proposed rulemaking. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to withdraw previous approvals of certain SIP revisions, and proposes disapproval of the same, and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: August 30, 2012.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2012–22973 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0721; FRL–9727–5]

Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision; South Coast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In response to a remand by the Ninth Circuit Court of Appeals, and pursuant to the Clean Air Act, EPA is proposing to find that the California State Implementation Plan (SIP) for the Los Angeles-South Coast Air Basin (South Coast) is substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the 1-hour ozone standard. If EPA finalizes this proposed finding of substantial inadequacy, California would be required to revise its SIP to correct these deficiencies within 12 months of the effective date of our final rule. If EPA finds that California has failed to submit a complete SIP revision as required by a final rule or if EPA disapproves such a revision, such finding or disapproval would trigger clocks for mandatory sanctions and an obligation for EPA to impose a Federal Implementation Plan. EPA is also proposing that if EPA makes such a finding or disapproval, sanctions would apply consistent with our regulations, such that the offset sanction would apply 18 months after such finding or disapproval and highway funding restrictions would apply six months later unless EPA first takes action to stay the imposition of the sanctions or to stop the sanctions clock based on the State curing the SIP deficiencies.

DATES: Written comments must be received on or before October 19, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0721, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: tax.wienke@epa.gov.*
- *Mail or deliver:* Wienke Tax, Air Planning Office, U.S. Environmental Protection Agency, Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 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 information claimed to be 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 email. The *http://www.regulations.gov* Web site 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 an email comment directly to EPA, your email 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 on the *http://www.regulations.gov* Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. 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 at 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 below.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office, U.S. Environmental Protection Agency, Region 9, Mail Code AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901, 415–947–4192, *tax.wienke@epa.gov.*

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

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I. Background

A. Regulatory Context

The Clean Air Act (CAA or Act) requires EPA to establish national ambient air quality standards (NAAQS or ''standards'') for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (see sections 108 and 109 of the CAA).

In 1979, under section 109 of the CAA, EPA established a primary health-based NAAQS for ozone [1] at 0.12 parts per million (ppm) averaged over a 1-hour period. See 44 FR 8202 (February 8, 1979). The Act, as amended in 1990, required EPA to designate as nonattainment any area that had been designated as nonattainment before the 1990 Amendments [section 107(d)(1)(C) of the Act; 56 FR 56694; (November 6, 1991)]. The Act further classified these areas, based on the severity of their

[1] Ground-level ozone or smog is formed when oxides of nitrogen (NO_X), volatile organic compounds (VOC), and oxygen react in the presence of sunlight, generally at elevated temperatures. Strategies for reducing smog typically require reductions in both VOC and NO_X emissions. Ozone causes serious health problems by damaging lung tissue and sensitizing the lungs to other irritants. When inhaled, even at very low levels, ozone can cause acute respiratory problems, aggravate asthma, temporary decreases in lung capacity of 15 to 20 percent in healthy adults, inflammation of lung tissue, lead to hospital admissions and emergency room visits, and impair the body's immune system defenses, making people more susceptible to respiratory illnesses, including bronchitis and pneumonia.

nonattainment problem, as Marginal, Moderate, Serious, Severe, or Extreme.

The control requirements and date by which attainment of the 1-hour ozone standard was to be achieved varied with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993, while Extreme areas were subject to the most stringent planning requirements and were provided the most time to attain the standard, until November 15, 2010. The various ozone planning requirements to which Extreme ozone nonattainment areas are subject are set forth in section 172(c) and section 182(a)–(e) of the CAA.

In 1997, EPA replaced the 1-hour ozone standard with an 8-hour ozone standard of 0.08 ppm. See 62 FR 38856 (July 18, 1997).[2] We promulgated final rules to implement the 1997 8-hour ozone standard in two phases. 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. For an area that was designated nonattainment for the 1-hour ozone standard at the time EPA designated it as nonattainment for the 1997 8-hour ozone standard as part of the initial 8-hour ozone designations, most of the requirements that had applied by virtue of the area's classification for the 1-hour ozone standard continue to apply even after revocation of the 1-hour ozone standard (which occurred in June 2005 for most areas). See 40 CFR 51.905(a)(1) and 40 CFR 51.900(f). Thus, for example, an area that was designated nonattainment and classified as Extreme for the 1-hour ozone standard at the time of an initial designation of nonattainment for the 1997 8-hour standard remains subject to the requirement to have a fully-approved attainment demonstration meeting Extreme area requirements for the 1-hour ozone standard or an alternative as provided under 40 CFR 51.905(a)(1)(ii). See 40 CFR 51.905(a)(1) and 40 CFR 51.900(f)(13).

The Phase 2 rule, which was issued on November 29, 2005 (70 FR 71612), addresses the SIP obligations for the 1997 8-hour ozone standard. Under the Phase 2 rule, an area that is designated as nonattainment for the 1997 8-hour ozone standard, and classified under subpart 2 (of part D of title I of the CAA), is subject to the requirements of subpart 2 that apply for that classification. See 40 CFR 51.902(a).

B. South Coast Ozone Designations and Classifications and Related SIP Revisions

As noted above, the CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard. The CAA also required EPA to classify nonattainment areas as Marginal, Moderate, Serious, Severe, or Extreme depending upon the design value of the area. On November 6, 1991, EPA designated the Los Angeles-South Coast Air Basin Area (''South Coast'')[3] as nonattainment and classified it as Extreme for the 1-hour ozone standard; thus the area had an attainment date no later than November 15, 2010 (56 FR 56694).

The California Air Resources Board (CARB) has submitted a number of SIP revisions over the years for the South Coast to address 1-hour ozone SIP planning requirements. Specifically, in 1994, CARB submitted a 1-hour ozone SIP that, among other things, included for the South Coast an attainment demonstration, a ''rate of progress'' (ROP) demonstration, and transportation control measures (TCMs). In 1997, EPA approved the 1994 South Coast Ozone SIP as it applied to the South Coast for the 1-hour standard. See 62 FR 1150 (January 8, 1997).

In 1997 and 1999, CARB submitted revisions to the 1994 South Coast 1-Hour Ozone SIP, including a revised ROP demonstration and a revised attainment demonstration (''1997/1999 South Coast 1-Hour Ozone SIP''), which EPA approved in 2000. See 65 FR 18903 (April 10, 2000). In 2004, CARB submitted revisions to the 1997/1999 South Coast 1-Hour Ozone SIP (''2003 South Coast 1-Hour Ozone SIP'') intended to update and replace the State's control measure commitments in the 1997/1999 South Coast 1-Hour Ozone SIP. See 73 FR 63408, 63410 (October 24, 2008). The revised attainment demonstration submitted as part of the 2003 South Coast 1-Hour Ozone SIP included updated emissions inventories showing higher mobile source emissions than the State had previously projected and updated modeling that indicated a lower ''carrying capacity'' in the South Coast air basin, as well as additional commitments by CARB to achieve specified amounts of VOC and NO_X emission reductions needed for attainment by the applicable attainment date (November 15, 2010) in light of these updated analyses. *Id.* at 73 FR 63410, 63416 (October 24, 2009). In 2008, however, CARB withdrew key components of the emission reduction commitments in the 2003 South Coast 1-Hour Ozone SIP. See 73 FR at 63410–12 (citing letter from James Goldstene, Executive Officer, CARB, dated February 13, 2008).

In 2009, EPA approved certain elements of the 2003 South Coast 1-Hour Ozone SIP[4] but disapproved the revised ROP demonstrations and attainment demonstration in the 2003 South Coast 1-Hour Ozone SIP, in large part because CARB's 2008 withdrawal of key components of the emission reduction commitments submitted in 2004 rendered the plan insufficient to demonstrate attainment and to meet ROP milestones. 74 FR 10176, 10181 (March 10, 2009). More specifically as to the attainment demonstration, EPA concluded that the 2003 South Coast 1-Hour Ozone SIP did not meet the CAA section 182(c)(2)(A) requirement for a demonstration of attainment of the 1-hour ozone NAAQS by the applicable attainment date because the modeled attainment demonstration ''relies upon emission reductions from [CARB's] control strategy as set forth in the 2003 State Strategy, most of which was withdrawn by [CARB] on February 13, 2008.'' 73 FR 63408, 63416; (October 24, 2008). EPA also concluded that the disapproval of the attainment demonstration did not trigger sanctions clocks or a Federal implementation plan (FIP) obligation because the approved SIP already contained an approved 1-hour ozone attainment demonstration meeting CAA requirements. See 74 FR at 10177, 10181.

With respect to the 1997 8-hour ozone standard, EPA initially designated the South Coast as nonattainment and classified it as ''Severe-17,'' but later approved a request by California to reclassify the area to ''Extreme.'' See 69 FR 23858 (April 30, 2004) and 75 FR 24409 (May 5, 2010). In 2007, CARB

[2] In 2008, EPA tightened the 8-hour ozone NAAQS to 0.075 ppm, see 73 FR 16436 (March 27, 2008). Today's proposed action relates only to SIP requirements arising from the classifications and designations of the South Coast with respect to the 1-hour ozone and 1997 8-hour ozone standards.

[3] The South Coast includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County (see 40 CFR 81.305).

[4] Among the elements EPA approved in 2009 were control measures adopted by the California Air Resources Board, including a control measure, referred to as ''PEST–1'' that carried forward the existing Pesticide Element from the 1994 California 1-Hour Ozone SIP that EPA approved in 1997, and a demonstration submitted by the South Coast Air Quality Management District addressing the first element of CAA section 182(d)(1)(A), referred to herein as the ''VMT emissions offset demonstration.''

submitted a SIP revision to address the Extreme 8-hour ozone SIP planning requirements for the South Coast (''2007 South Coast 8-hour Ozone SIP''), which EPA fully approved in March 2012. See 77 FR 12674 (March 1, 2012).

C. Litigation on EPA's 2009 Final Action on the South Coast 2003 1-Hour Ozone SIP

On May 8, 2009, several environmental and community groups filed a petition for review in the U.S. Court of Appeals for the Ninth Circuit challenging EPA's March 2009 partial approval and partial disapproval of the 2003 South Coast 1-Hour Ozone SIP. *Association of Irritated Residents et al.* v. *EPA,* Case Nos. 09–71383 and 09–71404. The case centered on three main issues: (1) The consequences of EPA's final disapproval of the attainment demonstration; (2) the necessity for substantive review of the previously-approved 1994 Pesticide Element brought forward in the 2003 State Strategy; and (3) EPA's interpretation of CAA section 182(d)(1)(A), which requires SIPs for ''Severe'' or ''Extreme'' ozone nonattainment areas to include specific transportation control strategies and transportation control measures (TCMs) to offset any growth in emissions from growth in vehicle miles traveled (''VMT emissions offset requirement''), and EPA's approval of the State's demonstration of compliance with this SIP requirement.[5]

On February 2, 2011, the Ninth Circuit ruled in favor of the petitioners on all three issues and remanded EPA's 2009 final action on the 2003 South Coast 1-Hour Ozone SIP. *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011). In so doing, the court held that EPA must promulgate a FIP under CAA section 110(c) or issue a SIP call where EPA disapproves a new attainment demonstration unless the Agency determines that the SIP as approved remains sufficient to demonstrate attainment of the NAAQS. Specifically, the court rejected EPA's argument that there is no FIP duty where the EPA had already approved into the SIP the required plan element and the submission disapproved was voluntarily submitted by the State to replace the existing approved SIP element. The court briefly referenced its analysis of the FIP provisions to conclude that the disapproval also triggered mandatory sanctions. *Id.* at 591–594.

As to the 1994 Pesticide Element, the court held that EPA had an affirmative duty to review the substance of the element anew in light of subsequent litigation over the Pesticide Element that revealed approvability issues not accounted for in EPA's previous review and approval of the element. *Id.* at 594–595. EPA is addressing this portion of the court's decision in a separate rulemaking. See footnote #5 of this document.

Finally, the court disagreed with EPA's interpretation of the VMT emissions offset requirement and found that the plain language of the Act requires SIPs subject to CAA section 182(d)(1)(A) to include additional transportation control strategies and measures whenever vehicle emissions are projected to be higher, due to growth in VMT, than they would have been had VMT not increased, even when aggregate vehicle emissions are actually decreasing. *Id.* at 595–597. EPA is addressing this portion of the court's decision in a separate rulemaking. See footnote #5 of this document.

On May 5, 2011, EPA filed a petition for panel rehearing requesting the court to reconsider its decision on the issue of whether CAA section 179 sanctions are triggered by disapproval of a revision to an already-approved SIP element, and on the court's interpretation of CAA section 182(d)(1)(A).[6] On January 27, 2012, the Ninth Circuit denied EPA's petition for rehearing but issued an amended opinion deleting references to the imposition of sanctions following disapproval of the South Coast plan. The mandate in the case issued on February 13, 2012. *See Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012 (''*AIR* v. *EPA''*). The decision, as amended, states *inter alia* that ''EPA should have ordered California to submit a revised attainment plan for the South Coast after it disapproved the 2003 Attainment Plan'' and remands EPA's action ''for further proceedings consistent with [the] opinion.'' *Id.* at 681.

D. Determination of South Coast's Failure to Attain 1-Hour Ozone Standard

On December 30, 2011, EPA determined that the South Coast extreme ozone nonattainment area had failed to attain the 1-hour ozone standard by its applicable attainment date of November 15, 2010. 76 FR 82133; (December 30, 2011). This determination was based on quality-assured and certified ambient air quality monitoring data from 2008–2010, the three-year period preceding the applicable attainment date. *Id.* EPA made this determination pursuant to its obligation and authority under CAA section 301(a) and the relevant portion of section 181(b)(2) to ensure implementation of 1-hour ozone anti-backsliding contingency measures and section 185 fee program requirements. *Id.* at 82145.

II. Rationale for Proposed SIP Call

The Ninth Circuit concluded in *AIR* v. *EPA* that EPA must promulgate a FIP under CAA section 110(c) or issue a SIP call where EPA disapproves an attainment demonstration submitted to replace an already-approved attainment demonstration in the SIP, unless the Agency determines that the SIP as approved remains sufficient to demonstrate attainment of the NAAQS. *AIR* v. *EPA,* 632 F.3d 584 (9th Cir. 2011), *as amended at* 686 F.3d 668. Consistent with this directive and in response to the court's conclusion that ''EPA should have ordered California to submit a revised attainment plan for the South Coast after it disapproved the 2003 Attainment Plan,'' *id.* at 681, EPA is proposing to issue a SIP call under CAA section 110(k)(5) to require California to submit a new attainment demonstration for the 1-hour ozone standard in the South Coast.

Section 110(k)(5) of the CAA states, in relevant part, as follows:

> Whenever the Administrator finds that the applicable implementation plan for an area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, * * * or to otherwise comply with any requirement of [the Act], the Administrator shall require the State to revise the plan as necessary to correct such inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates

[5] EPA is addressing issues #2 and #3 in separate rulemakings. With respect to issue #2 (the continuation of the 1994 Pesticide Element, also known as ''PEST–1''), the EPA Region IX Regional Administrator signed a final rule on August 14, 2012 approving certain State fumigant regulations and a revised Pesticide Element commitment for San Joaquin Valley, thereby responding to the remand in the *Association of Irritated Residents* case. See, also, 77 FR 24441; (April 24, 2012) (proposed rule on fumigant regulations and revised Pesticide Element for San Joaquin Valley). With respect to issue #3 (VMT emissions offset requirement), EPA is proposing action in a separate document in today's **Federal Register**.

[6] See Docket Nos. 09–71383 and 09–71404 (consolidated), Docket Entry 41–1, Petition for Panel Rehearing.

applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed).

Our proposed SIP call is based on the evidence submitted by California in the form of the 2003 South Coast 1-Hour Ozone Plan that the approved 1997/1999 South Coast 1-Hour Ozone SIP was substantially inadequate to provide for attainment of the 1-hour ozone standard by the applicable attainment date of November 15, 2010. Two major developments that occurred after EPA approval of the 1997/1999 South Coast 1-Hour Ozone SIP led the State of California to reconsider the adequacy of the control strategy for attaining the 1-hour ozone standard in the South Coast by the applicable attainment date (2010).

First, CARB released a significant update to California's mobile source emissions model (EMFAC2002) that resulted in significantly higher motor vehicle emissions estimates than previously calculated, and second, South Coast Air Quality Management District (SCAQMD) updated its ozone modeling and concluded that the carrying capacity of the South Coast Air Basin was significantly lower than previously calculated. See, generally, appendix III (''Base and Future Year Emission Inventories'') and appendix V (''Modeling and Attainment Demonstrations'') of the SCAQMD's 2003 South Coast Air Quality Management Plan (AQMP), August 2003.

Together, these technical considerations prompted CARB and SCAQMD to conclude that more control measures would be necessary than contained in the 1997/1999 South Coast 1-Hour Ozone SIP to attain the 1-hour ozone standard by 2010. In reference to the 1997/1999 South Coast 1-Hour Ozone SIP, the 2003 South Coast 1-Hour Ozone SIP states: ''The Plan is consistent with and builds upon the approaches taken in the 1997 AQMP and the 1999 Amendments to the Ozone SIP for the South Coast Air Basin for the attainment of the federal ozone air quality standard. However, this revision points to the urgent need for additional emission reductions (beyond those incorporated in the 1997/99 Plan) to offset increased emission estimates from mobile sources and meet all federal criteria pollutant standards within the time frames allowed under the federal Clean Air Act.'' See SCAQMD, 2003 Air Quality Management Plan,'' August 2003, pages ES–1 and ES–2.

In 2003, EPA approved the use of EMFAC2002 for SIP development purposes, and in 2004, EPA found the 1-hour ozone motor vehicle emissions budgets (MVEBs) in the 2003 South Coast 1-Hour Ozone SIP to be adequate for transportation conformity purposes. See 68 FR 15720; (April 1, 2003) and 69 FR 15325; (March 25, 2004). Adequacy findings for transportation conformity purposes are generally based on cursory reviews of submitted plans, but EPA's approval of EMFAC2002 and finding of adequacy of the MVEBs in 2003 South Coast 1-Hour Ozone SIP show general agreement by EPA with the technical foundation for the 2003 South Coast 1-Hour Ozone SIP, which highlights the inadequacy of the attainment demonstration in the 1997/1999 South Coast 1-Hour Ozone Plan.

In addition, in 2011, EPA determined, based on quality-assured and certified ambient air quality monitoring data, that the South Coast area has failed to attain the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2010. 76 FR 82133; (December 30, 2011). EPA's 2011 determination of failure to attain the standard by the applicable attainment date provides further support for our proposed action because it establishes, as a factual matter, that the 1997/1999 South Coast 1-Hour Ozone SIP failed to achieve its stated purpose of bringing the South Coast area into attainment of the 1-hour ozone NAAQS by the applicable attainment date.

In light of the evidence discussed above, we propose to find that the approved 1997/1999 South Coast 1-Hour Ozone SIP is substantially inadequate to provide for attainment of the 1-hour ozone standard and is therefore substantially inadequate to comply with EPA's ''anti-backsliding'' requirement at 40 CFR 51.905(a)(1)(i) to adopt and implement such a plan for the South Coast.

III. Consequences of Proposed SIP Call

EPA is proposing to require the State of California to submit, within 12 months, a SIP revision meeting the requirements of CAA section 182(c)(2)(A)[7] and demonstrating attainment of the 1-hour ozone standard in the South Coast as expeditiously as practicable but no later than five years from the effective date of a final SIP call unless the State can justify a later date, not to exceed 10 years beyond the effective date of the final SIP call, by considering the severity of the remaining nonattainment problem in the South Coast and the availability and feasibility of pollution control measures. See CAA section 172(a)(2).

The SIP call provisions of CAA section 110(k)(5) direct EPA, ''to the extent [EPA] deems appropriate,'' to ''subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed).'' By relying on section 172(a)(2) as the basis for the applicable attainment date for the South Coast, we are subjecting the State to the same CAA requirement that applied at the time that the State developed and submitted the 1997/1999 South Coast 1-Hour Ozone SIP, because, at that time, the area was an extreme ozone area with an attainment date of 2010 and subject to the potential for a finding of failure to attain by the applicable attainment date under CAA section 179(c) that would trigger a requirement under CAA section 179(d) to submit a new plan meeting the requirements of section 172.

The 12-month deadline for submittal of a revised attainment demonstration plan is appropriate in light of the time that has elapsed since the *AIR* decision was published and the significant planning effort that the SCAQMD has already undertaken to develop a new 1-hour ozone attainment plan but also recognizing the potential need to develop additional control measures, beyond those already adopted for the purposes of the South Coast 8-hour Ozone SIP, given the geographic extent and frequency of exceedances of the 1-hour ozone standard. See, e.g., the 1-hour ozone summary data for 2008–2010 published at 76 FR 56694, at 56697; (September 14, 2011).

If EPA subsequently finds that California has failed to submit a complete SIP revision that responds to a final SIP call, CAA section 179(a) provides for EPA to issue a finding of State failure. Such a finding starts mandatory 18-month and 24-month sanctions clocks and a 24-month clock for promulgation of a FIP by EPA. The two sanctions that apply under CAA section 179(b) are the 2-to-1 emission offset requirement for all new and modified major sources subject to the nonattainment new source review program and restrictions on highway

[7] Under CAA section 182(c)(2)(A), the State must submit a revision to the SIP that includes a demonstration that the plan, as revised, will provide for attainment of the ozone NAAQS. The attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the EPA to be at least as effective.

funding. However, section 179 leaves it up to the Administrator to decide the order in which these sanctions apply. EPA issued an order of sanctions rule in 1994 (59 FR 39832, August 4, 1994, codified at 40 CFR 52.31) but did not specify the order of sanctions where a state fails to submit or submits a deficient SIP in response to a SIP call. However, the order of sanctions specified in that rule (40 CFR 52.31) should apply here for the same reasons discussed in the preamble to that rule.

Thus, if EPA issues a final SIP call and California fails to submit the required SIP revision, or submits a revision that EPA determines is incomplete or that EPA disapproves, EPA proposes that the 2-to-1 emission offset requirement will apply for all new sources subject to the nonattainment new source review program 18 months following such finding or disapproval unless the State corrects the deficiency before that date. EPA proposes that the highway funding restrictions sanction will also apply 24 months following such finding or disapproval unless the State corrects the deficiency before that date. EPA is also proposing that the provisions in 40 CFR 52.31 regarding staying the sanctions clock and deferring the imposition of sanctions would apply.

In addition, CAA section 110(c) obligates EPA to promulgate a FIP addressing the deficiency that is the basis for a finding of failure to submit or a disapproval within two years after the effective date of such finding or disapproval, unless EPA has approved a revised SIP correcting the deficiency before that date.

IV. Proposed Action and Request for Public Comment

EPA is proposing to find, pursuant to section 110(k)(5) of the CAA, that the California SIP is substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the one-hour ozone NAAQS in the South Coast. If EPA finalizes this proposal, California will be required to submit a SIP revision correcting the deficiency within 12 months of the effective date of EPA's final rule.

We will accept comments on this proposal for 30 days following publication of this proposed rule in the **Federal Register.** We will consider all submitted comments in our final rulemaking.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, a finding of substantial inadequacy and subsequent obligation for a State to revise its SIP arise out of section 110(a) and 110(k)(5). The finding and State obligation do not directly impose any new regulatory requirements. In addition, the State obligation is not legally enforceable by a court of law. EPA would review its intended action on any SIP submittal in response to the finding in light of applicable statutory and Executive Order requirements, in subsequent rulemaking acting on such SIP submittal. For those reasons, 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).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the finding of SIP inadequacy would not 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

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

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

Dated: August 30, 2012.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2012–22972 Filed 9–18–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0611; FRL–9730–2]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern lead emissions from large lead-acid battery recycling facilities. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 19, 2012.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2012–0611, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: 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.

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