Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priority easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments about how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are LEAs, including charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the proposed priority would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priority would outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the proposed priority would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity probably would apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priority would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Katherine Neas,

Deputy Assistant Secretary. Delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2023–06417 Filed 3–24–23; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0425; FRL–10618–01–R9]

Disapproval of Clean Air Plans; Sacramento Metro, California; Contingency Measures for 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove under the Clean Air Act (CAA or ''Act'') state implementation plan (SIP) submissions from the State of California that address contingency measures requirements for the 2008 ozone national ambient air quality standards (NAAQS or ''standards'') in the Sacramento Metro, California ozone nonattainment area. The SIP revisions include the portions of the following documents that address the contingency measures requirements: the ''Sacramento Regional 2008 NAAQS 8-hour Ozone Attainment and Reasonable Further Progress Plan,'' submitted in 2017 (''2017 Sacramento Regional Ozone Plan''), and the Sacramento Metro portion of the ''2018 Updates to the California State Implementation Plan'' (''2018 SIP Update''). The EPA is proposing this disapproval because the SIP revisions do not provide for contingency

measures that would be triggered if the area fails to attain the NAAQS or make reasonable further progress (RFP).

DATES: Written comments must arrive on or before April 27, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2020–0425 at *https://www.regulations.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Lawrence, EPA Region IX, (415) 972–3407, *lawrence.laura@epa.gov*.

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

Table of Contents

I. Background

A. Ozone Air Pollution and Regulatory Framework

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight.[1] These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse health effects occur following exposure to elevated levels of ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.[2]

Under section 109 of the CAA, the EPA promulgates NAAQS for pervasive air pollutants, such as ozone. The EPA has previously promulgated NAAQS for ozone in 1979 and 1997.[3] In 2008, the EPA revised and further strengthened the ozone NAAQS by setting the acceptable level of ozone in the ambient air at 0.075 parts per million (ppm) averaged over an 8-hour period.[4] Although the EPA further tightened the 8-hour ozone NAAQS to 0.070 ppm in 2015, this action relates to the requirements for the 2008 ozone NAAQS.[5]

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas throughout the country as attaining or not attaining the NAAQS. The EPA classifies ozone nonattainment areas under CAA section 181 according to the severity of the ozone pollution problem, with classifications ranging from ''Marginal'' to ''Extreme.'' State planning and emissions control requirements for ozone are determined, in part, by the nonattainment area's classification.

B. Sacramento Metro Nonattainment Area

The EPA designated the Sacramento Metro area as nonattainment for the 2008 8-hour ozone NAAQS on May 21, 2012, and classified the area as ''Severe 15.''[6] The Sacramento Metro area consists of Sacramento and Yolo counties and portions of El Dorado, Placer, Solano and Sutter counties.[7] The applicable attainment date for the 2008 ozone NAAQS for the Sacramento Metro area is December 31, 2024.[8]

In California, the California Air Resources Board (CARB) is the state agency responsible for the adoption and submission to the EPA of California SIP submissions, and it has broad authority to establish emissions standards and other requirements for mobile sources. Under California law, local and regional air pollution control districts in California are responsible for the regulation of stationary sources and are generally responsible for the development of regional air quality plans. In the Sacramento Metro area, the El Dorado County Air Quality Management District (EDCAQMD), the Feather River Air Quality Management District (FRAQMD), the Placer County Air Pollution Control District (PCAPCD), the Sacramento Metropolitan Air Quality Management District (SMAQMD), and the Yolo-Solano Air Quality Management District (YSAQMD) (collectively, ''Districts'') develop and adopt air quality management plans to address CAA planning requirements applicable to the region. The Districts then submit such plans to CARB for adoption and submission to the EPA as proposed revisions to the California SIP.

C. State Implementation Plan Revisions and Previous EPA Rulemaking

Under the CAA, after the EPA designates areas as nonattainment for a NAAQS, states with nonattainment areas are required to submit SIP revisions. With respect to areas designated as nonattainment, states must implement the 2008 8-hour ozone NAAQS under Title 1, part D of the

[1] The State of California refers to reactive organic gases (ROG) rather than VOC in some of its ozone-related SIP submissions. As a practical matter, ROG and VOC refer to the same set of chemical constituents, and for simplicity, we refer to this set of gases as VOC in this proposed rule.

[2] For more information on ozone health effects, see ''Fact Sheet—2008 Final Revisions to the National Ambient Air Quality Standards for Ozone,'' dated March 2008.

[3] The ozone NAAQS promulgated in 1979 was 0.12 parts per million (ppm) averaged over a 1-hour period. For information on the 1979 NAAQS, see 44 FR 8202 (February 8, 1979). The ozone NAAQS promulgated in 1997 was 0.08 ppm averaged over an 8-hour period. For information on the 1997 NAAQS, see 62 FR 38856 (July 18, 1997).

[4] 73 FR 16436 (March 27, 2008).

[5] Information on the 2015 ozone NAAQS is available at 80 FR 65292 (October 26, 2015).

[6] 77 FR 30088. ''Severe-15'' signifies a Severe area that is required to attain the ozone standards within 15 years under CAA section 181(a)(1).

[7] For a precise description of the geographic boundaries of the Sacramento Metro area for the 2008 ozone standards, see 40 CFR 81.305. Specifically included portions are the eastern portion of Solano County, the western portions of Placer and El Dorado counties outside of the Lake Tahoe Air Basin, and the southern portion of Sutter County.

[8] 85 FR 68509, 68510 (October 29, 2020).

CAA, which includes section 172 (''Nonattainment plan provisions in general'') and sections 181–185 of subpart 2 (''Additional provisions for ozone nonattainment areas''). To assist states in developing effective plans to address ozone nonattainment problems, in 2015, the EPA issued a SIP Requirements Rule (SRR) for the 2008 8-hour ozone NAAQS (''2008 Ozone SRR'') that addressed implementation of the 2008 standards, including attainment dates, requirements for emissions inventories, attainment and RFP demonstrations, as well as the transition from the 1997 8-hour ozone NAAQS to the 2008 8-hour ozone NAAQS and associated anti-backsliding requirements.[9] The 2008 Ozone SRR is codified at 40 CFR part 51, subpart AA.

On December 18, 2017, CARB submitted the ''Sacramento Regional 2008 NAAQS 8-Hour Ozone Attainment and Reasonable Further Progress Plan'' (''2017 Sacramento Regional Ozone Plan'') to the EPA as a revision to the California SIP.[10] The 2017 Sacramento Regional Ozone Plan addresses the nonattainment area requirements for the Sacramento Metro area concerning the 2008 ozone NAAQS, including the contingency measures element. On December 11, 2018, CARB submitted the ''2018 Updates to the California State Implementation Plan'' (''2018 SIP Update'').[11] The 2018 SIP Update provides updates to prior SIP submittals for eight California nonattainment areas, including information to support the contingency measures element of the 2017 Sacramento Regional Ozone Plan in the wake of the decision by the U.S. Court of Appeals for the Ninth Circuit (''Ninth Circuit'') in *Bahr* v. *EPA*.[12]

In 2020, CARB and the Districts committed to supplement these contingency measures by adopting and submitting additional contingency measures that would be triggered upon the area's failure to attain or to meet RFP. In a letter dated May 26, 2020, the Districts committed to amend their respective architectural coatings rules,[13] and the SMAQMD committed to adopt a new rule for reducing VOC emissions from liquified petroleum gas transfer and dispensing, commensurate with South Coast Air Quality Management District Rule 1177.[14] CARB forwarded the Districts' May 26, 2020 letter to the EPA on July 7, 2020, accompanied by a letter committing to submit amended rules to the EPA as a revision to the California SIP within 12 months of a final conditional approval of the contingency measures element.[15]

On October 29, 2020, the EPA proposed to approve the 2017 Sacramento Regional Ozone Plan and the 2018 SIP Update as meeting the emissions inventory, attainment demonstration, reasonable further progress, reasonably available control measures, and motor vehicle emissions budgets requirements for the 2008 ozone NAAQS for the Sacramento Metro nonattainment area.[16] In that same proposed rule, we proposed to conditionally approve the contingency measures element of these submittals, based on the commitments by the Districts and CARB to submit the new and amended district rules to the EPA within 12 months of a final conditional approval of the contingency measures element for the Sacramento Metro area.[17] On August 26, 2021, the Ninth Circuit issued a decision in *Association of Irritated Residents* v. *U.S. Environmental Protection Agency*[18] (''*AIR* v. *EPA*'') which remanded the EPA's conditional approval of contingency measures for another California nonattainment area.

On October 22, 2021, we finalized our approval of the 2017 Sacramento Regional Ozone Plan and the 2018 SIP Update with respect to the emissions inventory, attainment demonstration, RFP, reasonably available control measures, and motor vehicle emissions budgets requirements.[19] Based on the Ninth Circuit's decision in *AIR* v. *EPA,* we did not finalize our proposed conditional approval of the contingency measures element at that time.[20] Because the EPA did not finalize our conditional approval of the contingency measures element, the 12-month period during which CARB and the Districts committed to submit supplemental contingency measures never commenced, and CARB and the Districts have not adopted or submitted the rules and revisions identified in their commitment letters.

This proposed action replaces our earlier proposed conditional approval of the contingency measures element.

II. Evaluation

A. Procedural Requirements for Adoption and Submission of SIP Revisions

CAA sections 110(a) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision. To meet this requirement, every SIP submission should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102. The EPA previously determined that the Districts and CARB have fulfilled the applicable requirements for public notice and public hearing for the 2017 Sacramento Regional Ozone Plan and 2018 SIP Update.[21]

[9] 80 FR 12264 (March 6, 2015).

[10] Letter dated December 18, 2017, from Richard Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region IX.

[11] Letter dated December 5, 2018, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX (submitted electronically December 11, 2018). Our previous proposed action at 85 FR 68509 and final action at 86 FR 58581 misidentified the date of the submittal of the 2018 SIP Update as December 5, 2018. While the letter accompanying the submittal is dated December 5, 2018, the EPA received the submittal electronically on December 11, 2018. For more information, see the eSIPs Application State Implementation Plan Summary Page in the docket for this rulemaking. CARB adopted the 2018 SIP Update on October 25, 2018.

[12] *Bahr* v. *EPA,* 836 F.3d 1218 (9th Cir. 2016). In this case, the court rejected the EPA's longstanding interpretation of CAA section 172(c)(9) as allowing for early implementation of contingency measures. The court concluded that a contingency measure must take effect at the time the area fails to make RFP or attain by the applicable attainment date, not before. See also *Sierra Club* v. *EPA,* 985 F.3d 1055 (D.C. Cir. 2021), reaching a similar decision. For a more complete description of the 2017 Sacramento Regional Ozone Plan and 2018 SIP Update as they relate to the Sacramento Metro nonattainment area for the 2008 ozone NAAQS, see 85 FR 68509, 68512.

[13] Specifically, the Districts committed to amend their respective architectural coating rules to be consistent with the CARB Architectural Coatings Suggested Control Measure (SCM), as adopted on May 21, 2019. This would include lowering the VOC limits for several coating categories, deleting the coating categories for non-flats, stains, floor, and some other specialty coatings, and establishing new VOC content limits for colorants.

[14] Letter dated May 26, 2020, from Alberto Ayala, Ph.D., M.S.E, Executive Officer/Air Pollution Control Officer, SMAQMD, Dave Johnston, Air Pollution Control Officer, EDCAQMD, Christopher Brown, AICP, Air Pollution Control Officer, FRAQMD, Erik White, Air Pollution Control Officer, PCAPCD, and Mat Erhardt, P.E., Executive Director/Air Pollution Control Officer, YSAQMD, to Richard Corey, Executive Officer, CARB, Subject: ''Commitments from the Sacramento Federal Nonattainment Area Districts to Adopt and/or Amend Rules as Contingency Measures for the Sacramento Regional 2008 NAAQS 8-Hour Ozone Attainment and Reasonable Further Progress Plan.''

[15] Letter dated July 7, 2020, from Richard W. Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX.

[16] 85 FR 68509.

[17] Id.

[18] 10 F.4th 937 (9th Cir. 2021).

[19] 86 FR 58581.

[20] See id. at 58590 (responding to comments on proposed approval of contingency measures element submitted by Air Law for All, Ltd. on behalf of Center for Biological Diversity and Center for Environmental Health).

[21] 85 FR 68509, 68512; 86 FR 58581, 58582–83.

B. Evaluation for Compliance With Clean Air Act Contingency Measures Requirements

Under the CAA, ozone nonattainment areas classified under subpart 2 as ''Serious'' or above must include in their SIPs contingency measures consistent with sections 172(c)(9) and 182(c)(9). CAA section 172(c)(9) requires states with nonattainment areas to provide for the implementation of specific measures to be undertaken if the area fails to make RFP or to attain the NAAQS by the applicable attainment date. Such measures must be included in the SIP as contingency measures to take effect in any such case without further action by the state or the EPA. Section 182(c)(9) requires states to provide contingency measures in the event that an ozone nonattainment area fails to meet any applicable RFP milestone.

Contingency measures are additional controls or measures to be implemented in the event an area fails to make RFP or to attain the NAAQS by the attainment date. Contingency measures must be designed so as to be implemented prospectively; already-implemented control measures may not serve as contingency measures even if they provide emissions reductions beyond those needed for any other CAA purpose.[22] The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measure will be implemented without significant further action by the state or the EPA.[23]

Neither the CAA nor the EPA's implementing regulations establish a specific amount of emissions reductions that implementation of contingency measures must achieve, but the 2008 Ozone SRR reiterates the EPA's guidance recommendation that contingency measures should provide for emissions reductions approximately equivalent to one year's worth of RFP, thus amounting to reductions of three percent of the baseline emissions inventory for the nonattainment area.[24] In *AIR* v. *EPA,* the Ninth Circuit remanded the EPA's approval of ozone contingency measures for the San Joaquin Valley and held that, under the EPA's existing guidance, the surplus emissions reductions from already-implemented measures cannot be relied upon to justify the approval of a contingency measure that would achieve far less than one year's worth of RFP as sufficient by itself to meet the contingency measures requirements of CAA sections 172(c)(9) and 182(c)(9) for the nonattainment area.[25]

The Districts and CARB had largely prepared the 2017 Sacramento Regional Ozone Plan prior to the *Bahr* decision; therefore, the plan relies solely upon surplus emissions reductions from already implemented control measures in the RFP milestone years to demonstrate compliance with the RFP milestone contingency measures requirements of CAA sections 172(c)(9) and 182(c)(9).[26] The plan also demonstrates compliance with the attainment contingency measures requirements using surplus emissions reductions (in the year after the attainment year).[27]

In the 2018 SIP Update, CARB revised the RFP demonstration for the 2008 ozone NAAQS for the Sacramento Metro area and recalculated the extent of surplus emission reductions in the milestone years.[28] Consistent with the *Bahr* decision, the 2018 SIP Update does not rely on the surplus or incremental emissions reductions from already-implemented measures to comply with the contingency measures requirements of sections 172(c)(9) and 182(c)(9) but instead documents the extent to which future baseline emissions from such measures would provide surplus emissions reductions beyond those required to meet applicable contingency measures requirements, to provide context for determining the magnitude of the emissions reductions needed from prospective-acting, to-be-triggered contingency measures.[29]

As noted in Section I.C of this notice, the EPA previously proposed a conditional approval of the Districts' contingency measures, based upon commitments by the Districts and CARB to adopt and submit additional contingency measure provisions in District rules within 12 months of the final conditional approval. Since the EPA did not finalize the conditional approval, the Districts and CARB did not submit the additional contingency measure provisions. Thus, the relevant submittals before us are limited to the portions of the 2017 Sacramento Regional Ozone Plan and 2018 SIP Update that address the contingency measures requirements for the Sacramento Metro area.

As described above, these submittals provide only an analysis of surplus emissions, and do not include specific measures to be triggered upon a failure to attain or to meet an RFP milestone that would achieve one year's worth of progress. This approach is inconsistent with CAA sections 172(c)(9) and 182(c)(9), in light of the Ninth Circuit's decisions in *Bahr* and *AIR,* and accordingly we are proposing to disapprove these portions of the 2017 Sacramento Regional Ozone Plan and 2018 SIP Update as contingency measures for the Sacramento Metro area for the 2008 ozone NAAQS.

III. Proposed Action and Clean Air Act Consequences

For the reasons given in this notice, we are proposing to disapprove the 2017 Sacramento Regional Ozone Plan and the 2018 SIP Update with respect to CAA contingency measures requirements under CAA section 172(c)(9) and 182(c)(9) for the Sacramento Metro area for the 2008 ozone NAAQS.

If the EPA finalizes the proposed disapproval of the contingency measures element of the 2017 Sacramento Regional Ozone Plan, as modified by the 2018 SIP Update, the area would be eligible for a protective finding under the transportation conformity rule because these submittals reflect adopted control measures and contain enforceable commitments that fully satisfy the emissions reductions requirements for RFP and attainment for the 2008 Ozone NAAQS.[30]

[22] See *Bahr* v. *EPA,* 836 F.3d 1218, 1235–1237 (9th Cir. 2016) (''*Bahr*'').

[23] For more information about the contingency measures requirements see the 1997 Ozone Phase 2 Implementation Rule at 70 FR 71612 (November 29, 2005) and the 2008 Ozone SRR at 80 FR 12264, 12285 (March 6, 2015).

[24] 80 FR 12264, 12285 (March 6, 2015).

[25] *AIR* v. *EPA,* 10 F.4th 937.

[26] ''Sacramento Regional 2008 NAAQS 8-hour Ozone Attainment and Reasonable Further Progress Plan,'' July 24, 2017, 12–1 to 12–6.

[27] Id. at 8–5 to 8–6.

[28] ''2018 Updates to the California State Implementation Plan,'' October 25, 2018, 27–34.

[29] The 2018 SIP Update identifies enhanced enforcement activities intended to serve as contingency measure to be triggered upon a failure to attain or meet RFP. See 2018 SIP Update, Chapter X. However, CARB subsequently withdrew this measure from consideration for inclusion in the Sacramento Metro portion of the California SIP. See letter dated January 8, 2021, from Richard W. Corey, Executive Officer, CARB, to John W. Busterud, Regional Administrator, EPA Region IX.

[30] 40 CFR 93.120(a)(3). Without a protective finding, the final disapproval would result in a conformity freeze, under which only projects in the first four years of the most recent conforming Regional Transportation Plan (RTP) and Transportation Improvement Programs (TIP) can proceed. Generally, during a freeze, no new RTPs, TIPs, or RTP/TIP amendments can be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, the EPA finds its motor vehicle emissions budget(s) adequate pursuant to 40 CFR 93.118 or approves the submission, and conformity to the implementation plan revision is determined. Under a protective finding, the final disapproval of the contingency measures element would not result in a transportation conformity freeze in the Sacramento

Continued

Further, if we finalize this proposed disapproval of the contingency measures element, the EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. In addition, under 40 CFR 52.35, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date of this action, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline.

IV. Request for Public Comment

The EPA is soliciting public comments on the issues discussed in this document. We will accept comments from the public on this proposal for the next 30 days and will consider comments before taking final action.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders*.

A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens, but simply disapproves certain state requirements submitted for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant impact on a substantial number of small entities. This proposed rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new requirements but simply disapproves certain state requirements submitted for inclusion into the SIP. Accordingly, it affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.,* higher offset requirements) may or will result from disapproval actions does not mean that the EPA either can or must conduct a regulatory flexibility analysis for this proposed action. Therefore, this proposed action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This proposed action contains no Federal mandates under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The EPA has determined that the proposed disapproval 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. This action proposes to disapprove pre-existing requirements under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this proposed action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This proposed action does not have federalism implications. It 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, because it merely disapproves certain state requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this proposed action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP that the EPA is proposing to disapprove would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to

Metro ozone nonattainment area and the local metropolitan planning organizations may continue to make transportation conformity determinations.

Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply disapproves certain state requirements submitted for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The EPA believes that this proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this action proposes to disapprove state submittals as not meeting federal requirements, and does not impose any additional requirements beyond those imposed by state law. Neither CARB nor the Districts evaluated environmental justice considerations as part of these SIP submittals; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an environmental justice analysis and did not consider environmental justice in this action. Consideration of environmental justice is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 22, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

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