Dated: *May 12, 2011.*

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–12088 Filed 5–17–11; 8:45 am]

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POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2011–10; Order No. 727]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is noticing a recently-filed Postal Service petition to initiate an informal rulemaking proceeding to consider changes in analytical principles. Proposal Two involves changes affecting cost models for evaluating competitive Negotiated Service Agreements. This notice informs the public of the filing, addresses preliminary procedural matters, and invites public comment.

DATES: *Comments are due:* June 13, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: On May 10, 2011, the Postal Service filed a petition pursuant to 39 CFR 3050.11 asking the Commission to initiate an informal rulemaking proceeding to consider changes in the analytical principles approved for use in periodic reporting.[1] Proposal Two is a set of four changes that the Postal Service first presented in its FY 2010 Annual Compliance Report (ACR) modifying the cost models that are used to evaluate Negotiated Service Agreements (NSAs) for competitive products. These cost models were included in USPS–FY10–NP27 in that docket.

The Petition notes that in its FY 2010 Annual Compliance Determination, the Commission made a preliminary determination that these four changes constitute changes to analytical principles that require prior Commission approval before being incorporated in an ACR.[2] The Postal Service notes that the purpose of its Petition is to obtain the Commission's approval of the referenced changes for use in future ACRs, even though some of the changes could be viewed as corrections to its models not requiring advance Commission approval. Petition at 1.

The four changes for which the Postal Service seeks approval are:

1. The addition of a cost avoidance for Priority mailpieces;
2. The inclusion of D-Report adjustments;[3]
3. The incorporation of the CRA adjustment for Alaska Air Priority transportation; and
4. Changes in the distribution of other costs for Parcel Select and Parcel Return Service.

In the material supporting these changes, the Postal Service asserts that including them in the NSA cost models better matches the characteristics of the mail volume for the NSAs in question. It characterizes inclusion of the D-Report and the Alaska Air adjustments as rectifying previous omissions from these models. It notes that the change in the distribution of "Other" costs for Parcel Select is made necessary by the inclusion of the D-Report adjustment.

The Postal Service explains that if the D-Report adjustment is made, it will comprise the majority of "Other" costs. Since the D-Report adjustment is computed as a cost per piece, it contends, "Other" costs should be distributed on a per-piece basis, rather than treated as proportionate to mail processing, transportation, and delivery costs. It says that for consistency, a similar adjustment should be made to the costs of Parcel Return Service. *Id.* at 4.

More detailed descriptions of the proposed changes can be found in USPS–RM2011–10/NP1, which is filed under seal.

It is ordered:

1. The Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider a Proposed Change in Analytical Principles (Proposal Two), filed May 10, 2011, is granted.
2. The Commission establishes Docket No. RM2011–10 to consider the matters raised by the Postal Service's Petition.
3. Interested persons may submit comments on Proposal Two no later than June 13, 2011.
4. The Commission will determine the need for reply comments after review of the initial comments.
5. John P. Klingenberg is appointed to serve as the Public Representative to represent the interests of the general public in this proceeding.
6. The Secretary shall arrange for publication of this notice in the **Federal Register.**

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2011–12202 Filed 5–17–11; 8:45 am]

BILLING CODE 7710–FW–P

[1] Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider a Proposed Change in Analytical Principles (Proposal Two), May 10, 2011 (Petition).

[2] *See* Docket No. ACR2010, FY 2010 Annual Compliance Determination, March 29, 2011, at 141.

[3] The D-Report is one of six reports used to develop the Cost and Revenue Analysis (CRA). In the D-Report, the Postal Service provides attributable, product-specific, and volume variable costs for each product.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0372; FRL–9307–4]

Approval and Promulgation of Air Quality Implementation Plans; California; Determination of Termination of Section 185 Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that the State of California is no longer required to submit or implement section 185 fee program State Implementation Plan (SIP) revisions for the Sacramento Metro 1-hour ozone nonattainment area (Sacramento Metro Area) to satisfy anti-backsliding requirements for the 1-hour ozone standard. The Sacramento Metro Area consists of both Sacramento and Yolo counties and portions of four adjacent counties (Solano, Sutter, Placer and El Dorado). This proposed determination ("Termination Determination") is based on complete, quality-assured and certified ambient air quality monitoring data for 2007–2009, showing attainment of the 1-hour ozone National Ambient Air Quality Standard (1-hour ozone NAAQS or standard), which is due to permanent and enforceable emission reductions implemented in the area. Complete and

quality-assured data for 2010 show that the area continues in attainment for the 1-hour ozone NAAQS. EPA is also proposing to exclude from use in determining attainment exceedances of the 1-hour ozone NAAQS that occurred on three days in 2008, because the exceedances are due to exceptional events (wildfires).

DATES: Written comments must be received on or before June 17, 2011.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R09–OAR–2011–0372, by one of the following methods:

1. *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail:* John J. Kelly at *kelly.johnj@epa.gov.*
3. *Fax:* John J. Kelly, Air Planning Office (Air-2), at fax number 415–947–3579.
4. *Mail:* John J. Kelly, Air Planning Office (Air-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105.
5. *Hand or Courier Delivery:* John J. Kelly, Air Planning Section (Air-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105. Such deliveries are only accepted during the Docket's normal hours of operation. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR–2011–0372. EPA's policy is that all comments received 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 the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Office (Air-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection during normal business hours.

FOR FURTHER INFORMATION CONTACT: John J. Kelly, (415) 947–4151, or by e-mail at *kelly.johnj@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

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I. What actions is EPA taking?

EPA is proposing to determine that California is no longer required to submit or implement Clean Air Act (CAA or the Act) section 185 fee program SIP revisions for the Sacramento Metro 1-hour ozone nonattainment area (Sacramento Metro Area) to satisfy anti-backsliding requirements associated with the transition from the 1-hour ozone standard (1-hour standard or 1-hour) to the 1997 8-hour ozone standard (8-hour standard or 8-hour). This proposed Termination Determination is based on EPA's belief that the area is attaining the 1-hour ozone standard due to permanent and enforceable emission reductions implemented in the area. In addition, EPA proposes to exclude from use in determining the area has attained the 1-hour ozone standard certain air quality monitoring data because they meet the criteria for ozone exceptional events that are caused by wildfires. If finalized, the effect of EPA's determination that the area has attained the 1-hour ozone standard due to permanent and enforceable emission reductions would be to terminate the area's obligations with respect to section 185 fee program requirements for the 1-hour ozone standard. In a separate interim final action, published in the Rules section in today's **Federal Register**, we are deferring sanctions that would otherwise apply to the entire Sacramento Metro Area with the exception of Sacramento County, that is, the entirety of Yolo County and the Sacramento Metro Area portions of Solano, Sutter, Placer and El Dorado counties. This action addresses only the CAA section 185 requirements for the 1-hour ozone standard for the Sacramento Metro Area, and not for the 1997 8-hour ozone standard.

II. Background

The Act requires us to establish NAAQS for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (sections 108 and 109 of the Act). In 1979, we promulgated the revised 1-hour ozone standard of 0.12 parts per million (ppm) (44 FR 8202, February 8, 1979).[1]

An area is considered to have attained the 1-hour ozone NAAQS if there are no violations of the standard, as determined in accordance with the regulation codified at 40 CFR section 50.9, based on three consecutive calendar years of complete, quality-assured and certified monitoring data. A violation occurs when the ambient ozone air quality monitoring data show greater than one (1.0) "expected number" of exceedances per year at any site in the area, when averaged over three consecutive calendar years.[2] An

[1] For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm × 1000. Thus, 0.12 ppm becomes 120 ppb (or between 120 to 124 ppb, when rounding is considered).

[2] An "expected number" of exceedances is a statistical term that refers to an arithmetic average. An "expected number" of exceedances may be equivalent to the number of observed exceedances plus an increment that accounts for incomplete sampling. See, 40 CFR part 50, Appendix H.

exceedance occurs when the maximum hourly ozone concentration during any day exceeds 0.124 ppm. For more information, please see "National 1-hour primary and secondary ambient air quality standards for ozone" (40 CFR 50.9) and "Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone" (40 CFR part 50, Appendix H).

The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period (section 107(d)(4) of the Act; 56 FR 56694, November 6, 1991). The Act further classified these areas, based on the severity of their 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 Severe and Extreme areas were subject to more stringent planning requirements and were provided more time to attain the standard.

Sacramento Metro Area's History

On November 6, 1991, EPA designated the Sacramento Metro Area as Serious nonattainment for the 1-hour ozone standard, with an attainment date no later than November 15, 1999 (56 FR 56694). The Sacramento Metro Area consists of the entirety of both Sacramento and Yolo counties and portions of four adjacent counties (El Dorado, Placer, Solano and Sutter counties) (see 40 CFR section 81.305). Sacramento County is under the jurisdiction of the Sacramento Metropolitan Air Quality Management District (SMAQMD). Yolo County and the eastern portion of Solano County comprise the Yolo-Solano Air Quality Management District. The southern portion of Sutter County is part of the Feather River Air Quality Management District. The western portion of Placer County is part of the Placer County Air Pollution Control District. Lastly, the western portion of El Dorado County is part of the El Dorado County Air Quality Management District. Under California law, each air district is responsible for adopting and implementing stationary source rules, such as the rules required under CAA section 185, while the California Air Resources Board (CARB) adopts and implements consumer products and mobile source rules. The district and state rules are submitted to EPA by CARB.

In 1995, EPA granted the State's request to reclassify the Sacramento Metro Area as Severe. 60 FR 20237 (April 25, 1995). The reclassification of the area as Severe required the State to adopt a SIP revision creating a penalty fee program under CAA section 185 that would apply if the area failed to meet the November 15, 2005 attainment date that applies to Severe 1-hour ozone areas and to submit that SIP revision to EPA by December 31, 2000 (CAA section 182(d)(3)). On September 26, 2002, SMAQMD adopted Rule 307 ("Clean Air Act Fees"). CARB submitted Rule 307 to EPA as a SIP revision for the Sacramento County portion of the area on December 12, 2002 and EPA approved Rule 307 on August 26, 2003 (68 FR 51184). The other affected air districts in the Sacramento Metro Area did not submit 1-hour section 185 SIP revisions for their portions of the nonattainment area. EPA published findings of failure to submit on January 5, 2010 (75 FR 232).[3] These findings started sanctions clocks for imposition of offset sanctions 18 months after January 5, 2010 and highway sanctions six months after the offset sanctions, pursuant to section 179 of the CAA and our regulations at 40 CFR section 52.31.

In 1997, EPA promulgated a new, more protective standard for ozone based on an 8-hour average concentration (the 1997 8-hour ozone standard). In 2004, EPA published the 1997 8-hour ozone designations and classifications and a rule governing certain facets of implementation of the 8-hour ozone standard (Phase 1 Rule) (69 FR 23858 and 69 FR 23951, respectively, April 30, 2004).

By the Sacramento Metro Area's 1-hour ozone 2005 attainment deadline, EPA had revoked the 1-hour standard and designated the area as nonattainment for the 1997 8-hour ozone NAAQS. See 40 CFR 81.305. The area's initial classification for 8-hour ozone was Serious, but EPA subsequently granted CARB's request to reclassify the area to Severe for the 8-hour ozone standard. See 75 FR 24409, May 5, 2010. On July 7, 2010, and in an update on April 13, 2011, CARB requested that EPA find that the Sacramento Metro Area had attained the 1-hour ozone standard due to permanent and enforceable emission reductions, and that EPA terminate 1-hour ozone CAA section 185 requirements for the area. See letters from James Goldstene, CARB Executive Officer, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, with enclosures, dated July 7, 2010 and April 13, 2011.

Section 185 1-Hour Ozone Anti-Backsliding Requirements

Although EPA revoked the 1-hour ozone standard (effective June 15, 2005), during the transition from the 1-hour ozone to the 8-hour ozone standard, 1-hour nonattainment areas remain subject to certain requirements based on their 1-hour ozone classification. The section 185 fee program requirement applies to any ozone nonattainment area classified as Severe or Extreme, including any area that was classified Severe or Extreme under the 1-hour ozone NAAQS as of the effective date of the area's 8-hour designation (see 40 CFR part 81).

Initially, in our rules to address the transition from the 1-hour to the 8-hour ozone standard, EPA did not include the section 185 fee penalty requirement as one of the measures necessary to meet Clean Air Act anti-backsliding requirements.[4] However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that EPA should not have removed from its anti-backsliding requirements the application of the section 185 fee provision for Severe and Extreme nonattainment areas that failed to attain the 1-hour ozone standard by their attainment date. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). In light of the Court's decision, on January 5, 2010 EPA issued guidance on the application of the section 185 1-hour anti-backsliding requirement.[5] EPA's guidance addressed, among other matters, alternative methods of satisfying the section 185 1-hour anti-backsliding requirement, and the circumstances under which EPA would determine that the obligation was terminated.

After the 1-hour ozone standard was revoked, and in accordance with anti-backsliding regulations that remain unchallenged, EPA was no longer obligated to find that an area attained by

[3] EPA's findings also addressed two other 1-hour ozone nonattainment areas in California, which are not at issue here: Southeast Desert and the Los Angeles-South Coast Air Basin.

[4] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1, 69 FR 23951 (April 30, 2004).

[5] Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Air Division Directors, "Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS," January 5, 2010. This memorandum is in the docket to this proposed action and can also be found on the Internet at: *http://www.epa.gov/groundlevelozone/pdfs/20100105185guidance.pdf.*

its 1-hour attainment date, nor to reclassify 1-hour areas under CAA Sections 181(b)(2) or 179(c) (40 CFR 51.905(e)). (69 FR 23951, April 30, 2004).

III. What is the legal rationale for this proposed termination determination?

As a result of the court decision in *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006), states with areas classified as Severe or Extreme nonattainment for the 1-hour ozone standard at the time of the area's initial nonattainment designation for the 1997 8-hour standard are no longer categorically exempt from the anti-backsliding requirements imposed by section 185. EPA has issued guidance for states related to developing 1-hour ozone section 185 fee programs.[6] As set forth in this guidance, EPA believes that states can meet the 1-hour ozone section 185 obligation through a SIP revision containing either the fee program prescribed in section 185 of the Act, or an equivalent alternative program, as further explained below. EPA believes that an alternative program may be acceptable if EPA determines, through notice-and-comment rulemaking, that it is consistent with the principles of section 172(e) of the CAA.

Section 172(e) is an anti-backsliding provision of the CAA that requires EPA to develop regulations to ensure that controls in a nonattainment area are "no less stringent" than those that applied to the area before EPA revised a NAAQS to make it less stringent. In the Phase 1 ozone implementation rule for the 1997 ozone NAAQS published on April 30, 2004 (69 FR 23951), EPA determined that although section 172(e) does not directly apply where EPA has strengthened the NAAQS, as it did in 1997, it was reasonable to apply the same anti-backsliding principle that would apply to the relaxation of a standard for the transition from the 1-hour NAAQS to the more stringent 1997 8-hour NAAQS. As part of applying the principle in section 172(e) for purposes of the transition from the 1-hour standard to the 1997 8-hour standard, EPA can either require states to retain programs that applied for purposes of the 1-hour standard, or alternatively can allow states to adopt alternative programs, but only if such alternatives are determined through notice-and-comment rulemaking to be "no less stringent" than the mandated program.

EPA is electing to consider alternative programs to satisfy the 1-hour ozone section 185 fee program SIP revision requirement. States choosing to adopt an alternative program to the section 185 fee program must demonstrate that the alternative program is no less stringent than the otherwise applicable section 185 fee program and EPA can only approve such demonstration after notice-and-comment rulemaking.

As set forth in EPA's January 5, 2010 guidance, EPA believes that for an area that we determine is attaining either the 1-hour ozone or 1997 8-hour ozone NAAQS, based on permanent and enforceable emission reductions, the area would no longer be obligated to satisfy the section 185 anti-backsliding requirements associated with the transition from the 1-hour ozone standard to the 1997 8-hour ozone standard. In such cases, an area's existing SIP could be considered an adequate alternative program. Our reasoning follows from the fact that an area's existing SIP measures, in conjunction with other enforceable Federal measures, are adequate for the area to achieve attainment, which is the purpose of the section 185 program. The section 185 fee program is an element of an area's attainment demonstration and its objective is to bring about attainment after a failure of an area to attain by its attainment date. Thus, areas that have attained the 1-hour ozone standard, the standard for which the fee program was originally required, as a result of permanent and enforceable emission reductions, would have a SIP that is no less stringent than the SIP required under section 185. Therefore, EPA concludes that the obligation to submit a rule or to collect fees terminates once EPA determines that the area has attained the 1-hour ozone standard based on permanent and enforceable emission reductions.

There is also an additional, independent basis for EPA's approach to determining that the anti-backsliding requirements associated with section 185 have been satisfied. Although section 185 provides that fees are to continue until the area is redesignated to attainment for ozone, EPA no longer promulgates redesignations for the 1-hour ozone standard because that standard has been revoked. Therefore, relief from the 1-hour section 185 fee program requirements under the terms of the statute is an impossibility, since the conditions the statute envisioned for relieving an area of its fee program obligation no longer can exist. There is thus a gap in the statute which must be filled by EPA. We believe that under these circumstances we must exercise our discretion under *Chevron USA, Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984), to fill this gap, so as to carry out Congressional intent in the unique context of anti-backsliding requirements for a revoked standard. We believe that it is reasonable for the fee program obligation that applies for purposes of anti-backsliding to cease upon a determination, based on notice-and-comment rulemaking, that an area has attained the 1-hour ozone standard due to permanent and enforceable measures. This determination centers on the core criteria for redesignations under CAA section 107(d)(3). We believe these criteria provide reasonable assurance that the purpose of the 1-hour anti-backsliding fee program obligation has been fulfilled in the context of a regulatory regime where the area remains subject to other applicable 1-hour anti-backsliding and 8-hour nonattainment measures. Under these circumstances, retention of the fee program under the anti-backsliding rule is no longer necessary for the purpose of achieving attainment of the 8-hour standard. See EPA's January 5, 2010 guidance (footnote 5, above).

IV. What is the effect of this proposed termination determination?

If this proposed determination to terminate the section 185 fee anti-backsliding requirement for the 1-hour ozone standard is finalized, the requirement for the State of California to submit section 185 penalty fee program SIP revisions for the portions of the area for which we made findings of failure to submit, which would require major stationary sources under the Sacramento Metro Area 1-hour ozone Severe nonattainment classification to pay fees as a penalty for the area's failure to attain the 1-hour ozone standard by the area's 1-hour ozone attainment date, as well as the requirement for the Sacramento Metropolitan Air Quality Management District portion of the area to implement its 1-hour ozone section 185 fee program, would be removed.

A final Termination Determination for the 1-hour standard section 185 measures will not be rescinded based on subsequent nonattainment of the 1-hour ozone standard. After EPA has determined that an area has attained the 1-hour standard due to permanent and enforceable emission reductions, EPA believes that it would be unduly punitive, confusing, and potentially destabilizing to re-impose the years-old penalty requirements if at some point in the future the area lapses back into 1-hour nonattainment. Moreover, EPA believes that under current circumstances, it would not be in keeping with the intent of Congress. First, we note that had the area attained the 1-hour ozone standard prior to its

[6] *Id.*

attainment date, no penalties at all would have been imposed even if the area subsequently lapsed into nonattainment. Second, the statute provides that penalties for failure to attain by an area's attainment date would be terminated by redesignation of the area. Now that the 1-hour ozone standard has been revoked and EPA is no longer promulgating redesignations for that standard, relief from the 1-hour section 185 fee program requirements under the terms of the statute is an impossibility—the mechanism the statute envisioned for relief no longer exists. As EPA explains in its January 5, 2010 guidance, we have reasonably concluded in these circumstances that a determination of attainment due to permanent and enforceable emission reductions, along with the area's existing SIP and its continuing obligations to meet ever more stringent ozone standards, are a reasonable alternative means for terminating these unique anti-backsliding penalty provisions. EPA believes that, given the gap in the statute, and the intent of Congress as expressed in quite different regulatory circumstances, it would be counterproductive and in conflict with that intent for EPA's determination to merely suspend rather than permanently terminate the 1-hour anti-backsliding penalty fees. Requiring areas to remain subject to the threat of reviving stale penalty fees for an old revoked standard, when these areas and the sources subject to the penalties must now muster their resources to focus on meeting newer more stringent standards, would be at odds with the purposes of the Act and in conflict with the principle that penalty provisions should be narrowly construed. This is also true because the area is subject to a host of ongoing obligations for the 1997 8-hour ozone standard as well as the future anticipated new 8-hour ozone standard,[7] when it has already shown great improvement towards meeting the 1-hour and 1997 8-hour ozone standards.

V. What is EPA's analysis?

EPA's proposed Termination Determination is based upon EPA's belief that the area is attaining the 1-hour ozone standard due to permanent and enforceable emission reductions implemented in the area. In its January 5, 2010 guidance, EPA set forth its views as to potential rationales for terminating section 185 obligations for 1-hour ozone. This notice formally sets forth EPA's legal interpretation concerning the basis for terminating those obligations.

As explained above, EPA set forth our belief in our January 5, 2010 guidance that for an area that we determine is attaining either the 1-hour ozone or 1997 8-hour ozone NAAQS, based on permanent and enforceable emission reductions, that the area would no longer be obligated to satisfy the anti-backsliding requirements associated with the transition from the 1-hour ozone standard to the 1997 8-hour ozone standard.

a. Attainment of the 1-Hour Ozone Standard

A determination of whether an area's air quality meets the 1-hour ozone NAAQS is generally based upon the most recent three years of complete, quality-assured and certified air quality monitoring data gathered at established National Air Monitoring Stations ("NAMS") or State and Local Air Monitoring Stations ("SLAMS") in the nonattainment area and entered into the EPA's Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to the AQS database. Monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in its AQS database when determining the attainment status of an area. See 40 CFR 50.9; 40 CFR part 50, Appendix H; 40 CFR part 53; 40 CFR part 58, Appendices A, C, D and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, Appendix H.

Under EPA regulations at 40 CFR 50.9, the 1-hour ozone standard is attained at a monitoring site when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 micrograms per cubic meter) is equal to or less than 1, as determined by 40 CFR part 50, Appendix H.

EPA proposes to determine that the Sacramento Metro Area has attained the 1-hour ozone standard; that is, the number of expected exceedances at any site in the nonattainment area is not greater than one per year.[8] This proposed determination is based on three years of complete, quality-assured and certified ambient air quality monitoring data in AQS showing attainment of the 1-hour ozone standard for the 2007–2009 monitoring period, and complete, quality-assured data in AQS for 2008–2010 that show continued attainment. As explained below, in determining the area's attainment of the 1-hour ozone standard, EPA is also proposing to exclude from consideration exceedances that occurred on three days in 2008, because they are due to wildfire exceptional events.

Monitoring Network

In the Sacramento Metro Area, the agencies responsible for assuring that the area meets air quality monitoring requirements include CARB, Sacramento Metropolitan Air Quality Management District (SMAQMD), Placer County Air Pollution Control District (PCAPCD) and Yolo-Solano Air Quality Management District (YSAQMD). Both CARB and SMAQMD submit annual monitoring network plans to EPA. SMAQMD Network Plans describe the monitoring network the district operates; CARB's Network Plans describe the monitoring sites CARB operates, in addition to monitoring sites operated by smaller air districts, namely, for the Sacramento Metro Area, PCAPCD and YSAQMD. These plans discuss the status of the air monitoring network, as required under 40 CFR 58.10.

Since 2007, EPA regularly reviews these annual plans for compliance with the applicable reporting requirements in 40 CFR part 58. With respect to ozone, EPA has found that the area's network plans meet the applicable requirements under 40 CFR part 58. See EPA letters to CARB and SMAQMD approving their annual network plans for years 2007, 2009 and 2010.[9] Furthermore, we concluded in our Technical System Audit of the CARB Primary Quality Assurance Organization (PQAO),[10] conducted during Summer 2007, that the combined ambient air monitoring network operated by CARB and the local air districts in their PQAO currently meets or exceeds the requirements for the minimum number of SLAMS monitoring sites for all criteria pollutants, and that all of the monitoring sites are properly located with respect to monitoring objectives, spatial scales and other site criteria, as

[7] EPA anticipates announcing the reconsidered 8-hour ozone standard in July 2011.

[8] The average number of expected exceedances is determined by averaging the expected exceedances of the 1-hour ozone standard over a consecutive three calendar year period. See 40 CFR part 50 Appendix H.

[9] Neither CARB nor SMAQMD proposed modifications to their networks in 2008; therefore, neither agency was required to submit a network plan to EPA for approval that year.

[10] A primary quality assurance organization is responsible for a group of monitoring stations for which data quality assessments can be pooled See 40 CFR section 58.1. CARB is the lead PQAO for all the air districts in the Sacramento Metro Area.

required by 40 CFR part 58, Appendix D. See letter from Deborah Jordan, Director, Air Division, U.S. EPA Region IX, to James Goldstene, Executive Officer, CARB, transmitting "Technical System Audit of the California Environmental Protection Agency Air Resources Board: 2007," with enclosure, August 18, 2008. Also, CARB annually certifies that the data it submits to AQS are complete and quality-assured. See, *e.g.*, letter from Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, CARB, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, certifying calendar year 2009 ambient air quality data and quality assurance data, May 19, 2010.

There were 16 ozone monitoring sites located throughout the Sacramento Metro Area in calendar years 2007, 2008, 2009 and 2010.[11] Sacramento Metro AQMD operates six ozone monitors in Sacramento County: Elk Grove (southwest Sacramento County), Del Paso Manor (northeast City of Sacramento), Folsom (City of Folsom), Sacramento-Goldenland Court [12] (northwest City of Sacramento), North Highlands (north Sacramento County) and Sloughhouse Road (west Sacramento County). CARB operates six ozone monitors in the Sacramento Metro Area: Sacramento-T Street (City of Sacramento) in Sacramento County; Cool (City of Cool), Echo Summit (in the Sierra Nevada Mountains) and Placerville (City of Placerville) in El Dorado County; Roseville (City of Roseville) in Placer County; and Davis (City of Davis) in Yolo County. Placer County APCD operates two ozone monitors in the Sacramento Metro Area: Colfax (City of Colfax) and Auburn (City of Auburn). Yolo-Solano AQMD operates two ozone monitors in the Sacramento Metro Area: Vacaville (City of Vacaville) in Solano County, and Woodland (City of Woodland) in Yolo County.

All Sacramento Metro Area sites monitor ozone concentrations on a continuous basis using ultraviolet absorption monitors.[13] EPA defines specific monitoring site types and spatial scales of representativeness to characterize the nature and location of required monitors. See 40 CFR part 58, Appendix D, § 1. Table 1 below lists the site types and spatial scale for each ozone monitoring site in the Sacramento Metro Area. Due to ozone precursor source distribution and general meteorological patterns in the area, the highest ozone concentrations for the past several years have typically occurred at the Folsom and Sloughhouse Road sites.

TABLE 1—SITE TYPE AND SPATIAL SCALE [a]

Site name	Site type [b]	Spatial scale [c]
Placerville (06–017–0010)	HC, TR	RS
Echo Summit (06–017–0012)	HC, TR	RS
Cool (06–017–0020)	HC, TR	RS
Auburn (06–061–0002)	HC	US
Colfax (06–061–0004)	HC	US
Roseville (06–061–0006)	HC	US
North Highlands (06–067–0002)	RC	NS
Sacramento-Del Paso Manor (06–067–0006)	HC	NS
Sacramento-T Street (06–067–0010)	RC	US
Elk Grove (06–067–0011)	RC	NS
Folsom (06–067–0012)	HC	NS
Sacramento-Airport Road (06–067–0013)	RC	NS
Sacramento-Goldenland Court (06–067–0014)	RC	NS
Sloughhouse Rd. (06–067–5003)	RC	NS
Vacaville (06–095–3003)	HC, TR	RS
Davis (06–113–0004)	HC	US
Woodland (06–113–1003)	HC	US

[a] Source: SMAQMD's "Annual Network Plan Report" (July 2010) and CARB's "Monitoring Network Report for Small Districts in California" (July 2010).
[b] Site types are defined in 40 CFR part 58, Appendix D section 1.1.1. The site types utilized in the Sacramento Metro Area include high concentration (HC), representative concentration (RC) and pollutant transport (TR).
[c] Spatial scales are defined in 40 CFR part 58 Appendix D section 1.2. The monitoring sites in the Sacramento Metro Area are either neighborhood scale (NS), urban scale (US) or regional scale (RS) sites.

Exceptional Events

On March 22, 2007, EPA adopted a final rule, "Treatment of Data Influenced by Exceptional Events," also known as the Exceptional Events Rule (EER), to govern the review and handling of certain air quality monitoring data for which the normal planning and regulatory processes are not appropriate (72 FR 13560). Under the EER, EPA may exclude data from use in determinations of NAAQS exceedances and violations if a state demonstrates that an "exceptional event" caused the exceedance or exceedances. 40 CFR 50.1, 50.14. Before EPA can exclude data from these regulatory determinations, the state must flag the data in EPA's AQS database and, after public notice and opportunity for comment, submit a demonstration to EPA to justify the exclusion. EPA considers the demonstration and concurs or nonconcurs with the state's flag. After notice-and-comment rulemaking, EPA determines whether to

[11] Enclosure 2 of CARB's July 7, 2010 request includes a map on page 3.2 showing locations of all ozone monitors in the Sacramento Metro Area. Letter from James Goldstene, CARB Executive Officer, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, dated July 7, 2010, requesting termination of CAA section 185 requirements as they pertain to the Sacramento Metro Area. The document can be found on the Internet at: *http://www.airquality.org/notices/1hour/AttainmentReport.pdf.*

[12] The Sacramento-Airport Road site was relocated to Sacramento-Goldenland Court in August 2008.

[13] Sacramento Metro Area monitoring agencies operate Federal equivalent method (FEM) monitors for ozone, specifically, API 400 Series ultraviolet absorption monitors. See SMAQMD's "Annual Network Plan Report" (July 2010) and CARB's "Monitoring Network Report for Small Districts in California" (July 2010). These monitoring devices have an EPA designation number EQOA–0992–087. See EPA "List of Designated Reference and Equivalent Methods, page 27 (February 1, 2011), available on the Internet at: *http://www.epa.gov/ttn/amtic/criteria.html.*

exclude the data from use when making a determination of attainment.

In submittals dated September 17, 2009 and March 30, 2011, CARB provided documentation for ozone exceedances that occurred at the Folsom monitor on three days in Summer 2008 which the state had flagged as due to wildfire exceptional events. EPA reviewed the documentation and concurred with the June 23, June 27 and July 10, 2008 flags in a letter from Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, to Mary D. Nichols, Chairman, CARB, dated April 13, 2011. EPA included with the letter a document setting forth in detail the bases for EPA's concurrences. See "Review of Exceptional Events Request: Folsom, CA; 1-hour ozone; June 23, June 27 and July 10, 2008," dated April 13, 2011 (in the docket for this proposed rulemaking). For the reasons set forth in the concurrence letter and its enclosure, EPA is proposing to exclude from regulatory consideration data showing exceedances at the Folsom monitoring site on June 23, June 27 and July 10, 2008.

Monitoring Data

EPA's proposal to exclude ozone exceedances monitored at the Folsom site on June 23, June 27 and July 10, 2008, if finalized, would result in a revision of the number of exceedances (as determined by 40 CFR part 50, Appendix H and described in section II of this notice) for 2008 and, therefore, the average number of expected exceedances for the 2007–2009 period. With the exclusion of the data for these three days, the highest three-year average of expected exceedances at any site in the Sacramento Metro Area for 2007–2009 is 1.0, which shows attainment of the 1-hour ozone standard (a three-year average of expected exceedances less than or equal to 1). For more information, please see "National 1-hour primary and secondary ambient air quality standards for ozone" (40 CFR section 50.9) and "Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone" (40 CFR part 50, Appendix H). Consistent with 40 CFR part 50, Appendix H, Tables 2 and 3 set forth the 1-hour ozone data for the Sacramento Metro Area monitors that show that the area is currently attaining the 1-hour ozone NAAQS.

TABLE 2—1-HOUR OZONE DATA FOR THE SACRAMENTO METRO 1-HOUR OZONE NONATTAINMENT AREA [a]

Site (monitor ID)	Expected exceedances by year			Expected exceedances 3-yr average
	2007	2008	2009	2007–2009
Placerville (06–017–0010)	0.0	2.0	0.0	0.7
Echo Summit (06–017–0012)	0.0	0.0	0.0	0.0
Cool (06–017–0020)	0.0	2.0	0.0	0.7
Auburn (06–061–0002)	0.0	0.0	0.0	0.0
Colfax (06–061–0004)	0.0	0.0	0.0	0.0
Roseville (06–061–0006)	0.0	2.0	0.0	0.7
North Highlands (06–067–0002)	0.0	0.0	0.0	0.0
Sacramento-Del Paso Manor (06–067–0006)	1.0	0.0	0.0	0.3
Sacramento-T Street (06–067–0010)	0.0	0.0	0.0	0.0
Elk Grove (06–067–0011)	0.0	0.0	0.0	0.0
Folsom (06–067–0012)	1.0	[b] 2.0	0.0	1.0
Sacramento-Airport Road (06–067–0013)	0.0	[c] 0.0	NA	NA
Sacramento-Goldenland Court (06–067–0014)	NA	[c] 0.0	0.0	0.0
Sloughhouse Rd. (06–067–5003)	0.0	3.0	0.0	1.0
Vacaville (06–095–3003)	0.0	0.0	0.0	0.0
Davis (06–113–0004)	0.0	0.0	0.0	0.0
Woodland (06–113–1003)	0.0	0.0	0.0	0.0

Source: Quicklook Report, May 3, 2011 (in the docket to this proposed action).
[a] 40 CFR part 50, Appendix H—Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.
[b] Data shown exclude exceedances on June 23, June 27 and July 10, 2008 due to exceptional events.
[c] The Airport Road site was relocated to the Goldenland Court site in August 2008.
NA—Data is not available.

The data in Table 2 indicate a long-term trend observed in the Sacramento Metro Area. As described in CARB's July 7, 2010 letter requesting a Termination Determination, the monitoring sites that historically experienced exceedances of the 1-hour ozone standard are the Cool, Sloughhouse, Folsom and Del Paso Manor sites. For example, in 1998 five exceedances were monitored at Cool and ten at Folsom. In 2009, by contrast, there were no exceedances at any monitor in the entire Sacramento Metro Area.

In sum, EPA believes that, if the exceedances resulting from wildfire exceptional events on three days in 2008 are excluded from consideration, the 2007–2009 ambient air monitoring data for the Sacramento Metro Area show attainment of the 1-hour ozone NAAQS. In addition, if EPA's proposal to exclude exceedances on three days due to wildfire exceptional events is finalized, the data for 2010 (complete and quality-assured but not yet certified), shown in Table 3 for the 2008–2010 monitoring period, show continued attainment. Preliminary data available for 2011 are also consistent with continued attainment.

TABLE 3—2010 1-HOUR OZONE DATA FOR THE SACRAMENTO METRO 1-HOUR OZONE NONATTAINMENT AREA SHOWING CONTINUED ATTAINMENT [a]

Site (monitor ID)	Expected exceedances by year			Expected exceedances 3-yr average
	2008	2009	2010 [b]	2008–2010 [b]
Placerville (06–017–0010)	2.0	0.0	0.0	0.7
Echo Summit (06–017–0012)	0.0	0.0	0.0	0.0
Cool (06–017–0020)	2.0	0.0	0.0	0.7
Auburn (06–061–0002)	0.0	0.0	0.0	0.0
Colfax (06–061–0004)	0.0	0.0	0.0	0.0
Roseville (06–061–0006)	2.0	0.0	0.0	0.7
North Highlands (06–067–0002)	0.0	0.0	0.0	0.0
Sacramento-Del Paso Manor (06–067–0006)	0.0	0.0	0.0	0.0
Sacramento-T Street (06–067–0010)	0.0	0.0	0.0	0.0
Elk Grove (06–067–0011)	0.0	0.0	0.0	0.0
Folsom (06–067–0012)	[c] 2.0	0.0	0.0	0.7
Sacramento-Airport Road (06–067–0013)	[d] 0.0	NA	NA	NA
Sacramento-Goldenland Court (06–067–0014)	[d] 0.0	0.0	0.0	0.0
Sloughhouse Rd. (06–067–5003)	3.0	0.0	0.0	1.0
Vacaville (06–095–3003)	0.0	0.0	0.0	0.0
Davis (06–113–0004)	0.0	0.0	0.0	0.0
Woodland (06–113–1003)	0.0	0.0	0.0	0.0

Source: Quicklook Report, May 3, 2011 (in the docket to this proposed action).
[a] 40 CFR part 50, Appendix H—Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.
[b] Data from 2010 are complete but have not yet been certified.
[c] Data exclude exceedances on June 23, June 27 and July 10, 2008 due to exceptional events.
[d] The Airport Road site was relocated to the Goldenland Court site in August 2008.
NA—Data are not available.

b. Permanent and Enforceable Emission Reductions

EPA believes that the State has demonstrated that the observed air quality improvements in the Sacramento Metro Area with respect to the 1-hour ozone standard are due to permanent and enforceable emission reductions through the implementation of state and district emission controls contained in the SIP and not due to favorable meteorology or temporary reductions in emission rates, such as temporary adverse economic conditions. See letter and accompanying documentation (Enclosure 2, Sacramento Metropolitan Air Quality Management District 1-Hour Ozone Attainment Demonstration Request for the Sacramento Federal Ozone Nonattainment Area) from James Goldstene, CARB Executive Officer, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, dated July 7, 2010, requesting termination of CAA section 185 requirements as they pertain to the Sacramento Metro Area (July 7, 2010 request).

In 1994, California submitted a comprehensive ozone plan for all ozone nonattainment areas in California including the Sacramento Metro Area (1994 SIP), which EPA approved on January 8, 1997 (62 FR 1150). The plan provided a blueprint for attaining the 1-hour ozone standard that relied on a combination of stationary and mobile source measures by the districts, and state and Federal governments. In addition, California air districts in the Sacramento Metro Area adopted and implemented emission control rules requiring many existing sources of oxides of nitrogen (NO_X) and volatile organic compounds (VOCs) [14] to meet, at minimum, Reasonably Available Control Technology (RACT). These requirements apply to sources in categories covered by Control Technology Guidelines (CTGs) and major non-CTG sources.

Meteorology

In its July 7, 2010 request (Enclosure 2, Sacramento Metropolitan Air Quality Management District 1-Hour Ozone Attainment Demonstration Request for the Sacramento Federal Ozone Nonattainment Area), CARB provided documentation that the improvement in air quality in the Sacramento Metro Area is not due to favorable meteorology. CARB showed that the weather patterns in the last decade have not been unusually favorable. For example, looking at days equal to or over 95 degrees Fahrenheit in each of the last thirteen years (1997 to 2009) as an indicator of conditions conducive to ozone formation, the area had an annual average of 37 such "high temperature" days, while in the last four years (2006–2009), the area also had an annual average of 37 high temperature days.

Economic Activity

The State provided documentation showing that the improvement in air quality leading to 1-hour ozone attainment in the Sacramento Metro Area is not due to a temporary economic downturn. See July 7, 2010 request (Enclosure 2, Sacramento Metropolitan Air Quality Management District 1-Hour Ozone Attainment Demonstration Request for the Sacramento Federal Ozone Nonattainment Area). As an indicator of economic activity, this analysis presented information on gasoline and diesel sales in California from 2000 to 2009. Fuel sales are an indicator of economic activity, and represent an indicator of emissions trends of both VOCs and NO_X as well. The Sacramento Metro Area's emissions inventory is dominated by mobile sources. See Table 7 below and Table 4.1 of Enclosure 2 of July 7, 2010 request. Although fuel sales have decreased in the last several years, perhaps coinciding with an overall economic downturn in California and nationally, we note that the decrease has been slight and that the last year presented, 2009, still had a higher level (14.8 billion gallons of fuel sold) than the first year presented (2001, at 14.5 billion gallons). Between those years, fuel sales increased gradually to a peak

[14] NO_X and VOCs are chemical precursors to ozone.

between 2005 and 2006 (both at 15.9 billion gallons sold per year), before gradually declining.

Given that the earliest years in that ten-year period were years when the area was not attaining the 1-hour ozone standard, EPA believes that any temporary emission reductions due to the more recent economic downturn in 2008 and later are relatively small and not a significant factor in the attainment of the 1-hour standard. Therefore, we conclude that economic conditions are not a source of temporary reductions in emission rates. On the contrary, EPA believes that the steady decline of emissions of NO_X and VOCs during the same ten-year period is attributable to fleet turnover with newer vehicles having lower evaporative and tailpipe emissions, as well as greater fuel economy. Additionally, EPA notes that CARB's emissions database (*http://www.arb.ca.gov/ei/emissiondata.htm*) shows that during 2006 through 2009, the vehicle miles traveled (VMT) have increased from approximately 68 million miles per day to 72 million miles per day in the Sacramento Valley Air Basin. See CEPAM: 2009 Almanac—Population and Vehicle Trends Tool, Sacramento Valley Air Basin, Daily Vehicle Miles Traveled, All Vehicles.

Local Districts' Measures Since 1990

Since 1990, the Districts have adopted, implemented and submitted for EPA approval dozens of stationary source rules which achieve NO_X and VOC emission reductions and have thus helped reduce ozone levels. Tables 4 through 7 below summarize the local air district rules adopted since 1990 and approved into the California SIP.[15] [16]

TABLE 4—SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT RULES ADOPTED SINCE 1990 AND APPROVED INTO THE CALIFORNIA STATE IMPLEMENTATION PLAN

Rule No.	Rule	Date rule adopted by district	Date rule approved into SIP	Federal Register citation	NO_X	VOC
411	NO_X from Boilers, Process Heaters and Steam Generators	08/23/2007	5/6/2009	74 FR 20880	X	.....
412	Stationary Internal Combustion Engine	06/01/1995	4/30/1996	61 FR 18959	X	.....
413	Stationary Gas Turbines	03/24/2005	1/10/2008	73 FR 1819	X	.....
414	Natural Gas-fired Water Heater	08/01/1996	4/20/1999	64 FR 19277	X	.....
442	Architectural Coatings	09/05/1996	11/9/1998	63 FR 60214	.....	X
443	Leaks from Synthetic Organic Chemical & Polymer Manufacturing.	09/05/1996	11/9/1998	63 FR 60214	.....	X
446	Storage of Petroleum Products	11/16/1993	9/16/1994	59 FR 47544	.....	X
447	Organic Liquid Loading	04/02/1998	11/26/1999	64 FR 66393	.....	X
448	Gasoline Transfer into Stationary Storage Containers	02/02/1995	1/23/1996	61 FR 1716	.....	X
449	Transfer of Gasoline into Vehicle Fuel Tanks	09/26/2002	3/24/2003	68 FR 14156	.....	X
450	Graphic Arts	10/23/2008	4/9/2010	75 FR 18068	.....	X
452	Can Coating	09/25/2008	4/9/2010	75 FR 18068	.....	X
454	Degreasing Operations	09/25/2008	4/9/2010	75 FR 18068	.....	X
456	Aerospace Assembly and Component Coating Operations	10/23/2008	7/14/2010	75 FR 40726	.....	X
458	Large Commercial Bread Bakeries	09/05/1996	11/9/1998	63 FR 60214	.....	X
459	Automotive, Truck and Heavy Equipment Refinishing Operations.	10/02/1997	11/13/1998	63 FR 63410	.....	X
463	Wood Products Coatings	09/25/2008	4/9/2010	75 FR 18068	.....	X
464	Organic Chemical Manufacturing Operations	07/23/1998	4/19/2000	65 FR 20912	.....	X
466	Solvent Cleaning	05/23/2002	5/5/2010	75 FR 24406	.....	X

TABLE 5—EL DORADO COUNTY AIR QUALITY MANAGEMENT DISTRICT RULES ADOPTED SINCE 1990 AND APPROVED INTO THE CALIFORNIA STATE IMPLEMENTATION PLAN

Rule No.	Rule	Date rule adopted by district	Date rule approved into SIP	Federal Register citation	NO_X	VOC
215	Architectural Coatings	9/27/1994	7/18/1996	61 FR 37390	.....	X
224	Cutback Asphalt Paving Material	9/27/1994	8/21/1995	60 FR 43383	.....	X
225	Solvent Cleaning (Degreasing)	9/27/1994	8/21/1995	60 FR 43383	.....	X
229	Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.	1/23/2001	10/10/2001	66 FR 51578	X	.....
230	Motor Vehicle & Mobile Equipment Coating	9/27/1994	4/30/1996	61 FR 18962	.....	X
231	Graphic Arts	9/27/1994	7/11/1997	62 FR 37136	.....	X
232	Biomass Boilers	9/25/2001	10/14/2003	68 FR 59121	X	.....
233	Stationary Internal Combustion Engines	6/11/2002	9/13/2002	67 FR 57960	X	.....
234	VOC RACT Rule—Sierra Pacific Industries	4/25/1995	9/12/1995	60 FR 47273	.....	X
235	Surface Preparation and Cleanup	6/27/1995	4/30/1996	61 FR 18962	.....	X
236	Adhesives	7/25/1995	7/18/1996	61 FR 37390	.....	X
237	Wood Products Coatings	6/27/1995	7/18/1996	61 FR 37390	.....	X
238	Gasoline Transfer and Dispensing	3/27/2001	8/27/2001	66 FR 44974	.....	X
239	Natural Gas-fired Residential Water Heaters	3/24/1998	3/30/1999	64 FR 15129	X	.....

[15] Feather River Air Quality Management District (FRAQMD) does not have any rules listed in the table because, since 1990, no additional FRAQMD VOC or NO_X rules have been added to the SIP. FRAQMD consists of the entirety of both Sutter and Yuba counties. Only the very southern portion of Sutter County falls within the Sacramento Metro Area, and that portion includes no major NO_X or VOC stationary sources.

[16] EPA is currently evaluating approximately 30 additional rules that have been adopted by Sacramento Metro Area air districts to control VOC and/or NO_X and that were submitted to EPA as SIP revisions. Although EPA has not yet taken action on these submitted rules, they are currently being implemented by the air districts.

TABLE 5—EL DORADO COUNTY AIR QUALITY MANAGEMENT DISTRICT RULES ADOPTED SINCE 1990 AND APPROVED INTO THE CALIFORNIA STATE IMPLEMENTATION PLAN—Continued

Rule No.	Rule	Date rule adopted by district	Date rule approved into SIP	Federal Register citation	NO_X	VOC
240	Polyester Resin Operations	2/15/2000	7/17/2001	66 FR 37154		X
244	Organic Liquid Loading and Transport Vessels	9/25/2001	7/8/2002	67 FR 45067		X
245	Valves and Flanges	3/27/2001	8/27/2001	66 FR 44974		X

TABLE 6—PLACER COUNTY AIR POLLUTION CONTROL AGENCY RULES ADOPTED SINCE 1990 AND APPROVED INTO THE CALIFORNIA STATE IMPLEMENTATION PLAN

Rule No.	Rule	Date rule adopted by district	Date rule approved into SIP	Federal Register citation	NO_X	VOC
212	Storage of Organic Liquids	6/19/1997	6/11/2009	74 FR 27714		X
213	Gasoline Transfer Into Stationary Storage Containers	10/19/1993	3/3/1997	62 FR 23365		X
214	Transfer of Gasoline Into Vehicle Fuel Tanks	10/19/1993	4/30/1997	62 FR 23365		X
215	Transfer of Gasoline Into Tank Trucks, Trailers and Railroad Tank Cars at Loading Facilities.	6/19/1997	1/31/2011	76 FR 5277		X
216	Organic Solvent Cleaning and Degreasing Operations	12/11/2003	5/5/2010	75 FR 24406		X
217	Cutback and Emulsified Asphalt Paving Materials	10/19/1993	4/30/1997	62 FR 23365		X
218	Architectural Coatings	02/09/1995	7/18/1996	61 FR 37390		X
219	Organic Solvents	10/19/1993	4/30/1997	62 FR 23365		X
223	Metal Container Coating	10/6/1994	3/23/1995	60 FR 15241		X
229	Fiberboard Manufacturing	6/28/1994	6/8/2001	66 FR 30815		X
230	Plastic Products and Materials—Paper Treating Operation	6/28/1994	12/14/1994	59 FR 64336		X
233	Biomass Boilers	10/06/1994	4/30/1996	61 FR 18959	X	
235	Adhesives	6/08/1995	7/18/1996	61 FR 37390		X
236	Wood Products Coating Operations	2/09/1995	4/30/1996	61 FR 18962		X
238	Factory Coating of Flat Wood Paneling	6/18/1995	2/12/1996	61 FR 5288		X
239	Graphic Arts Operations	2/13/1997	11/13/1998	63 FR 63410		X
244	Semiconductor Operations	2/9/1995	7/25/1996	61 FR 38571		X
250	Stationary Gas Turbines	10/17/1994	8/23/1995	60 FR 43713	X	

TABLE 7—YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT RULES ADOPTED SINCE 1990 AND APPROVED INTO THE CALIFORNIA STATE IMPLEMENTATION PLAN

Rule No.	Rule	Date rule adopted by district	Date rule approved into SIP	Federal Register citation	NO_X	VOC
2.13	Organic Solvents	5/24/1994	4/30/1996	61 FR 18962		X
2.14	Architectural Coatings	11/14/2001	1/2/2004	69 FR 34		X
2.21	Organic Liquid Storage & Transfer	9/14/2005	10/31/2006	71 FR 63694		X
2.22	Gasoline Dispensing Facilities	6/12/2002	1/23/2003	68 FR 3190		X
2.23	Fugitive Hydrocarbon	8/13/1997	11/26/1999	64 FR 66393		X
2.24	Solvent Cleaning Operations (Degreasing)	11/14/1990	12/13/1994	59 FR 64130		X
2.25	Surface Coating or Manufactured Metal Parts and Products	4/27/1994	2/12/1996	61 FR 5288		X
2.26	Motor Vehicle & Mobile Equipment Coating	11/30/1994	4/30/1996	61 FR 18962		X
2.27	Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.	8/14/1996	6/17/1997	62 FR 32691	X	
2.28	Cutback & Emulsified Asphalt	5/25/1994	2/5/1996	61 FR 4215		X
2.29	Graphic Arts Printing Operations	5/25/1994	8/21/1998	63 FR 44792		X
2.30	Polyester Resin Operation	4/14/1999	7/21/1999	64 FR 39037		X
2.31	Surface Preparation and Cleanup	04/27/1994	4/2/1999	64 FR 15922		X
2.32	Stationary Internal Combustion Engines	10/10/2001	1/28/2002	67 FR 3816	X	X
2.33	Adhesives Operation	3/12/2003	3/22/2004	69 FR 13234		X
2.34	Stationary Gas Turbines	7/13/1994	9/3/1998	63 FR 46892	X	
2.35	Pharmaceutical Manufacturing Operations	11/30/1994	2/24/1997	62 FR 8172		X
2.37	Natural Gas-Fired Water Heaters and Small Boilers	4/8/2009	5/10/2010	75 FR 25778	X	
2.42	Nitric Acid Production	5/13/2009	5/10/2010	75 FR 25778	X	

California State Measures

Source categories for which CARB has primary responsibility for reducing emissions in California include most new and existing on- and off-road engines and vehicles, motor vehicle fuels, and consumer products. In addition, California has unique authority under CAA section 209 (subject to a waiver by EPA) to adopt and implement new emission standards for many categories of on-road vehicles and engines, and new and in-use off-road vehicles and engines. California has been a leader in the development of

some of the most stringent control measures nationwide for on-road and off-road mobile sources and the fuels that power them. These measures have helped reduce ozone levels in the Sacramento Metro Area and throughout the state.

CARB's 2007 State Strategy provides a recent summary of the measures adopted and implemented by the state. See "Air Resources Board's Proposed State Strategy for California's 2007 State Implementation Plan," release date: April 26, 2007. From 1994 to 2006, the state has taken more than 45 rulemaking actions which have achieved significant emission reductions needed for the state's nonattainment areas such as the Sacramento Metro Area. See 2007 State Strategy, p. 38.[17] These measures include new emission standards and in-use requirements and have resulted in significant reductions in VOC and NO_X emissions from categories such as passenger cars, trucks, buses, motorcycles, locomotives, recreational boats, lawn and garden equipment and consumer products. EPA has generally approved all of the State's measures that are not subject to the CAA section 209 waiver process. See EPA's proposed approval of the San Joaquin Valley 1-hour ozone plan at 74 FR 33933, 33938 (July 14, 2009) and final approval at 75 FR 10420 (March 8, 2010). See also, EPA's proposed partial approval/partial disapproval of the San Joaquin Valley PM2.5 plan at 75 FR 74518, 74526–7 (November 30, 2010) and EPA's proposed partial approval/partial disapproval of the South Coast PM2.5 plan at 75 FR 71294, 71302–3 (November 22, 2010).

Federal Measures

Finally, in addition to the local district and state rules discussed above, the Sacramento Metro Area has also benefited from Federal mobile source measures such as emissions standards for new locomotive Tier 1 and Tier 2 engines, nationwide heavy-duty on-highway trucks, and new emission standards for pre-empted farm and construction equipment.

Summary/Conclusion

Based on the above discussion, EPA believes that the progress made to reduce emissions in the Sacramento Metro Area during the 1990–2009 timeframe resulting in achieving attainment of the 1-hour ozone standard is from permanent and enforceable measures which achieved significant reductions as summarized in Table 8 below:

TABLE 8—SUMMARY OF EMISSIONS FOR THE SACRAMENTO METRO 1-HOUR OZONE NONATTAINMENT AREA

[Tons per day]

	1990 VOC	2008 VOC	1990 NO_X	2008 NO_X
Stationary	39	22	22	15
Area-wide	34	28	4	3
On-road	140	45	148	95
Other mobile	49	41	69	53
Total	262	136	242	167

Source: Letter from James Goldstene, CARB Executive Officer, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, dated July 7, 2010, Table 4.1 of Enclosure 2, "1-Hour Ozone Attainment Determination Request for the Sacramento Federal Ozone Nonattainment Area," April 26, 2010, prepared by: Sacramento Metropolitan Air Quality Management District.

The emission reduction trends shown in Table 8 are not only expected to be maintained at current levels, but are expected to continue in the next several decades, in spite of increasing population in the area, due to the continued replacement of older vehicles and engines with newer units subject to more stringent California and Federal emission control requirements. The exception is that there is projected to be a slight (1% annually) growth in VOC emissions starting in 2020, as activity growth overcomes emission reductions. See Letter from James Goldstene, CARB Executive Officer, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region IX, dated July 7, 2010, Section 4.2 of Enclosure 2, "1-Hour Ozone Attainment Determination Request for the Sacramento Federal Ozone Nonattainment Area," April 26, 2010, prepared by: Sacramento Metropolitan Air Quality Management District.

EPA believes the preceding discussion demonstrates that permanent and enforceable emission reduction measures adopted and implemented by the state have been effective in reaching attainment of the 1-hour ozone standard, and that the improvement in the Sacramento Metro Area's air quality is due to permanent and enforceable emission reductions.

VI. Proposed Actions

EPA is proposing to make a determination to terminate the 1-hour ozone section 185 penalty fee requirement (Termination Determination) for the Sacramento Metro Area. Our proposed determination is based on our finding that the Sacramento Metro Area is attaining the 1-hour ozone NAAQS due to permanent and enforceable reductions in emissions. In proposing this determination, EPA is also proposing to exclude 1-hour ozone NAAQS exceedances that occurred at the Folsom monitor on three days in 2008 because they were caused by wildfire exceptional events. For the reasons set forth in this notice, EPA's proposed 1-hour ozone section 185 Termination Determination is based on EPA's determination that the area has attained and continues to attain the 1-hour ozone standard due to permanent and enforceable emission reductions.

VII. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment and a determination of termination of the CAA section 185 penalty fee requirements based on attainment of the 1-hour ozone standard due to permanent and enforceable emission reductions, and would, if finalized, result in the termination of the section 185 fee requirements for the 1-hour standard, and would not impose any

[17] This document can be found on the Internet at: *http://arb.ca.gov/planning/sip/2007sip/apr07draft/sipback.pdf.*

additional requirements. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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: May 9, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–12063 Filed 5–17–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2009–0809; FRL–9307–6]

Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards; Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve and conditionally approve the State Implementation Plan (SIP) submission from the State of Colorado to demonstrate that the SIP meets the requirements of Sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the "infrastructure elements" of section 110(a)(2). The State of Colorado submitted a certification of their infrastructure SIP for the 1997 ozone NAAQS, dated January 7, 2008 which was determined to be complete on March 27, 2008 (73 FR 16205).

EPA does not propose to act on the State's January 7, 2008 submission to meet the requirements of section 110(a)(2)(D)(i) of the CAA, relating to interstate transport of air pollution, for the 1997 ozone NAAQS. EPA approved the State's interstate transport SIP submission at 75 FR 31306, 75 FR 71029, and 76 FR 22036.

DATES: Written comments must be received on or before June 17, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2009–0809, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: dolan.kathy@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2009–0809. EPA's policy is that all comments received 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. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I, General Information, of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental