proposed rulemaking. In reviewing SIP submissions, EPA’s role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to withdraw previous approvals of certain SIP revisions, and proposes disapproval of the same, and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

List of Subjects in 40 CFR Part 52

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

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

Dated: August 30, 2012.

Jared Blumenfeld,
Regional Administrator, EPA Region IX.

[FR Doc. 2012–22973 Filed 9–18–12; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52
Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision; South Coast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In response to a remand by the Ninth Circuit Court of Appeals, and pursuant to the Clean Air Act, EPA is proposing to find that the California State Implementation Plan (SIP) for the Los Angeles-South Coast Air Basin (South Coast) is substantially inadequate to comply with the obligation to adopt and implement a plan providing for attainment of the 1-hour ozone standard. If EPA finalizes this proposed finding of substantial inadequacy, California would be required to revise its SIP to correct these deficiencies within 12 months of the effective date of our final rule. If EPA finds that California has failed to submit a complete SIP revision as required by a final rule or if EPA disapproves such a revision, such finding or disapproval would trigger clocks for mandatory sanctions and an obligation for EPA to impose a Federal Implementation Plan. EPA is also proposing that if EPA makes such a finding or disapproval, sanctions would apply consistent with our regulations, such that the offset sanction would apply 18 months after such finding or disapproval and highway funding restrictions would apply six months later unless EPA first takes action to stay the imposition of the sanctions or to stop the sanctions clock based on the State curing the SIP deficiencies.

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

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0721, by one of the following methods:
• Email: tax.wienke@epa.gov.
• Mail or deliver: Wiencek Tax, Air Planning Office, U.S. Environmental Protection Agency, Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at http://www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through http://www.regulations.gov or email. The http://www.regulations.gov Web site is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Docket: The index to the docket for this action is available electronically on the http://www.regulations.gov Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the FOR FURTHER INFORMATION CONTACT section below.

FOR FURTHER INFORMATION CONTACT:

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

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I. Background

A. Regulatory Context

The Clean Air Act (CAA or Act) requires EPA to establish national ambient air quality standards (NAAQS or “standards”) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (see sections 108 and 109 of the CAA). In 1979, under section 109 of the CAA, EPA established a primary health-based NAAQS for ozone1 at 0.12 parts per million (ppm) averaged over a 1-hour period. See 44 FR 8202 (February 8, 1979). The Act, as amended in 1990, required EPA to designate as nonattainment any area that had been designated as nonattainment before the 1990 Amendments [section 107(d)(1)(C) of the Act; 56 FR 56694; (November 6, 1991)]. The Act further classified these areas, based on the severity of their

1 Ground-level ozone or smog is formed when oxides of nitrogen (NOx), volatile organic compounds (VOC), and oxygen react in the presence of sunlight, generally at elevated temperatures. Strategies for reducing smog typically require reductions in both VOC and NOx emissions. Ozone causes serious health problems by damaging lung tissue and sensitizing the lungs to other irritants. When inhaled, even at very low levels, ozone can cause acute respiratory problems, aggravate asthma, temporary decreases in lung capacity of 15 to 20 percent in healthy adults, inflammation of lung tissue, lead to hospital admissions and emergency room visits, and impair the body’s immune system defenses, making people more susceptible to respiratory illnesses, including bronchitis and pneumonia.

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nonattainment problem, as Marginal, Moderate, Serious, Severe, or Extreme.

The control requirements and date by which attainment of the 1-hour ozone standard was to be achieved varied with an area’s classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993, while Extreme areas were subject to the most stringent planning requirements and were provided the most time to attain the standard, until November 15, 2010. The various ozone planning requirements to which Extreme ozone nonattainment areas are subject are set forth in section 172(c) and section 182(a)–(e) of the CAA.

In 1997, EPA replaced the 1-hour ozone standard with an 8-hour ozone standard of 0.08 ppm. See 62 FR 38856 (July 18, 1997). We promulgated final rules to implement the 1997 8-hour ozone standard in two phases. The “Phase 1” rule, which was issued on April 30, 2004 (69 FR 23951) established other things, the classification structure and corresponding attainment deadlines, as well as the anti-backsliding principles for the transition from the 1-hour ozone standard to the 8-hour ozone standard. For an area that was designated nonattainment for the 1-hour ozone standard at the time EPA designated it as nonattainment for the 1997 8-hour ozone standard as part of the initial 8-hour ozone designations, most of the requirements that had applied by virtue of the area’s classification for the 1-hour ozone standard continue to apply even after revocation of the 1-hour ozone standard (which occurred in June 2005 for most areas). See 40 CFR 51.905(a)(1) and 40 CFR 51.900(f). Thus, for example, an area that was designated nonattainment and classified as Extreme for the 1-hour ozone standard at the time of an initial designation of nonattainment for the 1997 8-hour standard remains subject to the requirement to have a fully-approved attainment demonstration meeting. EPA also concluded that the 2003 South Coast 1-Hour Ozone SIP did not meet the CAA section 182(c)(2)(A) requirement for a demonstration of attainment of the 1-hour ozone NAAQS by the applicable attainment date because the modeled attainment demonstration “relies upon emission reductions from [CARB’s] control strategy as set forth in the 2003 State Strategy, most of which was withdrawn by [CARB] on February 13, 2008.” 73 FR 63408, 63416; (October 24, 2008). EPA also concluded that the disapproval of the attainment demonstration did not trigger sanctions clocks or a Federal implementation plan (FIP) obligation because the approved SIP already contained an approved 1-hour ozone attainment demonstration meeting CAA requirements. See 74 FR at 10177, 10181.

With respect to the 1997 8-hour ozone standard, EPA initially designated the South Coast as nonattainment and classified it as “Severe-17,” but later approved a request by California to reclassify the area to “Extreme.” See 69 FR 23858 (April 30, 2004) and 75 FR 24409 (May 5, 2010). In 2007, CARB reclassified the area to “Moderate,” but later approved a request by California to reclassify the area to “Extreme.” See 69 FR 23858 (April 30, 2004) and 75 FR 24409 (May 5, 2010). In 2007, CARB...
submitted a SIP revision to address the Extreme 8-hour ozone SIP planning requirements for the South Coast (“2007 South Coast 8-hour Ozone SIP”), which EPA fully approved in March 2012. See 77 FR 12674 (March 1, 2012).

C. Litigation on EPA’s 2009 Final Action on the South Coast 2003 1-Hour Ozone SIP

On May 8, 2009, several environmental and community groups filed a petition for review in the U.S. Court of Appeals for the Ninth Circuit challenging EPA’s March 2009 partial approval and partial disapproval of the 2003 South Coast 1-Hour Ozone SIP. Association of Irritated Residents et al. v. EPA, Case Nos. 09–71383 and 09–71404. The case centered on three main issues: (1) The consequences of EPA’s final disapproval of the attainment demonstration; (2) the necessity for substantive review of the previously-approved 1994 Pesticide Element brought forward in the 2003 South Coast Strategy; and (3) EPA’s interpretation of CAA section 182(d)(1)(A), which requires SIPs for “Severe” or “Extreme” ozone nonattainment areas to include specific transportation control strategies and transportation control measures (TCMs) to offset any growth in emissions from growth in vehicle miles traveled (“VMT emissions offset requirement”), and EPA’s approval of the State’s demonstration of compliance with this SIP requirement.5

On February 2, 2011, the Ninth Circuit ruled in favor of the petitioners on all three issues and remanded EPA’s 2009 final action on the 2003 South Coast 1-Hour Ozone SIP. Association of Irritated Residents v. EPA, 632 F.3d 584 (9th Cir. 2011). In so doing, the court held that EPA must promulgate a FIP under CAA section 110(c) or issue a SIP call where EPA disapproves a new attainment demonstration unless the Agency determines that the SIP as approved remains sufficient to demonstrate attainment of the NAAQS. Specifically, the court rejected EPA’s argument that there is no FIP duty where the EPA had already approved into the SIP the required plan element and the submission disapproved was voluntarily submitted by the State to replace the existing approved SIP element. The court briefly referenced its analysis of the FIP provisions to conclude that the disapproval also triggered mandatory sanctions. Id. at 591–594.

As to the 1994 Pesticide Element, the court held that EPA had an affirmative duty to review the substance of the element anew in light of subsequent litigation over the Pesticide Element that revealed approvability issues not accounted for in EPA's previous review and approval of the element. Id. at 594–595. EPA is addressing this portion of the court’s decision in a separate rulemaking. See footnote #5 of this document.

Finally, the court disagreed with EPA’s interpretation of the VMT emissions offset requirement and found that the plain language of the Act requires SIPs subject to CAA section 182(d)(1)(A) to include additional transportation control strategies and measures whenever vehicle emissions are projected to be higher, due to growth in VMT, than they would have been had VMT not increased, even when aggregate vehicle emissions are actually decreasing. Id. at 595–597. EPA is addressing this portion of the court’s decision in a separate rulemaking. See footnote #5 of this document.

On May 5, 2011, EPA filed a petition for panel rehearing requesting the court to reconsider its decision on the issue of whether CAA section 179 sanctions are triggered by disapproval of a revision to an already-approved SIP element, and on the court’s interpretation of CAA section 182(d)(1)(A).6 On January 27, 2012, the Ninth Circuit denied EPA’s petition for rehearing but issued an amended opinion deleting references to the imposition of sanctions following disapproval of the South Coast plan. The mandate in the case issued on February 13, 2012. See Association of Irritated Residents v. EPA, 632 F.3d 584 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012 (“AIR v. EPA”). The decision, as amended, states inter alia that “EPA should have ordered California to submit a revised attainment plan for the South Coast after it disapproved the 2003 Attainment Plan,” id. at 681, EPA is proposing to issue a SIP call under CAA section 110(k)(5) to require California to submit a new attainment demonstration for the 1-hour ozone standard in the South Coast.

II. Rationale for Proposed SIP Call

The Ninth Circuit concluded in AIR v. EPA that EPA must promulgate a FIP under CAA section 110(c) or issue a SIP call where EPA disapproves an attainment demonstration submitted to replace an already-approved attainment demonstration in the SIP, unless the Agency determines that the SIP as approved remains sufficient to demonstrate attainment of the NAAQS. AIR v. EPA, 632 F.3d 584 (9th Cir. 2011), as amended at 686 F.3d 668. Consistent with this directive and in response to the court’s conclusion that “EPA should have ordered California to submit a revised attainment plan for the South Coast after it disapproved the 2003 Attainment Plan,” id. at 681, EPA is proposing to issue a SIP call under CAA section 110(k)(5) to require California to submit a new attainment demonstration for the 1-hour ozone standard in the South Coast.

Section 110(k)(5) of the CAA states, in relevant part, as follows:

Whenever the Administrator finds that the applicable implementation plan for an area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, * * * or to otherwise comply with any requirement of [the Act], the Administrator shall require the State to revise the plan as necessary to correct such inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates.

5 EPA is addressing issues #2 and #3 in separate rulemakings. With respect to issue #2 [the continuation of the 1994 Pesticide Element, also known as “PEST-1”), the EPA Region IX Regional Administrator signed a final rule on August 14, 2012 approving certain State fumigant regulations and a revised Pesticide Element commitment for San Joaquin Valley, thereby responding to the remand in the Association of Irritated Residents case. See, also, 77 FR 24441: (April 24, 2012) (proposed regulations and revised Pesticide Element for San Joaquin Valley). With respect to issue #3 (VMT emissions offset requirement), EPA is proposing action in a separate document in today’s Federal Register.

6 See Docket Nos. 09–71383 and 09–71404 (consolidated), Docket Entry 41–1, Petition for Panel Rehearing.
Our proposed SIP call is based on the evidence submitted by California in the form of the 2003 South Coast 1-Hour Ozone Plan that the approved 1997/1999 South Coast 1-Hour Ozone SIP was substantially inadequate to provide for attainment of the 1-hour ozone standard by the attainment date of November 15, 2010. Two major developments that occurred after EPA approval of the 1997/1999 South Coast 1-Hour Ozone SIP led the State of California to reconsider the adequacy of the control strategy for attaining the 1-hour ozone standard in the South Coast by the applicable attainment date (2010).

First, CARB released a significant update to California’s mobile source emissions model (EMFAC2002) that resulted in higher motor vehicle emissions estimates than previously calculated, and second, South Coast Air Quality Management District (SCAQMD) updated its ozone modeling and concluded that the 1997/1999 South Coast area into attainment of the 1-hour ozone standard by 2010. In reference to the 1997/1999 South Coast 1-Hour Ozone SIP, the 2003 South Coast 1-Hour Ozone SIP states: “The Plan is consistent with and builds upon the approaches taken in the 1997 AQMP and the 1999 Amendments to the Ozone SIP for the South Coast Air Basin for the attainment of the federal ozone air quality standard. However, this revision points to the urgent need for additional emission reductions (beyond those incorporated in the 1997/99 Plan) to offset increased emission estimates from mobile sources and meet all federal criteria pollutant standards within the time frames allowed under the federal Clean Air Act.” See SCAQMD, 2003 Air Quality Management Plan, August 2003, pages I-11 and E-2.

In 2003, EPA approved the use of EMFAC2002 for SIP development purposes, and in 2004, EPA found the 1-hour ozone motor vehicle emissions budgets (MVEBs) in the 2003 South Coast 1-Hour Ozone SIP to be adequate for transportation conformity purposes. See 68 FR 15720; (April 1, 2003) and 69 FR 15325; (March 25, 2004). Adequacy findings for transportation conformity purposes are generally based on cursory reviews of submitted plans, but EPA’s approval of EMFAC2002 and finding of adequacy of the MVEBs in 2003 South Coast 1-Hour Ozone SIP show general agreement by EPA with the technical foundation for the 2003 South Coast 1-Hour Ozone SIP, which highlights the inadequacy of the attainment demonstration in the 1997/1999 South Coast 1-Hour Ozone Plan.

In addition, in 2011, EPA determined, based on quality-assured and certified ambient air quality monitoring data, that the South Coast area has failed to attain the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2010. 76 FR 82133; (December 30, 2011). EPA’s 2011 determination of failure to attain the standard by the applicable attainment date provides further support for our proposed action because it establishes, as a factual matter, that the 1997/1999 South Coast 1-Hour Ozone SIP failed to achieve its stated purpose of bringing the South Coast area into attainment of the 1-hour ozone NAAQS by the applicable attainment date.

In light of the evidence discussed above, we propose to find that the approved 1997/1999 South Coast 1-Hour Ozone SIP is substantially inadequate to provide for attainment of the 1-hour ozone standard and is therefore substantially inadequate to comply with EPA’s “anti-backsliding” requirement at 40 CFR 51.905(a)(1)(ii) to adopt and implement such a plan for the South Coast.

III. Consequences of Proposed SIP Call

EPA is proposing to require the State of California to submit, within 12 months, a SIP revision meeting the requirements of CAA section 182(c)(2)(A) and demonstrating attainment of the 1-hour ozone standard in the South Coast as expeditiously as practicable but no later than five years from the effective date of a final SIP call unless the State can justify a later date, not to exceed 10 years beyond the effective date of the final SIP call, by considering the severity of the remaining nonattainment problem in the South Coast and the availability and feasibility of pollution control measures. See CAA section 172(a)(2).

The SIP call provisions of CAA section 110(k)(5) direct EPA, “to the extent [EPA] deems appropriate,” to “subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed).” By relying on section 172(a)(2) as the basis for the applicable attainment date for the South Coast, we are subjecting the State to the same CAA requirement that applied at the time that the State developed and submitted the 1997/1999 South Coast 1-Hour Ozone SIP, because, at that time, the area was an extreme ozone area with an attainment date of 2010 and subject to the potential for a finding of failure to attain by the applicable attainment date under CAA section 179(c) that would trigger a requirement under CAA section 179(d) to submit a new plan meeting the requirements of section 172.

The 12-month deadline for submittal of a revised attainment demonstration plan is appropriate in light of the time that has elapsed since the AIR decision was published and the significant planning effort that the SCAQMD has already undertaken to develop a new 1-hour ozone attainment plan but also recognizing the potential need to develop additional control measures, beyond those already adopted for the purposes of the South Coast 8-hour Ozone SIP, based on the geographic extent and frequency of exceedances of the 1-hour ozone standard. See, e.g., the 1-hour ozone summary data for 2008–2010 published at 76 FR 56694, at 56697; (September 14, 2011).

If EPA subsequently finds that California has failed to submit a complete SIP revision that responds to a final SIP call, CAA section 179(a) provides for EPA to issue a finding of State failure. Such a finding starts mandatory 18-month and 24-month sanctions clocks and a 24-month clock for promulgation of a FIP by EPA. The two sanctions that apply under CAA section 179(b) are the 2-to-1 emission offset requirement for all new and modified major sources subject to the nonattainment new source review program and restrictions on highway

7 Under CAA section 182(c)(2)(A), the State must submit a revision to the SIP that includes a demonstration that the plan, as revised, will provide for attainment of the ozone NAAQS. The attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the EPA to be at least as effective.
EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern lead emissions from large lead-acid battery recycling facilities. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 19, 2012.

ADDRESS: Submit comments, identified by docket number R90–OAR–2012–0611, by one of the following methods:
2. Email: stockel.andrew@epa.gov.
3. Mail or deliver: Andrew Stockel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or email.