

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This proposed action merely proposes to conditionally approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications as specified by

Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: December 16, 2022

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022-27867 Filed 12-22-22; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0947; FRL-10473-01-R4]

Air Plan Approval; Mississippi; PSD and Air Quality Modeling Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve portions of a State Implementation Plan (SIP) submission provided by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), via a letter dated January 25, 2021, and supplemented through a letter dated November 18, 2022. This proposal pertains to certain infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standards (NAAQS or standards). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of that NAAQS. The January 25, 2021, SIP submission addresses all infrastructure elements except for those pertaining to the contribution to nonattainment or interference with maintenance of the NAAQS in other states. EPA is proposing to conditionally approve the portions of the submittal related to the prevention of significant deterioration (PSD) infrastructure elements and the air quality modeling element.

DATES: Comments must be received on or before January 23, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2021-0947 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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. 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT:

Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8994. Ms. LaRocca can also be reached via electronic mail at larocca.sarah@epa.gov.

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I. Background

On October 1, 2015, EPA promulgated revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an “infrastructure SIP” or “iSIP.” States were required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.¹

EPA is proposing to conditionally approve portions of Mississippi’s January 25, 2021, SIP revision as supplemented on November 18, 2022,² provided to EPA through the MDEQ for the applicable requirements of the 2015 8-hour ozone NAAQS regarding the PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the air quality modeling element of section 110(a)(2)(K).³ Separately, EPA took final action on the remaining elements of Mississippi’s January 25, 2021, SIP revision with the exception of the visibility protection provisions of section 110(a)(2)(D)(i)(III).⁴ EPA will

consider the portion of Mississippi’s January 25, 2021, SIP revision that addresses the visibility protection provisions in a separate rulemaking.

As part of the January 25, 2021, SIP submission, as supplemented on November 18, 2022, Mississippi requested conditional approval of the PSD provisions related to major sources under CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) and the air quality modeling elements under section 110(a)(2)(K).⁵ Related to its request for conditional approval, Mississippi provided a written commitment under CAA section 110(k)(4) to take action to meet the requirements of the PSD and air quality modeling elements for its 2015 ozone iSIP by adopting a rule revision no later than one year after EPA’s conditional approval of these portions of Mississippi’s ozone iSIP. Specifically, MDEQ intends to amend 11 Mississippi Administrative Code (MAC), Part 2, Chapter 2, as well as 11 MAC, Part 2, Chapter 5, to cite to the current version of 40 CFR part 51, Appendix W, *Guideline on Air Quality Models*, and submit a revision containing the revised regulations to EPA within one year of EPA conditional approval to meet its conditional approval commitment to EPA. For this reason, in this notice of proposed rulemaking EPA is proposing to conditionally approve the portions of Mississippi’s 2015 8-hour ozone NAAQS iSIP addressing sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(J), and 110(a)(2)(K) related to the PSD program and air quality modeling.

II. What elements are required under sections 110(a)(1) and 110(a)(2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised

NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state’s existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements of section 110(a)(2) are listed below and are described in EPA’s September 13, 2013, memorandum entitled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” (2013 Guidance).⁶

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport (broken down into four separate Prongs)
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection

¹ In infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

² On November 21, 2022, Mississippi submitted a letter, dated November 18, 2022, related to its request for conditional approval of the PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the air quality modeling element of section 110(a)(2)(K). This letter is in the docket for this proposed rulemaking.

³ On September 6, 2019, Mississippi provided a SIP submission addressing the interstate transport provisions of section 110(a)(2)(D)(i)(I) pertaining to contribution to nonattainment or interference with maintenance of the NAAQS in other states. EPA will address the interstate transport provisions of section 110(a)(2)(D)(i)(I) through a separate rulemaking.

⁴ *See* 87 FR 57832 (September 22, 2022).

⁵ Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval will be treated as a disapproval.

⁶ Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) for infrastructure SIPs because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These elements are: (1) submissions required by section 110(a)(2)(C) to the extent that this subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the major source nonattainment permitting requirements of 110(a)(2)(C).

- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting Fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

As discussed above, whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to submit infrastructure SIPs that meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.⁷

Unless otherwise noted below, EPA is following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's implementation plan for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.⁸ EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

IV. What is EPA's analysis of how Mississippi addressed the elements of the section 110(a)(1) and (2) "infrastructure" provisions related to prevention of significant deterioration and modeling?

A. Section 110(a)(2)(C)—Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

This element consists of three sub-elements: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction

permitting of major sources and major modifications in areas designated attainment or unclassifiable for a NAAQS as required by CAA title I, part C (*i.e.*, the PSD program). Mississippi's 2015 8-hour ozone NAAQS infrastructure SIP submission cites to several SIP-approved provisions to address these requirements. Through a separate rulemaking, EPA has already taken final action to approve all but the PSD program sub-element. EPA's rationale for this proposed action regarding the PSD program sub-element is described below.

For the PSD program sub-element of section 110(a)(2)(C), EPA interprets the CAA to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has an up-to-date PSD permitting program in place covering the PSD requirements for all regulated NSR pollutants.⁹ A state's PSD permitting program is complete for this sub-element (as well as prong 3 of 110(a)(2)(D)(i)(II) and 110(a)(2)(F) related to PSD) if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all PSD requirements that are due under EPA regulations or the CAA on or before the date of EPA's action on the infrastructure SIP submission. Mississippi's 2015 8-hour ozone NAAQS infrastructure SIP submission cites to several SIP-approved provisions to address PSD program sub-element of section 110(a)(2)(C) as described below.

Mississippi's January 25, 2021, iSIP submission cites to two separate SIP-approved regulations. Specifically, Mississippi cites to 11 MAC, Part 2, Chapter 5 and portions of Chapter 2. These SIP-approved regulations provide that any new major sources and major modifications in areas of the State designated attainment or unclassifiable for any given NAAQS are subject to a federally approved PSD permitting program under part C of title I of the CAA. However, Mississippi's SIP-approved PSD regulations cited above do not reference the most updated version of EPA's *Guideline on Air Quality Models*, codified at 40 CFR part 51, Appendix W.¹⁰

EPA's PSD regulations at 40 CFR 51.166(l) require that modeling be conducted in accordance with Appendix W. As detailed in EPA's 2013 Guidance, approval of element C requires a fully approved and up-to-date PSD permitting program, which requires application of Appendix W consistent

with EPA's PSD implementing regulations (approval of PSD elements 110(a)(2)(D)(i)(II) and 110(a)(2)(F) is also contingent on an up-to-date PSD program). As noted, Mississippi's PSD program does not meet these updated modeling requirements and, for this reason, the State has committed to update its PSD regulations to reference the most current version of Appendix W and submit a SIP revision containing the revised regulations within one year of EPA's conditional approval. In this notice of proposed rulemaking, EPA is proposing to conditionally approve Mississippi's January 25, 2021, submission, as supplemented on November 18, 2022, related to the PSD element of section 110(a)(2)(C).

B. Sections 110(a)(2)(D)(i)(I) and (II)—Interstate Pollution Transport

Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts, resulting in four distinct components commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, contained in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1") and from interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, contained in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required in another state to prevent significant deterioration of air quality ("prong 3") or to protect visibility ("prong 4").

1. *110(a)(2)(D)(i)(I)—prongs 1, 2, and 4:* EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) or the visibility protection provisions (prong 4). EPA will consider these requirements in relation to Mississippi's 2015 8-hour ozone NAAQS infrastructure in a separate rulemaking.

2. *110(a)(2)(D)(i)(II)—prong 3:* Section 110(a)(2)(D)(i)(II) requires that the SIP contain adequate provisions that prohibit emissions activity in one state from interfering with measures required in another state to prevent significant deterioration of air quality. With regard to prong 3 of section 110(a)(2)(D)(i)(II), a state may meet this requirement by a confirmation in its infrastructure SIP

⁷ EPA explains and elaborates on these ambiguities and its approach to address them in its 2013 Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions including EPA's prior actions on Mississippi infrastructure SIPs such as the action to address the 2012 PM_{2.5} NAAQS. See 81 FR 36848 (June 8, 2016).

⁸ See *Mont. Envtl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

⁹ See EPA's 2013 Guidance.

¹⁰ EPA approved the most recent version of Appendix W on January 17, 2017, at 82 FR 5182.

submission that new major sources and major modifications in the state are subject to a PSD program meeting current structural requirements of part C, or (if the state contains a nonattainment area that has the potential to impact PSD in another state) a nonattainment NSR program.

To meet prong 3, Mississippi's January 25, 2021, iSIP submission cites to SIP-approved regulation 11 MAC, Part 2, Chapter 5. This regulation provides that new major sources and major modifications in areas of the State designated attainment or unclassifiable for any given NAAQS are subject to a federally approved PSD permitting program under part C of title I of the CAA.

However, as described in section IV.A concerning section 110(a)(2)(C) above, Mississippi's SIP-approved PSD regulations do not reference the most updated version of EPA's *Guideline on Air Quality Models*, codified at 40 CFR part 51, Appendix W. For this reason, Mississippi's January 25, 2021, iSIP submission, as supplemented on November 18, 2022, includes a request for conditional approval of prong 3 and a commitment to update its PSD regulations to reference the most current version of Appendix W and submit a SIP revision containing the revised regulations to EPA within one year of EPA conditional approval.

EPA has made the preliminary determination that Mississippi's SIP and practices are adequate to meet the prong 3 requirements related to the 2015 8-hour ozone NAAQS, with the exception of the citation to an outdated version of Appendix W. Accordingly, EPA is proposing to conditionally approve Mississippi's infrastructure SIP submission with respect to the PSD provisions for section 110(a)(2)(D)(II) (prong 3).

C. Section 110(a)(2)(J)—Consultation With Government Officials, Public Notification, PSD, and Visibility Protection

Section 110(a)(2)(J) has four components related to: (1) consultation with government officials, (2) public notification, (3) PSD, and (4) visibility protection. Through a previous rulemaking, EPA has approved all but the PSD element for section 110(a)(2)(J) from Mississippi's January 25, 2021, SIP revision. EPA's rationale for proposed action regarding the PSD element for section 110(a)(2)(J) sub-element is described below.

With regard to the PSD element of section 110(a)(2)(J), this requirement is met (similarly to 110(a)(2)(C)) by a state's confirmation, in an infrastructure

SIP submission, that the state has a SIP-approved PSD program meeting all the current requirements of part C of title I of the CAA for all NSR regulated pollutants. To meet the requirements of element J, Mississippi's January 25, 2021, iSIP submission cites to SIP-approved regulation 11 MAC, Part 2, Chapter 5, which provides that new major sources and major modifications in areas of the State designated attainment or unclassifiable for any given NAAQS are subject to a federally approved PSD permitting program under part C of title I of the CAA.

However, as described in section IV.A concerning section 110(a)(2)(C) above, Mississippi's SIP-approved PSD regulations do not reference the most updated version of EPA's *Guideline on Air Quality Models*, codified at 40 CFR part 51, Appendix W. For this reason, Mississippi's January 25, 2021, iSIP submission, as supplemented on November 18, 2022, includes a request for conditional approval of element J and a commitment to update its PSD regulations to reference the most current version of Appendix W and submit a SIP revision containing the revised regulations to EPA within one year of EPA conditional approval.

EPA has made the preliminary determination that Mississippi's SIP and practices are adequate to meet the PSD requirements of section 110(a)(2)(J) related to the 2015 8-hour ozone NAAQS, with the exception of the citation to an outdated version of Appendix W. Accordingly, EPA is proposing to conditionally approve Mississippi's infrastructure SIP submission with respect to the PSD provisions for section 110(a)(2)(J).

D. Section 110(a)(2)(K)—Air Quality Modeling and Submission of Modeling Data

Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to EPA can be made. Section 110(a)(2)(K) has two components related to: (1) the performance of air quality modeling, and (2) the submission of data related to such air quality modeling to the Administrator.

Mississippi's January 25, 2021, iSIP submission cites to two separate SIP-approved regulations to meet the modeling requirement of element K. Specifically, Mississippi cites to 11 MAC, Part 2, Chapter 2 and 11 MAC, Part 2, Chapter 5. These SIP-approved regulations include requirements for air quality modeling and reporting for the

PSD permitting program. However, as described in section IV.A concerning 110(a)(2)(C) above, Mississippi's SIP-approved PSD regulations cited above do not reference the most updated version of EPA's *Guideline on Air Quality Models*, codified at 40 CFR part 51, Appendix W. For this reason, Mississippi's January 25, 2021, iSIP submission, as supplemented on November 18, 2022, includes a request for conditional approval of element K and a commitment to update its PSD regulations to reference the most current version of Appendix W and submit a SIP revision containing the revised regulations to EPA within one year of EPA conditional approval. Because of the outdated reference to Appendix W modeling, EPA is proposing to conditionally approve Mississippi's infrastructure SIP submission with respect to section 110(a)(2)(K).

V. Proposed Action

For the reasons stated herein, EPA is proposing to conditionally approve the portions of the 2015 8-hour Ozone NAAQS iSIP that address the PSD related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J), and the modeling requirements of 110(a)(2)(K). With the exception of the visibility provisions, EPA has already taken final action on the remainder of Mississippi's January 25, 2021, SIP revision. EPA will consider Mississippi's visibility provisions in the January 25, 2021, SIP revision through a future rulemaking.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 16, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–27868 Filed 12–22–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0102; FRL–10369–01–R9]

Air Plan Approval; Bay Area Air Quality Management District; Nonattainment New Source Review; 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of California addressing the nonattainment new source review (NNSR) requirements for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS). This SIP revision addresses the Bay Area Air Quality Management District (BAAQMD or “District”) portion of the California SIP. This action is being taken pursuant to the Clean Air Act (CAA or “Act”) and its implementing regulations.

DATES: Comments must be received by January 23, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0102, at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.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

disabilities 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: Po-Chieh Ting, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3191 or by email at ting.pochieh@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Background and Purpose

On October 26, 2015, the EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm).¹ Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data. This action relates to one California air district that was designated nonattainment for the 2015 8-hour ozone NAAQS on June 4, 2018.² The San Francisco Bay Area, whose boundary matches that of the BAAQMD, was classified as a Marginal ozone nonattainment area.

On December 6, 2018, the EPA issued a final rule entitled, “Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements,” (“2015 SIP Requirements Rule”), which established the requirements and deadlines that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where ozone concentrations exceed the 2015 8-hour ozone NAAQS.³ Based on its initial nonattainment designation for the 2015 8-hour ozone standards, the District was required to make a SIP

¹ 80 FR 65292 (October 26, 2015).

² 83 FR 25776 (June 4, 2018).

³ 83 FR 62998 (December 6, 2018). The 2015 SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2015 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP.