

Two public comments were received on the proposed approval. Texaco Refining and Marketing recommended that EPA recognize and consider the flexibility that CARB intended for Measure M3, citing the following language from the SIP submittal:

[t]he heaviest medium-duty vehicles may have problems meeting the ULEV standard. However it may be possible to compensate for this situation through flexible standards which allow credits to be generated by the more populous lighter medium-duty vehicles. In addition, other mixes of vehicles and technologies could provide equivalent emission reductions.

EPA fully supports CARB's statement of its flexibility in developing and implementing this measure.

The Chemical Specialties Manufacturers Association (CSMA) commented on Measure CP-2. CSMA noted that EPA incorrectly identified the measure as "phase III." In the current CARB nomenclature, CP-2 is "phase II" of the State's consumer product element. EPA has revised the measure identification accordingly. CSMA also commented that CARB did not cite its full legislative authority to adopt the measure. EPA believes that CARB has sufficient authority to adopt and implement regulations to achieve the SIP's reduction targets. Finally, CSMA stated that CARB's proposed 25 percent reduction target for the measure is not supported by CARB's data, and CSMA further noted that EPA, CARB, and industry have met recently to discuss refinements to the categorization of consumer products. EPA continues to believe that the State's commitment to adopt the CP-2 measure, including its reduction target, should be approved.

As discussed in the proposed approval, EPA is firmly committed to assisting CARB in its efforts to develop and adopt the associated State regulations, which are essential if the State is to meet the public health goals of the Act. EPA shares the State's dedication, reflected in these commitments, to achieve real and sustainable progress toward clean air at the least cost. EPA intends to work closely with CARB to speed full SIP approval of the regulations eventually adopted by the State.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the Clean Air Act, do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal/state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of these SIP revisions, the State and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 182 of the CAA. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent

that the rules being approved today will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law.

Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 22, 1995.

Felicia Marcus,
Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(204)(i)(A)(5) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *

(204) * * *

(i) * * *

(A) * * *

(5) Mid-Term Measures, Accelerated Ultra-Low Emission Vehicle (ULEV) requirement for Medium-Duty Vehicles (Measure M3), Heavy-Duty Vehicles NO_x regulations (Measure M5), Heavy-Duty Gasoline Vehicles lower emission standards (Measure M8), Industrial Equipment, Gas & LPG—3-way catalyst technology (Measure M11), Mid-Term Consumer Products (Measure CP-2), as contained in The California State Implementation Plan for Ozone, Volume II: The Air Resources Board's Mobile