

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or

adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, and Commandant Instruction M16475.ID which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. § 117.445 is revised to read as follows:

§ 117.445 Franklin Canal.

The draw of the Chatsworth Bridge, mile 4.8 at Franklin, shall open on signal from 5 a.m. to 9 p.m. if at least one hour notice is given. From October 1 through January 31 from 9 p.m. to 5 a.m., the draw shall be opened on signal if at least three hours notice is given. From February 1 through September 30 from 9 p.m. to 5 a.m., the draw shall open on signal if at least 12 hours notice is given.

Dated: August 4, 2009.

Mary E. Landry,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. E9-19825 Filed 8-18-09; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2009-0470; FRL-8946-3]

Approval and Promulgation of Air Quality Implementation Plans; California; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve state implementation plan revisions submitted by the State of California on June 5, 2009 relating to the State's basic and enhanced vehicle inspection and maintenance (I/M) program. EPA is also proposing to find, with two exceptions, that California's program meets the requirements of the Clean Air Act and EPA regulations for basic and enhanced I/M programs. EPA is making the proposed approval contingent upon California's submittal of revisions to the enhanced program performance standard evaluations to address a different attainment year for the Western Mojave Desert 8-hour ozone nonattainment area and to address California's base-year program performance. If the necessary information is not provided, then EPA is proposing a partial approval and partial disapproval of California's June 5, 2009 I/M submittal. Under these circumstances, EPA is proposing approval of all of the submittal, except for the enhanced I/M performance standard evaluations for which EPA is proposing disapproval. The effect of this action would be to make the revisions federally enforceable as part of the California state implementation plan.

DATES: Comments must be received on or before September 18, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2009-0470, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.
2. E-mail: buss.jeffrey@epa.gov.
3. Mail or deliver: Jeffrey Buss (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> portal is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disc or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, 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 either electronically in www.regulations.gov or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT:
Jeffrey Buss, EPA Region IX, (415) 947-4152, buss.jeffrey@epa.gov.

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

Table of Contents

- I. Background
- II. Summary of California Submittal
- III. EPA Review of the SIP Revision
 - A. SIP Procedural Requirements
 - B. Substantive I/M Requirements
 - C. Section 110(l) of the Act
- IV. Proposed Action and Public Comment
- V. Statutory and Executive Order Reviews

I. Background

The general purpose of motor vehicle inspection and maintenance ("I/M") programs is to reduce emissions from in-use motor vehicles in need of repairs and thereby contribute to state and local efforts to improve air quality and to attain the national ambient air quality standards (NAAQS).

California has operated an I/M program, also known as the "Smog Check" program, in certain areas of the state for over 20 years. Over these years, California has expanded both the geographical scope of the program and the types of vehicles covered by it. Under California law, the Bureau of Automotive Repair (BAR) is responsible for developing and implementing the State's I/M program. The California Air Resources Board (CARB) is designated under California law as the agency responsible for the preparation of the state implementation plan (SIP) required by the Clean Air Act (CAA or "Act"). The I/M program is one of the many elements of the California SIP.

The CAA, as amended in 1990, requires that certain urban areas adopt either "basic" or "enhanced" I/M programs, depending on the severity of their air quality problem and their population. CAA section 182(a)(2)(B) directs EPA to publish updated guidance for state I/M programs, taking into consideration the findings of EPA's audits and investigations of these programs. The Act further directs that each area required to have an I/M program incorporate this guidance into its SIP. Based on these CAA requirements, EPA promulgated I/M regulations on November 5, 1992 (57 FR 51950), as corrected at 58 FR 59366 (November 9, 1993) and at 59 FR 32343 (June 23, 1994). EPA's I/M regulations are codified at 40 CFR part 51, subpart S ("Inspection/Maintenance Program Requirements"), sections 51.350 through 51.373.

The I/M regulations establish minimum performance standards for "basic" and "enhanced" I/M programs as well as requirements for the following: Network type and program evaluation; adequate tools and resources; test frequency and convenience; vehicle coverage; test procedures and standards; test equipment; quality control; waivers and compliance via diagnostic inspection; motorist compliance enforcement program oversight; quality assurance; enforcement against contractors, stations and inspectors; data collection; data analysis and reporting; inspector training and licensing or certification; public information and consumer

protection; improving repair effectiveness; compliance with recall notices; on-road testing; SIP revisions; and implementation deadlines.

The performance standard for basic I/M programs remains the same as it has been since EPA's initial I/M policy was established in 1978, pursuant to the 1977 CAA amendments. The performance standard for enhanced I/M programs was established in 1992 pursuant to the 1990 CAA amendments and is based on a high-technology transient test, known as IM240, for 1986 and later model year vehicles, including a transient loaded exhaust short test incorporating hydrocarbons (HC), oxides of nitrogen (NO_x), and carbon monoxide (CO) cutpoints, an evaporative system integrity (pressure) test and an evaporative system performance (purge) test.

As a general matter, "basic" and "enhanced" I/M programs both achieve their objective by identifying vehicles that have high emissions as a result of one or more malfunctions, and requiring them to be repaired. An "enhanced" program covers more of the vehicles in operation, employs inspection methods which are better at finding high emitting vehicles, and has additional features to better assure that all vehicles are tested properly and effectively repaired.

Under subparts 2 and 3 of Part D, title I of the Act, as amended in 1990, any area having a 1980 Bureau of Census-defined (Census-defined) urbanized area population of 200,000 or more and either: (1) Designated nonattainment for ozone and classified as serious or worse or (2) designated as nonattainment for CO and classified as moderate with a design value greater than 12.7 parts per million ("ppm") or serious must implement enhanced I/M in the 1990 Census-defined urbanized area. CAA sections 182(c)(3), 182(d), 182(e), 187(a)(6) and 187(b)(1). The Act requires basic I/M programs to be implemented in 1990 Census-defined urbanized areas within moderate ozone nonattainment areas. CAA section 182(b)(4). Any area classified as marginal ozone nonattainment or moderate CO nonattainment with a design value of 12.7 ppm or less must continue operating I/M programs that were part of its approved SIP at the time of the 1990 Act Amendments or implement any previously required program, and must update the program to meet the basic I/M requirements set forth in 40 CFR part 51, subpart S. CAA sections 182(a)(2)(B) and 187(a)(4).

In response to the various ozone and CO nonattainment area designations established for California in the wake of the 1990 CAA Amendments, BAR made

significant changes to the California I/M program during the early 1990s, culminating in a complete I/M SIP submittal dated January 22, 1996.

On January 8, 1997, we approved the California I/M statutes and regulations submitted on January 22, 1996 as strengthening the SIP and contributing specific emission reductions toward the progress, attainment, and maintenance requirements of the Act. See 62 FR 1150, at 1168. We also approved the California I/M program, statutes and regulations submitted on January 22, 1996, as meeting the requirements of section 182(b)(4) of the Act for basic I/M in applicable areas of the State classified as moderate for ozone and as meeting the requirements of section 187(a)(4) for the following areas of the State classified as moderate for CO with design values less than 12.7 ppm: Fresno, Sacramento, Modesto, Chico, Stockton and San Diego.

We also granted interim approval, to last no more than 18 months, to the California I/M submittal of January 22, 1996, as meeting the requirements of section 182(c)(3) of the CAA for enhanced I/M in applicable areas of the State classified as serious and above for ozone, and the requirements of section 187(a)(6) of the Act for enhanced I/M in the South Coast, which was classified at the time as a "serious" nonattainment area for CO. By the end of the 18-month period, California was to complete and submit a demonstration that the emissions reductions claimed by California for the enhanced I/M program were appropriate. California did not submit such a demonstration and thus the interim approval for the enhanced I/M program as meeting the CAA requirements under section 182(c)(3) for ozone and section 187(a)(6) for CO expired on August 7, 1998. See 40 CFR 52.241. Since August 7, 1998, with respect to ozone,¹ the California SIP no longer meets the specific requirements of the Act relating to enhanced I/M, but the State's I/M statutes and regulations remain in the SIP. 62 FR at 1168.

As approved in 1997, the California I/M program is implemented on a county-by-county basis as: (1) A high enhanced biennial program; (2) a basic biennial program; or (3) a requirement only upon change of ownership. For

¹ For carbon monoxide, in a 2007 final action redesignating the South Coast to "attainment" for the carbon monoxide NAAQS, we approved California's demonstration that the State's I/M program meets the alternate "low" enhanced I/M performance standard in the South Coast under CAA section 187(a)(6) and 40 CFR 51.351(g). See 72 FR 26718 (May 11, 2007). In our 2007 redesignation rule, we indicated that the State's I/M program submittal of January 22, 1996 remains an approved part of the SIP. See 72 FR 26718, at 26719.

counties in California, the type of I/M program in effect varies depending upon air quality designations and whether the area is urbanized.

California's basic program is a decentralized test-and-repair program utilizing two-speed idle testing. California's enhanced program is a hybrid program consisting of a network of test-only testing stations as well as privately operated test-and-repair testing stations. Approximately 15 percent of the dirtiest vehicles, based upon high-emitter profile and remote sensing results as well as other factors, are targeted for test-only inspection. All vehicles in the enhanced areas are subject to loaded-mode testing. Licensing requirements for technicians are more stringent and the frequency of enforcement related activities such as on-road testing are greater in enhanced areas than in basic areas. The two programs are essentially the same in all other respects.

The approved California I/M program was intended to meet the requirements of EPA's original 1992 I/M regulations (as corrected in 1993 and 1994). EPA has subsequently revised the I/M regulations a number of times. The revisions include:

- Revision of I/M SIP requirements for certain areas subject to basic I/M that otherwise qualify for redesignation from nonattainment to attainment for the carbon monoxide or ozone NAAQS, allowing such areas to defer adoption and implementation of certain I/M requirements. See 60 FR 1735 (January 5, 1995);
- Establishment of an additional, less stringent enhanced I/M performance standard (known as the alternate "low" enhanced performance standard) for certain areas, revision of the "high" enhanced I/M performance standard to include additional inspection requirements for light-duty vehicles and light duty trucks, and revisions to waiver repair cost requirements. See 60 FR 48029 (September 18, 1995);
- Establishment of minimum requirements for inspecting vehicles equipped with on-board diagnostic systems as part of the inspections required in basic and enhanced I/M programs. See 61 FR 40940 (August 6, 1996), as amended at 61 FR 44119 (August 27, 1996); 63 FR 24429 (May 4, 1998); (April 5, 2001);
- Revisions to provide additional flexibility to state I/M programs by, among other things, modifying the enhanced I/M performance standard modeling requirements; providing states greater flexibility in how they meet the performance standard; and removing the I/M rule provision establishing the

decentralized, test-and-repair credit discount. See 65 FR 45526 (July 24, 2000);

- Revision and simplification of certain provisions related to onboard diagnostic (OBD) inspections including the failure criteria for the OBD-I/M check. See 66 FR 18156 (April 5, 2001); and

- Revision of the I/M regulation to update the submission and implementation deadlines and other timing-related requirements to more appropriately reflect the implementation schedule for meeting the 8-hour ozone NAAQS. See 67 FR 17705 (April 7, 2006).

A more detailed description of these revisions can be found in the technical support document (TSD) for this proposal.

The approved California I/M program was developed in response to nonattainment designations promulgated under the CAA, as amended in 1990, for the 1-hour ozone NAAQS (as well as for the CO NAAQS). On July 18, 1997, EPA promulgated an 8-hour ozone standard of 0.08 ppm to replace the 1-hour ozone standard.² In 2004, EPA designated all areas of the country for the 8-hour ozone NAAQS. See 69 FR 23858 (April 30, 2004) and 40 CFR part 81, subpart C. EPA revoked the 1-hour ozone NAAQS effective June 15, 2005. See 69 FR 23951 (April 30, 2004) and 40 CFR 50.9(b).

We promulgated in two phases the final rules to implement the 1997 8-hour ozone NAAQS. The Phase 1 rule, which was issued on April 30, 2004 (69 FR 23951), establishes, among other things, the classification structure and corresponding attainment deadlines, as well as the anti-backsliding principles for the transition from the 1-hour ozone standard to the 8-hour ozone standard. I/M programs are among the "applicable requirements" subject to the anti-backsliding principles, which means that I/M programs continue to apply in an eight-hour ozone nonattainment area after revocation of the 1-hour NAAQS to the extent that I/M programs were required in the area by virtue of the area's previous designation and classification for the 1-hour ozone NAAQS. See 40 CFR 51.905.

The Phase 2 rule, which was issued on November 29, 2005 (70 FR 71612), addresses the remaining SIP obligations for the 1997 8-hour ozone NAAQS,

² In 2008 we lowered the 8-hour ozone standard to 0.075 ppm. See 73 FR 16436 (March 27, 2008). The references to the 8-hour standard in this proposed rule are to the 1997 standard as codified at 40 CFR 50.10. EPA has not yet completed the designation and classification process for the 2008 standard.

including the requirements for vehicle I/M programs.

In section II of this document, we describe the major changes in California's I/M program relative to the existing SIP-approved I/M program. In section III of this document, we evaluate the changes in light of the revisions to our I/M regulations, the 8-hour ozone designations, and the anti-backsliding principles in EPA's Phase 1 rule.

II. Summary of the California Submittal

On June 5, 2009, CARB submitted the *Revised State Implementation Plan for California's Motor Vehicle Inspection & Maintenance Program* (release date April 7, 2009) ("2009 I/M Revision") as a revision to the California SIP. The June 5, 2009 submittal includes a copy of the 2009 I/M Revision itself plus 12 attachments; a letter dated July 16, 2007 from Sherry Mehl, BAR Chief, to Mary D. Nichols, CARB Chairman, committing BAR to work with CARB to obtain additional emissions reductions through changes to the I/M program as outlined in the State Strategy for the 2007 SIP; CARB Executive Order S-09-008 adopting the 2009 I/M Revision; public process documentation (including public comments); and tables listing the changes made to California's I/M statutes and BAR's I/M regulations from 1995 through 2008, accompanied by supporting procedural documentation for the regulatory changes.

Attachments to the 2009 I/M Revision include: Listing of Smog Check Programs Laws and Regulations; Map of Program Areas; List of Zip Codes by Program Area; Enhanced I/M Performance Modeling Files; Basic I/M Performance Modeling files; Fund Condition for Vehicle Inspection and Repair Fund (VIRF) and High Polluter Repair or Removal Account (HPRRA); Vehicle Model Years Subject to Smog Check; Estimate of the California Fleet Subject to Smog Check Program in 2008; the DMV Handbook of Vehicle Registration Procedures, Chapter 21; BAR-97 Revised Emission Inspection System Specifications (December 2002); Draft Smog Check Inspection Manual; and the Low Pressure Fuel Evaporative Tester (LPFET) Specification.

The 2009 I/M Revision reflects many changes to the program relative to the existing SIP I/M program. The most significant changes include:

- Many areas have opted into the enhanced I/M program. Such areas, referred to as "partially enhanced" areas, are subject to the same requirements as enhanced I/M areas except that no vehicles are directed to

have their biennial inspection performed at a test-only station;

- California has expanded the existing exemption for older vehicles from the biennial inspection requirement to include vehicles between model years 1966 through 1975 and has added a new exemption, with certain exceptions, for vehicles six or less model-years old;

- Since 1998, California has conducted random roadside pullover inspections in accordance with 40 CFR 51.351(b);

- Since 2002, California has inspected 1996 and later OBD-equipped vehicles in accordance with 40 CFR 51.351(c) and 40 CFR 51.352(c);

- California has replaced the BAR-90 specification for I/M emissions inspection systems with updated BAR-97 specifications; and

- Lastly, the I/M program has been revised to include improved quality control methods, data collection systems, and more stringent requirements for certified technicians and instructors who provide training/retraining to technicians.

III. EPA Review of the SIP Revision

A. SIP Procedural Requirements

CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

CARB's June 5, 2009 SIP revision submittal includes public process documentation for all of the specific changes in BAR regulations from 1995 through 2008. In addition, the SIP revision includes documentation of a duly noticed public hearing held by BAR on May 7, 2009 on the proposed 2009 I/M Revision. The following month, CARB adopted the 2009 I/M Revision as a revision to the California SIP and submitted it to EPA for action pursuant to CAA section 110(k) of the Act. We find that the process followed by BAR and CARB in adopting the 2009 I/M Revision complies with the procedural requirements for SIP revisions under CAA section 110 and EPA's implementing regulations.

B. Substantive I/M Requirements

EPA's requirements for basic and enhanced I/M programs are found in 40

CFR part 51, Subpart S. The SIP revision submitted by the State must be consistent with these requirements as well as meeting EPA's requirements for enforceability and section 110(l) requirements of the CAA. With the exception of our review of the 2009 I/M Revision under CAA section 110(l) (see section III.C. of this document), we are limiting the review of the I/M changes submitted as part of the 2009 I/M Revision to ozone because California no longer has any CO nonattainment areas.³ More details on our review of the 2009 I/M Revision and the substantive program element requirements in part 51, subpart S are provided in the TSD prepared for this proposed action.

1. Applicability

Under 40 CFR 51.350, states may be required to operate either an enhanced or basic I/M program in each of their ozone nonattainment areas, depending upon the population and nonattainment classification of that area. Any area designated and classified as serious or worse nonattainment for an ozone NAAQS, and having a 1980 Census-defined urbanized area population of 200,000 or more, must implement enhanced I/M in the 1990 Census-defined urbanized area. Any area classified moderate ozone nonattainment must implement basic I/M in any 1990 Census-defined urbanized area with a population of 200,000 or more. Any area classified as marginal ozone nonattainment must continue to operate I/M programs that were part of the SIP prior to the 1990 CAA Amendments and must update these programs to meet EPA's basic I/M requirements. Any marginal ozone nonattainment area that had been required to have an I/M program under the Act, as in effect before the 1990

³ To be redesignated from "nonattainment" to "attainment," an area must have an approved maintenance plan under CAA section 107(d)(3)(E) and must adopt as contingency measures all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area but that are subsequently repealed or relaxed. See CAA section 175A(d). For all 11 California CO "maintenance" areas, the California I/M program as approved by EPA in 1997, as modified for the South Coast through EPA approval of the South Coast CO redesignation request in 2007, constitutes the applicable measure in the SIP for the purposes of CAA section 175A(d). We are, however, not requiring California to adopt a commitment to reinstitute the 1997 SIP version of the I/M program as a contingency measure for the 11 California carbon monoxide "maintenance" areas based on our finding (in section III.C. of this document) that the net effect of the changes in the I/M program under the 2009 I/M Revision would be beneficial from an emissions reduction standpoint.

Amendments, must also implement a basic I/M program.

Under 40 CFR 51.350, I/M program areas must nominally cover at least the entire urbanized area, based on the 1990 census. Exclusion of some urban population is allowed, however, as long as an equal number of non-urban residents of the same metropolitan statistical area (MSA) are included in the program to compensate. I/M SIPs must describe the applicable areas in detail and, consistent with 40 CFR 51.372, must include the legal authority or rules necessary to establish program boundaries.

Applicability for the approved I/M SIP is set forth in California Health & Safety Code (H&SC) sections 44003 and 44004. Since development of the approved I/M SIP, circumstances have changed in several ways that might affect geographic applicability of the basic and/or enhanced I/M requirement. First, several areas of California have been reclassified to higher classifications for the 1-hour ozone standard, including Sacramento (serious to severe) and San Joaquin Valley (serious to severe to extreme). None of these reclassifications changed the I/M program requirement for the area since all such areas were already subject to the enhanced I/M requirement, and in any event, the H&SC statutory provisions cited above are drafted to automatically apply to ozone areas that are classified as serious or above. According to the 2009 I/M Revision, the state continues to implement enhanced I/M in the urbanized areas within the South Coast Air Basin, Sacramento Metro, San Joaquin Valley, Western Mojave Desert, Coachella Valley, and Ventura County.

Second, we redesignated a number of areas to "attainment" for the 1-hour ozone NAAQS. These include the Monterey Bay Area, San Diego County, and Santa Barbara County.⁴ The consequence of redesignation for the 1-hour ozone NAAQS prior to the effective date of designation under the 8-hour ozone NAAQS is that I/M is no longer an "applicable requirement" for the area for anti-backsliding purposes under our Phase 1 implementation rule for the 8-hour ozone NAAQS. For such areas that are designated as "unclassifiable/attainment" for the 8-hour ozone standard (Monterey Bay Area and Santa Barbara County), a state may request that I/M be shifted to contingency measures, consistent with

sections 110(l) and 193 of the Act, but cannot remove the obligation from the SIP entirely. See 40 CFR 51.905(a)(4). For such areas designated as nonattainment for the 8-hour ozone standard (San Diego County), the state must continue to implement I/M to the extent I/M is required under the existing SIP. See 40 CFR 51.905(a)(2). According to the 2009 SIP Revision, the state continues to implement basic I/M in Monterey Bay Area and Santa Barbara County and continues to operate enhanced I/M in the urbanized area within San Diego County.

Lastly, we have promulgated area designations and classifications for the 8-hour ozone NAAQS. In California, we maintained the same geographic boundaries for nonattainment areas under the 8-hour ozone standard as under the 1-hour ozone standard. For California nonattainment areas under the 1-hour ozone NAAQS, our classifications under the 8-hour ozone NAAQS are the same or lower than under the 1-hour ozone NAAQS and thus the I/M requirement that had applied by virtue of the 1-hour ozone classification remains applicable under anti-backsliding principles. We did, however, designate several California areas as "nonattainment" for the 8-hour ozone NAAQS that had not been so designated under the 1-hour standard or that had been redesignated to "attainment" prior to the 8-hour ozone designations. All of these new nonattainment areas have not yet been classified under subpart 2 of title I of the CAA (*i.e.*, as marginal, moderate, serious, etc.). EPA has issued a proposed rule seeking comment on our proposed reclassification of these nonattainment areas under subpart 2 (74 FR 2936, Jan. 16, 2009), but until we finalize this action, these new areas are not subject to I/M program requirements under the 8-hour NAAQS. These new areas include Amador County, Calaveras County, San Diego County, Mariposa County, Tuolumne County, Sutter Buttes, and Western Nevada County. Nonetheless, although it is not yet required to do so under the CAA, the state already implements basic I/M in Western Nevada County.

Two other 8-hour ozone designations of note include Imperial County (moderate) and the San Francisco Bay Area (marginal). With respect to the former, as a moderate ozone nonattainment area for the 8-hour ozone NAAQS, but a "section 185A" area under the 1-hour ozone NAAQS, basic I/M would be a new applicable requirement for Imperial County but for the population criterion. Based on its limited population, there is no I/M

requirement for Imperial County. With respect to the San Francisco Bay Area, as a "marginal" ozone area under the 8-hour ozone NAAQS and a "not classified" nonattainment area under the 1-hour ozone NAAQS, implementation of a basic I/M program is now a requirement because the area had been subject to the I/M requirement prior to the 1990 Clean Air Act Amendments. However, under H&SC 44003.5, which is cited in the 2009 I/M Revision, the State of California has already chosen to implement not just basic, but enhanced, I/M in the San Francisco Bay Area and thereby exceeds the requirements of the Act and EPA's regulations.

The 2009 I/M Revision includes an updated description of the applicability of the I/M program within the State of California along with updated maps and a list of each zip code, with the corresponding I/M program implemented therein. Upon review of these materials against the requirements under the Act and EPA's regulations, we find that California continues to apply the appropriate type of I/M in the appropriate urbanized areas and has chosen to extend I/M into many other areas where it is not expressly required, to meet broader air quality attainment goals. Thus, we propose to find that the state's I/M program, as revised by the 2009 I/M Revision, continues to meet the requirements of 40 CFR 51.350.

2. High Enhanced I/M Performance Standard

Under 40 CFR 51.351(f), enhanced I/M programs must be designed and implemented to meet or exceed a minimum performance standard. This performance standard is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of a specified model I/M program design. The emission levels achieved by the state's program design must be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model and must meet or exceed the emission reductions achieved by the performance standard program both in operation and for SIP approval. For subject ozone nonattainment areas, the performance standard must be met for both NO_x and VOC unless a NO_x waiver has been approved for the area. Enhanced I/M program areas must be shown to obtain the same or lower emission levels as the model program described in section 51.351(f) by January 1, 2002 and must demonstrate through modeling the ability to maintain this level of emission

⁴ We also redesignated "East Kern County" as "attainment" for the 1-hour ozone NAAQS effective June 21, 2004, several days after the effective date for our 8-hour ozone designations (June 15, 2004), and thus too late for anti-backsliding purposes.

reduction (or better) through their attainment deadline for the applicable NAAQS. See 40 CFR 51.351(f)(13).

The 2009 I/M Revision includes high enhanced I/M performance standard evaluations for the urbanized areas within eight ozone nonattainment areas: the South Coast Air Basin, San Joaquin Valley, Sacramento Metro, Coachella Valley, Ventura County, Western Mojave Desert, San Diego County, and the San Francisco Bay Area. See main body of 2009 I/M Revision, pages 2 through 12, and attachment 4 (“Enhanced I/M Performance Modeling Files”). The latter two areas, San Diego County and the San Francisco Bay Area, are not subject to the enhanced I/M performance standard requirement under the Act or EPA’s regulations, and thus, we have not reviewed the submitted performance evaluations for these areas for compliance with 40 CFR 51.351(f) in this action.

For the six California areas subject to the high enhanced I/M requirement, the 2009 I/M Revision presents a comparison of the percent emissions reduction achieved under the EPA model enhanced I/M program (relative to the no I/M scenario) in 2002 for VOC and NO_x with the corresponding percent emissions reduction achieved under the California enhanced I/M program in the year before the attainment year. For South Coast Air Basin and San Joaquin Valley, the “year before the attainment year” corresponds to year 2023 based on the state’s previous requests to reclassify these two areas to “extreme” for the 8-hour ozone NAAQS. Also based on the state’s previous reclassification requests, the “year before the attainment year” for Western Mojave Desert, Sacramento Metro, Coachella Valley, and Ventura County corresponds to 2020 (severe 17), 2018 (severe 15), 2018 (severe 15), and 2012 (serious), respectively.⁵ As shown in the summary tables on pages 4 through 12, the 2009 I/M Revision shows that the California enhanced I/M program would achieve greater percent emissions reductions (relative to the no I/M scenario) for VOC and NO_x in each of the six areas in the year before the attainment year than the corresponding percent emissions reductions under the EPA model enhanced I/M program in 2002.

⁵ Through a SIP submittal dated November 16, 2007, CARB requested reclassification of San Joaquin Valley to “extreme.” Through a SIP submittal dated November 28, 2007, CARB requested reclassification of South Coast Air Basin and Coachella Valley to “extreme” and “severe-15,” respectively. By letter dated February 14, 2008, CARB requested reclassification of Ventura County (to “serious”), Sacramento Metro (to “severe-15”), and Western Mojave Desert (to “severe-17”).

With two exceptions discussed below, we find the high enhanced I/M performance standard evaluations in the 2009 I/M Revision to be acceptable. This conclusion is based on a review of the modeling files for each of these areas and our conclusion that the state’s reliance on its reclassification requests to identify the horizon years for the performance standard evaluations is appropriate given that EPA is required to grant such requests under CAA section 181(b)(3). However, a base year modeling run is also required for the six subject areas under the California enhanced I/M program to allow for a more definitive conclusion that the California enhanced I/M program obtained the same or lower emission levels as the EPA model program by January 1, 2002, and that the California program will maintain this level of emission reduction (or better) through the applicable 8-hour ozone attainment deadlines. With only a horizon year modeling run, a conclusion to this effect can be inferred but is not definitive.

In addition, EPA interprets CAA section 181(b)(3) as disallowing state requests to reclassify ozone nonattainment areas to “severe-17,” which is the basis for the state’s choice of 2020 as the horizon year for performance modeling for Western Mojave Desert. As such, the state must select a more appropriate horizon year for this area, such as 2009 (based on its current classification as “moderate” for the 8-hour ozone NAAQS) or some other horizon year pending a revised reclassification request for Western Mojave Desert.

Thus, we are making our proposed approval of the 2009 I/M Revision as meeting the enhanced I/M program requirement contingent upon receipt of: (1) base year performance modeling runs for the six subject areas under the California enhanced I/M program, and (2) a revised enhanced I/M performance standard evaluation using an appropriate attainment year for the Western Mojave Desert area. Preliminary modeling analyses of the enhanced program in the South Coast Air Basin in year 2002 indicate that California’s program achieved emission reductions equivalent to EPA’s model program by January 1, 2002. See the TSD for more information. Given this, we expect the modeling evaluations for other nonattainment areas subject to the enhanced program will also demonstrate equivalence with the model program in year 2002.⁶ We also

⁶ We note that CARB’s enhanced I/M modeling evaluations indicate California’s enhanced program will achieve emission reductions generally

expect that a revised modeling evaluation for the Western Mojave Desert area based on an appropriate attainment year will demonstrate compliance with EPA’s enhanced I/M performance standard in that area, given the emission reductions demonstrated in CARB’s submittal.⁷ We propose to fully approve the 2009 I/M Revision if we receive the required data to support these conclusions. If, however, the required modeling data is not provided, we plan to take final action approving all of the 2009 I/M Revision except for the enhanced I/M performance evaluation, as SIP strengthening, and disapproving the submitted enhanced I/M performance evaluation as failing to meet the requirements of section 182(c)(3) of the Act and 40 CFR 51.351(f). We will notify the public of any additional information that is provided to address these issues.

3. Basic I/M Performance Standard

Under 40 CFR 51.352, basic I/M programs must be designed and implemented to meet or exceed a minimum performance standard. The nature of the performance standard evaluation for basic I/M is similar to that described above for enhanced I/M, except that the model program for basic I/M is less stringent in many ways relative to the model program for enhanced I/M.

The 2009 I/M Revision includes basic I/M performance standard evaluations for seven ozone nonattainment areas: East Kern County, Sutter Buttes (Sutter County), Western Nevada County and Chico (Butte County), and the non-urbanized portions of San Joaquin Valley, San Diego County and Western Mojave Desert. See the main body of the 2009 I/M Revision beginning on page 13 through page 21, and attachment 5 (“Basic I/M Performance Modeling Files”). None of these areas is subject to the basic I/M performance standard requirement under the Act or EPA’s regulations, and thus we have not reviewed the submitted performance evaluations for compliance with 40 CFR 51.352 in this action.

As noted above under section III.B.2 of this document, however, the San

exceeding the EPA performance standards by 3% to 10% for VOCs and by 5% to 22% for NO_x, in the horizon year for each area. See main body of 2009 I/M Revision, pp. 4–12, and attachment 4 (“Enhanced I/M Performance Modeling Files”).

⁷ CARB’s modeling evaluation for the Western Mojave Desert area demonstrates that by year 2020, California’s enhanced I/M program will achieve emissions reductions exceeding the EPA performance standards by at least 5% for VOCs and 17% for NO_x. See main body of 2009 I/M Revision, pg. 10, and attachment 4 (“Enhanced I/M Performance Modeling Files”).

Francisco Bay Area is subject to the "basic" I/M requirement by virtue of its classification as "marginal" for the 8-hour ozone NAAQS and the fact that the area had been subject to the I/M requirement prior to the 1990 Clean Air Act Amendments. The 2009 I/M Revision presents an enhanced I/M performance evaluation for the San Francisco Bay Area that shows the California enhanced I/M program achieves the same or better percent emissions reductions in year 2006 as compared to the Federal model enhanced I/M program in 2002. In contrast, under 40 CFR 51.352(e), the comparison should be a direct comparison of the California I/M program in the San Francisco Bay Area versus the Federal model basic I/M program in year 2010 (*i.e.*, six years after designation). Nonetheless, the showing in the 2009 I/M Revision that California's I/M program, as implemented in the San Francisco Bay Area, essentially meets the EPA enhanced I/M model program provides sufficient demonstration that California's I/M program, as implemented in the San Francisco Bay Area, at the very least meets the EPA basic I/M model and thus meets the basic I/M performance evaluation requirements of 40 CFR 51.352(e).

4. Vehicle Coverage

Under 40 CFR 51.356, the performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds gross vehicle weight rating (GVWR), and includes vehicles operating on all fuel types. The standard for basic I/M programs does not include light duty trucks. Under EPA's regulations, other levels of coverage may be approved if the necessary emission reductions are achieved.

The existing I/M SIP exempts certain vehicle types from biennial I/M inspection requirements, including pre-1966 model-year vehicles, diesel-powered vehicles, electric vehicles, and motorcycles. The 2009 I/M Revision amends these provisions to also exempt 1966 through 1975 model-year vehicles and vehicles six or less model-years old from biennial inspection requirements, and to exempt transfers of vehicles four or less model-years old from change-of-ownership inspection requirements. However, as described in sections III.B.2 and III.B.3 above, we have concluded that the State has demonstrated that it meets the performance standards for both the federal enhanced and basic I/M programs, contingent upon receipt of revisions to the enhanced

performance standard evaluation to provide base year modeling runs and to use an appropriate attainment year for Western Mojave Desert. Thus, the increase in the types of exempt vehicles is acceptable under 40 CFR 51.356.

5. Test Procedures, Standards, and Equipment

Under 40 CFR 51.357, I/M programs must establish and implement written test procedures and pass/fail standards for each model year and vehicle type. Under 40 CFR 51.358, official emissions tests must be performed using computerized emissions test systems that are certified by the program and updated from time to time to accommodate new technology vehicles and program changes.

The existing I/M SIP requires loaded testing for vehicle inspections in enhanced areas and use of the BAR-90 two-speed idle test in basic areas. The 2009 I/M Revision updates the test procedures and standards in several ways, including: (1) To require use of the BAR-97 Emission Inspection System (EIS) Specifications in all program areas; (2) to require all vehicles subject to the program to undergo a low-pressure test of the fuel evaporative control system as part of the Smog Check inspection, unless specifically exempt; (3) to require all vehicles subject to the program to undergo a visible smoke test; and (4) to require that all vehicle inspections include a functional test of emission controls, including, for 1996 and newer model year light-duty vehicles, a test of on-board diagnostic (OBD) equipment. Each testing station must have a BAR-certified emissions inspection system that meets the specifications in the BAR-97 EIS Specifications.⁸

In addition, the 2009 I/M Revision requires that all required emission inspection systems used in the Smog Check program be connected to the internet in order to transmit required program information to BAR. Any emission inspection systems that BAR finds do not comply with the hardware and software requirements and specifications in the regulations will be disconnected from BAR's central computer database and network, and thereby prohibited from being used to perform smog checks and to transmit certificates of compliance to the Department of Motor Vehicles, until they are brought into compliance. These revisions strengthen the SIP program

⁸ All test stations are subject to this requirement, except that the hardware and the software necessary to conduct dynamometer based, loaded-mode emissions are required only in enhanced areas.

and satisfy the requirements for test procedures, standards, and equipment in 40 CFR 51.357 and 51.358.

C. Section 110(l) of the Act

Section 110(l) of the CAA states that a SIP revision cannot be approved if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. CARB's June 5, 2009 SIP submittal did not include a section 110(l) analysis for the 2009

I/M Revision. However, we can reasonably conclude, as discussed below, that the net effect of the revised I/M program would be greater emissions reductions under the California I/M program as revised through the 2009 I/M Revision than under the existing California I/M SIP, as approved in 1997.

To arrive at this conclusion, we identified the following I/M program changes that would be the most likely to result in emissions changes:

(1) Expansion of the older vehicle exemption to include 1966 through 1975 model year vehicles; (2) the addition of an exemption for newer vehicles (six or less model-years old); (3) the expansion of areas within the South Coast Air Basin, Sacramento Metro area, San Diego County, San Joaquin Valley, Western Mojave Desert, Coachella Valley, Ventura County, and San Francisco Bay Area subject to enhanced or partially enhanced I/M as opposed to basic I/M; and (4) implementation of OBD systems checks. For these areas, the emissions changes under the revised California I/M program result from a program that would require inspections of slightly fewer vehicles but increase the stringency of the I/M requirements for those vehicles subject to the program.

To qualitatively assess the net effect of these changes, we first note that the new or expanded exemptions under the revised I/M program would relate to a very small fraction of the vehicle fleet (*i.e.*, those from model years 1966 through 1975) or would relate to the cleanest portion of the vehicle fleet (those vehicles six or less model-years old) that is least likely to fail an inspection. Thus, we expect the new or expanded exemptions to have a minimal emissions effect. On the other hand, we note that California has expanded the geographic scope of the enhanced or partially enhanced program in each ozone nonattainment area subject to I/M requirements under the CAA. In addition, based on the enhanced and basic performance standard evaluations included as part of the 2009 I/M Revision, we note that significantly

greater emissions reductions are expected under enhanced or partially enhanced I/M requirements relative to those under basic I/M requirements. For instance, California enhanced I/M in San Joaquin Valley is estimated to provide 24 to 27 percent reduction in ozone precursors relative to the “no I/M” scenario, whereas California basic I/M in San Joaquin Valley is estimated to provide only 3 to 17 percent reduction in ozone precursors also relative to the “no I/M” scenario. See pages 5 and 15 of main body of 2009 I/M Revision. Finally, we note that the addition of OBD testing requirements⁹ for all 1996 and newer model-year vehicles and the improvements to California’s quality control methods, data collection systems, and technician training requirements adequately offset the potential emissions impacts of the revised vehicle exemptions in all program areas, including those nonattainment areas that are subject to California’s basic I/M program under the existing SIP and 2009 I/M Revision and do not benefit from the more stringent requirements of the enhanced or partially enhanced I/M program.

In all then, given the minimal emissions increase associated with the new or expanded exemptions and the relatively significant emissions decrease associated with the greater geographic applicability of enhanced or partially enhanced I/M in each area subject to CAA I/M requirements, in addition to California’s OBD testing requirements and improvements in program implementation and enforcement mechanisms in all program areas, we fully expect the net effect of approval of the 2009 I/M Revision to be beneficial from an emissions reduction standpoint in all California ozone nonattainment areas. Therefore, we propose to find that the 2009 I/M Revision would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act.

IV. Proposed Action and Public Comment

Under section 110(k) of the Clean Air Act, EPA is proposing to approve CARB’s June 5, 2009 submittal of a revision to the California I/M program as a revision to the California SIP. Our proposed approval for one area, Western Mojave Desert, is contingent upon California’s submittal of a revised evaluation of the enhanced program

performance standard for the area based on an appropriate attainment year. In addition, our proposed approval of the enhanced I/M program is contingent upon our receipt of base year performance modeling evaluations for the six areas subject to enhanced I/M that demonstrate compliance with the federal performance standard in 2002. (We will notify the public of any additional information that is provided to address these issues.) With these exceptions, EPA finds that the State’s submittal meets all applicable requirements of the CAA and EPA’s regulations. The updated elements of the California I/M program that we propose to approve include the following:

- (1) Discussion of each of the required design elements of the I/M program;
- (2) Description of the current geographic coverage of the program, including updated maps and list of program requirements by zip code;
- (3) I/M-related statutes and regulations;
- (4) Enhanced I/M performance standard evaluations for the urbanized areas within six California ozone nonattainment areas as meeting the requirements of CAA section 182(c)(3);
- (5) Basic I/M performance standard evaluation for the urbanized area within the San Francisco Bay Area ozone nonattainment area under 182(a)(2)(B); and
- (6) Emission analyzer specifications and test procedures, including BAR–97 specifications.

If the necessary enhanced I/M performance standard documentation for the six areas subject to enhanced I/M is not provided, then EPA proposes a partial approval and partial disapproval of the State’s 2009 I/M Revision as authorized under section 110(k)(3) of the Act. Under these circumstances, EPA is proposing approval of all portions of the 2009 I/M Revision, except for the enhanced I/M performance evaluations for the six subject areas, as improving the SIP, and is proposing disapproval of the enhanced I/M performance evaluations as failing to meet the requirements of section 182(c)(3) of the Act and 40 CFR 51.351(f). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the deficiencies within 18 months of the disapproval. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the two-year clock for the Federal implementation plan (FIP) requirement under section 110(c).

EPA is soliciting public comments on this document and on issues relevant to EPA’s proposed action. We will accept comments from the public on this proposal until the date noted in the **DATES** section above.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 Clean Air Act; 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).

⁹OBD system tests are generally expected to achieve air quality benefits compared to tailpipe emissions tests through accurate diagnosis and early detection of needed vehicle repairs. See <http://www.epa.gov/obd/>.

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

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

Dated: July 31, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9-19858 Filed 8-18-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2009-0024; FRL-8943-7]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan. These revisions concern a local fee rule that applies to major sources of volatile organic compound and nitrogen oxide emissions within the San Joaquin Valley ozone nonattainment area. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by *September 18, 2009.*

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2009-0024, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.
2. E-mail: steckel.andrew@epa.gov.
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection

Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947-4124, wang.mae@epa.gov.

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

Table of Contents

- I. The State's Submittal
 - A. What Rule did the State Submit?
 - B. What Is the Purpose of the Submitted Rule?
 - C. Why Was This Rule Submitted?
- II. EPA's Evaluation and Action
 - A. How Is EPA Evaluating the Rule?
 - B. Does the Rule Meet the Evaluation Criteria?
 - C. What Are the Rule Deficiencies?
 - D. Proposed Action and Public Comment
- III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What Rule Did the State Submit?

The San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) adopted Rule 3170, Federally Mandated Ozone Nonattainment Fee, on May 16,

2002. This rule was submitted by the California Air Resources Board (CARB) on August 6, 2002, for incorporation into the California State Implementation Plan (SIP). On August 30, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51, Appendix V.

B. What Is the Purpose of the Submitted Rule?

SJVUAPCD Rule 3170 requires certain major stationary sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) in the San Joaquin Valley ozone nonattainment area to pay a fee to the SJVUAPCD if the area fails to attain the 1-hour national ambient air quality standard (NAAQS) for ozone by its Federally established attainment date. The fee must be paid for each calendar year after the attainment year until the area is redesignated to attainment of the 1-hour ozone standard.

C. Why Was This Rule Submitted?

Under sections 182(d)(3), (e), and 185 of the Clean Air Act as amended in 1990 (CAA or the Act), States are required to adopt an excess emissions fee regulation for ozone nonattainment areas classified as severe or extreme. The 1-hour ozone NAAQS classification for the San Joaquin Valley area is extreme (*see* 69 FR 20550, April 16, 2004). Although EPA has revoked the 1-hour ozone NAAQS (69 FR 23951, April 30, 2004), Section 185 requirements still apply for 1-hour ozone non-attainment areas (*South Coast Air Quality Management District v. EPA*, 472 F.3d 882, DC Cir. 2006). The fee regulation specified by the Act requires major stationary sources of VOCs in the nonattainment area to pay a fee to the State if the area fails to attain the standard by the attainment date set forth in the Act. Section 182(f) of the Act requires States to apply the same requirements to major stationary sources of NO_x as are applied to major stationary sources of VOCs. Emissions of VOCs and NO_x play a role in producing ground-level ozone and smog, which harm human health and the environment. SJVUAPCD Rule 3170 applies to major sources of both NO_x and VOCs.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), and must not relax existing requirements (*see* sections 110(l) and 193). Rule 3170 was evaluated for compliance with the requirements in CAA section 185. The rule was also