



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2019-0176; FRL-9992-65-Region 9]

Air Plan Approval; California; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) from on-road heavy-duty vehicles. We are proposing to approve a local measure to reduce NO_x emissions from 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 [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2019-0176 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>.

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

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I. The State’s Submittal

A. What measure did the State submit?

Table 1 lists the measure addressed by this proposal with the date that it was adopted by the California Air Resources Board (CARB). We refer to this measure as the “South Coast Incentive Measure.”

TABLE 1 - SUBMITTED MEASURE

Agency	Resolution #	Measure Title	Adopted	Submitted
CARB	18-3	South Coast On-Road Heavy-Duty Vehicle Incentive Measure	03/22/18	05/04/18

On November 4, 2018, the submittal for the South Coast Incentive Measure was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this measure?

There are no previous versions of the South Coast Incentive Measure in the SIP.

C. What is the purpose of the submitted measure?

Emissions of NO_x contribute to ground-level ozone, smog and particulate matter, which harm human health and the environment. The CAA generally requires states to submit control measures to reduce NO_x emissions in ozone nonattainment areas.

On July 18, 1997, the EPA revised the national ambient air quality standard (NAAQS or “standards”) for ozone to establish an 8-hour ozone standard of 0.08 parts per million (ppm).¹

¹ 62 FR 38856 (July 18, 1997).

Effective June 15, 2004, the EPA designated and classified the Los Angeles-South Coast Air Basin (“South Coast”) as a Severe nonattainment area for the 1997 ozone NAAQS.² On May 5, 2010, EPA reclassified the South Coast as an Extreme area for the 1997 ozone NAAQS with an attainment date of June 15, 2024.³ The EPA has previously approved various SIP revisions submitted by California to provide for expeditious attainment of the 1997 ozone NAAQS in the South Coast and to meet other applicable planning requirements in the Clean Air Act.⁴ The South Coast is also designated and classified as an Extreme nonattainment area for the 1-hour ozone NAAQS promulgated in 1979, the revised 8-hour ozone NAAQS promulgated in 2008, and the revised 8-hour ozone NAAQS promulgated in 2015.⁵

On April 27, 2017, CARB submitted the “Final 2016 Air Quality Management Plan,” March 2017 (“2016 AQMP”) and the “Revised Proposed 2016 State Strategy for the State Implementation Plan,” March 7, 2017 (“State SIP Strategy”), which contain, inter alia, a revised attainment demonstration and revised commitments to achieve specific amounts of emission reductions by 2023 for the 1997 ozone NAAQS. The 2016 AQMP also contains an attainment demonstration and commitments to achieve specific amounts of emission reductions by 2031 for the 2008 ozone NAAQS, in addition to revised attainment plan components for the 1979 1-hour ozone NAAQS. The purpose of the South Coast Incentive Measure is to satisfy a portion of the State’s emission reduction commitments for the 1997 ozone NAAQS.

The South Coast Incentive Measure is a set of enforceable commitments by CARB to,

² 40 CFR 81.305, 69 FR 23858, 23888-89 (April 30, 2004).

³ 75 FR 24409 (May 5, 2010).

⁴ See, e.g., 77 FR 12674 (March 1, 2012), 79 FR 52539 (September 3, 2014).

⁵ 40 CFR 81.305, 77 FR 30088 (May 21, 2012), and 83 FR 25776 (June 4, 2018).

among other things, monitor the SCAQMD's implementation of 1,300 on-road heavy-duty compression ignition truck repower and replacement projects during the 2019-2022 timeframe in the South Coast in accordance with specified portions of the Carl Moyer Program Guidelines, 2017 Revisions, approved April 27, 2017 ("2017 Carl Moyer Guidelines"). These program requirements ensure, among other things, that older, dirtier truck engines currently in operation in the South Coast will be replaced with less-polluting engines.

The South Coast Incentive Measure obligates CARB to achieve specific amounts of NO_x emission reductions through implementation of the program by a specific year, to submit annual reports to the EPA beginning on March 31, 2020, detailing its implementation of the program and the projected emission reductions, and to adopt and submit substitute measures by specific dates if the EPA determines that the program will not achieve the necessary emission reductions by the applicable implementation deadline.

We are proposing to approve the South Coast Incentive Measure into the California SIP and to make the obligations stated therein enforceable by the EPA and by citizens under the CAA. The State relies on the measure to achieve 1 ton per day of NO_x emission reductions in 2023 for purposes of meeting the requirements for attainment of the 1997 ozone NAAQS. We intend to evaluate California's submitted ozone attainment plans for South Coast through subsequent notice-and-comment rulemaking actions, as appropriate. The EPA's technical support document (TSD) has more information about this measure.

II. The EPA's Evaluation and Proposed Action

A. *How is the EPA evaluating the measure?*

Generally, SIP control measures must be enforceable (see CAA section 110(a)(2)), must

not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

The CAA explicitly provides for the use of economic incentive programs (EIPs) as one tool for states to use to achieve attainment of the NAAQS.⁶ EIPs use market-based strategies to encourage the reduction of emissions from stationary, area, and mobile sources in an efficient manner. EPA has promulgated regulations for statutory EIPs required under section 182(g) of the Act and has issued guidance for discretionary EIPs.⁷

The EPA's guidance documents addressing EIPs and other nontraditional programs provide for some flexibility in meeting established SIP requirements for enforceability and quantification of emission reductions, provided the State takes clear responsibility for ensuring that the emission reductions necessary to meet applicable CAA requirements are achieved. Accordingly, the EPA has consistently stated that nontraditional emission reduction measures submitted to satisfy SIP requirements under the Act must be accompanied by appropriate "enforceable commitments" from the State to monitor emission reductions achieved and to rectify shortfalls in a timely manner.⁸ The EPA has also consistently stated that, where a state intends to rely on a nontraditional program to satisfy CAA requirements, the state must

⁶ See, e.g., CAA sections 110(a)(2)(A), 172(c)(6), and 183(e)(4).

⁷ 59 FR 16690 (April 7, 1994), codified at 40 CFR part 51, subpart U and EPA, "Improving Air Quality with Economic Incentive Programs," January 2001 ("2001 EIP Guidance"). A "discretionary economic incentive program" is "any EIP submitted to the EPA as an implementation plan revision for purposes other than to comply with the statutory requirements of sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act." 40 CFR § 51.491.

⁸ See, e.g., EPA, "Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs)," Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, October 24, 1997 ("1997 VMEP"), 4-5.

demonstrate that the program achieves emission reductions that are quantifiable, surplus, enforceable, and permanent.⁹

Guidance documents that we use to evaluate discretionary EIPs and other nontraditional emission reduction programs include the following:

- “Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs),” Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, October 24, 1997 (“1997 VMEP”).
- “Improving Air Quality with Economic Incentive Programs” January 2001 (EPA-452/R-01-001) (“2001 EIP Guidance”).
- “Incorporating Emerging and Voluntary Measure in a State Implementation Plan (SIP),” Stephen D. Page, OAQPS, October 4, 2004 (“2004 Emerging and Voluntary Measures Guidance”).
- “Guidance on Incorporating Bundled Measures in a State Implementation Plan,” Stephen D. Page, OAQPS, and Margo Oge, OTAQ, August 16, 2005 (“2005 Bundled Measures Guidance”).
- “Diesel Retrofits: Quantifying and Using Their Emission Benefits in SIPs and Conformity: Guidance for State and Local Air and Transportation Agencies,” February 2014 (EPA-420-B-14-007) (“2014 Diesel Retrofits Guidance”).

B. *Does the measure meet the evaluation criteria?*

The South Coast Incentive Measure contains clear, mandatory obligations that are

⁹ See, e.g., 2001 EIP Guidance, section 4.1.

enforceable against CARB and ensure that information about the emission reductions achieved through the program will be readily available to the public through CARB's submission of annual reports to the EPA. Our approval of the South Coast Incentive Measure would make these obligations enforceable by the EPA and by citizens under the CAA. The South Coast Incentive Measure obligates the State to implement a program that achieves quantifiable, surplus, permanent, and enforceable NO_x emission reductions and does not alter any existing SIP requirements. Our approval of this measure would strengthen the SIP and would not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements, consistent with the requirements of CAA section 110(l). Section 193 of the CAA does not apply to this action because this measure does not modify any SIP control requirement that was in effect before November 15, 1990.

We are proposing to find that the South Coast Incentive Measure satisfies CAA requirements for enforceability, SIP revisions, and nontraditional emission reduction programs as interpreted in EPA guidance documents. The TSD contains more information on our evaluation of this measure.

C. Proposed action and request for public comment

The EPA proposes to fully approve the submitted measure under CAA section 110(k)(3) based on a conclusion that the measure satisfies all applicable requirements. We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the Federal Register]**. If we take final action to approve the submitted measure, our final action will incorporate this measure into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the CARB measure described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through 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).

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, 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 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: April 4, 2019.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

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