

of a publication in the Federal Register of a notice of intent, the notice-and-comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. The APA expressly differentiates between an order and a rule, as it defines an "order" to mean a "final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making." 5 U.S.C. 551(6) (emphasis added). The specific language chosen by Congress indicates an intention for DEA to proceed through the issuance of an order instead of proceeding by rulemaking. Given that Congress specifically requires the Administrator to follow rulemaking procedures for other kinds of scheduling actions, see 21 U.S.C. 811(a), it is noteworthy that, in 21 U.S.C. 811(h)(1), Congress authorized the issuance of temporary scheduling actions by order rather than by rule.

In the alternative, even assuming that this notice of intent might be subject to section 553 of the APA, the Acting Administrator finds that there is good cause to forgo the notice-and-comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice-and-comment requirements of section 553 of the APA, DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Acting Administrator took into consideration comments submitted by the Assistant Secretary in response to the notice that DEA transmitted to the Assistant Secretary pursuant to such subsection.

Further, DEA believes that this temporary scheduling action is not a "rule" as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

In accordance with the principles of Executive Orders (E.O.) 12866, 13563, and 13771, this notice of intent is not a significant regulatory action. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits

(including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. E.O. 12866 classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Because this is not a rulemaking action, this is not a significant regulatory action as defined in Section 3(f) of E.O. 12866. In addition, this action does not meet the definition of an E.O. 13771 regulatory action, and the repeal and cost offset requirements of E.O. 13771 have not been triggered.

This action 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. Therefore, in accordance with E.O. 13132 (Federalism), it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA proposes to amend 21 CFR part 1308 as follows:

**PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES**

- 1. The authority citation for part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

- 2. In § 1308.11, add paragraph (h)(49) to read as follows:

**§ 1308.11 Schedule I**

\* \* \* \* \*

(h) \* \* \*

(49) 1-(1-(1-(4-bromophenyl)ethyl)piperidin-4-yl)-1,3-dihydro-2H-benzo[d]imidazol-2-one, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other names: brophine; 1-[1-(4-bromophenyl)ethyl]-4-piperidinyl]-1,3-dihydro-2H-benzimidazol-2-one) .....

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\* \* \* \* \*

**Timothy J. Shea,**

*Acting Administrator.*

[FR Doc. 2020-26301 Filed 12-2-20; 8:45 am]

**BILLING CODE 4410-09-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2020-0534; FRL-10016-98-Region 9]**

**Approval and Promulgation of Air Quality State Implementation Plans; California; Plumas County; Moderate Area Plan for the 2012 PM<sub>2.5</sub> NAAQS**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve through parallel processing a state implementation plan (SIP) revision submitted by the State of California to address Clean Air Act (CAA or "Act") requirements for the 2012 annual fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standard (NAAQS or "standard") in the Plumas County Moderate PM<sub>2.5</sub> nonattainment area ("Portola nonattainment area"). The submitted SIP revision is the State's "Proposed Portola PM<sub>2.5</sub> Plan Contingency Measure SIP Submittal" ("Proposed PM<sub>2.5</sub> Plan Revision"), which includes a revised City of Portola ordinance regulating PM<sub>2.5</sub> emission sources and the State's demonstration that this submission meets the Moderate area contingency measure requirement for the 2012 annual PM<sub>2.5</sub> NAAQS in the Portola nonattainment area. The EPA is also proposing to approve the contingency measure element of the Moderate area attainment plan for the Portola nonattainment area, as revised and supplemented by the Proposed PM<sub>2.5</sub> Plan Revision. Because the EPA is proceeding by parallel processing, the agency is proposing, in the alternative, to disapprove the contingency measure element of the Moderate area attainment

plan if the State does not submit the final, adopted PM<sub>2.5</sub> Plan Revision in substantially the same form before we take final action.

**DATES:** Any comments on this proposal must be received by January 4, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2020-0534 at <https://www.regulations.gov>, or via email to [Ungvarsky.john@epa.gov](mailto:Ungvarsky.john@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (*e.g.*, audio or video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** John Ungvarsky, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3963 or [ungvarsky.john@epa.gov](mailto:ungvarsky.john@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” or “our” refer to the EPA.

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## I. Background

On January 15, 2013, the EPA strengthened the primary annual NAAQS for particulate matter with a diameter of 2.5 microns or less by lowering the level from 15.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to 12.0  $\mu\text{g}/\text{m}^3$  (“2012 PM<sub>2.5</sub> NAAQS”).<sup>1</sup> The EPA established this standard after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to PM<sub>2.5</sub> concentrations above these levels.

Epidemiological studies have shown statistically significant correlations between elevated PM<sub>2.5</sub> levels and premature mortality. Other important health effects associated with PM<sub>2.5</sub> exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), changes in lung function, and increased respiratory symptoms. Individuals particularly sensitive to PM<sub>2.5</sub> exposure include older adults, people with heart and lung disease, and children.<sup>2</sup> PM<sub>2.5</sub> can be emitted directly into the atmosphere as a solid or liquid particle (“primary PM<sub>2.5</sub>” or “direct PM<sub>2.5</sub>”) or can be formed in the atmosphere (“secondary PM<sub>2.5</sub>”) as a result of various chemical reactions among precursor pollutants such as nitrogen oxides, sulfur oxides, volatile organic compounds, and ammonia.<sup>3</sup>

Following promulgation of a new or revised NAAQS, the EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. The EPA designated and classified the Portola nonattainment area as “Moderate” nonattainment for the 2012 annual PM<sub>2.5</sub> standards based on ambient monitoring data that showed the area was above 12.0  $\mu\text{g}/\text{m}^3$  for the 2011–2013 monitoring period.<sup>4</sup> For the 2011–2013 period, the annual PM<sub>2.5</sub> design value for the Portola area was 12.8  $\mu\text{g}/\text{m}^3$  based on monitored readings at the 161 Nevada Street and 420 Gulling Street monitors.<sup>5</sup>

<sup>1</sup> 78 FR 3086 and 40 CFR 50.18. Unless otherwise noted, all references to the PM<sub>2.5</sub> NAAQS in this document are to the 2012 annual NAAQS of 12.0  $\mu\text{g}/\text{m}^3$  codified at 40 CFR 50.18.

<sup>2</sup> *Id.*

<sup>3</sup> EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P-99/002aF and EPA/600/P-99/002bF, October 2004.

<sup>4</sup> 80 FR 2206 (January 15, 2015).

<sup>5</sup> From 2000 through early 2013, the Portola PM<sub>2.5</sub> monitoring site was located at 161 Nevada Street. In 2013, the site was relocated to 420 Gulling Street.

The Portola PM<sub>2.5</sub> nonattainment area includes the City of Portola (“Portola”), which has a population of approximately 2,100 and is located at an elevation of 4,890 feet in an intermountain basin isolated by rugged mountains. For a precise description of the geographic boundaries of the Portola PM<sub>2.5</sub> nonattainment area, see 40 CFR 81.305.

Portola averages 20 inches of precipitation annually. From October through March the Portola nonattainment area has very cold temperatures with an average daily low temperature of approximately 22 degrees Fahrenheit. The combination of mountainous terrain, cold temperatures, and elevation can cause atmospheric inversions and impair PM<sub>2.5</sub> dispersion, especially during the winter.

The local air district with primary responsibility for developing a plan to attain the 2012 annual PM<sub>2.5</sub> NAAQS in this area is the Northern Sierra Air Quality Management District (NSAQMD or “District”). The District worked cooperatively with the California Air Resources Board (CARB) in preparing the Proposed PM<sub>2.5</sub> Plan Revision. Under state law, authority for regulating sources under state jurisdiction in the Portola nonattainment area is split between the District, which has responsibility for regulating stationary and most area sources, and CARB, which has responsibility for regulating most mobile sources.

On February 28, 2017, California submitted the “Portola Fine Particulate Matter (PM<sub>2.5</sub>) Attainment Plan” (“Portola PM<sub>2.5</sub> Plan” or “Plan”) to address the CAA’s Moderate area requirements for the 2012 annual PM<sub>2.5</sub> NAAQS in the Portola nonattainment area. On March 25, 2019, the EPA approved all of the Portola PM<sub>2.5</sub> Plan, except for the contingency measure element.<sup>6</sup> The components of the Portola PM<sub>2.5</sub> Plan that the EPA approved include the modeled demonstration that the area will attain the 2012 annual PM<sub>2.5</sub> NAAQS by the applicable attainment date, which is December 31, 2021; the State and District control strategy for attaining the NAAQS by this date, including all reasonably available control measures and control technologies (RACM/RACT) and additional reasonable measures necessary for expeditious attainment; the reasonable further progress (RFP) demonstration and related quantitative milestones for the October 15, 2019 and October 15, 2022 quantitative milestone dates applicable to the area; and the

<sup>6</sup> 84 FR 11208.

motor vehicle emissions budgets for 2019 and 2021.<sup>7</sup>

As part of the attainment control strategy, the Portola PM<sub>2.5</sub> Plan relies on “Ordinance No. 344: An Ordinance of the City of Portola, County of Plumas Amending Chapter 15.10 of the City of Portola Municipal Code Providing for Regulation of Wood Stoves and Fireplaces” (“City Ordinance No. 344”) to achieve direct PM<sub>2.5</sub> emission reductions necessary for attainment by the December 31, 2021 attainment date. The EPA approved City Ordinance No. 344 into the SIP on March 5, 2018.<sup>8</sup> The attainment control strategy in the Portola PM<sub>2.5</sub> Plan also relies on an enforceable State commitment to implement an incentive grant program called the “Greater Portola Woodstove Change-out Program 2016” (“Wood Stove Program”) during the 2016 to 2021 period to fund the replacement of uncertified wood stoves with newer, EPA-certified devices and to educate residents on proper ways to store and burn wood. The EPA approved the Wood Stove Program into the SIP on April 2, 2018.<sup>9</sup>

City Ordinance No. 344 and the District’s Wood Stove Program collectively establish most of the recommended program elements outlined in the EPA’s guidance document entitled “Strategies for Reducing Residential Wood Smoke,”<sup>10</sup> including a wood burning curtailment program in section 15.10.060 of City Ordinance No. 344 (Mandatory Curtailment of Wood Burning Heaters, Wood Burning Fireplaces, Wood-Fired Fire Pits and Wood-Fired Cookstoves During Stagnant Conditions).<sup>11</sup> The Portola PM<sub>2.5</sub> Plan relies primarily on the Wood Stove Program to achieve the PM<sub>2.5</sub> emission reductions necessary for the Portola nonattainment area to attain the 2012 annual PM<sub>2.5</sub> NAAQS by December 31, 2021.<sup>12</sup>

The Portola PM<sub>2.5</sub> Plan also contains a contingency measure element in section VI.B that identifies the wood-burning curtailment provision in section 15.10.060 of City Ordinance No. 344 and a District policy designed to

incentivize certain types of wood stove change-outs as contingency measures for the 2012 annual PM<sub>2.5</sub> NAAQS.<sup>13</sup> The EPA did not act on this element of the Portola PM<sub>2.5</sub> Plan as part of its March 25, 2019 final action.<sup>14</sup>

On May 22, 2019, the Center for Biological Diversity filed a complaint in the United States District Court for the Northern District of California alleging that the EPA had, among other things, failed to take final action either approving or disapproving the contingency measure element of the Portola PM<sub>2.5</sub> Plan. On February 19, 2020, the court issued an order directing, *inter alia*, that the EPA “sign a notice of final rulemaking to approve, disapprove, conditionally approve, or approve in part and conditionally approve or disapprove in part” the contingency measure element of the Portola PM<sub>2.5</sub> Plan, under CAA sections 110(k)(2)-(4), no later than March 1, 2021.<sup>15</sup>

## II. Summary of the Proposed PM<sub>2.5</sub> Plan Revision

On September 9, 2020, the City of Portola adopted “Ordinance No. 359, An Ordinance of the City of Portola, County of Plumas Amending Chapter 15.10 of the City of Portola Municipal Code Providing for Regulation of Wood Stoves and Fireplaces and the Prohibition of the Open Burning of Yard Waste” (“City Ordinance No. 359”). City Ordinance No. 359 amends City Ordinance No. 344, as codified in Chapter 15.10 of the Portola Municipal Code.<sup>16</sup>

Specifically, section 15.10.070 (Curtailment Levels and Period) of City Ordinance No. 359 contains a contingency measure that revises and supplements the contingency measure element of the Portola PM<sub>2.5</sub> Plan. City Ordinance No. 359 also contains new provisions that ban all open burning of yard waste and debris within the City of Portola, with limited exceptions, and renumbers several sections of the prior version of this ordinance (City Ordinance No. 354) without change.<sup>17</sup> The additional open burning provisions in City Ordinance No. 359 are not part of the contingency measure element of the Plan. CARB has requested that the EPA entirely replace City Ordinance No.

344 in the SIP with City Ordinance No. 359.<sup>18</sup>

On October 26, 2020, the District Governing Board adopted City Ordinance No. 359 and, through Resolution 2020–09, instructed the District to submit City Ordinance No. 359 to CARB for inclusion in the SIP.<sup>19</sup> On October 28, 2020, CARB submitted City Ordinance No. 359, together with a document entitled “Proposed Portola PM<sub>2.5</sub> Plan Contingency Measure SIP Submittal,” October 16, 2020 (hereafter “CARB Staff Report”), to the EPA with a request for approval into the SIP through the EPA’s parallel processing procedures in 40 CFR part 51, appendix V, section 2.3.<sup>20</sup> We refer to City Ordinance No. 359 and the CARB Staff Report together as the “Proposed PM<sub>2.5</sub> Plan Revision.” CARB has scheduled the Proposed PM<sub>2.5</sub> Plan Revision for a hearing before the CARB Governing Board on November 19, 2020, and if it is then adopted, CARB will submit the final PM<sub>2.5</sub> Plan Revision to the EPA for approval into the California SIP.<sup>21</sup>

## III. Clean Air Act Requirements for PM<sub>2.5</sub> Contingency Measures and Other Control Measures

### A. Requirements for Contingency Measures

Under CAA section 172(c)(9) and the EPA’s implementing regulations for the PM<sub>2.5</sub> NAAQS (“PM<sub>2.5</sub> SIP Requirements Rule”),<sup>22</sup> each SIP submission for a nonattainment area must include contingency measures to be implemented if the area fails to meet requirements concerning RFP, fails to meet requirements concerning quantitative milestones, or fails to attain the NAAQS by the applicable attainment date. Contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon being triggered and that take effect without significant further action by the State or the EPA.<sup>23</sup> The purpose of the contingency measures is to continue progress in reducing emissions while a

<sup>18</sup> NSAQMD, Resolution 2020–09 (October 26, 2020).

<sup>19</sup> Id. Resolution 2020–09 instructs the District to exclude paragraph 15.10.060(B) (concerning penalties), section 15.10.100 (Violations), and section 15.10.110 (Continuing violations—each day being a separate violation) from the SIP submission.

<sup>20</sup> Letter dated October 28, 2020, from Richard Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX, with enclosures. Although both the City and the District have adopted City Ordinance No. 359, CARB has not yet adopted it.

<sup>21</sup> Id.

<sup>22</sup> 81 FR 58010 (August 24, 2016), codified at 40 CFR part 51, subpart Z.

<sup>23</sup> 81 FR 58010, 58066 and Addendum, 42015.

<sup>7</sup> Id.

<sup>8</sup> 83 FR 9213.

<sup>9</sup> 83 FR 13871.

<sup>10</sup> EPA, “Strategies for Reducing Residential Wood Smoke,” Publication No. EPA–456/B–13–001, revised March 2013.

<sup>11</sup> 83 FR 64774, 64782 (December 18, 2018) (proposed action on Portola PM<sub>2.5</sub> Plan) and EPA, Region IX, “Technical Support Document for the EPA’s Rulemaking for the California State Implementation Plan, Northern Sierra Air Quality Management District, City of Portola Ordinance 344, Wood Stove and Fireplace Ordinance,” July 2017 (“Ordinance 344 TSD”), 6.

<sup>12</sup> 83 FR 64774, 64788 (December 18, 2018).

<sup>13</sup> Portola PM<sub>2.5</sub> Plan, 72–74 (section VI.B, “Contingency Measure”).

<sup>14</sup> 84 FR 11208.

<sup>15</sup> *Center for Biological Diversity, et al. v. Andrew Wheeler*, Case No. 3:19-cv-02782–EMC, Order (N.D. Cal., February 19, 2020).

<sup>16</sup> NSAQMD, Resolution 2020–09 (October 26, 2020).

<sup>17</sup> City of Portola, Ordinance No. 359, adopted September 9, 2020.

state revises its SIP to meet a missed RFP requirement, to meet a missed quantitative milestone requirement, or to correct ongoing nonattainment.

Under the PM<sub>2.5</sub> SIP Requirements Rule, contingency measures must be implemented following a determination by the EPA that the state has failed: (1) To meet any RFP requirement in the approved SIP; (2) to meet any quantitative milestone in the approved SIP; (3) to submit a required quantitative milestone report; or (4) to attain the applicable PM<sub>2.5</sub> NAAQS by the applicable attainment date.<sup>24</sup> The contingency measures adopted as part of a PM<sub>2.5</sub> attainment plan must consist of control measures for the area that are not otherwise required to meet other nonattainment plan requirements (*e.g.*, to meet RACM/RACT requirements) and must specify the timeframe within which their requirements become effective following any of the EPA determinations specified in 40 CFR 51.1014(a).

Neither the CAA nor the EPA's implementing regulations establish a specific level of emission reductions that implementation of contingency measures must achieve, but EPA guidance recommends that contingency measures should provide for emission reductions equivalent to approximately one year of reductions needed for RFP, calculated as the overall level of reductions needed to demonstrate attainment divided by the number of years from the base year to the attainment year. In general, we expect all actions needed to effect full implementation of the contingency measures to occur within 60 days after the EPA notifies the state of a failure to attain or to meet an RFP or quantitative milestone requirement.<sup>25</sup>

It has been the EPA's longstanding interpretation of section 172(c)(9) that states may rely on existing Federal measures (*e.g.*, Federal mobile source measures based on the incremental turnover of the motor vehicle fleet each year) and state or local SIP measures already scheduled for implementation that provide emissions reductions in excess of those needed to meet any other nonattainment plan requirements, such as RACM/RACT, RFP, or expeditious attainment requirements. In *Bahr v. EPA* ("*Bahr*"), however, the Ninth Circuit Court of Appeals rejected the EPA's interpretation of CAA section 172(c)(9) as allowing for approval of already implemented control measures

as contingency measures.<sup>26</sup> The Ninth Circuit concluded that contingency measures must be measures that would take effect at the time the area fails to make RFP or to attain by the applicable attainment date, not before.<sup>27</sup> Thus, within the geographic jurisdiction of the Ninth Circuit, states cannot rely on already implemented measures to comply with the contingency measure requirement under CAA section 172(c)(9).

To comply with section 172(c)(9), as interpreted in the *Bahr* decision, a state must develop, adopt, and submit contingency measures to be triggered upon a failure to meet an RFP milestone, failure to meet requirements concerning quantitative milestones, or failure to attain the NAAQS by the applicable attainment date regardless of the extent to which already-implemented measures would achieve surplus emission reductions beyond those necessary to meet RFP or quantitative milestone requirements and beyond those projected to achieve attainment of the NAAQS.

#### *B. General Requirements for SIP Control Measures*

SIP control measures and revisions thereto must be enforceable,<sup>28</sup> must not interfere with applicable requirements concerning attainment and RFP or other CAA requirements,<sup>29</sup> and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions.<sup>30</sup> Generally, in PM<sub>2.5</sub> nonattainment areas classified as Moderate, SIP control measures must also implement RACM, including RACT, and additional reasonable measures.<sup>31</sup>

#### **IV. Completeness Review of the Proposed PM<sub>2.5</sub> Plan Revision**

On October 28, 2020, CARB submitted the Proposed PM<sub>2.5</sub> Plan Revision with a request that the EPA approve the submission into the SIP through the parallel processing procedures in 40 CFR part 51, appendix V, section 2.3. Parallel processing refers to a process that utilizes concurrent state and Federal proposed rulemaking actions. Generally, the state submits a copy of the proposed regulation or other revisions to the EPA before conducting its public hearing and completing its

public comment process under state law. The EPA reviews this proposed state action and prepares a notice of proposed rulemaking under Federal law. In some cases, the EPA publishes its notice of proposed rulemaking in the **Federal Register** during the same time frame that the state is holding its own public hearing and public comment process. The state and the EPA then provide for concurrent public comment periods on both the state action and Federal action on the initial SIP submission from the state. If, after completing its public comment process and after the EPA's public comment process has run, the state materially changes its final SIP submission to the EPA from the initial proposed submission, the EPA evaluates those changes and decides whether to publish another notice of proposed rulemaking in light of those changes or to proceed to taking final action on its proposed action and describe the state's changes in its final rulemaking action. Any final rulemaking action by the EPA will occur only after the state formally adopts and submits its final submission to the EPA.

Section 110(k)(1)(B) of the CAA requires the EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that if the EPA has not affirmatively determined a SIP submission to be complete or incomplete, it will become complete by operation of law six months after the date of submission. The EPA's SIP completeness criteria are found in 40 CFR part 51, appendix V. The EPA has reviewed the Proposed PM<sub>2.5</sub> Plan Revision and finds that it fulfills the completeness criteria of appendix V, with the exception of the requirements of paragraphs 2.1(e)–2.1(h), which do not apply to plans submitted for parallel processing.

CAA sections 110(a)(1) and (2) and 110(l) require each state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP submission to the EPA. To meet this requirement, a state's SIP submission must include evidence that the state provided adequate public notice and an opportunity for a public hearing, consistent with the EPA's implementing regulations in 40 CFR 51.102. However, because the Proposed PM<sub>2.5</sub> Plan Revision was submitted for parallel processing, it is exempt from this requirement at the time of initial submission to the EPA, pursuant to 40 CFR part 51, appendix V, section 2.3.1. CARB and the District are required to meet these procedural criteria during the parallel processing period, and prior

<sup>26</sup> *Bahr v. EPA*, 836 F.3d 1218, 1235–1237 (9th Cir. 2016).

<sup>27</sup> *Id.*

<sup>28</sup> CAA section 110(a)(2)(A).

<sup>29</sup> CAA section 110(l).

<sup>30</sup> CAA section 193.

<sup>31</sup> CAA sections 172(c)(1) and 189(a)(1)(C) and 40 CFR 51.1009.

<sup>24</sup> 40 CFR 51.1014(a).

<sup>25</sup> 81 FR 58010, 58066. See also General Preamble, 13512, 13543–13544, and Addendum, 42014–42015.

to adopting and submitting the final SIP submission to the EPA. The EPA will determine whether the final submission meets these requirements at the time of any final action on the PM<sub>2.5</sub> Plan Revision.

## V. Review of the Proposed PM<sub>2.5</sub> Plan Revision

### A. Revised Contingency Measure Element of Portola PM<sub>2.5</sub> Plan

The contingency measure element in section VI.B of the Portola PM<sub>2.5</sub> Plan, as submitted February 28, 2017, discusses two potential contingency measures for the 2012 PM<sub>2.5</sub> NAAQS: (1) The mandatory wood-burning curtailment provision in section 15.10.060 of SIP-approved City Ordinance No. 344; and (2) a District “policy” to incentivize only certain types of wood stove change-outs following a determination by the District that the area will not meet the 2019 RFP emission target.<sup>32</sup> The Plan indicates that the District identified these measures as potential contingency measures because they are not accounted for in the regional attainment demonstration modeling for the 2012 PM<sub>2.5</sub> NAAQS.<sup>33</sup>

The mandatory curtailment provision in SIP-approved City Ordinance No. 344 becomes effective January 1, 2021, and will prohibit the use of wood burning heaters, wood burning fireplaces, wood-fired fire pits and wood-fired cookstoves within city limits whenever the District declares a mandatory curtailment during the months of January, February, November, and December, unless it is an approved and currently registered EPA-certified wood burning heater.<sup>34</sup> The District will declare a mandatory curtailment whenever it determines that the 24-hour average PM<sub>2.5</sub> concentration may exceed 30 µg/m<sup>3</sup> on a given day and that adverse meteorological conditions are expected to persist.<sup>35</sup>

The District “policy” to incentivize only certain types of wood stove change-outs is not associated with a specific control measure. Section VI.B of the Portola PM<sub>2.5</sub> Plan states that if the District estimates, by October 31, 2018, that the area will not meet the 2019 RFP emission target, the District will only incentivize the replacement of older wood stoves with pellet stoves, propane stoves, or wood stoves meeting the

“Step 2” emission limits in the EPA’s new source performance standards (NSPS) for wood heating devices.<sup>36</sup>

City Ordinance No. 359 contains a new contingency measure that revises and supplements the contingency measure element of the Portola PM<sub>2.5</sub> Plan.<sup>37</sup> The new provision, in section 15.10.070 of City Ordinance No. 359, would strengthen the mandatory curtailment provision in SIP-approved City Ordinance No. 344 and would become effective within 60 days after the EPA makes any of the four determinations listed in 40 CFR 51.1014(a).<sup>38</sup> Specifically, the mandatory curtailment provision in section 15.10.070 of City Ordinance No. 359 would prohibit the use of wood burning heaters, wood burning fireplaces, wood-fired fire pits, and wood-fired cookstoves within city limits whenever the District declares a mandatory curtailment during the months of September through April, unless it is an approved and currently registered EPA-certified wood burning heater.<sup>39</sup> The District would declare a mandatory curtailment whenever it determines that the 24-hour average PM<sub>2.5</sub> concentration may exceed 20 µg/m<sup>3</sup> on a given day and adverse meteorological conditions are expected to persist.<sup>40</sup> CARB estimates that, if triggered, the requirements in section 15.10.070 of City Ordinance No. 359 would achieve reductions in direct PM<sub>2.5</sub> emissions of 0.0024 tons per day (tpd) in 2022.<sup>41</sup>

The CARB Staff Report contains the State’s quantification of additional direct PM<sub>2.5</sub> emission reductions estimated to be achieved in the Portola nonattainment area in 2022, the year after the December 31, 2021, attainment date applicable to the Portola nonattainment area. CARB attributes these additional emission reductions to ongoing implementation of the Wood Stove Program and several other control measures and programs that will achieve PM<sub>2.5</sub> emission reductions beyond those emission reductions necessary for attainment by the December 31, 2021 attainment date, including increased participation in a voluntary curtailment program outside of the City of Portola and the District’s

disbursement of 2019 Targeted Airshed Grant funds to weatherize 30 homes in the Portola nonattainment area.<sup>42</sup> CARB estimates that the emission reductions that will result from implementation of these other measures and programs, together with the emission reductions that would result from implementation of the contingency measure in City Ordinance No. 359, will achieve a total of 0.0087 tpd of direct PM<sub>2.5</sub> reductions in 2022.

### B. Additional Revisions in City Ordinance No. 359

The District implements open burning requirements in NSAQMD rules 300–317 that apply to a variety of area sources such as agricultural burning, forest burning, range improvement, and residences.<sup>43</sup> Neither these rules nor City Ordinance No. 344, however, restrict the open burning of yard waste. City Ordinance No. 359 contains a new prohibition on the open burning of yard waste, related definitions, and limited exemptions. These provisions are not part of the contingency measure element of City Ordinance No. 359 but supplement the existing PM<sub>2.5</sub> control strategy in the Portola nonattainment area. Specifically, City Ordinance No. 359 contains the following new provisions:

- Definitions of the terms “debris,” “open burning,” “recreational fire,” and “yard waste” (section 15.10.020);
- A provision that bans all open burning of yard waste and debris within Portola, except as otherwise authorized in section 15.10.026 (section 15.10.025); and
- Provisions to exempt three types of burning activities from the ban on open burning: Certain open outdoor fires used only for cooking or for recreation, “training burns” permitted in advance by the Fire Chief and the District, and certain health- and safety-related burning activities for which the Fire Chief and the District have issued special burn permits (section 15.10.026).

City Ordinance No. 359 would also renumber the following provisions: Section 15.10.080 (Outdoor Wood-Fired Boiler Installation Prohibited), located at section 15.10.070 in City Ordinance No. 344; section 15.10.090 (Wood Stove Retailers/Contractors Required to Provide Educational Materials), located at section 15.10.080 in City Ordinance No. 344; and numerous definitions in section 15.10.020. These renumbering revisions would not affect the substance of these provisions.

<sup>32</sup> Portola PM<sub>2.5</sub> Plan, 72–74 (section VI.B, “Contingency Measure”). The EPA did not act on the contingency measure element of the Portola PM<sub>2.5</sub> Plan as part of its March 25, 2019 final action (84 FR 11208).

<sup>33</sup> Portola PM<sub>2.5</sub> Plan, 73.

<sup>34</sup> City Ordinance No. 344, section 15.10.060.

<sup>35</sup> Id.

<sup>36</sup> Portola PM<sub>2.5</sub> Plan, 74.

<sup>37</sup> Upon the EPA’s final approval of City Ordinance No. 359, this ordinance (excluding paragraph 15.10.060(B) and sections 15.10.100 and 15.10.110) will entirely replace City Ordinance No. 344 in the SIP. NSAQMD, Resolution 2020–09 (October 26, 2020), 4 (para. 9).

<sup>38</sup> City Ordinance No. 359, section 15.10.070.

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> CARB Staff Report, 9 (Table 6).

<sup>42</sup> CARB Staff Report, 10–13.

<sup>43</sup> The EPA approved NSAQMD rules 300 to 317 into the SIP on September 16, 1997 (62 FR 48480) and August 19, 1999 (64 FR 45170).

### C. EPA Evaluation

Section 172(c)(9) of the CAA and EPA regulations require states to include contingency measures in nonattainment area plans to address potential failure to achieve RFP milestones, failure to meet requirements concerning quantitative milestones, and failure to attain the NAAQS by the applicable attainment date. For purposes of evaluating the contingency measure element of the Proposed PM<sub>2.5</sub> Plan Revision, we find it useful to distinguish between contingency measures to address potential failure to attain the NAAQS (“attainment contingency measures”) and contingency measures to address potential failure to achieve RFP milestones or to meet quantitative milestone requirements (“RFP contingency measures”).

#### 1. Contingency Measure Element of Portola PM<sub>2.5</sub> Plan

The Portola PM<sub>2.5</sub> Plan, as submitted February 28, 2017, identifies the mandatory curtailment provision in SIP-approved City Ordinance No. 344 as an attainment contingency measure and identifies a District “policy” to incentivize the replacement of older wood stoves with only pellet stoves, propane stoves, or wood stoves meeting the “Step 2” emission limits in the EPA’s NSPS for wood heating devices as an RFP contingency measure.<sup>44</sup>

The mandatory curtailment provision in section 15.10.060 of City Ordinance No. 344 does not qualify for use as a contingency measure under CAA section 172(c)(9) because City Ordinance No. 344 is a SIP-approved component of the attainment control strategy in the Portola PM<sub>2.5</sub> Plan.<sup>45</sup> Additionally, because this provision takes effect on January 1, 2021, before the December 31, 2021 attainment date and October 15, 2022 RFP milestone date applicable to the area, this measure is an already implemented measure that cannot be used to comply with the section 172(c)(9) contingency measure requirement under the Ninth Circuit’s decision in *Bahr*.

The District’s described “policy” for incentivizing the replacement of older wood burning devices with cleaner residential heating devices also does not qualify for use as a contingency measure under CAA section 172(c)(9) because it is not a fully adopted rule or control measure that is ready to be implemented

quickly upon being triggered and does not specify the timeframe within which its requirements would take effect following any of the EPA determinations specified in 40 CFR 51.1014(a).

Thus, the contingency measure element of the Portola PM<sub>2.5</sub> Plan, as submitted February 28, 2017, fails to satisfy the requirements for contingency measures in CAA section 172(c)(9) and 40 CFR 51.1014.

#### 2. Revised Contingency Measure for Attainment Purposes

City Ordinance No. 359 contains a new contingency measure that revises and supplements the contingency measure element of the Portola PM<sub>2.5</sub> Plan. The new provision, in section 15.10.070 of City Ordinance No. 359, would increase the stringency of the mandatory curtailment provision in section 15.10.060 of SIP-approved City Ordinance No. 344 by lowering the threshold at which the District will declare a mandatory curtailment from 30 µg/m<sup>3</sup> to 20 µg/m<sup>3</sup> and by extending the period during which the District may declare such mandatory curtailments from four months (January to December) to eight months (September to April).<sup>46</sup> This revised contingency measure would satisfy the requirements of CAA section 172(c)(9) and 40 CFR 51.1014 because it: (i) Would take effect without significant further action by the State or the EPA, if the EPA makes any of the four determinations listed in 40 CFR 51.1014(a); (ii) would consist of control requirements not otherwise included in the attainment control strategy for the Portola nonattainment area; and (iii) would specify the timeframe within which it becomes effective following any of the EPA determinations listed in 40 CFR 51.1014(a).

We also considered the adequacy of the contingency measure from the standpoint of the magnitude of emission reductions the measure would provide if triggered. Neither the CAA nor the EPA’s implementing regulations for the PM<sub>2.5</sub> NAAQS establish a specific amount of emission reductions that implementation of contingency measures must achieve, but we generally expect that contingency measures should provide for emission reductions approximately equivalent to one year’s worth of RFP. For the 2012 PM<sub>2.5</sub> NAAQS in the Portola nonattainment area, one year’s worth of reductions needed for RFP is

approximately 0.0085 tpd of direct PM<sub>2.5</sub> reductions.<sup>47</sup>

The CARB Staff Report contains the State’s quantification of the emission reductions anticipated from implementation of section 15.010.070 of City Ordinance No. 359. The State estimates that lowering the curtailment threshold to 20 µg/m<sup>3</sup> and extending the potential curtailment period by four months would reduce PM<sub>2.5</sub> emissions by an additional 0.0024 tpd in 2022, the year after the attainment year for the 2012 PM<sub>2.5</sub> NAAQS in the Portola nonattainment area.<sup>48</sup> This estimated reduction in emissions from the contingency measure alone does not achieve one year’s worth of RFP for the Portola nonattainment area. However, in the Proposed PM<sub>2.5</sub> Plan Revision CARB provides the larger SIP planning context in which to judge the adequacy of the contingency measure by identifying surplus direct PM<sub>2.5</sub> reductions estimated to be achieved in 2022 from other measures. The surplus emission reductions result from already implemented measures and programs, including the ongoing implementation of the Wood Stove Program (0.0059 tpd), increased participation in a voluntary curtailment program outside of the City of Portola (0.0007 tpd), and the District’s disbursement of 2019 Targeted Airshed Grant funds to weatherize 30 homes in the Portola nonattainment area (0.0002 tpd).<sup>49</sup> Because these surplus emission reductions result from already implemented measures, they cannot themselves constitute contingency measures. However, these measures provide additional reductions that CARB believes may be taken into consideration when evaluating the adequacy of the emission reductions from the contingency measure. CARB estimates that these other control measures and programs, together with the contingency measure in City Ordinance No. 359, would achieve a total of 0.0087 tpd of direct PM<sub>2.5</sub> reductions in 2022.

We have reviewed the State’s emission reduction estimates for 2022, as shown in the CARB Staff Report, and find the calculations reasonable. We therefore agree with the State’s conclusion that ongoing implementation of the measures and programs identified by the State in the CARB Staff Report

<sup>44</sup> Portola PM<sub>2.5</sub> Plan, 74.

<sup>45</sup> 83 FR 64774, 64780–64784 (December 18, 2018) (describing City Ordinance No. 344 and other control measures in the Portola PM<sub>2.5</sub> Plan as RACM and additional reasonable measures for the 2012 PM<sub>2.5</sub> NAAQS).

<sup>46</sup> Compare City Ordinance No. 359, section 15.10.070 with City Ordinance No. 344, section 15.10.060.

<sup>47</sup> Portola PM<sub>2.5</sub> Plan, 73 (Table 19).

<sup>48</sup> CARB Staff Report, 9 (Table 6).

<sup>49</sup> CARB Staff Report, 10–13. These emission reductions are surplus to those relied upon in the control strategy for attaining the 2012 PM<sub>2.5</sub> NAAQS in the Portola PM<sub>2.5</sub> Plan because they occur after the December 31, 2021 attainment date and/or will be achieved through implementation of measures adopted after the Plan’s adoption.

provides surplus emission reductions beyond those necessary to demonstrate attainment by the December 31, 2021, Moderate area attainment date for the 2012 annual PM<sub>2.5</sub> NAAQS in the Portola nonattainment area. While such surplus emission reductions from already implemented measures in the year after the 2021 attainment year cannot constitute contingency measures themselves, we consider them relevant in evaluating the adequacy of the emission reductions that will result from the contingency measure that CARB has proposed to adopt in order to meet the requirements of section 172(c)(9). In light of the ongoing reductions in emissions of direct PM<sub>2.5</sub> achieved by the District measures and programs identified in the CARB Staff Report, the emission reductions from the District contingency measure (*i.e.*, section 10.050.070 of City Ordinance No. 359) would be sufficient to meet the attainment contingency measure requirement for the 2012 PM<sub>2.5</sub> NAAQS, even though the measure would achieve emission reductions less than one year's worth of RFP.

### 3. Revised Contingency Measure for RFP and Quantitative Milestone Purposes

The applicable quantitative milestone dates for the 2012 PM<sub>2.5</sub> NAAQS in the Portola nonattainment area are October 15, 2019 and October 15, 2022.<sup>50</sup> On May 5, 2019, CARB submitted the "Portola 2019 Quantitative Milestone Report" ("2019 QM Report") to the EPA.<sup>51</sup> The 2019 QM Report includes a certification from the Governor's designee that the 2019 quantitative milestone for the Portola PM<sub>2.5</sub> nonattainment area has been achieved and a demonstration that the adopted control strategy has been fully implemented. The 2019 QM Report also contains a demonstration of how the emission reductions achieved to date compare to those required or scheduled to meet RFP. The State and District conclude in the 2019 QM Report that the emission reductions needed to demonstrate RFP have been achieved and that the 2019 quantitative milestone has been met in the Portola nonattainment area. On November 3, 2020, the EPA determined that the 2019 QM Report was adequate.<sup>52</sup>

<sup>50</sup> 40 CFR 51.1013(a)(1); see also 83 FR 64774, 64790 (December 18, 2018).

<sup>51</sup> Letter dated May 5, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, with enclosure.

<sup>52</sup> Letter dated November 3, 2020, from Deborah Jordan, Acting Regional Administrator, EPA Region IX, to Richard W. Corey, Executive Officer, CARB, regarding 2019 Quantitative Milestone Report for

Because the State and District have demonstrated that the Portola nonattainment area has met its 2019 quantitative milestones, RFP contingency measures for the 2019 milestone year are no longer needed. The sole purpose of RFP contingency measures is to provide continued progress if an area fails to meet its RFP or quantitative milestone requirements. Failure to meet RFP or quantitative milestone requirements for 2019 would have required California to implement an RFP contingency measure.<sup>53</sup> In this case, however, the 2019 QM Report demonstrates that actual emission levels in 2019 were consistent with the approved 2019 RFP milestone year targets for direct PM<sub>2.5</sub> in the Portola PM<sub>2.5</sub> Plan and that the adopted control strategy is being implemented as scheduled. Accordingly, RFP contingency measures for 2019 no longer have meaning or purpose, and the EPA proposes to find that the requirement for them is now moot as applied to the Portola nonattainment area.

With respect to the 2022 RFP milestone year, the contingency measure in section 10.050.070 of City Ordinance No. 359 would take effect if the EPA determines that the area has failed to meet a requirement concerning RFP or quantitative milestones<sup>54</sup> but would not, by itself, be sufficient to achieve emission reductions equivalent to one year's worth of RFP. The CARB Staff Report, however, states that continued implementation of the existing wood-stove changeout program together with several new measures and programs will result in surplus PM<sub>2.5</sub> emission reductions in the 2022 RFP milestone year and in 2023.<sup>55</sup> These measures and programs include a chimney sweep voucher program, additional weatherization of homes, wood sheds for households in the nonattainment area to keep firewood dry, and the provision of a reliable and affordable supply of seasoned wood.<sup>56</sup> The CARB Staff Report states that funds awarded to the District from the EPA's 2018 and 2019/2020 Targeted Airshed Grants will ensure continuous

the 2012 annual PM<sub>2.5</sub> National Ambient Air Quality Standards.

<sup>53</sup> Under section 189(c)(3) of the CAA, if a state fails to submit a required quantitative milestone report or the EPA determines that the area has not met an applicable milestone, the EPA must require the state, within nine months after such failure or determination, to submit a plan revision that assures that the state will achieve the next milestone (or attain the NAAQS, if there is no next milestone) by the applicable date.

<sup>54</sup> City Ordinance No. 359, section 10.050.070.

<sup>55</sup> CARB Staff Report, 14–15.

<sup>56</sup> *Id.*

education, outreach, and implementation and enforcement of these and additional programs designed to further reduce PM<sub>2.5</sub> emissions in the Portola nonattainment area after 2022.<sup>57</sup> In light of these ongoing and additional reductions in emissions of direct PM<sub>2.5</sub>, the emission reductions from the District's contingency measure (*i.e.*, section 10.050.070 of City Ordinance No. 359) would be sufficient to meet the 2022 RFP contingency measure requirement for the 2012 PM<sub>2.5</sub> NAAQS, even though the measure would achieve emission reductions less than one year's worth of RFP for the area.

We note that if the EPA determines that the Portola nonattainment area has failed to attain the 2012 PM<sub>2.5</sub> NAAQS by the December 31, 2021 attainment date and thereby triggers the contingency measure provision in section 10.050.070 of City Ordinance No. 359, the State would be required to submit a replacement contingency measure to address the 2022 milestone date. However, timely submittal of a quantitative milestone report for the 2022 milestone date would, if found adequate by the EPA, moot the contingency measure requirement for this milestone date.

### 4. Additional Revisions in City Ordinance No. 359

The new prohibition on the open burning of yard waste, related definitions, and limited exemptions in City Ordinance No. 359 are clear and the monitoring, recordkeeping, reporting and other provisions in the ordinance ensure that affected sources and regulators can consistently evaluate and determine compliance with these additional provisions. These revisions are therefore consistent with CAA requirements regarding enforceability.

Additionally, these new provisions in City Ordinance No. 359 comply with CAA section 110(l) because they strengthen the SIP by adding new requirements for the control of PM<sub>2.5</sub> emissions from open burning activities in the Portola nonattainment area and would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the CAA. Section 193 does not apply to this action because City Ordinance No. 359 does not modify a control requirement in effect before November 15, 1990.<sup>58</sup> We are not evaluating the

<sup>57</sup> *Id.*

<sup>58</sup> City Ordinance No. 359 modifies a control requirement that the EPA approved into the SIP on March 5, 2018 (83 FR 9213) (approving City Ordinance No. 344 into SIP). Upon the EPA's final approval of City Ordinance No. 359 into the SIP, this ordinance (excluding paragraph 15.10.060(B)

stringency of these provisions for compliance with specific CAA control standards at this time and will do so as part of our action on any subsequently submitted attainment plan for the Portola nonattainment area, as appropriate.<sup>59</sup>

The District has excluded from the SIP submission paragraph 15.10.060(B) and sections 15.10.100 and 15.10.110 of City Ordinance No. 359 regarding penalties and violations.<sup>60</sup> These paragraphs are not necessary for SIP approval and could lead to confusion with respect to similar Federal requirements set forth in CAA section 113.

## VI. Proposed Actions and Request for Public Comment

The EPA is proposing to approve the contingency measure element of the Portola PM<sub>2.5</sub> Plan, as revised and supplemented by the Proposed PM<sub>2.5</sub> Plan Revision, as meeting the contingency measure requirements of CAA section 172(c)(9) and 40 CFR 51.1014 for the 2012 annual PM<sub>2.5</sub> NAAQS in the Portola nonattainment area. Our proposed approval is contingent upon the State's submission of the final, adopted PM<sub>2.5</sub> Plan Revision in time for the EPA to finalize this action by March 1, 2021, our court-ordered deadline for taking final action on the contingency measure element of the Plan. The EPA also proposes to find that the requirement for RFP contingency measures for the 2019 milestone date is moot as applied to the Portola nonattainment area, because the State's and District's 2019 QM Report adequately demonstrates that the emission reductions needed to demonstrate RFP have been achieved and that the 2019 quantitative milestone has been met in the Portola nonattainment area.

The EPA is proposing, in the alternative, to disapprove the contingency measure element of the Portola PM<sub>2.5</sub> Plan, as submitted February 28, 2017 (section VI.B of the

and sections 15.10.100 and 15.10.110) will entirely replace City Ordinance No. 344. NSAQMD, Resolution 2020–09 (October 26, 2020), 4 (para. 9).

<sup>59</sup>The EPA previously determined that the Portola PM<sub>2.5</sub> Plan contains all RACM necessary for expeditious attainment of the 2012 PM<sub>2.5</sub> NAAQS by the December 31, 2021 Moderate area attainment date. 84 FR 11208 (March 25, 2019). If the EPA determines that the Portola nonattainment area has failed to attain the NAAQS by this date, the area will be reclassified as a Serious area, and the State will be required to submit a revised attainment plan for the area that provides for the implementation of best available control measures (BACM) within four years after such reclassification. CAA sections 188(b)(2) and 189(b)(1)(B).

<sup>60</sup>NSAQMD, Resolution 2020–09 (October 26, 2020), 3 (paragraphs. 6, 7).

Plan), if the State fails to adopt and submit the PM<sub>2.5</sub> Plan Revision in time for the EPA to take final action by March 1, 2021, because the contingency measure element of the Plan as submitted February 28, 2017, fails to satisfy the contingency measure requirements in CAA section 172(c)(9) and 40 CFR 51.1014.

If we finalize the proposed disapproval, the offset sanction in CAA section 179(b)(2) would apply in the Portola PM<sub>2.5</sub> 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 would apply unless we take final action to approve SIP revisions that meet the relevant CAA requirements prior to the time the sanctions would take effect. In addition to the sanctions, CAA section 110(c) provides that the EPA must promulgate a Federal implementation plan addressing the deficiency that is the basis for a disapproval, two years after the effective date of the disapproval, unless we have approved a revised SIP submission correcting the deficiency before that date.

Finally, the EPA is proposing to approve the new provisions in City Ordinance No. 359 concerning open burning of yard wastes and other debris, including related definitions and exemptions. These provisions strengthen the SIP and are consistent with CAA requirements regarding enforceability and SIP provisions. At the State's and District's request, we are not acting on paragraph 15.10.060(B), section 15.10.100, or section 15.10.110 of City Ordinance No. 359.

We will accept comments from the public on these proposals for the next 30 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this preamble.

## VII. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the CARB measure described in Section II of this preamble (City Ordinance No. 359). The EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve, or conditionally approve, state plans 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
  - Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
  - 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 the 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, the SIP is not approved to apply on any Indian reservation land

or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: November 17, 2020.

**John Busterud,**

*Regional Administrator, Region IX.*

[FR Doc. 2020-26648 Filed 12-2-20; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2020-0106]

RIN 2127-AM15

#### Framework for Automated Driving System Safety

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** NHTSA is requesting comment on the development of a framework for Automated Driving System (ADS) safety. The framework would objectively define, assess, and manage the safety of ADS performance while ensuring the needed flexibility to enable further innovation. The Agency is seeking to draw upon existing Federal and non-Federal foundational efforts and tools in structuring the framework as ADS continue to develop. NHTSA seeks specific feedback on key components that can meet the need for motor vehicle safety while enabling innovative designs, in a manner consistent with agency authorities.

**DATES:** Written comments are due no later than February 1, 2021.

**ADDRESSES:** Comments must refer to the docket number above and be submitted by one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9322 before coming.

- *Fax:* 202-493-2251.

Regardless of how you submit your comments, you must include the docket number identified in the heading of this document.

Note that all comments received, including any personal information provided, will be posted without change to <http://www.regulations.gov>. Please see the "Privacy Act" heading below.

You may call the Docket Management Facility at 202-366-9322. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. To be sure someone is there to help you, please call (202) 366-9322 before coming. We will continue to file relevant information in the Docket as it becomes available.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>.

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

#### FOR FURTHER INFORMATION CONTACT:

For legal issues, Sara R. Bennett, Attorney-Advisor, Vehicle Rulemaking and Harmonization, Office of Chief Counsel, 202-366-2992, email [Sara.Bennett@dot.gov](mailto:Sara.Bennett@dot.gov).

For research issues, Lori Summers, Director, Office of Vehicle Crash Avoidance and Electronic Controls Research, telephone: 202-366-4917, email [Lori.Summers@dot.gov](mailto:Lori.Summers@dot.gov).

For rulemaking issues, Tim J. Johnson, Acting Director, Office of

Crash Avoidance Standards, telephone 202-366-1810, email [Tim.Johnson@dot.gov](mailto:Tim.Johnson@dot.gov).

#### SUPPLEMENTARY INFORMATION:

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  - C. NHTSA Regulatory Activity To Remove Unintentional and Unnecessary Barriers to the Development and Deployment of ADS Vehicles
  - D. Need for a Safety Framework, Including Implementation and Oversight Mechanisms, for Federal Efforts To Address ADS Performance
- III. Safety Framework—Core Elements, Potential Approaches, and Current Activities
  - A. Engineering Measures—Core Elements of ADS Safety Performance
    1. Core ADS Safety Functions
    2. Other Safety Functions
    3. Federal Engineering Measure Development Efforts
    4. Other Notable Efforts Under Consideration as Engineering Measures
  - B. Process Measures—Safety Risk Minimization in the Design, Development, and Refinement of ADS
    1. Functional Safety
    2. Safety of the Intended Functionality
    3. UL 4600
- IV. Safety Framework—Administrative Mechanisms for Implementation and Oversight
  - A. Voluntary Mechanisms
    1. Safety Self-Assessment and Other Disclosure/Reporting
    2. New Car Assessment Program (NCAP)
    3. Operational Guidance
  - B. Regulatory Mechanisms
    1. Mandatory Reporting and/or Disclosure
    2. NHTSA's FMVSS Setting Authority
    3. Applying the Established FMVSS Framework to ADS Safety Principles
    4. Reforming How NHTSA Drafts New FMVSS To Keep Pace With Rapidly Evolving Technology
    5. Examples of Regulatory Approaches
  - D. Timing and Phasing of FMVSS Development and Implementation
  - E. Critical Factors Considered in Designing, Assessing, and Selecting Administrative Mechanisms
- V. Questions and Requests
- VI. Preparation and Submission of Written Comments
- VII. Regulatory Notices

#### I. Executive Summary

Over the past several years, NHTSA has published numerous research reports, guidance documents, advance notices of proposed rulemakings, and, on March 30, 2020 (85 FR 17624), a notice of proposed rulemaking relating to the development of vehicles equipped with Automated Driving Systems (ADS).<sup>1</sup> An ADS is the

<sup>1</sup> ADS, as defined by SAE International and as used in this document, refers to driving automation