



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0681; FRL-10386-02-R9]

Approval of Air Quality Implementation Plans; Vehicle Miles Traveled Emissions Offset Demonstrations for the 2015 Ozone Standards; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the California state implementation plan (SIP) concerning vehicle miles traveled (VMT) offset demonstrations for the Los Angeles – South Coast Air Basin (South Coast), Riverside County (Coachella Valley), Los Angeles – San Bernadino Counties (West Mojave Desert), and San Joaquin Valley nonattainment areas (NAAs) for the 2015 ozone national ambient air quality standards (2015 ozone NAAQS). The EPA is taking action to approve these revisions because they demonstrate that California has added or implemented specific enforceable transportation control strategies and transportation control measures to offset the growth in emissions from growth in VMT and vehicle trips. We are taking final action to approve these revisions under the Clean Air Act (CAA or “the Act”), which establishes VMT offset demonstration requirements for ozone nonattainment areas classified as “Severe” or “Extreme.”

DATES: This action will be effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2022-0681. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with 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: Michael Dorantes, Geographic Strategies and Modeling Section (AIR-2-2), EPA Region IX, (415) 972-3934, dorantes.michael@epa.gov.

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

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I. Summary of Proposed Action

On December 20, 2022, the EPA proposed to approve a revision to the California SIP concerning VMT emissions offset demonstrations required for the Coachella Valley and West Mojave Desert Severe ozone NAAs and for the South Coast and San Joaquin Valley Extreme ozone NAAs.¹ Section 182(d)(1)(A) of the Act and 40 CFR 51.1302 require a state to submit, for each ozone nonattainment area classified as Severe or above, a SIP revision that “identifies or adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips in such area.” Herein, we refer to this SIP requirement as the “VMT emissions offset requirement.” In addition, we refer to the SIP revision intended to demonstrate compliance with the VMT emissions offset requirement as the “VMT emissions offset demonstration.” In

¹ 87 FR 77774 (December 20, 2022).

Association of Irrigated Residents v. EPA, the Ninth Circuit ruled that additional transportation control measures are required whenever vehicle emissions are projected to be higher than they would have been had VMT not increased, even when aggregate vehicle emissions are decreasing.² In August 2012, the EPA issued a memorandum titled “Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset Growth in Emissions Due to Growth in Vehicle Miles Travelled” (“August 2012 Guidance”).³ The August 2012 Guidance discusses the meaning of “transportation control strategies” and “transportation control measures” and recommends that both be included in the calculations made for the purpose of determining the degree to which any hypothetical growth in emissions due to growth in VMT should be offset. The proposed rulemaking for this action outlines the August 2012 Guidance in further detail and how states may demonstrate that their VMT emissions offset demonstrations can satisfactorily conform with Court’s ruling in *Association of Irrigated Residents*.

The California Air Resources Board (CARB) provided two separate submittals as VMT emissions offset demonstrations for California’s Severe and Extreme ozone NAAs. On July 27, 2020, CARB submitted a staff report to the EPA titled “70 ppb Ozone SIP Submittal” (“July 2020 submittal”).⁴ In part, the July 2020 submittal contains the VMT offset demonstrations for the South Coast, Coachella Valley, and San Joaquin Valley ozone NAAs.⁵ Additionally, on December 28, 2020, CARB submitted to the EPA a staff report titled “West Mojave Desert VMT Offset Demonstration” (“December 2020 submittal”) for the West Mojave Desert ozone NAA.⁶

² See *Association of Irrigated Residents v. EPA*, 632 F.3d 584, at 596-597 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012 (“*Association of Irrigated Residents*”).

³ Memorandum dated August 30, 2012, Karl Simon, Director Transportation and Climate Division, Office of Transportation and Air Quality, to Carl Edland, Director, Multimedia Planning and Permitting Division, EPA Region VI, and Deborah Jordan, Director, Air Division, EPA Region IX.

⁴ Letter dated July 24, 2020, from Richard W. Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX (submitted electronically July 27, 2020).

⁵ The July 2020 submittal also addresses base year emissions inventory requirements for 18 of the 21 NAAs in California. The EPA approved the July 2020 submittal as meeting the base year emissions inventory requirements for the 18 areas addressed in the submittal on September 29, 2022, (87 FR 59015).

⁶ Letter dated December 28, 2020, from Richard W. Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX (submitted electronically December 29, 2020).

In our proposal, we evaluated the portions of the July 2020 submittal that address the South Coast, Coachella Valley, and San Joaquin Valley VMT offset demonstrations and the December 2020 submittal of the West Mojave Desert VMT offset demonstration against the statutory and regulatory requirements of CAA section 182(d)(1)(A) and 40 CFR 51.1302, and detailed our consideration of relevant Agency guidance and court rulings. The full evaluation and discussion of our review of the State's submittals can be found in our proposal. Therein we proposed approval of the submittals as revisions to the California SIP on the basis that they met the VMT emissions offset requirements of CAA section 182(d)(1)(A) and 40 CFR 51.1302 for the 2015 ozone NAAQS.

II. Public Comments and EPA Responses

The 30-day public comment period for the notice of proposed rulemaking closed on January 19, 2023. We did not receive any public comments.

III. Final Action

For the reasons discussed in our proposed rule and summarized in this document, we are finalizing our approval of the following as revisions to the California SIP:

- VMT emissions offset demonstration element in the July 27, 2020 CARB submittal for the Los Angeles – South Coast Air Basin (South Coast), Riverside County (Coachella Valley), and San Joaquin Valley ozone nonattainment areas as meeting the requirements of CAA section 182(d)(1)(A) and 40 CFR 51.1302 for the 2015 ozone NAAQS.
- VMT emissions offset demonstration element in the December 28, 2020 CARB submittal for the Los Angeles – San Bernadino Counties (West Mojave Desert) ozone nonattainment area as meeting the requirements of CAA section 182(d)(1)(A) and 40 CFR 51.1302 for the 2015 ozone NAAQS.

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 action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive 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 (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); 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, this rulemaking 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. This final action is expected to have a neutral to positive impact on the air quality of the affected area. 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 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, Ozone, Reporting and recordkeeping requirements.

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

Dated: October 25, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

For the reasons stated in the preamble, the EPA amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52— APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F – California

2. Section 52.220 is amended by adding paragraphs (c)(589)(ii)(A)(2) and (c)(605) to read as follows:

§52.220 Identification of plan—in part.

	*	*	*	*	*
(c)	*	*	*		
(589)	*	*	*		
(ii)	*	*	*		
(A)	*	*	*		

(2) California Air Resources Board “70 ppb Ozone SIP Submittal,” section III, “VMT Offset Demonstration,” adopted on June 25, 2020.

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(605) The following materials were submitted electronically on December 29, 2020, by the Governor's designee as an attachment to a letter dated December 28, 2020.

(i) [Reserved]

(ii) *Additional materials.*

(A) California Air Resources Board.

(1) “West Mojave Desert Vehicle-Miles Traveled Offset Demonstration,” adopted on October 22, 2020.

(2) [Reserved]

(B) [Reserved]

