

we finalize today's proposed determination that the area has attained the 1-hour standard and that the CAA planning requirements discussed above no longer apply to the area. These requirements include: A current, comprehensive, and accurate emission inventory of actual emissions (section 172(c)(3)); reasonable available control measures (section 172(c)(1)); and an NSR program (sections 172(c)(5) and 173(a)). When we take final action on this finding of attainment, we intend to take final action on the 2001 Plan, including whether the emissions inventories and control measures in the plan satisfy the applicable subpart 1 requirements. We have previously acted on the Bay Area's NSR program. See, for example, 65 FR 56284 (September 18, 2000).

B. Effects of the Proposed Determination on the Bay Area and Effects of a Future Violation on This Proposed Determination

If we finalize today's proposed determinations for the Bay Area, then the State will no longer be required to submit an RFP plan, an attainment demonstration, or contingency measures for the area. Any sanction clocks under CAA section 179(a) or requirements that we promulgate a federal implementation plan under CAA section 110(c) for these SIP requirements are suspended.

The suspension of the requirement to submit these SIP revisions and the suspension of sanction clocks/FIP requirements will exist only as long as the Bay Area continues to attain the 1-hour ozone standard. If we subsequently determine that the Bay Area has violated the 1-hour ozone standard (prior to a redesignation to attainment), the basis for the determination that the area need not make these SIP revisions would no longer exist. Thus, a determination that an area need not submit these SIP revisions amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

Should the Bay Area begin to violate the 1-hour standard, we will notify the State that we have determined that the area is no longer attaining the 1-hour standard. We also will provide notice to the public in the **Federal Register**, and we will at that time indicate what pertinent SIP provisions apply and when a SIP revision addressing those provisions must be submitted.

California must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is

attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance.

C. Effect of the Proposed Determination on Transportation Conformity

CAA section 176(c) requires that federally funded or approved transportation actions in nonattainment areas "conform" to the area's air quality plans. Conformity ensures that federal transportation actions do not worsen an area's air quality or interfere with its meeting the air quality standards.

One of the primary tests for conformity is to show that transportation plans and improvement programs will not cause motor vehicle emissions higher than the levels needed to make progress toward and to meet the air quality standards. These motor vehicle emissions levels are set in an area's attainment, maintenance and/or RFP demonstrations and are known as the "transportation conformity budgets."

We found the motor vehicle emissions budgets in the 2001 Plan adequate on February 14, 2002. 67 FR 8017 (February 21, 2002). A finding that the Bay Area has attained the 1-hour standard and that the State no longer needs to submit attainment and RFP demonstrations will not affect the continued applicability of these budgets. If the attainment demonstration is withdrawn, however, the continued applicability of the budgets could be affected.

III. Summary of EPA Actions

We are proposing to find that the Bay Area has attained the 1-hour ozone NAAQS. We are also proposing to determine that certain CAA requirements (RFP, attainment assessment, and contingency measures) no longer apply to the Bay Area should the attainment finding be finalized.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to find that an area has attained a previously-established national ambient air quality standard based on an objective review of measured air quality data. It also proposed to determine that certain

Clean Air Act requirements no longer apply to the Bay Area because of the attainment finding. If finalized, it would not impose any new regulations, mandates, or additional enforceable duties on any public, nongovernmental, or private entity. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not impose any additional enforceable duty, it 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).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to determine that an area has attained a Federal standard and thus is not subject to certain specific requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C.