

clarified that both increases and decreases in emissions resulting from a proposed project can be considered in Step 1 of the NSR major modification applicability test.<sup>3</sup>

On January 22, 2021, following promulgation of the final rule, the EPA Administrator received a petition for reconsideration of the final rule pursuant to CAA section 307(d)(7)(B). The petition for reconsideration was filed by EDF, NRDC, EIP, the Sierra Club, and the Adirondack Council. The petition for reconsideration requests that the EPA (1) stay the effectiveness of the rule during reconsideration for 90 days; (2) conduct reconsideration proceedings and withdraw the Project Emissions Accounting rule within the 90-day stay period; and, (3) immediately withdraw the March 2018 Memorandum. CAA section 307(d)(7)(B) requires the EPA to convene a proceeding for reconsideration of a rule if a party raising an objection to the rule “can demonstrate to the Administrator that it was impracticable to raise such objection within [the public comment period] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” The EPA has carefully reviewed the petition for reconsideration and evaluated all issues raised. The EPA has determined that they do not meet the CAA section 307(d)(7)(B) criteria for mandatory reconsideration, and has sent a letter to the petitioner denying the petition for reconsideration and request for administrative stay of the Project Emissions Accounting rule. The letter articulates the rationale for the EPA’s

final response and is available in the docket for this action.

**Michael S. Regan,**  
*Administrator.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2020–0254; FRL–8727–03–R9]**

### Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; West Mojave Desert, California

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Correcting amendment.

**SUMMARY:** On September 27, 2021, the Environmental Protection Agency (EPA) issued a final rule titled “Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; West Mojave Desert, California.” That publication incorrectly listed the transportation conformity budgets for the West Mojave Desert Nonattainment Area (West Mojave Desert) for the 2008 ozone NAAQS. Additionally, the regulatory text in that publication inadvertently included portions of the State’s submittal addressing contingency measures for failure to attain or to make reasonable further progress (RFP). This document corrects these errors and amends the regulatory text.

**DATES:** This rule will be effective on November 17, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2020–0254. 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. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please

contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Tom Kelly, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3856, or by email at [kelly.thomas@epa.gov](mailto:kelly.thomas@epa.gov).

**SUPPLEMENTARY INFORMATION:** On September 27, 2021, the EPA issued a final rule titled “Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; West Mojave Desert, California.”<sup>1</sup> That publication incorrectly listed the transportation conformity budgets provided in Table VI–3 of the “2018 Updates to the California State Implementation Plan” (“2018 SIP Update”).<sup>2</sup> The corrected values for the transportation conformity budgets are shown in Table 1 below.

**TABLE 1—TRANSPORTATION CONFORMITY BUDGETS FOR 2020, 2023 AND 2026 FOR THE 2008 OZONE NAAQS IN THE WEST MOJAVE DESERT**

[Average summer weekday, tons per day]<sup>a</sup>

Budget year	VOC	NO <sub>x</sub>
2020 .....	7.9	17.6
2023 .....	6.8	11.0
2026 .....	6.2	10.2

<sup>a</sup>Source: Table VI–3 from the 2018 SIP Update.

Other aspects of our final action regarding transportation conformity budgets are accurately described in the final rule, and the correct numbers were included in our May 10, 2021 proposed rule for this action.<sup>3</sup>

Additionally, while the final rule deferred action on the attainment plan’s contingency measures for failure to attain or to make RFP, the regulatory text adopted by the final rule inadvertently included portions of the State’s submittals related to the contingency measures element. This action corrects the regulatory text at 40 CFR 52.220(c)(514)(ii)(A)(9) and 40 CFR 52.220(c)(563)(ii)(A)(1), (c)(563)(ii)(B)(1), and (c)(563)(ii)(C)(1) to specify that these portions of the submittals are excluded from the EPA’s approval.

The EPA has determined that this action falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA)

<sup>1</sup> 86 FR 53223.

<sup>2</sup> Letter dated December 5, 2018, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, and electronically transmitted to the EPA’s State Planning Electronic Collaboration System on December 11, 2018.

<sup>3</sup> 86 FR 24809.

<sup>3</sup> An existing major stationary source triggers major NSR permitting requirements when it undergoes a “major modification.” The EPA’s implementing regulations for NSR establish a two-step process for determining major NSR applicability for projects at stationary sources. To be subject to major NSR requirements, the project must result in both (1) a significant emissions increase from the project (the determination of which is called “Step 1” of the NSR applicability analysis); and (2) a significant net emissions increase at the stationary source, taking account of emissions increases and emissions decreases attributable to other projects undertaken at the stationary source within a specific time frame (called “Step 2” of the NSR applicability analysis, or “contemporaneous netting”). For this two-step process, the NSR regulations define what emissions rate constitutes “significant” for each NSR regulated pollutant. See 40 CFR 52.21(a)(2)(iv)(a); 40 CFR 51.165(a)(1)(v); 40 CFR 51.166(b)(2)(i); 40 CFR part 51, appendix S, section II.A.5.(i).

which, upon finding “good cause,” authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action are unnecessary because the underlying rule for which this correcting amendment has been prepared was already subject to a 30-day comment period, and this action merely corrects an error in the rule text. Further, this action is consistent with the purpose and rationale of the final rule, which is corrected herein. Because this action does not change the EPA’s analyses or overall actions, no purpose would be served by additional public notice and comment. Consequently, additional public notice and comment are unnecessary.

### Statutory and Executive Order Reviews

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);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4);
- Does not impose a significant intergovernmental mandate or significantly or uniquely affect small governments, as described in sections 203 and 204 of the UMRA;
- 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 this error correction action does not involve technical standards; and
- Does not involve special consideration of environmental justice related issues as required by 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, the 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 (CRA) (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 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**. This correction to 40 CFR part 52 for California is not a “major rule” as defined by 5 U.S.C. 804(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: October 5, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

For the reasons stated in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations 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 revising paragraphs (c)(514)(ii)(A)(9), (c)(563)(ii)(A)(1), (c)(563)(ii)(B)(1), and (c)(563)(ii)(C)(1) to read as follows:

#### § 52.220 Identification of plan—in part.

\* \* \* \* \*

(c) \* \* \*

(514) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(9) 2018 Updates to the California State Implementation Plan, adopted on

October 25, 2018, chapter VI (“SIP Elements for the Western Mojave Desert”), excluding section VI.D (“Contingency Measures”); and pages A–19 through A–22 of Appendix A (“Nonattainment Area Inventories”).

\* \* \* \* \*

(563) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(1) CARB Review of the Mojave Desert AQMD and Antelope Valley AQMD Federal 75 ppb Ozone Attainment Plans for the Western Mojave Desert Nonattainment Area, released April 21, 2017, excluding section V.D (“Contingency Measures”).

\* \* \* \* \*

(B) \* \* \*

(1) AVAQMD Federal 75 ppb Ozone Attainment Plan (Western Mojave Desert Nonattainment Area), adopted on March 21, 2017, except the following portions: Chapter 2—Emission Inventories; “Contingency Measures” (page 18); “Reasonable Further Progress Requirements,” including Table 3 (pages 18–20); “Conformity Budgets” (page 21); “Transportation Conformity,” including Table 4 (pages 21–23); Appendix A—Base Year Emission Inventory; and Appendix B—Future Year Emission Inventories.

\* \* \* \* \*

(C) \* \* \*

(1) MDAQMD Federal 75 ppb Ozone Attainment Plan (Western Mojave Desert Nonattainment Area), adopted on February 27, 2017, except the following portions: Chapter 2—Emission Inventories; “Contingency Measures” (page 20); “Reasonable Further Progress Requirements,” including Table 3 (pages 20–22); “Conformity Budgets” (page 23); “Transportation Conformity,” including Table 4 (pages 23–25); Appendix A—Base Year Emission Inventory; and Appendix B—Future Year Emission Inventories.

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