

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory.	Northumberland County	12/17/07	07/18/08 [Insert page number where the document begins].	

* * * * *

[FR Doc. E8-16271 Filed 7-17-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2008-0313, FRL-8694-1]

Revisions to the California State Implementation Plan; Pesticide Element; Ventura County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act, EPA is approving a revision of the California State Implementation Plan submitted by the California Air Resources Board on November 30, 2007. The revision in part, and temporarily, relaxes a commitment to reduce emissions of volatile organic compounds in Ventura County caused by the application of pesticides.

DATES: *Effective Date:* This rule is effective on August 18, 2008.

ADDRESSES: EPA has established docket number EPA-R09-OAR-2008-0313 for this action. The index to the docket is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, EPA Region IX, (520) 622-1622, tax.wienke@epa.gov.

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

Table of Contents

I. Summary of EPA’s Proposed Action

II. Public Comments and EPA Responses

- A. Comments on the Economic Consequences of EPA Action on the SIP Revision
- B. Comments on the Environmental Consequences of EPA Action on the SIP Revision
- C. Clean Air Act Section 110(l) Issues
- D. Comments on Technical Issue of Whether Reduction Is Based on Tonnage or Percentage Reductions
- E. Comment About the Opportunity to Comment
- F. Comments on Whether Best Available Control Technology (BACT) Can Achieve the Necessary Reductions

III. EPA’s Final Action

IV. Statutory and Executive Order Reviews

I. Summary of EPA’s Proposed Action

On April 23, 2008 (73 FR 21885), we proposed to approve a revision of the California State Implementation Plan (SIP) submitted by the California Air Resources Board (CARB) on November 30, 2007. Table 1 lists the revision we proposed to approve with the dates that it was revised and submitted by CARB.

TABLE 1.—SUBMITTED SIP REVISION PROPOSED FOR FULL APPROVAL

State agency	SIP revision	Amended	Submitted
CARB	Revised Proposed Revision to the Pesticide Element of the 1994 Ozone SIP for the Ventura County Nonattainment Area (August 13, 2007).	November 30, 2007	November 30, 2007.

CARB’s November 30, 2007 SIP revision submittal package includes the “Revised Proposed Revision to the Pesticide Element of the 1994 Ozone SIP for the Ventura County Nonattainment Area (August 13, 2007)” (“Revised Pesticide Element for Ventura”) as attachment 3 to Executive Order S-07-003.

As discussed in detail in our April 23, 2008, proposed rule, California adopted the original Pesticide Element to reduce volatile organic compounds (VOC) emissions resulting from the application of agricultural and structural pesticides in certain ozone nonattainment areas and included the Pesticide Element in the 1994 Ozone SIP. Under the original Pesticide Element, for the Ventura County nonattainment area (Ventura), the California Department of Pesticide Regulation (DPR) committed to adopt

and submit to EPA by June 15, 1997, any regulations necessary to reduce VOC emissions from agricultural and structural pesticides by 20 percent of the 1990 base year emissions by 2005. California further defined DPR’s commitment in Ventura under the Pesticide Element in terms of VOC emissions reductions of 2.4 tons per day by 2005.¹ See 62 FR 1150, at 1169–1170 and at 1187 (January 8, 1997); and 40 CFR 52.220(c)(204)(i)(A)(6) and 52.220(c)(236). In 1997, we approved the 1994 Ozone SIP, including the Pesticide Element. See 62 FR 1150, at 1169–1170 (January 8, 1997). In today’s

¹ Tonnage commitment is 2.37 tons per day per letter dated June 13, 1996, from James D. Boyd to David Howekamp, including “Corrections to State and Local Measures” (Attachment A) and “Summary Emission Reduction Spreadsheets” (Attachment C).

action, we are approving a revision by the State of California to the Pesticide Element for Ventura County.

In our April 23, 2008, proposed rule, we also described the replacement of the 1-hour ozone national ambient air quality standard (NAAQS), for which the 1994 Ozone SIP (and related original Pesticide Element) was developed, with the current 8-hour ozone NAAQS. Further, we noted that California had requested a change in classification, with respect to the 8-hour NAAQS for the Ventura County nonattainment area from “moderate” to “serious” with a new attainment date of June 15, 2013. We also indicated that we had reviewed the subject SIP revision assuming the “serious” classification in anticipation of our approval of the State’s request. We have now approved the State’s

reclassification request. See 73 FR 29073 (May 20, 2008).

In our April 23, 2008, proposed rule, we presented our evaluation of the Revised Pesticide Element for Ventura first by characterizing the change in VOC emissions in Ventura County that would occur if we were to approve the revision, and then by determining whether the change in VOC emissions would interfere with reasonable further progress (RFP) or attainment of any of the NAAQS as required under CAA section 110(l). We described the impact of the Revised Pesticide Element for Ventura in terms of a reduction in the State's emission reduction commitments by 1.3 tons per day in 2008, 1.0 tons per day in 2009, 0.7 tons per day in 2010, and 0.3 tons per day in 2011 that allows a corresponding increase in VOC in Ventura County in those years.

With respect to CAA section 110(l), we found that the Revised Pesticide Element for Ventura would not interfere with RFP for the 8-hour ozone NAAQS, notwithstanding the corresponding, temporary increase in VOC emissions, based on the air quality analysis contained in the Draft Final Ventura County Air Quality Management Plan (AQMP) (March 2008), which includes an RFP demonstration that does not rely on emissions reductions from pesticides. In reaching our conclusion of non-interference with respect to 8-hour ozone RFP, we reviewed the RFP demonstration in the draft Ventura County 2007 AQMP and concluded that the methodology and emission estimates used therein appear reasonable. In our proposed rule, we indicated that we would defer final action on our proposed approval of the Revised Pesticide Element for Ventura until we had received a SIP revision submittal from California containing the final 8-hour ozone Ventura RFP plan. We have now received the final adopted 8-hour ozone Ventura RFP plan from CARB.²

In our proposed rule, in addition to our RFP finding, we found that the Revised Pesticide Element for Ventura would not interfere with attainment for the 8-hour ozone NAAQS because the temporary decrease in the VOC emissions reduction commitment allowed under the revised pesticide element would be phased out by 2012, i.e., the year before the attainment deadline (June 15, 2013) for Ventura

County as a reclassified "serious" ozone nonattainment area. Thus, based on the air quality analysis contained in the draft Ventura County 2007 AQMP and the phase-out of the relaxed commitment by 2012, we concluded that the Revised Pesticide Element for Ventura would not interfere with RFP, attainment, or any other applicable requirement with respect to the 8-hour ozone NAAQS. With respect to the other NAAQS, we based our non-interference conclusion on our finding that the SIP revision would only affect VOC emissions (precursor to ozone) and because Ventura County is unclassifiable/attainment for all of the other NAAQS.

For a more detailed discussion, please refer to our proposed rule (see 73 FR 21885, April 23, 2008).

II. Public Comments and EPA Responses

Our April 23, 2008 proposed rule provided a 30-day comment period. EPA received seven comment letters on our proposed rule during the comment period. Commenters include a government agency (California Department of Pesticide Regulation (DPR)), a State-sanctioned agricultural commission (California Strawberry Commission), two sets of agricultural groups (Western Growers and California Farm Bureau Federation (co-authored a single letter) and Ventura County Agricultural Association), a pesticides manufacturing group (Chloropicrin Manufacturers' Task Force), and two environmental groups (Pesticide Action Network, and Center on Race, Poverty & the Environment). Generally, the organizations other than the environmental groups provided comments in support of our proposed approval of the Revised Pesticide Element for Ventura. These commenters concentrated the discussion on the economic and environmental consequences of the decision on whether or not to approve the proposed revision. Of the two environmental groups who wrote opposing our proposed approval, one raised concerns about the health issues related to the smog in the area, of which pesticide application is a contributor, and the other focused on allegations that the SIP revision would violate section 110(l) of the CAA. Additionally, commenters writing both in support and opposition to our proposed approval remarked upon the technical issue of whether the commitment was to reduce emissions by a tonnage or percentage value.

A summary of the significant comments and responses is provided below.

A. Comments on the Economic Consequences of EPA Action on the SIP Revision

Comment 1: The majority of commenters emphasize that a reduction in the use of certain fumigants, as a result of a failure to approve the SIP revision, would have a significant, adverse economic impact on the farmers, as well as many others who depend on the agriculture industry. One commenter stresses the long reach of that economic loss, noting that there would be lost revenue to the community, lost jobs to the community, and lost land rents affecting bank loans and financing. These supporters contend that the phased-in approach to compliance will help mitigate adverse economic and environmental impacts in the region, while restoring the ultimate emissions reduction commitments under the 1994 Ozone SIP.

Response 1: EPA's role in reviewing SIP revisions is to approve State choices, provided that they meet minimum criteria set by the CAA and any applicable EPA regulations. As discussed in our proposed rule and as discussed further in this final rule, we believe the SIP revision that is the subject of this action, the Revised Pesticide Element for Ventura, meets those criteria. Thus, while we acknowledge commenters' views as to the economic impacts that could occur if we were to disapprove the SIP revision, we did not base our proposed approval, nor do we base our final approval today, on such considerations.

B. Comments on the Environmental Consequences of EPA Action on the SIP Revision

Comment 2: A few of the commenters address the negative environmental impacts that, in their view, a failure by EPA to approve the SIP revision could create. They explain that the economic strain that would come with the denial of the revision would force a substantial portion of the agricultural land to be converted to urban and suburban development. This conversion, they assert, will result in a large amount of additional emissions from an increase in vehicle traffic and residences (e.g. use of consumer products).

Response 2: We acknowledge commenters' views concerning long-term conversion of agricultural land to urban development and related environmental impacts that could occur if we were to disapprove the Revised Pesticide Element for Ventura. However, we did not take such considerations into account in our proposed action, nor do we take such considerations into

² On June 27, 2008, CARB submitted the Final Ventura County 2007 Air Quality Management Plan (May 13, 2008), which includes the final 8-hour ozone RFP demonstration for Ventura County. The final adopted plan mirrors the draft Ventura County AQMP that we relied upon in our proposed approval of the Revised Pesticide Element for Ventura.

account for our final action today. With the limited amount of information on the topic of agricultural land conversion and related environmental impacts that is before us, we do not have a sufficient basis either to agree or to disagree with the commenters' view in that regard. Instead, we have based our approval on an evaluation of the near-certain increase in VOC emissions that would occur from 2008–2011 due to the SIP revision in light of CAA requirements, and have concluded that such VOC increases in Ventura County over the short-term would not interfere with RFP or attainment of any of the NAAQS, or any other applicable requirement of the Clean Air Act.

It is important to note that, while we describe the effect of the SIP revision as an increase in VOC emissions, we do not expect there to be an increase in overall VOC emissions within Ventura County over the period affected by the SIP revision, but only that the expected overall decrease would be slightly less with the SIP revision than would occur if the SIP revision were not approved.

Comment 3: Two commenters state that the approval and implementation of the SIP revision would be accomplished without substantial adverse impacts to air quality in Ventura County or to the health or safety of its citizens. This conclusion is founded on the commenters' belief that the actual VOC from pesticides are a very small percentage of all VOC in Ventura.

Response 3: As discussed in our proposed rule (see 73 FR 21885, April 23, 2008), we believe that the Revised Pesticide Element for Ventura would have an adverse impact on air quality in the short-term as it would allow greater VOC emissions, and thereby incrementally slow the downward trend in such emissions and associated ozone concentrations, as compared to fully achieving the commitments for pesticide-related emission reductions in the 1994 Ozone SIP. However, we have determined that the Revised Pesticide Element for Ventura would not interfere with RFP for the 8-hour ozone NAAQS based on our review of the RFP demonstration in the Ventura County 2007 AQMP that does not rely on the foregone pesticide-related emissions reductions.³ Further, we note that, by its

terms, the Revised Pesticide Element for Ventura phases out over four years (2008–2011), ensuring that it would not interfere with Ventura's ability to attain the 8-hour ozone NAAQS by the serious area deadline (i.e., June 15, 2013).

Comment 4: One commenter is concerned that EPA approval of the revision of the SIP would further delay efforts to reduce smog, of which pesticide application is a contributor, in the region and hence the area would continue to suffer from air pollution created by smog, which damages lung tissue, exacerbates asthma, reduces lung capacity, increases respiratory and cardiovascular hospital admissions, and increases school and work absenteeism.

Response 4: We acknowledge the commenter's concerns over the health effects associated with elevated ozone concentrations. As discussed in our proposal, we believe that the Revised Pesticide Element for Ventura would have an adverse impact on ozone air quality in the short-term as it would allow greater VOC emissions, and thereby incrementally slow the downward trend in such emissions and associated ozone concentrations, as compared to fully achieving the commitments for pesticide-related emission reductions in the 1994 Ozone SIP. Nonetheless, under the Clean Air Act, we must approve a SIP revision notwithstanding such impacts so long as all of the applicable requirements of the CAA (and applicable EPA regulations) are met. We have determined that the Revised Pesticide Element for Ventura meets all applicable CAA requirements and applicable EPA regulations. For instance, notwithstanding the temporary increase in VOC emissions associated with the Revised Pesticide Element for Ventura, we have concluded that it would not interfere with RFP for the 8-hour ozone NAAQS in that area based on our review of the RFP demonstration in the Ventura County 2007 AQMP, which does not rely on the foregone pesticide-related emissions reductions, nor would it interfere with expeditious attainment of the 8-hour ozone NAAQS, because the effect of the Revised Pesticide Element for Ventura diminishes each year through 2011 and phases out completely well before the serious area deadline (June 15, 2013).

Comment 5: Some of the commenters assert that there would be no "backsliding" from the overall 1994 SIP commitments for Ventura County, because all of the reactive organic gases (ROG) emission reductions committed to in the 1994 SIP would still be achieved. This assertion is based on the argument that a portion of the ROG

reductions for Ventura County would come from other emission sources.

Response 5: As stated in our proposed rule, we do not agree with CARB that emissions reductions from California's mobile source emissions control program are "surplus" for 8-hour ozone planning purposes, and thus, we do not agree that such reductions are a substitute for the foregone emissions reductions that would occur under the Revised Pesticide Element for Ventura. See 73 FR 21885, at 21887 (April 23, 2008). Notwithstanding the temporary increase in VOC (equivalent to ROG) emissions resulting therefrom, we are approving the Revised Pesticide Element for Ventura because, for the reasons given in the proposed rule and this final rule, we find that it would not interfere with any requirement concerning attainment and RFP, or any other applicable requirement of the Clean Air Act.

C. Clean Air Act Section 110(l) Issues

Comment 6: One commenter argues that EPA cannot propose approval of the SIP revision because it has not approved the 8-hour ozone attainment demonstration plan and the 8-hour ozone reasonable further progress plan. It is suggested that approving the SIP revision before the attainment plan and reasonable further progress demonstration would make EPA's decision arbitrary and capricious because it has no basis to make the finding that the revision would not interfere with attainment.

Response 6: For our final action, we are not relying on an EPA-approved 8-hour ozone RFP or attainment demonstration for Ventura, but rather, are relying on our review of the RFP demonstration included in the Ventura County 2007 AQMP as a reasonable basis for our finding of non-interference with respect to RFP for the 8-hour ozone NAAQS under CAA section 110(l). We do not believe the attainment demonstration (approved or otherwise) to be necessary to this action because the effect of the Revised Pesticide Element for Ventura, by its terms, phases out completely by 2012, the year before the attainment deadline (June 15, 2013).⁴ As discussed further below, we do not believe that an approved RFP demonstration is necessary to approve the Revised Pesticide Element for Ventura based on our preliminary review of the air quality analysis in the Ventura County 2007 AQMP that shows

³ We note that the RFP demonstration that was contained in the draft Ventura County 2007 AQMP (March 2008) and that was included in the docket for our April 23, 2008 proposed rule mirrors the RFP demonstration in the final Ventura County 2007 AQMP (May 13, 2008) that was adopted by Ventura County on May 13, 2008, and adopted by CARB on June 26, 2008, and submitted to us on June 27, 2008. We received no comments on the substance of the RFP demonstration in response to our April 23, 2008 proposed rule.

⁴ The phase-out will also be complete before any attainment deadline for the 0.075 ppm 8-hour ozone standard. See generally, CAA sections 107(d), 181(a).

how the area will maintain reasonable further progress towards the 8-hour NAAQS without the benefit of VOC emissions reductions from pesticide use.

As explained in the proposed rule at 73 FR at 21888–21889, we found, based on our review of the air quality analysis contained therein, the RFP demonstration in the draft Ventura County 2007 AQMP to be a reasonable basis to propose approval of the Revised Pesticide Element for Ventura because the demonstration does not rely on VOC emission reductions from pesticide use to show RFP and the methods and emissions estimates used to demonstrate RFP in the AQMP appear reasonable. However, given the preliminary nature of our review of the RFP demonstration in the draft Ventura County 2007 AQMP, we concluded that it would be appropriate for us to wait for the final adopted AQMP to be submitted to us, and to consider any changes to the RFP demonstration as well as any public comments on the RFP demonstration submitted in connection with adoption of the plan at the county and State levels, and any public comments submitted in response to our April 23, 2008 proposed rule, prior to taking final action on the Revised Pesticide Element for Ventura. We described our approach, including our reliance on a draft SIP revision and our deferral of final action pending receipt of the adopted SIP revision including public comments, in our proposed rule at 73 FR 21889.

On June 27, 2008, CARB submitted the Final Ventura County 2007 Ventura County AQMP (May 13, 2008) as a revision to the California SIP. There were no public comments submitted either at the local district level or at the State level in relation to the AQMP's RFP demonstration, and the final adopted RFP demonstration is the same as the one in the Draft Final AQMP that was a basis for our proposed rule. We did not receive any comments on the substance of the RFP demonstration in the Ventura County 2007 AQMP in response to our April 23, 2008 proposed rule. Therefore, for the reasons set forth in the proposed rule, we continue to believe that the RFP demonstration in the 2007 Ventura County AQMP, even though it has not been approved, provides a reasonable basis for us to make our non-interference finding with respect to the Revised Pesticide Element for Ventura.

Comment 7: One commenter objected to EPA's finding that the SIP revision does not interfere with "any other applicable requirement" of the Act when, in the commenters' opinion, the proposed SIP revision directly interferes

with a court order issued to remedy a violation of the SIP. Noting that the EPA has not made an attainment finding for the 1-hour ozone NAAQS in Ventura County, the commenter further contends that EPA cannot approve the SIP revision without making a finding that the revision does not interfere with attainment of the 1-hour ozone NAAQS by the applicable deadline.

Response 7: We do not agree with the commenter's contention that the existence of a court order enforcing the existing SIP precludes a finding of non-interference under CAA section 110(l) with respect to a SIP revision amending the portion of the existing SIP that is under the court order. EPA is not a party to the lawsuit from which the court order emanates, and the court order is not itself part of the SIP. Thus, the existence of a court order under these circumstances is not material to EPA's evaluation of the subject SIP revision under CAA section 110(l), and as set forth in the proposed rule and further discussed in this document, we conclude that the Revised Pesticide Element for Ventura would not interfere with any requirement concerning RFP or attainment of the NAAQS, or any other applicable requirement under the Clean Air Act. By the same token, however, our approval today of the Revised Pesticide Element for Ventura does not relieve any obligations under the court order, but, as noted in the proposed rule at 73 FR 21886, footnote 2, we expect that our approval of the SIP revision will allow California to seek a modification to the court order.

Second, the commenter's assertion that we cannot make a finding of non-interference for the Revised Pesticide Element for Ventura without having first evaluated whether the SIP revision would interfere with attainment of the 1-hour ozone NAAQS by the applicable 1-hour ozone attainment deadline is incorrect because the 1-hour ozone NAAQS has been revoked. By way of explanation, we note that, under the Clean Air Act Amendments of 1990, States were required to develop, adopt and submit for EPA approval various SIP revisions to provide for expeditious attainment of the 1-hour ozone NAAQS by no later than the applicable deadline. However, under the Act, attainment of the 1-hour ozone NAAQS by the deadline is not itself a separate requirement, although failure to do so, even now that the 1-hour ozone NAAQS has been revoked, may have certain consequences such as the triggering of contingency measures.

Nonetheless, we reviewed Ventura County's 1-hour ozone data contained in EPA's Air Quality System (AQS)

database, the database in which quality-assured concentration data from the States' monitoring networks are recorded, and note that Ventura County appears to have attained the 1-hour ozone NAAQS by the applicable 1-hour ozone NAAQS deadline (2005) and appears to have continued to have been in attainment of the 1-hour ozone NAAQS since that time.

Furthermore, as noted in response to comment #2, above, while we describe the effect of the SIP revision as an increase in VOC emissions, we mean that there would be an increase in VOC emissions relative to what otherwise would occur. We do not mean that there would be an increase in overall VOC emissions within Ventura County over the period affected by the SIP revision. Rather, we expect that overall VOC emissions in Ventura County, with or without approval of this SIP revision, would decrease, reducing the potential for 1-hour ozone violations during the period affected by the SIP revision. See ROG emissions projections in table 4-6 on page 61 of the Ventura County 2007 AQMP. Thus, even if interference with attainment of the 1-hour NAAQS by the applicable deadline were material to this action, the AQS data provides us with the basis to reasonably conclude that the Revised Pesticide Element for Ventura would have no such effect. Our observations herein related to ambient 1-hour ozone concentrations are not tantamount to an attainment finding for Ventura County for the 1-hour ozone NAAQS. We expect to propose such a finding through a separate rulemaking in the near future.

Comment 8: One commenter claims the SIP revision relies on a new pesticide inventory, a part of the State Strategy for California's 2007 State Implementation Plan and the Draft Ventura 2007 Air Quality Management Plan that has not been approved by the EPA, and that the pesticide inventory lacks the appropriate scientific basis.

Response 8: California's Department of Pesticide Regulation (DPR) develops and continues to update baseline and current year inventories to evaluate pesticide VOC emissions. The refinement of emissions estimates is ongoing and necessary to better characterize and quantify emissions and control measures. We proposed to approve the Revised Pesticide Element for Ventura into the California SIP based on a finding of non-interference with 8-hour ozone RFP, which was itself based on a review of the Ventura County 2007 AQMP, and specifically, the RFP demonstration contained therein, and consideration of any related public comments. The AQMP includes an air

quality analysis that demonstrates RFP toward attaining the 8-hour ozone NAAQS without the attribution of VOC emissions reductions from pesticides. The estimated VOC emissions from pesticide use are included in the baseline emissions estimates of the RFP demonstration, and if they were significantly underestimated, the RFP demonstration might be undermined. However, the RFP demonstration in the Ventura County 2007 AQMP shows a significant surplus in oxides of nitrogen (NO_x) (i.e., the other ozone precursor in addition to VOC) after meeting substitution and contingency needs. See page 73 of the AQMP. The surplus in NO_x in the RFP milestone year of 2011, for example, amounts to roughly 150 tons per day. Thus, even if the estimate for VOCs from pesticides were double or triple the AQMP estimate of 4.82 tons per day, RFP would continue to be demonstrated based on the analysis in the Ventura County 2007 AQMP.

D. Comments on Technical Issue of Whether Reduction Is Based on Tonnage or Percentage Reductions

Comment 9: Commenters in support and in opposition to our proposed action assert that the existing SIP commitment from the Pesticide Element in the 1994 Ozone SIP is only to achieve a percentage reduction from the 1990 baseline inventory and not, in addition, a commitment to achieve a tonnage reduction as our proposed rule states. A commenter in opposition to the proposed approval contends that in presenting the commitment in a tons-per-day amount, EPA is overstepping its authority and amending a SIP, rather than reviewing it under the proper standards of section 110(k) of the Clean Air Act. Lastly, DPR clarifies the basis for certain VOC emissions estimates attributed to DPR and cited in the proposed rule.

Response 9: Commenters and EPA both agree that the State's SIP commitment (from the 1994 Ozone SIP) with respect to VOC emissions reductions from use of pesticides in Ventura County is defined in terms of percent reduction from base year emissions. The point of disagreement is that EPA states in the proposed rule that the commitment is a two-fold commitment defined in terms of both a percent reduction and a tonnage reduction.

Our interpretation of the original Pesticide Element commitment as having both a tonnage reduction commitment in addition to the percent reduction commitment rests on general and specific grounds. First, EPA has traditionally found committal measures,

such as the commitment to reduce VOC emissions in the Pesticide Element of the 1994 Ozone SIP, to be enforceable, and thus approvable, only if such measures identify the responsible party, adoption dates for rules, implementation dates, and emissions reductions in terms of emissions rates (such as tons per day) equal to the credit taken in the RFP or attainment plan for the committal measure. The tonnage specification provides the essential link between the committal measure and the RFP or attainment demonstration. See the general discussion of committal measures in EPA's final rule approving the 1994 Ozone SIP at 62 FR 1150 (January 8, 1997), at 1155–1157, and the specific discussion of the committal measures submitted as part of the 1994 Ozone SIP at 1157, column 3. In this case, the tonnage commitment (for 2005) links the original Pesticide Element commitment to the approved attainment demonstration for Ventura County. Each specific element of a committal measure, once the measure is approved by EPA, is considered to be enforceable. Thus, we believe that EPA would not have found the original Pesticide Element commitment for Ventura approvable unless the measure included the 2.37 tons per day reduction in pesticide VOC emissions in 2005 that was credited to the measure in the 1994 Ozone SIP.

Second of all, we find support for our conclusion in the California SIP in the form of the letter from James D. Boyd, Executive Officer, CARB, to David Howekamp, Director, Air and Toxics Division, EPA-Region IX, dated June 13, 1996 ("Boyd letter"), that includes an attachment C that specifies a 2.37 tons per day commitment in 2005 in Ventura County under the Pesticide Element of the 1994 Ozone SIP. The second page of the Boyd letter describes attachment C as follows: "In Attachment C, we provide summary spreadsheets identifying the reductions that the State committed to achieve and that we expect from the federal government, by measure, area, and milestone year. These summary tables contain the numbers used in the rate-of-progress and attainment demonstrations, as reflected in Volume IV of the California SIP." The Boyd letter, explicitly including attachment C, is incorporated by reference into the California SIP at 40 CFR 52.220(c)(236)(i)(A)(1). The commenters cite attachment A of the Boyd letter (also referred to as the "Howekamp letter") as evidence that the Pesticide Element only includes a percent reduction commitment, but we interpret the meaning of attachment A

("commitment is for a 20% reduction from 1990 levels by 2005 in each SIP area, except SD") as clarifying that a percent reduction commitment (related to the Pesticide Element) did not, as set forth in EPA's proposed rule on the 1994 Ozone SIP, exist for the RFP milestone years in Ventura County but only existed for the attainment year (2005). In other words, we do not view attachment A as excluding the existence of a tonnage reduction commitment in 2005 as set forth in attachment C to the Boyd letter.

In any event, under the Revised Pesticide Element for Ventura, the original commitment from the 1994 Ozone SIP, whether defined exclusively in terms of percent reduction or also as a tonnage reduction, will be entirely restored by year 2012, and no VOC emissions reductions from pesticide use are relied upon in the 8-hour ozone RFP demonstration in the Ventura County 2007 AQMP. Thus, our rationale for approval of the Revised Pesticide Element for Ventura does not depend upon definitive resolution of the issue of whether the original commitment from the Pesticide Element of the 1994 Ozone SIP is two-fold or just a percent reduction commitment. Lastly, EPA appreciates DPR's clarification of the estimates of pesticide-related VOC emissions in years 1990 and 1991.

E. Comment About the Opportunity To Comment

Comment 10: One commenter alleges that EPA has not provided the public with the opportunity to comment on the basis for its proposed findings—on whether the SIP revision interferes with attainment, reasonable further progress, or any other requirement of the CAA, as required by section 110(l)—which violates the Administrative Procedures Act (APA). Along the same lines, the commenter contends that EPA has failed to provide relevant documents requested in violation of the Freedom of Information Act (FOIA), and that the denial of documents on which to base comments interfered with the opportunity to comment in a meaningful manner.

Response 10: EPA has provided the public with the materials on which we have based our proposed action through creation of a docket for the rulemaking. In our proposed rule, at 73 FR 21886, we indicate where the index to the docket can be located and indicate how to access the items listed in the docket. Among the items so listed is Ventura County Air Pollution Control District's "Final Draft Ventura County 2007 Air Quality Management Plan (March 2008)," which contains the air quality

analysis, specifically, the RFP demonstration, that we relied upon in the proposed rule for our finding that the Revised Pesticide Element for Ventura would not interfere with RFP for the 8-hour ozone NAAQS. See footnote 5 of the proposed rule, at 73 FR 21888.

For our final action, we are not relying on an EPA-approved 8-hour RFP demonstration for Ventura, but rather, are relying on our review of the RFP demonstration included in the Ventura County 2007 AQMP as a reasonable basis for our finding of non-interference with respect to RFP for the 8-hour ozone NAAQS under CAA section 110(l). We described our approach, including our reliance on a draft AQMP and our deferral of final action pending receipt and consideration of the adopted SIP revision including any related public comments, as well as any comments made in response to our April 23, 2008 proposed rule, in our proposed rule at 73 FR 21889.

There were no public comments submitted either at the local district level or at the State level in relation to the AQMP's RFP demonstration nor did we receive any comments on the substance of the RFP demonstration in the Ventura County 2007 AQMP in response to our April 23, 2008 proposed rule. Moreover, the final adopted RFP demonstration is the same as the one in the draft AQMP that was a basis for our proposed rule. Therefore, for the reasons set forth in the proposed rule, we continue to believe that the RFP demonstration in the Ventura County 2007 AQMP, even though it has not been approved, is a reasonable basis to make our non-interference finding with respect to the Revised Pesticide Element for Ventura. As explained above and because the RFP demonstration in the final Ventura County 2007 AQMP, that was submitted on June 27, 2008, is no different than the one available at the time we proposed action, we conclude that the public has had an opportunity to know and review the basis for our proposed action, consistent with the requirements of the Administrative Procedure Act (APA). We will be taking action on the final adopted Ventura County 2007 AQMP, as submitted by CARB on June 27, 2008, in a separate rulemaking.

With respect to the second part of this comment, we believe that the documents needed for an informed review of our proposed action were included in the docket during the public comment period. Additional documents have been provided in response to the FOIA request, but none of these additional documents were needed to

review the substance and rationale of our proposed action in an informed manner.

F. Comments on Whether Best Available Control Technology (BACT) Can Achieve the Necessary Reductions

Comment 11: Some commenters question whether further, even total, implementation of Best Available Control Technology (BACT) could achieve the overall reductions commitment. The commenters indicate that even if all fumigant applicators adopt BACT, the emissions reduction commitment would still fail to be reached. They propose that the only way to reach the commitment level is through some combination of acreage reduction, application rate reduction, and shifting applications outside of the typical season.

Response 11: In today's action, we are approving a SIP revision that relaxes in part, and temporarily, a commitment by the State of California to reduce VOC emissions from pesticide use in Ventura County. We are not taking action on the specific regulations promulgated by DPR, and that purportedly go beyond BACT-level of control, to fulfill that commitment. We acknowledge commenters' views concerning the feasibility of complying with DPR's regulations but have not based our approval action on the SIP revision on such considerations.

III. EPA's Final Action

No comments were submitted that change our assessment of the Revised Pesticide Element for Ventura as set forth in our proposed rule. Therefore, pursuant to section 110(k)(3) of the CAA and for the reasons set forth in detail in EPA's proposed rule and in today's final rule, including the responses to comments, EPA is approving the revision to the California SIP submitted by the State of California on November 30, 2007 concerning the Pesticide Element for Ventura County. We find that the SIP revision is consistent with the requirements of the CAA and EPA's regulations.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public 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 EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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. EPA will submit a report containing this rule 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 September 16, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 3, 2008.

Kathleen H. Johnson,
Acting Regional Administrator, Region IX.

■ 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 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(355) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(355) The following plan revision was submitted on November 30, 2007, by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board.

(1) Attachment 3 to Executive Order S-07-003, Appendix H, Revised Proposed Revision to the Pesticide Element of the 1994 Ozone SIP for the Ventura County Nonattainment Area (August 13, 2007).

(2) California Air Resources Board, Executive Order S-07-003, November 30, 2007; to Wit: Revised Pesticide

Element of the 1994 Ozone SIP for the Ventura County Nonattainment Area.

[FR Doc. E8-16388 Filed 7-17-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2008-0254; FRL-8371-7]

Oxirane, 2-methyl-, polymer with oxirane, mono [2-[2-(2-butoxymethylethoxy)]methylethoxy] ether; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl-, polymer with oxirane, mono [2-[2-(2-butoxymethylethoxy)]methylethoxy] ether; (CAS Reg. No. 926031-36-9) when used as an inert ingredient in a pesticide chemical formulation. Rhodia, Inc. c/o SciReg, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of oxirane, 2-methyl-, polymer with oxirane, mono [2-[2-(2-butoxymethylethoxy)]methylethoxy] ether.

DATES: This regulation is effective July 18, 2008. Objections and requests for hearings must be received on or before September 16, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2008-0254. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the www.regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in www.regulations.gov. 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Karen Samek, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8825; e-mail address: samek.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this "**Federal Register**" document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>. You may