Secretary for Regulation Policy and Management (ASRPM) and served as VA's Regulatory Policy Officer until the Deputy Secretary became VA's Regulatory Policy Officer in accordance with Executive Order 13422, which amended Executive Order 12866 (Regulatory Planning and Review) to require that position to be filled by a Presidential appointee. Subsequently, on June 10, 2008, the Secretary designated the General Counsel as the Department's Regulatory Policy Officer and transferred ORPM from the Office of the Secretary to the Office of the General Counsel (OGC). ORPM's name and mission remain the same, but that office is now in direct support of the General Counsel. The ASRPM has become OGC's Director for Regulation Policy and Management to assist the General Counsel in supervising VA's rulemaking process and VA's compliance with Executive Order 12866.

This document removes the Secretary's delegations of rulemaking authority to the ASRPM in 38 CFR 2.6(l) and adds provisions concerning rulemaking authority in the delegations of authority to the General Counsel in 38 CFR 2.6(e).

Administrative Procedure Act

This document pertains to agency organization and management. Accordingly, its publication as a final rule with no delay in its effective date is pursuant to 5 U.S.C. 553, which exempts such a document from the notice-and-comment and delayed-effective-date requirements of section 553.

Executive Order 12866

Because this document is limited to agency organization and management, it is not within the definition of ''regulation'' in section 3(d) of Executive Order 12866 and therefore not subject to that Executive Order's requirements for regulatory actions.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The initial and final regulatory flexibility analysis requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule, because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This amendment will not directly affect any small entities. Therefore, this amendment is also exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analysis requirements of sections 603–604.

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance program numbers for this rule.

List of Subjects in 38 CFR Part 2

Authority delegations (Government agencies).

Approved: February 24, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons set forth in the preamble, VA amends 38 CFR part 2 as follows:

PART 2—DELEGATIONS OF AUTHORITY

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729, 1729A, 5711; 44 U.S.C. 3702, and as noted in specific sections.

■ 2. Amend § 2.6 by:
■ a. Adding paragraph (e)(1).
■ b. Removing paragraph (l).

The addition reads as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

* * * * *

(e) * * *

(1) The General Counsel is delegated authority to serve as the Regulatory Policy Officer for the Department in accordance with Executive Order 12866. The General Counsel, Deputy General Counsel, and Director for Regulation Policy and Management are delegated authority to manage, direct, and coordinate the Department's rulemaking activities, including the revision and reorganization of regulations, and to perform all functions necessary or appropriate under Executive Order 12866 and other rulemaking requirements.

(Authority: 38 U.S.C. 501, 512)

* * * * *

[FR Doc. E9–5063 Filed 3–9–09; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0677; FRL–8770–1]

Approval and Promulgation of Implementation Plans; State of California; 2003 State Strategy and 2003 South Coast Plan for One-Hour Ozone and Nitrogen Dioxide

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve one state implementation plan (SIP) revision, and to approve in part and to disapprove in part a second SIP revision, submitted by the California Air Resources Board to provide for attainment of the one-hour ozone standard and maintenance of the nitrogen dioxide standard in the Los Angeles-South Coast Air Basin. The two SIP revisions include the 2003 State Strategy and the 2003 South Coast SIP, both of which were submitted on January 9, 2004.

With respect to the 2003 State Strategy, EPA is taking final action to approve the commitment by the State to develop and propose near-term defined measures sufficient to achieve specific emissions reductions in the South Coast and to continue implementation of an existing measure. With respect to the 2003 South Coast SIP, EPA is taking final action to approve certain elements, and to disapprove other elements. The plan elements that are being disapproved are not required under the Clean Air Act because they represent revisions to previously-approved SIP elements, and thus, the disapprovals will not affect the requirements for the State to have an approved SIP for these SIP elements. Therefore, the disapprovals do not trigger sanctions clocks nor EPA's obligation to promulgate a Federal implementation plan.

EPA is taking these actions under provisions of the Clean Air Act regarding EPA action on SIP submittals and plan requirements for nonattainment areas.

DATES: *Effective Date:* This rule is effective on April 9, 2009.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2008–0677 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (520) 622–1622, *tax.wienke@epa.gov*.

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

Table of Contents

I. Proposed Action

On October 24, 2008 (73 FR 63408), under the Clean Air Act (CAA or ''Act''), EPA proposed to approve one state implementation plan (SIP) revision, and to approve in part and to disapprove in part, a second SIP revision, submitted by the California Air Resources Board (ARB) to provide for attainment of the one-hour ozone national ambient air quality standard (NAAQS) and for maintenance of the nitrogen dioxide NAAQS in the Los Angeles-South Coast Air Basin Area (South Coast).[1] The two SIP revisions include the Final 2003 State and Federal Strategy (''2003 State Strategy'') and the 2003 revisions to the SIP for ozone and nitrogen dioxide in the South Coast Air Basin (''2003 South Coast SIP''),[2] both of which were submitted by ARB on January 9, 2004. These SIP revisions were developed in recognition of a need for additional emissions reductions to attain the one-hour ozone NAAQS than had been planned for in the late 1990s, and to establish new motor vehicle emissions budgets (MVEBs) for transportation conformity.

With respect to the 2003 State Strategy, we proposed to approve the commitments by ARB to develop and propose for adoption 15 near-term defined control measures, and the commitment by the California Bureau of Automotive Repair (BAR) to develop and propose one near-term defined control measure, sufficient to achieve specified emissions reductions in the South Coast. We also proposed to approve the continuation of the existing SIP pesticide strategy adopted by the California Department of Pesticide Regulation (DPR).

With respect to the 2003 South Coast SIP, we proposed to approve the base year and projected baseline emissions inventories, the South Coast Air Quality Management District's (District's or SCAQMD's) commitment to adopt and implement near-term stationary and mobile source control measures (with the exception of ''FSS–05—Mitigation Fee Program for Federal Sources'') and commitment to achieve aggregate emission reductions through a schedule of rule adoption and implementation, the District's contingency measure (''CTY–01—Accelerated Implementation of Control Measures''), the District's ''black box'' emission reduction commitment,[3] the vehicle emissions offset demonstration, and the nitrogen dioxide maintenance demonstration and related MVEBs.

Also, in connection with the 2003 South Coast SIP, we proposed to disapprove the District commitment to adopt one particular control measure (''FSS–05—Mitigation Fee Program for Federal Sources''); the ''black box'' emissions reduction assignment to EPA; the revised rate-of-progress (ROP) and attainment demonstrations; and the ozone MVEBs.

The primary rationale for proposing approval of certain control measures and the specific SIP elements described above is that they would strengthen the SIP by adding to, or updating, SIP elements previously approved by EPA. The reasons for proposing disapproval of the other specified elements of the 2003 South Coast SIP include incorrect ROP calculation methods and the withdrawal by ARB of the state emissions reductions commitments in the 2003 State Strategy that were relied upon in the 2003 South Coast SIP. In our proposed rule, we explained that no sanctions clocks or Federal implementation plan (FIP) requirement would be triggered by our disapprovals because the plan revisions that are the subject of the proposed disapprovals represent revisions to previously-approved SIP elements that EPA determined met the CAA requirements, and thus, the revisions are not required under the Act. For additional information, *please see* our October 24, 2008 proposed rule.

II. Public Comments

EPA's October 24, 2008 proposed rule provided a 30-day public comment period. We received comments dated November 17, 2008 from the Center on Race, Poverty & the Environment (CRP&E) on behalf of a number of environmental and community groups. CRP&E submitted additional comments by letter dated November 24, 2008. We also received comments from the Natural Resources Defense Council (NRDC) by letter dated November 24, 2008 that was followed shortly thereafter by a revised letter reflecting minor edits to the original letter. We summarize the comments and provide responses in the paragraphs below.

Comment: ARB's Executive Officer does not have the authority to withdraw certain portions of the 2003 State Strategy as it applies to the South Coast Air Basin and does not have the authority to withdraw the TCM portion of the 2003 South Coast AQMP. The withdrawal letter submitted by the Executive Officer cannot be approved by EPA because it was not subject to the notice and hearing requirements for SIPs under the CAA. Also, due to procedural deficiencies, EPA should not take into consideration the supplemental material submitted by the SCAQMD. EPA must act on the 2003 State Strategy and 2003 South Coast AQMP as submitted on January 9, 2004 and defer action on the subsequent withdrawals and supplemental material until such time as ARB completes the necessary public process.

Response: In our proposed rule, we describe in detail the letter from James Goldstene, ARB Executive Officer, dated February 13, 2008 (''February Goldstene Letter'') withdrawing several portions of the 2003 State Strategy that relate to the South Coast Air Basin. See 73 FR 63408, at 63410–63411. We also cite a second letter from the ARB Executive Officer, dated October 14, 2008 (''October Goldstene Letter''), that corrects an error in the February Goldstene Letter and

[1] The area referred to as ''Los Angles-South Coast Air Basin'' (South Coast Air Basin or ''South Coast'') includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. For a precise description of the boundaries of the Los Angeles-South Coast Air Basin, *see* 40 CFR 81.305.

[2] The ''2003 South Coast SIP'' refers to the January 9, 2004 submittal of the Final 2003 South Coast Air Quality Management Plan (AQMP) adopted by the SCAQMD on August 1, 2003, as modified by ARB through its resolution of adoption (Resolution 03–23) on October 23, 2003.

[3] ''Black box'' commitment refers to the provisions under CAA section 182(e)(5) that anticipate development of new control techniques or improvement of existing control technologies.

withdraws the TCM portion of the 2003 South Coast SIP. *Id.*

We acknowledge that our proposed action gives full effect to the two Goldstene letters cited above and thus we have proposed action only on those portions of the 2003 State Strategy and 2003 South Coast SIP that remain post-withdrawal. From the standpoint of CAA procedural requirements, we find nothing in the CAA that prevents states from withdrawing SIPs or SIP revisions prior to EPA approval. To be sure, such withdrawals may lead to sanctions under the CAA depending on the circumstances of the submittal, but the Act does not prevent states from subjecting themselves to potential liability for failure to submit SIPs and SIP revisions if they so choose. Moreover, no public process is required for withdrawal, once again, prior to the time EPA acts to approve the submittal as part of the applicable SIP.

Once SIPs or SIP revisions have been approved by EPA, however, then a state must submit a request for a withdrawal of, or rescission of, for example, a portion of a SIP, and EPA must approve the request to effectively amend the SIP. In other words, a state's post-approval rescission is considered a SIP revision, and subject to CAA public process procedural requirements, whereas a state's pre-approval rescission is not considered a SIP revision and takes effect upon receipt by EPA regardless of the procedure that was followed so long as the procedure for withdrawal is consistent with state law. In this instance, we had not approved the portions of the 2003 State Strategy and the 2003 South Coast SIP that the Goldstene letters purport to withdraw and thus we gave the letters full effect under the belief that the ARB Executive Officer had the authority under State law to make the subject withdrawals.

As to the challenge by the commenters to the authority of the ARB Executive Officer under State law to withdraw portions of the 2003 State Strategy and 2003 South Coast SIP, we take note of a letter dated March 26, 2008 from Mary D. Nichols, chairperson of the ARB (''Nichols Letter''), to various environmental organizations defending the Executive Officer's authority to make the withdrawals set forth in the February Goldstene Letter. In the Nichols Letter, the chairperson of the ARB explains: ''California Health & Safety Code §§ 39515 and 39516 empower the Executive Officer to act on behalf of the Board, and provide that any power that the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer, unless the Board specifically has reserved that power for the Board's own action. Withdrawal of still-pending SIP submittals is not among the powers the Board has reserved for itself.'' As to the specific Board language in the resolution of adoption for the 2003 South Coast SIP, the Nichols Letter explains: ''Moreover, the language of Resolution 03–23 * * * does not constitute such a reservation of powers. Resolution 03–23 directs the Executive Officer to take certain actions in 2003, which the Executive Officer did at that time. Resolution 03–23 does not prohibit the Executive Officer from taking different actions in 2008 when warranted by changed circumstances, which in this case is a logical administrative action to follow the Board's adoption of the new 2007 strategy.'' For the proposed rule, we reviewed the citations in the California Heath & Safety Code and the relevant provisions in ARB resolutions 03–22 and 03–23, adopting the 2003 State Strategy and 2003 South Coast SIP, respectively, and found the Nichols Letter to be a reasonable interpretation of California law. We continue to believe that the ARB Executive Officer acted in a manner consistent with State law in withdrawing the SIP submittal elements set forth in the February Goldstene Letter and that we took into account the subject withdrawals appropriately. The same holds true also for the withdrawal of the TCM element in the 2003 South Coast SIP in the October Goldstene Letter.

Lastly, a commenter challenges EPA's reliance on a September 10, 2008 letter from Elaine Chang, DrPH, Deputy Executive Officer, SCAQMD (''Chang Letter''), because it had not been subject to the public notice, hearing and adoption process required for SIP submittals. We describe the contents of the Chang Letter on page 63417 of the proposed rule as ''supplemental motor vehicle emissions data drawn largely from emissions inventory estimates presented in appendix III of the 2003 South Coast AQMP.'' We agree generally that amendments by a state to submitted SIPs (as opposed to withdrawals thereof) must undergo the necessary public process prior to submittal to meet CAA procedural requirements, but, in this instance, the supplemental information provided in the Chang Letter simply collects in a single table certain emissions data that had already been subject to the required public process and estimates certain other values through simple interpolation. Because we find that the underlying emissions data included in the Chang Letter were subject to the necessary public process, we continue to believe that reliance on the Chang Letter as support for the conclusion that the 2003 South Coast SIP meets the TCM offset requirement under CAA section 182(d)(1)(A) is appropriate.

Comment: EPA must ensure that the 2003 South Coast AQMP provides for attainment of the 1-hour ozone NAAQS and cannot simply rely on previous approvals because existing commitments to achieve certain emissions reductions have not come to fruition and because the new inventory shows that the plan does not provide sufficient emissions reductions to attain the standard by 2010. Furthermore, ambient data for year 2008 already shows that the South Coast will not attain the 1-hour ozone standard by 2010. EPA must ensure that there is a viable path to reaching the 1-hour ozone standard.

Response: We had a responsibility to ensure that the South Coast had a viable path to attainment for the 1-hour ozone NAAQS. In 1997 (62 FR 1150, January 9, 1997), and then again in 2000 (65 FR 18903, April 10, 2000), we fulfilled that responsibility through our final rulemaking actions approving South Coast attainment demonstrations for the 1-hour ozone NAAQS. Our final approvals of the attainment demonstrations for the South Coast were based on the best information available at the time.

As to unfulfilled commitments, we believe that a state is required to fulfill its commitments that have been approved into the SIP, but failure by a state to do so is a separate issue from our action on the 2003 State Strategy and 2003 South Coast SIP and does not trigger a requirement to prepare a new plan. Further, we note that, absent a commitment by a state such as a mid-course correction or an action by EPA such as a ''SIP call'' under CAA section 110(k)(5), a state is not required to submit a new attainment demonstration to account for changed circumstances, such as new technical information reflected in the emissions estimates in the 2003 South Coast SIP or the ambient ozone concentration data from 2008.[4]

[4] In support of the statement that the South Coast Air Basin will not attain the 1-hour ozone NAAQS by 2010, the commenter attached tables containing ARB summaries of preliminary 2008 ozone monitoring data from five sites in the South Coast: Asuza, Glendora-Laurel, Crestline, Santa Clarita, and Perris. The summary tables submitted by the commenter highlight exceedance-days relative to the more stringent state 1-hour ozone standard (0.09 ppm) rather than the federal 1-hour ozone standard (0.12 ppm). The data shows that the number of days during which hourly ozone concentrations equaled or exceeded 0.125 ppm (i.e., exceedance-days for the revoked federal 1-hour ozone standard) at the

Lastly, we agree that EPA must ensure a viable path to attainment, and previously did so for the 1-hour ozone NAAQS in the South Coast, but EPA's responsibility at the present time is to ensure that states adopt viable paths toward attainment of the 8-hour NAAQS, rather than the revoked 1-hour ozone NAAQS, and EPA will fulfill its obligations in this respect through review and action on submitted 8-hour ozone SIPs. For the South Coast, EPA is currently reviewing the 2007 South Coast AQMP to ensure that it meets all applicable requirements for demonstrating attainment of the 8-hour ozone NAAQS. By this, we do not mean to suggest that attainment of, or failure to attain, the revoked 1-hour ozone standard by the applicable attainment date is irrelevant. Indeed, failure to attain the 1-hour ozone standard, in this case, by 2010 (or 2011 or 2012 if the South Coast qualifies for an extension), can lead to regulatory consequences (such as the imposition of fees under CAA section 185 and the implementation of contingency measures) that are triggered to prevent backsliding during the transition from a 1-hour ozone standard to the 8-hour ozone standard.

Comment: EPA improperly fails to require a transportation control measure (TCM) plan pursuant to CAA section 182(d)(1)(A). Specifically, EPA has improperly construed section 182(d)(1)(A) not to require offsets for the emissions increases attributable to the increase in vehicle miles traveled (VMT) since 1990 despite clear guidance contained in a related House Committee report included in the legislative history of the Clean Air Act Amendments of 1990. Also, EPA has also failed to assess the adequacy of the 2003 South Coast AQMP's compliance with section 182(d)(1)(A) against the additional statutory requirement that the SIP provide adequate enforceable TCMs sufficient to allow total area emissions to comply with reasonable further progress (RFP) and attainment requirements.

Response: CAA section 182(d)(1)(A), referred to herein as the TCM provision, requires a state to submit a SIP revision, for certain nonattainment areas such as the South Coast, that identifies and adopts specific enforceable transportation control strategies and TCMs to offset any growth in emissions from growth in VMT or numbers of vehicle trips in such areas and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements, to comply with ROP and attainment requirements. In our proposed rule, we indicate that ARB withdrew the TCM element of the 2003 South Coast SIP, and we conclude that compliance with the VMT offset requirement under CAA section 182(d)(1)(A) is shown in the 2003 South Coast SIP through supplemental material provided by SCAQMD showing a decline in motor vehicle emissions each year in the South Coast through the applicable attainment date (2010). *See* 73 FR 63408, at 63417 (October 24, 2008). EPA believes that it is appropriate to treat the three required elements of section 182(d)(1)(A) (i.e., offsetting growth, attainment of the ROP reduction, and attainment of the ozone NAAQS) as separable,[5] and while not stated as such in the proposed rule, our proposed approval in this instance relates only to the first element of CAA section 182(d)(1)(A) (i.e., offsetting growth). The second and third elements of CAA section 182(d)(1)(A) were satisfied in 1997 when we approved the 1994 South Coast AQMP's transportation control strategies and TCMs, such as TCM–1 (''Transportation Improvements''), which includes the capital and non-capital facilities, projects, and programs contained in the Regional Mobility Element and programmed through the Regional Transportation Improvement Program (RTIP) process to reduce emissions, in the same action in which we approved the South Coast ROP and attainment demonstrations. See 62 FR 1150, at 1180–1181 (January 8, 1997).

As to EPA's interpretation of the first element of CAA section 182(d)(1)(A), we point to the following excerpt on this subject from our General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (''General Preamble''):

> ''The EPA has received comment indicating that section 182(d)(1)(A) should be interpreted to require areas to offset any growth in VMT above 1990 levels, rather than offsetting VMT growth only when such growth leads to actual emissions increases. Under this approach, areas would have to offset VMT growth even while vehicle emissions are declining. Proponents of this interpretation cite language in the House Committee Report which appears to support the interpretation. The report states that '(t)he baseline for determining whether there has been growth in emissions due to increased VMT is the level of vehicle emissions that would occur if VMT held constant in the area.' (H.R. No. 101–490, part 1, 101st Cong. 2nd Sess., at 242).
>
> Although the statutory language could be read to require offsetting of any VMT growth, EPA believes that the language can also be read so that only actual emissions increases resulting from VMT growth need to be offset. The statute by its own terms requires offsetting of 'any growth in emissions from growth in VMT.' It is reasonable to interpret this language as requiring that VMT growth must be offset only where such growth results in emissions increases from the motor vehicle fleet in the area.
>
> While it is true that the language of the H.R. 101–490 appears to support the alternative interpretation of the statutory language, such an alternative interpretation would have drastic implications for many of the areas subject to this provision. Since VMT is growing at rates as high as 4 percent per year in some cities such as Los Angeles, these cities would have to impose draconian TCM's such as mandatory no-drive restrictions, to fully offset the effects of increasing VMT if the areas where [sic] forced to ignore the beneficial impacts of all vehicle tailpipe and alternative fuel controls.
>
> Although the original authors of the provision and H.R. 101–490 may in fact have intended this result, EPA does not believe the Congress as a whole, or even the full House of Representatives, believed at the time it voted to pass the CAAA that the words of this provision would impose such severe restrictions. There is no further legislative history on this aspect of the provision; it was not discussed at all by any member of the Congress during subsequent legislative debate and adoption.
>
> Given the susceptibility of the statutory language to these two alternative interpretations, EPA believes that it is the Agency's role in administering the statute to take the interpretation most reasonable in light of the practical implications of such

five sites cited by the commenter are as follows: Asuza (3), Glendora-Laurel (10), Crestline (16), Santa Clarita (8), and Perris (2). These numbers reflect substantial improvement in air quality in the South Coast Air Basin since the area's classification as an ''extreme'' nonattainment area for ozone under the 1990 Clean Air Act Amendments when the corresponding number of exceedance-days (year 1990) at these sites were as follows: Asuza (84), Glendora-Laurel (103), Crestline (103), Santa Clarita (62), and Perris (62).

The total number of exceedance-days per monitor over the 2008–2010 time period will determine if the area attains by 2010. However, CAA section 181(a)(5) allows EPA to approve up to two one-year extensions of the attainment date if all requirements and commitments have been complied with and if no more than one exceedance of the standard occurs in the year preceding the extension year. We will not know whether the South Coast Air Basin qualifies for the first one-year extension until the end of 2010.

[5] We believe that the three elements of section 182(d)(1)(A) are separable because of the timing problem created by Congress in requiring a TCM SIP to be submitted years before the broader SIP submittals, such as the ROP and attainment demonstration SIPs. The SIP submittals showing attainment of the 1996 15 percent ROP and the post-1996 RFP and NAAQS attainment demonstration are broader in scope than growth in VMT or in numbers of vehicle trips in that they necessarily address emissions trends and control measures for non motor vehicle emissions sources and, in the case of attainment demonstrations, involve complex photochemical modeling studies. It was neither practicable nor reasonable to expect that the subsequently required submissions could be developed and implemented so far ahead of schedule as to effectively influence the TCM SIP submission.

interpretation, taking into consideration the purposes and intent of the statutory scheme as a whole. In the context of the intricate planning requirements Congress established in title I to bring areas towards attainment of the ozone standard, and in light of the absence of any discussion of this aspect of the VMT offset provision by the Congress as a whole (either in floor debate or in the Conference Report), EPA concludes that the appropriate interpretation of section 182(d)(1)(A) requires offsetting VMT growth only when such growth would result in actual emissions increases.'' 57 FR 13498, at 13522–13523 (April 16, 1992).

For the reasons given in the General Preamble excerpt provided above, EPA believes that the first element of CAA section 182(d)(1)(A) requires states to adopt sufficient TCMs so that projected motor vehicle emissions, taking into account motor-vehicle-related emissions controls and growth in VMT, will never be higher during the ozone season in one year than during the ozone season in the year before, but that a state may comply with this provision through a demonstration of declining motor vehicle emissions each year through the attainment year rather than through submittal of TCMs.[6] Thus, we continue to accept the supplemental material submitted by letter dated September 10, 2008 from Elaine Chang, Deputy Executive Officer, SCAQMD, showing a decline in motor vehicle emissions each year in the South Coast through 2010, as a demonstration showing that the 2003 South Coast SIP meets the TCM offset requirement under CAA section 182(d)(1)(A).

Comment: Because conformity is still applicable under the 1-hour ozone standard and because the 8-hour ozone motor vehicle emissions budgets are less stringent than the 1-hour ozone budgets, EPA cannot allow the use of the former to serve as the conformity budgets for attainment of the 1-hour ozone standard.

Response: In our proposed rule, we proposed to disapprove the VOC and NO_X motor vehicle emissions budgets (MVEBs) for 1-hour ozone (''1-hour ozone MVEBs'') based on our proposed disapprovals of the one-hour ozone ROP and attainment demonstrations in the 2003 South Coast SIP. See 73 FR 63408, at 63418. We noted in our proposed rule that the 1-hour ozone MVEBs would not be used for conformity purposes even if we were to approve them because EPA has revoked the 1-hour ozone standard and transportation conformity determinations are no longer required for that air quality standard, and because we have already found 8-hour ozone MVEBs from the 2007 South Coast AQMP to be adequate for transportation conformity purposes. See 73 FR 63408, at 63418.

The commenter takes issue with our statement in the proposed rule that transportation conformity determinations are no longer required for the 1-hour ozone standard, citing the D.C. Circuit's decision in *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006), and with our conclusion that the 1-hour ozone MVEBs would not be used for conformity even if we approved them.

We agree that the D.C. Circuit's decision in the *South Coast* overruled EPA's decision that 1-hour ozone MVEBs do not constitute one of the ''applicable requirements'' that must be retained for anti-backsliding purposes during the transition from the 1-hour to the 8-hour ozone standard, but the regulatory impact of the *South Coast* ruling is not what the commenter believes. On June 8, 2007, the D.C. Circuit amended its opinion to limit the scope of its decision regarding continued application of the 1-hour ozone conformity obligation to clarify that the court's reference to conformity determinations speaks only to the use of 1-hour ozone MVEBs as part of 8-hour ozone conformity determinations until 8-hour ozone MVEBs are found adequate or are approved. See EPA memorandum from Robert J. Meyers, Acting Assistant Administrator, to Regional Administrators, dated June 15, 2007. The court thus clarified that 1-hour ozone conformity determinations are not required for anti-backsliding purposes. Therefore, the court's decision does not change the transportation conformity regulations in place before the court's ruling on December 22, 2006.

In this instance, the relevant transportation conformity regulations are the amendments to the conformity regulations that EPA promulgated to address conformity in nonattainment and maintenance areas for the 8-hour ozone NAAQS. See 69 FR 40004 (July 1, 2004) and also 73 FR 4420, at 4434 (January 24, 2008). Under the 2004 amendments to the transportation conformity rule, 8-hour MVEBs replace the existing 1-hour ozone MVEBs once the 8-hour MVEBs are found adequate or are approved. See 40 CFR 93.109(e)(1) and (2). In this instance, we found certain 8-hour ozone MVEBs in the 2007 South Coast AQMP (specifically, ROP milestone years 2008, 2011, 2014, 2017, and 2020) to be adequate for transportation conformity purposes. See 73 FR 28110 (May 15, 2008), as corrected at 73 FR 34837 (June 18, 2008). As a result of our finding, the U.S. Department of Transportation and the area's Metropolitan Planning Organization, the Southern California Association of Governments, must use the 8-hour ozone MVEBs, and may not use the 1-hour ozone MVEBs, for transportation conformity determinations.

Lastly, the commenter juxtaposes the 8-hour ozone MVEBs, that have been found adequate, with the 1-hour ozone MVEBs that the 8-hour MVEBs replaced, to show that the 8-hour ozone MVEBs in 2011 are higher than the 1-hour ozone MVEBs, and concludes therefore the EPA cannot allow use of the former to serve as the MVEBs for attainment of the 1-hour ozone standard. However, as discussed above, conformity need no longer be shown for the 1-hour ozone NAAQS, and 1-hour ozone MVEBs no longer apply once a finding of adequacy is made for 8-hour ozone MVEBs, a circumstance that applies to the South Coast.

Comment: EPA should disapprove the Pesticide Strategy portion of the 2003 State Strategy because of a recent Ninth Circuit Court of Appeals decision that held that a particular document that had supported EPA's approval of the original Pesticide Strategy in the 1994 California Ozone SIP was not a part of the California SIP and thus was unenforceable under provisions of the Clean Air Act.

Response: One of the State's original purposes in adopting the 2003 State Strategy was to entirely replace the existing State control strategy for the South Coast (primarily comprised by commitments from the approved 1994 Ozone SIP) with a new strategy that included three components: an annual adoption schedule for aggregate emissions reductions, defined measures, and a set of long-term commitments including aggregate long-term emissions reductions. See section I, chapter D, of the 2003 State Strategy. In this context, the State included PEST–1 (''Implement Existing Pesticide Strategy''), which simply retains the existing SIP commitment, into the list of defined measures for the sake of completeness to allow for the wholesale replacement of the existing strategy for the South Coast with the new strategy from the 2003 State Strategy.

As described in the proposed rule (73 FR 63408, at 63410–63411), however, the State withdrew several components of the new State Strategy as it relates to the South Coast, including the aggregate annual emissions reductions commitments and long-term

[6] EPA has previously discussed its interpretation of the section 182(d)(1)(A) requirement in our approval of the VMT offset plan for the Houston/Galveston ozone nonattainment area. *See* 66 FR 57247 (November 14, 2001).

commitments, leaving just the bare commitment to bring certain measures (listed in table 1 of our October 24, 2008 proposed rule) to the ARB's Board for any action within the Board's discretion and to implement the existing Pesticide Strategy. The withdrawal of key components of the new State Strategy eliminated any possibility for the wholesale replacement of the existing State strategy for the South Coast with the new strategy.

Given the changed circumstances, PEST–1 did not need any longer to be brought forward as part of the 2003 State Strategy, but because ARB did not specifically withdraw it, EPA had to propose action on it. We did so through a proposed approval. A footnote to table 1 (of the proposed rule) sets forth our interpretation of what approval of PEST–1 would mean: ''We interpret our approval of this measure as maintaining the status quo with respect to the existing pesticide strategy (i.e., the SIP will continue to reflect the strategy as approved by EPA in 1997).'' Furthermore, since disapproval of PEST–1 in the 2003 State Strategy would not act to rescind the existing Pesticide Strategy, approval or disapproval of PEST–1 amounts to the same thing: namely, the continuation of the existing EPA-approved Pesticide Strategy. Therefore, deficiencies in the enforceability of the Pesticide Element, whatever they might be, are the same whether EPA approves PEST–1 or disapproves PEST–1.

Comment: EPA should disapprove the State's commitments to adopt new measures because they are unenforceable.

Response: With the withdrawal of key components of the 2003 State Strategy, including the aggregate annual and long-term emissions reductions commitments for the South Coast, the State has left only the bare commitment to bring certain near-term measures (listed in table 1 of our October 24, 2008 proposed rule) to the ARB's Board (for any action within the Board's discretion) and to implement the existing Pesticide Strategy. We acknowledge the limited scope of the State's commitment, but do not find it to be entirely unenforceable. For instance, ARB staff must bring to the Board the measures listed in table 1 of the proposed rule (drawn from the 2003 State Strategy) consistent with the schedule set forth in table 1. Further, the ARB staff proposal for each measure must, at a minimum, achieve the lower end of a range of reductions. Failure by ARB to act accordingly is subject to enforcement under applicable provisions of the Act once EPA approves the commitment into the California SIP. We concluded in our proposed approval that the California SIP would be more effective with the commitment than without the commitment. We explained our rationale for proposing approval of the State defined measures as follows: ''Assuming that the remaining component of the 2003 State Strategy adds to, but does not replace, the existing SIP ozone strategy, we propose to approve the State commitments with respect to the near-term defined measures listed in table 1 as described above as strengthening the SIP.'' See 73 FR 63408, at 63414. On this limited basis, we take final action today to approve the State's near-term defined measures from the 2003 State Strategy as part of the California SIP.

III. EPA Action

Under section 110(k)(3) of the CAA, and for the reasons discussed above and in the proposed rule, EPA is taking the following actions on the 2003 State Strategy, as submitted on January 9, 2004:

(1) Approval of commitments by State agencies to develop and propose 16 near-term defined control measures (15 for ARB and 1 for BAR) to achieve specified emissions reductions in the South Coast as listed in table 1 of the proposed rule and the continuation of the existing pesticide strategy.

Also under section 110(k)(3) of the CAA, and for the reasons discussed above and in the proposed rule, EPA is taking the following actions on the 2003 South Coast SIP, as submitted on January 9, 2004:

(1) Approval of base year and projected baseline emission inventories under CAA sections 172(c)(3) and 182(a)(1);

(2) Approval of the District's commitment to adopt and implement near-term control measures as shown in table 2 of the proposed rule (except FSS–05), the District's commitment to achieve emissions reduction through a schedule of adoption and implementation as shown in table 3 of the proposed rule, and the District's contingency measure CTY–01 (''Accelerated Implementation of Control Measures''), as strengthening the SIP;

(3) Disapproval of District control measure FSS–05 (''Mitigation Fee Program for Federal Sources'') that assigns control measure responsibility to the Federal Government;

(4) Approval of District's ''black box'' VOC emission reduction commitment of 31 tpd;

(5) Disapproval of the ''black box'' emission reduction commitment of 68 tpd of NO_X and 18 tpd of VOC assigned to the Federal Government;

(6) Disapproval of the attainment demonstration because control measures upon which the demonstration relies have been withdrawn;

(7) Disapproval of the ROP demonstrations because the calculations do not properly account for the emissions reductions from the pre-1990 Federal Motor Vehicle Control Program (FMVCP) and certain federal gasoline volatility requirements;

(8) Approval of the demonstration that no TCM offsets are required under CAA section 182(d)(1)(A) based on baseline motor vehicle emissions projections as supplemented by the District;

(9) Approval of the revised nitrogen dioxide maintenance demonstration based on the downward trend in baseline NO_X emissions;

(10) Disapproval of the 1-hour ozone (VOC and NO_X) motor vehicle emissions budgets in the wake of proposed disapprovals of the ROP and attainment demonstrations; and

(11) Approval of the nitrogen dioxide motor vehicle emissions budget of 686 tpd (year 2003), winter planning inventory.

No sanctions clocks or FIP requirement are triggered by our disapprovals because the approved SIP already contains the plan elements that we are disapproving. A disapproval of the revisions to the already-approved elements does not alter the fact that the SIP already meets these statutory requirements.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

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

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

The Congressional Review Act, 5 U.S.C. section 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 rule 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. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *May 11, 2009.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 15, 2009.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by revising paragraph (c)(339) introductory text and by adding paragraph (c)(339)(ii) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(339) New and amended plans were submitted on January 9, 2004, by the Governor's designee.

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(ii) Additional material.

(A) The following portions of the Final 2003 State and Federal Strategy (2003 State Strategy) for the California State Implementation Plan, adopted by the California Air Resources Board (ARB) on October 23, 2003:

(*1*) State agency commitments with respect to the following near-term defined measures for the South Coast Air Basin: LT/MED–DUTY–1 [Air Resources Board (ARB)], LT/MED–DUTY–2 (Bureau of Automotive Repair), ON–RD HVY–DUTY–1 (ARB), ON–RD HVY–DUTY–3 (ARB), OFF–RD CI–1 (ARB), OFF–RD LSI–1 (ARB), OFF–RD LSI–2 (ARB), SMALL OFF–RD–1 (ARB), SMALL OFF–RD–2 (ARB), MARINE–1 (ARB), MARINE–2 (ARB), FUEL–2 (ARB), CONS–1 (ARB), CONS–2 (ARB), FVR–1 (ARB), FVR–2 (ARB), and PEST–1 (Department of Pesticide Regulation) in Resolution 03–22 Attachments A–2, A–3, A–4 and A–6 Table I–7 and in 2003 State Strategy Section I Appendix I–1 and Sections II and III.

(B) The following portions of the South Coast 2003 Air Quality Management Plan (AQMP), adopted by the South Coast Air Quality Management District (SCAQMD) on August 1, 2003 and adopted by the California Air Resources Board on October 23, 2003:

(*1*) Base year and future year baseline planning inventories (summer and winter) in AQMP Chapter III and Appendix III; SCAQMD commitment to adopt and implement control measures CTS–07, CTS–10, FUG–05, MSC–01, MSC–03, PRC–07, WST–01, WST–02, FSS–04, FLX–01, CMB–10, MSC–05, MSC–07, MSC–08, FSS–06, and FSS–07 in AQMP Chapter 4, Table 4–1, as qualified and explained in AQMP, Chapter 4, pages 4–59 through 4–61 and in Appendix IV–A Section 1, and SCAQMD commitments to achieve near-term and long-term emissions reductions through rule adoption and implementation in AQMP Chapter 4, Tables 4–8A and 4–8B; contingency measure CTY–01 in AQMP Chapter 9, Table 2 and in Appendix IV–A Section 2 (excluding FSS–05); nitrogen dioxide maintenance demonstration in AQMP Chapter 6 page 6–11; and motor vehicle emissions budget for nitrogen dioxide in year 2003 of 686 tons per day (winter planning inventory) in AQMP Chapter 6 Table 6–7.

(*2*) Letter from Elaine Chang, Deputy Executive Officer, South Coast Air Quality Management District, dated September 10, 2008, containing supplemental material related to on-road motor vehicles emissions.

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[FR Doc. E9–4593 Filed 3–9–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2005–0131; FRL–8779–6]

RIN 2060–AM46

Protection of Stratospheric Ozone: Recordkeeping and Reporting Requirements for the Import of Halon-1301 Aircraft Fire Extinguishing Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.