NAAQS for the Department. In support of this proposed action, we have concluded that our approval of the submitted 2015 ozone certification for the Department would comply with section 110(l) of the Act because our approval of the ozone certification will not interfere with continued attainment or maintenance of the NAAQS in the Department. Similarly, we find that the submitted revision is approvable under section 193 of the Act because it does not modify any control requirement in effect before November 15, 1990, without ensuring equivalent or greater emission reductions. The EPA has concluded that the State's submission fulfills the 40 CFR 51.1314 revision requirement and meets the requirements of CAA sections 110, 172(c)(5), 173, 182(a)(2)(C), 193, and the minimum SIP requirements of 40 CFR 51.165. If we finalize this action as proposed, our action will incorporate this certification into the federally enforceable SIP and be codified through revisions to 40 CFR 52.1470 (Identification of plan).

The EPA has made, and will continue to make, the State's submission and all other materials available electronically through *https://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). We will accept comments from the public on this proposal until March 4, 2024.

V. 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 state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

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 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).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

Dated: January 29, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–02088 Filed 2–1–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0626; FRL–11614–01–R9]

Air Plan Disapproval; California; Los Angeles-South Coast Air Basin; 1997 8-Hour Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove a state implementation plan (SIP) revision submitted by the State of California to meet a Clean Air Act (CAA) requirement for the 1997 8-hour ozone national ambient air quality standards (NAAQS or ''standards'') in the Los Angeles-South Coast Air Basin, California ozone nonattainment area (''South Coast''). This submission, titled ''Final Contingency Measure Plan—Planning for Attainment of the 1997 80 ppb 8-hour Ozone Standard in the South Coast Air Basin,'' (''Contingency Measure Plan'' or ''Plan''), addresses the CAA requirements for the submission of contingency measures that will be implemented if emissions reductions from anticipated technologies associated with the area's 1997 ozone NAAQS attainment demonstration are not achieved. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before March 4, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0626 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* 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 (audio, video, etc.) 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 the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability 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: Ginger Vagenas, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3964 or by email at *vagenas.ginger@epa.gov.*

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

Table of Contents

I. Background

A. Ozone Standards, Area Designations, and State Implementation Plans

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight.[1] These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on-road and nonroad motor vehicles and engines,[2] power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.[3]

Under section 109 of the CAA, the EPA promulgates NAAQS for pervasive air pollutants, such as ozone. The NAAQS establish concentration levels whose attainment and maintenance the EPA has determined to be requisite to protect public health and welfare. In 1979, the EPA established primary (public health-based) and secondary (welfare-based) NAAQS for ozone at 0.12 parts per million (ppm) averaged over a 1-hour timeframe (''1-hour ozone NAAQS'').[4] In 1997, the EPA revised the primary and secondary ozone NAAQS to set the acceptable level of ozone in the ambient air at 0.08 ppm averaged over an 8-hour timeframe (''1997 ozone NAAQS'').[5] The EPA further tightened the 8-hour ozone NAAQS to 0.075 ppm in 2008 (''2008 ozone NAAQS''),[6] and to 0.070 ppm in 2015 (''2015 ozone NAAQS'').[7] The EPA subsequently revoked the 1-hour ozone NAAQS [8] and the 1997 ozone NAAQS,[9] but has retained applicable requirements for anti-backsliding purposes for areas that remained designated as nonattainment for those standards at the time of revocation.[10]

Section 110 of the CAA requires states to develop and submit SIPs to implement, maintain, and enforce the NAAQS. States with nonattainment areas are required to submit revisions to their SIPs that include a control strategy and technical analysis to demonstrate how the area will attain the NAAQS by the applicable attainment date (referred to as an ''attainment demonstration''), and to meet other requirements according to each area's nonattainment classification. Under CAA section 181, the EPA classifies ozone nonattainment areas as ''Marginal,'' ''Moderate,'' ''Serious,'' ''Severe,'' or ''Extreme.''

The SIP revision that is the subject of this proposed action was submitted to address the contingency measures requirement of CAA section 182(e)(5) for the 1997 ozone NAAQS. Under this provision, states relying on the development of new control techniques or improvement of existing technologies (''new technology measures'') to demonstrate attainment in an Extreme nonattainment area must submit contingency measures to the EPA that will be implemented if the anticipated new technology measures do not achieve the planned reductions.[11]

B. The South Coast Ozone Nonattainment Area

The South Coast nonattainment area for the 1997 ozone NAAQS consists of Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. The South Coast encompasses an area of approximately 6,600 square miles and is bounded by the Pacific Ocean to the west and by the San Gabriel, San Bernardino, and San Jacinto mountains to the north and east.[12] The population of the South Coast is over 17 million people.[13]

The EPA has classified the South Coast as an ''Extreme'' nonattainment area for the 1-hour ozone NAAQS, 1997 ozone NAAQS, 2008 ozone NAAQS,

[1] The State of California refers to ''reactive organic gases'' (ROG) rather than VOC in some of its ozone-related SIP submissions. As a practical matter, ROG and VOC refer to the same set of chemical constituents, and for the sake of simplicity, we refer to this set of gases as VOC in this proposed rule.

[2] The EPA's definition of ''nonroad engine'' is found at 40 CFR 1068.30. The State of California uses the term ''off-road'' instead of ''nonroad.'' The terms are interchangeable.

[3] ''Fact Sheet—Final Revisions to the National Ambient Air Quality Standards for Ozone,'' dated March 2008, available at *https://www.epa.gov/sites/default/files/2015-08/documents/ozone_fact_sheet.pdf.*

[4] 44 FR 8202 (February 8, 1979).

[5] 62 FR 38856 (July 18, 1997).

[6] 73 FR 16436 (March 27, 2008)

[7] 80 FR 65292 (October 26, 2015).

[8] 70 FR 44470 (August 3, 2005).

[9] 80 FR 12264 (March 6, 2015).

[10] 40 CFR 51.1100(o). Continuing applicable requirements for the 1997 ozone NAAQS include the contingency measures requirement of CAA section 182(e)(5). Id. at 51.1100(o)(16); see also id. at 51.1105.

[11] The CAA section 182(e)(5) requirements are discussed in more detail in Section I.C. of this document.

[12] For a precise definition of the boundaries of the South Coast 1997 ozone nonattainment area, see 40 CFR 81.305.

[13] 2016 South Coast Ozone SIP (''2016 AQMP''), p. 1–5.

and 2015 ozone NAAQS. For the 1997 ozone NAAQS, the area has an attainment date of June 15, 2024.[14]

California first addressed the planning requirements for the 1997 ozone NAAQS with the ''Final 2007 Air Quality Management Plan'' (''2007 South Coast AQMP''), prepared by the South Coast Air Quality Management District (SCAQMD), and the ''State Strategy for California's 2007 State Implementation Plan'' (''2007 State Strategy''), prepared by the California Air Resources Board (CARB). These submittals were subsequently revised in 2009 and 2011.[15] Collectively, we refer to these submittals and revisions as the ''2007 South Coast Ozone SIP.'' CARB subsequently submitted revisions to the 2007 South Coast Ozone SIP's control strategy and commitments for the 1997 ozone NAAQS in 2012 (''2012 AQMP'') [16] and 2016 (''2016 South Coast Ozone SIP,'' including the ''2016 AQMP'').[17]

C. Clean Air Act Provisions for New Technologies

For ozone nonattainment areas classified as Extreme, the CAA recognizes that an attainment plan may rely to a certain extent on new or evolving technologies, given the long time period between developing the initial plan and attaining the standards, and the amount of emissions reductions needed to attain. CAA section 182(e)(5) authorizes the EPA to approve provisions in an Extreme area plan that anticipate development of new technology measures, and to approve an attainment demonstration based on such provisions, if the state demonstrates that: (1) such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after the area's nonattainment designation; [18] and (2) the state has submitted enforceable commitments to develop and adopt contingency measures to be implemented if the anticipated technologies do not achieve the planned reductions (''182(e)(5) contingency measures'').[19] New technology measures may include those that anticipate future technological developments as well as those that require complex analyses, decision making, and coordination among a number of government agencies.[20] An attainment demonstration that relies on planned reductions from new technology measures under section 182(e)(5) must identify the measures for which additional time would be needed for development and adoption. The plan must also show that the new technology measures cannot be fully developed and adopted by the submittal date for the attainment demonstration and must contain a schedule outlining the steps leading to final development and adoption of the measures.[21]

The state must submit the required 182(e)(5) contingency measures to the EPA no later than 3 years before proposed implementation of the plan provisions that anticipate development of new technology measures. The EPA approves or disapproves section 182(e)(5) contingency measures in accordance with CAA section 110. The contingency measures must be adequate to produce emissions reductions sufficient, in conjunction with other approved plan provisions, to make reasonable further progress (RFP) and to attain by the applicable dates. If the EPA later determines that the Extreme area has failed to make RFP or to attain, and that such failure is due in whole or part to an inability to fully implement the new technology measures approved under CAA section 182(e)(5), the EPA will require the state to implement the contingency measures to the extent necessary to assure compliance with the applicable requirement.[22]

D. The EPA's Prior Approvals of New Technology Provisions for the 1997 8-Hour Ozone Standards

In our action on the South Coast attainment demonstration for the 1997 ozone NAAQS in the 2007 South Coast Ozone SIP, the EPA approved a number of commitments regarding the development of new pollution control measures by CARB and the SCAQMD. These included CARB's commitments to achieve, by 2023, 141 tons per day (tpd) of NO_X reductions and 54 tpd of VOC reductions from defined measures and to achieve 241 tpd of NO_X reductions and 40 tpd of VOC reductions from new technology measures.[23] We also approved CARB's commitment to provide 182(e)(5) contingency measures to cover any new technology measures shortfall as part of our approval of the 2007 South Coast Ozone SIP.[24]

The 2012 AQMP included a list of proposed new technology measures intended to provide the emissions reductions necessary to attain both the 1-hour ozone standard and the 1997 8-hour ozone standard.[25] We approved these measures both for purposes of the 1-hour ozone attainment demonstration and as an update to the 2007 South Coast Ozone SIP's new technology measures for the 1997 8-hour ozone standard.[26]

In the 2016 South Coast Ozone SIP, which included an updated control strategy and attainment demonstration for the 1997 ozone standards, CARB provided a revised list of new technology measures and revised the amount of reductions needed from defined measures and new technology measures. CARB committed to achieving aggregate emissions reductions of 113 tpd of NO_X and 50 to

[14] The EPA initially designated and classified the South Coast as a ''Severe-17'' nonattainment area for the 1997 ozone NAAQS in 2004. 69 FR 23858 (April 30, 2004). We later granted CARB's request to reclassify the area to Extreme. 75 FR 24409 (May 5, 2010).

[15] 77 FR 12674 (March 1, 2012). These submittals and the related materials are included in the associated docket, available at *https://www.regulations.gov/docket/EPA-R09-OAR-2011-0622*.

[16] See 79 FR 52526 (September 3, 2014). The 2012 AQMP and related materials are included in the associated docket, available at *https://www.regulations.gov/docket/EPA-R09-OAR-2014-0185*.

[17] See 84 FR 52005 (October 1, 2019). The 2016 AQMP and related materials are included in the associated docket, available at *https://www.regulations.gov/docket/EPA-R09-OAR-2019-0051*.

[18] CAA section 182(e)(5) specifies ''the first 10 years after November 15, 1990,'' which reflects the effective date of designation for the 1-hour ozone NAAQS. The EPA has interpreted this 10-year timeframe to run from the effective date of designation for the 1997 ozone NAAQS. 76 FR 57872, 57881, n.24.

[19] CAA section 182(e)(5). In this document, we refer to such contingency measures as ''182(e)(5) contingency measures'' to distinguish them from the contingency measures that are required under CAA sections 172(c)(9) and 182(c)(9) for a failure to make reasonable further progress (RFP) or to attain by the attainment date. Attainment and RFP contingency measures are a required element of an attainment plan submission under part D of title I of the CAA and are subject to the same submittal deadline as the attainment plan. A state relying on new technology measures in an Extreme area attainment plan must submit 182(e)(5) contingency measures in addition to the attainment and RFP contingency measures otherwise required for the area. 57 FR 13498, 13524 (April 16, 1992).

[20] 57 FR 13498, 13524.

[21] Id.

[22] CAA section 182(e)(5).

[23] 77 FR 12674, 12693 (March 1, 2012). California relied on these reductions from new technology measures for the attainment demonstration, but not for the RFP demonstration or other provisions. 76 FR 57872, 57882.

[24] 77 FR 12674, 12693. See also CARB Resolution 11–22 (July 21, 2011) (CARB commitment to ''develop, adopt, and submit contingency measures by 2020 if advanced technology measures do not achieve planned reductions'') and letter dated November 18, 2011, from James N. Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region IX (further clarifying CARB commitment).

[25] A list of the SCAQMD and CARB new technology measures in the 2012 AQMP is included in Table 6 of the EPA's notice of proposed rulemaking. 79 FR 29712, 29722 (May 23, 2014).

[26] 79 FR 52526, 52537 (September 3, 2014). The amount of reductions to be achieved through new technology measures for the 1997 8-hour ozone standard (40 tpd of VOC and 241 tpd of NO_X) was unchanged.

51 tpd of VOC, with 108 tpd of NO_X reductions and 41 tpd of VOC reductions coming from new technology measures, identified as ''further deployment of cleaner technologies'' addressing emissions from on-road light-duty and heavy-duty vehicles, aircraft, locomotives, ocean-going vessels, and off-road equipment.[27] We approved this updated demonstration based on CARB's previously-approved commitment to submit 182(e)(5) contingency measures by 2020 as necessary to cover any emissions reduction shortfall from new technology measures.

Because reductions from new technology measures were relied on to ensure sufficient emissions reductions by 2023 to provide for attainment of the 1997 ozone NAAQS by the June 15, 2024 attainment date, the 182(e)(5) contingency measures would be triggered upon the EPA finding that the area failed to attain and that this failure was due in whole or in part to a failure to implement provisions approved under CAA section 182(e)(5).[28]

II. Submission From the State of California

The SCAQMD prepared the Contingency Measure Plan in collaboration with CARB.[29] It was submitted by CARB to the EPA on December 31, 2019,[30] and became complete by operation of law on July 1, 2020.

The Contingency Measure Plan is intended to address the requirement in CAA section 182(e)(5) that states relying on reductions from new technology measures to demonstrate attainment must submit contingency measures no later than three years before the proposed implementation of those new technology measures.[31] Under CAA section 182(e)(5), these contingency measures are required to produce emissions reductions sufficient to make up any shortfall in reductions attributed to new technology measures that were relied upon to meet the applicable RFP or attainment requirements. In this instance, California committed to achieve the NO_X and VOC reductions necessary to attain the 1997 ozone NAAQS by 2023, relying in part on reductions from new technology measures. CARB's submittal also includes a CARB staff report titled ''South Coast 8-Hour Ozone SIP Update'' (''CARB Staff Report''), a response to public comments received on the Plan (''CARB Response to Comments''), and other supporting documents, which are included in the docket for this rulemaking action.

The Contingency Measure Plan does not include contingency measures that could be implemented in the event the area fails to attain because the previously anticipated new technologies have not achieved the planned reductions. Instead, the Plan updates the State's approach for achieving the 108 tpd of NO_X reductions that the 2016 AQMP attributed to further deployment of cleaner technologies.[32] This updated approach includes three specific strategies: (1) identified emissions reductions strategies (24–26 tpd); (2) additional incentive funding (15 tpd); and (3) federal sources and federal measures (67–69 tpd).[33]

1. Identified Emissions Reductions Strategies

Section 3 of the Contingency Measure Plan identifies NO_X reductions that exceed the anticipated reductions from defined SCAQMD measures and CARB regulations identified in the 2016 AQMP. According to the Contingency Measure Plan, by 2023, an additional 10.2–12.2 tpd of NO_X reductions would be achieved through the following: (1) RECLAIM transition rules (2 tpd); (2) facility-based mobile source measures for commercial airports (0.5 tpd); (3) facility-based mobile source measures for marine ports (3.2–5.2 tpd); (4) incentive funding (expected future funding) (1.5 tpd); and (5) Metrolink tier 4 locomotives conversion (3.0 tpd).[34]

The Plan estimates that new mobile source measures implemented by CARB would provide an additional 6.15 tpd of NO_X reductions toward the 108 tpd of NO_X reductions that the State committed to achieving through new technology measures under CAA section 182(e)(5). These measures are listed in Table 3–5 of the Plan and consist of the following: (1) low-carbon fuel standard and alternative diesel fuels regulation (1.7 tpd); (2) airborne toxic control measure (ATCM) for portable engines and the statewide portable equipment registration program (0.25 tpd); and (3) heavy duty truck inspection and maintenance program (4.2 tpd).

The Contingency Measure Plan also describes a suite of innovative measures that were not identified in the 2016 AQMP, but which had been adopted, or would soon be adopted, by CARB.[35] These measures, which the Contingency Measure Plan estimates will provide NO_X reductions of 3.0 tpd, include requirements for State contractors to use the cleanest equipment available and for State agencies to purchase the cleanest vehicles and equipment available; pricing programs to encourage people to take public transit, carpool, or walk at congested times of the day; and a measure that would require certain railroads to set aside funding for the purchase of cleaner locomotives.

As described in the Contingency Measure Plan, these reductions, in conjunction with a 4.2 tpd adjustment resulting from a previous over-commitment for reductions from ocean-going vessels,[36] will provide a total of 24–26 tpd of NO_X reductions towards the 182(e)(5) commitment.[37]

2. Additional Incentive Funding

Section 4 of the Contingency Measure Plan discusses additional incentive funding that could speed the transition to technologies that are cleaner than required by current regulations. The 2016 AQMP identified a need for over $1 billion per year in funds to incentivize the transition to clean vehicles, infrastructure, and equipment. The SCAQMD notes that in the years between the adoption of the 2016 AQMP and the adoption of the Contingency Measure Plan, its efforts to increase funding resulted in an approximate doubling of incentive funding, to $200–300 million per year.[38]

To address the shortfall between existing funding and the amount the SCAQMD estimated would be needed to adequately fund incentive measures that would provide reductions needed for attainment, the SCAQMD identifies several additional sources of funding for incentive programs and describes its ongoing advocacy efforts to secure more funding, including sponsoring

[27] 84 FR 28132 (June 17, 2019). See esp. id. at Table 7 (identifying new technology measures projected to generate 108 tpd NO_X and 41 tpd VOC emissions reductions needed by 2023).

[28] 57 FR 13498, 13524; CAA section 182(e)(5).

[29] Letter dated December 6, 2019, from Wayne Nastri, Executive Officer, SCAQMD, to Richard Corey, Executive Officer, CARB and SCAQMD Board Resolution 19–26.

[30] Letter dated December 31, 2019, from Richard W. Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region 9 (submitted electronically December 31, 2019).

[31] Contingency Measure Plan, p. 2.

[32] Id. at 35.

[33] Id. at 39. Although California's approved SIP relies on planned reductions from new technology measures for both NO_X and VOC emissions reductions, and the State committed to submitting contingency measures for both, the Contingency Measure Plan focuses on achieving NO_X reductions. In support of this approach, the State notes that for the 1997 ozone NAAQS the area is more sensitive to NO_X emissions reductions, and that VOC reductions from CARB's commitment will occur through implementation of the NO_X reductions strategy. Id. at 16.

[34] Id. at Table 3–1.

[35] Id. at Tables ES–1 and ES–2, and at 49–52.

[36] Id. at 47.

[37] Id. at Table ES–1.

[38] Id. at 5.

legislation that would allow the public or the SCAQMD Board to put a sales tax measure on the ballot in the South Coast region. The SCAQMD estimates this could generate a sustainable source of funding in the amount of $1.4 billion per year, and that this amount could generate 15 tpd of NO_X emissions reductions in 2023.[39]

3. Federal Sources and Federal Measures

Section 5 of the Contingency Measure Plan designates additional reductions from federal sources and measures that the SCAQMD asserts will be necessary for attainment. This section describes California's successful efforts to reduce NO_X emissions from sources subject to its regulatory authority and explains that the State has limited authority to impose emissions controls on other significant sources of emissions, such as heavy duty trucks and engines sold outside California; passenger and freight locomotives, aircraft engines, construction and agricultural equipment under 175 horsepower; and ocean-going vessels (which the Plan refers to collectively as ''federal sources'').[40] The SCAQMD notes that, while NO_X emissions in the South Coast have decreased by 70 percent since 1997, NO_X emissions from federal sources have only decreased by 15 percent over that same time period. Figure ES–3 in the Contingency Measure Plan illustrates the reductions that have been achieved since 2000 and highlights the increasing portion that federal sources contribute to the overall emissions inventory.[41]

The SCAQMD identifies the emissions reductions potential, by 2023, for the following four categories of sources under federal authority or responsibility: (1) low-NO_X heavy-duty vehicles (up to 35 tpd); (2) low-NO_X ocean-going vessels (up to 28 tpd); (3) low-NO_X locomotives (up to 11 tpd); and (4) low-NO_X aircraft (up to 4 tpd).[42]

III. The EPA's Evaluation

A. Procedural Requirements

CAA sections 110(a)(1) and (2) and section 110(l) require a state to provide reasonable public notice and an opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision. To meet these procedural requirements, every SIP submission should 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.

CARB's December 31, 2019 SIP submittal package includes documentation of the public processes used by the SCAQMD and CARB to adopt the Contingency Measure Plan. As documented in the SIP revision submittal package, on November 6, 2019, the SCAQMD published a notice in newspapers of general circulation in the South Coast that a public hearing to consider adoption of the Plan would be held on December 6, 2019. As documented in the Minute Order of the Air Pollution Control Board that is included in the SIP revision submittal package, the SCAQMD Governing Board adopted the Contingency Measure Plan on December 6, 2019, following the public hearing.

On November 8, 2019, CARB published on its website a notice of a public hearing to be held on December 12, 2019, to consider adoption of the plan. As evidenced by CARB Resolution 19–31, CARB adopted the Contingency Measure Plan on December 12, 2019, following a public hearing. Based on documentation included in the December 31, 2019 SIP revision submittal package, we find that both the SCAQMD and CARB have satisfied the applicable statutory and regulatory requirements for reasonable public notice and hearing prior to the adoption and submission of the Contingency Measure Plan. Therefore, we find that the submission of the Contingency Measure Plan meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and in 40 CFR 51.102.

B. Evaluation for Compliance With Clean Air Act Requirements

As described in Section I.C of this document, CAA section 182(e)(5) allows the EPA to approve an attainment demonstration for an Extreme ozone area that relies on anticipated new technology measures, if (A) the measures are not necessary to achieve emission reductions required in the first 10 years after the area's nonattainment designation, and (B) the state submits enforceable commitments to develop and adopt contingency measures to be implemented if the new technology measures do not achieve the planned reductions. The state must submit these contingency measures no later than three years before the new technology measures would be implemented.

The EPA approves or disapproves 182(e)(5) contingency measures as SIP revisions under CAA section 110. The contingency measures must be adequate to produce sufficient emission reductions, in conjunction with other provisions of the approved SIP, to allow the Extreme area to make RFP and to attain by the applicable attainment date, and must be capable of being implemented in the event of a failure to make RFP or to attain that is due in whole or part to an inability to fully implement the new technology measures approved under CAA 182(e)(5).

As recounted in Section I.C of this document, the 2007 South Coast Ozone SIP's attainment demonstration for the 1997 ozone NAAQS relied on new technology measures to achieve 241 tpd of NO_X reductions and 40 tpd of VOC reductions by 2023. With respect to the 182(e)(5) requirements, our approval of the 2007 South Coast Ozone SIP relied on CARB's commitment to ''develop, adopt, and submit contingency measures by 2020 if advanced technology measures do not achieve planned reductions.'' [43] The 2016 AQMP subsequently revised the reductions assigned to new technology measures to 108 tpd of NO_X and 41 tpd of VOC by 2023.

The Contingency Measure Plan identifies a combination of state and federal strategies that CARB and the SCAQMD project would result in the 108 tpd of NO_X reductions previously determined to be necessary for the area to attain the 1997 ozone NAAQS. As recounted in Section II of this document, these include measures identified since the 2016 AQMP that were projected to be adopted by CARB or the SCAQMD and to be implemented prior to 2023, as well as reductions anticipated from additional incentive funding included in new and anticipated state legislation, and additional reductions assigned to federal sources and measures that the State asserts will be needed to reach attainment. Thus, while some of the identified measures are enforceable and are presently being implemented to achieve reductions, others (including additional state incentive funding and federal measures) are not fully developed or implemented and are not enforceable.[44]

[39] Id. at 53–55.

[40] Id. at 56.

[41] Id. at 6.

[42] Id. at Table 5–3.

[43] 77 FR 12674, 12693. CARB's commitment is outlined in CARB Resolution 11–22 (dated July 21, 2011) and in the letter dated November 18, 2011, from James N. Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region IX.

[44] For example, CARB's Response to Comments indicates that the State intends to later develop the Plan's incentive measures into SIP submittals that are ''surplus, quantifiable, permanent, and enforceable,'' and that include an enforceable mechanism to achieve the reductions from substitute projects ''if necessary,'' but that those elements were not required at the time that the Contingency Measure Plan was submitted.

Critically, while the Plan acknowledges a continuing need for additional measures to be developed and adopted to satisfy the remaining 108 tpd of NO_X projected to be necessary for the South Coast to attain the 1997 ozone NAAQS, it does not include any contingency measures that would be implemented if these anticipated measures fail to achieve the necessary reductions. This is inconsistent with CAA section 182(e)(5), which requires a state that relies on new technology measures for an Extreme area attainment demonstration to submit contingency measures that can be implemented in the event that the area fails to attain as a result of the state's inability to fully implement the new technology measures that were the basis for the EPA's approval.[45]

Additionally, the Contingency Measure Plan's assignment of NO_X reductions to federal measures and sources subject to federal authority is not approvable as a matter of law. In evaluating prior SCAQMD attainment plans that included similar ''federal assignments,'' the EPA has consistently taken the position that states do not have authority under the CAA or the U.S. Constitution to assign SIP responsibilities to the federal government.[46] For the same reasons, we see no basis for approving the federal assignments included in the Contingency Measure Plan.[47] In effect, the Contingency Measure Plan purports to shift responsibility to achieve reductions needed for the South Coast to attain the 1997 ozone NAAQS from the State to the federal government, while failing to include any contingency measures that could be implemented if the planned reductions from new technology measures are not achieved. This approach falls short of CARB's specific enforceable commitment to develop, adopt, and submit by 2020 contingency measures to be implemented if new technology measures do not achieve the planned emissions reductions, as well as the statutory requirement for CARB to submit contingency measures adequate to produce emission reductions sufficient, in conjunction with other approved plan provisions, to achieve the emission reductions necessary for attainment.

For the reasons outlined herein, we are proposing to determine that the Contingency Measure Plan does not fulfill the contingency measure requirements of CAA 182(e)(5), and on that basis to disapprove the Plan.[48]

IV. The EPA's Proposed Action and Public Comment

As authorized in section 110(k)(3) of the CAA, we are proposing full disapproval of the Contingency Measure Plan, because it fails to provide contingency measures as required by CAA section 182(e)(5), and because it relies on improper ''federal assignments'' to achieve the necessary reductions. If we finalize this disapproval, CAA section 110(c) would require the EPA to promulgate a federal implementation plan within 24 months after the effective date of the final action, unless we approve subsequent SIP revisions that correct the deficiencies identified in the final approval.

In addition, final disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the deficiencies identified in our final action before the applicable deadline.

We will accept comments from the public on the proposed disapproval for the next 30 days.

V. Statutory and Executive Order Reviews

Under the CAA, 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 review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this action proposes to disapprove a state submittal as not meeting federal requirements, and does not impose any additional requirements beyond those imposed by state law.

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens, but simply disapproves certain state requirements submitted for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently

[45] A state would not need to submit 182(e)(5) contingency measures if it can demonstrate attainment without relying on emission reductions from future development of new technology measures. See 84 FR 52005, 52009–52010 (explaining that California was not required to submit 182(e)(5) contingency measures for the 1-hour ozone NAAQS once the State demonstrated that it was no longer relying on new technology measures for attainment). See also Contingency Measure Plan at 1–2 (''In this submittal, the State must demonstrate that the assumed reductions from future technology were already achieved, or if not, the State must submit contingency measures capable of achieving the remaining emission reductions''). Because the Contingency Measure Plan continues to rely on emissions reductions from measures requiring additional time for development and adoption, the State remains subject to the requirement to submit 182(e)(5) contingency measures.

[46] See, *e.g.,* 61 FR 10920, 10936 (March 18, 1996); 62 FR 1150, 1152 (January 8, 1997); 64 FR 1770, 1776 (January 12, 1999); 75 FR 71294, 71309 (November 22, 2010).

[47] The executive summary to the CARB Staff Report acknowledges that federal assignments are not permitted as a matter of law, and that the reductions assigned to federal sources and measures do not constitute a legally binding requirement upon the EPA. CARB Staff Report, p. 6. While we agree with this statement, we do not rely on it to reach our conclusion that the Plan as submitted fails to meet the contingency measure requirements of 182(e)(5).

[48] See also CAA section 110(l) (specifying that EPA may not approve a SIP revision that would interfere with any applicable requirement concerning attainment or any other applicable CAA requirement).

owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed action on small entities, I certify that this proposed action will not have a significant impact on a substantial number of small entities. This proposed rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new requirements but simply disapproves certain state requirements submitted for inclusion into the SIP. Accordingly, it affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.,* higher offset requirements) may or will result from disapproval actions does not mean that the EPA either can or must conduct a regulatory flexibility analysis for this proposed action. Therefore, this proposed action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This proposed action contains no Federal mandates under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The EPA has determined that the proposed disapproval action does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this proposed action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain state requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this proposed action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP that the EPA is proposing to disapprove would not 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, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed action.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply disapproves certain state requirements submitted for inclusion into the SIP.

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

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The EPA believes that this proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

Neither CARB nor the SCAQMD evaluated environmental justice considerations as part of this SIP submission; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an environmental justice analysis and did not consider environmental justice in

this action. Consideration of environmental justice is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

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

Dated: January 29, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–02082 Filed 2–1–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 384

[Docket No. FMCSA–2023–0115]

RIN 2126–AC46

Amendments to the Commercial Driver's License Requirements; Increased Flexibility for Testing and for Drivers After Passing the Skills Test

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FMCSA proposes to increase flexibility for State Driver Licensing Agencies (SDLAs) and commercial driver's license (CDL) applicants by expanding applicants' ability to take a CDL skills test in a State other than their State of domicile; permitting a commercial learner's permit (CLP) holder who has passed the CDL skills test to operate a commercial motor vehicle (CMV) on public roads without having a qualified CDL holder in the passenger seat; eliminating the requirement that an applicant wait at least 14 days to take the CDL skills test following initial issuance of the CLP. The NPRM also proposes to remove the requirement that CMV drivers must have a passenger (P) endorsement to transport CMVs designed to carry passengers, including school buses, when the vehicle is being transported in a driveaway-towaway operation and the vehicle is not carrying any passengers. Additionally, FMCSA proposes to require that third-party knowledge examiners be subject to the training, certification, and record check standards currently applicable to State knowledge examiners and third-party knowledge testers be subject to the auditing and monitoring requirements now applicable to third-party skills testers. The NPRM responds to petitions for rulemaking from the American Trucking Associations (ATA) and the New Hampshire Department of Transportation (NHDOT), as discussed below. FMCSA believes these proposals would improve the efficiency and convenience of CDL issuance and improve highway safety by further ensuring the integrity of third-party CDL knowledge testing.

DATES: Comments must be received on or before April 2, 2024.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2023–0115 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/FMCSA-2023-0115/document*. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Patrick D. Nemons, Director, Office of Safety Programs, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 385–2400; *patrick.nemons@dot.gov*. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION: FMCSA organizes this NPRM as follows:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (FMCSA–2023–0115), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2023-0115/document,* click on this NPRM, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

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CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act