6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2011-0589; FRL-9624-5]

Approval of Air Quality Implementation Plans; California; San Joaquin Valley; Attainment Plan for 1997 8-hour Ozone Standards

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving state implementation plan (SIP) revisions submitted by California to provide for attainment of the 1997 8-hour ozone national ambient air quality standards in the San Joaquin Valley (SJV). These SIP revisions are the 2007 Ozone Plan (revised 2008 and 2011) and SJV-related portions of the 2007 State Strategy (revised 2009 and 2011). EPA is approving the base year emissions inventory, reasonably available control measures demonstration, provisions for transportation control strategies and measures, provisions for advanced technology/clean fuels for boilers, reasonable further progress (RFP) and attainment demonstrations, transportation conformity motor vehicle emissions budgets for all RFP milestone years and the attainment year, contingency measures for failure to make RFP or attain, and Clean Air Act section 182(e)(5) new technologies provisions and associated commitment to adopt contingency measures. EPA is also approving commitments to

measures and reductions by the SJV Air Pollution Control District and the California Air Resources Board.

DATES: The rule is effective [insert date 60 days from the date of publication in the Federal Register].

ADDRESSES: EPA has established docket number EPA-R09-OAR-2011-0589 for this action. The index to the docket is available electronically at 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 may be publicly available only at the hard copy location (e.g., copyrighted material) and some may not be publicly available at 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 below.

Copies of the SIP materials are also available for inspection at the following locations:

- California Air Resources Board, 1001 I Street, Sacramento, California 95812
- San Joaquin Valley Air Pollution Control District, 1990 E. Gettysburg, Fresno, California 93726.

The SIP materials are also electronically available at: http://www.valleyair.org/Air_Quality_Plans/Ozone_Plans.htm and

www.arb.ca.gov/planning/sip/sip.htm.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region 9, (415) 972-3957, wicher.frances@epa.gov

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

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I. Summary of EPA's Proposed and Final Actions on the 2007 State Implementation Plan for Attainment of the 1997 8-Hour Ozone Standards in the San Joaquin Valley

On September 16, 2011, EPA proposed to approve California's state implementation plan (SIP) for attaining the 1997 8-hour

ozone national ambient air quality standards (NAAQS) in the San Joaquin Valley (SJV). *See* 76 FR 57846. California developed this SIP to provide for expeditious attainment of the 1997 8-hour ozone standards in the SJV and to meet other applicable ozone planning requirements in Clean Air Act (CAA) sections 172(c) and 182 and EPA's 8-hour ozone implementation rule.[1]

California has made five SIP submittals to address the CAA's planning requirements for attaining the 1997 8-hour ozone standard in the San Joaquin Valley. We refer to these submittals collectively as the "[SJV] 2007 8-hour Ozone SIP." The two principal ones are the San Joaquin Valley Unified Air Pollution Control District's (SJVUAPCD) 2007 Ozone Plan (also Plan) and the California Air Resources Board's (CARB) State Strategy for California's 2007 State Implementation Plan (2007 State Strategy).[2]

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[1] *See* 40 CFR part 51, subpart X and 69 FR 23951 (April 30, 2004) and 70 FR 71612 (November 29, 2005).

[2] These five SIP submittals are:

1. SJVUAPCD, *2007 Ozone Plan,* adopted on April 30, 2007 by the SJVUAPCD and on June 14, 2007 by CARB, submitted on November 16, 2007.
2. CARB, *Proposed State Strategy for California's 2007 State Implementation Plan*, amended and adopted on September 27, 2007 by CARB, submitted on November 16, 2007.
3. CARB, *Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revisions to the SIP Reflecting Implementation of the 2007 State Strategy* (pages 11-27 only), adopted on

Together, the 2007 Ozone Plan and the 2007 State Strategy present a comprehensive and innovative strategy for attaining the 1997 8-hour ozone standards in the SJV.

In our September 2011 notice, EPA proposed to approve as meeting the applicable requirements of the CAA the SJV 2007 8-hour Ozone SIP's base year emissions inventory, reasonably available control measures demonstration, provisions for transportation control strategies and measures, provisions for advanced technology/clean fuels for boilers, reasonable further progress (RFP) and attainment demonstrations, transportation conformity motor vehicle emissions budgets (MVEB) for all RFP milestone years and the attainment year, contingency measures for failure to make RFP or attain, and CAA section 182(e)(5) provisions for new technologies and the associated commitment to adopt contingency measures.[3] EPA also proposed to approve

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April 24, 2009, submitted on August 12, 2009. ("2009 State Strategy Status Report")

4. SJVUAPCD, *Amendments to the 2007 Ozone Plan* (amending the rulemaking schedule for Measure S-GOV-5 Organic Waste Operations) adopted on December 18, 2008 by the SJVUAPCD, submitted on April 24, 2009.
5. CARB,*8-Hour Ozone State Implementation Plan Revisions and Technical Revisions to the $PM_{2.5}$ State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins*," adopted on July 21, 2011, submitted July 29, 2011. "2011 Ozone SIP Revisions."

[3] *See* letter, James Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, dated November 18, 2011

commitments to measures and reductions by the District and CARB.[4] 76 FR 57846, 57867.

A more detailed discussion of each of California's SIP submittals for the SJV area, the CAA and EPA requirements applicable to them, and our evaluation and proposed actions can

[4] We also proposed in the alternative to disapprove the SIP with respect to certain provisions in CAA section 182(d)(1)(A) for transportation control strategies and measures sufficient to offset any growth in emissions from growth in vehicle miles traveled or the number of vehicle trips. In *Association of Irritated Residents v. EPA*, 632 F.3d 584 (9th Cir. 2011) (*AIR*), the U.S. Court of Appeals for the Ninth Circuit held that, with respect to the first element, section 182(d)(1)(A) of the CAA requires States to adopt transportation control measures and strategies whenever vehicle emissions are projected to be higher than they would have been had vehicle miles traveled not increased, even when aggregate vehicle emissions are actually decreasing. EPA has filed a petition for rehearing on this issue. Docket Nos. 09-71383 and 09-71404 (consolidated), Docket Entry 41-1, *Petition for Panel Rehearing*.

At the time of our September proposal, the Ninth Circuit had not yet issued its mandate in the *AIR* case, and EPA had not adopted the court's interpretation for the reasons set forth in the Agency's petition for rehearing, pending a final decision by the court. We stated in our proposed rule that if the court denied the Agency's petition for rehearing and issued its mandate before EPA issued a final rule on the SJV 2007 8-hour Ozone SIP, then we anticipated that we would not be able to finalize approval of the SJV 2007 8-hour Ozone SIP with respect to the first element (i.e., offsetting emissions growth) of section 182(d)(1)(A). *See* 76 FR 57846, 57863. Therefore, we proposed in the alternative to disapprove the SJV 2007 8-hour Ozone SIP with respect to the first element of section 182(d)(1)(A) based on the plan's failure to include sufficient transportation control strategies and TCM to offset the emissions from growth in VMT. *Id.* The court has still not issued its mandate; therefore, we are approving the SJV 2007 8-hour Ozone SIP as meeting the requirements of CAA section 182(d)(1)(A).

be found in our September 2011 proposed rule (76 FR 57846) and the technical support document (TSD) for this final action.[5]

EPA is today approving all elements of the SJV 2007 8-hour Ozone SIP based on our conclusion that they comply with applicable CAA requirements and provide for expeditious attainment of the 1997 8-hour ozone standards in the San Joaquin Valley.

II. Response to Public Comments Received on the Proposals

EPA provided the public an opportunity to comment on its proposed approval of the SJV 2007 8-hour ozone SIP for 30 days following the proposed rule's September 16, 2011 publication in the Federal Register. We received two comment letters on the proposed rule. The first letter came from CARB who requested that we limit the approval of the SIP's MVEB until such time as the State submits and EPA finds adequate new budgets. We address CARB's request in Section IV below. The second letter was submitted jointly by the Center on Race, Poverty and the Environment; Earthjustice; and the Natural Resources Defense Council on behalf of themselves, the Association of Irritated Residents (AIR) and other San Joaquin Valley-based environmental and community organizations (collectively "AIR"). *See* letter

[5] "Technical Support Document and Response to Comments Final Rule on the San Joaquin Valley 2007 8-hour State Implementation Plan," Air Division, U.S. EPA Region 9, September 30, 2011. The TSD can be found in the docket for this rulemaking.

Brent Newell, General Counsel, Center on Race, Poverty & the Environment, October 17, 2011. We respond to AIR's main comments below. The entire Response to Comments document received can be found section III of the TSD. A copy of the comment letters can be found in the docket for this rule.

A. Enforceable Commitments

Comment: AIR characterizes CARB's and the District's commitments to achieve aggregate emissions reductions in specific years as "global commitments" and argues that they could be interpreted as "goals" unenforceable by citizens under Ninth Circuit precedent rather than enforceable "strategies" to achieve those goals, citing *Bayview Hunters Point Community Advocates v. Metropolitan Transp. Comm'n*, 366 F.3d 692, 701 (9th Cir. 2004) and *El Comite Para El Bienstar de Earlimart v. Warmerdam*, 539 F.3d 1062, 1067 (9th Cir. 2008).

AIR argues that the plans' global commitments are not enforceable for two reasons. First, AIR claims that enforcement is not practical because it is not possible for citizens or EPA to determine whether the CARB and the District have met the global commitments. AIR argues further that because no measures are submitted to EPA for inclusion into the SIP citizens have no idea which measures CARB has used to satisfy the total tonnage commitments. AIR also argues that there are no provisions for

CARB and the District to report to EPA and the public what actions they have taken to comply with the tonnage commitments and thus EPA and citizens are left to determine, based on information exclusively held and maintained by CARB and the District, whether the commitments have in fact been met.

Second, AIR claims that because "enforcing the global commitment ultimately turns on how the ARB and the District calculate emissions reductions achieved through the measures," CARB's and the District's emissions reduction commitments are not enforceable unless the methodology for calculating the reductions is also enforceable. Otherwise, AIR argues, the manner in which CARB and the District determine compliance with the tonnage target is left to their discretion, and citizens and EPA would be placed in the situation held by the plaintiffs in *Warmerdam*. In conclusion, AIR asserts that the CAA "does not condone a discretionary commitment and EPA should not approve the ARB's latest attempt to achieve a reduction target based on discretionary actions."

Response: Under CAA section 110(a)(2)(A), SIPs must include enforceable emissions limitations and other control measures, means or techniques as necessary to meet the requirements of the Act, as well as timetables for compliance. Similarly, section 172(c)(6) provides that nonattainment area SIPs must include

enforceable emission limitations and such other control measures, means or techniques "as may be necessary or appropriate to provide for attainment" of the NAAQS by the applicable attainment date.

Control measures, including commitments in SIPs, are enforced directly by EPA under CAA section 113 and also through CAA section 304(a) which provides for citizen suits to be brought against any person who is alleged "to be in violation of … an emission standard or limitation…." "Emission standard or limitation" is defined in subsection (f) of section 304. As observed in *Conservation Law Foundation, Inc. v. James Busey et al.*, 79 F.3d 1250, 1258 (1st Cir. 1996):

> Courts interpreting citizen suit jurisdiction have largely focused on whether the particular standard or requirement plaintiffs sought to enforce was sufficiently specific. Thus, interpreting citizen suit jurisdiction is limited to claims "for violations of specific provisions of the act or specific provisions of an applicable implementation plan," the Second Circuit held that suits can be brought to enforce specific measures, strategies, or commitments designed to ensure compliance with the NAAQS, but not to enforce the NAAQS directly. *See*, e.g., *Wilder, 854*

F.2d at 613-14. Courts have repeatedly applied this test as the linchpin of citizen suit jurisdiction. *See*, e.g., *Coalition Against Columbus Ctr. v. City of New York*, 967 F.2d 764, 769-71 (2d Cir. 1992); *Cate v. Transcontinental Gas Pipe Line Corp.,* 904 F. Supp. 526, 530-32 (W.D. Va. 1995); *Citizens for a Better Env't v. Deukmejian,* 731 F. Supp. 1448, 1454-59 (N.D. Cal.), modified, 746 F. Supp. 976 (1990).

Thus courts have found that the citizen suit provision cannot be used to enforce the aspirational goal of attaining the NAAQS, but can be used to enforce specific strategies to achieve that goal, including enforceable commitments to develop future emissions controls.

We describe CARB's and the District's commitments in the 2007 State Strategy (revised in 2009 and 2011) and the 2007 Ozone Plan in detail in our proposed rule. *See* 76 FR 57846, 57851-57856 and 57857-57860. The 2007 State Strategy includes commitments to propose defined new measures and an enforceable commitment for emissions reductions sufficient, in combination with existing measures, the District's commitments, and the new technology provisions to attain the 1997 8-hour ozone NAAQS in the SJV by June 15, 2024. *See* CARB Resolution 07-28, Attachment B at pp. 3 and 6 and 2009 State Strategy Status Report, p. 21.

For the SJV, CARB's emissions reductions commitments as submitted in 2007 and 2009 are to specific reductions of NO_x and VOC in 2014, 2017, 2020, and 2023 as well as additional reductions from CAA section 182(e)(5) measures in 2023. These commitments are shown in Table 8 of the proposed rule (76 FR 57846, 57854) and Table D-6 of the TSD.

SJVUAPCD's commitments as submitted in 2007 are also to specific reductions of NO_x and VOC in 2008, 2011, 2012, 2014, 2017, 2020 and 2023 and are shown Table 6-1 of the 2007 Ozone Plan (as revised in 2008). These commitments are also shown (for all years except for 2008) on Table 3 of the proposed rule (76 FR 57846, 578524) and Table D-2 of the TSD. The language used in the Board's resolution adopting the 2007 8-hour Ozone Plan at page 5 to describe its commitment is mandatory and unequivocal in nature:

> 10. The District Governing Board *commits to adopt and implement* the rules and measures in the 2007 Ozone Plan by the dates specified in Chapter 6 *to achieve the emissions reductions shown in Chapter 6*, and to submit these rules and measures to the ARB within one month of adoption for transmittal to EPA as a revision to the State Implementation Plan. If the total emissions reductions from the adopted rules are less

> than those committed to in the Plan, the District Governing Board *commits to adopt, submit, and implement* substitute rules and measures that will achieve equivalent reductions in emissions of ozone precursors in the same adoption and implementation timeframes or in the timeframes needed to meet CAA milestones.

SJVUAPCD Board Resolution No. 07-04-11a, p. 6. (Emphasis added).

Thus, CARB's and the District's commitments here are to adopt and implement measures that will achieve specific amounts of NO_x and VOC emissions reductions by specific years. These are not mere aspirational goals to ultimately achieve the standards. Rather, the State and District have committed to adopt enforceable measures that will achieve these specific amounts of emissions reductions by specified milestone years and ultimately by the attainment year (2023). *See* 70 FR 71612, 71633 (November 29, 2005) and 40 CFR 51.910(a)(1) and 51.908(d) (requiring implementation of all control measures needed for expeditious attainment no later than the beginning of the year prior to the attainment date). All of these control measures are subject to State and local rulemaking procedures and public participation requirements, through which EPA and the public may track the State/District's progress in achieving the requisite emissions

reductions. EPA and citizens may enforce these commitments under CAA sections 113 and 304(a), respectively, should the State/District fail to adopt measures that achieve the requisite amounts of emissions reductions by each specified year. We conclude that these enforceable commitments to adopt and implement additional control measures to achieve aggregate emissions reductions on a fixed schedule are appropriate means, techniques, or schedules for compliance under sections 110(a)(2)(A) and 172(c)(6) of the Act.

AIR cites *Bayview* as support for their contention that the SIP's commitments are unenforceable aspirational goals. *Bayview* does not, however, provide any such support. That case involved a provision of the 1982 Bay Area 1-hour ozone SIP, known as TCM 2, which states in pertinent part:

> Support post-1983 improvements identified in transit operator's 5-year plans, after consultation with the operators adopt ridership increase target for 1983-1987.
>
> EMISSION REDUCTION ESTIMATES: These emission reduction estimates are predicated on a 15% ridership increase. The actual target would be determined after consultation with the transit operators.

> Following a table listing these estimates, TCM 2 provided that "[r]idership increases would come from productivity improvements…."

Ultimately, the 15 percent ridership estimate was adopted by the Metropolitan Transportation Commission (MTC), the implementing agency, as the actual target. Plaintiffs subsequently attempted to enforce the 15 percent ridership increase. The court found that the 15 percent ridership increase was an unenforceable estimate or goal. In reaching that conclusion, the court considered multiple factors, including the plain language of TCM 2 (e.g., "[a]greeing to establish a ridership 'target' is simply not the same as promising to attain that target," *Bayview* at 698); the logic of TCM 2, *i.e.*, the drafters of TCM 2 were careful not to characterize any given increase as an obligation because the TCM was contingent on a number of factors beyond MTC's control, *id.* at 699; and the fact that TCM 2 was an extension of TCM 1 that had as an enforceable strategy the improvement of transit services, specifically through productivity improvements in transit operators' five-year plans, *id.* at 701. As a result of all of these factors, the Ninth Circuit found that TCM 2 clearly designated the productivity improvements as the only enforceable strategy. *Id.* at 703.

The commitments in the 2007 State Strategy (revised in 2009 and 2011) and 2007 Ozone Plan are in stark contrast to the ridership target that was deemed unenforceable in *Bayview*. The language in CARB's and the District's commitments, as stated multiple times in multiple documents, is specific; the intent of the commitments is clear; and the strategy of adopting measures to achieve the required reductions is completely within CARB's and the District's control. Furthermore, as stated previously, CARB and the District identify specific emissions reductions that they will achieve, how they could be achieved and the time by which these reductions will be achieved. *See* 76 FR 57846, 57854 (Table 8) (listing CARB's commitments) 57852 (Table 3) (listing the District's commitments).

CARB's and the District's commitments here are analogous to the terms of the contingency measures for the transportation sector in the 1982 Bay Area 1-hour ozone SIP in *Citizens for a Better Environment v. Deukmejian*, 731 F.Supp.1448 (N.D. Cal. 1990) (known as *CBE I)*. The provision states: "If a determination is made that RFP is not being met for the transportation sector, MTC will adopt additional TCMs within 6 months of the determination. These TCMs will be designed to bring the region back within the RFP line." The court found that "[o]n its face, this language is both specific and mandatory."

Id. at 1458. In *CBE I*, CARB and MTC argued that TCM 2 could not constitute an enforceable strategy because the provision fails to specify exactly what TCMs must be adopted. The court rejected this argument, finding that "[w]e discern no principled basis, consistent with the Clean Air Act, for disregarding this unequivocal commitment simply because the particulars of the contingency measures are not provided. Thus we hold that the basic commitment to adopt and implement additional measures, should the identified conditions occur, constitutes a specific strategy, fully enforceable in a citizen's action, although the exact contours of those measures are not spelled out." *Id*. at 1457. In concluding that the transportation and stationary source contingency provisions were enforceable, the court stated: "Thus, while this Court is not empowered to enforce the Plan's overall objectives [footnote omitted; attainment of the NAAQS]--or NAAQS--directly, it can and indeed, must, enforce specific strategies committed to in the Plan." *Id*. at 1454; *see also Citizens for a Better Environment* v. *Metropolitan Tranp. Comm'n,* 746 F. Supp. 976, 980 (N.D.Cal. 1990) [known as CBE II] (rejecting defendants' argument that RFP and the NAAQS are coincident and stating that the court's enforcement of the *contingency plan*, an express strategy for attaining NAAQS, is distinct from simply ordering that NAAQS be achieved).

As in the *CBE* cases, CARB and the District commit to propose or adopt measures, which are not specifically identified, to achieve a specific tonnage of emissions reductions by specific years. Thus, the commitment to a specific tonnage reduction is comparable to a commitment to achieve RFP. Similarly, a commitment to achieve a specific amount of emissions reductions through adoption and implementation of unidentified measures is comparable to the commitments to adopt unspecified TCMs and stationary source measures. The key is that the commitment must be clear in terms of what is required, e.g., a specified amounts of emissions reductions or the achievement of a specified amount of progress (i.e., RFP). CARB's and the District's commitments are thus a specific enforceable strategy rather than an unenforceable aspirational goal.

AIR's reliance on *El Comite* (also referred to as *Warmerdam*) to argue that CARB's commitments are not enforceable is also misplaced. In *El Comite,* the plaintiffs in the district court attempted to enforce a provision of the 1994 California 1-hour ozone SIP known as the Pesticide Element. The Pesticide Element relied on an inventory of pesticide VOC emissions to provide the basis to determine whether additional regulatory measures would be needed to meet the SIP's pesticides emissions target. To this end, the Pesticide Element provided that "ARB will develop a

baseline inventory of estimated 1990 pesticidal VOC emissions based on 1991 pesticide use data…." *El Comite Para El Bienestar de Earlimart v. Helliker,* 416 F. Supp. 2d 912, 925 (E.D. Cal. 2006). CARB subsequently employed a different methodology that it deemed more accurate to calculate the baseline inventory. The plaintiffs sought to enforce the commitment to use the original methodology, claiming that the calculation of the baseline inventory constitutes an "emission standard or limitation." The district court disagreed:

> By its own terms, the baseline identifies emission sources and then quantifies the amount of emissions attributed to those sources. As defendants argue, once the sources of air pollution are identified, control strategies can then be formulated to control emissions entering the air from those sources. From all the above, I must conclude that the baseline is not an emission "standard" or "limitation" within the meaning of *42 U.S.C. § 7604 (f)(1)-(4).*

Id. at 928. In its opinion, the court distinguished *Bayview* and *CBE I*, pointing out that in those cases "the measures at issue were designed to reduce emissions." *Id.*

On appeal, the plaintiffs shifted their argument to claim that the baseline inventory and the calculation methodology were

necessary elements of the overall enforceable commitment to reduce emissions in nonattainment areas. The Ninth Circuit agreed with the district court's conclusion that the baseline inventory was not an emission standard or limitation and rejected plaintiffs' arguments attempting "to transform the baseline inventory into an enforceable emission standard or limitation by bootstrapping it to the commitment to decide to adopt regulations, if necessary." *Id.* at 1073.

While AIR cites the Ninth Circuit's *El Comite* opinion, its utility in analyzing the CARB and District commitments here is limited to that court's agreement with the district court's conclusion that neither the baseline nor the methodology qualifies as an independently enforceable aspect of the SIP. Rather, it is the district court's opinion, in distinguishing the commitments in *CBE* and *Bayview*, that provides insight into the situation at issue in our action. As the court recognized, a baseline inventory or the methodology used to calculate it, is not a measure to reduce emissions. It instead "identifies emission sources and then quantifies the amount of emissions attributed to those sources." In contrast, as stated previously, in the 2007 State Strategy (revised 2009 and 2011) and SJV 2007 Ozone Plan, CARB and the District commits to adopt and implement measures sufficient to achieve specified amounts of emissions

reductions by specified dates. As described above, a number of courts have found commitments substantially similar to CARB's here to be enforceable under CAA section 304(a).

B. Baseline Measures, Baseline Inventories, and Attainment Demonstration

Comment: AIR asserts that EPA's approval of the inventory in the Plan would violate CAA sections 172(c)(3) and 182(a)(1) because the baseline inventory includes emissions reduction credit for both "waiver measures" and "non-waiver measures" adopted before 2007 (together referred to as "baseline measures") that have not been approved into the SIP. AIR argues that EPA has not evaluated each of these baseline measures to determine if they are creditable or quantified the emissions reductions attributed to each of these measures. Additionally, AIR asserts that EPA should disapprove the attainment demonstration because EPA has approved neither mobile source baseline measures nor pesticide measures as part of the SIP. AIR asserts that "[t]he total tonnage attributed to these unsubmitted and non-SIP approved measures in the attainment demonstration is not clear, because EPA does not differentiate between reductions from SIP-approved measures, waiver measures, and those that have not received EPA approval." Thus, AIR argues, "a significant amount of emission reductions claimed in

the attainment demonstration are not SIP creditable, a finding that EPA must make before approving the attainment demonstration." AIR references CAA sections 110(a)(2)(A) and 172(c)(6) in support of these assertions and argues that "EPA has failed to find that the reductions from the unsubmitted rules have occurred, are enforceable, or are otherwise consistent with the Act, EPA's implementing regulations, and the General Preamble."

Response: We disagree with these assertions. We explained in our Proposal TSD (section II.A.3.) our reasons for concluding both that the 2002 base year inventory in the SIP is comprehensive, accurate, and current as required by CAA section 182(a)(1) and that the projected baseline inventories provide adequate bases and support for the RFP and attainment demonstrations in the SJV 2007 8-hour Ozone SIP. [6]

Specifically, with respect to mobile source emissions, we believe that credit for emissions reductions from implementation of California mobile source rules that are subject to CAA section 209 waivers ("waiver measures") is appropriate in the attainment and RFP demonstrations and for other SIP purposes notwithstanding the fact that such rules are not approved as

[6] For ozone nonattainment areas, a State that satisfies the specific inventory requirements of CAA section 182(a)(1) also satisfies the general inventory requirements of CAA section 172(c)(3). *See* General Preamble at 13503 (April 16, 1992).

part of the California SIP. In the Proposal TSD, we explained why we believe such credit is appropriate. *See* Proposal TSD at section II.D.3.a.i. Historically, EPA has granted credit for the waiver measures because of special Congressional recognition, in establishing the waiver process in the first place, of the pioneering California motor vehicle control program and because amendments to the CAA (in 1977) 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 Congr., 1st Sess. 301-2 (1977)). In allowing California to take credit for the waiver measures notwithstanding the fact that the underlying rules are not part of the California SIP, EPA treated the waiver measures 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.

EPA's historical practice has been to give SIP credit for motor-vehicle-related waiver measures in attainment and RFP demonstrations and for other SIP purposes by allowing California to include motor vehicle emissions estimates made by using California's EMFAC (and its predecessors) motor vehicle emissions factor model in SIP inventories. EPA verifies the

emissions reductions from motor-vehicle-related waiver measures through review and approval of EMFAC, which is updated from time to time by California to reflect updated methods and data, as well as newly-established emissions standards. (Emissions reductions from EPA's motor vehicle standards are reflected in an analogous model known as MOVES.[7]) The SJV 2007 8-hour Ozone SIP was developed using a version of the EMFAC model referred to as EMFAC2007, which EPA has approved for use in SIP development in California. *See* 73 FR 3464 (January 18, 2008). Thus, the emissions reductions that are from the California on-road "waiver measures" and that are estimated through use of EMFAC are as verifiable as are the emissions reductions relied upon by states other than California in developing their SIPs based on estimates of motor vehicle emissions made through the use of the MOVES model. All other states use the MOVES model (and prior to release of MOVES, the MOBILE model) in their baseline inventories without submitting the federal motor vehicle regulations for incorporation into their SIPs.

Similarly, emissions reductions that are from California's waiver measures for non-road engines and vehicles (e.g., agricultural, construction, lawn and garden and off-road

[7] MOVES replaced the MOBILE model as EPA's on-road mobile source emission estimation model for use in SIPs and conformity in 2010.

recreation equipment) are estimated through use of CARB's OFFROAD emissions factor model.[8] (Emissions reductions from EPA's non-road engine and vehicle standards are reflected in an analogous model known as NONROAD). Since 1990, EPA has treated California non-road standards for which EPA has issued waivers 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. In so doing, EPA has treated the California non-road standards similarly to the Federal non-road standards, which are relied upon, but not included in, various SIPs. *See* generally TSD at section II.D.3.a.i.

CARB's EMFAC and OFFROAD models employ complex routines that predict vehicle fleet turnover by vehicle model years and include control algorithms that account for all adopted regulatory actions which, when combined with the fleet turnover algorithms, provide future baseline projections. *See* 2007 State Strategy, Appendix F at 7-8. For stationary sources, the California Emission Forecasting System (CEFS) projects future emissions from stationary and area sources (in addition to aircraft and ships) using a forecasting algorithm that applies

[8] Information about CARB's emissions inventories for on-road and non-road mobile sources, and the EMFAC and OFFROAD models used to project changes in future inventories, is available at http://www.arb.ca.gov/msei/msei.htm.

growth factors and control profiles to the base year inventory.[9] *See id.* at 7. The CEFS model integrates the projected inventories for both stationary and mobile sources into a single database to provide a comprehensive statewide forecast inventory, from which nonattainment area inventories are extracted for use in establishing future baseline planning inventories. *See id.* In 2011, CARB updated the baseline emissions projections for several source categories to account for, among other things, more recent economic forecasts and improved methodologies for estimating emissions from the heavy duty truck and construction source categories. *See* 2011 Ozone SIP Revisions, Appendix B. These methodologies for projecting future emissions based on growth factors and existing Federal, State, and local controls were consistent with EPA guidance on developing projected baseline inventories. *See* TSD at section II.A; *see also* "Procedures for Preparing Emissions Projections," EPA Office of Air Quality Planning and Standards, EPA-450/4-91-019, July 1991; "Emission Projections," STAPPA/ALAPCO/EPA Emission Inventory Improvement Project, Volume X, December 1999

[9] Information on base year emissions from stationary point sources is obtained primarily from the districts, while CARB and the districts share responsibility for developing and updating information on emissions from various area source categories. *See* 2007 State Strategy, Appendix F at 21.

(available at http://www.epa.gov/ttnchie1 /eiip/techreport/volume10/x01.pdf).

In sum, the 2002 base year and future projected baseline inventories in the SJV 2007 8-hour Ozone SIP were prepared using a complex set of CARB methodologies to estimate and project emissions from stationary sources, in addition to the most recent emissions factors and models and updated activity levels for emissions associated with mobile sources, including: (1) the latest EPA-approved California motor vehicle emissions factor model (EMFAC2007) and the most recent motor vehicle activity data from each of the MPOs in the San Joaquin Valley; (2) improved methodologies for estimating emissions from specific source categories; and (3) CARB's non-road mobile source model (the OFFROAD model). *See* TSD, section II.A. (referencing, *inter alia*, 2007 State Strategy at Appendix F) and 2011 Ozone SIP Revisions. EPA has approved numerous California SIPs that rely on base year and projected baseline inventories including emissions estimates derived from the EMFAC, OFFROAD, and CEFS models. *See, e.g.*, 65 FR 6091 (February 8, 2000) (proposed rule to approve 1-hour ozone plan for South Coast) and 65 FR 18903 (April 10, 2000) (final rule); 70 FR 43663 (July 28, 2005) (proposed rule to approve PM-10 plan for South Coast and Coachella Valley) and 70 FR 69081 (November 14, 2005) (final

rule); 74 FR 66916 (December 17, 2009) (direct final rule to approve ozone plan for Monterey Bay); 76 FR 41338 (July 13, 2011) (proposed rule to approve in part and disapprove in part the $PM_{2.5}$ plan for the San Joaquin Valley) and 76 FR 69896 (November 9, 2011) (final rule); and 76 FR 41562), (July 14, 2011) (proposed rule to approve in part and disapprove in part the $PM_{2.5}$ plan for the South Coast Air Basin) and 76 FR 69928 (November 9, 2011) (final rule). The commenter has provided no information to support a claim that these methodologies for developing base year inventories and projecting future emissions in the SJV are inadequate to support the RFP and attainment demonstrations in the SJV 2007 8-hour Ozone SIP.

For all of these reasons and as discussed in our proposed rule (76 FR 57846, 57850), we conclude that the 2002 base year inventory in the 2007 8-hour Ozone SIP is a "comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants" in the SJV area, consistent with the requirements for emissions inventories in CAA section 182(a)(1), 40 CFR 51.915, and 40 CFR part 51, subpart A. In addition, we conclude that the projected future year baseline inventories were prepared consistent with EPA's guidance on development of emissions inventories and attainment demonstrations and, therefore, provide an adequate basis for the

RFP and attainment demonstrations in the SIP under CAA sections 172(c)(2), 182(a), and 182(c)(2). *See* TSD at section II.A.3.

Finally, we disagree with AIR's assertion that EPA has not identified the total amount of emissions reductions attributed to baseline measures in the projected inventories. The total amounts of emissions reductions attributed to baseline measures in the 2007 8-hour Ozone SIP, as revised in 2011, are 54.2 tpd of VOC and 338.6 tpd of NO_x. *See* 76 FR 57846, 57858, table 9 at line E; *see also* TSD, Table F-4 at line D.

Comment: AIR asserts that EPA has not approved any CARB mobile source baseline measures as part of the SIP or reviewed those measures to consider whether they achieve the reductions claimed by CARB, and that EPA cannot approve the SJV 2007 8-hour Ozone SIP when such a "huge component of the control strategy" has not been SIP-approved. AIR also asserts that CARB has not submitted copies of its mobile source baseline measures to EPA as part of this plan. AIR also asserts that waiver measures may not be used in attainment demonstrations because EPA makes no finding during the waiver process that the rules achieve the reductions claimed or that the measures are SIP creditable. AIR also notes that these issues are the subject of litigation in the 9th Circuit U.S. Court of Appeals in *Sierra Club v. EPA*, Consolidated Case Nos. 10-71457 and 10-71458.

Response: We continue to believe that credit for emissions reductions from implementation of California mobile source rules that are subject to CAA section 209 waivers ("waiver measures") is appropriate notwithstanding the fact that such rules are not approved as part of the California SIP. In our September 16, 2011 proposed rule and the technical support document (TSD) for that proposal, we explained why we believe such credit is appropriate. *See* 76 FR 57872, at 57879-57880 and the Proposal TSD, pp. 86-90. Historically, EPA has granted credit for the waiver measures because of special Congressional recognition, in establishing the waiver process in the first place, of the pioneering California motor vehicle control program and because amendments to the CAA (in 1977) 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 Congr., 1st Sess. 301-2 (1977)). In allowing California to take credit for the waiver measures notwithstanding the fact that the underlying rules are not part of the California SIP, EPA treated the waiver measures 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. As we explained in the Proposal

TSD (p. 87), credit for Federal measures, including those that establish on-road and nonroad standards, notwithstanding their absence in the SIP, is justified by reference to CAA section 110(a)(2)(A), which establishes the following content requirements for SIPs: "… enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights),… as may be *necessary or appropriate* to meet the applicable requirements of this chapter." (emphasis added). Federal measures are permanent, independently enforceable (by EPA and citizens), and quantifiable without regard to whether they are approved into a SIP, and thus EPA has never found such measures to be "necessary or appropriate" for inclusion in SIPs to meet the applicable requirements of the Act. Section 209 of the CAA establishes a process under which EPA allows California's waiver measures to substitute for Federal measures, and like the Federal measures for which they substitute, EPA has historically found, and continues to find, based on considerations of permanence, enforceability, and quantifiability, that such measures are not "necessary or appropriate" for California to include in its SIP to meet the applicable requirements of the Act.

First, with respect to permanence, we note that, to maintain a waiver, CARB's on-road waiver measures can be relaxed only to a level of aggregate equivalence to the Federal Motor Vehicle Control Program (FMVCP). *See* section 209(b)(1). In this respect, the FMVCP acts as a partial backstop to California's on-road waiver measures (i.e., absent a waiver, the FMVCP would apply in California). Likewise, Federal nonroad vehicle and engine standards act as a partial backstop for corresponding California nonroad waiver measures. The constraints of the waiver process thus serve to limit the extent to which CARB can relax the waiver measures for which there are corresponding EPA standards, and thereby serve an anti-backsliding function similar in substance to those established for SIP revisions in CAA sections 110(l) and 193. Meanwhile, the growing convergence between California and EPA mobile source standards diminishes the difference in the emissions reductions reasonably attributed to the two programs and strengthens the role of the Federal program in serving as an effective backstop to the State program. In other words, with the harmonization of EPA mobile source standards with the corresponding State standards, the Federal program is becoming essentially a full backstop to most parts of the California program.

Second, as to enforceability, we note that the waiver process itself bestows enforceability onto California to enforce the on-road or nonroad standards for which EPA has issued the waiver. CARB has as long a history of enforcement of vehicle/engine emissions standards as EPA, and CARB's enforcement program is equally as rigorous as the corresponding EPA program. The history and rigor of CARB's enforcement program lends assurance to California SIP revisions that rely on the emissions reductions from CARB's rules in the same manner as EPA's mobile source enforcement program lends assurance to other state's SIPs in their reliance on emissions reductions from the FMVCP. While it is true that citizens and EPA are not authorized to enforce California waiver measures under the Clean Air Act (i.e., because they are not in the SIP), citizens and EPA are authorized to enforce EPA standards in the event that vehicles operate in California without either California or EPA certification.

As to quantifiability, EPA's historical practice has been to give SIP credit for motor-vehicle-related waiver measures by allowing California to include motor vehicle emissions estimates made by using California's EMFAC (and its predecessors) motor vehicle emissions factor model in SIP inventories. EPA verifies the emissions reductions from motor-vehicle-related waiver

measures through review and approval of EMFAC, which is updated from time to time by California to reflect updated methods and data, as well as newly-established emissions standards. (Emissions reductions from EPA's motor vehicle standards are reflected in an analogous model known as MOVES.) The EMFAC model is based on the motor vehicle emissions standards for which California has received waivers from EPA but accounts for vehicle deterioration and many other factors. The motor vehicle emissions estimates themselves combine EMFAC results with vehicle activity estimates, among other considerations. *See* the 1982 Bay Area Air Quality Plan, and the related EPA rulemakings approving the plan (*see* 48 FR 5074 (February 3, 1983) for the proposed rule and 48 FR 57130 (December 28, 1983) for the final rule) as an example of how the waiver measures have been treated historically by EPA in California SIP actions.[10] The South Coast

[10] EPA's historical practice in allowing California credit for waiver measures notwithstanding the absence of the underlying rules in the SIP is further documented by reference to EPA's review and approval of a May 1979 revision to the California SIP entitled, "Chapter 4, California Air Quality Control Strategies." In our proposed approval of the 1979 revision (44 FR 60758, October 22, 1979), we describe the SIP revision as outlining California's overall control strategy, which the State had divided into vehicular sources and non-vehicular (stationary source) controls. As to the former, the SIP revision discusses vehicular control measures as including technical control measures and transportation control measures. The former refers to the types of measures we refer to herein as waiver measures, as well as fuel content limitations, and a vehicle inspection and maintenance program. The 1979 SIP revision included several

8-hour ozone plan was developed using a version of the EMFAC model referred to as EMFAC2007, which EPA has approved for use in SIP development in California. *See* 73 FR 3464 (January 18, 2008). Thus, the emissions reductions that are from the California on-road "waiver measures" and that are estimated through use of EMFAC are as verifiable as are the emissions reductions relied upon by states other than California in developing their SIPs based on estimates of motor vehicle emissions made through the use of the MOVES model.

Moreover, EPA's waiver review and approval process is analogous to the SIP approval process. First, CARB adopts its emissions standards following notice and comment procedures at the state level, and then submits the rules to EPA as part of its waiver request. When EPA receives new waiver requests from CARB, EPA publishes a notice of opportunity for public hearing

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appendices, including appendix 4–E, which refers to "ARB vehicle emission controls included in title 13, California Administrative Code, chapter 3 * * *," including the types of vehicle emission standards we refer to herein as waiver measures; however, California did not submit the related portions of the California Administrative Code (CAC) to EPA as part of the 1979 SIP revision submittal. With respect to the CAC, the 1979 SIP revision states: "The following appendices are portions of the California Administrative Code. Persons interested in these appendices should refer directly to the code." Thus, the State was clearly signaling its intention to rely on the California motor vehicle control program but not to submit the underlying rules to EPA as part of the SIP. In 1980, we finalized our approval as proposed. *See* 45 FR 63843 (September 28, 1980).

and comment and then publishes a decision in the Federal Register following the public comment period. Once again, in substance, the process is similar to that for SIP approval and supports the argument that one hurdle (the waiver process) is all Congress intended for California standards, not two (waiver process plus SIP approval process). Second, just as SIP revisions are not effective until approved by EPA, changes to CARB's rules (for which a waiver has been granted) are not effective until EPA grants a new waiver, unless the changes are "within the scope" of a prior waiver and no new waiver is needed. Third, both types of final actions by EPA--i.e., final actions on California requests for waivers and final actions on state submittals of SIPs and SIP revisions may be challenged under section 307(b)(1) of the CAA in the appropriate United States Court of Appeals.

AIR correctly notes that EPA's treatment of California waiver measures in SIP actions is the subject of current litigation in *Sierra Club v. EPA*, Consolidated Case Nos. 10-71457 and 10-71458 (9th Circuit).

Comment: AIR argues that our reliance on the general savings clause in CAA section 193 for the proposal to grant emissions reduction credit to California's waiver measures without first having California submit and EPA approve them into the SIP is

inappropriate for two reasons. First, AIR argues that CAA section 193 only saves those "formal rules, notices, or guidance documents" promulgated before the effective date of the 1990 amendment that are not inconsistent with the CAA. It asserts that the plain language of the CAA requires that California submit the control measures, rules and regulations used to meet CAA requirements as part of the SIP and that nothing in CAA title II or section 209 provide a basis for EPA's position. Second, AIR argues that there is no automatic presumption that Congress is aware of an agency's interpretations and we have not provided any evidence that Congress was aware of our interpretation regarding the SIP treatment of California's mobile source control measures. AIR also argues that our positions that Congress must expressly disapprove of EPA's long-standing interpretation and Congressional silence equates to a ratification of EPA's interpretation are incorrect.

Response: In the Proposal TSD (pp. 89-90), we indicated that we believe that section 193 of the CAA, the general savings clause added by Congress in 1990, effectively ratified our long-standing practice of granting credit for the California waiver rules because Congress did not insert any language into the statute rendering EPA's treatment of California's motor vehicle standards inconsistent with the Act. Rather, Congress extended

the California waiver provisions to most types of nonroad vehicles and engines, once again reflecting Congressional intent to provide California with the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare. Requiring the waiver measures to undergo SIP review in addition to the statutory waiver process is not consistent with providing California with the broadest possible discretion as to on-road and nonroad vehicle and engine standards, but rather, would add to the regulatory burden California faces in establishing and modifying such standards, and thus would not be consistent with Congressional intent. In short, we believe that Congress intended California's mobile source rules to undergo only one EPA review process (i.e., the waiver process), not two.

In summary, we disagree that our interpretation of CAA section 193 is fundamentally flawed. EPA has historically given SIP credit for waiver measures in our approval of attainment demonstrations and other planning requirements such as reasonable further progress and contingency measures submitted by California. We continue to believe that section 193 ratifies our long-standing practice of allowing credit for California's waiver measures notwithstanding the fact they are not approved into the SIP, and correctly reflects Congressional intent to

provide California with the broadest possible discretion in the development and promulgation of on-road and nonroad vehicle and engine standards.[11]

C. Reasonably Available Control Measures

Comment: AIR takes issue with EPA's policy interpretation of the RACM requirement in CAA section 172(c)(1) that a SIP meets the RACM requirement if it includes all reasonably available measures that individually or in combination with other such measures can advance attainment of the relevant standard by at least one year. The commenter claims this interpretation is "not based on the language of the statute and is irrational and perverse in the context of the SIP approval here." Specifically, AIR argues that because the 2007 8-hour Ozone SIP includes a "black box," under EPA's reasoning no controls would need to be adopted as RACM because even the controls that the District and State have identified as RACM would not advance attainment by a year.

[11] In this regard, we disagree that we are treating the waiver measures inconsistently with other California control measures, such as consumer products and fuels rules, for the simple reason that, unlike the waiver measures, there is no history of past practice or legislative history supporting treatment of other California measures, such as consumer products rules and fuels rules, in any manner differently than is required as a general rule under CAA section 110(a)(2)(A), i.e., state and local measures that are relied upon for SIP purposes must be approved into the SIP.

In addition, AIR claims that the 2007 8-hour Ozone SIP neither provides for attainment nor identifies the controls needed to attain, and that it is not rational to suggest that additional, feasible controls need not be adopted. AIR asserts that if a control is economically and technically feasible, then it is reasonably available and must be adopted. Finally, AIR argues that such controls *could* advance attainment and that "[a]s technology is developed, it very well could allow for earlier attainment, especially if the Plan minimizes the magnitude of emissions reductions put into the 'black box.'"

Response: Section 172(c)(1) of the Act requires that each attainment plan "provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards." For over 30 years, EPA has consistently interpreted this provision to require that States adopt only those "reasonably available" measures necessary for expeditious attainment and to meet RFP requirements. *See* 40 CFR 51.912(d) and 51.1010; 44 FR 20372 (April 4, 1979) (Part D of title I of the CAA "does not require

that all sources apply RACM if less than all RACM will suffice for [RFP] and attainment"); General Preamble[12] at 13560 ("where measures that might in fact be available for implementation in the nonattainment area could not be implemented on a schedule that would advance the date for attainment in the area, EPA would not consider it reasonable to require implementation of such measures")[13]; "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas," November 30, 1999 (1999 Seitz Memo) (a State may justify rejection of a measure as not "reasonably available" for that area based on technological or economic grounds); and 70 FR 71612 (November 29, 2005) at 71660, 71661 (noting that "to require areas to adopt and implement as RACM every control technology or measure that obtains a small amount of emissions reductions--even if such

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[12] The "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," published at 57 FR 13498 on April 16, 1992, describes EPA's preliminary view on how we would interpret various SIP planning provisions in title I of the CAA as amended in 1990, including those planning provisions applicable to the 1-hour ozone standard. EPA continues to rely on certain guidance in the General Preamble to implement the 8-hour ozone standard under title I.

[13] EPA also believes it is not reasonable to require the adoption of measures that are absurd, unenforceable, or impracticable. *See* General Preamble at 13560; *see also* 55 FR 38236 (September 18, 1990) (revoking prior EPA guidance to the extent it suggested or stated that areas with severe pollution problems must implement every conceivable control measure including those that would cause severe socioeconomic disruption.

measure would not advance the attainment date or is not required to meet RFP requirements--is not justified" as it "would be extremely burdensome to planning agencies, would detract from the effort to develop more reasonable and effective controls to meet the NAAQS, and would not be necessary to meet the statutory goal of expediting attainment"); *see also* preamble to $PM_{2.5}$ Implementation Rule, 72 FR 20586 at 20613, 20615 (April 25, 2007) (stating that a RACM demonstration should "focus on the most effective measures with the greatest possibility for significant air quality improvements"). EPA's interpretation of section 172(c)(1) has been upheld by several courts. *See, e.g., Sierra Club v. EPA, et al.*, 294 F. 3d 155 (D.C. Cir. 2002); *Sierra Club v. EPA*, 314 F.3d 735 (5th Cir. 2002).

Second, we disagree with AIR's assertion that our approach to RACM is "irrational" or "perverse" in the context of a plan that includes a "black box," – *i.e.,* an attainment demonstration that relies to some extent on the development of new control techniques or improvement of existing control technologies in accordance with CAA section 182(e)(5). Congress first enacted the RACM requirement as part of the CAA Amendments of 1977, which required SIPs for all nonattainment areas to provide for application of all "reasonably available control measures,"[14]

[14] The term "reasonably available control measures" is not

including RACT for all stationary sources. *See* 44 FR 53761 at 53762 (September 17, 1979) (citing sections 172(b)(2) and (b)(3) of the 1977 CAA).[15] As part of the 1990 Amendments to the CAA, Congress created specific nonattainment area planning requirements for ozone, including section 182(e)(5) of the Act, which allows for approval of a plan for an extreme ozone nonattainment area that relies in part on the development of new control techniques or improvements to existing technologies. Notably, however, Congress did not substantively alter the RACM requirement, although it moved the provision from section 172(b)(2) to section 172(c)(1) of the amended Act. Following the 1990 Amendments, EPA has consistently reaffirmed its pre-existing interpretation of the RACM requirement, *i.e.*, that only

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specifically defined in the CAA. EPA first interpreted the term in guidance issued in 1979. *See* 44 FR 20,372 (April 4, 1979). That guidance established the principle that RACM is determined based on evaluation of a collection of control measures submitted as part of the reasonable further progress (RFP) plan and attainment demonstration for a particular NAAQS. *See id.* at 20, 375; *see also id.* at 20,373 (noting that "states often have flexibility to obtain more or less emission reduction from any one measure, as long as a group of measures in the plan is adequate").

[15] Section 172(b) of the 1977 CAA stated, in relevant part, as follows: "The plan provisions required by subsection (a) of this section [for nonattainment areas] shall— (2) provide for the implementation of all reasonably available control measures as expeditiously as practicable; [and] (3) require, in the interim, reasonable further progress… including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology; . . ."

those measures that would advance attainment or that are needed to meet reasonable further progress requirements are "reasonably available" within the meaning of section 172(c)(1). *See, e.g.*, 57 FR 13498 at 13560 (April 16, 1992); 1999 Seitz Memo; 40 CFR 51.912(d) and 70 FR 71612 at 71660, 71661 (November 29, 2005); *see also Sierra Club v. EPA*, 314 F.3d 735 (5th Cir. 2002) (concluding that section 193 of the 1990 CAA expresses Congress' intent to preserve EPA's pre-1990 interpretation of the RACM requirement).

Thus, the CAA explicitly contemplates that, for an extreme ozone nonattainment area, even where all RACM necessary for expeditious attainment and RFP are implemented, additional control measures based on new or improved control techniques (*i.e.*, control measures yet to be defined) may be necessary to attain the ozone NAAQS. These new or improved control techniques are, by definition, not reasonably available for current implementation in the nonattainment area. AIR's comment suggests that our approval of a plan containing only those RACM necessary for expeditious attainment and RFP under CAA section 172(c)(1), together with new technology provisions under CAA section 182(e)(5) and other plan elements required under subpart 2 of part D, is somehow absurd. For the reasons discussed above, however, we believe Congress intended to allow for approval of

both those reasonably available measures that contribute to expeditious attainment and new technology provisions as elements of a reasonable strategy for attaining the ozone NAAQS in the SJV area. We therefore disagree with AIR's claim that the 2007 8-hour Ozone SIP fails to provide for attainment of the 1997 8-hour ozone standard.

As explained in our proposed rule, the 2007 Ozone Plan includes an enforceable commitment by the SJVUAPCD to adopt 19 control measures in the near term, all but one of which the District has since adopted. *See* 2007 Ozone Plan, Table 6-1 and 76 FR 57846, 57851 (Table 2).[16] Also as part of the near term emissions reductions, CARB committed to bring 11 measures to its Board that would contribute emissions reductions to the SJV and now has completed rulemaking on many of them including requirements for in-use off-road equipment and in-use heavy duty diesel trucks that are the first of their kind nationwide. *See* 76 FR 57846, 57853 (Table 5). We anticipate that these measures will accelerate introduction of the most stringent currently available new engine and retrofit technologies for these sources and result in almost full deployment of these technologies by

[16] The one measure that the SJVUAPCD has not adopted is a measure regulating aviation fuel storage (Control Measure S-PET-3), which the District determined was infeasible. *See* SJVUAPCD, "Final Draft Staff Report, Revised Proposed Amendments to Rules 2020, 4621, 4622, and 4624," December 20, 2007, p. 2.

2023.[17] These new measures are in addition to the many rules and regulations adopted by the District and State prior to the development of the SJV 8-Hour Ozone SIP (baseline measures), which collectively achieve more than 80 percent of NO_x and 47 percent of VOC reductions needed to attain the 8-hour ozone standard. *See* 76 FR 57846, 87859 (Table 10); *see also* Appendices A and B of TSD. Thus, contrary to the implication of AIR's argument, this is not a situation where the area is not adopting and implementing a variety of control measures that have been determined reasonable for other areas. In fact, SJVUAPCD is on the cutting edge of the type and level of controls it has required for sources in the area.[18]

Finally, we do not dispute AIR's statement that "[a]s technology is developed, it very well could allow for earlier attainment" and reduce the magnitude of emissions reductions put into the "black box" – *i.e.*, attributed to the plan provisions for new and improved technologies. At this time, however, we are not aware of currently available technologies or control measures that would achieve emissions reductions sufficient to

[17] The California Bureau of Automotive Repair, which implements California's SmogCheck program, and the California Department of Pesticides also have adopted measures as part of the 2007 State Strategy. *See* 2009 State Strategy Status Report, p. 4.

[18] Neither the District nor CARB rejected any potential RACM based on a finding that it would not advance attainment (alone or in combination with other potential measures), and AIR has not identified any such measures.

advance attainment of the ozone NAAQS in the SJV, and AIR has not identified any such measures.

Comment: AIR disputes EPA's statement that the process and criteria the District used to select certain measures and reject others are consistent with EPA's RACM guidance, asserting that the District's approach to evaluating economic feasibility is not consistent with EPA guidance because the District rejects control options based on the "affordability" of controls for a particular industry. Citing, for example, the District's "Revised Proposed Staff Report and Recommendations on Agricultural Burning," at p. 1-4 (May 20, 2010), AIR states that the District rejects controls "not based solely on the cost-effectiveness of controls but based on an overly simplistic ratio of costs to profits for the industry," referred to as the "'10 percent of profits' test, to determine whether controls are economically feasible." AIR also asserts that this 10-percent-of-profits test "has no connection to whether an industry is actually capable of bearing the costs of control, let alone whether the control should be considered cost-effective on a dollars per ton of emission reduction basis."

In support of these assertions, AIR quotes from EPA's Supplement to the General Preamble (57 FR 18070, 18074 (April 28, 1992)) and states that EPA "presumes that it is reasonable

for similar sources to bear similar costs of emission reductions" because "[e]conomic feasibility rests very little on the ability of a particular source to 'afford' to reduce emissions to the level of similar sources." AIR further quotes from this same document to assert that "capital costs, annualized costs, and cost effectiveness . . . should be determined for all technologically feasible emissions reduction options" and notes that cost effectiveness is the cost per amount of emissions reduction (in tons) per year.

Response: We agree generally that an economic feasibility analysis based on the use of a "10 percent of profits" test is not a sufficient basis for rejecting a control option from consideration as RACM under CAA section 172(c)(1). As AIR correctly notes, under EPA's long-standing guidance on evaluating economic feasibility for RACM/RACT under CAA section 172(c)(1), EPA presumes that the cost of using a control measure is reasonable if those same costs are borne by other comparable facilities. *See, e.g.*, 57 FR 18070, 18074 (April 28, 1992) and 59 FR 41998, 42009 (August 16, 1994). EPA guidance provides that economic feasibility is largely determined by evidence that other sources in a source category have in fact applied the control technology in question and may also be based on cost effectiveness (*i.e.*, calculation of the cost per amount of

emissions reduction in $/ton). *Id*. However, we note that our policy merely establishes a presumption and RACT is determined based on a source category or single source analysis; therefore, states can present additional or other evidence of what constitutes RACT for a source category or a single source.

For that reason, we disagree, with AIR's suggestion that cost effectiveness must be the sole criterion for evaluating economic feasibility. EPA's Supplement to the General Preamble (57 FR 18070, April 28, 1992), which AIR quotes from, provides that a state "*may* give substantial weight to cost effectiveness in evaluating the economic feasibility of an emissions reduction technology" but does not indicate that cost effectiveness is the only acceptable criterion.[19] *See* 57 FR 18070, 18074 (emphasis added). To the contrary, in numerous guidance documents EPA has

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[19] In the Supplement to the General Preamble, EPA stated that "[c]ost effectiveness provides a value for each emission reduction option that is comparable with other options and other facilities" but also stated that companies may provide other source-specific information about costs for consideration in an economic feasibility analysis:

> If a company contends that it cannot afford the technology that appears to be RACT for that source or group of sources, the claim should be supported with such information as impact on:
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> 1. Fixed and variable production cost ($/unit),
> 2. Product supply and demand elasticity,
> 3. Product prices (cost absorption vs cost pass-through)
> 4. Expected costs incurred by competitors,
> 5. Company profits, and
> 6. Employment.

57 FR 18070, 18074.

identified cost effectiveness as one of several factors that states may consider in evaluating the economic feasibility of an available control option. *See, e.g.*, 57 FR at 18074 ("[t]he capital costs, annualized costs, *and* cost effectiveness of an emissions reduction technology should be considered in determining its economic feasibility") (emphasis added); 57 FR 55620 at 55625 (November 25, 1992) ("NO_x Supplement to General Preamble") ("comparability" of a NO_x RACT control level "shall be determined on the basis of several factors including, for example, cost, cost-effectiveness, and emission reductions"); 59 FR 41998 at 42013 (August 16, 1994) ("PM-10 Addendum to General Preamble") ("capital costs, annualized costs, and cost effectiveness of an emission reduction technology should be considered in determining its economic feasibility"); and Memorandum from D. Kent Berry, EPA, Air Quality Management Division, to Air Division Directors, EPA Regions I – X, "Cost-Effective Nitrogen Oxides (NO_x) Reasonably Available Control Technology (RACT)" ("[w]hile cost effectiveness… is an important consideration, it must be noted that other factors should be integrated into a RACT analysis [such as] emissions reductions and environmental impact…").[20]

[20] EPA also included guidance on economic feasibility determinations in the preamble to its 2007 $PM_{2.5}$ Implementation Rule. *See* 72 FR 20586, 20619-20620 (April 25, 2007). In June

We also disagree with AIR's suggestion that the "affordability" of controls for a particular industry cannot play any role as part of an economic feasibility analysis. Although EPA has stated that "[e]conomic feasibility rests very little on the ability of a *particular source* to 'afford' to reduce emissions to the level of similar sources" (57 FR at 18074) (emphasis added), this does not mean that affordability on an *industry-wide basis* may not be considered as part of an economic feasibility analysis, among other factors.[21]

2007, a petition to the EPA Administrator was filed on behalf of several public health and environmental groups requesting, among other things, reconsideration of elements of this economic feasibility guidance. *See* Earthjustice, Petition for Reconsideration, "In the Matter of Final Clean Air Fine Particle Implementation Rule," June 25, 2007. On April 25, 2011, EPA granted this petition. *See* Letter, Lisa P. Jackson, EPA, to Paul Cort, Earthjustice, April 25, 2011. EPA did not rely on the economic feasibility guidance in the $PM_{2.5}$ implementation rule preamble in its review of the SJV 2007 8-hour Ozone Plan.

[21] The SJVUAPCD's "percent of profits" evaluation considers the economic impact of a rule or rule revision on the industries located within SJV as a whole rather than the economic impact for any particular source. *See*, for examples, the socioeconomic studies prepared for Rule 4570 found in Appendix D of the District's Final Staff Report, Revised Proposed Amendments to Rule 4570 (Confined Animal Facilities),October 21, and for Rule 4311 found in Appendix D to SJVUAPCD, Final Draft Staff Report, Revised Proposed Amendments to Rule 4311 ("Flares"), June 18, 2009.

As we explained in our SJV 2009 RACT SIP final action,[22] the District generally considers multiple factors in evaluating the economic feasibility of available control options during its rule development processes, including capital costs, annualized costs, cost-effectiveness, and compliance costs as a percentage of profits. Given EPA's long-standing position that states may justify rejection of a control measure as not "reasonably available" based on the technical and economic circumstances of the particular sources being regulated, it is appropriate for the District to consider multiple factors in evaluating the costs of potential control options to determine if they are economically feasible for sources located within the SJV. With respect to SJVUAPCD Rule 4103 (Open Burning), which AIR references as an example of the District's use of a "10 percent of profits" test to evaluate economic feasibility, EPA previously reviewed the District's analyses and explained our bases for concluding that the rule requires all control measures for open burning that are technically and economically feasible

[22] See "Partial Approval and Partial Disapproval of Air Quality Implementation Plans; California; San Joaquin Valley; Reasonably Available Control Technology for Ozone;" Final rule, pre-publication notice signed December 15, 2011, Response to Comment #4 ("SJV 2009 RACT SIP final action"). The 2009 RACT SIP is SJVUAPCD's "Reasonably Available Control Technology (RACT) Demonstration for Ozone State Implementation Plans (SIP), April 16, 2009, which was adopted by the SJVUAPCD on April 16, 2009 and submitted to EPA on June 18, 2009.)

for implementation in the SJV area. *See* "Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District;" final rule, pre-publication notice signed September 30, 2011 (Rule 4103).

Comment: AIR asserts that EPA cannot defend the cost-effectiveness criteria used by the District because the criteria have not been justified based on the attainment needs of the area. AIR further asserts that "EPA's cursory and conclusory analysis of the District's RACM demonstration is not sufficient to comply with the requirements and objectives of the [CAA]," and that it not possible to make a RACM demonstration for the SJV without explaining what is needed for attainment and using the attainment need to justify the thresholds used to accept or eliminate available control options. AIR cites EPA's 1992 General Preamble at 13541 in support of these assertions.

Response: It is not clear what AIR is referring to by "cost-effectiveness criteria used by the District." We are not aware of a specific dollar per ton threshold that the District routinely uses to reject control options during its rule development processes and AIR does not provide one.

To the extent AIR intended to object to the District's use of a "10 percent of profits" test, rather than to any particular "cost-effectiveness" criteria, we have responded to that concern

above. We note also that since the District's submittal of the 8-hour ozone plan in 2007, EPA has SIP-approved a number of rules that the District adopted despite cost estimates exceeding the "10 percent of profits" threshold for one or more industries subject to the rule, including Rule 4311 – Flares (June 18, 2009); Rule 4682 – Polystyrene Foam, Polyethylene and Polypropylene Manufacturing (September 20, 2007); and Rule 4570 – Confined Animal Facilities (October 21, 2010).[23]

We agree with AIR's position that it is not possible to make a RACM demonstration for the 1997 8-hour ozone standard in the SJV without explaining what is needed to attain that standard in the area. This explanation is provided in both the 2007 Ozone Plan and EPA's proposed approval of the Plan. *See* 2007 Ozone Plan, Chapter 3 ("What is Needed To Demonstrate Attainment?") and 76 FR 57846, 57857 (September 16, 2011). *See also* 2007 State Strategy, p. 33 and EPA's TSD, section II.F. To provide the emissions reductions needed to attain, the State and District developed a four part control strategy which is described in the Plan. *See* 2007 Ozone Plan at Chapter 4 ("Strategy"), Chapter 6 ("District Regulatory Control Measures

[23] EPA approved Rule 4311 at 76 FR 68106 (November 3, 2011); proposed a limited approval/limited disapproval of Rule 4682 at 76 FR 41745 (July 15, 2011); and approved Rule 4570 on December 13, 2011. *See* Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District; Final rule. Pre-publication version signed December 13, 2011.

for Stationary Sources"), Chapter 7 ("Action Plan for Reducing Emissions with Incentive Funds"), Chapter 8 ("Innovative Strategies and Programs"), and Chapter 9 ("Local, State, and Federal Controls"). *See also* 2007 State Strategy, Chapter 3 ("ARB's 2007 SIP State Strategy").

Chapter 6 of the Plan describes the process the District undertook to identify potential stationary source control measures for adoption; that is, to identify potential RACM within its jurisdiction.[24] This measure identification process resulted in the development of a stationary source regulatory implementation schedule which lists not only the specific control measures that the District committed to adopt but also the schedule for their adoption and implementation and their anticipated emissions reductions by year. *See* 2007 Ozone Plan, Table 6-1, p. 6-5. It is this regulatory implementation schedule (and a similar one developed for the subsequent SJV 2008 $PM_{2.5}$ Plan) that has in large part determined the District's rulemaking calendar over the last few years, and the anticipated emissions reductions listed in this implementation schedule have helped to define the needed stringency of the individual rules. Supporting information for the District's adopted rules shows that during the rule-development process, the District considers

[24] The detailed evaluation of each potential controls is found in Appendix I of the 2007 Ozone Plan.

its control strategies and the emissions reductions needed for attainment that it has identified in its plans. For example, section I.A. ("Reasons for Rule Development and Implementation") in the Rule 4320 SJV Staff Report[25] discusses both the deadline for adoption and the anticipated reductions from these new and revised rules in the 2007 Ozone Plan and states: "[t]his rulemaking project is intended to satisfy the attainment goals of the District's 2007 Ozone plan," "[t]he plan calls for a total of 1.1 tons per day of NO_x reductions [from large and medium boilers]…," and "[t]he proposed amendments…will seek to obtain as much reduction of [NO_x] from boilers, steam generators, and process heaters as expeditiously [as] practicable and technologically and economically feasible."[26]

Comment: AIR states that RACM is not limited to major sources, quoting EPA's recommendation in the General Preamble at 13541 that "a State's control analysis for existing stationary sources go beyond major stationary sources and that the state require control technology for other sources that are reasonable in

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[25] SJVUAPCD, Final Draft Staff Report, Proposed Amendments to Rule 4306, Proposed Amendments to Rule 4307, and Proposed New Rule 4320, October 16, 2008 (Rule 4320 SJV Staff Report)

[26] Most if not all District staff reports on proposed rule adoptions or amendments include a section discussing the reasons for rule develop and implementation. This section generally list the CAA provisions applicable to the rule (e.g., section 182(b)(2) RACT) and identifies whether the rulemaking project is part of the area's ozone and/or $PM_{2.5}$ control strategy and the reductions from the rule called for in the plan.

light of the areas attainment needs." AIR claims that an analysis of the effect of applying additional controls to non-major sources has not been conducted and therefore, EPA has no basis for its determination that additional reasonable controls are not available or that such control could not advance attainment. AIR further claims that the District's RACT demonstration only explores controls on sources down to 10 tons per year.

Response: We agree that a RACM analysis should not be limited to major sources. [27] *See* General Preamble at 13541. We disagree, however, with AIR's assertion that the District failed to evaluate controls for non-major sources. The District's control measure evaluation (documented in Appendices H and I of the Plan) was not limited to major stationary sources but covered a wide variety of small stationary sources (e.g., gasoline stations, p. I-75), area sources (e.g., architectural coatings, p. I-100; asphalt roofing, p. I-56; and residential water heaters, p. I-28), indirect sources (e.g., employer trip reduction, p. I-141) and mobile sources (e.g., school buses, p. I-156).

[27] A major stationary source in an ozone nonattainment area classified as extreme is any stationary facility or source of air pollutant which directly emits or has the potential to emit 10 tons of VOC or 10 tons of NOx per year. *See* CAA sections 302(j) and 182(e).

Most of the District's rules currently apply to sources much smaller than major sources. *See*, for example, Rule 4607 – Graphic Arts which applies to any graphic arts source that emits more that 1.2 tpy of VOC, Rule 4308 – Boilers 0.75 – 2 MMBtu/hr which applies to all boilers of this size without regard to the source size; Rule 4622 – Gasoline Transfer into Motor Vehicles which applies to most retail gasoline station; and Rule 4902 – Residential Water Heaters.[28] We also note that of the 18 measures that the District has adopted following its submittal of the 2007 Ozone Plan, all but two (glass melting furnaces and brandy and wine aging) regulate non-major sources. *See* 2007 Ozone Plan, Table 6-1. *See also*, Table 1 below.

As to AIR's claim that "[t]he District's RACT demonstration only explores controls on sources down to 10 tons per year," this statement is not germane to our evaluation of the Plan's RACM demonstration under CAA 172(c)(1). The District submitted the 2009 RACT SIP[29] to meet the technology-based RACT requirements for specific types of sources in CAA section

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[28] We have identified only seven District prohibitory rules (of the approximately 60 District rules that regulate NO_x and/or VOC) which apply only to units at major sources: Rule 4354 – Solid Fuel Boilers (NO_x); Rule 4356 – Glass Melting Furnaces (NO_x and VOC); Rule 4311 – Flares (SO_x, NO_x, and VOC); Rule 4610 – Glass Coating Operations (VOC); Rule 4693 – Bakeries (VOC); Rule 4694 – Wine Fermentation and Storage Tanks (VOC); and Rule 4695 – Brandy and Wine Aging (VOC).

[29] We assume here that AIR intended to refer to the SJV 2009 RACT SIP.

182(b)(2) and (f). These requirements are separate from the RACM obligation in CAA section 172(c)(1), and EPA therefore evaluated the 2009 RACT SIP for compliance only with these specific control technology requirements. *See* SJV 2009 RACT SIP final action.

Evaluation of Potential to Advance Attainment

As discussed above, under EPA's longstanding policy, a SIP meets the RACM requirement in CAA section 172(c)(1) if it includes all reasonably available measures that individually or in combination with other such measures can advance attainment of the relevant standard by one year or more. Thus to determine whether the SJV Ozone SIP meets this statutory requirement, we evaluated whether implementation of potential RACM (including any missing section 182 RACT controls and those identified by AIR in its comments (*see* TSD, section III.C.) would expedite attainment of the 1997 8-hour ozone standard in the SJV.

Attainment of the 1997 8-hour ozone standard in the SJV depends on significant reductions in NO_x emissions. Air quality modeling shows that no level of VOC reductions will bring about attainment of the 8-hour ozone standard in the SJV absent these NO_x reductions and no reasonable level of VOC reductions will expedite attainment absent significant NO_x reductions. See 2007 Ozone Plan, Chapter 3; see also, section II.C.3. of the TSD.

Because VOC reductions will not advance attainment of the 1997 8-hour ozone standard unless substantial NO_x reductions are also achieved, we have focused our evaluation on the potential RACM that reduce NO_x emissions. Specifically, we evaluated whether additional emissions reductions from the control measures suggested by the commenter (e..g, requiring RACT-level controls on major source solid fuel-fired boilers and prohibiting the use of pre-baseline emissions reductions credits as discussed in section III.C. below) and certain control measures not yet eligible for SIP credit, would provide sufficient additional reductions in 2023 to attain by June 15, 2024 without reliance on the CAA section 182(e)(5) new technology provision.[30] We used 2023 rather than 2022 because more information is available on projected controlled emissions levels in that year. Fleet turnover from existing mobile source measures will provide an additional 10 tpd in NO_x emissions reductions in the SJV between 2022 and 2023. Therefore, if we conclude that additional RACM measures would not provide

[30] As an extreme ozone nonattainment area, SJV's statutory attainment date is as expeditiously as practicable but no later than June 15, 2024. 40 CFR 51.903(a). The SIP as submitted demonstrates that the most expeditious attainment date is June 15, 2024. *See* 2007 Ozone Plan, p. 11-1. In order to attain by that date, the area must have all reductions needed for attainment in place by 2023. Thus, to advance attainment by one year, all reductions needed for attainment must be in place by 2022.

sufficient reductions in 2023 to attain, we can also conclude that they would not provide sufficient emissions reductions in 2022.

After analyzing the maximum potential emissions reductions from additional controls on source categories for which we have not yet approved rules meeting RACT and measures recommended by AIR (including eliminating the use of pre-baseline emissions reduction credits in the area's new source review program) and comparing them against the level of reductions needed for attainment in the SJV by June 15, 2024, we find that even with these additional controls , the 2023 NO_x emissions level in the SJV would still be well above the level needed for attainment. See Table C-5 in the TSD. We conclude, therefore, that the SJV 2007 8-hour ozone SIP provides for RACM as required by CAA section 172(c)(1).[31]

D. CAA section 182(e)(5) New Technology Provision

Comment: AIR states that California's reliance on "black box" measures in the SJV 2007 8-hour Ozone SIP fails to meet the requirements and intent of the Clean Air Act by allowing the State and District to defer their responsibility to attain the 8-hour ozone standards. AIR argues that there are three problems

[31] This finding under CAA section 172(c)(1) does not affect the District's separate obligation under CAA sections 182(b)(2) and (f) and 40 CFR 51.905(a)(1)(ii) to implement RACT for all major sources and all CTG source categories.

with how the State and District are using the CAA 182(e)(5) new technology provision.

First, AIR argues that it is arbitrary for EPA to approve a new technology provision of 80 tons per day of NO_x reductions or 59 percent of the reductions needed for attainment given its lack of definition.

Second, AIR asserts that section 182(e)(5) is intended to address new technologies that will develop over time but that in California, "new technologies alone will not sufficiently reduce pollution to attain federal air quality standards." Citing a description in the Proposal TSD (at page 81) of a potential measure described by CARB as "prioritizing federal transportation funding to support air quality goals," AIR argues that "[t]his example clearly fails to meet all the criteria required for Black Box use," and that while "tying air quality to transportation planning" is important for attainment, the black box cannot be used as a basis for not requiring implementation of "existing" strategies such as increased public transit that do not require the development of new technologies.

Third, AIR states that the section 182(e)(5) commitments are vague and insufficient and that EPA cannot approve the attainment demonstration "unless the Section 182(e)(5) measures comply with the CAA." Citing both CAA section 182(e)(5) and

EPA's January 8, 1997 final rule approving the 1-hour ozone plan for several California nonattainment areas (62 FR 1150, 1179), AIR asserts that the new technology measures must: (1) contain sufficient definition; (2) contain schedules for development of the new technologies; (3) contain commitments for funding; (4) depend on development of new technologies; and (5) include an enforceable commitment to develop and adopt necessary contingency measures. AIR asserts that the SJV 2007 8-hour Ozone SIP "only attempts to comply with requirement number (5)," that the generalized discussion in the SIP provides little assurance of CARB's ability to develop these measures, and that approval of these measures is therefore arbitrary and capricious.

Response: First, we disagree with the commenters' contention that EPA's approval of the SIP is arbitrary because of the amount of emissions reductions attributed to the new technology provision or because they are undefined. As an initial matter, we note that the commenters' assertion about the 59 percent of the emissions reductions needed for attainment of the 1997 8-hour ozone standard in the SJV that are attributed to the new technologies provision is not correct.[32] The correct percentage

[32] It appears that the commenters overestimated the percentage of emissions reductions attributed to the new technology provision in the SIP by calculating the amount of needed reductions without taking into account the reductions attributed to baseline measures. The 59 percent figure represents the

of the needed NO_x emissions reductions attributed to the new technology provision in the SJV 2007 8-hour Ozone SIP is 12 percent as explained further below.

The CAA does not provide a quantitative limit on the extent to which the attainment demonstration for an extreme ozone nonattainment area may rely on the new technology provisions under CAA section 182(e)(5). As we explained in our proposed rule, CAA section 182(e)(5) authorizes EPA to approve provisions in an extreme area plan which "anticipate development of new control techniques or improvement of existing control technologies," and to approve an attainment demonstration based on such provisions if the State demonstrates that: (1) such provisions are not necessary to achieve incremental reductions required during the first 10 years after the effective date of designation for the 1997 8-hour ozone standards, and (2) the State has submitted enforceable commitments to submit adopted contingency measures meeting certain criteria no later than three years before proposed implementation of the new technology measures. *See* 76 FR 57846, 57854. EPA guidance on section 182(e)(5) states, among other things, that the SIP should show that the long-term measure(s) cannot be fully developed and

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percent contribution of the new technology provision to the new emissions reductions (that is, the non-baseline emissions reductions) in the SIP. *See* TSD, Table F-2.

adopted by the submittal date for the attainment demonstration and that the measures approved under section 182(e)(5) may include those that anticipate future technological developments as well as those that require complex analyses, decision making and coordination among a number of government agencies. *See* General Preamble at 13524.

The majority of the emissions reductions in the SJV 2007 8-hour Ozone SIP are attributed to already adopted and near-term measures. *See* 76 FR 57846, 57850-61. Our summary of SJV's 8-hour ozone attainment demonstration in the proposed rule shows that the area needs to reduce emissions from 2002 levels by a total of 424 tpd of NO_x and 116 tpd of VOC to attain the 1997 8-hour ozone standards by June 15, 2024. *See* 76 FR 57846, 57859 (Table 10) (values rounded to the ones place). Of these needed reductions, approximately 88 percent of the NO_x reductions and all of the VOC reductions are attributed to already adopted measures or commitments to adopt and implement existing technologies by 2014. *S*ee 76 FR 57846, 57859 (Table 10) and 57851, 57853 (Tables 2 and 5) (identifying CARB and District measures recently adopted or scheduled for near-term consideration). These measures include all reasonably available control measures and generally represent the most stringent air pollution control requirements for stationary, area, and mobile

sources nationwide. This leaves just 12 percent of the needed NO_x reductions and none of the needed VOC reductions to be met through new technologies under CAA section 182(e)(5). *See* 76 FR 57846, 57859 (Table 10).

Given the demonstrated need for emissions reductions from new and improved control techniques needed to attain the 1997 8-hour ozone standard in the SJV, we believe it is reasonable for the State to attribute this amount of emissions reductions to the new technology provision. However, as we stated in our proposed rule, we expect the amount and relative proportion of reductions from measures scheduled for long-term adoption under section 182(e)(5) should decrease in any future SIP update, and EPA will not approve any future SIP revisions with an increase in the 182(e)(5) reductions for 2023 without a convincing showing that the technologies relied upon in the near-term rules are infeasible or ineffective in achieving emissions reductions in the near-term. *See* 76 FR 57846, 57856. Moreover, to the extent new modeling performed in any subsequent SIP revision demonstrates that there is an increase in the year 2023 carrying capacity for VOC and NO_x, this change may not be used to decrease the amount of emissions reductions scheduled to be achieved by any existing technology measures from the SJV 2007 8-hour Ozone

SIP unless CARB or the District make the convincing showing described above.

Second, we disagree with AIR that CAA section 182(e)(5) allows only for plan provisions that rely on "new technologies" and that the District must adopt additional "existing strategies" that do not rely on new technologies. CAA section 182(e)(5) allows for approval of extreme area plan provisions that "anticipate development of new control techniques or improvement of existing control technologies," which EPA interprets to include "[those that may anticipate future technological developments as well as those that may require complex analyses and decision making and coordination among a number of government agencies." *See* 57 FR 13498, 13524. Thus, in addition to plan provisions that rely on "new technologies," section 182(e)(5) contemplates provisions that are as of yet undefined because they require, for example, time for State and local agencies to evaluate complex technical information and to seek public participation in their regulatory processes.

AIR correctly notes that EPA's TSD identified "prioritiz[ation of] federal transportation funding to support air quality goals" among a number of potential long-term strategies that CARB had identified for further consideration (*see* Proposal TSD, p. 81, citing 2007 State Strategy, pp. 55-

56), but it does not describe any specific control measure that such budgetary decisions could support and that is reasonably available for current implementation in the SJV. Likewise, although AIR asserts generally that "increased transit" and other "existing strategies" should be required as control measures because these do not require the development of new technologies, they have not identified any particular control measure that the State should be obligated to include in its plan for attaining the 1997 8-hour ozone standards in the SJV. CARB and the District have adopted all of the control measures for NO_x and VOC that are "reasonably available" within the meaning of CAA section 172(c)(1) for current implementation in the SJV and have submitted enforceable commitments to adopt additional measures achieving specific amounts of emissions reductions by specific years. *See* 76 FR 57846, 57850-57854. These measures are not sufficient, however, to achieve the significant amounts of NO_x and VOC reductions necessary to attain the 1997 8-hour ozone NAAQS in the SJV by June 15, 2024. Absent new information about additional control measures that are cost-effective and technically feasible for current implementation in the area, we believe it is reasonable to allow the State and District time to develop additional control measures based on

new or improved control technologies under CAA section 182(e)(5).

Third, we disagree with AIR that the SIP's section 182(e)(5) provisions are vague and insufficient. As discussed in our proposed rule, CARB has submitted enforceable commitments to achieve specific amounts of NO_x and VOC reductions by 2023 through the development of new or improved control technologies under CAA section 182(e)(5). The total tonnage commitment in the SJV is for 81 tpd NO_x. *See* 76 FR 57846, 57854-57855 and 2009 State Strategy Status Report, p. 21. With respect to the requirement for contingency measures in CAA section 182(e)(5)(B), we explained in our proposed rule that CARB's 2011 Ozone SIP Revisions contain the State's enforceable commitment "to develop, adopt, and submit contingency measures by 2020 if advanced technology measures do not achieve planned reductions" (76 FR 57846, 57855, referencing CARB Resolution 11-22, July 21, 2011), and in a letter dated November 18, 2011 to EPA Region 9, CARB confirmed that EPA's understanding of this enforceable commitment is correct. *See* letter James N. Goldstene, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region 9, November 18, 2011.

In addition, as explained in our proposed rule (76 FR 57846, 57855), the SJV 2007 8-hour Ozone SIP identifies numerous

potential measures currently under consideration as part of the long-term strategy, and CARB has committed to submit a SIP revision by 2020 that will identify the additional strategies and implementing agencies needed to achieve the needed reductions by the beginning of the 2023 ozone season. *See* 2011 Ozone SIP Revisions, p. A-8; *see also* the August 29, 2011 Goldstene letter which describes California's climate change programs, clean car technologies, programs to accelerate hybrids and plug-in technologies, greenhouse gas emissions reduction targets for passenger vehicles, and the District's efforts to shift goods movement to lower-emission alternatives and to reduce emissions caused by electricity and natural gas consumption in residential, industrial, and institutional settings). We note also that CARB has stated its intent to convene annual strategy meetings with the South Coast and SJV Districts and EPA to discuss progress in the development of its new technology measures, and to secure resources for continuing research and development of new technologies. *See* August 29, 2011 Goldstene letter; *see also* 2009 State Strategy Status Report, pp. 25-27.

Finally, AIR references CAA section 182(e)(5) and EPA's final rule approving an ozone SIP previously submitted by

California (62 FR 1150, 1179)[33] in support of its assertion that the long-term strategy must satisfy five "requirements," of which, commenters contend, the SJV 2007 8-hour Ozone SIP addresses only one. We disagree with this characterization of both the requirements of CAA section 182(e)(5) and the provisions in the SIP.

As explained above and in our proposed rule, EPA interprets the Act to allow EPA to approve the State's conceptual new technology provisions and credit them toward the attainment demonstration if the state makes the required commitment to submit contingency measures, which then must be submitted to EPA no later than 3 years before proposed implementation and EPA concludes that the measures are not needed to achieve the first 10 years of required rate of progress reductions. *See* 76 FR 57846, 57854. The five "requirements" for approval of new technology provisions that commenters reference are not

[33] We note that although this final action included EPA's approval of new technology provisions under CAA section 182(e)(5) as part of California's SIP for the 1-hour ozone NAAQS in the South Coast area, this prior rulemaking action is not germane to today's action on the SJV 2007 Ozone SIP. We assume that the commenters intended to refer, instead, to the source of the five criteria that EPA has recommended for consideration in evaluating new technology provisions under CAA 182(e)(5), which is the General Preamble (57 FR 13498, 13524 (April 16, 1992)).

statutory or regulatory requirements but recommended criteria. *See* General Preamble at 13524.[34]

As also explained in the proposed rule, CARB and the District have demonstrated a clear need for additional time to fully develop and adopt the long-term measures under consideration and have met the statutory requirements for approval of such conceptual measures under CAA section 182(e)(5). *See* 76 57846 57854-57855. The General Preamble at 13524 recommends that a SIP relying on new technology provisions under CAA section 182(e)(5) identify all of the specific long-term measures the State intends to adopt, contain a schedule outlining the specific steps leading to final development and adoption, and contain commitments from the agencies that would

[34] EPA's General Preamble states that in order to rely on "new technology provisions" under CAA section 182(e)(5), a SIP must satisfy the following criteria: (1) identify all measures, including the long-term measure(s) for which additional time would be needed for development and adoption; (2) show that the long-term measure(s) cannot be fully developed and adopted by the submittal date for the attainment demonstration and contain a schedule outlining the steps leading to final development and adoption of the measure(s); (3) contain commitments from those agencies that would be involved in developing and implementing the schedule for the measure; (4) contain a commitment to develop and submit contingency measures (in addition to those otherwise required for the area) that could be implemented if the measure is not developed or if it fails to achieve the anticipated reductions; and (5) not rely on the new technology measures to meet any emissions reductions requirements within the first 10 years after enactment. *See* 57 FR 13498, 13524 (April 16, 1992). We note that this language is non-binding guidance although it is phrased in mandatory terms.

be involved in developing and implementing these measures, in addition to satisfying the statutory criteria. However, as discussed in our proposed rule and above, both the 2007 State Strategy and the 2007 Ozone Plan provide lists of the types of technologies and measures that they are pursuing to achieve the emissions reductions needed for attainment of the 8-hour ozone standard in the SJV. *See* 76 FR 57846, 57854-57855 and TSD, section II.E.2.*; see also,* 2007 Ozone Plan, Chapters 7, 8, and 11; 2007 State Strategy, pp. 54-57; 2009 State Strategy Update, p. 25; and 2011 Ozone Plan Update, Appendix A. The State has also committed to share the results of its efforts with the public through Board meetings, workshops and other means. *See* 2009 State Strategy Update, p. 25; *see also*, letter, James Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, August 29, 2011. Finally, the State has committed to work to secure resources for continuing research and development and to develop schedules for moving from research to implementation. *Id.* We find that the State and District have adequately addressed the policy criteria in the General Preamble given the significant emissions reductions needed to attain the 1997 8-hour ozone NAAQS in the SJV and the type of sources (i.e., mobile sources) for which technology must be developed, tested, and deployed in order to

achieve these reductions. EPA commits to do its share to support the needed research and development activities of CARB and the District.

Comment: AIR asserts that the SJV already violates the 1-hour ozone standard and failed to attain that standard by November 15, 2010 (citing 76 FF 56694 (September 14, 2011)) is "particularly" relevant to the approval of the new technology provisions in the 8-hour ozone plan because, according to AIR, the District and CARB "relied heavily" on new technology measures in its previous plans for the 1-hour ozone standard and these commitments have not been met. AIR further asserts that EPA cannot reasonably rely on the continued use of the new technologies provision because, according to AIR, the District's and CARB's track record for using this approach has not resulted in the pollution reductions committed to in the SJV 2004 1-hour attainment plan.

Response: EPA is acting today on the SJV 2007 8-hour Ozone SIP, which the State submitted to meet the requirements of part D, title I of the CAA for the 1997 8-hour ozone standard. Neither the CAA's planning requirements related to attainment of the 1-hour ozone standard nor the State's submittals to meet the Act's requirements for that prior standard are germane to our action on the SJV 2007 8-hour Ozone SIP under CAA section 110(k).

Additionally, nothing in section 182(e)(5) of the CAA or our implementing regulations requires EPA to take into account the success or failure of a prior plan for a different ambient air quality standard in approving extreme area plan provisions that meet the requirements of CAA section 182(e)(5) for the 1997 8-hour ozone standard. EPA's proposed rule to determine that the SJV failed to attain the 1-hour ozone standard by its applicable attainment date (76 FR 56694, September 14, 2011), which commenters reference, likewise has no bearing on our action on the SJV 2007 8-hour Ozone SIP under CAA section 110(k).

We disagree with AIR's assertions that the District and CARB relied heavily on new technology measures in its previous plans for the 1-hour ozone standards and that these commitments have not been met. The District relied on emissions reductions from new technology measures only in its 2004 Ozone SIP. [35]

[35] The 2004 Ozone SIP is the "Extreme Ozone Attainment Plan," adopted by the SJVUAPCD on October 8, 2004 and submitted to EPA by CARB on November 15, 2004 and the relevant portions of the CARB's "2003 State and Federal Strategy for the California State Implementation Plan" adopted on October 23, 2003 and submitted to EPA on January 9, 2004.

As initially submitted, the attainment demonstration in the 2004 Ozone SIP included 5 tpd of NO_x and 5 tpd of VOC emissions reductions from new technology measures (referred to as "long-term measures" in 2004 Ozone SIP). *See* CARB, "Staff Report, Proposed 2004 State Implementation Plan for Ozone in the San Joaquin Valley," September 28, 2004, Table E-2, p. 5. These reductions were part of the District's emissions reductions commitments. *Id.* However, prior to EPA's action on the 2004 Ozone SIP, the District adopted and submitted rules that

Reductions from new technology measures in the 2004 Ozone SIP accounted for less than 4 percent of the overall reductions in that SIP's attainment demonstration; and the District subsequently showed that it had adopted sufficient measures to achieved these reductions. *See* 74 FR 33933, 33937 (July 14, 2009).

Finally, we disagree with commenters' argument that EPA must direct CARB to "extract from the black box needed reductions they know will not come from future technologies, reduce the overall size of the black box to a reasonable level and better define where the remaining black box reductions are expected to come from." It is not possible at this point in time to know that certain emissions reductions will not come from future technologies, and we do not believe it is reasonable to require the State to reduce the amount of emissions reductions attributed to the long-term strategy by either implementing measures or incremental reductions beyond those otherwise

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provided sufficient emissions reductions to meet its all its commitments including its commitments for reductions from new technology measures. *See* 74 FR 33933, 33937 (July 14, 2009). As a result, EPA did not approve any element of the 2004 SIP under the CAA section 182(e)(5) new technology provision. *See* 75 FR 10420, 10436-37 (March 8, 2010). The 2004 Ozone SIP also included commitments by CARB to achieve 15 tpd of VOC and 20 tpd of NO_x emissions reductions in the SJV by 2010; likewise, these commitments were approved as meeting the requirements of CAA section 110(a)(2)(A) and 172(c)(6) and not CAA section 182(e)(5). *Id.*

mandated by the Act or developing measures based on control techniques not yet identified or commercially available for implementation in the area. As explained above, the State has met the statutory criteria for approval of its long-term strategy under CAA section 182(e)(5).

E. CAA Section 182(d)(1)(A) Requirements

Comment: AIR asserts that EPA has also failed to assess the adequacy of the SIP's compliance with the requirement in CAA section 182(d)(1)(A) that the SIP provide adequate enforceable control measures "to allow total area emissions to comply with RFP and attainment requirements." AIR argues that, because the area has not adopted sufficient enforceable control measures to provide for attainment (citing to its comments that the attainment demonstration is not approvable because, *inter alia*, measures relied on in that demonstration were not in the SIP), this provision must be met and EPA must direct the State/District to adopt the additional measures needed for attainment, either as TCMs to reduce motor vehicle emissions, or as controls on other source categories so that total emissions reductions provide for attainment.

Response: CAA section 182(d)(1)(A) requires the State to "submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation

control measures …to attain reductions in motor vehicle emissions as necessary, in combination with other emissions reduction requirements of [title 1, part D, subpart 2], to comply with the requirements of [sections 182] (b)(2)(B) and (c)(2)(B)" and "to consider measures specified in section 108(f)… and to choose from among and implement such measures as necessary to demonstrate attainment."

We have determined that the SJV 2007 8-hour Ozone SIP meets the RPF requirements in sections 182(b)(2)(B) and (c)(2)(B) and demonstrates attainment consistent with the subpart 2 requirements and thus also meets the requirements of section 182(d)(1)(A) to adopt transportation control strategies and TCMs as necessary to demonstrate RFP and attainment. *See* 76 FR 57846, 57863 and TSD, section II.H.3.; *see also,* TSD, section III.A.2. (responding to comments on the approvability of the baseline emissions inventory and the attainment demonstration). The SIP also includes documentation that the state considered the transportation control measures listed in CAA section 108(f), evaluated their effectiveness in contributing to expeditious attainment, and concluded that they would not. *See* 2007 Ozone SIP, appendix D; 76 FR 57846, 57852 and 57863 and TSD, sections II.B.3.b. and II.H.2.

We disagree with AIR's summary of the CAA section 182(d)(1)(A) requirements related to RFP and attainment. This specific section does not require that the SIP provide "adequate enforceable control measures 'to allow total area emissions to comply with RFP and attainment requirements'" but rather it requires that the state adopt *enforceable transportation strategies and TCM as necessary in combination with other emissions reduction requirement of subpart 2* to demonstrate RFP and to implement *TCMs as necessary* to demonstration attainment. Thus, if other SIP provisions provide for RFP and attainment consistent with applicable CAA requirements (including, in this case, the provisions of CAA section 182(e)(5)), then the state has no obligation under section 182(d)(1)(A) to adopt transportation control strategies and TCMs for RFP and attainment purposes.

III. Approval Status of the Control Strategy Measures and Final Actions on the Attainment Demonstration and Enforceable Commitments

A. Approval Status of Control Strategy Measures

As part of its control strategy for attaining the 1997 8-hour ozone standards in the SJV, the District made specific commitments to adopt nineteen measures on the schedule identified in the Plan. *See* 2007 Ozone Plan, Table 6-1 (revised

December 18, 2009). The District has now completed its actions on all measures except for one which it found to be infeasible. *See* Table 1 below. As Table 1 shows, EPA has approved all of the adopted rules except for one, which EPA is not currently crediting with emissions reductions in the RFP or attainment demonstration.

Table 1
San Joaquin Valley Air Pollution Control District
2007 Ozone Plan Specific Rule Commitments

Measure Number & Description	District Rule Number	Adoption Date		SIP Status
		Anticipated	Actual	
S-GOV-1 Composting Biosolids	4565	1st Q – 2007	March 2007	Approved: December 13, 2011 (signature date)
S-AGR-1 Open Burning (Phase IV)	4103	2nd Q – 2010	April 2010	Approved: September 29, 2011 (signature date)
S-SOL-11 Solvents				
Organic Solvents	4661	3rd Q – 2007	September 2007	Approved: 75 FR 24406 (May 5, 2010)
Organic Solvent Degreasing	4662		September 2007	Approved: 74 FR 37948 (July 30, 2009)
Organic Solvent Cleaning	4663		September 2007	Approved: 74 FR 37948 (July 30, 2009)
S-COM-5 Stationary Gas Turbines	4703	3rd Q – 2007	September 2007	Approved: 74 FR 53888 (October 21, 2009)
S-IND-24 Soil Decontaminati	4651	3rd Q – 2007	September 2007	Approved: 74 FR 52894 (October 15, 2009)

Measure Number & Description	District Rule Number	Adoption Date		SIP Status
		Anticipated	Actual	
on				
S-IND-6 Polystyrene Foam	4682	3rd Q – 2007	September 2007	Approved: 76 FR 41745 (July 15, 2011)
S-PET-1&2 Gasoline Storage & Transfer	4623 4624	4th Q – 2007	December 2007	Approved: 74 FR 56120 (October 30, 2009)
S-PET-3 Aviation Fuel Storage	—	3rd Q – 2007	found not feasible	Found infeasible
S-COM-1 Large Boilers	4306 4320	3rd Q – 2008	October 2008	Approved: 75 FR 1715 (January 13, 2010) and 76 FR 16696 (March 25, 2011)
S-COM-2 Boilers, Steam Generators and Process Heaters (2 to 5 MMBtu/hr)	4307	3rd Q – 2008	October 2008	Approved: 75 FR 1715 (January 13, 2010)
S-COM-7 Glass Melting Furnaces[1]	4354	3rd Q – 2008	October 2008	Approved: 76 FR 53640 (August 29, 2011)
S-SOL-20 Graphic Arts	4607	4th Q – 2008	December 2008	Approved: 74 FR 52894 (October 15, 2009)
S-COM-9 Residential Water Heaters	4902	1st Q – 2009	March 2009	Approved: 75 FR 24408 (May 5, 2010)
S-GOV-5 Composting Green Waste	4566	4th Q 0 2010	August 2011	Rule adopted August 2011, Submitted November 18, 2011

Measure Number & Description	District Rule Number	Adoption Date		SIP Status
		Anticipated	Actual	
S-IND-21 Flares	4311	2nd Q – 2009	June 2009	Approved: 76 FR 68106 (November 3, 2011)
S-IND-14 Brandy and Wine Aging	4695	3rd Q – 2009	September 2009	Approved: 76 FR 47076 (August 4, 2011)
S-SOL-1 Architectural Coatings	4601	4th Q – 2009	December 2009	Approved: 76 FR69135 (November 8, 2011)
S-AGR-2 Confined Animal Facilities	4570	2nd Q – 2010	October 2010	Approved: December 13, 2011 (signature date)
S-SOL-6 Adhesives	4653	3rd Q – 2010	September 2010	Approved: November 18, 2011 (signature date)

Source: List of measures and anticipated adoption dates: 2007 Ozone Plan, Table 6-1, revised December 18, 2009.

As part of its control strategy for attaining the 1997 8-hour ozone standards in the SJV, CARB committed to propose certain measures on the schedule identified in the 2007 State Strategy. These commitments were updated in the 2011 Progress Report and 2011 Ozone SIP Revisions. We list these measures and their current approval status in Table 2. Of the measures listed in the 2007 State Strategy's updated rulemaking schedule, we note that only reductions from the "SmogCheck Improvement," "Cleaner In-Use Heavy Duty Trucks," "Cleaner In-Use Off-Road Engines," and "Consumer Products Program" measures are currently

credited with reductions in the attainment demonstration. *See* 76 FR 57846, 57853 (Table 7).

Generally, EPA will approve a State plan that takes emissions reduction credit for a control measure only where EPA has approved the measure as part of the SIP, or in the case of certain on-road and nonroad measures, where EPA has issued the related waiver of preemption or authorization under CAA section 209(b) or section 209(e). In our September 2011 proposed rule, in calculating and proposing to approve the State's aggregate emissions reductions commitment in connection with our proposed approval of the attainment demonstration, we assumed that full final approval, waiver, or authorization of a number of CARB rules would occur prior to our final action on the San Joaquin Valley 8-hour ozone SIP. *See* 76 FR 57846, 57853 (Table 7). Two specific adopted CARB rules on which the attainment demonstration relies include the Truck Rule and the Drayage Truck Rule (that collectively are included in a State measure referred to as "Cleaner In-Use Heavy Duty Trucks"). We proposed approval of both rules at 76 FR 40652 (July 11, 2011) but could not take final action on the rules until these rules were approved by the California Office of Administrative Law (OAL). OAL approved the Drayage Truck Rule on November 9, 2011 and the Truck Rule on December 14, 2011. CARB submitted the rules to EPA

for final approval on December 9 and 15, 2011, respectively. We expect to complete action on these rules prior to the effective date of this rule.

Based on anticipated approval of these two CARB rules, we are allowing the plan's attainment demonstration, and our final approval of it, to rely on the emissions reductions from these rules for the following reasons:

- Both rules have been adopted by CARB, approved by the California OAL, and submitted to EPA as a revision to the California SIP,[36] and the adopted versions are essentially the same as those for which EPA proposed approval; and
- The comments that we have received on our proposed approval of the two CARB rules (Truck Rule and Drayage Truck Rule) contend that the rules are costly and may not be economically or technologically feasible, but such considerations cannot form the basis for EPA disapproval of a rule submitted by a state as part of the SIP [see *Union Electric Company v. EPA*, 427 U.S. 246, 265 (1976)].

We are confident that the final action on the rules will be completed in the near-term and that, as a result, continued reliance by the SJV 2007 8-hour Ozone SIP, and our final

[36] The Truck Rule and the Drayage Truck Rule were included in a SIP submittal dated September 21, 2011. We have included the September 21, 2011 SIP submittal in the docket for this rulemaking.

approval of it, on the emissions reductions associated with the rules is reasonable and appropriate. If, however, we are unable to complete a final action on these rules prior to the effective date of today's action, we will take appropriate remedial action to ensure that our action on the plan is fully supportable or to reconsider that action.

Table 2
2007 State Strategy Defined Measures Applicable to the SJV, Schedule for Consideration and Current Status

State Measures	Expected Action Year	Current Status
Smog Check Improvements	2007-2009	Elements approved 75 FR 38023 (July 1, 2010)[37]
Expanded Vehicle Retirement (AB 118)	2007	Adopted by CARB, June 2009; by Bureau of Automotive Repair, September 2010.
Modification to Reformulated Gasoline Program	2007	Approved, 75 FR 26653 (May 12, 2010)
Cleaner In-Use Heavy Duty Trucks (includes Drayage rule)	2007, 2008, 2010	Proposed for approval: 76 FR 40652 (July 11, 2011) See discussion above.
Accelerated Introduction of Cleaner Locomotives	2008	Prop 1B bond funds awarded to upgrade line-haul locomotive engines not already accounted for by enforceable agreements with the railroads. Those cleaner line-hauls will begin operation by 2012.

[37] California Assembly Bill 2289, passed in 2010, requires the Bureau of Automotive Repair to direct older vehicles to high performing auto technicians and test stations for inspection and certification effective 2013. Reductions shown for the SmogCheck program in the 2011 Ozone SIP Revisions do not include reductions from AB 2289 improvements. 2011 Ozone SIP Revisions, Appendix C.

State Measures	Expected Action Year	Current Status
Cleaner In-Use Off-Road Engines	2007, 2010	Waiver decision pending.
Cleaner In-Use Agricultural Equipment	2013	Incentive program in progress. Additional action expected 2013.
New Emissions Standards for Recreational Boats	2013	Action expected 2013.
Expanded Off-Road Recreational Vehicle Emissions Standards	2013	Action expected 2013
Enhanced Vapor Recovery for Above Ground Storage Tanks	2008	Adopted June 2007. Requirements implemented through District Rule 4621
Additional Evaporative Emissions Standards	2013	Action expected 2013.
Consumer Products Program (I & II)	2008, 2009, 2011	Approved 74 FR 57074 (November 4, 2009), 76 FR 27613 (May 12, 2011) and December 7, 2011 (signature date)
Pesticide Regulation (DPR)	2008, 2009	Submitted October 2009, revisions submitted August 2011

Source: 2009 State Strategy Status Report, p.4, 2011 Progress Report, Table 1, and 2011 Ozone SIP Revisions, Appendix A-3. Additional information from www.ca.arb.gov.

B. Enforceable Emissions Reductions Commitments

For the 2007 Ozone Plan, the District committed to achieve certain aggregate emissions reductions of NOx and VOC. See 2007 Ozone Plan, Table 6-1 (revised December 18, 2008). See Table 3.

EPA is approving these aggregate emissions reductions commitments.

Table 3
San Joaquin Valley Air Pollution Control District
2007 Ozone Plan Aggregate Emissions Reductions Commitments
(tons per summer day)

	2011	2012	2014	2017	2020	2023
NO_x	4.4	6.0	6.3	7.8	8.0	8.2
VOC	15.3	26.5	40.5	42.2	44.5	46.3

Source: 2007 Ozone Plan, Table 6-1, revised December 18, 2008

In the 2007 State Strategy, CARB committed to achieve certain aggregate emissions reductions of 46 tpd NO_x and 25 tpd VOC in the SJV by the attainment year of 2023 that are sufficient, in combination with existing SIP-creditable measures, the District's commitments, and commitments for reductions under the CAA section 182(e)(5) new technologies provision, to attain the 1997 8-hour ozone standard in the San Joaquin Valley by the applicable attainment date of June 15, 2024. CARB also made enforceable commitments to achieve aggregate emissions reductions in the SJV in the RFP milestone years of 2014, 2017, and 2020. See 2007 State Strategy, p. 63; CARB Resolution 07-28, Attachment B, p. 6; and 2009 State Strategy Status Report, p. 21. See Table 4 below.

The 2011 Ozone SIP Revisions revised the State's emissions estimates for certain source categories and projection years and provided additional information on the State and District's

progress to date in achieving their total emissions reduction commitments. In this action, we are approving CARB's and the District's emissions reduction commitments as submitted in the 2007 State Strategy, 2009 State Strategy Update and the 2007 Ozone Plan without change, because we do not have sufficient information to determine how the 2011 SIP Revision alters the State's near-term and CAA section 182(e)(5) emissions reduction commitments. We note that the amount and relative proportion of reductions from measures scheduled for adoption under CAA section 182(e)(5), as compared to measures already adopted or scheduled for near-term adoption, should decrease in any future SIP update.

Table 4
CARB Commitments to Specific Aggregate Emissions Reductions
(tons per summer day)

	2014	2017	2020	2023	2023 CAA 182(e)(5)
VOC	23	—[1]	24	25	—[1]
NO_x	17.1[2]	88-93	56	46	81

Source: 2009 State Strategy Status Report, p. 21.
[1] No commitment to VOC reductions in 2017 or to VOC reductions pursuant to CAA 182(e)(5) advanced technologies provision.
[2] As modified in the final approval of the SJV 2008 PM2.5 SIP, *see* 76 FR 69896, 69924.

IV. Approval of the Motor Vehicle Emissions Budgets for Transportation Conformity

CARB submitted updated MVEB for the San Joaquin Valley and their documentation in Appendices A and C, respectively, of the 2011 Ozone SIP Revisions. As part of our review of the budgets' approvability, EPA evaluated the revised budgets using our adequacy criteria in 40 CFR 93.318(e)(4). We posted the revised budgets on EPA's adequacy review web page on September 19, 2011 and requested public comment by October 19, 2011. We did not receive any comments. As documented in Table K-3 in the TSD, we found that the budgets meet each adequacy criterion. We have completed our detailed review of the 2007 SJV 8-hour Ozone SIP and supplemental submittals including the 2011 Ozone SIP Revisions and are approving the SIP's attainment and RFP demonstrations. We have also reviewed the MVEB submitted with the 2011 Ozone SIP Revisions and have found that they are consistent with the attainment and RFP demonstrations and are based on control measures that have already been adopted and implemented. Therefore, we are approving the 2011, 2014, 2017, 2020, and 2023 MVEB as shown in Table 5.

Now that the approval of the budgets is finalized, the SJV MPOs and the U.S. Department of Transportation are required to use the revised budgets in transportation conformity determinations. Due to the formatting of the budgets (combining emissions changes, recession impacts and reductions from control

measures), CARB will need to provide the MPOs with emissions reductions associated with the control measures incorporated into the budgets for the appropriate analysis years so that they can include these reductions in future conformity determinations in accordance with 40 CFR 93.122. In addition, for these conformity determinations, the motor vehicle emissions from implementation of the transportation plan should be projected and compared to the budgets at the same level of accuracy as the budgets in the plan, for example emissions should be rounded to the nearest tenth (e.g., 0.1 tpd).

During the comment period on the proposed approval of the SJV 2007 8-hour Ozone SIP, CARB requested that EPA limit the duration of its approval of the budgets submitted on July 29, 2011 as part of the 2011 Ozone SIP Revisions to last only until the effective date of EPA's adequacy finding for any subsequently submitted budgets. *See* letter, Douglas Ito, Chief, Air Quality and Transportation Planning Branch; California Air Resources Board, October 17, 2011.

The transportation conformity rule allows EPA to limit the approval of budgets. *See* 40 CFR 93.118(e)(1). However, we can only consider a state's request to limit an approval of its MVEB if the request includes the following elements:

- an acknowledgement and explanation as to why the budgets under consideration have become outdated or deficient;
- a commitment to update the budgets as part of a comprehensive SIP update; and
- a request that EPA limit the duration of its approval to the time when new budgets have been found to be adequate for transportation conformity purposes.

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

Because CARB's request does not include all of these elements, we cannot address it at this time. Once CARB has adequately addressed them, we intend to propose to limit the duration of our approval of the MVEB in the SJV 2007 8-hour Ozone SIP and provide the public an opportunity to comment.[38] The duration of the approval of the budgets, however, is not limited until we complete such a rulemaking.

[38] CARB's letter also requested that we limit the duration of our approval of the MVEB approved with the 2008 $PM_{2.5}$ Plan. These budgets were also submitted on July 29, 2011 as an appendix to the 2001 Ozone SIP Revisions.

Table 5
Motor Vehicle Emissions Budget in the SJV 2007 Ozone SIP
as Revised on July 21, 2011
(tons per summer day)

Year	2011		2014		2017		2020		2023	
County	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x	ROG	NO_x
Fresno	14.3	36.2	10.7	30.0	9.3	22.6	8.3	17.7	8.0	13.5
Kern (SJV)	12.7	50.3	9.7	42.7	8.7	31.7	8.2	25.1	7.9	18.6
Kings	2.8	10.7	2.1	8.9	1.8	6.7	1.7	5.3	1.6	4.0
Madera	3.4	9.3	2.5	7.7	2.2	5.8	2.0	4.7	1.9	3.6
Merced	5.1	19.9	3.7	16.7	3.2	12.4	2.9	9.9	2.8	7.4
San Joaquin	11.1	24.6	8.4	20.5	7.2	15.6	6.4	12.4	6.3	10.0
Stanislaus	8.5	16.9	6.4	13.9	5.6	10.6	5.0	8.4	4.7	6.4
Tulare	8.8	16.0	6.7	13.2	5.8	10.1	5.3	8.1	4.9	6.2

V. Final Actions

For the reasons discussed in our September 16, 2011 proposed rule (76 FR 57846) and further explained above, EPA is approving California's SIP for attaining the 1997 8-hour ozone NAAQS in the San Joaquin Valley. The California 8-hour ozone attainment SIP for the San Joaquin Valley is composed of the SJVUAPCD's 2007 Ozone Plan as revised in 2009 and 2011 and the SJV-specific portions of CARB's 2007 State Strategy as revised in 2009 and 2011 that address CAA and EPA regulations for attainment of the 1997 8-hour ozone NAAQS in the SJV.

Specifically, EPA is approving under CAA section 110(k)(3) the following elements of the SJV 2007 8-hour ozone attainment SIP:

1. the revised 2002 base year emissions inventory as meeting the requirements of CAA sections 182(a)(1) and 40 CFR 51.915;

2. the reasonably available control measures demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.912(d);

3. the reasonable further progress demonstration as meeting the requirements of CAA section 172(c)(2) and 182(c)(2)(B) and 40 CFR 51.910;

4. the attainment demonstration as meeting the requirements of CAA sections 182(c)(2)(A) and 40 CFR 51.908;

5. the provisions for the development of new technologies pursuant to CAA section 182(e)(5) and CARB's commitment to adopt and submit by 2020 contingency measures to be implemented if the new technologies do not achieve the planned emissions reductions and additional attainment contingency measures meeting the requirements of CAA 172(c)(9) as given in CARB Resolution 11-22 (July 21, 2011), and CARB's commitment to develop and submit by 2020 revisions to the SIP that will: (1) reflect modifications to the 2023 emissions reduction target based on updated science and (2) identify additional strategies and implementing agencies needed to achieve the needed reductions by 2023 as given in the 2011 Ozone SIP Revisions on page A-8;

6. the contingency measure provisions for failure to make RFP and to attain as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9);

7. the demonstration that the SIP provides for transportation control strategies and measures sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips and to provide for RFP and attainment as meeting the requirements CAA section 182(d)(1)(A);

8. the revised motor vehicle emissions budgets for the RFP years of 2011, 2014, 2017, and 2020 and the attainment year of 2023 submitted on July 29, 2011 because they are derived from approvable RFP and attainment demonstrations and meet the requirements of CAA section 176(c) and 40 CFR part 93, subpart A;

9. SJVUAPCD's commitments to achieve specific aggregate emissions reductions of direct VOC and NO_x, as listed in Table 6-1 of the 2007 Ozone Plan (as revised December 18, 2008) and as given in Table 3 above; and

10. CARB's commitments to propose certain defined measures, as listed in Table B-1 on page 1 of Appendix B of the 2011 Progress Report and in Appendix A-3 of the 2011 Ozone SIP Revisions, to achieve aggregate emissions reductions of 23 tpd of VOC by 2014; 88-93 tpd of NOx by 2017; 24 tpd of VOC and 46 tpd of NO_x by 2023 from existing technologies and 81 tpd of NOx by 2023 from new technologies as provided in CARB Resolution 07-28, Attachment B and the 2009 State Strategy Status Report; p. 20 and as given in Table 4 above; to update the SJV 2007 Ozone Plan modeling to reflect the emissions inventory improvements and any other new information by December 31, 2014 or by the date the SIPs are due for the revised 8-hour ozone standard, whichever comes first, as provided in CARB Resolution 11-22

(July 21, 2011), p. 3, and to achieve the emissions reductions needed to attain the 8-hour ozone standard in the SJV as provided in CARB Resolution 07-28 (September 27, 2007), Appendix B, p. 3, 2009 State Strategy Status Report, p. 13.

Finally, we find that SJVUAPCD has satisfied the clean fuel/advanced technology requirement for boilers in CAA section 182(e)(3) for the SJV.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small

entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co., v. U.S. EPA, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal

governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this approval action as promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is

defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will 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, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities

established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive

Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely approves certain State requirements for inclusion into the SIP under CAA section 110 and subchapter I, part D and disapproves others, and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

K. Congressional Review Act

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

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial

review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

December 15, 2011 /s/

_____ _____.

Dated: Jared Blumenfeld,
Regional Administrator,
EPA Region 9

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

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

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

Subpart F – California

2. Section 52.220, is amended by adding paragraphs (c)(356)(ii)(B)(*4*), (c)(396)(ii)(A)(*1*)*(i)* and (*2*)*(i)*, (c)(397)(ii)(A)(*4*) and (B), and (c)(408).

§52.220 Identification of plan.

* * * * *

(c) * * *

(356) * * *

(ii) * * *

(B) * * *

(*4*) CARB Resolution No. 07-28 with Attachments A and B, September 27, 2007. Commitments to achieve the total emissions reductions necessary to attain the Federal standards in the SJV air basin, which represent aggregate emissions reductions of 24 tons per day (tpd) of volatile organic compounds (VOC) and 46 tpd of nitrogen oxides (NOx) by 2023 from existing technologies and 81 tpd of NOx by 2023 from new technologies and to achieve

23 tpd of VOC by 2014; 88-93 tpd of NOx by 2017; 24 tpd of VOC and 56 tpd of NOx by 2020 as provided in CARB Resolution 07-28, Attachment B, pp. 3-6 as modified by the 2009 State Strategy Status Report, pp. 20-21 as adopted by CARB Resolution No. 09-34 (April 24, 2009).

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(396) * * *

(ii) * * *

(A) * * *

(*1*) * * *

(i) Commitment to develop and submit by 2020 revisions to the SIP that will: reflect modifications to the 2023 emissions reduction target based on updated science and identify additional strategies and implementing agencies needed to achieve the needed reductions by 2023 as given in the 2011 Ozone SIP Revisions on page A-8.

(*2*) * * *

(i) Commitment to develop, adopt and submit by 2020 contingency measures to be implemented if advanced technology measures do not achieve the planned reductions and attainment contingency measures meeting the requirements of CAA 172(c)(9), pursuant to CAA section 182(e)(5) as given on page 4.

(ii) Commitment to update the air quality modeling in the SJV 2007 Ozone Plan to reflect the emissions inventory improvements and any other new information by December 31, 2014 or the date by which state implementation plans are due for the expected revision to the federal 8-hour ozone standard whichever comes first, as provided on page 3.

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(397) * * *

(ii) * * *

(A) * * *

(*4*) CARB Resolution No. 07-20 with Attachment A, June 14, 2007.

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) 2007 Ozone Plan, adopted on April 30, 2007.

(*2*) SJVUAPCD Governing Board, In the Matter of: Adopting the San Joaquin Valley Unified Air Pollution Control District 2007 Ozone Plan, Resolution No. 07-04-11a, April 30, 2007. Commitments to achieve emissions reductions as described in Table 6-1 of the 2007 Ozone Plan, as amended December 18, 2008.

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(408) An amended plan was submitted on April 24, 2009 by the Governor's designee.

(i) [Reserved]

(ii) Additional Material.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) *Amendments to the 2007 Ozone Plan* (amending the rulemaking schedule for Measure S-GOV-5 Organic Waste Operations) adopted on December 18, 2008.

(*2*) SJVUAPCD Governing Board, In the Matter of: Proposed Amendment to the 2007 Ozone Plan to Extend the Rule Adoption Schedule for Organic Waste Operations, SJVUAPCD Governing Board Resolution No. 08-12-18. December 18, 2008.

[FR Doc. 2012-4674 Filed 02/29/2012 at 8:45 am; Publication Date: 03/01/2012]