

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA-R09-OAR-2008-0693; FRL-8929-9]****Approval and Promulgation of Implementation Plans: 1-Hour Ozone Extreme Area Plan for San Joaquin Valley, CA****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing to approve in part and disapprove in part State implementation plan (SIP) revisions submitted by the State of California to meet the Clean Air Act (CAA) requirements applicable to the San Joaquin Valley, California 1-hour ozone nonattainment area (SJV area). These requirements apply to the SJV area following its April 16, 2004 reclassification from severe to extreme for the 1-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the SIP revisions for the SJV area as meeting applicable CAA requirements for the attainment demonstration, rate-of-progress demonstration and related contingency measures, and other control measures. EPA is also proposing to disapprove the contingency measures for failure to attain. In addition, EPA is proposing to approve the SJV Air Pollution Control District's Rule 9310, "School Bus Fleets." Finally, EPA is withdrawing its previous proposal (73 FR 61381; October 16, 2008) to fully approve the SJV SIP revisions.

DATES: Comments must be submitted by August 13, 2009.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2008-0693, by one of the following methods:

1. *Agency Web site:* <http://www.regulations.gov>. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.
2. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.
3. *E-mail:* wicher.frances@epa.gov.
4. *Mail or deliver:* Ms. Marty Robin, Office of Air Planning (AIR-2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>,

including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal, or e-mail. The agency Web site and eRulemaking portal are anonymous access systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for Clarifications, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region 9, 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: Frances Wicher, U.S. EPA Region 9, 415-972-3957, wicher.frances@epa.gov or [31http://www.epa.gov/region09/air/actions](http://www.epa.gov/region09/air/actions).

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" mean U.S. EPA.

Table of Contents

- I. The History of San Joaquin Valley 1-Hour Ozone Nonattainment Area and Its Extreme Area Ozone Plan
 - A. The San Joaquin Valley 1-Hour Ozone Nonattainment Area
 - B. SJV 2004 SIP, SJV Portion of 2003 State Strategy and 2008 Clarifications
 - C. EPA's 2008 Proposed Approval of the SJV Extreme 1-Hour Ozone Plan and 2003 State Strategy
- II. Revocation of the 1-Hour Ozone Standard and Anti-Backsliding Requirements
- III. Review of the 2004 SIP, the SJV Portion of the 2003 State Strategy and the 2008 Clarifications
 - A. Control Measures
 - B. Emission Inventories
 - C. Rate of Progress Demonstrations
 - D. Attainment Demonstration
 - E. Contingency Measures
 - F. Proposed Findings on Other Requirements for Extreme Nonattainment Areas
- IV. SJVAPCD Rule 9310 School Bus Fleets

V. Proposed Actions

- A. Summary
 - B. Effect of Finalizing These Proposed Actions
- VI. Statutory and Executive Order Reviews

I. The History of San Joaquin Valley 1-Hour Ozone Nonattainment Area and its Extreme Area Ozone Plan**A. The San Joaquin Valley 1-Hour Ozone Nonattainment Area**

Eight counties comprise the San Joaquin Valley ozone nonattainment area (SJV area). From north to south, these counties are San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and the valley portion of Kern. 40 CFR 81.305. The local air district is the San Joaquin Valley Air Pollution Control District (SJVAPCD or District).

The SJV area was initially classified under the CAA, as amended in 1990, as a serious area for the 1-hour ozone standard. 56 FR 56694 (November 6, 1991). Under the amended CAA, the attainment deadline for serious 1-hour ozone areas was no later than November 15, 1999. CAA section 181(a)(1).

In 2001, we found that the SJV area had failed to attain the 1-hour ozone standard by the required deadline. 66 FR 56476 (November 8, 2001). As a result of this finding, the area was reclassified by operation of law to severe with a new attainment deadline of no later than November 15, 2005. CAA section 181(a)(1). After determining that sufficient controls could not be implemented in time for the area to attain by the severe area deadline, California requested a voluntary reclassification of the area to extreme as allowed under CAA section 181(a)(5). See SJVAPCD Resolution 03-12-10 "Requesting the [EPA] to Classify the [SJV] Air Basin as Extreme Nonattainment for the Federal 1-Hr Ozone [] Standards," December 18, 2003. We granted California's request in 2004. 69 FR 20550 (April 16, 2004). As a result, the SJV area is currently classified as an extreme area for the 1-hour ozone standard with an attainment date of as expeditiously as practicable but no later than November 15, 2010. CAA section 181(a)(1).

B. 2004 SIP, SJV Portion of 2003 State Strategy and 2008 Clarifications

The SJVAPCD adopted its "Extreme Ozone Attainment Demonstration Plan" on October 8, 2004 and amended it on October 20, 2005 to, among other things, substitute a new "Chapter 4: Control Strategy." The State submitted the plan

(with the exception of Chapter 8¹) and amendment on November 15, 2004 and March 6, 2006, respectively. See letters from Catherine Witherspoon, California Air Resources Board (ARB), to Wayne Nastri, EPA, November 15, 2004 and March 6, 2006. The plan and amendment, collectively, will be referred to as the “2004 SIP” in this proposed rule. The 2004 SIP addresses CAA requirements for extreme 1-hour ozone areas including control measures, rate-of-progress (ROP) and attainment demonstrations, and contingency measures.

For the reductions needed to demonstrate attainment and ROP, the 2004 SIP relies in part on the “2003 State and Federal Strategy for the California State Implementation Plan.” This strategy document identifies ARB’s regulatory agenda to reduce ozone and particulate matter in California and includes defined statewide control measures that were to be reflected in future SIPs and provisions specific to air quality plans for the San Joaquin Valley. On October 23, 2003, ARB adopted the “2003 State and Federal Strategy for the California State Implementation Plan,” which consists of two elements: (1) the Proposed 2003 State and Federal Strategy for the California State Implementation Plan (released August 25, 2003); and (2) ARB Board Resolution 03–22 which approves the Proposed 2003 State and Federal Strategy with the revisions to that Strategy set forth in Attachment A. On January 9, 2004, ARB submitted to EPA the “2003 State and Federal Strategy for the California State Implementation Plan.” Letter from Catherine Witherspoon, ARB, to Wayne Nastri, EPA, January 9, 2004.²

In this proposed rule we refer to the two documents comprising the “Final State and Federal Strategy for the California State Implementation Plan” as the “2003 State Strategy” or individually as the “State Strategy” and “ARB Resolution 03–22,” respectively.

On August 21, 2008, the SJVAPCD adopted “Clarifications Regarding the 2004 Extreme Ozone Attainment Demonstration Plan” (2008

Clarifications). The State submitted the 2008 Clarifications on September 5, 2008. Letter from James N. Goldstene, ARB, to Wayne Nastri, EPA, with enclosures, September 5, 2008. The 2008 Clarifications provide updates to the 2004 SIP related to reasonably available control technology (RACT) measures adopted by the SJVAPCD, the ROP demonstration, and contingency measures.

CAA section 110(k)(1) requires EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that any plan that has not been affirmatively determined to be complete or incomplete shall become complete within 6 months by operation of law. EPA’s completeness criteria are found in 40 CFR part 51, subpart V.

The 2004 SIP, comprised of the original November 15, 2004 plan and May 6, 2006 amendment, was deemed complete by operation of law on May 15, 2005 and September 6, 2006. On February 18, 2004, we determined the Final 2003 State Strategy to be complete. Letter from Deborah Jordan, EPA, to Catherine Witherspoon, ARB, February 18, 2004. We found the 2008 Clarifications complete on September 23, 2008. Letter from Deborah Jordan, EPA, to James N. Goldstene, ARB, September 23, 2008.

C. EPA’s 2008 Proposed Approval of the 2004 SIP, SJV Portion of the 2003 State Strategy and the 2008 Clarifications

This is the second time we have proposed action on the 2004 SIP, the SJV portion of the 2003 State Strategy and the 2008 Clarifications. On October 16, 2008, we proposed full approval of these SIP submittals and received three comment letters during the public comment period.³ 73 FR 61381. After considering these comments, we are withdrawing our October 16, 2008 proposed rule and reproposing action on these SIP submittals. As a result, we are not responding to the comments we received on that proposed action at this time. Commenters wishing to again raise issues raised in comments on that proposal should resubmit applicable comments to the docket for this rulemaking.

II. Revocation of the 1-Hour Ozone Standard and Anti-Backsliding Requirements

In 1979, we set the health-based NAAQS for ozone at 0.12 parts per million (ppm) averaged over one hour.

See 44 FR 8220 (February 9, 1979). In 1997, we revised this ozone standard by lowering the level to 0.08 ppm and extending the averaging time to eight hours.⁴ See 62 FR 38856 (July 18, 1997).

In 2004, EPA designated and classified most areas of the country under the 8-hour ozone standard. 69 FR 23858 (April 30, 2004). At the same time, we issued the “Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1” (Phase 1 rule or 8-hour implementation rule). 69 FR 23951 (April 30, 2004). Among other matters, the Phase 1 rule revoked the 1-hour ozone standard in the SJV area (as well as in most other areas of the country), effective June 15, 2005. See 40 CFR 50.9(b); 69 FR at 23996 and 70 FR 44470 (August 3, 2005).

The Phase 1 rule also set forth anti-backsliding principles to ensure continued progress toward attainment of the 8-hour ozone standard by identifying which 1-hour ozone standard requirements remain applicable in an area after revocation of that standard. 40 CFR 51.900(f). The Phase 1 rule also identified several CAA requirements, such as contingency measures in CAA sections 172(c)(9) and 182(c)(9), that would not continue to apply after revocation. See § 51.905(e).

The U.S. Court of Appeals for the District of Columbia Circuit subsequently vacated the provisions of the Phase 1 rule that waived the requirements under the revoked 1-hour ozone standard for, among other things, contingency measures for failure to attain or to make reasonable further progress toward attainment of the 1-hour ozone standard. See *South Coast Air Quality Management District, et al., v. EPA*, 472 F.3d 882 (D.C. Cir. 2006), rehearing denied 489 F.3d 1245 (2007) (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review) (collectively referred to below as *South Coast*). On January 16, 2009, EPA proposed to remove the contingency measure exemption in 40 CFR 51.905(e) for these requirements and to list contingency measures as applicable requirements under § 51.900(f). 74 FR 2936.

As a general matter, the planning and control requirements that remain applicable following the revocation of the 1-hour ozone standard derive from CAA sections 110, 172, and 182. CAA sections 110 and 172 contain general planning and control requirements

¹ Chapter 8 “California Clean Air Act Triennial Progress Report and Plan Review” was included in the plan to meet a State requirement to report every three years on the area’s progress toward meeting California’s air quality standards. Nothing in the chapter was intended to address federal Clean Air Act requirements.

² On February 13, 2008, ARB withdrew from EPA consideration certain commitments related to the South Coast Air Basin in the “Final 2003 State and Federal Strategy for the California State Implementation Plan.” These withdrawals do not change the 2003 Strategy’s provisions that apply to the SJV area. Letter from James N. Goldstene, ARB, to Wayne Nastri, EPA, February 13, 2008.

³ Comment letters were received from Earthjustice; the Center for Race, Poverty and the Environment; and the National Association of Home Builders. These letters can be found in the docket for this proposal.

⁴ In 2008 we lowered the 8-hour ozone standard to 0.075 ppm. See 73 FR 16436 (March 27, 2008). The references in this proposed rule to the 8-hour standard are to the 1997 standard as codified at 40 CFR 50.10.

applicable to all nonattainment areas. CAA section 182 contains more specific requirements applicable to ozone nonattainment areas, including requirements in section 182(e) that apply to areas classified as extreme, such as the SJV area.

In 1992, EPA issued a General Preamble describing our preliminary views on how we intended to review 1-hour ozone plans submitted to meet these CAA's requirements. See "General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992). The General Preamble as well as other EPA guidance documents related to 1-hour ozone plans continue to guide our review of the 1-hour ozone requirements that remain applicable following revocation of that standard.

Under the Phase 1 rule, areas remain subject to the 1-hour requirements until they attain the 8-hour ozone standard. Once an area is redesignated to attainment for the 8-hour standard, it may shift the applicable requirements to contingency measures (consistent with the CAA sections 110(l) and 193). See Phase 1 rule at 23955 and 40 CFR 51.905(b).

III. Review of the 2004 SIP, the SJV Portion of the 2003 State Strategy and the 2008 Clarifications

A. Control Measures

1. Requirements for Control Measures

CAA section 172(c)(1) requires nonattainment area plans to provide for the implementation of all reasonably available control measures (RACM) including RACT. RACM is not listed separately in 40 CFR 51.900(f) as an applicable requirement following revocation of the 1-hour ozone standard; however, EPA interprets the RACM requirement to be a component of an area's attainment demonstration. See General Preamble at 13560.

EPA has previously provided guidance interpreting the RACM requirement in the General Preamble at 13560 and a memorandum entitled "Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas," John Seitz, Director, OAQPS to Regional Air Directors, November 30, 1999 (Seitz memo). In summary, EPA guidance provides that States, in addressing the RACM requirement, should consider all potential measures for source categories in the nonattainment area to determine whether they are reasonably available for implementation in that area and whether they would advance the area's attainment date by one or more years.

Under the CAA, RACT is required for major sources of volatile organic compounds (VOC) and for all VOC source categories for which EPA has issued Control Techniques Guideline (CTG) documents. In addition, EPA has issued Alternative Control Techniques (ACT) documents to help States in making RACT determinations. CAA sections 172(c)(1), 182(a)(2)(A), 182(b)(2), and 183(a) and (b). CAA section 182(f) requires that RACT also apply to major stationary sources of nitrogen oxides (NO_x). In extreme areas, a major source is a stationary source that emits or has the potential to emit 10 tons of VOC or NO_x per year. CAA section 182(e). The RACT requirement in 182(b)(2), the major source threshold in section 182(e) as it applies to RACT, and the application of RACT to major sources of NO_x are all applicable requirements under the Phase 1 rule. 40 CFR 51.905(a)(1)(i) and 51.900(f)(1), (3) and (12).

The CAA also requires that SIPs "shall include enforceable emission limitations, and such other control measures, means or techniques * * * as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment * * * by the applicable attainment date." * * * CAA section 172(c)(6). CAA section 110(a)(2)(A) contains almost identical language.

2. Control Measures in the 2004 SIP and 2003 State Strategy

a. RACM Demonstration

To determine which measures would be feasible for the SJV area, the District looked at measures implemented in other areas (including the South Coast Air Basin, the San Francisco Bay Area, and the Houston-Galveston area), documents produced by ARB, as well as measures suggested by the public at local workshops. The District then screened the identified measures and rejected those that affected few or no sources in the SJV area, had already been adopted as rules, or were in the process of being adopted. The remaining measures were evaluated using baseline inventories, available control technologies, and potential emission reductions as well as whether the measure could be implemented on a schedule that would expedite attainment of the 1-hour ozone standard. 2004 SIP, section 4.2.1.

Based on this evaluation, the District developed an expeditious rule adoption schedule listing 21 measures involving adoption of eight new rules and revisions to over 20 existing rules. 2004 SIP, Table 4–1. Since submittal of the

SIP in 2004, the District has completed action on these rules and submitted them to EPA for approval. Table 1 in the 2008 Clarifications and Table 2 below.

In addition to the District's efforts, the eight San Joaquin Valley Regional Transportation Planning Agencies (RTPAs) conducted a RACM evaluation for transportation sources. This evaluation, described in section 4.6.3. of the 2004 SIP, resulted in extensive local government commitments to implement programs to reduce auto travel and improve traffic flow. 2004 SIP, section 4.6 and Appendix C. The local governments also provide reasoned justifications for any measures that they did not adopt. See 2004 SIP, Appendix C.

Finally, the 2004 SIP relies on the 2003 State Strategy to address mobile and area source categories not under the District's jurisdiction. 2004 SIP, section 4.7. Table I–1 in the 2003 State Strategy shows the impressive list of both mobile and area source measures that have been adopted by California between 1994 and 2003, along with the mobile source rules that have been adopted by EPA during this period. Table I–2 in the 2003 State Strategy lists proposed new State measures, most of which have already been adopted.⁵ This list of new State measures was developed through a public process intended to identify and refine new emission reductions strategies for California. 2003 State Strategy, page ES–5.

b. RACT Demonstration

The 2004 SIP includes a brief section 4.2.5 discussing the RACT obligation and specific source categories where further analysis and potential future controls would need to be adopted in order to ensure that RACT levels of control are applied to sources down to the 10 tons per year (tpy) level. The State subsequently formally withdrew the RACT portion of the 2004 SIP, specifically section 4.2.5. See 2008 Clarifications, page 3. On January 21, 2009, we made a finding that California failed to submit the required RACT demonstration for the 1-hour ozone standard and initiated sanction and Federal implementation plan (FIP) clocks under CAA sections 179(a) and 110(c). 74 FR 3442.

During the last several years, the District has also adopted and revised its

⁵ See chapter 3 (page 38) of the "Air Resources Board's Proposed State Strategy for California's 2007 State Implementation Plan," Revised Draft (Release date: April 26, 2007) (2007 State Strategy) and "Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revision to the SIP Reflecting Implementation of the 2007 State Strategy," ARB, April 24, 2009.

RACT demonstration plan for the 8-hour ozone standard. On January 31, 2007, California submitted the District's initial RACT plan for the 8-hour ozone standard to EPA. The District adopted a revised 8-hour ozone standard RACT plan on April 16, 2009 and the State submitted the revised plan on June 17, 2009. In addition to addressing comments on the initial plan, The District intends this revised plan to address the failure to submit finding for the 1-hour ozone RACT demonstration and to assure that its rules cover sources in the SJV area down to the extreme area major source threshold of 10 tpy. See letter from Andrew Steckel, EPA, to George Heinen, SJVAPCD, May 6, 2008. We are currently reviewing the revised RACT plan for future action.

c. Enforceable Limitations and Other Control Measures

The 2004 SIP's modeling analysis, discussed further below, determined that attainment of the 1-hour ozone standard required reducing 2000 baseyear emissions from 556.8 tons per day (tpd) NO_x and 443.5 tpd VOC to 343.5 tpd NO_x and 314.4 tpd VOC. 2004 SIP at 3–7 through 3–11 and 5–9 through 5–12 and "Proposed 2004 State Implementation Plan for Ozone in the San Joaquin Valley," September 28, 2004, Air Resources Board Staff Report (ARB Staff Report) at Table III–6.

As shown in Table 1 below, we have divided the control measures in the 2004 SIP's attainment demonstration among three categories: Baseline measures, interim measures, and control strategy measures. As the term is used here and in the ARB Staff Report, baseline measures are rules and regulations adopted prior to September, 2002 (*i.e.*, prior to 2004 SIP's development) that provide continuing reductions through and after 2010. We have defined interim measures as those rules adopted between September, 2002 and the 2004 SIP's adoption date in October, 2004. See Table III–7 in the ARB Staff Report. Finally, control strategy measures are the new rules, rule revisions, and commitments included in the 2004 SIP and 2003 State Strategy that will ensure that the additional increment of emission reductions needed beyond the baseline and interim measures is achieved in time to demonstrate attainment by November 2010. See Tables III–6 and III–8 in the ARB Staff Report.

TABLE 1—SUMMARY OF EMISSION REDUCTIONS IN THE 2004 SIP
[Tons per summer day]

	VOC	NO _x
2000 baseyear emissions	443.5	556.8
2010 baseline emissions ..	365.1	396.8
2010 Attainment emissions target	314.4	343.5
Reductions needed for attainment	129.1	213.3
Baseline Measures:		
SJVAPCD	6–8.5	18.9
State	79.3	97.2
Federal	7.6	43.9
Total	78.4	160
Percent from Baseline Measures	61%	75%
Interim Measures:		
SJVAPCD adopted rules	2.4	12.2
Percent from Interim Measures	2%	6%
Control Strategy Measures:		
SJVAPCD (includes long-term measures)	33.3	21.1
State	15	20
Total	48.3	41.1
Percent from Control Strategy Measures	38%	19%

ARB Staff Report, table III–6. Percentage may not sum to 100% because of rounding.

i. Baseline and Interim Measures

As shown in Table 1, the majority of the emission reductions needed to demonstrate attainment by November 2010 come from baseline and interim measures. These reductions come from a combination of Federal, State, and District measures.

A. SJVAPCD Measures—SJVAPCD currently has adopted more than 50 prohibitory rules that limit emissions of either VOC or NO_x. These rules include controls for boilers, oil field and refinery equipment, a variety of surface coatings operations, and open burning. We have provided a list of SJVAPCD NO_x and VOC rules together with information on their SIP approval status in the technical support document (TSD) for this proposal.

B. State measures—California has adopted standards for many categories of on- and off-road vehicles and engines, gasoline and diesel fuels, and numerous categories of consumer products. The State's baseline measures fall within

⁶ The negative number here indicates that emissions increased in the source categories under the District's authority to control. The increase is mainly from growth in livestock operations. ARB Staff report, table III–6.

two categories: measures for which the State has obtained or has applied to obtain a waiver of Federal pre-emption under CAA section 209 (section 209 waiver measures or waiver measures) and those for which the State is not required to obtain a waiver (non-waiver measures).

Section 209 waiver measures. A waiver under section 209 is, in general, required for most on- and non-road vehicle or engine standards. Examples of State waiver measures are: low emission vehicle program, heavy duty bus standards, and small off-road engines. A list of California's waiver measures can be found in the TSD. We discuss in more detail the CAA section 209 waiver provisions and how we intend to treat reductions from these measures in attainment and ROP demonstrations in section C.3.b. below.

Non-waiver measures. These measures include: improvements to California's inspection and maintenance (I/M) program, SmogCheck; cleaner burning gasoline and diesel regulations; and limits on the VOC content and reactivity of consumer products.⁷ A list of these non-waiver measures can be found in the TSD.

Federal measures. These measures include EPA's national emission standards for heavy duty diesel trucks,⁸ certain new construction and farm equipment,⁹ and locomotives.¹⁰ States are allowed to rely on reductions from Federal measures in attainment and ROP demonstrations.

ii. Control Strategy Measures

A. SJVAPCD's commitments and rule adoption. In the 2004 SIP, the District committed to adopt specific rules or rule revisions by specified dates, to submit the rules within one month of adoption to ARB for submittal to EPA, and to achieve from each measure specified reductions by 2010. 2004 SIP at Table 4–1 and SJVAPCD Resolution No. 5–10–12 (October 20, 2005), p. 4, item 9. This information is updated in

⁷ California's Department of Pesticide Regulations (DPR) limits total pesticide emissions in the San Joaquin Valley. However, the attainment demonstration in the 2004 SIP does not assume any DPR regulatory limits on pesticide emissions. See 2003 State Strategy, p. III–C–3.

⁸ 66 FR 5001 (January 18, 2001). ARB estimates that interstate trucks registered outside of California represent over 50 percent of the heavy duty trucks in California. See Table III–1 in "Staff Report: Initial Statement of Reason for Proposed Rulemaking, Proposed Regulation for In-Use, On-road Diesel Vehicles," California Air Resources Board (October 2008).

⁹ Tier 2 and 3 non-road engines standards, 63 FR 56968 (October, 23, 1998); Tier 4 diesel non-road engine standard, 69 FR 38958 (June 29, 2004).

¹⁰ 63 FR 18978 (May 16, 1998) and 73 FR 37045 (June 30, 2008).

Table 1 of the 2008 Clarifications which shows not only the original commitment in the 2004 SIP but also the date on which the District adopted the rule associated with each commitment and

the actual emissions reductions achieved by each rule. A summary of the information found in Table 1 in the 2008 Clarifications is presented in our Table 2 below. Table 2 also gives the

date and cite for EPA's approval or proposed approval of the rule or the date of signature on the proposed approval.

TABLE 2—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT 2004 PLAN SPECIFIC RULE COMMITMENTS

Rule No., description and commitment ID from 2004 SIP	2004 SIP commitment (2010-tpd)	Achieved emission reductions (2010-tpd)	Local adoption	Approval cite/date or proposed approval cite/date
NO_x Control Measures				
9310 Fleet School buses (C)	0.1	0.6 ¹¹	9/21/06	NPR signed 6/30/09.
9510 Indirect Source Mitigation (D)	4.0	.....	12/15/05	See note below.
4307 Small Boilers (2–5 MMBTU) (E)	1.0	5.1	4/20/06	72 FR 29887 (5/30/07).
4352 Solid fuel boilers (G)	0.0	0.0	5/18/06	Proposed 72 FR 29901 (5/30/07).
4702 Stat. IC engines (H)	8.0	16.8	1/18/07	73 FR 1819 (1/10/08).
4309 Commercial Dryers (I)	1.0	0.7	12/15/05	72 FR 29887 (5/30/07).
4308 Water Heaters 0.075 (N)	0.2	0.8	10/20/05	72 FR 29887 (5/30/07).
4103 Open Burning (Q)	1.1	1.7	5/17/07	Proposed 74 FR 30485 (6/26/09).
4703 Sta. Gas Turbines (S)	0.6	1.9	8/17/06	NPR signed 6/22/07.
Long-term measures	5.0	.....	.....	See discussion below.
NO _x Total	21.1	27.6		
Rule No. and description	2004 SIP commitment (2010-tpd)	Achieved emission reductions (2010-tpd)	Local adoption	Submittal date or approval cite/date
VOC Control Measures				
4409 Oil & Gas Fug. (A)	4.7	5.1	4/20/05	71 FR 14653 (3/23/06).
4455 Ref. & Chem. Fug. (B)	0.2	0.3	4/20/05	71 FR 14653 (3/23/06).
4694 Wineries (F)	0.7	.....	12/15/05	See note below.
4565 Composting/Biosolids (J)	0.1	.....	3/15/07	See note below.
4612 Automotive Coating (incorporates Rule 4602)(K)	0.1	1.0	9/20/07	Proposed 74 FR 28467 (6/16/09).
4570 CAFO Rule (L)	15.8	17.7	6/15/06	NPR signed 6/30/09.
4662 Org. Solvent Degreasing (M) .....	.....	.....	.....	Proposed 74 FR 27084 (June 8, 2009).
4663 Org. Sol. Cleaning (M)	1.3	3.1	9/20/07	Proposed 74 FR 27084 (June 8, 2009).
4603 Metal Parts/Products (M) .....	.....	.....	.....	Proposed 74 FR 28467 (June 16, 2009).
4604 Can and Coil Coating (M) .....	.....	.....	.....	Proposed 74 FR 28467 (6/16/09).
4605 Aerospace Coating (M) .....	.....	.....	.....	NPR signed 6/30/09.
4606 Wood Products Coating (M) .....	.....	.....	.....	NPR signed 6/26/09.
4607 Graphic Arts (M) .....	.....	.....	.....	NPR signed 6/26/09.
4612 Automotive Coating (M) .....	.....	.....	.....	Proposed 74 FR 28467 (6/16/09).
4653 Adhesives (M) .....	.....	.....	.....	NPR signed 6/26/09.
4684 Polyester Resin Operation (M) .....	.....	.....	.....	NPR signed 6/30/09.
4401 Steam-Enhanced Oil-well (O)	1.4	0.3	12/14/06	NPR signed 6/30/09.
4651 Soil Decontamination (P)	<0.05	0.0	9/20/07	NPR signed 6/22/09.
4103 Open Burning (Q)	2.9	3.9	5/17/07	Proposed 74 FR 30485 (6/26/09).
4682 Polymeric Foam Mfg. (R)	0.1	.....	9/20/07	See note below.
4621 & 4624 Gasoline storage & trans. (T & U)	0.9	1.9	12/20/07	NPRs signed 6/22/09 and 6/26/09.
Long-term measures	5	.....	.....	See discussion below.
VOC total	33.3	33.3		

Note: This rule has been adopted and submitted. EPA is currently reviewing the rule for SIP action. Numbers may not add to totals because of rounding.

As can be seen from Table 2, the District also committed to achieve an additional 5 tpd NO_x and 5 tpd of VOC reductions from unidentified long-term measures. The status of this aggregate commitment is discussed further below. In total, the District committed to reductions of 33.3 tpd of VOC and 21.1 tpd of NO_x by 2010. See Table 1 above.

B. State commitments and rule adoption. The 2003 State Strategy, adopted prior to the 2004 SIP, includes a commitment to reduce NO_x emissions in the SJV area by 10 tpd by 2010.¹² 2003 State Strategy, I–24 through I–26. Possible measures to achieve these reductions are described and listed in the 2003 State Strategy at I–14 through I–26 and ARB Resolution 03–22, Attachment A. The 2003 State Strategy also states that beyond its emission reduction commitment, new commitments to achieve further VOC¹³ and NO_x reductions would be needed for the future SJV 1-hour ozone plan (which the SJVAPCD and ARB subsequently adopted as the 2004 SIP) and would be considered as part of that plan. 2003 State Strategy, I–26. To that end, the 2004 SIP incorporates the 2003 State Strategy as it applies to the area and includes an additional commitment by the State to achieve by the beginning of the 2010 ozone season emissions reductions of 10 tpd NO_x and 15 tpd VOC.

Although the 2003 State Strategy identifies possible control measures that could deliver these reductions, the State's commitment is only to achieve these NO_x and VOC emission reductions in the aggregate by the beginning of the 2010 ozone season. Thus the State's total enforceable commitments in the 2004 SIP are to achieve 20 tpd NO_x and 15 tpd VOC emission reductions in the aggregate by 2010. See 2003 State Strategy, pages I–7 through I–9 and I–26; ARB Board Resolution 04–29, October 28, 2004; ARB Staff Report, pages 29–30; 2004 SIP at section 4.7 (including Table 4–3 which duplicates Table I–2 in the 2003 State Strategy).¹⁴

¹¹ Table 1 in the 2008 Clarifications erroneously gives this reduction as 1.6 tpd. See e-mail, Jessi Hafer, SJVAPCD, to Frances Wicher, EPA, February 18, 2009, "Reductions from 1-hour SIP clarifications."

¹² The 2003 State Strategy makes clear that this commitment was intended for immediate inclusion in the 2003 PM–10 plan for the SJV area and for later inclusion in the 1-hour ozone plan for the SJV area. State Strategy, I–23 and I–26.

¹³ The State uses the term "reactive organic gases" (ROG) in its documents. For the purposes of this proposed rule, VOC and ROG are interchangeable.

¹⁴ In these documents the State's commitment is sometimes referred to as 20 tpd NO_x and sometimes as 10 tpd NO_x. The 20 tpd reference is to ARB's

3. EPA's Evaluation of the Control Measures in the SIP Submittals

a. RACM/RACT Demonstration

As described above, with respect to the RACM requirement, the District evaluated a range of potentially available measures for inclusion in its 2004 SIP and committed to adopt those it found to be feasible for attaining the 1-hour ozone standard. The process and the criteria the District used to select certain measures and reject others are consistent with EPA's RACM guidance. We also describe above the measure evaluation process undertaken by the State, the SJV RTPAs and the SJV local jurisdictions. This process is also consistent with EPA's RACM guidance. See General Preamble at 13560 and Seitz memo.

Based on our review of the results of these RACM analyses, the 2003 State Strategy and the District's and California's adopted rules and commitments to adopt and implement controls, we propose to find that there are, at this time, no additional reasonably available measures that would advance attainment of the 1-hour ozone standard in the SJV area. We estimate that it would take an additional reduction of from 3.7 to 6.2 tpd VOC and 13.7 to 17.0 tpd NO_x to advance attainment by one year in the San Joaquin Valley. See TSD, Section V. No reasonably available unadopted measures identified in the 2004 SIP, 2003 State Strategy, and revised 8-hour ozone RACT demonstration plan, either individually or collectively, could deliver this level of emission reductions. See TSD, Section V for more details.

Therefore, we propose to find that the 2004 SIP, together with the 2003 State Strategy, provides for the implementation of RACM as required by CAA section 172(c)(1). This proposed finding does not affect the District's continuing obligation under the CAA to implement RACT pursuant to CAA section 182(b)(2) and 40 CFR 51.905(a)(1)(ii).

b. Enforceable Limitations and Other Control Measures

i. SJVAPCD Measures

Every District baseline and interim rule has been either approved into the SIP or replaced by a SIP-approved

commitment for 10 tpd NO_x in the Statewide Strategy and ARB's additional commitment for 10 tpd NO_x in the 2004 SIP at section 4.7 and ARB Board Resolution 04–29. See also ARB Staff Report for the 2004 SIP at 29. The 10 tpd reference is to ARB's additional commitment for 10 tpd NO_x in the 2004 SIP at section 4.7 and ARB Resolution 04–29.

revision to that rule. See Table 8 in the TSD. Emission reductions from these rules are fully creditable in attainment and ROP demonstrations and may be used to meet other CAA requirements, such as contingency measures.

As shown above and discussed further below, the 2008 Clarifications and Table 2 above demonstrate that the District has fulfilled its control strategy commitments in the 2004 SIP to adopt specific rules. The reductions from these adopted rules have exceeded the District's total emission reduction commitments, including its commitments for reductions from long-term measures. We have either approved or proposed to approve all measures relied upon to achieve these emission reductions; therefore, the reductions from these measures are or will be, when finally approved, fully creditable in attainment and ROP demonstrations and may be used to meet other CAA requirements.

To the extent such measures are not credited for attainment or ROP, they may also be used as contingency measures that would be triggered by a failure to attain or to make reasonable further progress.

ii. State Measures and Commitments

A. Section 209 Waiver Measures.

California's motor vehicle emissions control program predates the first Federal statute regulating motor vehicle emissions, the Motor Vehicle Air Pollution Control Act of 1965 (which amended the CAA of 1963). In further CAA amendments, referred to as the Air Quality Act of 1967 (Pub. L. 90–148), Congress allowed the State of California, and only California, a waiver of the Air Quality Act's pre-emption of State emissions standards for new motor vehicles or new motor vehicle engines because of California's pioneering efforts and unique problems. This was not changed when the statute was amended in 1970. The 1977 amendments to the CAA expanded the flexibility granted to California in order "to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare." (H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–2 (1977). So long as California determines that its motor vehicle standards are "in the aggregate" at least as protective of public health and welfare as applicable Federal standards, title II of the CAA requires EPA, unless it makes certain findings, to waive the Act's general prohibition on State adoption and enforcement of standards relating to the control of emissions from new motor vehicles or new motor

vehicle engines. See CAA section 209(a) and (b).

In the Agency's review of the California SIP and its many revisions, EPA has historically allowed emission reduction credit for the motor vehicle emissions standards that are subject to a section 209(b) waiver without requiring California to submit the standards themselves to EPA for approval as part of the California SIP. In this respect EPA treated these rules similarly to the Federal motor vehicle control requirements, which EPA has always allowed States to credit in their SIPs without submitting the program as a SIP revision. CAA section 193, enacted as part of the 1990 Amendments to the CAA, is a general savings clause that provides for, among other things, EPA statutory interpretations that predate those amendments to remain in effect so long as not inconsistent with the Act. At the time it enacted section 193, Congress did not insert any language into the statute rendering EPA's treatment of California's motor vehicle standards inconsistent with the Act. Thus, in section 193, Congress effectively ratified EPA's longstanding pre-1990 practice of allowing emission reduction credit for California standards subject to the waiver process notwithstanding the absence of the standards in the SIP itself.

As part of the 1990 Amendments to the CAA, Congress enacted subsection (e) of section 209. In nearly identical language to subsections (a) and (b) of section 209, subsection (e) sets forth the Federal pre-emption of State emissions standards for nonroad vehicles or engines but allows the State of California, and only California, a waiver of pre-emption (with certain exceptions) under criteria that mirror the section 209(b) waiver provisions for motor vehicles. Since 1990, EPA has treated such nonroad standards in the same manner as California motor vehicle standards, i.e., allowing credit for standards subject to the waiver process without requiring submittal of the standards as part of the SIP. Congress is presumed to be aware of agency interpretations and its subsequent revision of the statute to add subsection (e) without overruling EPA's interpretation with respect to motor vehicle standards is further compelling evidence that the Agency correctly interpreted congressional intent with respect to crediting California requirements subject to a section 209 waiver without requiring California to submit the standards themselves to EPA for approval as part of the California SIP.

B. Non-waiver measures. In separate proposed rules, we have proposed to approve the latest revisions to the gasoline and diesel fuel standards (proposed rule signed June 30, 2009 and will be published in early July, 2009¹⁵) and consumer products rules (74 FR 30481 (June 26, 2009)). We also will be proposing action soon on the State's I/M program. The reductions from these measures will be, if finally approved into the SIP, fully creditable in attainment and ROP demonstrations. To the extent such measures are not credited for attainment or ROP, they may also be used as contingency measures that would be triggered by a failure to attain or to make reasonable further progress.

C. State commitments. As stated above, measures already adopted by the District and State (both prior to and pursuant to the 2004 SIP) provide the majority of emission reductions needed to demonstrate attainment. The balance of the needed reductions is in the form of enforceable commitments by ARB. EPA believes, consistent with past practice, that the CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.¹⁶ Once EPA determines that

¹⁵ These fuel regulations do not include the Low Carbon Fuel Standards adopted by ARB on April 24, 2009.

¹⁶ Commitments approved by EPA under section 110(k)(3) of the CAA are enforceable by EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments: See, e.g., *American Lung Ass'n of N.J. v. Kean*, 670 F. Supp. 1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC, Inc. v. N.Y. State Dept. of Env. Cons.*, 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't v. Deukmejian*, 731 F. Supp. 1448, recon. granted in part, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air v. South Coast Air Quality Mgt. Dist.*, No. CV 97-6916-HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under CAA Section 179(a), which starts an 18-month period for the State to correct the non-implementation before mandatory sanctions are imposed.

CAA section 110(a)(2)(A) provides that each SIP "shall include enforceable emission limitations and other control measures, means or techniques * * * as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirement of the Act." Section 172(c)(6) of the Act, which applies to nonattainment SIPs, is virtually identical to section 110(a)(2)(A). The language in these sections of the CAA is quite broad, allowing a SIP to contain any "means or techniques" that EPA determines are "necessary or appropriate" to meet CAA requirements, such that the area will attain as expeditiously as practicable but no later than the designated date. Furthermore, the express allowance for "schedules and timetables" demonstrates that Congress understood that all

circumstances warrant consideration of an enforceable commitment, EPA considers three factors in determining whether to approve the enforceable commitment: (a) does the commitment address a limited portion of the statutorily-required program; (b) is the State capable of fulfilling its commitment; and (c) is the commitment for a reasonable and appropriate period of time.¹⁷

We believe that, in acting on the 2004 SIP and 2003 State Strategy, circumstances warrant the consideration of enforceable commitments. As shown in Table 1 and discussed below in section III.D., the majority of emission reductions needed to demonstrate attainment and all of the emission reductions needed to demonstrate ROP come from rules and regulations that were adopted prior to the plan's submittal in November 2004, i.e., they come from the baseline and interim measures. All of these rules and regulations have been approved, proposed for approval, granted a waiver, or promulgated by EPA.

As a result of these State and District efforts, most sources in the SJV area were already subject to stringent rules prior to the plan's development, leaving fewer opportunities to reduce emissions. In the 2004 SIP and the 2003 State Strategy, SJVAPCD and ARB identified potential control measures that could achieve the additional emission reductions needed for attainment (see 2004 SIP, sections 4.2.4 and 4.3 and 2003 State Strategy, sections II-IV.). However, the timeline needed to develop, adopt, and implement these measures went well beyond the November 15, 2004 deadline to submit the SJV's extreme area plan.¹⁸

Given these circumstances, we believe that the reliance in the 2004 SIP on enforceable commitments was warranted. As noted before, SJVAPCD has now fully satisfied its 2004 SIP commitments, leaving just ARB's commitment remaining. We now consider the three factors to determine whether ARB's commitment is approvable.

First, we look to see if the commitment addresses a limited portion of a statutory requirement. Only the

required controls might not have to be in place before a SIP could be fully approved.

¹⁷ The U.S. Court of Appeals for the Fifth Circuit upheld EPA's interpretation of CAA sections 110(a)(2)(A) and 172(c)(6) and the Agency's use and application of the three factor test in approving enforceable commitments in the Houston-Galveston ozone SIP. *BCCA Appeal Group et al. v. EPA et al.*, 355 F.3d 817 (5th Cir. 2003).

¹⁸ This deadline was set pursuant to CAA section 182(i), when the SJV was reclassified to extreme on April 16, 2004 at 69 FR 20550.

attainment demonstration in the 2004 SIP relies on ARB's aggregate commitment to achieve reductions of 20 tpd NO_x and 15 tpd VOC in the SJV area by 2010. Because the District's rules are now anticipated to achieve more

emission reductions than anticipated in the 2004 SIP (see Table 2 above), we expect that not all of the reductions committed to by ARB will be needed to demonstrate attainment. Table 3 below shows that the remaining reductions

from commitments needed to attain the 1-hour ozone standard will be 13.5 tpd NO_x or 6.3% and 15 tpd VOC or 11.6 percent or 8.3 percent of the combined NO_x and VOC needed for attainment.

TABLE 3—REMAINING COMMITMENT PORTION OF THE 2004 SIP REDUCTIONS IN TONS PER DAY FOR 2010

	NO _x	VOC
Reductions needed to attain	213.3	129.1
Reductions from baseline measures adopted by 9/02 and interim measures	172.2	80.8
Reductions needed from commitments in 2004 SIP	41.1	48.7
Reductions achieved from SJVAPCD rules that are approved or proposed for approval	27.6	33.3
Reductions needed to attain from commitments	13.5	15
Percent of reductions needed to attain from commitments	6.3	11.6

Sources: ARB Staff Report for the 2004 SIP, Table III-6; 2008 Clarifications, Table 1.

Given the State's efforts to date, we believe this relatively small portion of reductions from enforceable commitments in the 2004 SIP is acceptable.

Second, we look to see if the State is capable of fulfilling its commitment. ARB has recently submitted information on its efforts to fulfill its commitment in the 2004 SIP and 2003 State Strategy. See Letter, James Goldstene, ARB, to Laura Yoshii, EPA, June 29, 2009. Overall, ARB adopted rules between July 2003 and October 2007 that are expected to achieve 14.1 tpd NO_x and 3.3 tpd VOC. Attached to this letter is a list of these measures which includes tighter diesel fuel standards and tighter consumer product limits which we have proposed to approve, and a number of waiver measures. These measures represent the most stringent regulations yet enacted in the country.

The list, however, does not include a number of State programs that may reduce emissions between now and the 2010 attainment deadline (e.g., California's greenhouse gas motor vehicle standards and limits on pesticide emissions in the SJV area adopted by DPR). Moreover, in 2007, ARB adopted a revised State Strategy that continues its program of identifying, evaluating, developing and adopting new or tighter controls on sources within its jurisdiction.¹⁹ See 2007 State Strategy as revised and updated on April 24, 2009.

Given the evidence of the State's efforts to date and its continuing program to adopt controls, we believe that the State will be able to meet its enforceable commitments to achieve 20 tpd NO_x and 15 tpd VOC by 2010. We, therefore, conclude that the second factor is satisfied.

Finally, we look to see if the commitment is for a reasonable and appropriate period of time. In order to meet the commitment to achieve reductions of 15 tpd VOC and 20 tpd NO_x by the beginning of the 2010 ozone season, the State projected an ambitious rule development, adoption, and implementation schedule in the 2003 State Strategy. This projected schedule reasonably anticipated sufficient time to achieve the committed reductions by 2010. See 2003 State Strategy, Tables I-7 and I-10. Most projected adoption dates for measures that could fulfill the commitment were in 2006 or earlier, with implementation in 2006 to 2008. These dates were all well before the SJV area's required attainment deadline of November 15, 2010. They are also reasonable given the type of measures that were contemplated (e.g., retrofit controls for existing heavy-duty off-road diesel equipment), measures that require significant lead times to achieve reductions. Therefore, the State's schedule was reasonable and appropriate for achieving its commitment, and we conclude that the third factor is satisfied.

For the above reasons, we believe that the three factors EPA considers in determining whether to approve enforceable commitments are satisfactorily addressed with respect to the State's commitment. We are therefore proposing to approve the State's commitment in the 2004 SIP, ARB Board Resolution 04-29 and Final 2003 State Strategy to achieve 20 tpd NO_x and 15 tpd VOC reductions by 2010. Final approval of this commitment would make the commitment enforceable by EPA and by citizens.

B. Emission Inventories

We have evaluated the emission inventories in the 2004 SIP to determine

if they are consistent with EPA guidance (General Preamble at 13502) and adequate to support that plan's ROP and attainment demonstrations. Chapter 3 of the 2004 SIP presents the baseline and projected emission inventories relied on for the attainment and ROP demonstrations. This chapter also discusses the methodology used to determine 1999 emissions and identifies the growth and control factors used to project emissions for the 2000 baseline inventory and the 2008 (ROP milestone) and 2010 (attainment) projected year inventories. The plan includes weekday summer inventories for the base year of 2000 and projected baseline inventories for 2008 and 2010 for all major source categories. Emissions are calculated for the two major ozone precursors—NO_x and VOC—as well as for the less significant precursor, carbon monoxide (CO). 2004 SIP at Table 3-1. Motor vehicle emissions were based on estimates of vehicle miles traveled (VMT) provided by the regional transportation planning agencies and the California Department of Transportation. The plan uses ARB's Emission FACTor (EMFAC) 2002, version 2.2, to calculate the emission factors for cars, trucks and buses. At the time the 2004 SIP was developed, EMFAC 2002 was the mobile source model approved for use in California's SIPs 68 FR 15720 (April 1, 2003).

We have determined that the 2000 baseyear emission inventory in the 2004 SIP was comprehensive, accurate, and current at the time it was submitted on November 15, 2004 and that this inventory as well as the 2008 and 2010 projected inventories were prepared consistent with EPA guidance. Accordingly, we propose to find that these inventories provide an appropriate basis for the ROP and attainment demonstrations in the 2004 SIP.

¹⁹ The State's current rulemaking agenda for 2009 can be found at: <http://www.arb.ca.gov/regact/2009rulemakingcalendar.pdf>.

C. Rate of Progress Demonstrations

1. Requirements for Rate of Progress Demonstrations

CAA section 172(c) requires nonattainment area plans to provide for reasonable further progress (RFP) which is defined in section 171(1) as such annual incremental reductions in emissions as are required in part D or may reasonably be required by the Administrator in order to ensure attainment of the relevant ambient standard by the applicable date.

CAA sections 182(c)(2) and (e) require that serious and above area SIPs include ROP quantitative milestones that are to be achieved every 3 years after 1996 until attainment. For ozone areas classified as serious and above, section 182(c)(2) requires that the SIP must provide for reductions in ozone-season, weekday VOC emissions of at least 3 percent per year net of growth averaged over each consecutive 3-year period. This is in addition to the 15 percent reduction over the first 6-year period required by CAA section 182(b)(1) for areas classified as moderate and above. The CAA requires that these milestones

be calculated from the 1990 inventory after excluding, among other things, emission reductions from “[a]ny measure related to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990” and emission reductions from certain Federal gasoline volatility requirements. CAA section 182(b)(1)(B)–(D). EPA has issued guidance on meeting 1-hour ozone ROP requirements. See General Preamble at 13516 and “Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration,” EPA-452/R-93-015, OAQPS, EPA, February 18, 1994 (corrected).

CAA section 182(c)(2)(C) allows for NO_x reductions that occur after 1990 to be used to meet the post-1996 ROP emission reduction requirements, provided that such NO_x reductions meet the criteria outlined in the CAA and EPA guidance. The criteria require that: (1) the sum of all creditable VOC and NO_x reductions must meet the 3 percent per year ROP requirement; (2) the substitution is on a percent-for-percent of adjusted base year emissions for the relevant pollutant; and (3) the

sum of all substituted NO_x reductions cannot be greater than the cumulative NO_x reductions required by the modeled attainment demonstration. See General Preamble at 13517 and “NO_x Substitution Guidance,” OAQPS, EPA, December 1993.

Our guidance in the General Preamble states that by meeting the specific ROP milestones discussed above, the general RFP requirements in CAA section 172(c)(2) will also be satisfied. General Preamble at 13518.

Rate of progress reductions as well as the NO_x requirements of CAA section 182(f) remain applicable requirements under the 8-hour ozone implementation rule for areas that are nonattainment for both the 1-hour and 8-hour ozone standards. See § 51.905(a)(1)(i) and § 51.900(f)(4) and (12).

2. Rate of Progress Demonstrations in the 2004 SIP and the 2008 Clarifications

Chapter 7 of the 2004 SIP, updated by Table 2 in the 2008 Clarifications, provides a demonstration that the SJV area meets both the 2008 and 2010 ROP milestones. We have summarized this ROP demonstration in Table 4.

TABLE 4—SAN JOAQUIN RATE OF PROGRESS DEMONSTRATIONS

[Summer planning tons per day]

	Base-year	Milestone year	
	1990	2008	2010
VOC Calculations			
A. 1990 Baseline VOC	633.2	633.2	633.2
B. CA Pre-1990 MV standards adjustment		120.1	123.8
C. Adjusted 1990 baseline VOC in the milestone year (Line A–Line B)		513.1	509.4
D. Cumulative VOC reductions needed to meet milestone		261.7	209.4
E. Target level of VOC needed to meet ROP requirement (Line C–Line D)		251.4	219.0
F. Projected level (baseline) of VOC in milestone year with adopted controls only		369.4	362.7
G. VOC ROP shortfall (Line F–Line E)		118.0	143.7
H. VOC ROP shortfall (% of adjusted baseline)		23.0%	28.2%
NO_x Calculations			
A. 1990 Baseline NO _x	805.1	805.1	805.1
B. CA Pre-1990 MV standards adjustment		114.0	116.6
C. Adjusted 1990 baseline NO _x in the milestone year (Line A–Line B)		691.1	688.5
D. Projected level (baseline) of NO _x in milestone year with adopted controls only		411.0	384.5
E. Change in NO _x since 1990 (Line C–Line D)		280.1	304.0
F. Change in NO _x since 1990 (% of adjusted baseline)		40.5%	44.2%
G. VOC ROP shortfall		23.0%	28.2%
H. % Surplus NO _x reductions after offsetting VOC ROP shortfall available for contingency measures (Line F–Line G)		17.5%	16.0%

²⁰ The ROP demonstration relies on “the emission control program as it existed when the Valley’s 2004 SIP was submitted * * *” 2008 Clarification

at 6. As discussed in section III.C.2.c.i. above, all baseline measures are either federal, SIP-approved, proposed for approval, or otherwise creditable in ROP demonstrations.

Because there are insufficient VOC reductions to meet the milestones, the ROP demonstration relies on NO_x substitution, consistent with EPA's guidance, to show that the area meets the emission reduction requirements for 2008 and 2010. The demonstration does not depend on reductions from any measures that are not either Federal, SIP-approved, proposed for approval or State waiver measures or on reductions from any measures that are not creditable under the terms of section 182(b)(1).²⁰

3. EPA's Evaluation of the Rate of Progress Demonstrations in the SIP Submittals

The 2008 Clarifications follow EPA's guidance on addressing the pre-1990 motor vehicle program adjustments, using the pre-1990 California motor vehicle exhaust and evaporative standards in lieu of the national motor vehicle control program.²¹ Because the 2004 SIP and the 2008 Clarifications demonstrate that sufficient emission reductions have or will be achieved to meet the 2008 and 2010 ROP milestones, we propose to approve the ROP provisions in these documents as meeting the requirements of CAA section 182(c)(2). As stated above, if the ROP milestones are met, we deem the general RFP requirements of CAA section 172(c)(2) to also have been met. Therefore, we also propose to approve the ROP provisions as meeting the requirements of CAA sections 172(c)(2).

D. Attainment Demonstration

1. Requirements for Attainment Demonstrations

One-hour ozone nonattainment areas classified as extreme under CAA section 181(b)(3) must demonstrate attainment "as expeditiously as practicable" but not later than the date specified in CAA section 181(a), November 15, 2010. CAA Section 182(c)(2)(A) requires serious, severe and extreme areas to use photochemical grid air quality modeling or an analytical method EPA determines to be as effective.

For areas such as the SJV area that did not have a fully approved attainment demonstration for the 1-hour ozone

standard at the time they were designated nonattainment for the 8-hour ozone standard, the Phase 1 rule required the submission of the 1-hour ozone attainment demonstration or, alternatively, the early submission of an 8-hour attainment demonstration or an early increment of progress toward attainment of the 8-hour standard. See 40 CFR 51.905(a)(1)(ii). For the SJV area, California submitted an attainment demonstration for the 1-hour ozone standard.

2. Air Quality Modeling in the 2004 SIP

For purposes of demonstrating attainment, CAA section 182(c)(2)(A) requires extreme areas to use photochemical grid modeling or an analytical method EPA determines to be as effective. EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results.²² The photochemical grid modeling analysis is performed for days when the meteorological conditions are conducive to the formation of ozone. For purposes of developing the information to put into the model, the State must select days in the past with elevated ozone levels that are representative of the ozone pollution problem in the nonattainment area and a modeling domain that encompasses the nonattainment area. The State must then develop both meteorological data describing atmospheric conditions for the selected days and an emission inventory to evaluate the model's ability to reproduce the monitored air quality values. Finally, the State needs to verify that the model is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests. Once these steps are satisfactorily completed, the model can be used to generate future year air quality estimates to support an attainment demonstration. A future-year emissions inventory, which includes growth and controls through the attainment year, is developed for input

to the model to predict air quality in the attainment year.

For the 1-hour ozone standard, the modeled attainment test compares model-predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the standard. For the 1-hour ozone standard, a predicted concentration above 0.124 parts per million (ppm) indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to attain the standard.

Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the standard or at an acceptable upper limit above the NAAQS permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the standard, a weight of evidence determination, which incorporates other analyses such as air quality and emissions trends, may be used to address the uncertainty inherent in the application of photochemical grid models.

EPA recommended that States use the Urban Airshed Model (UAM) version IV as the ozone model of choice for the grid-point modeling required by the CAA for 1-hour ozone attainment demonstrations.²³ Other models are allowed if the State shows that they are scientifically valid and they perform as well as (i.e., are just as reliable), or better than, UAM IV. California selected the Comprehensive Air Quality Model with Extensions (CAMx) based on slightly better performance for the SJV area than the other tested models. Details on the model and its selection can be found in Appendix D to the 2004 SIP. The meteorological modeling was based on a hybrid approach, using the Meso-scale Model 5 (MM5) and Calmet models, because of the ability of this modeling system to reproduce the measured design value near the Fresno monitoring site.

Information on how the CAMx modeling meets EPA guidance is summarized here and detailed in the State's submittals. 2004 SIP at Chapter 5 and Appendix D. The air quality modeling domain extends from the Oregon border in the north to Los Angeles County in the south, and from the Pacific Ocean in the west to Nevada in the east.

EPA's Guideline on the use of photochemical grid models recommends that areas model three or

²⁰ The ROP demonstration relies on "the emission control program as it existed when the Valley's 2004 SIP was submitted * * * 2008 Clarification at 6. As discussed in section III.C.2.c.i. above, all baseline measures are either federal, SIP-approved, proposed for approval, or otherwise creditable in ROP demonstrations.

²¹ See "How to calculate non-creditable reductions for motor vehicle programs in California as required for reasonable further progress (RFP) SIPs," EPA, Office of Transportation and Air Quality, Transportation and Regional Program Division, September 6, 2007.

²² EPA has issued the following guidance regarding air quality modeling used to demonstrate attainment of the 1-hour ozone NAAQS: "Guideline for Regulatory Application of the Urban Airshed Model," EPA-450/4-91-013 (July 1991); "Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS," EPA-454/B-95-007 (June 1996); "Guidance for the 1-hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstrations, Mid-Course Review Guidance" (March 28, 2002); and "Guidance for Improving Weight-of-Evidence Through Identification of Additional Emission Reduction Not Modeled" (Nov. 99). Copies of these documents may be found on EPA's Web site at <http://www.epa.gov/ttn/scram> and in the docket for this proposed rule.

²³ EPA has not recommended a model for attainment demonstrations for the 8-hour ozone standard.

more episodes, including the types of weather conditions most conducive to ozone formation. The final photochemical grid modeling submitted by California focused on the CAMx modeling for one several day episode, July 27 to August 2, 2000. This episode represents high measured ozone, with a peak measured concentration of 151 parts per billion (ppb) at Bakersfield on August 2, 2000. The episode was typical of the worst case meteorology (i.e., the highest potential for ozone formation) of episodes in the San Joaquin Valley.

The CAMx model was run using the MM5/CALMET meteorological processor with State emission inventories for the 2000 base year and with projected emissions representing grown and controlled emissions for the attainment year. The projected 2010 emissions inventory was developed for modeling simulations and included the effects of projected growth and control measures adopted prior to September 2002, as discussed in section II.C. below.

The CAMx simulation for July 30, with the emission inventory for the year

2010, was used to develop targets for reduction of VOC and NO_x in the attainment year.

EPA has established the following guidelines for model performance: unpaired peak ratio 0.80–1.2, normalized bias +/- 15 percent, and gross error less than 35 percent. The model performance is presented in Appendix D to the 2004 SIP for the Fresno and Bakersfield areas, representing areas of highest 1-hour ozone levels in the SJV area and shows that the CAMx model predicts ozone within the quality limits recommended in EPA guidance on most days for most subregions of the modeling domain. On those days for which a subregion had peak measured ozone concentrations above 125 ppb, the model performance meets the EPA recommended criteria.

We conclude that the modeling is consistent with the CAA and EPA modeling guidance; therefore, we propose to find that the modeling analysis is adequate to support the attainment demonstration in the 2004 SIP. For more information on EPA's

review of the modeling, see the TSD, section II.

3. The Attainment Demonstration in the 2004 SIP

The 2004 SIP's air quality modeling identified the SJV area's 2010 attainment target as 343.5 tpd NO_x and 314.4 tpd VOC or a reduction of 213.3 tpd of NO_x and 129.1 tpd of VOC from the 2000 projected baseline emissions. 2004 SIP, section 5.6; ARB Staff Report, section III.C. See also Table 1 above.

The 2004 SIP shows that Federal rules, rules approved or proposed for approval by EPA, the State's waiver measures, and the State's commitment for the SJV area in the 2003 State Strategy reduce the 2000 projected baseline emissions by 219.8 tpd of NO_x and 129.5 tpd of VOC by the beginning of the 2010 ozone season. These levels represent a decrease in emissions from the 2000 baseline of 38 percent NO_x and 29 percent VOC and are in excess of the reductions needed for attainment in the SJV area. Table 5 provides a summary of the 2004 SIP's attainment demonstration.

TABLE 5—2004 SIP ATTAINMENT DEMONSTRATION SUMMARY AS UPDATED BY 2008 CLARIFICATIONS

	NO _x (tpd)	VOC (tpd)
2000 baseline	556.8	443.5
2010 attainment target	343.5	314.4
Total reductions needed to attain in 2010	213.3	129.1
Reductions from creditable baseline measures and interim measures	172.2	80.8
Reductions from SIP-approved (or proposed for approval) rules	27.6	33.3
Reductions from enforceable State commitment	20	15
Total reductions from Federal rules, measures approved or proposed for approval, waiver measures, and enforceable commitments	219.8	129.1

The reductions needed for attainment of the 1-hour ozone standard in the SJV area derive from ambitious State and District rule development projects to adopt or amend new regulations to tighten controls expeditiously on existing sources and to regulate a few previously uncontrolled sources.²⁴ Moreover, both agencies set tight compliance schedules for their amended and newly adopted rules, requiring full compliance in most cases within one year or less. Attainment reductions also come from the benefits of mobile source fleet turnover to meet increasingly stringent Federal and State emission standards. Finally, as discussed

previously, no other reasonably available control measure or set of RACMs have been identified that can advance attainment of the 1-hour ozone standard in the SJV area.

Based on our evaluation of the State's submittals, we propose to approve the 2004 SIP's demonstration of attainment as meeting the requirements of CAA sections 172 and 181 and 40 CFR 51.905(a)(1)(ii) that areas classified as extreme demonstrate attainment as expeditiously as practicable but no later than November 15, 2010.

E. Contingency Measures

1. Requirements for Contingency Measures

Sections 172(c)(9) and 182(c)(9) of the CAA require that SIPs contain contingency measures that will take effect without further action by the State

or EPA if an area fails to attain the ozone standard by the applicable date (section 172(c)(9)) or fails to meet a ROP milestone (section 182(c)(9)).

The Act does not specify how many contingency measures are needed or the magnitude of emission reductions that must be provided by these measures. However, EPA provided initial guidance interpreting the contingency measure requirements in the General Preamble at 13510. Our interpretation is based upon the language in sections 172(c)(9) and 182(c)(9) in conjunction with the control measure requirements of sections 172(c), 182(b) and 182(c)(2)(B), the reclassification and failure to attain provisions of section 181(b) and other provisions. In the General Preamble, EPA indicated that states with moderate and above ozone nonattainment areas should include sufficient contingency

²⁴ We note that the majority of emission reductions needed to demonstrate attainment (63% of the VOC and 81% of the NO_x) come from baseline or interim measures, i.e., from measures adopted prior to October, 2004. See Table 2 above.

measures so that, upon implementation of such measures, additional emission reductions of 3 percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure is identified. The States must show that the contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions.

In subsequent guidance, EPA stated that contingency measures could be implemented early, i.e., prior to the milestone or attainment date.²⁵ Under this policy, States are allowed to use excess reductions from already adopted measures to meet the CAA sections 172(c)(9) and 182(c)(9) contingency measures requirement. The key is that the CAA requires extra reductions that are not relied on for ROP or attainment and that will provide a cushion while the plan is being revised to fully address the failure. Nothing in the CAA precludes a State from implementing such measures before they are triggered. This approach has been approved by EPA in numerous SIPs. See 62 FR 15844 (April 3, 1997); 62 FR 66279 (December 18, 1997); 66 FR 30811 (June 8, 2001); 66 FR 586 and 66 FR 634 (January 3, 2001). A recent court ruling upheld this approach. See *LEAN v. EPA*, 382 F.3d 575 (5th Cir. 2004). 70 FR 71611, 71651.

As discussed in section II above, EPA initially determined that contingency measures for the 1-hour ozone standard would not be required once the standard was revoked. See 70 FR 30592 (May 26, 2005). However, the D.C. Circuit in *South Coast* vacated the provision of the Phase 1 rule that waived the 1-hour contingency measure requirements. Consequently, States subject to the anti-backsliding requirements must continue to meet the CAA sections 172(c)(9) and 182(c)(9) requirements. We have recently proposed to revise § 51.900(f) in order to remove the vacated provision and to add language consistent with the Court's holding that contingency measures for failure to attain or to make reasonable further progress toward attaining the 1-hour standard continue to apply in such areas. See 74 FR 2936 (January 16, 2009).

2. Contingency Measures in the 2004 SIP and 2008 Clarifications

Table 2 in the 2008 Clarifications provides an updated ROP demonstration that shows that, after

meeting the VOC ROP milestones for 2008 and 2010 with NO_x substitution, there are still creditable NO_x reductions of 17.5 percent of the adjusted baseline for the 2008 milestone and 16 percent for the 2010 milestones. See also Table 4 in this proposed rule. The reductions shown in Table 2 in the 2008 Clarifications come from creditable measures adopted prior to September 2002 and not from any interim or control strategy measures. 2008 Clarifications, page 6.

In addition, Table 3 in the 2008 Clarifications, which is reproduced as Table 6 below, shows that on-road fleet turnover will continue to deliver substantial reductions in 2011 from adopted and creditable measures, i.e., an additional 10 tpd NO_x and 5 tpd VOC beyond the reductions shown in Tables 1 and 2 in the 2008 Clarifications. These reductions are available to serve as additional contingency reductions in 2011.

3. EPA's Evaluation of the Contingency Measures in the SIP Submittals

Table 2 of the 2008 Clarifications and Table 4 above show that there are significant additional NO_x reductions beyond the levels needed to meet the 2008 and 2010 ROP milestones in the SJV area. These reductions are more than the 3 percent excess reductions suggested by EPA's policy for contingency measures and come from fully adopted and creditable measures and occur in or prior to the milestone year. We therefore propose to approve the ROP contingency measures provisions in the SJV extreme area plan as meeting CAA section 182(c)(9).

For the attainment year, 2010, the requirement is to show that there are fully adopted contingency measures that will achieve emission reductions in excess of the levels needed for attainment and sufficient to provide continued ROP in the year after the attainment date, i.e., 3 percent reductions from the pre-1990 adjusted baseline, if triggered by a failure to attain. Consistent with the ROP demonstration, an additional 3 percent equates to approximately 15.3 tpd of VOC or 20.7 tpd of NO_x with NO_x substitution.²⁶

Table 4 above shows that there are no excess reductions from adopted measures in the 2004 SIP's attainment demonstration and that, in addition to the adopted measures that make significant reductions toward

attainment, the plan relies on commitments to adopt measures to achieve the additional reductions needed to demonstrate attainment. Table 6 below shows that there are 10 tpd NO_x and 5 tpd VOC in reductions in 2011 from adopted on-road mobile source measures that could serve to fulfill a portion of the attainment contingency measure requirement. However, these amounts collectively provide just a 2.4 percent rate of progress in 2011, short of the suggested 3 percent.

Based on our analysis and the information currently available to EPA, there are not enough excess reductions to satisfy the contingency measure requirement for the attainment demonstration. We therefore propose to disapprove the attainment contingency measures provision in the San Joaquin Valley extreme area plan as not meeting the requirements of CAA section 172(c)(9). The State may remedy this failure by submitting either new contingency measures or a demonstration that existing creditable measures provide, consistent with the guidance cited above, sufficient emission reductions in 2011.

F. Proposed Findings on Other Requirements for Extreme Nonattainment Areas

1. TCMs To Offset Growth in Motor Vehicle Emissions Under CAA Section 182(d)(1)

CAA section 182(d)(1)(A) requires that extreme areas submit transportation control measures (TCMs) sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips, and to provide (along with other measures) the reductions needed to meet ROP. This VMT offset requirement is a continuing applicable requirement for 1-hour ozone nonattainment areas under EPA's 8-hour ozone implementation rule. See 40 CFR 51.900(f)(11). EPA interprets this CAA provision to allow areas to meet the requirement by demonstrating that emissions from motor vehicles decline each year through the attainment year. General Preamble at 13522.

Information in the 2008 Clarifications and reproduced in Table 6 below shows that on-road mobile source emissions of VOC and NO_x decline steadily from 2000 to 2011. This decline in emissions is due to EPA's and California's on-road mobile source programs. As discussed above, these programs are fully creditable in attainment and ROP demonstrations and therefore can also be used to demonstrate compliance with CAA section 182(d)(1). Because

²⁵ See Memorandum from G.T. Helms, EPA, to EPA Air Branch Chiefs, Regions I-X, entitled "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas," August 13, 1993.

²⁶ States may use a combination of NO_x and VOC reductions to meet the 3 percent contingency requirement. See General Preamble at 13520, footnote 6.

emissions decline each year for both VOC and NO_x, the plan need not include additional TCMs to offset

growth; therefore, we propose to find that the 2004 SIP as amended by the

2008 Clarifications meets this CAA requirement.

TABLE 6—BASELINE MOTOR VEHICLE EMISSIONS 2000–2011

[San Joaquin Valley, Summer Planning, in tons per day]

Year	00	01	02	03	04	05	06	07	08	09	10	11
VOC	115	107	100	93	88	82	77	72	67	63	59	54
NO _x	223	218	211	201	192	184	176	166	157	148	137	127

The emission levels in Table 6 are derived from the inventory used in the modeling analysis for the 2004 SIP and are calculated using EMFAC2002, version 2.2, and the same transportation activity projections used in the 2004 SIP.

2. Clean Technology and/or Fuels for Boilers

CAA section 182(e)(3) provides that SIPs for extreme areas must require each new, modified, and existing electric utility and industrial and commercial boiler that emits more than 25 tpy of NO_x to burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low polluting fuel), or use advanced control technology (such as catalytic control technology or other comparably effective control methods). This requirement is a continuing applicable requirement for 1-hour ozone nonattainment areas under EPA's Phase 1 rule. See 40 CFR 51.905(a)(1)(i) and 51.900(f)(7).

Further guidance on this requirement is provided in the General Preamble at 13523. According to the General Preamble, boilers should generally be considered as any combustion equipment used to produce steam and would generally not include a process heater that transfers heat from combustion gases to process streams. General Preamble at 13523. In addition, boilers with rated heat inputs less than 15 million Btu (MMBtu) per hour which are oil or gas fired may generally be considered not subject to these requirements since it is unlikely that they will exceed the 25 tpy NO_x emission limit. General Preamble at 13524.

The 2004 SIP, which addresses the CAA section 182(e)(3) requirements on page 4–37, states that District Rules 4305, 4306, and 4352 address NO_x from affected boilers and that these rules meet the requirements of the CAA. Since submittal of the 2004 SIP, Rule 4305 has been superseded by Rules 4306, 4307, and 4308.

Rule 4306 “Boilers, Steam Generators, and Process Heaters—Phase 3” as revised on September 18, 2003, applies to any gaseous fuel or liquid fuel fired

boiler, steam generator, or process heater with a total rated heat input greater than 5 million Btu per hour. The emission limits in the rule, which range from 5 ppm to 30 ppm for gaseous fuels and is 40 ppm for liquid fuels, cannot be achieved without the use of advance control technologies. See “Alternative Control Techniques Document—NO_x Emissions from Industrial/Commercial/Institutional (ICI) Boilers,” Emissions Standards Division, EPA, March 1994. We approved Rule 4306 as a SIP revision on May 18, 2004 at 69 FR 28061.

Rule 4307 “Boilers, Steam Generators, and Process Heaters—2.0 MMBtu/hr to 5.0 MMBtu/hr,” as revised on April 20, 2006, applies to any gaseous fuel or liquid fuel fired boiler, steam generator, or process heater with a total rated heat input greater than 2.0 MMBtu per hour but less than 5.0 MMBtu per hour. Rule 4308 “Boilers, Steam Generators, and Process Heaters—0.075 MMBtu/hr to 2.0 MMBtu/hr,” as revised on October 20, 2005, applies to any gaseous fuel or liquid fuel fired boiler, steam generator, or process heater with a total rated heat input greater than 0.075 MMBtu per hour but less than 2.0 MMBtu per hour. The limits in these rules, which are 30 ppm for gaseous fuels and for 40 ppm for liquid fuels for units between 2 and 5 MM Btu/hour and between 30 ppm and 77 ppm for units between 0.75 and 5 MM Btu/ hour, could not be met without the use of advance control technologies. We approved both rules as SIP revisions on May 30, 2007 at 72 FR 29887.

Rule 4352 “Solid Fuel Fired Boilers, Steam Generators And Process Heaters,” as revised May 18, 2006, applies to any boiler, steam generator or process heater fired on solid fuel at a source that has a potential to emit more than 10 tons per year of NO_x or VOC. In order to meet the emission limitations in this rule, which are between 115 and 200 ppm, sources use advance NO_x control technologies. See “Reasonably Available Control Technology (RACT) Demonstration and Negative Declaration for Two Source Categories Covered By EPA Control Techniques Guidelines,

SJVAPCD, April 2009, p. 4–67. We proposed to approve Rule 4352 on May 30, 2007 at 72 FR 29901.²⁷

Based on our review of the emission limitations in SJVAPCD's rules, we propose to find that the SJV area meets the clean fuel/clean technology for boilers requirement in CAA section 182(e)(3).

3. Adequate Resources and Enforcement Authority

CAA Section 110(a)(2)(E)(i) requires that implementation plans provide necessary assurances that the State (or the general purpose local government) will have adequate personnel, funding and authority under State law to carry out the submitted plan. Under this section, a State needs to provide assurances of adequate personnel, funding and authority for its submitted implementation plan. These requirements are further defined in EPA's regulations at 40 CFR part 51, subpart L (authority) and §§ 51.280 (resources). States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. SIPs must also describe the resources that are available or will be available to the State and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal.

The 2004 SIP and 2003 State Strategy do not directly address the resources requirement in EPA regulations. However, as submitted, the 2004 SIP and 2003 State Strategy consist of a description of the result of technical work already completed by ARB and the District to develop emission inventories, perform air quality modeling, analyze potential controls, and to evaluate the effect of those controls on attainment and ROP in the SJV nonattainment area. The 2004 SIP contains commitments by the District to adopt certain rules or rule

²⁷ Concurrent with the May 30, 2007 proposal, we also approved Rule 4352 in a direct final action. See 72 FR 29887. Because we received adverse comments on this direct final action, we withdrew it on July 30, 2007 (72 FR 41450). This withdrawal, however, left the proposed action in place.

revisions and commitments by the District and ARB to achieve certain emission reductions. At this point in time, the District has adopted all the rules it committed to adopt. See Table 2 of this proposal. California has also made substantial progress in adopting rules to fulfill its commitment and has an ambitious rulemaking schedule for 2009 and 2010. See section III.C.1.c. of this proposal. By carrying out their commitments in these plans, which were submitted in November 2004 (almost 5 years ago), both the District and ARB have demonstrated that they have adequate resources.

The District's and State's authorities to adopt and enforce plans, rules and regulations to achieve and maintain Federal air quality standards are listed in the resolutions of adoption that accompany the plans' submittals. See ARB Resolutions 04–29, October 28, 2004 (adopting the SJV 1-hour ozone plan) and 03–22 (October 23, 2003) (adopting the 2003 State Strategy). These authorities are found in California's Health and Safety Code (HSC) at sections 40000, 40002, 40701, 40702, and 41650 for the District and 39002, 39500, 39602, 40469, 41650, and part 5 for ARB. These authorities are sufficient to meet CAA and EPA requirements.

EPA regulations at 40 CFR 51.111 also require that plans describe procedures for monitoring compliance, procedures for handling violations, and designation of the agency responsible for enforcement.

The District has primary responsibility under California law to adopt and enforce rules controlling air pollution from nonvehicular source rules. CA HSC 40001. See also ARB Resolution 04–29, October 28, 2004. ARB has primary responsibility under California law to adopt and enforce rules controlling air pollution from vehicular (including fuels) and consumer products. CA HSC 39002, 39500, part 5, and 41712.

The 2004 SIP and 2003 State Strategy do not describe procedures for monitoring compliance and for handling violations; however, this information is readily available on the Internet. The District's source monitoring and enforcement programs, including its procedures for handling violations, are described on its Web site at <http://www.valleyair.org> under "Compliance Assistance." ARB's source monitoring and enforcement programs including its procedures for handling violations, are described at <http://www.arb.ca.gov/enf/enf.htm>. Specific compliance monitoring procedures (such as test methods, recordkeeping and/or

continuous monitoring) are evaluated as part of EPA's action on individual rules. See, for example, proposed action on several SJVAPCD surface coating rules at 74 FR 28467 (June 15, 2009).

IV. SJVAPCD Rule 9310 School Bus Fleets

On September 21, 2006, SJVAPCD adopted Rule 9310, "School Bus Fleets," to regulated NO_x, PM, and diesel toxic air contaminants from in-use school bus fleets. The rule was submitted to EPA by the State on December 29, 2006. See letter, Michael S. Scheible, ARB, to Wayne Nastri, EPA, December 29, 2006. We found the submittal complete on February 13, 2007. See Letter, Deborah Jordan, EPA to Catherine Weatherspoon, ARB. A copy of the adopted rule and the material submitted with it can be found in the docket for this proposed action. Estimated reductions from the rule for 2010 are listed in Table 2 above.

Rule 9310 applies to all school bus fleet operators with one or more buses, including both public and private operators and any contractors who provide school bus services. Under provisions of the rule, fleet operators must replace by no later than January 1, 2016 any diesel school buses in their fleet manufactured before January 1, 1978 with buses that meet the applicable ARB or EPA emission standards for the year the bus is delivered to the operator. For diesel buses manufactured after January 1, 1978, fleet operators have the option to replace them with buses that meet the applicable ARB and EPA emission standards for the delivery year, retrofit them with an Approved Diesel Emission Control Strategy (i.e., ARB level 3 verified technologies to reduce PM and or other precursor emissions by at least 85%), or repower them with an engine meeting the ARB or EPA emissions standards that are applicable to engines produced on and after October 1, 2002. Rule 9310, section 5.1.1.

The rule also requires existing alternative or gasoline-fueled school buses and any diesel school buses manufactured after October 1, 2002 to operate per manufacturers' specification and, if replaced, the operator must replace with a school bus that meets all applicable emissions standards for the delivery year. Rule 9310, section 5.1.2. New school buses and additions to school bus fleets must meet all ARB and EPA applicable emissions standards for the delivery year. See Rule 9310, section 5.2.

Administrative requirements in Rule 9310 require each operator to provide the District with a list identifying

existing school bus fleets by January 1, 2007 and to include information specific to each affected bus and an explanation of how each school bus will comply with the requirements of Rule 9310. See Rule 9310, section 6.1

Rule 9310 requires operators to maintain records for a minimum of five years of each school bus annual mileage, amount of fuel purchased by fuel type, and travel records beginning on and after September 21, 2006. These records must be made available for inspection by the District's Air Pollution Control Officer (APCO) upon request. Rule 9310, section 6.4.

Rule 9310 is enforced by the APCO under the authority of the California HSC, Sections 40001, 40702, 40752, and 40753, and by all officers and employees empowered by Sections 40120 and 41510. Enforceability is mainly tied to school bus fleet operators' reporting requirements.

In reviewing a rule for SIP approval, EPA looks to assure that the rule is enforceable as required by CAA section 110(a)(2)(A), is consistent with all applicable EPA guidance, and does not relax existing SIP requirements as required by sections 110(l) and 193.

We have determined that the recordkeeping and reporting requirements in Rule 9310 are sufficient for enforceability. EPA has not issued any guidance applicable to rules such as Rule 9310. There are no previous versions of Rule 9310 and, as such, its approval would strengthen the SIP. EPA's approval of Rule 9310 would also not interfere with attainment, reasonable further progress or any other requirement of the CAA. We therefore propose to approve SJVAPCD Rule 9310 under CAA section 110(k)(3) as part of California SIP for the SJV area.

V. Proposed Actions

A. Summary

1. EPA is proposing to approve pursuant to CAA section 110(k)(3), the following elements of the 2004 SIP and the 2008 Clarifications:

a. The rate of progress demonstration as meeting the requirements of CAA sections 172(c)(2) and 182(c)(2);

b. The rate-of-progress contingency measures as meeting the requirements of CAA section 182(c)(9); and

c. The attainment demonstration as meeting the requirements of 182(c)(2)(A) and 181(a).²⁸

²⁸ The 2004 SIP also included motor vehicle emission budgets (MVEB) for NO_x and VOC for the milestone year of 2008 and attainment year of 2010. We do not address these budgets in this proposal because they are no longer required for the 1-hour ozone standard. Furthermore, the budgets in the

The proposed approval of the attainment demonstration is predicated in part on emission reductions from a number of State and District rules that we have proposed to approve in separate actions. These proposed-for-approval rules, combined with previously approved rules and other creditable measures, provide more than the minimum reductions needed for attainment of the 1-hour standard in the SJV area. See Table 5 above. Should we be unable to finalize approval of one or more of these rules and, as a result, there is a shortfall in the needed emission reductions, we will not be able to finalize our proposed approval of the attainment demonstration.

2. EPA is proposing to find pursuant to CAA section 110(k)(3) that the 2004 SIP and the 2008 Clarifications meet the requirements of:

- a. CAA section 182(e)(3) for clean fuel/clean technology for boilers; and
- b. CAA section 182(d)(1)(A) for TCMs sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips.

3. EPA is proposing to approve pursuant to CAA section 110(k)(3) section 4.7 in the 2004 SIP and the provisions of the 2003 State Strategy and ARB Board Resolution 04–29 that relate to aggregate emission reductions in the San Joaquin Valley Air Basin as meeting the requirements of CAA sections 110(a)(2)(A) and 172(c)(6).

4. EPA is proposing to approve pursuant to CAA section 110(k)(3), the 2004 SIP, the 2003 State Strategy and the 2008 Clarifications as meeting the RACM (exclusive of RACT) requirements of CAA section 172(c).

5. EPA is proposing to approve pursuant to CAA section 110(k)(3), SJVAPCD Rule 9310 School Bus Fleets (adopted September 21, 2006) into the San Joaquin Valley portion of the California SIP.

2004 SIP have been replaced by budgets in the SJV plan for the 1997 8-hour ozone standard.

As discussed in section II. of this proposal, EPA has revoked the 1-hour ozone standard. As a result, transportation conformity determinations and thus budgets are no longer required for that standard. Under our transportation conformity regulations, 8-hour ozone MVEBs replace existing 1-hour ozone MVEBs once the 8-hour ozone MVEBs are found adequate or are approved. See 40 CFR 93.109(e)(1) and (2). Although the MVEB budgets from the 2004 SIP have been used in the initial conformity determinations in the SJV area for the 1997 8-hour ozone standard, these budgets have now been replaced by budgets in the SJV 8-hour ozone plan which were found adequate on January 8, 2009. See Letter, Deborah Jordan, EPA to James Goldstene, ARB, “Adequacy Status of San Joaquin Valley 8-Hour Ozone Rate of Progress and Attainment Plan Motor Vehicle Emissions Budgets” and 74 FR 4032 (January 22, 2009). Thus, because the 1-hour ozone budgets will have no further utility, we are not proposing action on them here.

6. EPA is proposing to disapprove pursuant to CAA section 110(k)(3) the attainment contingency measures in the 2004 SIP and the 2008 Clarifications as failing to meet the requirements of CAA section 172(c)(9).

B. Effect of Finalizing the Proposed Disapproval Actions

If we should finalize our disapproval of the attainment contingency measures, the offset sanction in CAA section 179(b)(2) will be applied in the SJV 1-hour ozone nonattainment area 18 months after the effective date of the final disapproval. The highway funding sanctions in CAA section 179(b)(1) will apply in the area 6 months after the offset sanction is imposed. Neither sanction will be imposed if California submits and we approve prior to the implementation of the sanctions replacement attainment contingency measures.

In addition to the sanctions, CAA section 110(c)(1) provides that EPA must promulgate a Federal implementation plan addressing the 1-hour ozone contingency measures in the SJV area, two years after the effective date of a disapproval should we not be able to approve replace attainment contingency measures adopted and submitted by the State.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory action” and therefore is not subject to either review by the Office of Management and Budget or to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

This action merely proposes to approve in part and disapprove in part a State-adopted attainment plan and to approve a State-adopted rule for the San Joaquin Valley Air Basin and does not impose any additional requirements. Accordingly, the Administrator certifies that this proposed action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed action does not impose any additional enforceable duties, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249,

November 9, 2000), because the plan is not approved to apply in Indian country located in the State. It will not impose substantial direct costs on tribal governments or preempt tribal law.

This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action merely proposes to approve in part and disapprove in part a State-adopted plan and to approve a State-adopted rule and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency actions by directing agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. Today’s action involves a proposed approval in disapproval in part of a State-adopted plan and proposed approval of a State-adopted rule. It will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

This proposed action also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant. The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 30, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E9–16492 Filed 7–13–09; 8:45 am]

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