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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2013-0534; FRL-9900-35-Region 9]

Approval and Promulgation of Implementation Plans; California; San Joaquin Valley; Contingency Measures for the 1997 $PM_{2.5}$ Standards

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

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a state implementation plan (SIP) revision submitted by the State of California to address Clean Air Act nonattainment area contingency measure requirements for the 1997 annual and 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards in the San Joaquin Valley. Final approval of this SIP revision would terminate the sanctions clocks and a federal implementation plan clock that were triggered by EPA's partial disapproval of a related SIP submission on November 9, 2011 (76 FR 69896).

DATES: Any comments must arrive by **[Insert date 30 days from publication in the Federal Register.]**

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2013-0534, by one of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.
- E-mail: wicher.frances@epa.gov.
- Mail or deliver: Frances Wicher, Office of Air Planning (AIR-2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket (docket number EPA-R09-OAR-2013-0534) for this action is available electronically on the www.regulations.gov website and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available 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.

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. BACKGROUND

On July 18, 1997, EPA established new national ambient air quality standards (NAAQS) for $PM_{2.5}$ (particulate matter with a diameter of 2.5 microns or less) including annual standards of 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations and 24-hour (daily) standards of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. *See* 62 FR 36852 and 40 CFR 50.7. Effective April 5, 2005, EPA designated the San Joaquin Valley (SJV) in California as nonattainment for the 1997 annual and 24-hour $PM_{2.5}$ standards. *See* 70 FR 944 (January 5, 2005) and 40 CFR 81.305.[1] The SJV

[1] EPA has also designated the San Joaquin Valley as nonattainment for the more stringent 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$, which EPA promulgated on October 17, 2006 and codified at 40 CFR 50.13 (74 FR 58688, November 13, 2009). In this preamble, all references to the $PM_{2.5}$ NAAQS, unless otherwise specified, are to the 1997 24-hour $PM_{2.5}$ standards of 65 $\mu g/m^3$ and annual standards of 15 $\mu g/m^3$ as codified in 40 CFR 50.7.

$PM_{2.5}$ nonattainment area is located in the southern half of California's central valley and includes all or part of eight counties: San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and the valley portion of Kern. The local air district with primary responsibility for developing the state implementation plan (SIP) to attain the $PM_{2.5}$ NAAQS in this area is the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or "District").

California has made numerous SIP submittals to address the SJV's nonattainment designation for the 1997 $PM_{2.5}$ NAAQS. The two principal ones are the SJVUAPCD's "2008 $PM_{2.5}$ Plan," submitted on June 30, 2008, and the California Air Resources Board's (CARB's) "State Strategy for California's 2007 State Implementation Plan" ("2007 State Strategy"), submitted on November 16, 2007 and revised in 2009 and 2011 through CARB's "2009 State Strategy Status Report"[2] and "2011 Progress Report."[3]

On November 9, 2011, EPA partially approved and partially disapproved the District's 2008 $PM_{2.5}$ Plan and the revised 2007 State Strategy (collectively the "SJV $PM_{2.5}$ SIP") (76 FR 69896). EPA's partial disapproval of the SJV $PM_{2.5}$ SIP was based on our determination that its contingency measure provisions failed to meet the requirements of Clean Air Act (CAA) section 172(c)(9) and 40 CFR 51.1012, which require that the SIP for each $PM_{2.5}$ nonattainment area contain contingency measures to be implemented if the area fails to make reasonable further progress (RFP) or to attain the NAAQS by the applicable attainment date. *See* 76 FR 41338, 41357 to 41359 (July 13, 2011) and 76 FR 69896, 69918 to 69919 and 69924.

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[2] CARB, "Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revision to the SIP Reflecting Implementation of the 2007 State Strategy," dated March 24, 2009, adopted April 24, 2009.

[3] CARB, "Progress Report on Implementation of $PM_{2.5}$ State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins and Proposed SIP Revisions," dated March 29, 2011 and adopted April 28, 2011.

As we explained in our proposed action on the SJV $PM_{2.5}$ SIP, contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly without significant additional action by the state. *See* 76 FR 41338, 41357; *see also* "Final Technical Support Document and Responses to Comments, Final Rulemaking Action on the San Joaquin Valley $PM_{2.5}$ State Implementation Plan," Air Division, U.S. EPA Region 9, September 30, 2011 ("Final TSD for SJV $PM_{2.5}$ SIP") at pp. 126 to 134. We further explained that these measures must not be relied on in the plan to demonstrate RFP or attainment and should provide SIP-creditable emission reductions equivalent to approximately one year of RFP. *Id.* Finally, we stated that the SIP should contain trigger mechanisms for the contingency measures and specify a schedule for their implementation. *Id.*

The contingency measure provisions in the SJV $PM_{2.5}$ SIP consisted of several different types of measures, including surplus emission reductions in the RFP demonstration; commitments by the District to take specific actions; a contingency provision in the District's Rule 4901, "Wood Burning Fireplaces and Wood Burning Heaters Residential Woodburning;" post-attainment year (2015) reductions from CARB mobile source measures; reductions resulting from the District's expenditure of incentive program funds; and other reductions from implemented District rules that were not otherwise relied on in the attainment and RFP demonstrations. *See* 76 FR 41338, 41357 to 41359; *see also* Final TSD for SJV $PM_{2.5}$ SIP at pp. 126 to 136. EPA found that, although several of these measures individually qualified for approval as contingency measures, collectively the measures identified in the SJV $PM_{2.5}$ SIP did not provide sufficient SIP-creditable emission reductions for contingency measure purposes . *See id.* and 76 FR 69896, 69918 to 69919.

Specifically, for RFP contingency measures for the 2012 milestone year, the SJV $PM_{2.5}$ SIP relied on surplus reductions of direct $PM_{2.5}$ and the two regulated precursors[4] in the RFP demonstration, which provided some of the needed emission reductions but did not provide enough to achieve roughly one-year's worth of RFP (76 FR 41338, 41359 (Table 10)).[5] For attainment contingency measures in 2015, the SJV $PM_{2.5}$ SIP relied on the State's continued implementation of mobile source measures, a contingency provision in the District's Rule 4901, and surplus reductions from other District rules that would reduce emissions substantially in 2015. Overall, the attainment contingency measures in the SJV $PM_{2.5}$ SIP provided all of the needed SO_x reductions but only about two-thirds of the needed NO_x and direct $PM_{2.5}$ reductions for 2015. Accordingly, we disapproved the contingency measure provisions in the SJV $PM_{2.5}$ SIP for failure to satisfy the CAA's contingency measure requirements for the 2012 RFP milestone year and for the 2015 attainment date.[6] *See* 76 FR 41338, 41359 and 76 FR 69896, 69924.

II. CLEAN AIR ACT REQUIREMENTS FOR CONTINGENCY MEASURES

[4] To demonstrate attainment of the 1997 $PM_{2.5}$ NAAQS, the SJV $PM_{2.5}$ SIP relied on reductions of direct $PM_{2.5}$ and two $PM_{2.5}$ precursor pollutants: nitrogen oxides (NO_x) and sulfur oxides (SO_x). It did not rely on reductions of the two other chemical precursors to $PM_{2.5}$: volatile organic compounds (VOC) and ammonia. *See* 76 FR 41338, 41353 and 76 FR 69896, 69924.

[5] The SJV $PM_{2.5}$ SIP also contained provisions addressing RFP contingency measures for the 2009 milestone year, but EPA concluded it was not necessary to evaluate these provisions given the District had demonstrated that the area met the applicable 2009 RFP milestone year targets for direct $PM_{2.5}$, NO_x, and SO_x (76 FR 41338, 41358 to 41359).

[6] EPA's partial disapproval of the SJV $PM_{2.5}$ SIP based on these deficiencies triggered mandatory sanctions clocks under CAA section 179(b) and an obligation on EPA to promulgate a Federal Implementation Plan (FIP) within two years (76 FR 69896, 69924). The first sanctions, the offset sanction under CAA section 179(b)(2), became effective in the SJV area 18 months after the effective date of EPA's final disapproval, *i.e.,* on July 9, 2013 (40 CFR 52.31(d)). In a separate action published in today's Federal Register, EPA is staying the offset sanction and deferring the application of highway funding sanctions, based on today's proposed rule to fully approve the Contingency Measure SIP. *See* "Interim Final Determination to Stay and Defer Sanctions; San Joaquin Valley" in the Rules section of today's Federal Register.

CAA section 172(c)(9) requires that the SIP for each nonattainment area "provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under [part D of title I]" and requires that these measures "take effect without further action by the State or EPA." The CAA does not specify how many contingency measures are required or the magnitude of emission reductions that must be provided by these measures. Consistent with the text of section 172(c)(9), however, these measures must be specific, adopted measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the standard by its attainment date.[7]

EPA provided guidance on the section 172(c)(9) contingency measure requirement in an interpretative document entitled "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) ("General Preamble"). As EPA explained in the General Preamble, "contingency measures should, at a minimum, ensure that an appropriate level of emission reduction progress continues to be made if attainment [or] RFP is not achieved and additional planning by the State is needed" (57 FR 13498, 13511). These emission reductions would be in addition to those that were already scheduled to occur in accordance with the plan for the area. *See Id.* at n. 2 and 57 FR 13498, 13543 to 13544. Additionally, States must show that their contingency measures can be implemented with minimal further action on their part and without additional rulemaking actions such as public hearings or legislative review. In general, EPA expects actions needed to effect full implementation of the measures to occur within 60 days after EPA notifies the State of an

[7] We refer to those measures addressing failure to make RFP as "RFP contingency measures" and those measures addressing failure to attain as "attainment contingency measures."

area's failure to meet RFP or attain. *See* 57 FR 13498, 13512 and 13543 to 13544; *see also* 59 FR 41998, 42014 to 42015 (August 16, 1994) ("PM-10 Addendum").

Consistent with these interpretations of the Clean Air Act, EPA explained in the preamble to its 2007 implementation rule for the 1997 $PM_{2.5}$ NAAQS that the SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented without significant further action by the State or EPA. *See* 72 FR 20586, 20642 to 20645 (April 25, 2007) and 40 CFR 51.1012.[8]

Contingency measures can include Federal, state, and local measures already scheduled for implementation that provide emission reductions in excess of those needed to provide for RFP or expeditious attainment. The key is that the contingency measures provide for additional emission reductions that are not relied on for RFP or attainment and that are not included in the attainment demonstration. The purpose is "to provide a cushion while the plan is being revised to meet the missed milestone" (72 FR 20586, 20642 to 20643). Nothing in the statute precludes a state from implementing such measures before they are triggered. *See, e.g., LEAN v. EPA*, 382 F.3d 575 (5th Cir. 2004) (upholding contingency measures that were previously required and implemented where they were in excess of the attainment demonstration and RFP SIP).

EPA has approved numerous SIPs under this interpretation – *i.e.,* SIPs that use as contingency measures one or more Federal or local measures that are in place and provide

[8] Although the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) recently remanded this rule and directed EPA to re-promulgate it pursuant to subpart 4 of part D, title I of the CAA (*see Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir., Jan. 4, 2013)), the court's ruling in this case does not affect EPA's action on the Contingency Measure SIP. Subpart 4 of part D, title I of the Act contains no specific provision governing contingency measures for PM_{10} or $PM_{2.5}$ nonattainment areas that supersedes the general contingency measure requirement for all nonattainment areas in CAA section 172(c)(9). Thus, even if EPA applies the subpart 4 requirements to our evaluation of the Contingency Measure SIP and disregards the provisions of the 2007 $PM_{2.5}$ implementation rule recently remanded by the court, the general requirement for contingency measures in CAA section 172(c)(9) continues to apply.

reductions that are in excess of the reductions required by the attainment demonstration or RFP plan. *See, e.g.*, 62 FR 15844 (April 3, 1997) (direct final rule approving an Indiana ozone SIP revision); 62 FR 66279 (December 18, 1997) (final rule approving an Illinois ozone SIP revision); 66 FR 30811 (June 8, 2001) (direct final rule approving a Rhode Island ozone SIP revision); 66 FR 586 (January 3, 2001) (final rule approving District of Columbia, Maryland, and Virginia ozone SIP revisions); and 66 FR 634 (January 3, 2001) (final rule approving a Connecticut ozone SIP revision). A state may use the same measures for both RFP and attainment contingency if the measures will provide reductions in the relevant years. If these measures are first triggered for failure to make RFP, however, the state would need to submit replacement contingency measures for attainment purposes (57 FR 13498, 13511).

With respect to the level of emission reductions associated with contingency measures, EPA has recommended that states consider "the potential nature and extent of any attainment shortfall for the area" and the amount of actual emission reductions required by the SIP control strategy to attain the standards. *See* PM-10 Addendum at 42015; *see also* 72 FR 20586, 20643. The contingency measures are to be implemented in the event that the area does not meet RFP or attain the standards by the attainment date, and "should represent a portion of the actual emission reductions necessary to bring about attainment in area" (72 FR 20586, 20643). Accordingly, EPA has recommended that the emission reductions anticipated by the contingency measures should be equal to approximately one-year's worth of emission reductions needed to achieve RFP for the area. *See id.* and PM-10 Addendum at 42015.

III. REVIEW OF THE SUBMITTED SAN JOAQUIN VALLEY $PM_{2.5}$ CONTINGENCY MEASURE SIP

A. The Submitted San Joaquin Valley $PM_{2.5}$ Contingency Measure SIP

On July 3, 2013, CARB submitted the "Quantifying Contingencies for the *2008 $PM_{2.5}$ Plan*" (dated June 20, 2013) ("Contingency Measure SIP") as a revision to the California State Implementation Plan. The State and District adopted the Contingency Measure SIP to correct the SIP deficiencies identified in EPA's November 9, 2011 partial disapproval of the SJV $PM_{2.5}$ SIP by (1) confirming that the SJV area had met its 2012 RFP milestones and (2) expanding upon the attainment contingency measures in the SJV $PM_{2.5}$ SIP to establish a contingency plan that achieves SIP-creditable emission reductions equivalent to approximately one year's worth of RFP in 2015. *See generally* Contingency Measure SIP. The July 3, 2013 submission includes a copy of the Contingency Measure SIP revision itself; a letter dated July 3, 2013 from Richard Corey, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, submitting the adopted Contingency Measure SIP for EPA review; CARB Resolution 13-30 (June 27, 2013) adopting the Contingency Measure SIP; a letter dated June 21, 2013 from Samir Sheikh, Director of Strategies and Incentives, SJVUAPCD, to Richard Corey, Executive Officer, CARB, submitting the adopted Contingency Measure SIP for CARB review and approval; SJVUPACD Board Resolution No. 13-6-18 approving the Contingency Measure SIP; technical support documentation; and public process documentation.

On July 24, 2013, the District clarified its intent that EPA review, as support documentation for the Contingency Measure SIP, additional materials related to incentive programs that the District had submitted to EPA under separate cover. *See* e-mail dated July 24, 2013, from Samir Sheikh, SJVUAPCD, to Kerry Drake, EPA Region 9, "RE: Per our conversation earlier." These supplemental materials include: (1) SJVUAPCD Rule 9610, "State Implementation Plan Credit for Emission Reductions Generated through Incentive Programs," adopted June 20, 2013; (2) SJVUAPCD, Rule 9610 Final Staff Report (including appendices),

dated June 20, 2013; (3) SJVUAPCD, "2013 Annual Demonstration Report," dated June 2013 (including associated electronic "Data Sheet"); (4) CARB, "Carl Moyer Program: Guideline Criteria for On-Road and Off-Road Projects," dated July 2013; (5) CARB, "San Joaquin Valley Air Pollution Control District Proposed Rule 9610, Responses to U.S. EPA's Request to Address 'Integrity Elements' in the Proposition 1B: Goods Movement Emission Reduction Program Guidelines," draft, revised June 6, 2013; (6) CARB, "Proposition 1B: Goods Movement Emission Reduction Program, Final Guidelines for Implementation," adopted February 28, 2008 (selected excerpts); (7) CARB, "Proposition 1B: Goods Movement Emission Reduction Program, Final 2010 Guidelines for Implementation," adopted March 25, 2010 (selected excerpts); and (8) CARB, "The Carl Moyer Program Guidelines," approved April 28, 2011 (selected excerpts). CARB submitted additional technical support for its $PM_{2.5}$ to NO_x conversion analysis on August 6, 2013. *See* Memorandum dated August 13, 2013 from Scott Bohning, EPA Region 9 to File for docket EPA-R09-OAR-2013-0534, San Joaquin Valley action; Subject: Contingency precursor effectiveness ratio using additional information.

In sum, the Contingency Measure SIP contains (1) the District's demonstration that actual emission levels in the SJV in 2012 were below the milestone year targets identified in the SJV $PM_{2.5}$ SIP and approved by EPA for the 2012 RFP year; and (2) identification of contingency measures that provide 2015 emission reductions not relied on for RFP or attainment that are approximately equivalent to one-year's worth of RFP. The District's calculation of 2015 emission reductions in the Contingency Measure SIP includes: reductions from contingency measures that we previously identified as SIP-creditable measures as part of our 2011 action on the SJV $PM_{2.5}$ SIP, a revised calculation of emission reductions from the District's woodburning control measure (Rule 4901) based on updated air quality and emissions data, emission

reductions resulting from the District's implementation of incentive programs, and substitution of surplus direct $PM_{2.5}$ reductions for NO_x reductions. For the SJV $PM_{2.5}$ SIP, emission reductions equivalent to one year's worth of RFP are 2.5 tpd of direct $PM_{2.5}$, 31.6 tpd of NO_x and 0.2 tpd of SO_x. *See* 76 FR 41338, 41359 (Table 10) and Final TSD for SJV $PM_{2.5}$ SIP, p. 131.

We provide below a summary of our evaluation of the Contingency Measures SIP. For a more detailed discussion of EPA's analyses, *see* Air Division, EPA Region 9, "Technical Support Document - Proposed Approval of Clean Air Act Section 172(c)(9) Contingency Measures - San Joaquin Valley State Implementation Plan for Attainment of the 1997 $PM_{2.5}$ Standards," August 15, 2013 ("Proposal TSD"), available in the docket for this proposed rule.

B. Clean Air Act Procedural Requirements for SIP Submissions

CAA sections 110(a) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

CARB's SIP submission includes public process documentation for the Contingency Measure SIP, including documentation of duly-noticed public hearings held by the District on June 20, 2013 and by CARB on June 27, 2013. *See* SJVUAPCD Board Resolution No. 13-6-18, pp. 2 and 3 and CARB Resolution 13-30, p. 3. We find that the process followed by the District and CARB in adopting the Contingency Measure SIP complies with the procedural requirements for SIP revisions under CAA section 110 and EPA's implementing regulations.[9]

[9] The State also provided public notice and a hearing on Rule 9610 before submitting the rule

CAA section 110(k)(1)(B) requires EPA to determine whether a SIP submission is complete within 60 days of receipt. Our SIP completeness criteria are found in 40 CFR part 51, Appendix V. We determined that the Contingency Measure SIP is complete on August 12, 2013. *See* letter from dated August 12, 2013 Deborah Jordan, Air Division Director EPA Region 9 to Richard Corey, Executive Officer, Air Resources Board.

C. Evaluation of the Contingency Measure SIP

1. Contingency Measures for Failure to Meet the 2012 Reasonable Further Progress Milestone

The Contingency Measure SIP includes a demonstration that emissions of direct $PM_{2.5}$, NO_x, and SO_x in 2012 were all below the corresponding 2012 RFP milestone year emissions targets that EPA approved as part of the SJV $PM_{2.5}$ SIP. *See* Contingency Measure SIP, p. 2. To make this demonstration, the District used the emission inventory from the 2011 Progress Report, adjusted to remove uncreditable reductions,[10] and compared it to the SIP-approved 2012 RFP milestone year targets. Based on this comparison, the District concluded that it met its approved 2012 RFP milestone year targets and, accordingly, that RFP contingency measures for this milestone year are no longer needed. *Id.*

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and associated support documents to EPA as a SIP revision. *See* letter dated June 26, 2013 from Richard Corey, Executive Officer, CARB to Jared Blumenfeld, Regional Administrator, EPA Region 9 (submitting Rule 9610) and CARB Executive Order S-13-006, dated June 26, 2013. EPA is not acting on Rule 9610 at this time but is reviewing it as support material for the Contingency Measure SIP. Other supplemental materials related to incentive programs that the State submitted to EPA under separate cover are not subject to additional State procedures under the Act as they provide only technical support and do not alter the substance of the Contingency Measure SIP. All of these supplemental materials are available in EPA's docket for this rulemaking.

[10] For a description of these uncreditable reductions, *see* Proposal TSD, Table E-4, p. 15.

We agree with the District's conclusion that the SJV area has now met its approved 2012 RFP milestone year targets[11] and that RFP contingency measures for 2012 are, therefore, no longer needed. The emission inventory used in the RFP demonstration in the SJV $PM_{2.5}$ SIP is expressed in tons per average annual day, an appropriate metric for measuring progress for the annual $PM_{2.5}$ standard. The inventory in the 2011 Progress Report, used in the Contingency Measure SIP to demonstrate that the 2012 RFP targets have been met, is the most recent average annual day inventory currently available for the SJV. However, as an additional check, EPA also reviewed the average winter day inventory recently submitted as part of the District's 2012 $PM_{2.5}$ Plan for attaining of the 2006 24-hour $PM_{2.5}$ NAAQS and determined that the conclusion that the area has met its approved 2012 milestone year targets is also supported by this inventory. *See* Proposal TSD, pp. 16 to 17.

Based on our evaluation, EPA proposes to find that the RFP contingency measure requirement for the 2012 RFP milestone year is now moot as applied to the SJV. The sole purpose of RFP contingency measures is to provide continued progress if an area fails to meet its RFP goal. Failure to meet the 2012 milestone year target would have required California to implement RFP contingency measures and to revise the SJV $PM_{2.5}$ SIP to assure that the plan still provided for attainment by the applicable attainment date of April 5, 2015. In this case, however, the Contingency Measure SIP demonstrates that actual emission levels in 2012 met the approved 2012 RFP milestone year targets for all three pollutants ($PM_{2.5}$, NO_x, and SO_x) regulated in the SJV $PM_{2.5}$ SIP. Accordingly, RFP contingency measures for 2012 no longer

[11] The 2012 RFP milestone year targets that EPA approved as part of the RFP demonstration in the SJV $PM_{2.5}$ SIP are identified as "revised projected controlled emissions levels" for 2012 in EPA's proposed action on the SJV $PM_{2.5}$ SIP (76 FR 41338, 41357 (Table 9)).

have meaning or purpose, and therefore EPA proposes to find that the requirement for them is now moot.

2. Contingency Measures for Failure to Attain

The Contingency Measure SIP identifies projected emission reductions for 2015 on which the District is relying to meet the CAA's attainment contingency measure requirement for the 1997 $PM_{2.5}$ NAAQS. These projected emission reductions are categorized as follows: (1) surplus emission reductions from adopted and implemented State and District regulatory measures, *i.e.,* emission reductions not relied on for RFP or attainment; (2) emission reductions from a contingency provision in the District woodburning rule; (3) emission reductions resulting from the District's implementation of incentive programs, and (4) substitution of surplus direct $PM_{2.5}$ contingency reductions for NO_x contingency reductions. We address each of these categories of emission reductions below.

a. Regulatory measures and programs

The SJV $PM_{2.5}$ SIP, which EPA partially approved and partially disapproved in November 2011 (76 FR 69896), provided for the continuing implementation of existing CARB mobile source measures that will achieve 21 tpd of NO_x reductions in 2015. *See* 76 FR 41338, 41359 (Table 9) and Final TSD for SJV $PM_{2.5}$ SIP, p. 135. These mobile source emission reductions are surplus to the reductions relied upon to demonstrate attainment because they occur in 2015 (after implementation of all control measures necessary for expeditious attainment)[12] and will achieve approximately two-thirds of the NO_x emission reductions needed to achieve one-year's worth of RFP. The Contingency Measure SIP also identifies these same mobile source

[12] Consistent with CAA section 172(c)(1) and 40 CFR 51.1007(b), the SJV $PM_{2.5}$ SIP provides for the implementation of all control measures needed for attainment as expeditiously as practicable and no later than the beginning of the year prior to the attainment date (*i.e.,* by January 2014) (76 FR 69896, 69916 to 69917).

emissions reductions as attainment contingency measures, and EPA agrees that these emission reductions qualify for approval as attainment contingency measures.

Additionally, the SJV $PM_{2.5}$ SIP showed that continuing implementation of CARB's mobile source control program and District rules would provide 3 tpd of SO_x reductions beyond the levels needed for expeditious attainment in 2015. *See* 76 FR 41338, 41359 (Table 10) and Final TSD for SJV $PM_{2.5}$ SIP, p. 135. These surplus reductions are primarily due to the low-sulfur content requirements in CARB diesel fuel regulations for on- and off-road equipment[13] and SO_x limits in District Rule 4320 (Advanced Emission Reduction Option for Boilers) and Rule 4354 (Glass Melting Furnaces).[14] The Contingency Measure SIP also identifies these SO_x reductions from State and District control measures as attainment contingency measures, and EPA agrees that these measures provide 3 tpd of SO_x reductions that are not relied on for RFP or attainment and, therefore, qualify for approval as attainment contingency measures.

Finally, the SJV $PM_{2.5}$ SIP included a contingency provision in section 5.6.5 of District Rule 4901 (Wood Burning Fireplaces and Wood Burning Heaters). This provision requires that 60 days after EPA finds the SJV has failed to attain the 1997 $PM_{2.5}$ NAAQS, the District will lower the level at which mandatory curtailment of residential wood burning is required from a predicted level of 30 $\mu g/m^3$ to 20 $\mu g/m^3$. EPA approved this rule, including the contingency provision, on November 10, 2009 (74 FR 57907).

As part of the SJV $PM_{2.5}$ SIP, the District had preliminarily estimated the emissions reduction from this contingency provision at 1.6 tons of direct $PM_{2.5}$ per average annual day. This estimate was derived by reviewing 2006 air quality data to determine how many additional

[13] *See* 13 CCR section 2281 ("Sulfur Content of Diesel Fuel").
[14] EPA approved CARB's diesel fuel regulations on May 12, 2010 (75 FR 26653), Rule 4320 on March 25, 2011 (76 FR 16696), and Rule 4354 on August 29, 2011 (76 FR 53640).

curtailment days would be required at the lower (20 μg/m^3) threshold. As part of the revised analysis contained in the Contingency Measure SIP, the District reviewed ambient air quality data for the 2009-2013 period to determine the numbers of "No Burn" days that it would have required had the lower mandatory curtailment level (20 μg/m^3) been effective during these years. Based on these updated data, the District revised the estimated additional emission reductions expected from the Rule 4901 contingency provision to 3.12 tpd of direct $PM_{2.5}$ and 0.32 tpd of NO_x. *See* Contingency Measure SIP, pp. 4 to 6. EPA now finds that these updated calculations of the projected emission reductions from Rule 4901 are reasonable and, therefore, agrees with the District that Rule 4901 provides 3.1 tpd of direct $PM_{2.5}$ reductions and 0.3 tpd of NO_x reductions that qualify for approval as attainment contingency measures.

In sum, taking into account surplus emission reductions in the SJV $PM_{2.5}$ SIP that EPA previously identified as available for contingency measure purposes and the District's revised estimate of emissions reduction from the contingency provision in the SIP-approved Rule 4901, the total amount of emission reductions from regulatory control measures that we are proposing to approve as part of the Contingency Measure SIP are as follows: 21.3 tpd of NO_x reductions from the continuing implementation of CARB's mobile source control program and District Rule 4901; 3.1 tpd of direct $PM_{2.5}$ reductions from the contingency provision in District Rule 4901; and 3 tpd of surplus SO_x reductions from District rules limiting SO_x emissions and CARB's mobile source control program, including its low-sulfur diesel fuel regulation.

b. Discretionary economic incentive programs

The Contingency Measure SIP states that NO_x and $PM_{2.5}$ emission reductions to be achieved through the implementation of specific incentive programs in the San Joaquin Valley are available for contingency measure purposes in 2015. *See* Contingency Measure SIP, pp. 7 to

9. The incentive programs identified in the Contingency Measure SIP for this purpose are as follows: the Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program), implemented through a partnership between CARB and local air districts; the Proposition 1B: Goods Movement Emission Reduction Program (Prop 1B), also implemented through a partnership between CARB and local air districts; and the U.S. Department of Agriculture, Natural Resources Conservation Service's (NRCS) Environmental Quality Incentives Program (EQIP), implemented by NRCS. *See id*. We are proposing to approve 4.15 tpd of NO_x reductions and 0.10 tpd of direct $PM_{2.5}$ reductions from specific Carl Moyer Program and Prop 1B projects, as identified in the Contingency Measure SIP and in this proposed rule, for purposes of satisfying the contingency measure requirement for the 1997 $PM_{2.5}$ NAAQS.

The CAA explicitly provides for the use of economic incentives as one tool for states to use to achieve attainment of the NAAQS. *See, e.g.,* CAA section 110(a)(2)(A) (requiring that each SIP "include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of [the Act]"); *see also* sections 172(c)(6), 183(e)(4). Economic incentive programs (EIPs) use market-based strategies to encourage the reduction of emissions from stationary, area, and/or mobile sources in an efficient manner. EPA has promulgated regulations for statutory EIPs required under section 182(g) of the Act and has issued guidance for discretionary EIPs.[15] *See* 59 FR 16690 (April 7, 1994) (codified at 40 CFR part 51, subpart U) and "Improving Air Quality with Economic Incentive Programs," U.S. EPA,

[15] A "discretionary economic incentive program" is "any EIP submitted to the EPA as an implementation plan revision for purposes other than to comply with the statutory requirements of sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act" (40 CFR 51.491).

Office of Air and Radiation, January 2001 (EPA-452/R-01-001) ("2001 EIP"). Where a State relies upon a discretionary EIP in a SIP submission, EPA evaluates the programmatic elements of the EIP to determine whether the resulting emission reductions are *quantifiable, surplus, enforceable and permanent*. *See* 2001 EIP at Section 4.1. These four fundamental "integrity elements," which apply to all EIPs and other incentive/voluntary measures relied on for SIP purposes, are designed to ensure that such programs and measures satisfy the applicable requirements of the Act. *See id.*; *see also* "Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs)," October 24, 1997 ("1997 VMEP"); "Incorporating Voluntary Stationary Source Emission Reduction Programs Into State Implementation Plans – Final Policy," January 19, 2001; "Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP)," September 2004; "Guidance on Incorporating Bundled Measures in a State Implementation Plan," August 16, 2005; and "Roadmap for Incorporating Energy Efficiency/Renewable Energy Policies and Programs into State and Tribal Implementation Plans," July 2012.

We are evaluating the incentive-based emission reductions in the Contingency Measure SIP in accordance with these fundamental integrity elements as applied, in particular, to discretionary "financial mechanism EIPs" and "voluntary mobile source emission reduction programs" (VMEPs). *See* 2001 EIP at Section 8.0 (describing "financial mechanism EIP" as a mechanism that indirectly reduces emissions by increasing costs for high emitting activities – *e.g.*, through fees/taxes on emissions and subsidies targeted at promoting pollution-reducing activities or products) and 1997 VMEP at p. 3 (describing "VMEP" as a mobile source strategy that complements existing regulatory programs through voluntary, nonregulatory changes in local transportation sector activity levels or changes in in-use vehicle and engine fleet

composition). A discretionary EIP or VMEP submission must be accompanied by sufficient technical support for EPA to determine that the statutory criteria for approval are met – *e.g.,* procedures designed to compare projected emission reductions with actual emission reductions achieved; State commitments to monitor, assess, and report on program implementation and actual emission reductions achieved; and procedures for the State to remedy emission reduction shortfalls in a timely manner. *See* 2001 EIP at Section 5.0 and 1997 VMEP at pp. 6, 7. The State must also demonstrate that it has adequate personnel and program resources to implement the program and that the EIP or VMEP does not interfere with other requirements of the Act. *See id.* and 2001 EIP at Section 11.0. With respect to VMEPs, EPA has in the past generally limited the amount of emission reductions allowed in a SIP to three percent (3 percent) of the total projected future year emission reductions required to attain the relevant NAAQS, and for any particular SIP submittal to demonstrate attainment or maintenance of the NAAQS or progress toward attainment (RFP), 3 percent of the specific statutory requirement. *See* 1997 VMEP at 5.

i. Overview of SJVUAPCD's Incentive-Based Emission Reductions

The Carl Moyer Program is a California grant program established in 1998 that provides funding to encourage the voluntary purchase of cleaner-than-required engines, equipment, and other emission reduction technologies. *See generally* CARB, "The Carl Moyer Program Guidelines, Approved Revisions 2011," Release Date: February 8, 2013, at Chapter 1 (*available electronically at* http://www.arb.ca.gov/msprog/moyer/moyer.htm). In its first 12 years, the Carl Moyer Program provided over $680 million in state and local funds to reduce air pollution from equipment statewide, *e.g.,* by replacing older trucks with newer, cleaner trucks, retrofitting controls on existing engines, and encouraging the early retirement of older, more polluting vehicles. *Id.*

The Prop 1B program is a California grant program established in 2007, as a result of State bond funding approved by voters, which provides $1 billion in funding to CARB to reduce air pollution emissions and health risks from freight movement along California's priority trade corridors. Under the enabling legislation (California Senate Bill 88 and Assembly Bill 201 (2007)), CARB awards grants to fund projects proposed by local agencies that are involved in freight movement or air quality improvements associated with goods movement activities. Upon receipt of such grants, the local agencies are then responsible for providing financial incentives to owners of equipment used in freight movement to upgrade to cleaner technologies, consistent with program guidelines adopted by CARB. *See generally* "Strategic Growth Plan Bond Accountability, Goods Movement Emission Reduction Program," Approved February 27, 2008 (*available electronically at* http://www.arb.ca.gov/bonds/gmbond/docs/gm_accountability_with_links_2-27-08.pdf).

The Contingency Measure SIP states that a total of 10.9 tpd of NO_x reductions and 0.44 tpd of direct $PM_{2.5}$ reductions, to be achieved in 2015 through implementation of the Carl Moyer Program, Prop 1B, and EQIP, are available for contingency measure purposes and that these emission reductions exceed the 4.15 tpd of NO_x reductions and 0.10 tpd of direct $PM_{2.5}$ reductions needed to satisfy the contingency measure requirement for 2015. *See* Contingency Measure SIP, p. 7. To support the District's conclusion that these NO_x and direct $PM_{2.5}$ reductions from incentive programs are quantifiable, surplus, enforceable and permanent, the Contingency Measure SIP cites specified requirements in SJVUAPCD Rule 9610, a regulation adopted by the District on June 20, 2013 to establish administrative processes and criteria for documenting emission reductions achieved through incentive programs for CAA SIP purposes. *See id*. at 7, 8 (citing Proposed SJVUAPCD Rule 9610, section 7.0). According to the District,

the 4.15 tpd of NO_x reductions and 0.10 tpd of direct $PM_{2.5}$ reductions from incentive programs that it is relying upon to satisfy the attainment contingency measure requirement (for 2015) satisfy the requirements of section 7.0 of proposed Rule 9610[16] and, therefore, qualify for SIP credit under the CAA.

Under section 7.0 of Rule 9610,[17] each SIP submission as to which the District relies on projections of emission reductions from incentive programs to satisfy a CAA SIP requirement must include a demonstration that each applicable incentive program guideline continues to provide for "SIP-creditable emission reductions" – *i.e.,* emission reductions that are quantifiable, surplus, enforceable, and permanent, as those terms are defined in Rule 9610. *See* Rule 9610, section 7.0 and section 2.25 (definition of "SIP-Creditable Emission Reduction"). In addition, each such SIP submission must include an enforceable commitment that: (1) identifies incentive program guidelines used to generate projected SIP-creditable emission reductions; (2) identifies emission reductions "projected to be achieved through the use of secured or reasonably anticipated incentive program funding" and estimated numbers of projects and willing participants; (3) is specifically adopted by the District as part of the SIP and accounted for in subsequent annual demonstration reports; and (4) states that "if either the District or EPA finds that there is a SIP shortfall for a particular year, the District will adopt and submit to EPA, by

[16] The Contingency Measure SIP references "proposed" Rule 9610 because the rule was not yet adopted at the time the District was developing the Contingency Measure SIP. Rule 9610, as adopted by the SJVUAPCD Governing Board on June 20, 2013, is substantively unchanged from the proposed rule that the District made available for public comment on May 21, 2013, and section 7.0 of the adopted rule is identical to the text in the proposed rule. Unless otherwise noted, all references to Rule 9610 herein are to the rule as adopted June 20, 2013.

[17] EPA is not proposing at this time to act on Rule 9610 itself. To the extent the Contingency Measure SIP relies upon emission reductions that are quantified and tracked pursuant to the requirements of Rule 9610, however, EPA has reviewed relevant provisions of Rule 9610 and related support documents, consistent with the District's intent. *See* e-mail dated July 24, 2013 from Samir Sheikh, SJVUAPCD, to Kerry Drake, EPA Region 9, "RE: Per our conversation earlier."

specified dates, substitute rules and measures that will achieve equivalent emission reductions as expeditiously as practicable and no later than any applicable implementation deadline in the Clean Air Act or EPA's implementing regulations." *See* Rule 9610, sections 7.1 through 7.4.

Consistent with these criteria, the Contingency Measure SIP contains the State's and District's demonstrations that specified portions of the following Prop 1B and Carl Moyer Program guidelines[18] provide for emission reductions that are quantifiable, surplus, enforceable, and permanent: (1) "Proposition 1B: Goods Movement Emission Reduction Program, Final 2010 Guidelines for Implementation," adopted March 25, 2010; (2) "Proposition 1B: Goods Movement Emission Reduction Program, Final Guidelines for Implementation," adopted February 28, 2008; and (3) "The Carl Moyer Program Guidelines," approved April 28, 2011. *See* e-mail dated July 24, 2013 from Samir Sheikh, SJVUAPCD, to Kerry Drake, EPA Region 9, "RE: Per our conversation earlier." In addition, the Contingency Measure SIP contains an enforceable commitment by the District: (1) to "account for" the District's claimed 4.15 tpd of NO_x reductions and 0.10 tpd of direct $PM_{2.5}$ reductions "in annual demonstration reports pursuant to the requirements of Rule 9610"; and (2) if there is a shortfall in emission reductions from these incentive programs, to "adopt and submit to EPA substitute rules and measures that

[18] The District's Board Resolution adopting the Contingency Measure SIP broadly identifies "the incentive program guidelines identified in Section 3.1 of Rule 9610, the 2013 Draft Annual Demonstration Report, and the Manual of Procedures to quantify SIP-creditable emission reductions relied upon to satisfy the $PM_{2.5}$ contingency measure requirement for 2015 in the amount of 4.15 tons per day (tpd) of NO_x reductions and 0.10 tpd of direct $PM_{2.5}$ reductions…," and the Contingency Measure SIP similarly identifies the Carl Moyer Program, Prop 1B, and EQIP (NRCS) in their entirety as the basis for the District's claimed NO_x and direct $PM_{2.5}$ emission reductions. *See* SJVUAPCD Board Resolution No. 13-6-18, p. 3 and Contingency Measure SIP, p. 7. In this proposed rule, however, EPA is evaluating only a subset of these guidelines (*i.e.,* specified portions of those Carl Moyer Program and Prop 1B guidelines identified herein), as the Contingency Measure SIP does not contain adequate technical documentation for EPA to fully evaluate all of the incentive programs referenced in the SIP submission.

will achieve equivalent emission reductions as expeditiously as practicable and no later than any applicable implementation deadline in the CAA or EPA's implementing regulations, by no later than December 31, 2016." *See* SJVUAPCD Board Resolution No. 13-6-18 at p. 3.

Finally, information provided to support the Contingency Measure SIP demonstrates that the District has adequate personnel and program resources to implement the Carl Moyer Program and Prop 1B programs. *See, e.g.,* "The Carl Moyer Program Guidelines" (approved April 28), Chapter 3 ("Program Administration"); "2011 Proposition 1B: Goods Movement Emission Reduction Program, Final 2010 Guidelines for Implementation" (adopted March 25, 2010) at Chapter III ("Local Agency Project Proposal"); and letter dated January 2, 2013 from James Goldstene, Executive Officer, CARB, to Seyed Sadredin, Air Pollution Control Officer, SJVUAPCD, enclosing "Incentive Program Review Report, San Joaquin Valley Air Pollution Control District Fiscal Years 2006-07 through 2009-10."

ii. Evaluation of Applicable Incentive Program Guidelines and Projects

We have evaluated specific portions of the three incentive program guidelines identified above (the 2008 and 2010 Prop 1B guidelines and 2011 Carl Moyer Program guideline)[19] and believe, with one exception, that they provide for emission reductions that are quantifiable, surplus, enforceable, and permanent consistent with the requirements of the CAA. The one exception is the option for the State to grant a longer project life on a case-by-case basis "if an applicant provides justifying documentation." *See, e.g.,* "The Carl Moyer Program Guidelines," approved April 28, 2011, Chapter 9 (Off-Road Equipment Replacement) at section C.1(C)(5) ("Project Life"). This option to grant a longer project life on a case-by-case basis provides the State with broad discretion to extend the duration of emission reductions claimed from an

[19] Relevant excerpts of these three guidelines are available in EPA's docket for this rulemaking.

equipment replacement project without any EPA oversight or public process. Because these case-by-case determinations could undermine the integrity of the program (*e.g.,* by undermining EPA's ability to limit SIP credit to the period during which the emission reductions are "surplus" to other requirements), EPA cannot grant SIP credit for emission reductions from projects subject to such a determination unless the District submits the individual determination for EPA review and approval through the SIP process.

With the limited exception of these provisions regarding case-by-case determinations, the portions of the identified program guidelines that we have reviewed establish clear criteria that enable the District to quantify the emission reductions attributed to specified projects with a reasonable level of accuracy; verify that those emission reductions are "surplus" as that term is defined in section 2.27 of Rule 9610[20]; enforce the conditions of program grants to ensure that contracted emission reductions are achieved; and monitor the continuing implementation of program grants to ensure that emission reductions are "permanent" throughout the life of each project. For a more detailed discussion of EPA's review of the relevant portions of these three program guidelines, *see* Proposal TSD, pp. 29 to 42.

Additionally, we have evaluated the District's documentation for specific projects[21] funded through the Prop 1B program and Carl Moyer Program that provide an adequate basis for

[20] Section 2.27 of Rule 9610 defines the term "surplus" as follows: "for purposes of this rule, emission reductions are surplus when they are not otherwise required by any federal, state, or local regulation, or other legal mandate, and are in excess of the baseline emission inventories underlying a SIP attainment demonstration."

[21] Section 2.19 of Rule 9610 defines the term "project" as follows: "for purposes of this rule, actions taken to reduce emissions through incentive programs, as contracted between the Grantee and the District, NRCS, or CARB using incentive program guidelines at the time of contracting. Such actions include, but are not limited to, replacements, retrofits, new purchases, new practices, and repower."

the District's claimed NO_x and direct $PM_{2.5}$ emission reductions for 2015.[22] The Contingency Measure SIP states that it relies on incentive-based emission reductions to be achieved from "already-executed, legally binding contracts" rather than on projections of future funding and participation rates. *See* Contingency Measure SIP at 7, 8. According to the 2013 Annual Demonstration Report and associated "Data Sheet,"[23] on-road vehicle replacement projects that have been funded through the Prop 1B program and off-road vehicle replacement projects that have been funded through the Carl Moyer Program are expected to achieve NO_x and direct $PM_{2.5}$ emission reductions in amounts adequate to cover the incentive-related emission reductions claimed by the District in the Contingency Measure SIP (*i.e.,* the 4.15 tpd of NO_x reductions and 0.10 tpd of direct $PM_{2.5}$ reductions claimed for 2015). Each of these funded projects is subject to one of the three incentive program guidelines identified above (*i.e.,* the 2008 Prop 1B guideline, 2010 Prop 1B guideline, or 2011 Carl Moyer Program guideline).

Specifically, the Data Sheet identifies 1243 "on-road vehicle replacement" projects funded through the Prop 1B program that have a "project life" ending on or after January 1, 2016 and therefore will continue to achieve emission reductions at least through the end of 2015.[24] Collectively, these 1243 funded projects are projected to achieve 3.78 tpd of NO_x reductions and 0.15 tpd of PM reductions in 2015. *See* Memorandum from Idalia Perez to File dated July 22,

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[22] EPA is not reviewing projects funded through the EQIP program at this time because the Contingency Measure SIP does not contain adequate documentation regarding this program. *See* n. 18, *supra.*

[23] Available at http://www.valleyair.org/MOP/docs/9610ProjectDataforPublicUNLOCKED8-7-13.xlsx

[24] In the Data Sheet, these Prop 1B projects are listed under the following columns: (1) Component: "On-Road Prop 1B"; (2) Component Option: "Vehicle Replacement" and "Vehicle Replacement 2 for 1"; and (3) Applicable Guideline: "Prop 1B 2008" and "Prop 1B 2010." EPA has compiled these Prop 1B projects into a separate document which identifies each project by its unique "project identification" code and information regarding the emission reductions it will achieve over its lifetime, in tons. *See* Proposal TSD at Attachment A ("Prop 1B: On-Road Vehicle Replacement projects achieving emission reductions through 2015").

2013. These totals are consistent with the emission reduction estimates for 2015 provided in Table 18 of the 2013 Annual Demonstration Report, which identifies the total reductions, in tons per day, of NO_x, particulate matter (PM) and "reactive organic gases" (ROGs)[25] that the District expects will be achieved by Prop 1B projects related to on-road trucks between 2009 and 2020. *See* 2013 Annual Demonstration Report at 40, Table 18 ("SIP-Creditable Incentive-Based Emission Reductions for On-Road Trucks"). Additionally, the Data Sheet indicates that 853 of these 1243 projects subject to Prop 1B funds have a project life ending after December 31, 2016 and will, therefore, continue to generate emission reductions through at least the end of 2016. *See* Proposal TSD at Attachment A ("Prop 1B: On-Road Vehicle Replacement projects achieving emission reductions through 2015") and Memorandum from Idalia Perez to File dated July 22, 2013. These funded projects are expected to achieve 2.35 tpd of NO_x reductions and 0.09 tpd of PM reductions in 2016. *See id.* and 2013 Annual Demonstration Report at 40, Table 18.

Similarly, the Data Sheet identifies 675 "off-road vehicle replacement" projects funded through the Carl Moyer Program that have a "project life" ending on or after January 1, 2021 and therefore will continue to achieve emission reductions well past the end of 2015.[26] Collectively, these 675 funded projects are projected to achieve 1.23 tpd of NO_x reductions and 0.06 tpd of PM reductions in 2015. *See* Memorandum from Idalia Perez to File dated July 22, 2013. These totals are consistent with the emission reduction estimates for 2015 provided in Table 13 of the

[25] California uses the term "reactive organic gases" (ROGs) to refer generally to volatile organic compounds (VOCs) as defined in 40 CFR 51.100(s).

[26] In the Data Sheet, these Carl Moyer Program projects are listed under the following columns: (1) Component: "Off-Road"; (2) Component Option: "Vehicle Replacement"; and (3) Applicable Guideline: "Carl Moyer 2011." EPA has compiled these Carl Moyer Program projects into a separate document which identifies each project by its unique "project identification" code and information regarding the emission reductions it will achieve over its lifetime, in tons. *See* Proposal TSD at Attachment B ("Carl Moyer Program: Off-Road Vehicle Replacement projects achieving emission reductions through 2015").

2013 Annual Demonstration Report, which identifies the total reductions, in tons per day, of NO_x, PM and ROGs that the District expects will be achieved by Carl Moyer Program projects related to off-road vehicle replacement between 2009 and 2020. *See* 2013 Annual Demonstration Report at 37, Table 13 ("SIP-Creditable Incentive-Based Emission Reductions for Off-Road Compression-Ignition Equipment Replacement Claimed Pursuant to Section 3.1"). All of these funded projects are expected to continue achieving emission reductions through at least 2021. *See* Proposal TSD at Attachment B ("Carl Moyer Program: Off-Road Vehicle Replacement projects achieving emission reductions through 2015") and Memorandum from Idalia Perez to File dated July 22, 2013. Although Chapter 9 of the 2011 Carl Moyer Program guideline contains several provisions allowing for case-by-case determinations,[27] we understand that the District's 2015 emission reduction estimates for Carl Moyer projects in Table 13 of the 2013 Annual Demonstration Report do not rely on any projects subject to case-by-case determinations, as such determinations are not eligible for SIP credit unless reviewed through a public process and submitted to EPA as part of a SIP submission meeting the requirements of Rule 9610.[28]

We conclude that the District's documentation regarding these Prop 1B and Carl Moyer Program projects is adequate to ensure that the associated NO_x and direct $PM_{2.5}$ emission reductions can be monitored and verified. In any future SIP that relies on incentive-based emission reductions quantified pursuant to the requirements of Rule 9610, we expect the District will specifically identify the types of projects relied upon to generate the emission reductions and

[27] *See, e.g.,* "The Carl Moyer Program Guidelines," approved April 28, 2011, Chapter 9 (Off-Road Equipment Replacement) at section C.1(C)(5) ("Project Life").

[28] Rule 9610 specifically prohibits the use of any case-by-case determination to quantify emission reductions for SIP purposes "unless such determination is reviewed through a public process and submitted to EPA in accordance with Section 7.0 [of Rule 9610]." *See* Rule 9610 at section 3.2.2; *see also* 2013 Annual Demonstration Report at 11. Neither the 2013 Annual Demonstration Report nor the Contingency Measure SIP specifically identifies any case-by-case determination for EPA review.

the specific incentive program guidelines that apply to those projects and we expect the subsequent annual demonstration reports will then list the individual projects relied upon to achieve those reductions, as provided in our Proposal TSD. We note that the 4.15 tpd of NO_x reductions and 0.10 tpd of direct $PM_{2.5}$ reductions attributed to the Carl Moyer Program and Prop 1B in 2015 for contingency measure purposes each amount to less than 2 percent of the total projected emission reductions of each pollutant needed to attain the 1997 $PM_{2.5}$ NAAQS in the SJV.[29]

iii. Evaluation of SJVUAPCD's Enforceable Commitments

We have evaluated the Board commitments submitted as part of the Contingency Measure SIP and find that they establish clear obligations on the District's part to monitor, assess, and report on program implementation and actual emission reductions achieved and to remedy any emission reduction shortfalls in a timely manner, consistent with EPA policy. Specifically, SJVUAPCD Board Resolution No. 13-6-18 contains two key components designed to ensure that the 4.15 tpd of NO_x reductions and 0.10 tpd of direct $PM_{2.5}$ reductions claimed in the District's Contingency Measure SIP are enforceable under the CAA.

The first key component is a commitment to "account for" these emission reductions "in annual demonstration reports pursuant to the requirements of Rule 9610." SJVUAPCD Board Resolution No. 13-6-18 at p. 3. Rule 9610 specifically requires the District to submit to EPA, no later than August 31 of each year, an "annual demonstration report" that includes the following

[29] The SJV $PM_{2.5}$ SIP projects the total amounts of emission reductions needed to attain the $PM_{2.5}$ NAAQS, from a 2005 base year to a 2014 attainment year, are as follows: 284.2 tpd of NO_x reductions; 22.7 tpd of direct $PM_{2.5}$ reductions; and 1.8 tpd of SO_x reductions. *See* 76 FR 69896, 69923 (Table 4, line A) and Final TSD for SJV $PM_{2.5}$ SIP, p. 113 (Table G-2, line C). Thus, the incentive program reductions identified in the Contingency Measure SIP amount to approximately 1.5 percent of the NO_x reductions and 0.4 percent of the direct $PM_{2.5}$ reductions needed for timely attainment of the $PM_{2.5}$ NAAQS in the SJV.

elements: (1) identification of SIP-creditable emission reductions generated through incentive programs implemented in the preceding year(s), summarized by pollutant, years that the emission reductions occur (project life), cost effectiveness, funding amount, incentive program guideline, and project type; (2) identification of SIP commitment(s) that the District has satisfied, in whole or in part, through SIP-creditable emission reductions from the identified incentive programs; (3) identification and quantification of SIP commitment shortfalls, if any, and remedies for addressing said shortfalls; (4) detailed information about each specific project achieving SIP-creditable emission reductions, *e.g.,* unique project identification numbers, implementation dates, applicable incentive program guideline(s), and quantified emission reductions per year and aggregated over the project life, by pollutant; and (5) a summary of monitoring and enforcement activities conducted during the reporting period for incentive projects for which SIP-creditable emission reductions are being claimed. *See* Rule 9610, sections 4.1- 4.6 and 5.0.

The second key component is a commitment to adopt and submit to EPA, no later than December 31, 2016, "substitute rules and measures that will achieve equivalent emission reductions as expeditiously as practicable and no later than any applicable implementation deadline in the CAA or EPA's implementing regulations," if there is a shortfall in emission reductions. SJVUAPCD Board Resolution No. 13-6-18, p. 3. Consistent with this commitment, EPA expects the District to confirm as part of its 2014 and 2015 Annual Demonstration Reports whether the claimed 4.15 tpd of NO_x reductions and 0.10 tpd of direct $PM_{2.5}$ reductions are expected to occur in 2015 as projected, and to provide the basis for its conclusion – *e.g.,* information about actual program participation rates, actual reported activity data, project audits, usage reports, and other project monitoring activities consistent with the requirements of Rule

9610, section 4.0. If the District finds that there may be a shortfall in the claimed emission reductions for 2015, the District will be required to identify in its 2014 or 2015 Annual Demonstration Report both the estimated amount of the SIP shortfall (in tons per day, by pollutant) and the specific remedy to be implemented in the event of a shortfall – *i.e.,* the substitute rules and measures that will achieve equivalent emission reductions, to be submitted to EPA no later than December 31, 2016. *See* Rule 9610, section 4.4 ("The District shall identify and quantify SIP commitment shortfalls, if any, and remedies for addressing said shortfalls" as part of the annual demonstration report). Finally, EPA expects the District's 2016 Annual Demonstration Report will either confirm that the claimed 4.15 tpd of NO_x reductions and 0.10 tpd of direct $PM_{2.5}$ reductions actually occurred in 2015 as projected or identify and quantify the specific SIP shortfalls and specific remedies to be implemented consistent with the District's commitment. Any conclusion that the District's claimed 4.15 tpd of NO_x reductions and 0.10 tpd of $PM_{2.5}$ reductions actually occurred in 2015 must be supported by documentation of actual emissions, based on historical annual usage (i.e., reported activity data), actual program participation rates, project audits, and other information consistent with the requirements of sections 4.0 to 4.6 of Rule 9610. For a more detailed discussion of our evaluation of these commitments, *see* Proposal TSD, pp. 42 to 44.

These Board commitments obligate the District to monitor, assess, and report on program implementation and actual emission reductions achieved and, ultimately, enable EPA and the public to determine whether the District's claimed emission reductions (4.15 tpd of NO_x reductions and 0.10 tpd of direct $PM_{2.5}$ reductions) actually occurred in 2015. Based on the District's long history of successful implementation and enforcement of Prop 1B and Carl Moyer Program grants and the detailed requirements in the associated incentive program guidelines, we

fully expect that SJVUAPCD will achieve the required emission reductions in 2015 as projected. However, should EPA find based on the 2014 or 2015 Annual Demonstration Report that the District's claimed 4.15 tpd of NO_x reductions and 0.10 tpd of direct $PM_{2.5}$ reductions may not occur in 2015 as projected, EPA will promptly notify the District of its potential obligation to adopt and submit substitute rules and measures consistent with its Board commitment no later than December 31, 2016, so that the District has ample time to develop and adopt such rules/measures consistent with this deadline. Subsequently, should EPA determine that the SJV area has failed to attain the $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2015, the District will be obligated to verify through its next annual report (*i.e.,* the 2016 Annual Demonstration Report) whether the 4.15 tpd of NO_x reductions and 0.10 tpd of $PM_{2.5}$ reductions identified in the Contingency Measure SIP occurred in 2015, and if not, to adopt and submit substitute rules and measures to EPA consistent with its Board commitment no later than December 31, 2016.

iv. Conclusion on SJVUAPCD's Incentive-Based Emission Reductions

Based on our evaluation of the District's commitments regarding the Carl Moyer Program and Prop 1B and related technical documentation provided by the District in its SIP submission, we propose to find that the 2015 emission reductions associated with these specific incentive programs satisfy the statutory criteria for SIP credit and to approve these emission reductions as attainment contingency measures for the 1997 $PM_{2.5}$ NAAQS in the SJV. Upon EPA's final approval of the Contingency Measure SIP, the District's commitments will become federally enforceable and will obligate it to monitor, assess, and report to EPA on implementation of the Carl Moyer Program and Prop 1B program grants with respect to the specific Prop 1B and Carl Moyer projects identified in EPA's Proposal TSD. *See* Proposal TSD

at Attachment A ("Prop 1B: On-Road Vehicle Replacement projects achieving emission reductions through 2015") and Attachment B ("Carl Moyer Program: Off-Road Vehicle Replacement projects achieving emission reductions through 2015").

EPA supports and encourages the continuing efforts by CARB, the District, and NRCS to make incentive programs and voluntary measures an effective part of the SJV's strategy for clean air. We commit to continue our work with these agencies to establish reliable procedures for documenting the emission reductions associated with voluntary and incentive programs for SIP purposes, in particular through the District's implementation of Rule 9610, which EPA intends to act on in the near future. Our collective goal is to establish a process that ensures that the emission reductions resulting from voluntary and incentive programs are quantifiable, surplus, enforceable, and permanent consistent with CAA requirements as interpreted in EPA guidance. We welcome public comments on how best to achieve this goal.

c. Substitution of direct $PM_{2.5}$ reductions for NO_x reductions

The District estimated, based on monitored air quality over the past five winter seasons, that triggering the contingency provision in the District's woodburning rule would reduce direct $PM_{2.5}$ emissions by a further 3.12 tpd. *See* Contingency Measure SIP, p. 6. This level of reduction exceeds the 2.5 tpd of direct $PM_{2.5}$ reductions needed to meet the CAA contingency requirement for this pollutant by 0.62 tpd. Taking into account the 0.1 tpd of direct $PM_{2.5}$ reductions from incentive programs discussed above in section III.C.2.b, the District then converted the total amount of surplus direct $PM_{2.5}$ reductions (0.72 tpd) into NO_x reductions at a ratio of 9 tons of NO_x for each ton of direct $PM_{2.5}$. Based on this $PM_{2.5}$ to NO_x conversion, the District concluded that a 0.72 tpd reduction in direct $PM_{2.5}$ emissions has the same ambient air quality impact as a 6.48 tpd reduction in NO_x emissions.

Using the Community Multiscale Air Quality (CMAQ) modeling application underlying the attainment demonstration in the SJV $PM_{2.5}$ Plan,[30] CARB developed an equivalency ratio between emission reductions of direct $PM_{2.5}$ and of NO_x. For each pollutant, CARB modeled the ambient effect of a 10 percent reduction of emissions over the modeling domain. The concentration change per emission change gave a precursor effectiveness value for NO_x and an effectiveness value for direct $PM_{2.5}$. The ratio of these two effectiveness values provided the NO_x-$PM_{2.5}$ equivalency ratio.

Emission reductions of direct $PM_{2.5}$ from the District's wood burning restrictions tend to be concentrated in the SJV's urban areas. These urban areas also typically record the highest $PM_{2.5}$ ambient levels in the SJV. As explained above, the District is proposing to substitute these urban-centered direct $PM_{2.5}$ reductions for region-wide NO_x reductions. Because these wood burning reductions are concentrated in areas most like to experience high levels of ambient $PM_{2.5}$, their impact on these ambient levels will likely be greater than the same amount of $PM_{2.5}$ reductions distributed over the entire nonattainment area. CARB's full modeling domain approach, which assumed distributed $PM_{2.5}$ reductions, will therefore tend to underestimate the impact of direct $PM_{2.5}$ reductions from wood burning restrictions on ambient concentrations. As a result the 9:1 ratio of NO_x to $PM_{2.5}$ emission reductions in this case gives a conservatively high estimate of the direct $PM_{2.5}$ emission reductions needed to substitute for a given amount of NO_x reductions. EPA proposes to approve the use of this ratio for purposes of quantifying emission reductions to satisfy the CAA section 172(c)(9) attainment contingency measure requirement for

[30] EPA approved this air quality modeling as part of its approval of the attainment demonstration in the SJV $PM_{2.5}$ Plan. *See* 76 FR 41338, 41349 and 76 FR 69896, 69924.

the 1997 $PM_{2.5}$ NAAQS in the SJV.[31] For further information, *see* the Proposal TSD, pp. 44 - to 45.

d. Summary

In sum, EPA believes that the Contingency Measure SIP identifies SIP-creditable attainment contingency measures that will achieve a total of 31.6 tpd of NO_x, 2.5 tpd of direct $PM_{2.5}$, and 3 tpd of SO_x reductions in 2015. EPA believes that these emission reductions will equal or exceed one-year's worth of RFP as calculated in EPA's 2011 final action on the SJV $PM_{2.5}$ SIP. *See* Table 1.

Table 1. Summary of 2015 emission reductions creditable as attainment contingency measures (in tons per day)

	NO_x	**Direct $PM_{2.5}$**	**SO_x**
California/Federal Mobile Source Control Program	21	—	—
Surplus SO_x Reductions from CARB and District Rules	—	—	3
[Incentive Programs]	4.15	0.1	—
Contingency Provision in District Rule 4901	0.3	3.1	—
Substitution of surplus direct $PM_{2.5}$ reductions for NO_x reductions	6.5	-0.7	—
TOTAL EMISSION REDUCTIONS:	**31.9**	**2.5**	**3**
Emission reductions equal to one-year's worth of RFP[32]	31.6	2.5	0.2
Contingency measure requirement met?	Yes	Yes	Yes

Based on our evaluation, we are proposing to fully approve the Contingency Measure SIP as satisfying the attainment contingency measure requirement in CAA section 172(c)(9) for the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley nonattainment area. All of the emission

[31] EPA has previously approved the use of this ratio for use in transportation conformity determinations for the 1997 $PM_{2.5}$ NAAQS in the SJV. *See* 76 FR 69896, 69923. *See also* 76 FR 41338, 41349 (noting adequacy of CARB's ratio for purposes of assessing the effect of "area-wide emissions changes," *e.g.,* to address RFP, contingency measures, and conformity budgets).
[32] *See* ibid.

reductions relied on to meet the attainment contingency measure requirement are provided by control measures or incentive programs that are fully adopted under State law. These measures and programs provide SIP-creditable emission reductions that are not relied on in the SJV $PM_{2.5}$ SIP to demonstrate RFP or attainment and provide for an appropriate level of continued emission reduction progress should the SJV area fail to attain by its statutory attainment date and necessitate additional planning.

D. Clean Air Act Section 110(l)

CAA section 110(l) prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and RFP or any other applicable CAA requirement. The Contingency Measure SIP corrects SIP deficiencies identified in EPA's November 9, 2011 partial approval and partial disapproval of the SJV $PM_{2.5}$ SIP (76 FR 69896). Specifically, the Contingency Measure SIP contains: (1) the District's demonstration that actual emission levels in the SJV in 2012 were below the approved 2012 RFP milestone year targets and (2) identification of SIP-creditable emission reductions to be achieved in 2015 that are not relied on for RFP or expeditious attainment. The Contingency Measure SIP does not alter any existing emission limitation or other control requirement in the applicable SIP and only expands upon the contingency measure portion of the SJV $PM_{2.5}$ SIP, which EPA had partially disapproved in November 2011. We propose to determine that our approval of the Contingency Measure SIP would comply with CAA section 110(l) because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for RFP and attainment of the NAAQS are met, and the submitted SIP corrects SIP deficiencies that were the basis for EPA's November 9, 2011 partial disapproval of the SJV $PM_{2.5}$ SIP.

IV. PROPOSED ACTIONS AND REQUEST FOR PUBLIC COMMENT

For the reasons discussed above, we are proposing to conclude that the Contingency Measure SIP submitted by CARB on July 3, 2013, satisfies the attainment contingency measure requirement in CAA section 172(c)(9) for the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley nonattainment area and to fully approve this submission into the California SIP. We are also proposing to conclude that the RFP contingency measure requirement in CAA section 172(c)(9) for the 2012 milestone year is moot as applied to the San Joaquin Valley because the area achieved its approved emissions targets for the 2012 RFP milestone year. Finally, we are proposing to approve enforceable commitments by the SJVUAPCD to monitor, assess, and report on actual NO_x and direct $PM_{2.5}$ emission reductions achieved through its implementation of specific Prop 1B and Carl Moyer Program grants and to remedy any identified emission reduction shortfall in a timely manner.

Finalizing these proposals would correct the deficiencies that were the basis for EPA's partial disapproval of the SJV $PM_{2.5}$ SIP on November 9, 2011 (76 FR 69896) and would, therefore, terminate the CAA section 179(b) sanction and sanction clocks triggered by that action and the obligation on EPA to promulgate a federal implementation plan under CAA section 110(c).

We will accept comments from the public on these proposals for the next 30 days. The deadline and instructions for submission of comments are provided in the "Date" and "Addresses" sections at the beginning of this preamble.

V. STATUTORY AND EXECUTIVE ORDER REVIEWS

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations (42 U.S.C. 7410(k); 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve State choices,

provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, (October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255 (August 10, 1999));
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885 (April 23, 1997));
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355 (May 22, 2001));
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629 (February 16, 1994)).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: August 15, 2013

Jared Blumenfeld,
Regional Administrator,
Region 9.

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