requirements. As such and based upon the above two sections we are proposing to find that for both the CTG categories identified in Table 2 and all Non-CTG sources Texas has RACT-level controls in place for the HGB Area under the 1997 8-Hour ozone standard.

L. Is Texas' approach to for RACT determination for major NO_X sources based on the June 13, 2007 and April 6, 2010 submittals acceptable?

Texas has identified a list of major NO_X sources in the HGB Area, in its Appendix D of the April 6, 2010 submittal. TCEQ reviewed the point source emissions inventory and title V databases to identify all major sources of NO_X emissions. All sources in the title V database that were listed as a major source for NO_X emissions were included in the RACT analysis. Since the point source emissions inventory database reports actual emissions rather than potential to emit emissions, the TCEQ reviewed sources that reported actual emissions as low as 10 tpy of NO_X to account for the difference between actual and potential emissions. To be conservative, sites from the emissions inventory database with emissions of 10 tpy or more of NO_X that were not identified in the title V database and could not be verified as minor sources by other means are also included in the RACT analysis. We have reviewed TCEQ's April 6, 2010 submittal and find their approach to include these sources in the inventory of the sources acceptable.

Texas reviewed the list of sources and certified that it has the appropriate NO_X control measures in place for the affected sources. In addition, as a part of 1-Hour ozone attainment demonstration plan for the HGB Area at 70 FR 58136, October 5, 2005, and 71 FR 52676, September 6, 2006, Texas has met RACT for VOC and NO_X sources. We are proposing to approve TCEQ's determination that NO_X control measures in Chapter 117 meet RACT requirements for major sources of NO_X in the HGB Area under the 1997 8-Hour ozone NAAQS.

III. Proposed Action

Today, we are proposing to find that for VOC, CTG categories identified in Table 2 and major Non-CTG sources, and for NO_X, Texas has RACT-level controls in place for the HGB Area under the 1997 8-Hour ozone standard. The EPA had previously approved RACT for VOC and NO_X into Texas' SIP under the 1-Hour ozone standard. We are also proposing to approve the 2007 VMEP into Texas SIP.

IV. 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. If a portion of the plan revision meets all the applicable requirements of this chapter and Federal regulations, the Administrator may approve the plan revision in part. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices that meet the criteria of the Act, and to disapprove state choices that do not meet the criteria of the Act. Accordingly, this proposed action approves 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;
- 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); and
- This 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.

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

List of Subjects in 40 CFR Part 52

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

Dated: September 6, 2012.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 2012–23152 Filed 9–18–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0713; FRL–9727–6]

Disapproval of Implementation Plan Revisions; State of California; South Coast VMT Emissions Offset Demonstrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to withdraw its final approvals of state implementation plan revisions submitted by the State of California to meet the vehicle-miles-traveled emissions offset requirement under the Clean Air Act for the Los Angeles-South Coast Air Basin 1-hour and 8-hour ozone nonattainment areas. EPA is also proposing to disapprove the same plan revisions. EPA is proposing the withdrawal and disapproval actions in response to a remand by the Ninth Circuit Court of Appeals in *Association of Irritated Residents* v. *EPA.* The effect of this action, if finalized as proposed, would be to trigger deadlines by which new plan revisions meeting the applicable requirements must be submitted by the State of California and approved by EPA to avoid sanctions and to avoid an obligation on EPA to promulgate a federal implementation plan.

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

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0713, 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.

Table of Contents

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 1-hour ozone nonattainment areas, based on the severity of their 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. Of particular importance for the purposes of this proposed action, section 182(d)(1)(A) requires the following:

> Within 2 years after November 15, 1992, the State shall submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection (b)(2)(B) and (c)(2)(B) of this section (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 7408(f) of this title, and choose from among and implement such measures as necessary to demonstrate attainment with the national ambient air quality standards; in considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or related emissions and congestion rather than reduce them.

EPA believes that it is appropriate to treat the three required elements of section 182(d)(1)(A) (*i.e.,* offsetting emissions growth, attainment of the rate-of-progress (ROP) reduction, and attainment of the ozone NAAQS) as separable. As to the first element of CAA section 182(d)(1)(A) (*i.e.,* offsetting emissions growth caused by growth in vehicle miles travelled (VMT)), EPA had historically interpreted this CAA provision to allow areas to meet the requirement by demonstrating that emissions from motor vehicles decline each year through the attainment year. See, *e.g.,* 57 FR 13498, at 13521–15323; (April 16, 1992). This proposed rule relates only to the first element of section 182(d)(1)(A) (*i.e.,* offsetting emissions growth caused by growth in VMT). Herein, we refer to this element as the Vehicle Miles Traveled (VMT) emissions offset requirement (''VMT emissions offset requirement'') and the demonstration submitted to us to address this requirement as the ''VMT emissions offset demonstration.''

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

[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.

[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 1979 1-hour ozone and 1997 8-hour ozone standards.

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 when 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 8-hour standard remains subject to the VMT emissions offset requirement under CAA section 182(d)(1)(A) for the 1-hour ozone NAAQS even if the area would not otherwise have been subject to that particular requirement based on the area's classification for the 1997 8-hour ozone standard. See 40 CFR 51.905(a)(1) and 40 CFR 51.900(f)(11).

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). Among the requirements for areas classified as Severe or Extreme for the 1997 8-hour ozone standard is the VMT emissions offset requirement under CAA section 182(d)(1)(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 had been designated as nonattainment before the 1990 Amendments. 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 Air Basin 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, ROP demonstrations, and transportation control measures (TCMs). In 1997, EPA approved the 1994 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 revised ROP demonstrations, and a revised attainment demonstration (''1997/1999 South Coast 1-Hour Ozone SIP''). 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''). In 2008, the 2003 South Coast 1-Hour Ozone SIP was supplemented by submittal of a VMT emissions offset demonstration [4] that was intended to comply with the VMT emissions offset requirement by showing that there would be no upturn in emissions between the area's base year for the SIP revision and the area's attainment year. In 2009, EPA disapproved the revised ROP demonstrations and attainment demonstration in the 2003 South Coast 1-Hour Ozone SIP, but approved the VMT emissions offset demonstration that had been submitted in 2008. 74 FR 10176; (March 10, 2009).[5]

With respect to the 1997 8-hour standard, EPA designated the South Coast as nonattainment and classified the area as ''Severe-17,'' but later approved a request by California to reclassify the South Coast to ''Extreme.'' See 69 FR 23858; (April 30, 2004) and 75 FR 24409; (May 5, 2010). In 2007, CARB submitted a SIP revision to address the 8-hour ozone SIP planning requirements for the South Coast (''2007 South Coast 8-hour Ozone SIP''). The 2007 South Coast 8-Hour Ozone SIP included, among many other elements, a VMT emissions offset demonstration addressing the VMT emissions offset requirement under CAA section 182(d)(1)(A).[6] Consistent with the approach used for the demonstration submitted for 1-hour ozone purposes in 2008, the 2007 South Coast 8-Hour Ozone SIP showed compliance with the VMT emissions offset requirement, as then interpreted by EPA, by showing that aggregate motor vehicle emissions are projected to decrease each year from the base year through the attainment year (2024).

In March 2012, EPA approved the 2007 South Coast 8-Hour Ozone SIP, including the VMT emissions offset demonstration addressing the VMT emissions offset requirement under CAA section 182(d)(1)(A). See 77 FR 12674; (March 1, 2012).

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

In approving the VMT emissions offset demonstration that was submitted by the South Coast Air Quality Management District to supplement the 2003 South Coast 1-Hour Ozone SIP, EPA applied its then-longstanding interpretation of the VMT emissions offset requirement under CAA section 182(d)(1)(A) that no TCMs are necessary if aggregate motor vehicle emissions are projected to decline each year from the base year of the plan to the attainment year. See 74 FR 10176, at 10179–10180; (March 10, 2009). EPA's 2009 approval was challenged in the U.S. Court of Appeals for the Ninth Circuit, and, in 2011, the court ruled against EPA, determining that EPA incorrectly interpreted the statutory phrase ''growth in emissions'' in section 182(d)(1)(A) as meaning a growth in ''aggregate motor vehicle emissions.'' In other words, the court ruled that additional transportation control strategies and measures are required whenever vehicle emissions are projected to be higher than they would have been had vehicle miles traveled not increased, even when aggregate vehicle emissions are actually decreasing. *Association of Irritated Residents* v. *EPA,* 632 F.3d 584, at 596–597 (9th Cir. 2011), reprinted as

[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] Letter from Elaine Chang, Deputy Executive Officer, South Coast Air Quality Management District, dated September 10, 2008, approved at 40 CFR 52.220(c)(339)(ii)(B)(2).

[5] In response to comments on EPA's proposal to partially approve and partially disapprove the 2003 South Coast 1-Hour Ozone SIP, EPA indicated that the second and third elements of CAA section 182(d)(1)(A) were satisfied in 1997 when EPA approved the 1994 South Coast 1-Hour Ozone SIP's transportation control strategies and TCMs, such as TCM–1 (''Transportation Improvements''), which includes the capital and non-capital facilities, projects, and programs contained in the Regional Mobility Element and programmed through the Regional Transportation Improvement Program (RTIP) process to reduce emissions, in the same action in which EPA approved the South Coast ROP and attainment demonstrations. See 74 FR 10176, at 10179; (March 10, 2009).

[6] See pages 6–23 and 6–27 (table 6–12) of the Final 2007 Air Quality Management Plan, June 2007, prepared by the South Coast Air Quality Management District.

amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012 (''AIR v. EPA'').

Based on this reasoning, the court remanded the approval of the VMT emissions offset demonstration back to EPA for further proceedings consistent with the opinion. In May 2011, EPA filed a petition for panel rehearing requesting the court to reconsider its decision as to the VMT emissions offset requirement. In January 2012, the court denied the request and issued the mandate shortly thereafter.

D. Litigation on EPA's Final Action on 2007 South Coast 8-Hour Ozone SIP

As of December 15, 2011, the time of signature on the final rule approving the 2007 South Coast 8-hour Ozone SIP, the court had not yet responded to our petition for panel rehearing in *AIR* v. *EPA.* Notwithstanding adverse comments on the proposed approval of the VMT emissions offset demonstration in the 2007 South Coast 8-Hour Ozone SIP, EPA proceeded to approve the demonstration on the basis of the same rationale that had been rejected by the Ninth Circuit in connection with the VMT emissions offset demonstration submitted as part of the 2003 South Coast 1-Hour Ozone SIP. The final rule was ultimately published on March 1, 2012 (77 FR 12674). Shortly thereafter, several environmental and community groups filed a lawsuit in the Ninth Circuit challenging that approval. *Communities for a Better Environment, et al.* v. *EPA,* No. 12–71340.

II. Proposed Withdrawal of Previous Approvals, and Proposed Disapproval, of VMT Emissions Offset Demonstrations

As noted above, the Ninth Circuit rejected EPA's long-standing interpretation of the first element of section 182(d)(1)(A) that states could demonstrate compliance with the VMT emissions offset requirement through submittal of aggregate motor vehicle emissions estimates showing year-over-year declines in such emissions. These demonstrations formed the basis for our consideration and approval of the section 182(d)(1)(A) VMT emissions offset demonstrations submitted in connection with the 2003 South Coast 1-Hour Ozone SIP and the 2007 South Coast 8-Hour Ozone SIP. In response to the court's rejection of our interpretation of the Act and its remand of our action approving the VMT emissions offset demonstration for the 1-hour ozone standard, we are proposing the following two actions.

First, we are proposing to withdraw our previous approval of the VMT emissions offset demonstration in our March 8, 2009 final action on the 2003 South Coast 1-Hour Ozone SIP. Second, we are proposing to withdraw our March 1, 2012 approval of the portion of the 2007 South Coast 8-Hour Ozone SIP that was submitted to address the VMT emissions offset requirement of CAA section 182(d)(1)(A).

Withdrawal of our approvals of the two section 182(d)(1)(A) demonstrations would remove them from the California SIP and we would be obligated to take action on them under section 110(k), unless the State were to also withdraw the demonstrations from their submissions to us. To date, the State has not withdrawn these demonstrations. Therefore, in this action, we are proposing to disapprove them. Specifically, we are proposing to disapprove the demonstrations submitted by California to demonstrate compliance with the VMT emissions offset requirement under CAA section 182(d)(1)(A) with respect to the 1-hour and 8-hour ozone standards because they are predicated on EPA's previous interpretation of section 182(d)(1)(A) that has been rejected by the Ninth Circuit. The demonstrations are not consistent with the court's ruling on the requirements of section 182(d)(1)(A) because they fail to identify, compared to a baseline assuming no VMT growth, the level of increased emissions resulting solely from VMT growth and to show how such increased emissions have been offset through adoption and implementation of transportation control strategies and transportation control measures.

III. Proposed Action and Request for Public Comment

EPA is proposing to withdraw and to disapprove our final approvals of SIP revisions submitted by the State of California to demonstrate compliance with the VMT emissions offset requirement under CAA section 182(d)(1)(A) with respect to the 1-hour and 8-hour ozone standards in the South Coast nonattainment area. EPA is proposing this action in response to a decision of the Ninth Circuit in *AIR* v. *EPA.* Under section 110(k) of the Clean Air Act, we are proposing to disapprove these same plan elements because they reflect an approach to showing compliance with section 182(d)(1)(A) that was rejected by the court as inconsistent with the CAA section 182(d)(1)(A) VMT emissions offset requirement. Should we finalize the disapproval proposed here, the offset sanction in CAA section 179(b)(2) would apply in the South Coast ozone nonattainment area 18 months after the effective date of the final disapproval. The highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. These sanctions will apply unless we take final action approving SIP revisions meeting the relevant requirements of the CAA prior to the time the sanctions would take effect. If we propose approval of a SIP revision meeting the relevant requirements of the CAA and determine at that time that it is more likely than not the deficiency has been corrected, sanctions would be deferred. See 40 CFR 52.31 which sets forth when sanctions apply and when they may be stopped or deferred.

In addition to the sanctions, CAA section 110(c) provides that EPA must promulgate a federal implementation plan addressing the deficiency that is the basis for this disapproval two years after the effective date of the disapproval unless we have approved a revised SIP before that date.

We are soliciting comments on these proposed actions. Comments will be accepted for 30 days following publication of this proposal in the **Federal Register**. We will consider all comments in our final rulemaking.

IV. Statutory and Executive Order Reviews

A. Executive Order 12988, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 128665, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Reduction Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove

requirements that the State is already imposing. Therefore, because the proposed withdrawal of previous approvals of certain SIP revisions, and proposed disapproval of the same, do not create any new requirements, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed withdrawal and disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to withdraw previous approvals of certain SIP revisions, and proposes disapproval of the same, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this proposed action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to withdraw previous approvals of certain SIP revisions implementing a Federal standard, and proposes disapproval of the same, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this proposed rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it proposes to withdraw previous approvals of certain SIP revisions implementing a federal standard, and proposes disapproval of the same.

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

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this proposed action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this

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.