EPA-APPROVED NEVADA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
Air Quality Implementation Plan for the State of Nevada [1]				
* * *	*	*	*	*
The Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2012 Annual Primary Fine Particulate Matter NAAQS, excluding the cover letter; the part addressing the visibility requirements of CAA 110(a)(2)(D)(i)(II) on page 9; and Appendices A–D and F–I.	State-wide within NDEP jurisdiction.	12/11/15	[INSERT **Federal Register** CITATION], 2/16/2023.	NDEP "Infrastructure" SIP for the 2012 $PM_{2.5}$ NAAQS.
The Clark County Portion of the State Implementation Plan to meet the $PM_{2.5}$ SIP Requirements of the Clean Air Act Section 110(a)(2), excluding the cover letter to NDEP; the part of the submittal addressing the visibility requirements of CAA 110(a)(2)(D)(i)(II) on page 8; and Attachments A, B, and D.	Clark County	12/11/15	[INSERT **Federal Register** CITATION], 2/16/2023.	Clark County "Infrastructure" SIP for the 2012 $PM_{2.5}$ NAAQS.
The Washoe County Portion of the Nevada State Implementation Plan to Meet the $PM_{2.5}$ Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), excluding the cover letter to NDEP and all Attachments and Appendices.	Washoe County	12/11/15	[INSERT **Federal Register** CITATION], 2/16/2023.	Washoe County "Infrastructure" SIP for the 2012 $PM_{2.5}$ NAAQS.
* * *	*	*	*	*

[1] The organization of this table generally follows from the organization of the State of Nevada's original 1972 SIP, which was divided into 12 sections. Nonattainment and maintenance plans, among other types of plans, are listed under Section 5 (Control Strategy). Lead SIPs and Small Business Stationary Source Technical and Environmental Compliance Assistance SIPs are listed after Section 12 followed by nonregulatory or quasi-regulatory statutory provisions approved into the SIP. Regulatory statutory provisions are listed in 40 CFR 52.1470(c).

■ 3. Section 52.1472 is amended by adding paragraph (l) to read as follows:

§ 52.1472 Approval status.

* * * * *

(l) *2012 24-hour $PM_{2.5}$ NAAQS.* The Nevada state implementation plan (SIP) submittal on December 11, 2015 is partially disapproved for the prevention of significant deterioration-related portions of Clean Air Act (CAA) elements 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the NDEP and Washoe County portions of the Nevada SIP. CAA element 110(a)(2)(J) for public notification is conditionally approved for NDEP and Washoe County.

[FR Doc. 2023–02999 Filed 2–15–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0503; FRL–9936–02–R9]

Air Plan Approval; California; Innovative Clean Transit Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the California State Implementation Plan (SIP) consisting of State rules intended to reduce particulate matter (PM) and oxides of nitrogen (NO_X) emissions from public transit buses. The EPA is approving the SIP revision because the regulations meet the applicable requirements of the Clean Air Act. Approval of the regulations as part of the California SIP makes them federally enforceable.

DATES: This rule is effective on March 20, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R09–OAR–2022–0503. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. 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: Jeffrey Buss, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4152 or by email at *buss.jeffrey@epa.gov.*

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

Table of Contents

I. Proposed Action

On October 14, 2022 (87 FR 62337) (herein referred to as the proposed rule), the EPA proposed to approve a SIP revision submitted by the California Air Resources Board (CARB) on February

13, 2020 consisting of certain state regulations (known as the Innovative Clean Transit (ICT) regulation) adopted to transition California public transit bus fleets to zero-emission technologies by 2040 and thereby to provide reductions in NO_X and PM emissions to support regional air quality plans and improve air quality along public transit routes. Table 1 lists the specific sections of Title 13, Division 3, Chapter 1, Article 4.3 of the California Code of Regulations (CCR) that comprise the ICT regulation.

TABLE 1—SUBMITTED RULES

Agency	Section No. 13 CCR	Rule title	State effective date	Submission date
CARB	2023	Innovative Clean Transit Regulations Applicability and Scope	10/01/2019	02/13/2020
CARB	2023.1	Zero-Emission Bus Requirements	10/01/2019	02/13/2020
CARB	2023.2	Compliance Option for Joint Zero-Emission Bus Groups	10/01/2019	02/13/2020
CARB	2023.3	Zero-Emission Bus Bonus Credits	10/01/2019	02/13/2020
CARB	2023.4	Provisions for Exemption of a Zero-Emission Bus Purchase	10/01/2019	02/13/2020
CARB	2023.5	Zero-Emission Mobility Option	10/01/2019	02/13/2020
CARB	2023.6	Low-NO_X Engine Purchase Requirements	10/01/2019	02/13/2020
CARB	2023.7	Requirements to Use Renewable Fuels	10/01/2019	02/13/2020
CARB	2023.8	Reporting Requirements for Transit Agencies	10/01/2019	02/13/2020
CARB	2023.9	Record Keeping Requirements	10/01/2019	02/13/2020
CARB	2023.10	Authority to Suspend, Revoke or Modify	10/01/2019	02/13/2020
CARB	2023.11	Severability	10/01/2019	02/13/2020

On August 11, 2022, CARB supplemented the February 13, 2020, SIP submission by submitting certain additional definitions codified in the CCR or California Health & Safety Code (CH&SC) that are relied upon in the ICT regulation. The specific definitions submitted on August 11, 2022, are listed in table 2.

TABLE 2—SUBMITTED ADDITIONAL DEFINITIONS RELIED UPON BY THE ICT REGULATION

Agency	CCR or CH&SC section	Title	State effective date
CARB	CH&SC 39012	Air Basin	01/01/1976
CARB	17 CCR 95481(a)(27)[1]	Untitled but defines the term "compressed natural gas (CNG)"	01/04/2019
CARB	13 CCR 2208(c)(18)	Untitled but defines the term "Low-NO_X engine"	10/16/2017
CARB	17 CCR 60100(e)	Untitled but defines the Sonoma County portion of the North Coast Basin	07/05/1978
CARB	17 CCR 60113[2]	Lake Tahoe Air Basin	01/30/1976
CARB	17 CCR 95481(a)(123)[3]	Untitled but defines the term "Renewable hydrocarbon diesel"	01/04/2019
CARB	17 CCR 95481(a)(20)[4]	Untitled but defines the term "Biomethane"	01/04/2019
CARB	13 CCR 2020(b)	Definitions	01/02/2010

On pages 62339–62341 of our proposed rule, we described how we evaluated the ICT regulation and how we determined that the regulation meets all applicable CAA requirements. In short, we determined that:

- CARB provided adequate public notice of a comment period and a hearing on the draft ICT regulation prior to adoption and submission to the EPA, and thereby complied with the applicable procedural requirements for SIP revisions under the CAA section 110(l) and 40 CFR 51.102;
- CARB has adequate legal authority to implement the ICT regulation because state law so provides; and because the requirements relate to transit bus purchases directed at public transit agencies (*i.e.,* not private fleet operators), the regulations are not preempted under the CAA; and because CARB is not otherwise prohibited by any provision of federal or state law from carrying out the regulation;
- The regulation includes all of the elements necessary to provide for practical enforceability, including clear applicability and exemption provisions, requirements that are sufficiently specific so that the persons affected by the regulation are fairly on notice as to what the requirements and related compliance dates are, and recordkeeping and reporting provisions, and thereby establish an enforceable control measure as required under CAA section 110(a)(2)(A);
- The ICT regulation is an outgrowth of a committal measure for further deployment of zero-emission bus (ZEB) technologies in the public transit sector that was adopted by CARB in the 2016 State SIP Strategy, and the ICT regulation would achieve incremental emissions reductions needed to attain the NAAQS, particularly in the South Coast and San Joaquin Valley air quality planning areas. Thus, we found that the ICT regulation would not interfere with reasonable further progress (RFP), attainment or any other applicable CAA requirement for the purposes of CAA section 110(l); and
- The ICT regulation would require only one additional person-year for developing a reporting system and updating fleet information prior to initial reporting in 2020, assisting transit agencies with compliance and

[1] Erroneously listed in the proposed rule as 17 CCR 95481(a)(30) with a state effective date of 7/1/2020.

[2] Erroneously listed in the proposed rule as 17 CCR 60013.

[3] Erroneously listed in the proposed rule as 17 CCR 95481(a)(130) with a state effective date of 7/1/2020.

[4] Erroneously listed in the proposed rule as 17 CCR 95481(a)(22) with a state effective date of 7/1/2020.

annual reporting, and thus CARB has adequate personnel and funding to carry out the ICT regulation.

For additional detail on the SIP submission itself, and our evaluation, please see our proposed rule.

II. Public Comments and EPA Responses

The EPA's proposed rule provided for a 30-day comment period. The EPA received a total of seven comment letters in response to the proposed rule. Four of the comment letters express general support for our proposed action. The three other comment letters include objections to our proposed action: (1) a comment letter from the Center for Community Action and Environmental Justice (CCAEJ); [5] (2) a comment letter from the American Fuel & Petroleum Manufacturers (AFPM); and (3) a comment letter from an individual member of the public. All the comments letters can be found in the docket for this rulemaking. In the paragraphs below, we summarize the comments and provide responses for the three comment letters that include objections to our proposed action.

CCAEJ Comment #1: CCAEJ submits these comments in support of the EPA's proposed approval of the ICT regulation. CCAEJ strongly supports ZEBs as an air quality and environmental justice solution in the Inland Empire and in other communities. However, a recent ICT regulation implementation update disclosed the financial challenges facing transit agencies to fully transition to 100 percent ZEBs as required by the regulation.

CCAEJ has concerns that transit agencies will seek to avoid the transition to ZEBs by claiming financial infeasibility. Accordingly, CCAEJ calls on the EPA to partially disapprove the ICT regulation due to the unenforceability of the exemption for ''financial hardship.'' The Clean Air Act requires that measures are enforceable, and the EPA should require CARB to amend the regulation to ensure enforceability. The financial hardship exemption at 13 Cal. Code Regs. § 2023.4(c)(5) lacks enforceability. The exemption provision requires the CARB Executive Officer to grant a transit agency an exemption if the agency meets certain criteria. 13 Cal. Code Regs. § 2023.4(a). A transit agency may claim the financial hardship exemption request when the transit agency adopts a resolution declaring a ''fiscal emergency.'' Cal. Code Reg. § 2023.4(c)(5)(B)(1). This exemption is not enforceable. A transit agency can claim the exemption by adopting nothing more than a resolution declaring a ''fiscal emergency.'' 13 Cal. Code Regs. § 2023.4(c)(5)(B)(1). However, the ICT regulation does not define ''fiscal emergency.'' See 13 Cal. Code Regs. § 2023(b). And CARB has not submitted any other regulations that define ''fiscal emergency'' to the EPA for approval into the SIP. See 87 FR at 62338 and Table 2. The ICT regulation further requires no supporting documentation for the resolution to justify the undefined ''fiscal emergency.'' See 13 Cal. Code Regs. § 2023.4(c)(5)(B)(1). A transit agency, relying on this provision, could adopt a simple resolution finding a fiscal emergency without any supporting documentation and without reference to any enforceable standard for what constitutes a ''fiscal emergency.'' This provision begs for abuse and could allow transit agencies to avoid the regulation's purchase mandate for claimed fiscal emergencies. Without a defined standard and supporting documentation, citizens and the EPA will be unable to hold transit agencies accountable for their duty to purchase ZEBs.

EPA response to CCAEJ Comment #1: The EPA does not have the authority to disapprove the exemption for ''financial hardship'' but approve the rest of the ICT regulation because the exemption is not severable from the rest of the regulation, and because the EPA cannot render a SIP more stringent than intended by the state through a partial SIP approval.[6] This principle was first established in the Seventh Circuit Court of Appeal's decision in *Bethlehem Steel,* a case in which the EPA approved a state opacity limitation but disapproved the allowance for violations of the limitation for a certain number of minutes within a 24-hour period.[7] The court held that the EPA cannot, in the guise of a partial approval, remove words of limitation and thereby make the regulation stricter than the state had intended.[8] If the EPA determines that a stricter rule is required, then the CAA provides that the EPA must disapprove the state regulation and promulgate a Federal Implementation Plan (FIP) in its place. In this instance, too, the EPA is not authorized to approve the ICT regulation but disapprove the financial hardship exemption included therein because doing so would make the regulation stricter than the state had intended. Moreover, we believe the ICT regulation need not be made stricter by removal of this exemption to meet applicable CAA requirements.

In addition, we do not view the ''financial hardship'' exemption as making the ICT regulation unenforceable. We agree that the provision does not have a specific definition for the term ''fiscal emergency,'' but the EPA believes that the requirements for public process and involvement will serve to assure that a public transit agency would not assert a fiscal emergency inappropriately or for purposes of invoking the exemption except when actually necessary. With respect to the specific provisions regarding fiscal emergencies, we note that the ICT regulation specifies that, to claim the exemption, a transit agency would need to declare a fiscal emergency under a resolution by a transit agency's governing body following a public hearing.[9] Moreover, under California law, a public hearing conducted by a public transit agency to consider declaration of a fiscal emergency will be governed by the Brown Act, which as a general matter requires California public agencies to conduct their business publicly.[10] Under the Brown Act, such a hearing will be subject to minimum requirements regarding posting of notice of the hearing, posting of agendas and providing opportunities for public comment.[11] As such, the public will have knowledge of, and the opportunity to participate in, the decision by a transit agency to declare a fiscal emergency. Given the procedure safeguards established in the Brown Act, we do not expect public transit agencies to abuse the financial hardship exemption to unduly delay the process under the ICT regulation for full transition to zero-emission buses.

However, while, we do not view the financial hardship exemption as making the ICT regulation unenforceable, we do

[5] The letter from CCAEJ included six exhibits: American Lung Association's State of the Air 2022 report; Progress Report and Technical Submittal for the 2012 $PM_{2.5}$ Standard San Joaquin Valley (citing Appendix L, Emissions Inventory Methods and Results for the Proposed Innovative Clean Transit Regulation) (October 19, 2021); Innovative Clean Transit (ICT) Regulation Fact Sheet; CARB, Board Meeting, September 22, 2022, Board Item Summary; National Renewable Energy Laboratory, Comprehensive Review of California's Innovated Clean Transit Regulation: Phase 1 Summary Report; and CARB, Board Meeting, September 22, 2022, transcript.

[6] *Bethlehem Steel Corp.* v. *Gorsuch,* 742 F.2d 1028, 1036 (7th Cir. 1984) (*Bethlehem Steel*).

[7] *Id,* at 1032.

[8] *Id.,* at 1036.

[9] 13 CCR 2023.4(c)(5).

[10] Title 5, division 2, part 1, chapter 9 of the California Government Code. The Brown Act is referred to as one of the State of California's ''sunshine'' laws.

[11] California Government Code sections 54954(a) (meeting notice), 54954.2(a) (meeting agenda), and 54954.3(a) (public comment opportunity).

agree that the exemption, if granted frequently, could delay the expected schedule for full transition to ZEBs and delay the timing of the associated emissions reductions. As discussed further below in the EPA response to CCAEJ Comment #2, we expect that CARB will take into account the actual transition to ZEBs and related emissions reductions in future updates to the EMFAC model, and the EPA will assess the accuracy of emissions projections reflecting emissions reductions from the ICT regulation when the Agency takes action on SIP submissions of regional air quality plans.

CCAEJ Comment #2: Given several exemptions provided in the ICT regulation, the financial challenges of implementation, and CARB's claim that the regulation will achieve zero NO_X and $PM_{2.5}$ emissions, the EPA should not grant full SIP credit. CARB has claimed significant reductions from the ICT regulation, including 100% reductions by 2045. The EPA should only grant partial SIP credit because the regulation allows for transit agencies to claim several exemptions and continue to purchase internal combustion engine buses. A transit agency may claim exemptions for delays in ZEB infrastructure, when ZEBs cannot meet daily mileage needs, when ZEBs do not have adequate gradeability performance, when a ZEB for the applicable weight class is not available, and for financial hardship provided the agency demonstrates that the agency cannot offset the initial capital costs of ZEBs and associated infrastructure. Given these offramps for transit agencies, and the recent implementation update showing the substantial financial challenges transit agencies face with implementation beyond the initial 25 percent target, the EPA should decline to grant full SIP credit.

EPA response to CCAEJ Comment #2: While, in the proposed rule, the EPA acknowledged CARB's estimates for the reductions associated with the ICT regulation,[12] the EPA is not approving a specific numerical credit for the ICT regulation in this rulemaking. The emissions reductions associated with the ICT regulation are reflected in the most recently-approved version of CARB's on-road motor vehicle emissions model, EMFAC2021, and in the EPA-approved adjustment factors for the previous version of the model, EMFAC2017.[13]

CARB updates its EMFAC model every three or four years and each successive version reflects update vehicle mixes and vehicle types and also changes in circumstances that affect assumptions regarding emissions reductions from regulatory initiatives such as the ICT regulation. Thus, if the transition to ZEBs in public transit fleets proves to be slower than assumed by EMFAC2021 and the adjustment factors to EMFAC2017, then CARB will take that circumstance into account in updating the model. The EPA, for its part, will assess the accuracy of emissions projections reflecting emissions reductions from the ICT regulation when the Agency takes action on SIP submissions, such as RFP and attainment demonstrations, that rely on emissions estimates made using EMFAC2021 or EMFAC2017 (with the adjustment factors).

Moreover, at this time, we do not find that CARB's emission reduction projections for the transition to zero emission buses under the ICT regulation are overly optimistic. First, at the CARB Board hearing on September 22, 2022, CARB reported that, based on the reported data for year 2021, California transit agencies collectively have 510 zero-emission buses in fleet and an addition 424 ZEBs on order, which is a total increase of over 250 zero-emission buses compared to year 2020.[14] Second, CARB reports that funding has been awarded for nearly 750 additional zero-emission buses to be ordered.[15] When the ICT regulation was proposed, CARB had estimated that, by 2027, approximately 1,350 zero-emission bus purchases would be required to comply with the regulation,[16] but that number of bus purchases has already been surpassed when taking into account the number of zero-emission buses in service, or on order, or for which funding has been awarded. As such, we expect the anticipated emissions reductions estimated by CARB due to the ICT regulation and reflected in EMFAC to be achieved at least through the end of this decade. Beyond 2030, there is greater uncertainty as to the emissions reductions from the ICT regulation, but as noted above, future updates to the EMFAC model will take into account updated forecasts for the transition to zero-emission buses by the various public transit agencies.

AFPM Comment #1: The Clean Air Act provides states with a limited authority to establish emissions standards for government-owned fleets; however, that authority is constrained by the statute. In litigation challenging an earlier set of fleet regulations in California,[17] the Ninth Circuit Court of Appeals explained the limitations to the provisions of CAA section 209(a). Although states are free to set more stringent standards for state-owned fleets, the ICT regulation fails to respect these statutory limits. The ICT regulation that the EPA is proposing to approve as part of the California SIP are not emissions standards because they are not performance standards, but rather a mandate to purchase an increasing percentage of specific technologies, and only vehicles powered by electricity or fuel cells qualify. The regulation is not applied uniformly to all vehicles in the class and, therefore, is not a standard.

EPA response to AFPM Comment #1: States do not derive their authority to set emission standards under the CAA, rather they do so pursuant to their respective state law authority. However, CAA section 209(a) prohibits states and political subdivisions from adopting or attempting to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines. As set forth in AFPM Comment #3 and EPA's response, the ICT regulation is an emission standard that would generally be preempted by section 209(a). The *EMA* decision noted by AFPM was the result of remand from the United States Supreme Court to the United States District Court and then on appeal to the Ninth Circuit.[18] The

[12] 87 FR 62337, at 62338–62339.

[13] 87 FR 68483 (November 15, 2022).

[14] CARB, Board Meeting, September 22, 2022, transcript, page 19.

[15] Email communication, Pippin Brehler, Senior Attorney, CARB, to Jefferson Wehling, EPA Region IX, December 15, 2022.

[16] CARB; Public Hearing to Consider the Proposed Innovative Clean Transit Regulation, a Replacement of the Fleet Rule for Public Agencies; Staff Report: Initial Statement of Reasons; Date of Release: August 7, 2018, Table VIII–10 on page VIII–24.

[17] AFPM cites *Engine Mfrs. Ass'n* v. *S. Coast Air Quality Mgmt. Dist.,* 498 F.3d 1031 (9th Cir. 2007) (referred to herein by its full name or as *EMA*).

[18] In *Engine Mfrs. Ass'n* v. *S. Coast Air Quality Mgmt. Dist.,* 541 U.S. 246 (2004), the Supreme Court reversed an earlier decision by the Ninth Circuit affirming a District Court ruling that upheld certain SCAQMD fleet rules from a preemption challenge, and in doing so, rejected the argument that the Rules ''escape[d] pre-emption under § 209(a) . . . because they address the purchase of vehicles, rather than their manufacture or sale.'' *Id.* However, the Supreme Court did not decide whether the SCAQMD fleet rules were actually preempted. See *id.* at 258. The Court stated that it was ''likely that at least certain aspects of the Fleet Rules are preempted,'' but allowed that ''[i]t does not necessarily follow . . . that the Fleet Rules are pre-empted in toto.'' *Id.* On remand in the District Court in the wake of the Supreme Court's decision, the District Court concluded that the SCAQMD fleet rules were not preempted as applied to state and local governmental entities, and in the *EMA* case cited by AFPM, the Ninth Circuit agreed, stating that ''the Clean Air Act does not preempt the Fleet Rules insofar as they direct the procurement behavior of state and local governmental entities.'' *Engine Mfrs. Ass'n* v. *S. Coast Air Quality Mgmt. Dist,* 498 F.3d 1031, 1039 (9th Cir. 2007).

Supreme Court noted: ''The criteria referred to in § 209(a) relate to the emission characteristics of a vehicle or engine. To meet them the vehicle or engine must not emit more than a certain amount of a given pollutant, must be equipped with a certain type of pollution-control device, or must have some other design feature related to the control of emissions. This interpretation is consistent with the use of 'standard' throughout Title II of the CAA (which governs emissions from moving sources) to denote requirements such as numerical emission levels with which vehicles or engines must comply, *e.g.,* 42 U.S.C. 7521(a)(3)(B)(ii), or emission-control technology with which they must be equipped, *e.g.,* 42 U.S.C. 7521(a)(6).'' [19] The EPA need not decide whether CARB's ICT zero-emission technology requirements are performance requirements or design technology requirements, as either relates to the emission characteristics of the vehicle and is designed to address emissions from the vehicle. Further, the commenter provides no authority for the claim that a requirement is only a ''standard'' if it applies uniformly. As addressed by the Supreme Court in *Engine Mfrs. Ass'n* v. *S. Coast Air Quality Mgmt. Dist,* a set of rules that require a specific emission performance be met (among a broader list of emission-certified vehicles) by fleet purchasers will still be considered a standard under section 209(a).[20]

Lastly, we acknowledge that, in our proposed rule on page 62340, we stated that, in adopting the ICT regulation, CARB has not adopted or attempted to enforce a ''standard'' relating to the control of emissions from new motor vehicles for the purposes of CAA section 209(a). However, in so stating, we did not mean that the ICT regulation does not establish an emission standard in the sense considered preempted by the Supreme Court, but rather, that, because the requirements only apply to purchases by public entities, the regulation is not preempted under CAA section 209(a). This is discussed further in AFPM Comment #3 and EPA's response thereto.

AFPM Comment #2: In the *EMA* case, the Ninth Circuit found ''nothing to indicate a congressional intent to bar states from choosing to use their own money to acquire or use vehicles that exceed the federal standards.'' However, the California standards do not exceed federal standards. California (and the EPA) has not shown that the ICT standards will reduce life-cycle greenhouse gas, $PM_{2.5,}$ or NO_X emissions. California has not conducted any analysis that compares the costs and benefits of alternative options, such as using the same amount of funding on new diesel or CNG busses that would speed progress towards NAAQS attainment compared to EV purchase requirements and may yield more significant reductions in life-cycle greenhouse gas. Such an analysis is particularly relevant because electric buses routinely do not operate on long bus routes and travel fewer miles per bus compared to diesel and CNG busses. California also needs to evaluate the significant increase in $PM_{2.5}$ emissions associated with the higher tire wear from heavier electric buses.

EPA response to AFPM Comment #2: First, we disagree that the ICT regulation does not exceed federal standards. The ICT regulation establishes more stringent numerical emission requirements that are beyond those established under other state or federal regulations applicable to emissions from buses.[21] In other words, the requirements under the ICT regulation do not supplant or replace any existing emission control requirements applicable to buses.

Second, we evaluate emissions impacts associated with SIP revisions, such as the ICT regulation, under CAA section 110(l), which prohibits EPA approval of SIP revisions that would interfere with any applicable requirement concerning attainment or RFP or any other applicable requirement of the CAA. In this regard, we note that CARB conducted an environmental analysis of the proposed ICT regulation that evaluated the emissions changes under the proposed regulations relative to several alternative scenarios included the ''Business-as-Usual'' (BAU) scenario. The BAU scenario represents the projected emission reductions under the current level of compliance with the Fleet Rule for Transit Agencies.[22] Relative to the BAU scenario, CARB concluded that the tailpipe emissions of NO_X and $PM_{2.5}$ would be lower under the proposed ICT regulation [23] as would well-to-wheel greenhouse gas (GHG) emissions.[24] CARB's environmental analysis acknowledges that the proposed ICT regulation would place additional demand on the existing electricity grid; however; the ICT regulation would be implemented in conjunction with other statewide regulatory programs aimed at improving the State's per capita energy consumption, decreasing reliance on fossil fuels, and increasing reliance of renewable energy sources.[25] In light of CARB's environmental analysis, we find sufficient evidence that the ICT regulation would result in net emissions reductions of NO_X and $PM_{2.5}$, and that, as such, approval of the ICT regulation as a SIP revision would not interfere with attainment or RFP of any NAAQS, or any other applicable requirement of the CAA. Moreover, as noted in the proposed rule,[26] the ICT regulation is an outgrowth of a committal measure for further deployment of zero-emission bus technologies in the public transit sector that was adopted by CARB in the 2016 State SIP Strategy, and for that reason also, we find that the ICT regulation is consistent with CAA section 110(l) and would not interfere with attainment, RFP or any other applicable requirement of the CAA.

Third, California is not obligated to conduct any analysis that compares the costs and benefits of alternative options, such as using the same amount of funding on new diesel or CNG busses. Such considerations are not relevant to the EPA's review of SIP submissions under CAA section 110. The EPA's role is to review and approve state choices if they meet applicable CAA requirements. See 42 U.S.C. 7410(k) and 40 CFR 52.02(a); see also *Union Elec. Co.* v. *EPA,* 427 U.S. 246, 256–266 (1976) (holding that the EPA may not disapprove a state implementation plan that meets the requirements of CAA section 110(a)(2) on the basis of technological or economic infeasibility). In this instance, perhaps the state could have chosen an alternative to the gradual transition to a zero-emissions fleet for public transit buses, but the approach the state ultimately selected through adoption of the ICT regulation meets all applicable CAA requirements, and that is a sufficient basis for the EPA

[19] *Engine Mfrs. Ass'n* v. *S. Coast Air Quality Mgmt. Dist.,* 541 U.S. 246, 253 (2004).

[20] *Id.,* at 250 and footnote 2.

[21] 87 FR at 62340.

[22] As described on page 62338 if the proposed rule, CARB originally adopted the Fleet Rule for Transit Agencies in 2000, and amended the rule in 2004 and 2006. Under the Fleet Rule for Transit Agencies, public transit agencies operating urban bus fleets were required to select either the diesel bus path or the alternative-fuel bus path. The diesel bus path required retrofitting existing buses with diesel particulate filters, while transit agencies utilizing the alternative-fuel path had to ensure that eighty-five percent of urban bus purchases were alternative fueled buses. In the 2006 amendment to the Fleet Rule for Transit Agencies, there was a 15 percent ZEB purchase requirement for larger transit agencies with more than 200 urban buses to purchase ZEBs starting in 2011.

[23] CARB, Final Environmental Analysis for the Proposed Innovative Clean Transit Regulation, A Replacement to the Fleet Rule for Transit Agencies, Date of Release: December 7, 2018, pages 33–37.

[24] *Id.,* pages 53–55.

[25] *Id.,* page 48.

[26] Proposed rule, page 62340.

to approve the ICT regulation as a SIP revision under CAA section 110.

Lastly, with respect to PM emissions from tire wear, we first note that tire wear is caused by contact between tires and the road surface, with the rate of tire wear dependent on a variety of factors, including the roughness of the road surface; activity factors such as route and style of driving, and seasonal influences; and vehicle characteristics, such as weight, suspension, steering geometry, and tire material and design.[27] Moreover, most of the PM emissions from tire wear are coarse particles, *i.e.,* larger than particles considered PM_{10} or $PM_{2.5}$. The EPA estimates that approximately 8.0 percent and 1.2 percent of tire wear PM emissions are emitted as PM_{10} and $PM_{2.5}$, respectively.[28] While the various factors that influence tire wear are known, the current state of knowledge does not provide a basis to quantify the relationship between tire wear and vehicle weight within the various regulatory classes of vehicles. As such, the EPA's most recent version of the Agency's mobile source estimation model, MOVES3,[29] applies the same tire wear emission rate for all vehicle fuel types (gasoline, diesel, flex-fuel, CNG or electric) within a MOVES regulatory class.[30] Thus, while the hypothetical incremental increase in PM emissions from heavier buses (due to the weight of batteries) as suggested by AFPM cannot reasonably be quantified, there is no evidence (and AFPM provides no evidence) to suggest that the incremental increase would result in PM emissions in great enough quantities to offset the documented decrease in tailpipe $PM_{2.5}$ emissions.[31]

AFPM Comment #3: California's new rule is a purchase mandate for which California has not sought a waiver from the EPA, as required prior to their inclusion in a SIP submittal to the EPA. In the above-referenced litigation, upon its remand to the 9th Circuit, the Supreme Court rejected California's argument that their rules did not need an EPA waiver and ''escape[d] pre-emption under § 209(a) . . . because they address the purchase of vehicles, rather than their manufacture or sale.'' The Court held that ''standard-enforcement efforts that are proscribed by § 209 can be directed to manufacturers or purchasers.'' *Engine Mfrs. Assn.* v. *S. Coast Air Quality Mgmt. Dist.,* 541 U.S. 246 (2004). The Court remanded the case back to the 9th Circuit for further proceedings consistent with its opinion, which stated that it is ''likely that at least certain aspects of the Fleet Rules are preempted.''

The reason that the California rules do not qualify as being excluded from the waiver requirements is that they are not a ''state proprietary action.'' Such an exception can only be applied to the efficient procurement of needed goods and services that also lack the effect of broader social regulation. On the contrary, California's rules mandate the inefficient procurement of goods for the purpose of implementing broader social regulation. The inefficiency of California's rule is clear because if California instead required the same amount of money to be invested in more cost-effective and proven bus technology, such as new diesel buses and new CNG buses, instead of electric buses and all of the associated costs to install and interconnect charging equipment, California would achieve greater emission reductions and achieve the NAAQS in a more expeditious timeframe than its so-called 'Clean Transit' regulations in the proposed SIP. California must seek a waiver, and must receive approval from the EPA, prior to including its bus purchase mandates in a SIP submittal to the EPA.

EPA response to AFPM Comment #3: In this comment, AFPM refers to a Ninth Circuit decision, *Engine Mfrs. Assn.* v. *S. Coast Air Quality Mgmt. Dist.,* 498 F.3d 1031 (9th Cir. 2007) (referred to herein by its full name or as *EMA*), issued in the wake of the Supreme Court's decision in *Engine Mfrs. Assn.* v. *S. Coast Air Quality Mgmt. Dist.,* 541 U.S. 246 (2004). In *EMA,* the Ninth Circuit held that the market participant doctrine applied to preemption under CAA section 209(a) and that fleet rules governing procurement decisions by state and local governments fell within scope of market participant doctrine and thus were saved from CAA preemption.[32] The ICT regulation is not subject to preemption under CAA section 209(a), and CARB does not need a waiver under CAA section 209(b) for the ICT regulation to enforce the regulation. Further, nothing in CAA section 209(a) could be read as barring states from using their purchasing power for motor vehicles with more stringent standards than federal standards. Such a reading ''would also run afoul of [CAA section 116's] express reservation to the states of primary authority over and responsibility for controlling air pollution.'' [33] In any event, the ICT regulation is analogous to the fleet rules that were the subject of the *EMA* decision to the extent they apply to fleets of vehicles purchased by the government for government purposes, which in this case is public transit services.

APFM counters that the ICT regulation does not qualify as an exception to CAA section 209(a) preemption under the market participant doctrine because the ''exception can only be applied to the efficient procurement of needed goods and services that also lack the effect of broader social regulation,'' and ''California's rules mandate the inefficient procurement of goods for the purpose of implementing broader social regulation.'' However, APFM's formulation of the exception under the market participant doctrine conflates the two different circumstances cited by the Ninth Circuit in *EMA* under which state action qualifies as ''proprietary,'' and thus saved from preemption, as opposed to ''regulatory,'' and thus subject to preemption.[34] In the first circumstance, state action is considered proprietary where the action essentially reflects the governmental entity's own interest in its efficient procurement of needed goods and services, as measured by comparison with the typical behavior of private parties in similar circumstances.[35] Under these circumstances, the market participant doctrine protects comprehensive state policies from preemption so long as the type of state action is essentially proprietary.[36] Under the second circumstance, state action is considered proprietary where the state action may not reflect the efficient procurement of needed good and services but is so limited in scope as to lack to effect of broader social regulation.[37]

In this instance, we find that the state action through the ICT regulation is proprietary in that it reflects the State of California's own interest in the efficient procurement of needed goods and services. *Engine Mfrs. Assn* v. *S. Coast Air Quality Mgmt. Dist.,* 498 F.3d 1031,

[27] EPA Office of Transportation and Air Quality, ''Brake and Tire Wear Emissions from Onroad Vehicles in MOVES3,'' EPA–420–R–20–014, November 2020, page 22.

[28] *Id.,* page 29.

[29] The EPA published the MOVES3 notice of availability at 86 FR 1106 (January 7, 2021).

[30] EPA Office of Transportation and Air Quality, ''Brake and Tire Wear Emissions from Onroad Vehicles in MOVES3,'' EPA–420–R–20–014, November 2020, page 29.

[31] See California Air Resources Board, Brake & Tire Wear Emissions, *https://ww2.arb.ca.gov/resources/documents/brake-tire-wear-emissions* (last visited Dec. 22, 2022).

[32] *EMA,* at 1044, 1048.

[33] *Id.,* at 1043.

[34] *Id.,* at 1041.

[35] *Id.*

[36] *Id.*

[37] *Id.*

1046 (9th Cir. 2007) (''That a state or local governmental entity may have policy goals that it seeks to further through its participation in the market does not preclude the doctrine's application, so long as the action in question is the state's own market participation.'') Like the fleet rules that were the subject of *EMA,* one purpose of the ICT regulation is to reduce air pollution, and ''efficient procurement'' must be viewed with an eye toward ''procurement that serves the state's purposes—which may include purposes other than saving money—just as private entities serve their purposes by taking into account factors other than price in their procurement decisions.'' [38] In the case of the ICT regulation, the purposes include more than just reducing air pollution, and include reducing energy consumption and leading zero-emissions technology in the heavy-duty vehicle sector.[39] *Engine Mfrs. Assn* v. *S. Coast Air Quality Mgmt. Dist.,* 498 F.3d 1031, 1046 (9th Cir. 2007) (''`Efficient' does not merely mean `cheap.' In context, `efficient procurement' means procurement that serves the state's purposes—which may include purposes other than saving money—just as private entities serve their purposes by taking into account factors other than price in their procurement decisions.'') In light of these state purposes, the ICT regulation's requirement for purchase of zero-emission buses, rather than diesel buses or CNG buses, can properly be characterized as ''efficient procurement'' of needed goods and services and thus is not preempted under CAA section 209(a) under the market participant doctrine.

Individual Member of the Public Comment #1: While generally supportive, the commenter remains concerned about whether the reduction in emissions from buses will increase costs to run the buses.

EPA response to Individual Member of the Public Comment #1: In developing the ICT regulation, CARB too was concerned about the potential for increased costs to transit agencies affecting transit service, and thus, included in the regulation a number of provisions intended to provide the transit agencies with flexibility in meeting the requirements of the regulation and reduce the potential for impacts to transit service. Among the built-in flexibilities are a phase-in schedule and exemptions that would be granted by CARB under certain specific circumstances. The exemptions are broadly available, and the criteria for granting them are clearly set forth in the regulatory text.

[38] *Id.,* at 1046.

[39] CARB, Public Hearing to Consider the Proposed Innovative Clean Transit Regulation, A Replacement of the Fleet Rule for Transit Agencies, Staff Report: Initial Statement of Reasons, Date of Release: August 7, 2018, pages II–1—II–6.

III. Final Action

Under section 110(k)(3) of the CAA, and for the reasons given above, we are taking final action to approve a SIP revision submitted by CARB on February 3, 2020 that includes certain sections of title 13 of the California Code of Regulations that comprise the Innovative Clean Transit regulation and that was supplemented by CARB on August 11, 2022 with certain definitions relied upon by the regulation. Tables 1 and 2 above list the regulations and related supplemental definitions we are approving in this action. We are approving the SIP revision because the regulation fulfills all relevant CAA requirements. This final action incorporates by reference the regulation and related supplemental definitions into the federally enforceable SIP for the State of California.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of one section of the California Health and Safety Code and certain sections of titles 13 and 17 of the California Code of Regulations described in the amendments to 40 CFR part 52 set forth below which pertain to the transition of California public transit bus fleets to zero-emission technologies by 2040. Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[40] The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and/or at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

[40] 62 FR 27968 (May 22, 1997).

V. 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. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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

In addition, the SIP is not approved to 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. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs

federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA notes that, in adopting the ICT regulation, the state found that it furthers state environmental justice goals by transitioning to clean transportation modes in low-income and disadvantaged communities and does not disproportionately impact people of any race, culture, or income.[41] We agree that, by transitioning to clean transportation modes in low-income and disadvantaged communities, the ICT regulation will serve to reduce adverse human health effects in all communities and thereby help to achieve environmental justice.

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. The EPA will submit a report containing this action 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 April 17, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 10, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. In § 52.220a, paragraph (c), Table 1 is amended by:

■ a. Adding an entry for ''39012'' after the heading ''Health and Safety Code'';

■ b. Adding a heading for ''Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 4 (Diesel Particulate Matter Control Measures)'' after the entry for ''1978''; and under the new heading, adding an entry for ''2020 (paragraph (b) (''Transit Agency''), only)'';

■ c. Adding a heading for ''Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 4.3 (Innovative Clean Transit)'' after the new entry for ''2020 (paragraph (b) (''Transit Agency''), only)'' and under the new heading, adding entries for ''2023'', ''2023.1'', ''2023.2'', ''2023.3'', ''2023.4'', ''2023.5'', ''2023.6'', ''2023.7'', ''2023.8'', ''2023.9'', ''2023.10'' and ''2023.11'';

■ d. Adding a heading for ''Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 4 (Criteria for the Evaluation of Motor Vehicle Pollution Control Devices and Fuel Additives), Article 1 (Fuel Additives and Prototype Emission Control Devices)'' after the entry for ''2194''; and under the new heading, adding an entry for ''2208 (paragraph (c)(18) (''Low-NO_X engine''), only)'';

■ e. Adding a heading for ''Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 1.5 (Air Basins and Air Quality Standards), Article 1 (Description of California Air Basins)'' after the entry for ''3394.6''; and under the new heading, adding entries for ''60100 (paragraph (e), only)'' and ''60113''; and

■ f. Adding a heading for ''Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 4 (Regulations to Achieve Greenhouse Gas Emission Reductions), Subarticle 7 (Low Carbon Fuel Standard)'' after the entry for ''94701''; and under the new heading, adding an entry for ''95481 (paragraphs (a)(20) (''Biomethane''), (a)(27) (''Compressed Natural Gas (CNG)''), and (a)(123) (''Renewable Hydrocarbon Diesel''), only)''.

The additions read as follows:

§ 52.220a Identification of plan—in part.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* *	* *	*	*	* *
39012	Air Basin	1/1/1976	[Insert **Federal Register** citation], 2/16/2023.	Definition of ''Air Basin'' is relied upon by CARB's Innovative Clean Transit regulation.

[41] CARB, Resolution 18–60, December 14, 2018, pages 8 and 9. Also, see CARB; Public Hearing to Consider the Proposed Innovative Clean Transit Regulation, a Replacement of the Fleet Rule for Public Agencies; Staff Report: Initial Statement of Reasons; Date of Release: August 7, 2018, chapter VII (''Environmental Justice'').

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* *	*	*	*	* *
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 4 (Diesel Particulate Matter Control Measures)				
2020 (paragraph (b) (''Transit Agency''), only).	Purpose and Definitions of Diesel Particulate Matter Control Measures.	1/2/2010	[Insert **Federal Register** citation], 2/16/2023.	The definition of ''Transit Agency'' is relied upon by CARB's Innovative Clean Transit regulation.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 4.3 (Innovative Clean Transit)				
2023	Innovative Clean Transit Regulations Applicability and Scope.	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.1	Zero-Emission Bus Requirements	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.2	Compliance Option for Joint Zero-Emission Bus Groups.	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.3	Zero-Emission Bus Bonus Credits	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.4	Provisions for Exemption of a Zero-Emission Bus Purchase.	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.5	Zero-Emission Mobility Option	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.6	Low-NO_X Engine Purchase Requirements.	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.7	Requirements to Use Renewable Fuels.	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.8	Reporting Requirements for Transit Agencies.	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.9	Record Keeping Requirements	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.10	Authority to Suspend, Revoke, or Modify.	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
2023.11	Severability	10/1/2019	[Insert **Federal Register** citation], 2/16/2023.	Submitted on February 13, 2020.
* *	*	*	*	* *
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 4 (Criteria for the Evaluation of Motor Vehicle Pollution Control Devices and Fuel Additives), Article 1 (Fuel Additives and Prototype Emission Control Devices)				
2208 (paragraph (c)(18) (''Low-NO_X engine''), only).	Purpose, Applicability, Definitions, and Reference Documents.	10/16/2017	[Insert **Federal Register** citation], 2/16/2023.	The definition of ''Low-NO_X engine'' is relied upon by CARB's Innovative Clean Transit regulation.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* *	*	*	*	* *
Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 1.5 (Air Basins and Air Quality Standards), Article 1 (Description of California Air Basins)				
60100 (paragraph (e), only)	North Coast Basin	7/5/1978	[Insert **Federal Register** citation], 2/16/2023.	Paragraph (e) of 17 CCR 60100 defines the Sonoma County portion of the North Coast Basin and is relied upon by CARB's Innovative Clean Transit regulation.
60113	Lake Tahoe Air Basin	1/30/1976	[Insert **Federal Register** citation], 2/16/2023.	The definition of ''Lake Tahoe Air Basin'' is relied upon by CARB's Innovative Clean Transit regulation.
* *	*	*	*	* *
Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 4 (Regulations to Achieve Greenhouse Gas Emission Reductions), Subarticle 7 (Low Carbon Fuel Standard)				
95481 (paragraphs (a)(20) (''Biomethane''), (a)(27) (''Compressed Natural Gas (CNG)''), and (a)(123) (''Renewable Hydrocarbon Diesel''), only).	Definitions and Acronyms	1/4/2019	[Insert **Federal Register** citation], 2/16/2023.	Certain definitions in 17 CCR 95481 are relied upon by CARB's Innovative Clean Transit regulation.
* *	*	*	*	* *

[1] Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

[FR Doc. 2023–03275 Filed 2–15–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 2

[FAC 2023–02; Item III; Docket No. FAR–2023–0052; Sequence No.1]

Federal Acquisition Regulation; Technical Amendments

Correction

In rule document 2023–02427, appearing on page 9739, in the issue of Tuesday, February 14, 2023, make the following correction:

On page 9739, in the first column, in the **DATES** section, ''February 14, 2023'' should read ''March 16, 2023''.

[FR Doc. C1–2023–02427 Filed 2–15–23; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220919–0193; RTID 0648–XC720]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Closure of the General Category January Through March Fishery for 2023

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the General category fishery for large medium and giant (*i.e.,* measuring 73 inches (185 centimeters) curved fork length or greater) Atlantic bluefin tuna (BFT) for the January through March subquota time period. This action applies to Atlantic Tunas General category (commercial) permitted vessels and highly migratory species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. Fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may tag-and-release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs. On June 1, 2023, the fishery will reopen automatically.

DATES: Effective 11:30 p.m., local time, February 14, 2023, through March 31, 2023.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, Ann Williamson, *ann.williamson@noaa.gov,* 301–427–8503, or Nicholas Velseboer, *nicholas.velseboer@noaa.gov,* 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT