ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0535; FRL–9990–13–Region 9]

Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; San Joaquin Valley, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of two state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA or ''the Act'') requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS or ''standards'') in the San Joaquin Valley, California ozone nonattainment area. First, the EPA is approving the portion of the ''2016 Ozone Plan for the 2008 8-Hour Ozone Standard'' (''2016 Ozone Plan'') that addresses the requirement for a base year emissions inventory. Second, the EPA is approving the portions of the ''2018 Updates to the California State Implementation Plan'' (''2018 SIP Update'') that address the requirements for a reasonable further progress (RFP) demonstration and motor vehicle emissions budgets (MVEBs or ''budgets'') for the San Joaquin Valley for the 2008 ozone standards. Lastly, the EPA is conditionally approving the contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update. The approval is conditional because a key portion of the element relies on commitments by the State air agency and regional air district to supplement the contingency measure element with submission of a specific contingency measure within one year of the EPA's final conditional approval.

DATES: This rule is effective on April 24, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2018–0535. 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 (CBI) 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 only 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.

FOR FURTHER INFORMATION CONTACT: Laura Lawrence, EPA Region IX, (415) 972–3407.

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

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I. Summary of the Proposed Action

On November 29, 2018 (83 FR 61346), the EPA proposed to approve, under CAA section 110(k)(3), and to conditionally approve, under CAA section 110(k)(4), portions of submittals from the California Air Resources Board (CARB or ''State'') and the San Joaquin Valley Air Pollution Control District (SJVAPCD or ''District'') as revisions to the California SIP for the San Joaquin Valley 2008 ozone nonattainment area.[1] The relevant SIP revisions include the 2016 Ozone Plan and the 2018 SIP Update. With respect to the 2018 SIP Update, our proposal was based on a public draft version of this document and a request from CARB that the EPA accept the public draft for parallel processing with respect to the portions of the 2018 SIP Update that apply to the San Joaquin Valley 2008 ozone nonattainment area.[2] The State has since adopted and submitted the 2018 SIP Update, and this submittal is discussed in more detail in section II of this preamble.

Our proposal also relied on a specific commitment from the District to revise the District's architectural coatings rule to create a contingency measure that will be triggered if the area fails to meet reasonable further progress (RFP) or to attain by the applicable attainment date, and a commitment from CARB to submit the revised District rule to the EPA as a SIP revision within 12 months of our final action.[3] [4] For more information on these submittals, please see our November 29, 2018 proposed rulemaking.

In our proposed rulemaking, we provided background material on the ozone standards,[5] area designations, and related SIP revision requirements under the CAA, and the EPA's implementing regulations for the 2008 ozone standards, referred to as the 2008 Ozone SIP Requirements Rule (''2008 Ozone SRR''). In short, the San Joaquin Valley nonattainment area is classified as Extreme for the 2008 ozone standards, and the 2016 Ozone Plan was developed to address the requirements for this Extreme nonattainment area.

In our proposed rulemaking, we also discussed a decision issued by the DC Circuit Court of Appeals in *South Coast Air Quality Management Dist.* v. *EPA,* (''*South Coast II*'')[6] that vacated certain portions of the EPA's 2008 Ozone SRR. The only aspect of the *South Coast II* decision that affects this action is the vacatur of the provision in the 2008 Ozone SRR that allowed states to use an alternative baseline year for demonstrating RFP. To address this, in the 2018 SIP Update, CARB submitted an updated RFP demonstration that relied on a 2011 baseline year as required, along with updated motor vehicle emissions budgets (MVEBs) associated with the new RFP milestone years. Portions of the 2016 Ozone Plan not affected by the *South Coast II* decision were addressed in previous rulemakings.[7]

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[1] The San Joaquin Valley nonattainment area for the 2008 ozone standards generally covers the southern half of California's Central Valley and consists of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, and Kings counties, and the western portion of Kern County. A precise description of the San Joaquin Valley ozone nonattainment area is contained in 40 CFR 81.305.

[2] Letter from Richard Corey, CARB Executive Officer, to Michael Stoker, EPA Region IX Regional Administrator, dated October 3, 2018.

[3] Letter from Sheraz Gill, SJVAPCD Deputy Air Pollution Control Officer, to Richard Corey, CARB Executive Officer, and to Michael Stoker, EPA Region IX Regional Administrator, dated October 18, 2018.

[4] Letter from Dr. Michael Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Michael Stoker, EPA Region IX Regional Administrator, dated October 30, 2018.

[5] Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight. The 2008 ozone standard is 0.075 parts per million (ppm) average over an 8-hour period. 73 FR 16436 (March 27, 2008). The State of California typically refers to reactive organic gases (ROG) in its ozone-related submittals. The CAA and the EPA's regulations refer to VOC, rather than ROG, but both terms cover essentially the same set of gases. In this final rule, we use the term federal term (VOC) to refer to this set of gases.

[6] *South Coast Air Quality Management Dist.* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018). The term ''*South Coast II*'' is used in reference to the 2018 court decision to distinguish it from a decision published in 2006 also referred to as ''*South Coast.*'' The earlier decision involved a challenge to the EPA's Phase 1 implementation rule for the 1997 ozone standard. *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006).

[7] For approval of the elements related to the RACT SIP requirement, see 83 FR 41006 (August 17, 2018). For approval of the attainment demonstration and other associated requirements, see 84 FR 3302 (February 12, 2019).

For our November 29, 2018 proposed rulemaking, we reviewed the base year emissions inventory contained in the 2016 Ozone Plan, the RFP demonstration, the RFP and attainment year MVEBs contained in the 2018 SIP Update, and the contingency measure element contained in the 2016 Ozone Plan, as modified by the 2018 SIP Update and supplemented by the CARB and District commitment letters, and evaluated them for compliance with statutory and regulatory requirements.

With respect to the contingency measure requirement, in our proposed rulemaking, we noted that the EPA's longstanding interpretation of section 172(c)(9) that states may rely on already-implemented measures as contingency measures (if they provide emissions reductions in excess of those needed to meet any other nonattainment plan requirements) was rejected by the Ninth Circuit Court of Appeals in a case referred to as *Bahr* v. *EPA*.[8] In *Bahr,* the Ninth Circuit concluded that contingency measures must be measures that would take effect at the time the area fails to make RFP or to attain by the applicable attainment date, not before.[9] Thus, within the geographic jurisdiction of the Ninth Circuit, states cannot rely on already-implemented control measures to comply with the contingency measure requirements under CAA sections 172(c)(9) and 182(c)(9).[10]

Based on our review of the relevant portions of the 2016 Ozone Plan and 2018 SIP Update, commitment letters and other technical documentation provided by CARB, we proposed the following:

- We proposed to approve the 2012 base year emissions inventory from the 2016 Ozone Plan because we determined that it is comprehensive, accurate, and current, and thereby meets the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115.
- We proposed to approve the RFP demonstration in the 2018 SIP Update because we determined that it provides for emissions reductions of VOC or NO_X of at least 3 percent per year on average for each three-year period from a 2011 baseline year through the attainment year and thereby meets the requirements of CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B), and 40 CFR 51.1110(a)(2)(ii); and
- We proposed to find adequate and approve MVEBs for the RFP milestone years of 2020, 2023, 2026, 2029, and the attainment year of 2031 from the 2018 SIP Update because we determined that they are consistent with the RFP demonstration proposed for approval and the attainment demonstration previously approved, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements in 40 CFR 93.118(e), including the adequacy criteria in 40 CFR 93.118(e)(4) and (5).
- Finally, we proposed to conditionally approve the contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update, as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9), based on commitments by CARB and the District to supplement the element through submission of a SIP revision within one year of final conditional approval action that will include a revised District architectural coatings rule.

Please see our November 29, 2018 proposed rulemaking and the related Technical Support Document for more information concerning the background for this action and for a more detailed discussion of the rationale for approval or conditional approval of the above-listed elements of the 2016 Ozone Plan and 2018 SIP Update.

II. Changes and Corrections to Proposed Action

A. Submittal of Adopted 2018 SIP Update

As noted above, we proposed to approve portions of the 2018 SIP Update based on a public draft of the plan and an October 3, 2018 request from CARB that the EPA accept the draft 2018 SIP Update for parallel processing with respect to the portions of the 2018 SIP Update that apply to the San Joaquin Valley nonattainment area. Under the EPA's parallel processing procedure, the EPA may propose action on a public draft version of a SIP revision but will take final action only after the state adopts and submits the final version to the EPA for approval.[11] If there are no significant changes from the draft version of the SIP revision to the final version, the EPA may elect to take final action on the proposal.

In this case, CARB adopted the 2018 SIP Update, previously released for public review, without significant modifications on October 25, 2018, and submitted the adopted 2018 SIP Update to the EPA as a revision to the California SIP on December 5, 2018.[12] The submittal includes CARB Resolution 18–50 adopting the 2018 SIP Update, the 2018 SIP Update itself, and documentation of public notice and opportunity to comment on the draft plan update. With respect to the San Joaquin Valley, the 2018 SIP Update includes an RFP demonstration with a 2011 baseline year, MVEBs for RFP milestone years and the attainment year, and modifications to the contingency measure element of the 2016 Ozone Plan. The modifications to the contingency measure element include CARB's Enhanced Enforcement Activities Program and updated emissions estimates for surplus emissions reductions in the RFP milestone years and in the year following the attainment year. We proposed action based on the draft version of the 2018 SIP Update submitted to us on October 3, 2018, and the contents of CARB Resolution 18–50, and are now finalizing action based on the December 5, 2018 submittal of the final adopted version of the 2018 SIP Update and CARB Resolution 18–50.

For this final rule, we have evaluated the December 5, 2018 submittal for compliance with CAA procedural requirements for adoption and submission of SIP revisions. Specifically, CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102.

CARB has satisfied the applicable statutory and regulatory requirements for reasonable public notice and hearing prior to the adoption and submittal of the 2018 SIP Update. Concurrent with the release of the draft 2018 SIP Update, CARB published a notice of public hearing to be held on October 25, 2018, to consider approval of the 2018 SIP Update.[13] On October 25, 2018, CARB held the hearing, approved the 2018 SIP Update, and directed its Executive Officer to submit the 2018 SIP Update

[8] *Bahr* v. *EPA,* 836 F.3d 1218, at 1235–1237 (9th Cir. 2016).

[9] Id. at 1235–1237.

[10] The *Bahr* v. *EPA* decision involved a challenge to an EPA approval of contingency measures under the general nonattainment area plan provisions for contingency measures in CAA section 172(c)(9), but, given the similarity between the statutory language in section 172(c)(9) and the ozone-specific contingency measure provision in section 182(c)(9), we find that the decision affects how both sections of the Act must be interpreted.

[11] See 40 CFR part 51, appendix V, section 2.3.

[12] Letter from Richard Corey, CARB Executive Officer, to Michael Stoker, EPA Region IX Regional Administrator, dated December 5, 2018.

[13] See Notice of Public Meeting to Consider the 2018 Updates to the California State Implementation Plan, September 21, 2018.

to the EPA for approval into the California SIP.[14] On December 5, 2018, the CARB Executive Officer submitted the 2018 SIP Update to the EPA and included the transcript of the hearing held on October 25, 2018.[15]

B. Enhanced Enforcement Activities Program as Stand-Alone Contingency Measure

In our November 29, 2018 proposed rulemaking, we proposed to approve conditionally the contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update, and as supplemented by the District's and CARB's commitments to submit a revised District rule as a contingency measure, as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9). In our proposal, we considered two elements of the overall contingency measure package as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9)—the CARB contingency measure, *i.e.,* the Enhanced Enforcement Activities Program described in Chapter X of the 2018 SIP Update, and the District's forthcoming contingency measure, *i.e.,* the removal of the small container exemption from the current District architectural coatings rule in the SIP upon a triggering event (*i.e.,* failure to meet RFP or attainment deadlines). We considered these two elements in the context of additional reductions from ongoing implementation of the existing control program, and CARB's commitment in the 2016 State Strategy to achieve an additional 8 tons per day (tpd) of emissions reductions of NO_X in the San Joaquin Valley nonattainment area in 2031.

In response to comments received during the comment period for this proposed action, and as discussed in more detail in section III of this preamble, we are conditionally approving only the District's intended contingency measure as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9). Though we are not approving the CARB Enhanced Enforcement Activities Program as submitted to fulfill the requirements of CAA 172(c)(9) and 182(c)(9), we consider the program to have merit in achieving additional emissions reductions in the San Joaquin Valley nonattainment area in the event that the area fails to meet an RFP milestone or to attain the 2008 ozone NAAQS by the attainment date. For that reason, we find that the CARB Enhanced Enforcement Activities Program strengthens the SIP and we are approving it conditionally as part of the overall contingency measure element. Our rationale is discussed in section III of this preamble. Our overall conclusion—that the contingency measure element in the 2016 Ozone Plan, as modified by the 2018 SIP Update and supplemented by the forthcoming District measure (once adopted and submitted), meets the contingency measure requirements for the 2008 ozone NAAQS—remains unchanged.

C. Corrections to Motor Vehicle Emissions Budgets

In our November 29, 2018 proposed rulemaking, we proposed to find adequate and approve MVEBs for the San Joaquin Valley for RFP milestone years 2020, 2023, 2026, 2029 and the 2031 attainment year.[16] In our proposal, we inadvertently introduced typographical errors in table 5, which detailed the MVEBs for each county. Table 1 below corrects these errors, making them consistent with tables VIII–3 through VIII–10 of the 2018 SIP Update. Because the changes in Table 1 below are consistent with the source tables in the public draft version of the 2018 SIP Update, and those source tables were cited in the proposal rule, we are correcting this error without re-proposing approval of the budgets. The approved MVEBs (in tons per day (tpd), average summer weekday) are as follows:

TABLE 1—MOTOR VEHICLE EMISSIONS BUDGETS (MVEBS) IN THE 2018 SIP UPDATE

[Tons per day]

County	2020		2023		2026		2029		2031	
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
Fresno	6.7	23.9	5.5	14.1	4.9	13.2	4.5	12.4	4.2	12.1
Kern (SJV)	5.4	20.9	4.5	14.5	4.2	14.4	4.0	14.3	3.9	14.3
Kings	1.2	4.5	1.0	2.7	0.9	2.6	0.8	2.6	0.8	2.6
Madera	1.5	4.3	1.1	2.7	1.0	2.5	0.9	2.4	0.8	2.3
Merced	2.2	8.8	1.7	6.0	1.5	5.9	1.3	5.6	1.2	5.4
San Joaquin	4.7	11.2	3.9	7.4	3.5	7.0	3.1	6.6	2.8	6.3
Stanislaus	3.1	8.8	2.6	5.6	2.2	4.9	2.0	4.5	1.8	4.3
Tulare	3.0	7.6	2.4	4.6	2.1	4.0	1.8	3.7	1.7	3.5

Source: Tables VIII–3 through VIII–10 of the 2018 SIP Update.

Also, with regards to the MVEBs, in its December 5, 2018 letter submitting the adopted 2018 SIP Update to the EPA as a revision to the California SIP, CARB requested that we limit the duration of our approval of the budgets only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets.[17] The request to limit duration of our approval of the budgets was not included in the October 3, 2018 letter requesting parallel processing of the 2018 SIP Update, and therefore was not addressed in our November 29, 2018 proposal.

The transportation conformity rule allows the EPA to limit the duration of the approval of budgets.[18] We will consider a state's request to limit an approval of its MVEB if the request includes the following elements: [19]

- An acknowledgement and explanation as to why the budgets under consideration have become outdated or deficient;
- A commitment to update the budgets as part of a comprehensive SIP update; and

[14] See CARB Resolution 18–50.

[15] See Letter from Richard Corey, CARB Executive Officer, to Michael Stoker, EPA Region IX Regional Administrator, dated December 5, 2018, transmitting the following enclosures: (1) 2018 SIP Update, (2) CARB SIP Completeness Checklist, (3) CARB Resolution 18–50 adopting the 2018 SIP Update as a revision to the California SIP, (4) Evidence of public notice and transcript of public meeting to consider approval of the 2018 SIP Update, Board Meeting Comments Log and written comments regarding the 2018 SIP Update.

[16] See table 5, Budgets in the 2018 SIP Update, 83 FR 61346 (November 29, 2018) at 61354.

[17] Letter, Richard W. Corey, Executive Officer, California Air Resources Board, to Michael Stoker, Regional Administrator, EPA Region IX, December 5, 2018.

[18] 40 CFR 93.118(e)(1).

[19] 67 FR 69141 (November 15, 2002), limiting our prior approval of MVEB in certain California SIPs.

• A request that the EPA limit the duration of its approval to the time when new budgets have been found to be adequate for transportation conformity purposes.

Because CARB's request does not include a commitment to update the budgets as part of a comprehensive SIP update, we cannot at this time limit the duration of our approval of the submitted budgets until new budgets have been found adequate. Once CARB provides that commitment, we intend to review the request and take appropriate action. If we propose to limit the duration of our approval of the motor vehicle emissions budgets in the 2018 SIP Update, we will provide the public an opportunity to comment. The duration of the approval of the budgets, however, would not be limited until we complete such a rulemaking.

III. Public Comments and EPA Responses

The public comment period on the proposed rulemaking opened on November 29, 2018, the date of its publication in the **Federal Register**, and closed on December 31, 2018. During this period, the EPA received five anonymous comments, and a comment letter submitted on behalf of the Association of Irritated Residents (AIR). Three of the anonymous commenters express overall support for the proposed action. One of the anonymous commenters questions the existence of global warming, an issue that is outside the scope of this rulemaking. The EPA is not responding to these four comments, either because they are not adverse to, or because they are not relevant to, the proposed action.

The fifth anonymous comment and the comment letter from AIR are germane to this action and are addressed below. All of the comments received are included in the docket for this action. In addition to written comments received during the comment period, EPA staff participated in a conference call with CARB staff during which aspects of the proposed rulemaking were discussed. A summary of this call is included in a memo to the docket.

Comment #1: An anonymous commenter seeks clarification on the repercussions of a failure by San Joaquin Valley to achieve an RFP milestone given that the contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update, would be conditionally, rather than fully, approved.

Response #1: In our November 29, 2018 proposed rulemaking, we proposed to approve conditionally the contingency measure element of the 2016 Ozone Plan, as modified by CARB in the 2018 SIP Update, and as supplemented by commitments by the District and CARB to adopt and submit a specific contingency measure for the San Joaquin Valley for the 2008 ozone NAAQS. The contingency measure element of the 2016 Ozone Plan (as modified and supplemented) includes a measure that would be implemented by CARB (*i.e.,* the Enhanced Enforcement Activities Program) and a measure, that, upon adoption, would be implemented by the District (*i.e.,* the removal of the small container exemption from the current District architectural coatings rule). In this document, we are taking final action to approve conditionally the contingency measure element of the nonattainment plan for the San Joaquin Valley nonattainment area for the 2008 ozone NAAQS.

As allowed under section 110(k)(4) of the CAA, the District contingency measure has not yet been adopted or submitted by the District and CARB to the EPA for approval as part of the California SIP. Rather, the District has submitted a commitment to CARB and the EPA to adopt a specific contingency measure and to submit the measure to CARB in sufficient time to allow for its adoption and submittal by CARB to the EPA within one year of the EPA's conditional approval of the contingency measure element for the San Joaquin Valley nonattainment area in this final action. More specifically, the District has committed to amend its existing architectural coatings rule to provide that the small container exemption will no longer be available upon a failure to meet an RFP milestone or upon a failure to attain the 2008 ozone NAAQS by the applicable attainment date. This means that if such a triggering event occurs, the VOC emissions from small containers of architectural coatings would immediately be subject to regulation in the District. For its part, CARB has committed to the EPA to submit the District's revised architectural coatings rule to the EPA within one year of the effective date of the final conditional approval. Assuming this action is published by the end of February 2019, and made effective 30 days from publication, the District's and CARB commitments as to the District contingency measure should be fulfilled well before the next relevant triggering event will occur, *i.e.,* the EPA's determination of whether the San Joaquin Valley ozone nonattainment area met the RFP milestone in 2020.[20]

In addition, while the EPA has concluded that CARB's Enhanced Enforcement Activities Program does not meet all of the requirements for a stand-alone contingency measure, the program will strengthen the SIP and is part of the conditional approval of the overall contingency measure element. Like the forthcoming District contingency measure, the Enhanced Enforcement Activities Program would be triggered upon a failure to achieve an RFP milestone or failure to attain the ozone NAAQS by the applicable attainment date in San Joaquin Valley. As discussed in more detail in chapter X (''Contingency Measures'') of the 2018 SIP Update and our November 29, 2018 proposed rulemaking, under CARB's Enhanced Enforcement Activities Program, within 60 days of the triggering event the CARB Executive Officer would implement enhanced enforcement activities in the San Joaquin Valley nonattainment area consistent with the findings and recommendations in a report (referred to as the Enhanced Enforcement Report) that CARB will prepare and publish. Per the terms of the Enhanced Enforcement Activities Program, the report will identify the probable causes of the failure to meet RFP or attain by the applicable attainment date and identify specific enhanced enforcement activities to reduce emissions and health impacts in the area, and it requires CARB to implement those activities within 60 days of the triggering event. The focus of CARB's enhanced enforcement would be regulations for which CARB has the authority to enforce under State law, such as mobile source and consumer product regulations.

Under CAA section 110(k)(4), if the District and CARB fulfill their commitments, then the conditional approval would become a full approval upon the EPA's approval of the District's contingency measure as part of the SIP, and both the District's contingency measure (removal of the small container exemption in the architectural coatings rule) and CARB's Enhanced Enforcement Activities Program would be triggered upon a failure to achieve an RFP milestone, or failure to attain the 2008 ozone NAAQS by the applicable attainment date, in the San Joaquin Valley nonattainment area.

If, on the other hand, the District or CARB fail to meet their commitments to adopt and submit the District

[20] Section 182(g)(2) of the CAA requires states to submit a demonstration that the milestone has been met not later than 90 days after the date on which an applicable milestone occurs. The EPA has 90 days thereafter to determine whether or not a state's demonstration is adequate.

contingency measure within one year, then the final conditional approval of the contingency measure element would become a disapproval upon the EPA's determination that the agencies had failed to fulfill their commitments and would thereby trigger the imposition of certain sanctions if the contingency measure SIP deficiency is not remedied within 18 months or 24 months (depending on the specific sanction).[21] The disapproval would also trigger a 24-month clock for the EPA to promulgate a Federal Implementation Plan (FIP) to remedy the deficiency if CARB and the District do not remedy the deficiency within that time frame.[22]

Comment #2: AIR asserts that the 2016 Ozone Plan, as amended by the 2018 SIP Update, fails to meet the CAA requirements for base year inventories because it provides emissions inventory information for year 2012 whereas a recent court decision requires that such inventories reflect emissions for year 2011.

Response #2: The commenter appears to be confused as to the purpose for which we are approving the various inventories prepared in this package and under which specific CAA requirements those inventories must be evaluated. In our November 29, 2018 proposed rulemaking, we proposed to approve the 2012 base year emissions inventory provided in the 2016 Ozone Plan as meeting the *base year* requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115. We also are approving the portion of the 2018 SIP Update that starts with 2011 as the *baseline year* and future baseline emissions inventories out to 2032 as appropriate for use in developing the RFP demonstration, motor vehicle emissions budgets, and the contingency measure element. The base year emissions inventory requirement and the RFP demonstration are two separate SIP revision requirements under the CAA and the EPA's regulations.

As described in our November 29, 2018 proposed rulemaking, the EPA issued the 2008 Ozone SRR to assist states in developing effective plans to address ozone nonattainment problems. The 2008 Ozone SRR addresses implementation of the 2008 ozone NAAQS, including requirements for base year emissions inventories and RFP demonstrations, among other requirements. As AIR notes, the 2008 Ozone SRR was challenged and certain portions of the SRR were vacated in the *South Coast II* decision. In relevant part, the court decision vacated the option for a state to select an alternative baseline year for RFP demonstrations.

More specifically, the 2008 Ozone SRR required states to develop the baseline emissions inventory for RFP plans using the emissions for the most recent calendar year for which states submit a triennial inventory to the EPA under subpart A (''Air Emissions Reporting Requirements'') of 40 CFR part 51, which was 2011. However, the 2008 Ozone SRR allowed states to use an alternative year, between 2008 and 2012, for the baseline emissions inventory provided that the state demonstrated why the alternative baseline year was appropriate. In the *South Coast II* decision, the D.C. Circuit vacated the provisions of the 2008 Ozone SRR that allowed states to use an alternative baseline year for demonstrating RFP.

However, the provisions in the 2008 Ozone SRR addressing the base year emissions inventory, in contrast to the RFP demonstration, were not at issue in the *South Coast II* case and, thus, remain in effect. The 2008 Ozone SRR defines the base year emissions inventory as a comprehensive, accurate, current inventory of actual emissions and requires that the base year emissions inventory year be selected ''consistent'' with the baseline year for the RFP plan.[23] In promulgating the 2008 Ozone SRR, we indicated that we generally expect that the year used for the base year emissions inventory for the nonattainment area would be the same as the year used for the RFP plan baseline,[24] but we did not require that they be the same.

In this case, CARB selected 2012 as the year for the base year emissions inventory in the 2016 Ozone Plan. Although this means that the state is not using the same year for the base year inventory and the RFP baseline, we believe that using 2012 for the base year inventory is consistent with the 2011 baseline year for the RFP demonstration because the 2011 emission inventory is backcast from the 2012 base year inventory, and therefore is based on the same data.

Comment #3: AIR asserts that the 2011 emissions inventory does not meet the requirements for base year emissions inventories because it does not represent actual emissions but, rather, represents emissions that have been backcast from actual emissions in year 2012.

Response #3: First, we did not review the 2011 emissions inventory for compliance with the requirements for *base year* emissions inventories under CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115. We reviewed the 2012 emissions inventory for compliance with those base year requirements, and for the reasons set forth in our proposed rulemaking, we found that the 2012 emissions inventory represents a comprehensive, accurate, and current inventory of actual emissions during that year in the San Joaquin Valley nonattainment area.[25]

Second, we reviewed the 2011 emissions inventory as part of our review of the RFP demonstration, and we found it to be appropriate for that purpose. With respect to the derivation of the 2011 RFP *baseline year* emissions inventory, CARB has explained that the 2011 RFP baseline year emissions inventory reflects actual emissions (in 2011) from the large stationary sources and that, with respect to areawide and small stationary sources, the inventory reflects emissions backcast from the 2012 base year emissions inventory.[26] Backcasting emissions based on differences in emissions controls and source activity levels is a standard method for estimating emissions in previous years, just as forecasting emissions on the same basis is a standard method for estimating emissions in future years. On-road motor vehicle emissions in 2011 were calculated using the same model (EMFAC2014) and the same source for transportation activity data (2014 Regional Transportation Plan) as that used for the corresponding emissions in the 2012 base year emissions inventory for the 2016 Ozone Plan.

Comment #4: AIR asserts that the 2011 emissions inventory fails to meet the CAA requirements for base year emissions inventories because the on-road motor vehicle portion of the emissions inventory is based on an outdated emissions model (EMFAC2014) and, thus, is not current.

Response #4: As noted in response to comment #3, we did not review the 2011 emissions inventory for compliance with the requirements for *base year* emissions inventories under CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115. We reviewed the 2012 emissions inventory for compliance with those base year requirements, and for the reasons set forth in our proposed rulemaking, we found that the 2012 emissions inventory represents a comprehensive, accurate,

[21] See CAA section 179(a) and (b); 40 CFR 52.31.

[22] See CAA section 110(c).

[23] 40 CFR 51.1100(bb) and 40 CFR 51.1115(a).

[24] 80 FR 12264, at 12290 (March 6, 2015).

[25] 83 FR 61346, 61352 (November 29, 2018).

[26] Richard W. Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region IX, December 5, 2018, enclosure titled ''San Joaquin Valley Emission Projections Technical Clarification.''

and current inventory of actual emissions during that year in the San Joaquin Valley nonattainment area. We acknowledge that the on-road motor vehicle emissions portions of the 2012 base year emissions inventory and 2011 RFP baseline emissions inventory are based on EMFAC2014 and that CARB has released an updated version of that model (EMFAC2017). We disagree, however, that the motor vehicle emissions estimates for the 2012 base year emissions inventory or the 2011 RFP baseline emissions inventory are thereby outdated.

The 2008 Ozone SRR states that the latest approved models should be used to estimate emissions from on-road sources.[27] EMFAC2014 was approved in December 2015 and is the most recently approved version of CARB's motor vehicle emissions model, and as such, is the appropriate model to use for SIP development purposes.[28] CARB submitted EMFAC2017 to the EPA for approval in July 2018, but the EPA has not yet taken action to approve it, and until the Agency takes such action, EMFAC2014 will remain the appropriate model to use for SIP development purposes.[29] Moreover, based on the timing of the EPA's review of submittals of previous versions of EMFAC, it would not have been reasonable for CARB to assume that EMFAC2017 would have been approved by the time the 2018 SIP Update was adopted and submitted to the EPA.[30] As such, the continued use by CARB of EMFAC2014 for the on-road motor vehicle portion of the emissions inventories in the 2018 SIP Update is reasonable and appropriate.

Nonetheless, the EPA is aware of differences in on-road motor vehicle emissions estimates between the two models. Preliminary data developed by CARB indicate that, within the San Joaquin Valley nonattainment area, on-road emissions estimates of NO_X using EMFAC2017 would be slightly higher than the corresponding emissions estimates using EMFAC2014 in years 2011 and 2012.[31]

Comment #5: AIR asserts that CARB's Enhanced Enforcement Activities Program does not meet the requirements for contingency measures under CAA sections 172(c)(9) and 182(c)(9) because it fails to require adoption by CARB of any specific strategies and is thus unenforceable. AIR acknowledges that, in adopting the 2018 SIP Update, CARB required that the Enhanced Enforcement Program for a given area include some of the enhanced enforcement actions listed in a menu of actions attached to CARB's resolution of adoption, but asserts that the requirement to include such actions does not make the plan enforceable because CARB retains discretion to select among the menu of activities and include activities not listed in the menu.

Response #5: As noted by AIR, CARB's enhanced enforcement approach includes a menu of enhanced enforcement actions, one or more of which must be included in an Enhanced Enforcement Report developed under the program and implemented within 60 days of a triggering event. This menu was included as Attachment B to CARB Resolution 18–50 (October 25, 2018) through which CARB adopted the 2018 SIP Update as a revision to the California SIP. The menu lists eight source categories over which CARB retains primary enforcement authority—including on- and off-road mobile sources, fuels, marine vessels and consumer products—and includes options for enhanced enforcement actions applicable to each source category. Examples of the types of specific actions listed in the menu of actions included as Attachment B include additional audits of commercial truck and bus fleets operating in the region; additional investigations of manufacturers, retailers and installers of aftermarket ''defeat devices''; and use of additional data, including remote sensing data, to identify high-emitting off-road vehicles and equipment.

We acknowledge that CARB retains the discretion to select among the actions and to supplement the selected actions with additional actions not listed in Attachment B; however, Resolution 18–50 contains certain limits on that discretion. For example, Resolution 18–50 states that the Enhanced Enforcement Report cannot conclude that no enhanced enforcement action is appropriate.[32] Resolution 18–50 also states that the Enhanced Enforcement Program must include at least some of the menu of actions included in Attachment B.[33] As such, the menu in Attachment B serves as a floor for enforcement responses to a triggering event under the program. Moreover, the enforcement actions must be implemented within 60 days of the triggering event. Because CARB's Enhanced Enforcement Activities Program can be utilized on a state-wide basis, it is not feasible to predict the specific events that would lead to triggering of this measure in a specific nonattainment area (*i.e.,* failure to meet RFP or attainment deadlines. In light of the variety of conditions that could lead to a specific triggering event, we believe a menu-based approach is reasonable and that the menu of enhanced enforcement actions in Attachment B includes reasonable and appropriate responses to potential triggering events.

We note that the EPA has approved other rules that include a menu of specific control measures from which affected sources have the discretion to select a single measure for implementation, where the need for flexibility was clearly demonstrated, and the EPA's approval of those rules has withstood legal challenge.[34] In this case, the need for flexibility is clear because it is not feasible to know the exact nature of any potential future violations of SIP requirements at this time.

Nonetheless, we recognize that the enforcement actions listed in Attachment B are themselves general in nature and lack the specificity found in menu-type rules that the EPA has approved in the past. The lack of specificity, while understandable for the reasons described above, means that the program itself does not ''provide for the implementation of specific measures'' to address ozone emissions that would ''take effect . . . without further action by the State or the Administrator'' upon a triggering event as required under CAA sections 172(c)(9) and 182(c)(9). Accordingly, we find the program to be a SIP-strengthening portion of the contingency measure element that we are approving conditionally today, rather than as a stand-alone contingency measure. We believe CARB's program is meritorious and that the reports and enhanced enforcement actions would likely achieve additional emissions

[27] 80 FR 12264, at 12290 (March 6, 2015).

[28] 80 FR 77337 (December 14, 2015).

[29] AIR cites the EPA's SRR for the 2015 ozone NAAQS as evidence of the EPA's knowledge about EMFAC2017. EPA's SRR for the 2015 ozone NAAQS does refer to the EPA's on-going review of EMFAC2017, but it also notes that ''EMFAC2017 should not be used for any conformity analyses until the EPA officially approves the model for that purpose.'' 83 FR 62998, at 63022 n.54 (December 6, 2018).

[30] EMFAC2007 was submitted on April 18, 2007 and approved on January 18, 2008 (73 FR 3464); EMFAC2011 was submitted on April 6, 2012 and approved on March 6, 2013 (78 FR 14533); and EMFAC2014 was submitted on May 21, 2015, and approved on December 14, 2015 (80 FR 77337).

[31] See page 250 of CARB's EMFAC2017 Volume III—Technical Documentation, July 20, 2018.

[32] See page 7 of CARB Resolution 18–50.

[33] Id.

[34] See *Vigil* v. *Leavitt,* 381 F.3d 826 (9th Cir. 2004) (Upholding the EPA's approval of Arizona's general permit rule for agricultural sources) and *Latino Issues Forum* v. *EPA,* 558 F.3d 936 (9th Cir. 2009) (Upholding the EPA's approval of San Joaquin Valley Unified Air Pollution Control District Rule 4550).

reductions to address a failure to meet an RFP milestone or a failure to attain; however, the program, as currently conceived, fails to include all of the characteristics necessary to provide for a stand-alone contingency measure.

Likewise, while we recognize that the lack of specificity in the program does limit some enforcement of specific enhanced enforcement actions CARB may identify after a future triggering event, the discretion afforded to CARB under Resolution 18–50 to select specific actions listed in the menu does not preclude all enforcement against CARB. First, CARB's Resolution 18–50 is being conditionally approved as part of the SIP in today's action; therefore, its provisions will be enforceable by the EPA and the public. Accordingly, if CARB were to fail to implement the Enhanced Enforcement Activities Program after a triggering event, the EPA or the public could initiate an enforcement action. Furthermore, Resolution 18–50 requires CARB to implement the specific Enhanced Enforcement Program selected by CARB for a given area as documented in the report.[35] In addition, to the extent that CARB's Enhanced Enforcement Report fails to include any of the actions included in the menu of actions listed in Attachment B and/or failed to implement the enhanced enforcement actions within 60 days of the triggering event, that would not comply with the SIP-approved program,[36] and the EPA or the public could initiate an enforcement action against CARB to compel the inclusion and implementation of at least one of the actions from the menu.

Although we have decided that, for the specific reasons described above, the Enhanced Enforcement Activities Program as defined in the 2018 SIP Update and Resolution 18–50 does not meet all of the characteristics needed for a stand-alone contingency measure under CAA sections 172(c)(9) and 182(c)(9), we continue to find the contingency measure element for San Joaquin Valley nonattainment area for the 2008 ozone standard acceptable for conditional approval on the basis of the District's and CARB's commitment to submit a District measure that will eliminate an exemption in the event of a failure to achieve an RFP milestone or failure to attain by the applicable attainment date. In other words, we find the Enhanced Enforcement Activities Program to be a SIP-strengthening portion of the contingency measure element for San Joaquin Valley nonattainment area for the 2008 ozone standard that we are conditionally approving in this action.

Comment #6: AIR asserts that the contents of the Enhanced Enforcement Program will not be independently enforceable by the EPA or citizens because the Enhanced Enforcement Activities Program has not and will not be submitted to the EPA for review or approval into the SIP.

Response #6: While there are parts of the Enhanced Enforcement Activities Program that will be approved into the SIP, we agree that the Enhanced Enforcement Program resulting from any specific triggering event, as set forth in the Enhanced Enforcement Report, will not be submitted to the EPA for review and approval into the SIP. In this context, the Enhanced Enforcement Program refers to the specific enforcement actions that CARB selects after consideration of various factors such as the enforcement history, inspection locations and compliance status of emissions sources in the area.[37] The menu of enforcement actions listed in Attachment B lacks specificity (as described in Response #5) and so the specific actions that would make up the Enhanced Enforcement Program would not have been defined and adopted in the SIP. CARB has obligated itself to implementing the Enhanced Enforcement Program documented in the Enhanced Enforcement Report,[38] and thus could be compelled through citizen enforcement to implement the actions set forth in the Enhanced Enforcement Report. However, we agree that the specific contents of the Enhanced Enforcement Program as documented in the Enhanced Enforcement Report remain largely at CARB's discretion due to the program's structure and the general nature of enforcement actions listed in Attachment B. Thus, due to the lack of specificity of the measures as described in our response to comment #5, we no longer consider the Enhanced Enforcement Activities Program (in its current form) to include all of the necessary characteristics of a stand-alone contingency measure, but we find it to be a SIP-strengthening portion of the contingency measure element that we are approving conditionally in today's action.

Comment #7: AIR asserts that the EPA does not have the Enhanced Enforcement Activities Program before it now for review, and therefore the EPA cannot evaluate the Enhanced Enforcement Activities Program to determine whether it meets EPA's SIP measure criteria standards (quantifiable, enforceable, surplus and permanent).

Response #7: Though CARB has submitted the Enhanced Enforcement Activities Program to the EPA as a revision to the SIP, we agree that the Enhanced Enforcement Program (refer to footnote 37) as set forth in the Enhanced Enforcement Report will not be submitted to the EPA for review and approval into the SIP. As explained more fully in our response to comment #5, although we continue to find that the Enhanced Enforcement Activities Program has merit and will likely achieve emissions reductions beyond those that would otherwise occur to address a failure to meet an RFP milestone or failure to attain, we no longer consider the Enhanced Enforcement Activities Program (in its current form) to include all of the characteristics necessary for a stand-alone contingency measure to fulfill the requirements of CAA section 172(c)(9) and 182(c)(9), but we find the program to be SIP-strengthening and are including it as part of our conditional approval of the contingency measure element.

Comment #8: AIR asserts that the Enhanced Enforcement Activities Program fails as a contingency measure because such measures must be included as part of the SIP and must take effect (after the triggering event) without further action by the state or the EPA, and, in contrast, the Enhanced Enforcement Activities Program would not be included in the SIP and would require CARB to, among other things, take several additional actions prior to implementation, such as adoption of a report, commitment of enforcement resources, investigation of responsible parties for enforcement, prosecution of any identified violations, and filing of a final report documenting the activities and emissions reductions resulting from enhanced enforcement.

Response #8: AIR is correct that sections 172(c)(9) and 182(c)(9) specify that the EPA must approve the contingency measures as part of the SIP

[35] See page 6, paragraph 1.b. of CARB Resolution 18–50 (October 25, 2018).

[36] See id. at page 7, paragraph 4.

[37] The ''Enhanced Enforcement Program'' is distinct from the ''Enhanced Enforcement Activities Program.'' As noted above, the ''Enhanced Enforcement Program'' refers to the specific enforcement actions described in the ''Enhanced Enforcement Report.'' In our notice of proposed rulemaking, 83 FR 61346 (November 29, 2018), at page 61356, we define the ''Enhanced Enforcement Activities Program'' as an umbrella term describing the program that CARB has set forth in Chapter X of the 2018 SIP Update and Resolution 18–50. Though the Enhanced Enforcement Program as described in the Enhanced Enforcement Report will not be submitted into the SIP, the Enhanced Enforcement Activities Program is being conditionally approved into the SIP in today's action.

[38] See page 77 of the 2018 SIP Update.

and the measures must be structured so as to take effect without further significant action by the state or the EPA. As noted above, we are no longer approving the Enhanced Enforcement Activities Program as a stand-alone contingency measure, but we find the program to be SIP-strengthening and are including it as part of our conditional approval of the contingency measure element.

We disagree, however, that the Enhanced Enforcement Activities Program is not structured so as to take effect without further action by the state or the EPA. The EPA has long interpreted the phrase ''without further action'' in section 172(c)(9), and section 182(c)(9), not to preclude contingency measures that may require some additional actions, so long as those pertain to effective implementation of the measures within a short period of time. The EPA provided its interpretation of this requirement in the General Preamble (57 FR 13498 (April 16, 1992)) published in the wake of the Clean Air Act Amendments of 1990. In the General Preamble, we stated the following in connection with the requirement to take effect without further action by the state or EPA:

> The EPA interprets this requirement to be that no further rulemaking activities by the State or EPA would be needed to implement the contingency measures. The EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., would probably be needed before a measure could be implemented effectively. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review. In general, EPA will expect all actions needed to affect full implementation of the measures to occur with 60 days after EPA notifies the State of its failure. [39]

The EPA has reiterated this interpretation of the contingency measure requirements many times in the intervening years, including the 2008 Ozone SRR applicable to this action.[40]

Under the Enhanced Enforcement Activities Program, once triggered, implementation would occur within 60 days without the need for additional rulemaking activity by CARB or the EPA.[41] CARB would, however, need to undertake certain actions prior to implementation, primarily the preparation of a report titled ''Enhanced Enforcement Report.'' In the Enhanced Enforcement Report, CARB enforcement staff will evaluate a number of factors (*e.g.,* enforcement history and compliance status), identify the probable causes of the failure (to meet the RFP milestone or to attain the NAAQS), and specify the type and quantity of additional enforcement resources that will be reallocated to the particular area (referred to as the ''Enhanced Enforcement Program'' for the area). The Executive Officer will then direct enhanced enforcement activities in accordance with the Enhanced Enforcement Program (as documented in the Enhanced Enforcement Report) that is selected for the area.[42] We believe that the preparation by CARB enforcement staff of the Enhanced Enforcement Report and the role of the CARB Executive Officer to direct enhanced enforcement activities in accordance with the report are minimal administrative types of actions that are consistent with our interpretation of the requirement for contingency measures to take effect without further action by the state or the EPA. As noted by the EPA in the General Preamble, actions by a state such as modification of permits may be needed for effective implementation of a contingency measure, and we conclude that the Enhanced Enforcement Report and identification of specific actions for additional enforcement are analogous implementation actions. We believe that the 60-day period for this process assures that the contingency measure will take effect in a timely fashion as intended.

Comment #9: AIR asserts that the EPA interprets the CAA to mean that the 2018 SIP Update must include contingency measures that would result in emissions reductions equivalent to at least one year's worth of RFP. AIR states that the EPA has failed to articulate a factual basis on which it could make the finding that the Enhanced Enforcement Activities Program and the District's architectural coating exemption removal rule would together achieve that quantity of emission reductions.

Response #9: As noted in our November 29, 2018 proposed rulemaking, neither the CAA nor the EPA's implementing regulations for the ozone NAAQS establish a specific amount of emissions reductions that implementation of contingency measures must achieve. AIR is correct, however, that the EPA has recommended in guidance that contingency measures should provide emissions reductions approximately equivalent to one year's worth of RFP, which, with respect to ozone in the San Joaquin Valley nonattainment area, amounts to approximately 11.4 tpd of VOC or NO_X reductions.[43]

In making the recommendation that contingency measures achieve one year's worth of RFP, the EPA has considered the overarching purpose of such measures in the context of attainment planning. The purpose of emissions reductions from implementation of contingency measures is to ensure that, in the event of a failure to meet an RFP milestone or a failure to attain the NAAQS by the applicable attainment date, the state will continue to make progress toward attainment at a rate similar to that specified under the RFP requirements and that the state will achieve these reductions while conducting additional control measure development and implementation as necessary to correct the RFP shortfall or as part of a new attainment demonstration plan.[44] The facts and circumstances of a given nonattainment area may justify larger or smaller amounts of emission reductions.

The EPA has also interpreted the Act to allow already-implemented measures to qualify as contingency measures so long as the emissions reductions from such measures are surplus to those necessary for RFP or attainment. In light of the *Bahr* decision, already-implemented measures no longer qualify as contingency measures for SIP purposes in the states located within the jurisdiction of the Ninth Circuit Court of Appeals. Thus, in the states affected by the *Bahr* decision, the EPA evaluates contingency measure SIP elements to determine whether they include contingency measures that are structured to meet the statutory requirements set forth in CAA section 172(c)(9) and 182(c)(9) (*e.g.,* structured to take effect prospectively in the event of a failure to achieve an RFP milestone or to attain by the applicable attainment date) and whether the contingency measure or measures would provide emissions reductions that, when considered with emissions reductions from already-implemented measures or other extenuating circumstances, ensure sufficient continued progress in the

[39] 57 FR 13498, at 13512 (April 16, 1992).

[40] 80 FR 12264, 12285 (March 6, 2015).

[41] See page 7 of CARB Resolution 18–50: ''A given Enhanced Enforcement Report (as described above) may not conclude that no enhanced enforcement action is appropriate; U.S. EPA's finding that a covered area has failed to meet an RFP milestone or failed to attain must result in some enhanced enforcement action for the relevant district and those actions must begin within 60 days of the finding.''

[42] See page 77 of the 2018 SIP Update for a full description of the actions CARB will take in the event of a triggering event.

[43] 83 FR 61346, at 61357 (November 29, 2018).

[44] 57 FR 13498, at 13512 (April 16, 1992).

event of a failure to achieve an RFP milestone or to attain the ozone NAAQS by the applicable attainment date. We continue to evaluate the sufficiency of continued progress that will result from contingency measures in light of our guidance, but in appropriate circumstances, do not believe that the contingency measures themselves must provide for one year's worth of RFP so long as sufficient progress would be maintained by the contingency measures plus other sources of surplus emissions reductions while the state conducts additional control measure development and implementation as necessary to correct the RFP shortfall or as part of a new attainment demonstration plan. In other words, if there are additional emission reductions projected to occur that a state has not relied upon for purposes of RFP or attainment or to meet other nonattainment plan requirements, and that result from measures the state has not adopted as contingency measures, then those reductions may support EPA approval of contingency measures identified by the state even if they would result in less than one year's worth of RFP in appropriate circumstances.

In this instance, the contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update, and supplemented by the commitments to adopt and submit a local contingency measure, relies upon a to-be-adopted District contingency measure (*i.e.,* the removal of the small container exemption from the current District architectural coatings rule). In our proposed rulemaking, we identify an analogous rulemaking by the South Coast Air Quality Management District as the source for our estimate of 1-tpd of emissions reductions from the to-be-adopted District contingency measure. As for the Enhanced Enforcement Activities Program, although we believe that the measure would result in emissions reductions, we found that the reductions are not reasonably quantifiable at this time given the range of potential enforcement actions that could be taken. While we consider the program's potential value in mitigating the effects of a failure to meet an RFP milestone or to attain the standard by the attainment date, we did not credit the Enhanced Enforcement Activities Program as achieving any emissions reductions.

As to whether the 1-tpd of emissions reductions from the contingency measures would provide for sufficient continued progress in the event of a failure to achieve an RFP milestone or failure to attain, we reviewed the documentation provided in the 2018 SIP Update of ''surplus'' (*i.e.,* those over and above the emissions reductions necessary to demonstrate RFP in the San Joaquin Valley nonattainment area) reductions from CARB's already-adopted mobile source control program in the RFP milestone years and the year-over-year emissions reductions expected in the year following the attainment year. For the San Joaquin Valley nonattainment area, CARB's estimates of ''surplus'' reductions in the various RFP milestones years (ranging from 92.4 tpd to 157.4 tpd) provide the factual basis for us to conclude that the to-be-adopted District contingency measure need not in itself achieve one year's worth of RFP. The 1 tpd reduction from the contingency measures would be sufficient even though it is far less than 11.4 tpd (*i.e.,* one year's worth of RFP) because already-implemented measures (although not relied upon for the purposes of meeting the statutory contingency measure requirement) will also ensure sufficient continued progress in the event of a failure to achieve an RFP milestone.

For attainment contingency measure purposes, we noted that overall regional emissions are expected to be approximately 1 tpd of NO_X lower in 2032 than in 2031 and that the contingency measures (1 tpd) plus the year-over-year reduction in regional emissions (1 tpd) would not provide for sufficient progress during the time when a new attainment demonstration plan is being prepared, absent countervailing circumstances. However, we also noted CARB had made an 8 tpd NO_X aggregate emissions reduction commitment in the 2016 State Strategy for the San Joaquin Valley nonattainment area in year 2031, and that CARB's aggregate commitment would result in emissions reductions beyond those needed for RFP or attainment, and thus would reduce the potential for the San Joaquin Valley to fail to attain the 2008 ozone NAAQS by the 2031 attainment date.[45] (We recently took final action in a separate action to approve CARB's 8 tpd aggregate commitment from the 2016 State Strategy as part of the SIP.[46]) The 1 tpd year-over-year reduction in regional emissions—in addition to the 8 tpd reduction in emissions from CARB's aggregate commitment and the additional potential emission reductions of the SIP-strengthening Enhanced Enforcement Activities Program—provide us with the factual basis to conclude that the 1 tpd reduction from the contingency measure would be sufficient to ensure continued progress in the event of a failure to attain the ozone NAAQS by the applicable attainment date notwithstanding the fact that the District contingency measure itself does not provide one year's worth of RFP.

IV. Final Action

For the reasons discussed in our proposed action and in responses to comments above, the EPA is taking final action under CAA section 110(k)(3) to approve as a revision to the California SIP the following portion of the San Joaquin Valley 2016 Ozone Plan submitted by CARB on August 24, 2016:[47]

• Base year emissions inventory as meeting the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115.

The EPA is also taking final action to approve as a revision to the California SIP the following portions of the 2018 SIP Update to the California State Implementation Plan, submitted by CARB on December 5, 2018:

• RFP demonstration for the San Joaquin Valley as meeting the requirements of CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B), and 40 CFR 51.1110(a)(2)(ii); and

• Motor vehicle emissions budgets for the RFP milestone years of 2020, 2023, 2026, 2029, and the attainment year of 2031 (see Table 1, above) for the San Joaquin Valley nonattainment area because they are consistent with the RFP demonstration approved herein and the attainment demonstration previously approved and meet the other adequacy criteria in 40 CFR 93.118(e).[48]

[45] To be clear, the 8 tpd NO_X aggregate emissions reduction commitment by CARB in the 2016 State Strategy was not submitted, and was not approved, as a contingency measure. Rather, we consider the existence of the aggregate commitment in the context of evaluating whether the reductions associated with the contingency measure element would be sufficient to provide the EPA with the basis to approve the contingency measure element as meeting the applicable requirements of the CAA for San Joaquin Valley for the 2008 ozone NAAQS.

[46] See 84 FR 3302 (February 12, 2019).

[47] As noted previously, the EPA has already approved the portions of the 2016 Ozone Plan that relate to the Reasonably Available Control Technology (RACT), Reasonably Available Control Measure (RACM), attainment demonstration, and vehicle miles traveled (VMT) offset demonstration requirements, among others. For approval of the elements related to the RACT SIP requirement see 83 FR 41006 (August 31, 2018). For approval of other elements see 84 FR 3302 (February 12, 2019).

[48] On February 12, 2019, the EPA finalized approval of motor vehicle emissions budgets for year 2031 for San Joaquin Valley for the 2008 ozone standards. See 84 FR 3302. The revised budgets for 2031 that we are approving in this action replace the budgets that we approved through our action published on February 12, 2019. In addition, the MVEBs that we are finding adequate and approving today are also replacing the MVEBs from the 2016 Ozone Plan that we previously found adequate (see 82 FR 29547, June 29, 2017) for use in conformity

Lastly, we are taking final action to approve conditionally the contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update, as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9) based on commitments by CARB and the District to supplement the element through submission of a SIP revision within one year of final conditional approval that will include a revised District architectural coatings rule removing an exemption upon a failure to achieve an RFP milestone or to attain the 2008 ozone NAAQS by the applicable attainment date.

V. 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 or conditionally 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 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, 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, 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 final rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 24, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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: February 15, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended 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)(496)(ii)(B)(*4*), and (c)(514) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(496) * * *

(ii) * * *

(B) * * *

(*4*) 2016 Ozone Plan for 2008 8-Hour Ozone Standard, adopted June 16, 2016, subchapters 3.11.1 ("Emission Inventory Requirements") and 6.4 ("Contingency for Attainment"), only.

* * * * *

(514) The following plan was submitted on December 5, 2018, by the Governor's designee.

(i) [Reserved]

(ii) *Additional materials.* (A) California Air Resources Board.

(*1*) Resolution 18–50, 2018 Updates to the California State Implementation Plan, October 25, 2018, including Attachments A ("Covered Districts"), B ("Menu of Enhanced Enforcement Actions"), and C ("Correction of Typographical Error").

(*2*) 2018 Updates to the California State Implementation Plan, adopted on October 25, 2018, chapter VIII ("SIP Elements for the San Joaquin Valley"), chapter X ("Contingency Measures"), and Appendix A ("Nonattainment Area Inventories"), pages A–1, A–2 and A–27 through A–30, only.

■ 3. Section 52.248 is amended by adding paragraph (g) to read as follows:

§ 52.248 Identification of plan—conditional approval.

* * * * *

(g) The EPA is conditionally approving the California State Implementation Plan (SIP) for San

determinations by transportation agencies in the San Joaquin Valley.

Joaquin Valley for the 2008 ozone NAAQS with respect to the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9). The conditional approval is based on a commitment from the San Joaquin Valley Unified Air Pollution Control District (District) dated October 18, 2018 to adopt specific rule revisions, and a commitment from the California Air Resources Board (CARB) dated October 30, 2018 to submit the amended District rule to the EPA within 12 months of the effective date of the final conditional approval. If the District or CARB fail to meet their commitment within one year of the effective date of the final conditional approval, the conditional approval is treated as a disapproval.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0728; FRL–9990–34–Region 9]

Approval and Promulgation of Air Quality State Implementation Plans; California; Plumas County; Moderate Area Plan for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving most elements of state implementation plan (SIP) revisions submitted by California to address Clean Air Act (CAA or ''Act'') requirements for the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or ''standards'') in the Plumas County Moderate $PM_{2.5}$ nonattainment area (''Portola nonattainment area''). The SIP revisions are the ''Portola Fine Particulate Matter ($PM_{2.5}$) Attainment Plan'' submitted on February 28, 2017, and the 2019 and 2022 transportation conformity motor vehicle emission budgets (''budgets'') submitted on December 20, 2017. We refer to these submittals collectively as the ''Portola $PM_{2.5}$ Plan'' or ''Plan.'' The EPA is not taking action at this time on the contingency measures in the Portola $PM_{2.5}$ Plan.

DATES: This final rule is effective on April 24, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2017–0728. 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 (CBI) 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 only 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.

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

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I. Background

Epidemiological studies have shown statistically significant correlations between elevated levels of $PM_{2.5}$ (particulate matter with a diameter of 2.5 microns or less) and premature mortality. Other important health effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease, changes in lung function, and increased respiratory symptoms. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.[1] $PM_{2.5}$ can be emitted directly into the atmosphere as a solid or liquid particle (''primary $PM_{2.5}$'' or ''direct $PM_{2.5}$'') or can be formed in the atmosphere as a result of various chemical reactions among precursor pollutants such as nitrogen oxides, sulfur oxides, volatile organic compounds, and ammonia (''secondary $PM_{2.5}$'').[2]

The EPA first established annual and 24-hour NAAQS for $PM_{2.5}$ on July 18, 1997.[3] The annual standard was set at 15.0 micrograms per cubic meter (μg/m^3) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and the 24-hour (daily) standard was set at 65 μg/m^3 based on the 3-year average of the annual 98th percentile values of 24-hour $PM_{2.5}$ concentrations at each monitor within an area.[4] On October 17, 2006, the EPA revised the level of the 24-hour $PM_{2.5}$ NAAQS to 35 μg/m^3 based on a 3-year average of the annual 98th percentile values of 24-hour concentrations.[5] On January 15, 2013, the EPA revised the annual standard to 12.0 μg/m^3 based on a 3-year average of annual mean $PM_{2.5}$ concentrations.[6] We refer to this standard as the 2012 $PM_{2.5}$ NAAQS.

California submitted the Portola $PM_{2.5}$ Plan to provide for attainment of the 2012 $PM_{2.5}$ NAAQS in the Portola nonattainment area, which the EPA has designated and classified as ''Moderate'' nonattainment for these NAAQS.[7] On December 18, 2018, we proposed to approve the following elements of the Portola $PM_{2.5}$ Plan: The 2013 base year emissions inventories, the reasonably available control measure/reasonably available control technology (RACM/RACT) demonstration, the attainment demonstration, the reasonable further progress demonstration, the quantitative milestones, and the budgets for 2019 and 2021. We did not propose action on the contingency measures in the Portola $PM_{2.5}$ Plan.[8]

As part of the December 18, 2018 action, we proposed to find that the collection of $PM_{2.5}$ control requirements in the Portola $PM_{2.5}$ Plan implements all RACM/RACT for the control of direct $PM_{2.5}$ and to approve the $PM_{2.5}$ RACM demonstration in the Portola $PM_{2.5}$ Plan as meeting the requirements of CAA sections 172(c)(1) and 189(a)(1)(C) and 40 CFR 51.1009. The RACM/RACT measures in the Plan include the District's enforceable commitment to implement the voluntary wood stove change-out program, the City of Portola Wood Stove and Fireplace Ordinance, CARB's mobile source program, the District's commitment to strengthen its open burning measure, and other controls on sources in the nonattainment area.

We also proposed to find that the attainment demonstration in the Portola $PM_{2.5}$ Plan satisfies the requirements of sections 189(a)(1)(B) and 172(c)(1) of the CAA and 40 CFR 51.1011(a). In support of this proposal, we found that the State used two acceptable modeling techniques to demonstrate attainment of the 2012 $PM_{2.5}$ NAAQS in the Portola nonattainment area, and that the plan demonstrates attainment as

[1] 78 FR 3086, 3088 (January 15, 2013).

[2] 72 FR 20586, 20589 (April 25, 2007).

[3] 62 FR 38652. The initial NAAQS for $PM_{2.5}$ included annual standards of 15.0 μg/m^3 based on a 3-year average of annual mean $PM_{2.5}$ concentrations and 24-hour (daily) standards of 65 μg/m^3 based on a 3-year average of 98th percentile 24-hour concentrations (40 CFR 50.7).

[4] The primary and secondary standards were set at the same level for both the 24-hour and the annual $PM_{2.5}$ standards.

[5] 71 FR 61144.

[6] 78 FR 3086.

[7] 80 FR 2206 (January 15, 2015).

[8] 83 FR 64774.