safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

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

In addition, this final action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes, and thus this action will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Nitrogen oxides, Sulfur oxides, Reporting and recordkeeping requirements.

Dated: December 18, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—Arizona

■ 2. Section 52.131 is added to read as follows:

§ 52.131 Control Strategy and regulations: Fine Particle Matter.

(a) *Determination of Attainment:* Effective February 6, 2013, EPA has determined that, based on 2009 to 2011 ambient air quality data, the Nogales $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. This determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment for as long as this area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. If EPA determines, after notice-and-comment rulemaking, that this area no longer meets the 2006 $PM_{2.5}$ NAAQS, the corresponding determination of attainment for that area shall be withdrawn.

(b) [Reserved]

[FR Doc. 2012–31639 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0721; FRL–9767–3]

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In response to a remand by the United States Court of Appeals for the Ninth Circuit, and pursuant to the Clean Air Act, EPA is taking final action to find that the California State Implementation Plan (SIP) for the Los Angeles-South Coast Air Basin is substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the 1-hour ozone standard. In response to this finding, California is required to submit a SIP revision correcting this deficiency within 12 months of the effective date of this rule. If EPA finds that California has failed to submit a complete SIP revision as required by this 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 taking final action establishing the order in which mandatory sanctions would apply in the event that EPA makes a finding of failure to submit a SIP revision or disapproves the SIP revision. Specifically, the offset sanction would apply 18 months after such finding or disapproval and highway funding restrictions would apply six months later. Sanctions would not apply if EPA first takes action to stay the imposition of the sanctions or to stop the sanctions clock based on a preliminary or final determination that the State has corrected the SIP deficiencies.

DATES: This rule is effective on February 6, 2013.

ADDRESSES: EPA has established docket EPA–R09–OAR–2012–0721 for this action. 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, 94105–3901. 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.

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

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

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I. Summary of Proposed Action

On September 19, 2012 (77 FR 58072), EPA proposed to find that the California SIP for the Los Angeles-South Coast Air Basin (South Coast) [1] is substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the 1-hour ozone national ambient air quality standard (NAAQS or ''standard''). EPA proposed this finding pursuant to the ''SIP call'' authority found in section 110(k)(5) of the Clean Air Act (CAA or ''Act'').[2] In our proposed rule, we explained that States remain obligated to adopt and implement an attainment demonstration plan for the 1-hour ozone standard, notwithstanding the revocation of the standard in 2005, under EPA's ''anti-backsliding'' regulations governing the transition from the 1-hour ozone standard to the 1997 8-hour ozone standard.[3] See 40 CFR 51.905(a)(1)(i).

EPA also proposed to require California to submit a revision to its SIP correcting these deficiencies by a date no later than 12 months after the effective date of a final rule finding the current SIP inadequate. The SIP revision must meet the requirements of CAA section 182(c)(2)(A) [4] and demonstrate attainment of the 1-hour ozone standard 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. In considering whether a period longer than five years is warranted, EPA must consider the severity of the remaining nonattainment problem in the South Coast and the availability and feasibility of pollution control measures. See section 172(a)(2).

We noted that if EPA were to find that California has failed to submit a complete SIP revision or if EPA disapproves such revision, such finding or disapproval would trigger clocks for mandatory sanctions and an obligation for EPA to impose a Federal Implementation Plan (FIP). EPA proposed that if EPA makes such a finding or disapproval, the offset sanction would apply 18 months after such finding or disapproval and highway funding restrictions would apply six months later. Sanctions would apply unless EPA first takes action to stay the imposition of the sanctions or to stop the sanctions clock based on a preliminary or final determination that the State has cured the SIP deficiencies.

EPA proposed this action in response to a decision by the United States Court of Appeals for the Ninth Circuit (Ninth Circuit or Court) in a lawsuit challenging EPA's partial approval and partial disapproval of the 2003 South Coast 1-Hour Ozone SIP.[5] 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 2003 South Coast 1-Hour Ozone SIP was intended by California to update the attainment demonstration for the 1-hour ozone standard for the South Coast contained in the 1997/1999 South Coast 1-Hour Ozone SIP that EPA approved in 2000. Among other issues, the petitioners in the *AIR* v. *EPA* case challenged EPA's conclusion that the Agency's disapproval of the updated attainment demonstration for the 1-hour ozone standard in the 2003 South Coast 1-Hour Ozone SIP did not obligate the Agency to promulgate a FIP because the plan that was disapproved was not required to be submitted given that the SIP contained a fully-approved 1-hour ozone attainment demonstration for the South Coast (i.e., the 1997/1999 South Coast 1-Hour Ozone SIP).

The court disagreed with EPA, and 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.

In response, EPA reviewed the 1997/1999 South Coast 1-Hour Ozone SIP to determine whether it remained sufficient to demonstrate attainment of the 1-hour ozone standard notwithstanding the disapproval of the updated 1-hour ozone attainment demonstration in the 2003 South Coast 1-Hour Ozone SIP and determined that the SIP was substantially inadequate to comply with the obligation under EPA's anti-backsliding regulations to adopt and implement a 1-hour ozone attainment demonstration. In the September 19, 2012 proposed rule, EPA proposed this finding of substantial inadequacy based on the following considerations:

- Documentation included in the 2003 South Coast 1-Hour Ozone SIP showing that motor vehicle emissions were significantly underestimated in the 1997/1999 South Coast 1-Hour Ozone SIP; that the carrying capacity associated with attainment of the 1-hour ozone standard was significantly lower than projected for the 1997/1999 South Coast 1-Hour Ozone SIP; and that, as a result, additional emissions reductions would be necessary to attain the 1-hour ozone standard by the applicable attainment date (November 15, 2010) beyond those incorporated in the 1997/1999 South Coast 1-Hour Ozone SIP;
- EPA's ''anti-backsliding'' requirements promulgated in 2004 governing the transition from the 1-hour ozone standard to the 1997 8-hour ozone standard and requiring a state to adopt and implement an attainment demonstration for the 1-hour ozone standard (40 CFR 51.905(a)(1)(i)) notwithstanding the revocation of the 1-hour ozone standard in areas designated as nonattainment for the 1997 8-hour ozone standard; and
- EPA's final determination at 76 FR 82133 (December 30, 2011) that the South Coast area failed to attain the 1-hour ozone standard by the applicable attainment date (November 15, 2010).

See the proposed rule at 77 FR 58072, at 58074–58075 (September 19, 2012).

For more information about the 1-hour and 8-hour ozone standards, the designations and classifications for the South Coast, the various South Coast SIP revisions submitted in response to CAA nonattainment area requirements, the litigation over EPA's action on the 2003 South Coast 1-Hour Ozone SIP, and the rationale behind the proposed 12-month deadline and sequence of mandatory sanctions, please see our September 19, 2012 proposed rule.

[1] 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).

[2] Section 110(k)(5) provides, in relevant part, that: ''Whenever [EPA] finds that the [SIP] for any area is substantially inadequate to attain or maintain the relevant [NAAQS], * * *, or to otherwise comply with any requirement of this chapter, [EPA] shall require the State to revise the plan as necessary to correct such inadequacies.''

[3] Our finding of substantial inadequacy under CAA section 110(k)(5) for failure to ''adopt and implement'' a 1-hour ozone attainment demonstration is not intended as a finding of nonimplementation under CAA section 179(a)(4).

[4] 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 EPA to be at least as effective. Section 182(c)(2)(A) applies within ozone nonattainment areas classified as ''serious,'' but as a general matter, areas classified as ''extreme'' for the ozone nonattainment area, such as the South Coast, are subject to the requirements for lower-classified areas, such as those for ''serious'' areas, as well as those prescribed specifically for ''extreme'' areas.

[5] EPA's final action challenged in the *AIR* v. *EPA* case was published at 74 FR 10176 (March 10, 2009).

II. Response to Public Comments

As stated above, on September 19, 2012, EPA proposed to find that the California SIP was substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the 1-hour ozone standard (see 77 FR 58072), and held a 30-day comment period which ended on October 19, 2012. On October 16, 2012, we received two requests to extend the comment period. On October 25, 2012, we published a **Federal Register** notice reopening the comment period for 14 days (see 77 FR 65151). This comment period ended on November 8, 2012.

In response to the proposed rule, we received 11 comment letters that we have grouped into five categories. We received comments from:

- Pechanga Indian Reservation-Temecula Band of Luiseno Mission Indians (''Pechanga Tribe'');
- South Coast Air Quality Management District (SCAQMD), and the State of California Air Resources Board (CARB) (''government agencies'');
- Coalition for Clean Air, Communities for a Better Environment, Natural Resources Defense Council; and Physicians for Social Responsibility—Los Angeles, (''environmental and community groups'');
- American Chemistry Council, American Coatings Association, Consumer Specialty Products Association, International Fragrance Association, National Aerosol Association, and Personal Care Products Council (''industry groups''); and
- A private citizen.

None of the commenters challenged the proposed finding of substantial inadequacy, the proposed one-year deadline for submittal of a new 1-hour ozone attainment plan, the proposed sequence for application of mandatory sanctions in the event of failure by California to meet the deadline, or the proposed application of the provisions in 40 CFR 52.31 regarding staying the sanctions clock and deferring the imposition of sanctions. Instead, the comments relate to the contents of a future 1-hour ozone attainment demonstration for the South Coast and the potential impacts of the SIP call on Indian tribes in the region. Below, we set forth a summary of the comments and EPA's responses.

Pechanga Tribe

Comment 1: In its comment letter, the Pechanga Tribe requested an opportunity to consult on a government to government basis with EPA Region IX regarding the potential impacts of this proposed action on federally recognized tribes located in the region.

Response 1: On November 28, 2012, EPA Region IX staff met with members and representatives of the Pechanga Tribe and explained that, as stated in the proposed rule, EPA foresaw no direct impact to the Tribe due to a SIP call for a new South Coast 1-hour ozone attainment demonstration plan. EPA acknowledged that a portion of Pechanga Indian country lies within the South Coast 1-hour ozone ''extreme'' nonattainment area, but indicated that, under the ''Tribal Authority Rule'' (40 CFR part 49), tribes are not subject to SIP submittal deadlines. See 40 CFR 49.4(a).[6] Moreover, under 40 CFR 49.4(c), Tribes will also not be treated as States with respect to the mandatory imposition of sanctions under section 179 of the Act because of a failure to submit an implementation plan or required plan element by a specific deadline, or the submittal of an incomplete or disapproved plan or element. Thus, the Tribes in the South Coast will not be subject to the deadline that we are setting today for the State of California for submittal of a new 1-hour ozone attainment demonstration for the South Coast, and the Tribes will not be subject to mandatory sanctions in the event that sanctions are imposed as a consequence of failure to submit or disapproval of the submitted SIP revision.

Government Agencies

Comment 2: In response to the attainment date that would be established under the proposed SIP call (i.e. as expeditiously as practicable but no later than five years unless the State can justify a later date, not to exceed 10 years), SCAQMD indicates that it and CARB intend to request and justify that the full ten years are needed for the attainment demonstration.

Response 2: This comment is not relevant for purposes of the current rule as it concerns the potential contents of a future SIP submittal from the State. Consistent with the requirement of CAA section 172(a)(2)(A), EPA would consider the severity of nonattainment and the availability and feasibility of pollution control measures in determining whether to approve any future submitted plan with an attainment date that is later than five years from the effective date of this final rule.

Comment 3: SCAQMD asserts that the new technology provisions of CAA section 182(e)(5) are available for the purposes of the new 1-hour ozone attainment demonstration plan for the South Coast so long as the reductions to be obtained from them are not needed for the first ten years after November 15, 1990, i.e. through November 15, 2000, citing CAA section 182(e)(5). While the SCAQMD asserts that the plain language of section 182(e)(5) settles any question as to whether that provision applies to a new 1-hour ozone attainment demonstration plan for the ''extreme'' South Coast nonattainment area, it also asserts that there is no policy reason to interpret the statute to preclude reliance on section 182(e)(5) even if the language were ambiguous. CARB's comment letter expressed agreement and support for comments provided by SCAQMD on the availability of CAA section 182(e)(5) new technology provisions for the new South Coast 1-hour ozone attainment demonstration plan.

Response 3: We did not explicitly address section 182(e)(5)[7] in our proposed SIP call because its availability or lack of availability is not directly relevant to the issue of our finding of substantial inadequacy of the California SIP for the South Coast with respect to the 1-hour ozone standard, or the issues of submittal or attainment dates. Thus, this comment is not relevant for purposes of the current rule as it concerns the potential contents of a future SIP submittal from the State. We will consider the approvability of the future South Coast 1-hour ozone attainment demonstration, including the control strategy on which it relies, once the plan is submitted, in the context of a subsequent rulemaking on the submitted plan.

Environmental and Community Groups

Comment 4: Citing the long period of nonattainment and the health effects of ozone at levels even below the 1-hour ozone standard, environmental and community groups request that the final

[6] Under 40 CFR 49.4(a), Tribes will not treated as States with respect to specific plan submittal and implementation deadlines for NAAQS-related requirements, such as the deadline established in today's final SIP call.

[7] Section 182(e)(5) states, in part: ''[EPA] may, * * *, approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control technologies, and an attainment demonstration based on such provisions, if the State demonstrates to the satisfaction of the [EPA] that (A) such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after November 15, 1990; and (B) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented as set forth herein if the anticipated technologies do not achieve planned reductions.'' Provisions in a SIP that rely on section 182(e)(5) are commonly referred to as ''black box'' or ''new technology'' provisions.

rule include more details about the need for a 1-hour ozone plan in the South Coast.

Response 4: EPA believes that the Agency provided sufficient support for its finding of substantial inadequacy and related SIP call. The rationale for the proposed finding and SIP call is set forth at 77 FR, 58072, 58074–58075. In short, in response to a remand by the Ninth Circuit in the *AIR* v. *EPA* case, we proposed to find 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. We based this determination on a review of the technical information and updated control measure strategy contained in the 2003 South Coast SIP and also considered our determination in December 2011 that the South Coast had failed to attain the applicable attainment date (2010) for the 1-hour ozone standard. Today, we are taking final action to find that the California SIP is substantially inadequate and to issue the SIP call for a new 1-hour ozone attainment demonstration plan for the South Coast on the basis of the rationale set forth in the proposed rule.

Comment 5: The environmental and community groups believe that EPA should clearly state that the future 1-hour ozone attainment demonstration plan cannot rely on the new technology provisions of section 182(e)(5) (i.e., the ''black box''). The groups contend that the text of the CAA demonstrates that the black box was not intended to be used past the attainment date. In support for this contention, the groups note that, under section 182(e)(5), there can be no contingency measures that are ''adequate to produce emissions reductions sufficient, * * * to achieve the periodic emissions reductions * * * and attainment by the applicable dates'' where, as is the case for South Coast, the attainment date (2010) has passed.

Response 5: In issuing a SIP call, CAA section 110(k)(5) directs EPA to the extent that 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 EPA may adjust any dates applicable under such requirements as appropriate (except that the EPA may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed.) In this case, the prescribed attainment date (2010) under part D of the title I of the CAA for extreme 1-hour ozone nonattainment areas, such as the South Coast, has passed, and thus, CAA section 110(k)(5) authorizes EPA to establish a new attainment date for the purposes of the new South Coast 1-hour ozone attainment demonstration plan.

With respect to black box provisions, as noted in response to comment #3, we did not explicitly address section 182(e)(5) in our proposed SIP call because its availability or lack of availability is not directly relevant to the issue of our finding of substantial inadequacy of the California SIP for the South Coast with respect to the 1-hour ozone standard, or the issues of submittal or attainment dates. Thus, this comment is not relevant for purposes of the current rule as it concerns the potential contents of a future SIP submittal from the State. We will consider the approvability of the future South Coast 1-hour ozone attainment demonstration, including the control strategy on which it relies, once the plan is submitted, in the context of a subsequent rulemaking on the submitted plan.

Comment 6: The environmental and community groups assert that the new requirements that must be fulfilled by SIPs in 1-hour ozone areas that fail to attain by the statutory deadline are provided in section 179(d). They further assert that the failure to attain does not allow areas to start all over again under section 182 and that the new plan should be governed by sections 110 and 172, neither of which provide for a black box. Moreover, they contend that the attainment deadline for these areas is governed by section 179(d)(3).

Response 6: We disagree that the new requirements for the new 1-hour attainment demonstration are governed by the provisions of section 179(d). The provisions of section 179(d) are triggered by a finding of failure to attain the standard under section 179(c), but under our anti-backsliding regulations governing the transition from the 1-hour ozone standard to the 8-hour ozone standard, we are no longer obligated to determine pursuant to section 179(c) whether an area attained the 1-hour ozone standard by the applicable attainment date for the 1-hour ozone standard. See 40 CFR 51.905(e)(2). In our 2011 determination that the South Coast failed to attain the applicable attainment date (2010) for the 1-hour ozone standard, we relied on section 301(a) and the relevant portion of section 181(b)(2) for the purpose of ensuring implementation of 1-hour ozone anti-backsliding requirements, such as contingency measures and section 185 major stationary source fee programs. See 76 FR 82133, at 82145 (December 30, 2011). We did not make the determination of failure to attain under section 179(c) and thus the provisions of section 179(d) do not apply.

As to the applicability of subpart 2 requirements, we note that the ''substantial inadequacy'' that is the basis for our SIP call relates directly to the requirements that continue to apply to an 8-hour ozone nonattainment area by virtue of that area's classification under subpart 2 for the 1-hour ozone standard at the time we designated the area as nonattainment for the 1997 8-hour ozone standard. In this instance, the South Coast 8-hour ozone nonattainment area remains subject to the obligation to adopt and implement the ''applicable requirements'' in 40 CFR 51.900(f) to the extent such requirements apply or applied to the South Coast as an ''extreme'' area for the 1-hour ozone standard in June 2004 (i.e., at designation for the 1997 8-hour ozone standard). One such ''applicable requirement'' is the attainment demonstration requirement. 40 CFR 51.900(f)(13).

EPA had approved a 1-hour ozone attainment demonstration plan for the South Coast (i.e., the 1997/1999 South Coast Ozone SIP) prior to revocation, but in response to the remand in the *AIR* v. *EPA* case, we reconsidered the adequacy of 1997/1999 South Coast Ozone SIP for compliance with the obligation to adopt and implement a 1-hour ozone attainment demonstration, and proposed to find the 1997/1999 South Coast Ozone SIP substantially inadequate to comply with the anti-backsliding requirements and to require California to submit a new 1-hour ozone attainment demonstration plan for the ''extreme'' South Coast 1-hour ozone nonattainment area within one year of the effective date of the final determination.

Even though we look to subpart 2 (of part D) and 40 CFR 51.905(a)(1) as the statutory and regulatory basis, respectively, for the new South Coast 1-hour ozone attainment demonstration, we do not view our SIP call for the South Coast as allowing California to start all over again. The new 1-hour ozone attainment demonstration plan necessarily will build upon the extensive ozone control strategy developed over the past 40 years in the South Coast. Moreover, the new plan will not be allowed 20 years to demonstrate attainment of the 1-hour ozone standard, as was initially allowed for ''extreme'' ozone nonattainment areas, under the CAA Amendments of 1990. Rather, the new plan must

demonstrate attainment as expeditiously has practicable but no later than five years from the final SIP call unless California can justify a later date, not to exceed 10 years beyond 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.

Lastly, while we disagree that section 179(d)(3) applies to establish the attainment date for the new 1-hour ozone attainment demonstration plan, we note that the attainment deadline under section 179(d)(3) would only be a little over one year earlier than the deadline established in this final action because they both derive from the formulation set forth in section 172(a)(2) (''* * * as expeditiously as practicable, but no later than 5 years, * * * may extend the attainment date * * * for a period no greater than 10 years * * *''). The only difference is that the start date for the final SIP call will be the effective date of this final rule, whereas section 179(d)(3) would have established a start date of December 30, 2011, i.e., the publication date of our final finding of failure to attain the 1-hour ozone standard for the South Coast (76 FR 82133).

Comment 7: The environmental and community groups contend that, if black box measures are allowed for an attainment plan developed after a region failed to attain the deadline, the state or local air district would have no incentive to close the black box within the attainment timeframes laid out in the CAA and could continually roll the black box over past the attainment date. Second, as a practical matter, the environmental and community groups contend that allowance for black box measures for a plan with at most a ten year planning horizon does not allow for the time necessary to develop the types of new technologies envisioned in section 182(e)(5).

Response 7: With respect to black box provisions, as noted in response to comment #3, we did not explicitly address section 182(e)(5) in our proposed SIP call because its availability or lack of availability is not directly relevant to the issue of our finding of substantial inadequacy of the California SIP for the South Coast with respect to the 1-hour ozone standard, or the issues of submittal or attainment dates. Thus, this comment is not relevant for purposes of the current rule as it concerns the potential contents of a future SIP submittal from the State.

Industry Groups

Comment 8: The industry groups assert that EPA should not require California to impose further VOC reductions on the consumer and commercial products for the new South Coast 1-hour ozone attainment demonstration. They point out that the 2003 State Strategy included stringent consumer and commercial products rules to achieve VOC reductions by 2010, and that this portion of the State Strategy was not withdrawn. They further contend that additional VOC reductions are unnecessary to provide for attainment of the 1-hour standard, and that EPA has the ability to issue a SIP call that focuses on NO_X reductions to address ozone attainment in the South Coast, citing *Michigan* v. *EPA*. Finally, the industry groups assert that control measures for additional VOC reductions from consumer products would likely not constitute reasonably available control technology (RACT) because they would not be economically or technically feasible.

Response 8: Through this action, EPA is not establishing specific requirements that must be included as part of the State's plan to attain the 1-hour ozone NAAQS. In general, a State has fairly broad discretion to select the mix of control measures it will rely on to demonstrate attainment and EPA's role is limited to ensuring that the State plan meets the minimum criteria in the CAA. We are requiring California to submit a new attainment demonstration for 1-hour ozone, and we leave to the state's discretion whether to impose further VOC reductions on sources.

Private Citizen

Comment 9: A private citizen states that the effect of methane on the air quality region is understated and asserts that methane affects the ozone layer. The citizen reports that current studies suggest spikes in methane emissions, possibly caused by broken pipelines, earthquake faults or malfunctioning mitigation equipment, and suggests that a multiple agency response is warranted to address the situation.

Response 9: This action is being taken with regard to the State's plan to address ground-level ozone and does not address the effect of pollutants on the ozone layer. EPA agrees that pollutants that affect the integrity of the ozone layer are a concern and separate programs under the Act address that problem. We note that many control measures that reduce VOC emissions have the co-benefit of reducing methane, and thus, the new 1-hour ozone attainment demonstration and related control measures could indirectly result in reductions of methane emissions in the region.

III. Final Action and Consequences

For the reasons provided in the proposed rule, and after due consideration of the comments received, EPA is taking final action, pursuant to section 110(k)(5) of the CAA, to find that the California SIP is substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the 1-hour ozone NAAQS in the Los Angeles-South Coast ozone nonattainment area. In response to this finding, California must revise and submit to EPA an attainment demonstration SIP for 1-hour ozone for the South Coast within 12 months of the effective date of this rule. The SIP must provide for attainment of the 1-hour ozone NAAQS in the South Coast nonattainment area as expeditiously as practicable, but no later than five years from the effective date of today's rule, unless the State can demonstrate that it needs up to an additional five years to attain in light of the severity of the nonattainment problem and the availability and feasibility of control measures.

If EPA finds that California has failed to submit a complete SIP revision as required by this 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 FIP.[8] In connection with mandatory sanctions, we are taking final action to establish the same sequence for application of mandatory sanctions (if California fails to submit a new 1-hour ozone plan or EPA disapproves the submitted plan) as established in 40 CFR 52.31. Specifically, our finding of failure to submit or our disapproval of the SIP revision will trigger the new source review (NSR) offset sanction in CAA section 179(b)(2) and the highway funding sanction under CAA section 179(b)(1) in the South Coast ozone nonattainment area 18 months, and 24 months, respectively, after the effective date of the finding or disapproval. The sanctions clock will permanently stop once we find the SIP submittal complete (if we had issued a finding of failure to submit a complete plan) or take final action approving (if we had disapproved the plan) SIP revisions meeting the

[8] Tribes having Indian country within the South Coast are not subject to the deadline established herein for the State of California nor would they be subject to the imposition of mandatory sanctions if California were to fail to submit a complete SIP revision or if EPA were to disapprove the SIP revision submitted by California in response to this final SIP call. See 40 CFR 49.4(a) and (c). We also note that the FIP provisions in CAA section 110(c)(1) do not apply to Indian country (40 CFR 49.4(d)).

relevant requirements of the CAA prior to the time the sanctions would take effect. Lastly, we are taking final action to apply the provisions in 40 CFR 52.31 regarding staying the sanctions clock and deferring the imposition of sanctions where we make a preliminary finding that it is more likely than not that the deficiency has been corrected. A FIP clock triggered by a finding of failure to submit or a disapproval of a submitted SIP can be stopped only by EPA approval of a SIP revision correcting the SIP deficiency.

IV. Statutory and Executive Order Reviews

Under the CAA, a finding of substantial inadequacy and subsequent obligation on 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 rule:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the Tribes with Indian country in the subject ozone nonattainment area would not be subject to the deadline established herein for the State of California nor would they be subject to the imposition of mandatory sanctions if California were to fail to submit a complete SIP revision or if EPA were to disapprove the SIP revision submitted by California in response to this final SIP call, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 19, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–31642 Filed 1–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0960; FRL–9766–4]

Interim Final Determination To Stay Sanctions, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay imposition of sanctions based on a proposed approval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in this **Federal Register**. The revisions concern local rules that regulate inhalable particulate matter (PM_{10}) emissions from sources of fugitive dust such as unpaved roads and disturbed soils in open and agricultural areas in Imperial County.

DATES: This interim final determination is effective on January 7, 2013. However, comments will be accepted until February 6, 2013.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0960, 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.

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 *www.regulations.gov* or email. *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