrected the deficiencies. However, we are also providing the public with a opportunity to comment on this interim final action. If, based on the comments on this action and the comments on our proposed approval of the State's submittal, we determine that the State's submittal does not comply with the CAA's requirements for RACM and attainment and this interim final action was inappropriate, we will propose to disapprove the State's submittal and will take interim final action finding that the State has not corrected the original disapproval deficiency. Upon a final disapproval of the State's submittal, we would finalize the interim final finding, finding that the State has not corrected the deficiency.

This action does not stop the sanctions clock that started for this area on September 2, 1998, the effective date of our disapproval. However, this action will stay the imposition of the offset sanction and will defer the imposition of the highway sanction. See 40 CFR 51.31(d)(2)(i). If we take final action approving the MAG plan's implementation of RACM and attainment demonstration provisions for the annual standard, such action will stop the sanctions clock and will lift any imposed, stayed or deferred sanctions. However, if at any time we determine that the State, in fact, did not correct the deficiencies, as appropriate, we either will withdraw this interim final determination or take final action finding that the State has not corrected the deficiencies. Such action will retrigger the sanctions consequences as described in the sanctions rule. 40 CFR 52.31.

##### II. EPA Action

We are taking interim final action finding that the State has corrected the deficiencies that started the sanctions clock. Based on this action, imposition of the offset sanction will be stayed and

<sup>2</sup> As a serious PM-10 nonattainment area, the plan must now provide for both the implementation of RACM and best available control measures (BACM) under CAA section 189(a)(1)(C) and (b)(1)(B). While we also proposed to approve the BACM provisions of the MAG serious area plan, that determination is not relevant to the sanction issue addressed here.

imposition of the highway sanction will be deferred until we take final action fully approving the MAG plan's implementation of RACM and attainment demonstration provisions for the annual standard or finally disapproving these provisions.

Because we have preliminarily determined that Arizona has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, we are invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

### III. Administrative 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 merely stays and defers federal sanctions. Accordingly, the Administrator certifies that this rule 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.*). Because this rule only stays an imposed sanction and defers the imposition of another, it 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). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely stays a sanction and defers another one, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not contain technical standards, 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 13, 2000. 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 3, 2000.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*  
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