**Note 1:** For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Judy Coyle, Aerospace Engineer, ANM–140S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6497; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on October 6, 2008.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–24579 Filed 10–15–08; 8:45 am]

BILLING CODE 4910–13–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[EPA–R09–OAR–2008–0693; FRL–8729–4]

## Approval and Promulgation of Implementation Plans: 1-Hour Ozone Extreme Area Plan for San Joaquin Valley, CA

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve state implementation plan revisions submitted by the State of California to meet the Clean Air Act (CAA) requirements applicable to the San Joaquin Valley (SJV), California 1-hour ozone nonattainment area. These requirements applied to the SJV following its reclassification from severe to extreme for the 1-hour ozone national ambient air quality standard on April 16, 2004. Although EPA subsequently revoked the 1-hour ozone standard effective June 15, 2005, the requirement to submit a plan for that standard remains in effect for the SJV. EPA is proposing to approve the SIP revisions for the SJV as meeting applicable CAA requirements except for the provision addressing the reasonably available control technology requirements that the State has withdrawn.

**DATES:** Comments may be submitted until November 17, 2008.

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

1. *Agency Web site: http://www.regulations.gov.* EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

3. *E-mail: wicher.frances@epa.gov*

4. *Mail or deliver:* Marty Robin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

*Docket:* The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Frances Wicher, U.S. EPA Region 9, 415–972–3957, *wicher.frances@epa.gov* or *http://www.epa.gov/region09/air/actions.*

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

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### I. Background

*A. What is the history of 1-hour ozone air quality planning in the SJV?*

The San Joaquin Valley 1-hour ozone nonattainment area (SJV) includes the following counties in California's central valley: San Joaquin, part of Kern, Fresno, Kings, Madera, Merced, Stanislaus and Tulare. 40 CFR 81.305.

Upon enactment of the 1990 Clean Air Act Amendments, the SJV was classified by operation of law as a serious nonattainment area with an attainment date of no later than November 15, 1999. 56 FR 56694 (November 6, 1991). On November 15, 1994, the California Air Resources Board (ARB) submitted ''The 1994 California State Implementation Plan for Ozone'' (1994 SIP), a comprehensive ozone plan for the State of California that included a local nonattainment plan developed for the SJV by the San Joaquin Valley Air Pollution Control District (SJVAPCD or the District). On January 8, 1997, EPA approved the 1994 SIP. 62 FR 1150.

On November 8, 2001, EPA found that the SJV had failed to attain the 1-hour ozone standard by the serious area deadline of November 15, 1999 and reclassified the area by operation of law to severe. 66 FR 56476. In the final

reclassification action to severe, EPA explained that the State would need to submit by May 31, 2002 a SIP revision addressing the severe area requirements including, but not limited to, a demonstration of attainment of the 1-hour ozone standard by November 15, 2005 and a rate of progress (ROP) demonstration of creditable ozone precursor emission reductions of at least 3 percent per year until attainment. *Id.*

On October 2, 2002, EPA found that the State failed to submit by May 31, 2002 several severe area SIP revisions for the SJV including a demonstration of attainment and a ROP demonstration. 67 FR 61784. The State subsequently requested a reclassification to extreme and submitted all of the severe area requirements except for the attainment demonstration. See 69 FR 8126 (February 23, 2004).[1] On April 16, 2004, EPA granted the State's request to voluntarily reclassify the SJV from a severe to an extreme 1-hour ozone nonattainment area and required the State to submit by November 15, 2004 an extreme area plan providing for the attainment of the ozone standard as expeditiously as practicable, but no later than November 15, 2010. 69 FR 20550.

*B. What are the elements in the new plan?*

The SJVAPCD adopted the ''Extreme Ozone Attainment Demonstration Plan'' on October 8, 2004 and amended it on October 20, 2005 to, among other things, substitute for the original chapter a new ''Chapter 4: Control Strategy.'' The State submitted the plan (with the exception of Chapter 8 [2]) and amendment on November 15, 2004 and March 6, 2006, respectively. See letters from Catherine Witherspoon, ARB, to Wayne Nastri, EPA, November 15, 2004 and March 6, 2006. The plan and amendment, collectively, will be referred to as the ''2004 SIP'' in this proposed rule. The 2004 SIP addresses CAA requirements for extreme 1-hour ozone areas, including emission inventories, modeling, control measures, contingency measures, and ROP and attainment demonstrations.

The 2004 SIP relies in part on the ''Final 2003 State and Federal Strategy for the California State Implementation Plan,'' which identifies ARB's regulatory agenda to reduce ozone and particulate matter in California and includes defined statewide control measures to be reflected in future SIPs and provisions specific to air quality plans for the San Joaquin Valley. On October 23, 2003, ARB adopted the ''Final 2003 State and Federal Strategy for the California State Implementation Plan,'' which consists of two elements: (1) The Proposed 2003 State and Federal Strategy for the California State Implementation Plan (released August 25, 2003); and (2) ARB Board Resolution 03–22 which approves the Proposed 2003 State and Federal Strategy with the revisions to that Strategy set forth in Attachment A. On January 9, 2004, ARB submitted to EPA the ''Final 2003 State and Federal Strategy for the California State Implementation Plan.'' Letter from Catherine Witherspoon, ARB, to Wayne Nastri, EPA, January 9, 2004.[3]

In this proposed rule we refer to the two documents comprising the ''Final State and Federal Strategy for the California State Implementation Plan'' after the withdrawal of the South Coast portions, collectively, as the ''Final 2003 State Strategy'' or individually as the ''State Strategy'' and ''ARB Resolution 03–22'', respectively.

On August 21, 2008, the SJVAPCD adopted ''Clarifications Regarding the 2004 Extreme Ozone Attainment Demonstration Plan'' (2008 SIP Clarification). The State submitted the 2008 SIP Clarification on September 5, 2008. Letter from James N. Goldstene, ARB, to Wayne Nastri, EPA, with enclosures, September 5, 2008. The 2008 SIP Clarification provides updates to the 2004 SIP related to RACT, control measures adopted by the SJVAPCD, the rate of progress demonstration, and contingency measures.

*C. What Clean Air Act requirements apply to this extreme area 1-hour ozone plan?*

The requirements for extreme 1-hour ozone areas are found in section 182 of the CAA and the general planning and control requirements for nonattainment plans are found in sections 110 and 172. These requirements are discussed in Section II of this proposed rule. EPA has issued a General Preamble describing our preliminary views on how the Agency intends to review SIPs submitted to meet the CAA's requirements for 1-hour ozone plans. ''General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990.'' 57 FR 13498 (April 16, 1992). EPA has also issued other guidance documents related to 1-hour ozone plans which we cited as necessary when discussing our evaluation of the 2004 SIP.

In an April 30, 2004 final rule, EPA designated and classified most areas of the country under the 8-hour ozone national ambient air quality standard (NAAQS) promulgated in 40 CFR 50.10. 69 FR 23858. On April 30, 2004, EPA also issued a final rule entitled ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1'' (Phase 1 Rule). 69 FR 23951. Among other matters, this rule revoked the 1-hour ozone NAAQS in the SJV (as well as in most other areas of the country), effective June 15, 2005. See 40 CFR 50.9(b); 69 FR at 23996 and 70 FR 44470 (August 3, 2005). The Phase 1 Rule also set forth anti-backsliding principles to ensure continued progress toward attainment of the 8-hour ozone NAAQS by identifying which 1-hour requirements remain applicable in an area after revocation of the 1-hour ozone NAAQS. Among the requirements not retained was the requirement to implement contingency measures pursuant to CAA sections 172(c)(9) and 182(c)(9) for failure to make reasonable further progress (RFP) toward attainment of the 1-hour NAAQS or for failure to attain that NAAQS. See 69 FR 23951 (April 30, 2004) and 70 FR 30592 (May 26, 2005).

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Rule. *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). Subsequently, in *South Coast Air Quality Management Dist.* v. *EPA,* 489 F.3d 1295 (DC Cir. 2007) in response to several petitions for rehearing, the court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. With respect to the challenges to the anti-backsliding provisions of the rule (codified in 40 CFR 51.905), the court vacated several provisions that would have allowed states to remove from the SIP or to not adopt several 1-hour obligations once

[1] The submittals included the District's ''Amended 2002 and 2005 Ozone Rate of Progress Plan for the San Joaquin Valley'' (submitted April 10, 2003 and found complete on September 4, 2003). On July 10, 2003, we found adequate for transportation conformity purposes the motor vehicle emission budgets (MVEBs) in this plan. Letter, Jack P. Broadbent, EPA Region 9 to Catherine Witherspoon, ARB, July 10, 2003. A table attached to the letter summarized our adequacy determination. Our notice of adequacy for these budgets was published in the **Federal Register** on July 24, 2003 at 68 FR 43724 and was effective 15 days later, on August 8, 2003.

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

[3] On February 13, 2008, ARB withdrew from EPA consideration specified portions of the ''Final 2003 State and Federal Strategy for the California State Implementation Plan'' as they relate to the 2003 SIP for the South Coast Air Basin. These withdrawals do not affect the 2003 Strategy as it relates specifically to the San Joaquin Valley. Letter from James N. Goldstene, ARB, to Wayne Nastri, EPA, February 13, 2008.

the 1-hour ozone NAAQS was revoked, among them, contingency measures to be implemented pursuant to CAA sections 172(c)(9) and 182(c)(9).

The provisions in 40 CFR 51.905(a)–(c) remain in effect and areas must continue to meet those anti-backsliding requirements for the 1-hour ozone NAAQS. However, the contingency measure provision noted previously, which is specified in 51.905(e), was vacated by the court. As a result, states must continue to meet the obligation for 1-hour ozone contingency measures.

## II. Review of the 2004 SIP, the SJV Elements of the Final 2003 State Strategy and the 2008 SIP Clarification

### *A. Did the SJVAPCD and ARB meet the CAA procedural requirements?*

1. What are the applicable CAA provisions?

CAA section 110 requires SIP submissions to be adopted by the state after reasonable notice and public hearing. EPA has promulgated specific requirements for SIP submissions in 40 CFR part 51, subpart F.

2. How does the plan address these provisions?

The District provided the requisite notice and public comment periods prior to adoption of the 2004 SIP and 2008 SIP Clarification. The State provided the requisite notice and public comment period prior to adoption of the 2004 SIP, Final 2003 State Strategy and 2008 SIP Clarification. See January 9, 2004, November 15, 2004 and March 6, 2006 letters from Catherine Witherspoon, ARB, to Wayne Nastri, EPA, with enclosures and September 5, 2008 letter from James. N. Goldstene to Wayne Nastri, with enclosures.

3. Does the plan meet the CAA procedural requirements for SIP submissions?

The submittal packages for the 2004 SIP, Final 2003 State Strategy and 2008 SIP Clarification include evidence of public notice and hearing, District and ARB responses to public comments, and evidence of District and ARB adoption. Based on our review of these materials, we find that the procedural requirements of CAA section 110 and 40 CFR part 51, subpart F have been met.

4. Are the plan submittals complete?

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

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

### *B. Do the baseline and projected emission inventories meet CAA requirements?*

1. What are the applicable CAA provisions?

CAA sections 172(c)(3) and 182(a)(1) require nonattainment areas to submit a comprehensive, accurate, and current inventory of actual emissions from all sources, in accordance with guidance provided by EPA. The inventory is to represent weekday emissions during the ozone season. General Preamble at 13502. EPA guidance for 1-hour ozone SIP emission inventories includes, in addition to the General Preamble: ''Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volume I: General Guidance for Stationary Sources,'' EPA—450/4–91–016; and ''Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources,'' EPA—450/5–91–026d Revised.

2. How does the plan address these provisions?

Chapter 3 of the 2004 SIP presents the baseline and projected emission inventories. This chapter also discusses the methodology used to determine 1999 emissions and identifies the growth and control factors used to project emissions for the 2000 baseline inventory and the 2008 and 2010 projected year inventories. The plan presents weekday summer inventories for 2000, 2008 and 2010 for all major source categories. Emissions are calculated for the two major ozone precursors—oxides of nitrogen ($NO_X$) and volatile organic compounds (VOC)—as well as for the less significant precursor, carbon monoxide (CO). 2004 SIP at Table 3–1. Motor vehicle emissions were based on estimates of vehicle miles traveled (VMT) provided by the regional transportation planning agencies and the California Department of Transportation. The plan uses ARB's EMission FACtor (EMFAC) 2002, version 2.2, to calculate the emission factors for cars, trucks and buses. On April 1, 2003, we approved EMFAC 2002 for use in SIP development. 68 FR 15720.

3. Does the plan meet the CAA provisions for the emission inventories?

We have determined that the emission inventories in the 2004 SIP were comprehensive, accurate, and current at the time the SIP was submitted. Accordingly, we propose to approve the emissions inventories in the 2004 SIP as consistent with the CAA and applicable EPA guidelines.

### *C. Is the air quality modeling consistent with the CAA and EPA's modeling guidelines?*

1. What are the applicable CAA provisions and EPA's guidelines?

Areas classified as extreme for the 1-hour ozone standard such as the SJV must demonstrate attainment ''as expeditiously as practicable'' but not later than November 15, 2010 as specified in CAA section 181(a). For purposes of demonstrating attainment, CAA section 182(c)(2)(A) requires extreme areas to use photochemical grid modeling or an analytical method EPA determines to be as effective.

EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results.[4] The photochemical grid modeling analysis is performed for days when the meteorological conditions are conducive to the formation of ozone. For purposes of developing the information to put into the model, the state must select days in the past with elevated ozone levels that are representative of the ozone pollution problem in the nonattainment area and a modeling domain that encompasses the nonattainment area. The state must then develop both meteorological data describing atmospheric conditions for the selected days and an emission inventory to evaluate the model's ability to reproduce the monitored air quality values. Finally, the state needs to verify

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

that the model is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests.

Once these steps are satisfactorily completed, the model can be used to generate future year air quality estimates to support an attainment demonstration. A future-year emissions inventory, which includes growth and controls through the attainment year, is developed for input to the model to predict air quality in the attainment year.

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

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

2. How does the plan address these provisions?

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

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

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

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

The CAMx simulation for July 30, with the emission inventory for the year 2010, was used to develop targets for reduction of VOC and $NO_X$ in the attainment year.

3. Does the air quality modeling meet EPA's modeling guidelines?

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

We conclude that the modeling is consistent with the CAA and EPA modeling guidance; therefore, we propose to approve the modeling analysis that underlies the attainment demonstration in the 2004 SIP. We discuss the attainment demonstration in more detail later in this proposed rule. See also ''Technical Support Document for the Extreme One-Hour Ozone Attainment Plan Modeling for the San Joaquin Valley Nonattainment Area,'' EPA Region 9, September 2008, found in the docket for this proposed rule.

*D. Do the control measures meet CAA requirements?*

1. What are the applicable CAA provisions?

The CAA section 172(c)(1) requires nonattainment area plans to provide for the implementation of all reasonably available control measures (RACM) including reasonably available control technology (RACT). EPA has previously provided guidance interpreting the RACM requirement in the General Preamble at 13560 and a memorandum entitled ''Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' John Seitz, Director, OAQPS to Regional Air Directors, November 30, 1999. In summary, EPA guidance requires that states, in addressing the RACM requirement, should consider all potential measures for source categories in the nonattainment area to determine whether they are reasonably available for implementation in that area and whether they would advance the area's attainment date.

Under the CAA, RACT is required for major VOC sources and for all VOC source categories for which EPA has issued Control Techniques Guideline (CTG) documents. In addition, EPA has issued Alternative Control Techniques (ACT) documents to help states in making RACT determinations. CAA sections 172(c)(1), 182(a)(2)(A), 182(b)(2), and 183(a) and (b). CAA section 182(f) requires that RACT also apply to major stationary sources of $NO_X$. In extreme areas, such as the SJV, a major source is one that emits or has the potential to emit 10 tons of VOC or $NO_X$ per year. CAA section 182(e).

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

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

Finally, CAA section 182(d)(1)(A) requires that extreme areas submit transportation control measures (TCMs) sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips, and to provide (along with other measures) the reductions needed to meet ROP. EPA interprets this CAA provision to allow areas to meet the requirement by demonstrating that emissions from motor vehicles decline each year through the attainment year. General Preamble at 13522.

2. How does the plan address these provisions?

a. RACM

To determine which measures would be feasible for the SJV, the District looked at measures implemented in other areas (including the South Coast Air Basin, the San Francisco Bay Area, and the Houston-Galveston area), documents produced by ARB, as well as measures suggested by the public at workshops. The District then screened the identified measures and rejected those that affected few or no sources in the SJV, had already been adopted as rules or were in the process of being adopted. The remaining measures were evaluated using baseline inventories, available control technologies, and potential emission reductions as well as whether the measure could be implemented on a schedule that would contribute to attainment of the 1-hour ozone standard by the deadline of 2010. 2004 SIP at section 4.2.1.

Based on this evaluation, the District developed an expeditious rule adoption schedule listing 21 measures involving adoption of eight new rules and revisions to over 20 existing rules. 2004 SIP, Table 4–1. Since submittal of the SIP in 2004, the District has completed action on all of these rules and submitted all except one of the adopted rules to EPA for approval. 2008 SIP Clarification, Table 1 and Table 1 below.[6]

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

The 2004 SIP relies on the Final 2003 State Strategy to address mobile and area source categories not under the District's jurisdiction. 2004 SIP at section 4.7. Table I–1 in the State Strategy shows the impressive list of both mobile and area source measures that have been adopted by California between 1994 and 2003, along with the mobile source rules that have been adopted by EPA during this period. Table I–2 lists proposed new State measures, most of which have already been adopted.[7] This list of new State measures was developed through a public process intended to identify and refine new emission reductions strategies for California. State Strategy at ES–5.

b. RACT

The 2004 SIP includes a brief section 4.2.5 discussing the RACT obligation and specific source categories where further analysis and potential future controls may be required in order to ensure that RACT levels of control are applied to sources down to the 10 tons per year (tpy) level. The District concluded that only a few categories would need additional work, since the District's existing rules already applied a stringent degree of control to sources with relatively low levels of emissions.

Subsequently, the District adopted, on August 17, 2006, and the State submitted on January 31, 2007, an 8-hour ozone RACT SIP addressing sources down to the 25 tpy size. In submitting the 2008 SIP Clarification, the State formally withdrew the RACT portion of the 2004 SIP, specifically section 4.2.5, stating that the District would fill the resulting 1-hour ozone RACT gap with the revised 8-hour ozone RACT SIP now under further development. The District intends to address sources down to the 10 tpy level of emissions in this revised 8-hour RACT SIP. 2008 SIP Clarification, page 3. Because the State has withdrawn this portion of the 2004 SIP and has not yet submitted a revised RACT SIP to address the extreme area requirements, we are not acting on RACT in this action.

c. Enforceable Limitations and Other Control Measures

i. Adopted Regulations

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

As shown in Table 3 below, of the 213.3 tpd $NO_X$ and 129.1 tpd VOC needed for attainment, approximately 160 tpd of $NO_X$ and 78.4 tpd of VOC reductions come from rules and regulations that were already adopted when the plan was submitted in 2004.

ii. Commitments

The 2004 SIP contains both State and District commitments to adopt control measures to achieve specified emissions reductions. The Final 2003 State Strategy, adopted prior to the 2004 SIP, includes an enforceable commitment to reduce $NO_X$ emissions in the SJV by 10 tpd by 2010.[8] State Strategy at I–24 through I–26. Possible measures to achieve these reductions are described and listed in the State Strategy at I–14 through I–26 and ARB Resolution 03–22, Attachment A. The State Strategy also states that beyond its emission reduction commitment, new commitments to achieve further VOC[9] and $NO_X$ reductions would be needed for the future SJV 1-hour ozone plan (which the SJVAPCD and ARB subsequently adopted as the 2004 SIP) and would be considered as part of that plan. State Strategy at I–26. To that end, the 2004 SIP incorporates the Final 2003 State Strategy as it applies to the SJV and includes an additional commitment by the State to achieve by 2010 emissions reductions of 10 tpd $NO_X$ and 15 tpd VOC.

Although the Final 2003 State Strategy identifies possible control measures that could deliver these reductions, the State's commitment is only to achieve these $NO_X$ and VOC emission reductions in the aggregate by 2010. Thus, the State's total enforceable

[6] The current set of the District's adopted regulations is available at: *http://www.valleyair.org/rules/1ruleslist.htm.* The current status of EPA approval of the District's rules is posted at: *http://yosemite.epa.gov/R9/r9sips.nsf/Agency?ReadForm&count=500&state=California&cat=San+Joaquin+Valley+Unified+APCD-Agency-Wide+Provisions.*

[7] See chapter 3 (page 38) of the ''Air Resources Board's Proposed State Strategy for California's 2007 State Implementation Plan,'' Revised Draft (Release date: April 26, 2007) for a list of adopted State measures.

[8] The State Strategy makes clear that this commitment was intended for immediate inclusion in the 2003 PM–10 plan for the San Joaquin Valley and for later inclusion in the 1-hour ozone plan for the SJV. State Strategy at I–23 and I–26.

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

commitments in the 2004 SIP are to achieve 20 tpd $NO_X$ and 15 tpd VOC emission reductions in the aggregate by 2010. See State Strategy at I–7 through I–9 and I–26; ARB Board Resolution 04–29, October 28, 2004; ARB Staff Report for the 2004 SIP at 29–30; 2004 SIP at section 4.7 (including Table 4–3 which duplicates Table I–2 in the State Strategy).[10]

In the 2004 SIP, the District commits to adopt specific rules by specified dates (quarter and year), to submit the rules within one month of adoption to ARB for submittal to EPA, and to achieve from each measure the specified reductions in 2010. 2004 SIP at Table 4–1 and SJVAPCD Resolution No. 5–10–12 (October 20, 2005) p. 4, item 9. This information is updated in Table 1 of the 2008 SIP Clarification which shows not only the original commitment in the 2004 SIP but also the date on which the District adopted the rule associated with each commitment and the actual emissions reductions achieved by each rule. A summary of the information found in Table 1 in the 2008 SIP Clarification is presented in our Table 1. Table 1 below also gives the date the rule was submitted to EPA or the date on which EPA approved the rule into the SIP.

TABLE 1—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT 2004 EXTREME OZONE ATTAINMENT PLAN "NEW MEASURE" COMMITMENTS

| Rule #, description and commitment ID from 2004 SIP | 2004 SIP commitment (2010–tpd) | Achieved emission reductions (2010–tpd) | Local adoption | Submittal date or approval cite/date |
|---|---|---|---|---|
| **$NO_X$ Control Measures** | | | | |
| 9310 Fleet rule-School buses (C) | 0.1 | 1.6 | 9/21/06 | 12/29/06 |
| 9510, 3180 Indirect Source Mitigation (D) | 4.0 | 4.0 | 12/15/05 | 12/29/06 |
| 4307 Small Boilers (2–5 MMBTU) (E) | 1.0 | 5.1 | 4/20/06 | 72 FR 29887 (5/30/07) |
| 4352 Solid fuel boilers (G) | 0.0 | 0.0 | 5/18/06 | 72 FR 29887 (5/30/07) |
| 4702 Stat. IC engines (H) | 8.0 | 16.8 | 1/18/07 | 73 FR 1819 (1/10/08) |
| 4309 Commercial Dryers (I) | 1.0 | 0.7 | 12/15/05 | 72 FR 29887 (5/30/07) |
| New Rule 4308—Water Heaters 0.075 (N) | 0.2 | 0.8 | 10/20/05 | 72 FR 29887 (5/30/07) |
| 4103 Open Burning (Q) | 1.1 | 1.7 | 5/17/07 | |
| 4703 Sta. Gas Turbines (S) | 0.6 | 1.9 | 8/17/06 | 12/29/06 |
| $NO_X$ Totals | 16.0 | 32.6 | | |
| EPA-Approved $NO_X$ Reductions | 10.2 | 23.4 | | |
| $NO_X$ Reductions Not Approved by EPA | 5.8 | 9.2 | | |
| **VOC Control Measures** | | | | |
| Rule # and Description: | | | | |
| 4409 Oil & Gas Fug. (A) | 4.7 | 5.1 | 4/20/05 | 71 FR 14653 (3/23/06) |
| 4455 Ref. & Chem. Fug. (B) | 0.2 | 0.3 | 4/20/05 | 71 FR 14653 (3/23/06) |
| 4694 Wineries (F) | 0.7 | 0.8 | 12/15/05 | 6/16/06 |
| 4565 Composting/Biosolids (J) | 0.1 | 0.3 | 3/15/07 | 8/24/07 |
| 4612 Automotive Coating (incorporates Rule 4602) (K) | 0.1 | 1.0 | 9/20/07 | 3/7/08 |
| 4570 CAFO Rule (L) | 15.8 | 17.7 | 6/15/06 | 10/5/06 |
| 4662 Org. Solvent Degreasing (M) | | | | |
| 4663 Org. Sol. Cleaning (M) | | | | |
| 4603 Metal Parts/Products (M) | | | | |
| 4604 Can and Coil Coating (M) | 1.3 | 3.1 | 9/20/07 | 3/7/08 |
| 4605 Aerospace Coating (M) | | | | |
| 4606 Wood Products Coating (M) | | | | |
| 4607 Graphic Arts (M) | | | | |
| 4612 Automotive Coating (M) | | | | |
| 4653 Adhesives (M) | | | | |
| 4684 Polyester Resin Operation (M) | | | | |
| 4401 Steam-Enhanced Oil-well (O) | 1.4 | 0.3 | 12/14/06 | 5/8/07 |
| 4651 Soil Decontamination (P) | <0.5 | 0.0 | 9/20/07 | 3/7/08 |
| 4103 Open Burning (Q) | 2.9 | 3.9 | 5/17/07 | — |
| 4682 Polymeric Foam Mfg. (R) | 0.1 | 0.1 | 9/20/07 | 3/7/08 |
| 4621 & 4624 Gasoline storage & trans. (T & U) | 0.9 | 1.9 | 12/20/07 | 3/7/08 |
| VOC totals | 28.2 | 34.5 | | |
| EPA-Approved VOC Reductions | 4.9 | 5.2 | | |
| VOC Reductions Not Approved by EPA | 23.3 | 29.3 | | |

In addition to the emission reductions associated with the rules listed in Table 1 above, the District also commits to achieve an additional 5 tpd $NO_X$ and 5 tpd VOC reductions in aggregate by

[10] In these documents the State's commitment is sometimes referred to as 20 tpd $NO_X$ and sometimes as 10 tpd $NO_X$. The 20 tpd reference is to ARB's commitment for 10 tpd $NO_X$ in the Statewide Strategy and ARB's additional commitment for 10 tpd $NO_X$ in the 2004 SIP at section 4.7 and ARB Board Resolution 04–29. See also ARB Staff Report for the 2004 SIP at 29. The 10 tpd reference is to ARB's additional commitment for 10 tpd $NO_X$ in the 2004 SIP at section 4.7 and ARB Resolution 04–29.

2010 from long-term measures. 2004 SIP at Table 5–1.

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

The 2008 SIP Clarification provides a demonstration that emissions from motor vehicles in the San Joaquin Valley decline each year from 2000 to 2011. This demonstration is reproduced in Table 2 below. 2008 SIP Clarification at 8. The emissions derive from the emissions inventory used in the modeling analysis for the 2004 SIP, and so are calculated using EMFAC2002, version 2.2, and the same transportation activity projections used in the 2004 SIP.

TABLE 2—BASELINE MOTOR VEHICLE EMISSIONS, 2000–2011

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

| Year | 00 | 01 | 02 | 03 | 04 | 05 | 06 | 07 | 08 | 09 | 10 | 11 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| VOC | 115 | 107 | 100 | 93 | 88 | 82 | 77 | 72 | 67 | 63 | 59 | 54 |
| $NO_X$ | 223 | 218 | 211 | 201 | 192 | 184 | 176 | 166 | 157 | 148 | 137 | 127 |

3. Does the plan meet the CAA provisions for control measures?

a. RACM

As described above, the District evaluated a range of potentially available measures for inclusion in its 2004 SIP and committed to adopt those it found to be feasible for attaining the 1-hour standard. The process and the criteria the District used to select certain measures and reject others are consistent with EPA's RACM guidance. We also describe above the measure evaluation process undertaken by the RPTAs and the local jurisdictions. This process is also consistent with EPA's RACM guidance. Based on our review of results of these RACM analyses, the State Strategy, and the resulting commitments to adopt and implement controls, we propose to find that there are, at this time, no additional reasonably available measures that would advance attainment of the 1-hour ozone standard in the SJ*V*. Therefore, we also propose to find that the 2004 SIP, together with the Final 2003 State Strategy, provides for the implementation of RACM as required by CAA section 172(c)(1). This proposed finding does not affect the District's continuing obligation under the CAA to implement RACT for its major sources of VOC and $NO_X$ and sources covered by an EPA CTG document.

b. RACT

As discussed above, the State has withdrawn the RACT portion of the 2004 Plan with the intent to fill the resulting 1-hour ozone RACT gap with the revised 8-hour ozone RACT SIP now under further development by the District. The District intends that this revised RACT SIP will, among other things, address sources down to the 10 tpy level of emissions as required for extreme areas. We agree with the District and the State that this approach is an efficient way to deal with the remaining RACT issues. See Letter, Deborah Jordan, EPA to Seyed Sadredin, SJVAPCD, September 9, 2008.

c. Enforceable Limitations and Other Control Measures

As stated above, measures already adopted by the District and State provide the majority of emission reductions needed to demonstrate attainment. The balance of the needed reductions is in the form of enforceable commitments by the District and ARB. EPA believes, consistent with past practice, that the CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[11] Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA considers three factors in determining whether to approve the enforceable commitment: (a) Does the commitment address a limited portion of the statutorily-required program; (b) is the state capable of fulfilling its commitment; and (c) is the commitment for a reasonable and appropriate period of time.[12]

We believe that circumstances here warrant the consideration of enforceable commitments. As discussed above, the bulk of emission reductions needed for attainment comes from regulations already fully adopted by the District and the State. These previously adopted measures include ARB regulations governing area and mobile sources and SJVAPCD rules governing stationary sources.

Moreover, as shown above and discussed further below, the 2008 SIP Clarification demonstrates that the District has fulfilled its commitments in the 2004 SIP to achieve the identified emission reductions from specific rules and to achieve an additional 5 tpd VOC and 5 tpd $NO_X$ reductions in the aggregate from long-term measures.

As a result of District's and ARB's previous efforts, the vast majority of sources in the SJV are already subject to stringent, adopted rules and it is increasingly difficult to develop regulations for the remaining universe of uncontrolled sources. Although the State is continuing its efforts to increase the stringency of existing controls on mobile sources and consumer products, the diverse nature of these source categories makes them difficult to regulate. As a result, rule development places an increasing burden on the State

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

CAA section 110(a)(2)(A) provides that each SIP ''shall include enforceable emission limitations and other control measures, means or techniques * * * as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirement of the Act.'' Section 172(c)(6) of the Act, which applies to nonattainment SIPs, is virtually identical to section 110(a)(2)(A). The language in these sections of the CAA is quite broad, allowing a SIP to contain any ''means or techniques'' that EPA determines are ''necessary or appropriate'' to meet CAA requirements, such that the area will attain as expeditiously as practicable but no later than the designated date. Furthermore, the express allowance for ''schedules and timetables'' demonstrates that Congress understood that all required controls might not have to be in place before a SIP could be fully approved.

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

to analyze advanced technologies and develop increasingly complex control approaches, and several years may be required to complete the tasks prerequisite to successful regulation. We, therefore, believe it is appropriate to allow an additional short period of time in order for them to determine which sources should be regulated and how.

Finally, the SJV does not rely on these enforceable commitments to meet the required rate of progress milestones. The 2008 SIP Clarification demonstrates achievement of the required ROP without the need for any reductions from commitments. See discussion in section II.E. below.

Having concluded that the circumstances warrant consideration of enforceable commitments, we consider below the three factors in determining whether to approve the submitted commitments.

i. The commitments address a limited portion of the 2004 SIP. Table 1 in the 2008 SIP Clarification and Table 1 above show that all of the District's commitments in Table 4–1 of the 2004 SIP have been converted to adopted rules, all but one has been submitted to EPA, and many have been approved by EPA. These tables demonstrate that the rules the District has adopted pursuant to these commitments will achieve 32.6 tpd $NO_X$ and 34.5 tpd VOC. These reductions amount to 16.6 tpd $NO_X$ and 6.3 tpd VOC more than the District originally committed to achieve in the 2004 Plan and are not only sufficient to meet all of its original emission reduction commitments from specified measures but also to satisfy the District's long-term measure commitment to achieve additional 5 tpd $NO_X$ and 5 tpd VOC by 2010.

The EPA-approved rules in Table 1 account for 23.4 tpd $NO_X$ and 5.2 tpd VOC. Table 3 below shows that the reductions from commitments needed to attain the 1-hour ozone NAAQS are 17.7 tpd $NO_X$ (8.3%) and 43.1 tpd VOC (33.4%).

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

| | $NO_X$ | VOC |
|---|---|---|
| 2000 baseline emissions | 556.8 | 443.5 |
| 2010 attainment target | 343.5 | 314.4 |
| Reductions needed to attain | 213.3 | 129.1 |
| Reductions from baseline measures adopted by 9/02 [13] | 160.0 | 78.4 |
| Reductions needed from commitments in 2004 SIP | 53.3 | 50.7 |
| Reductions achieved from EPA-approved rules [14] | 35.6 | 7.6 |
| Reductions needed to attain from commitments | *17.7* | *43.1* |
| Percent of reductions needed to attain from commitments (row 3) | 8.3% | 33.4% |

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

Of the 17.7 tpd $NO_X$ commitments, 9.2 tpd are from measures already adopted by the District but not yet acted on by EPA. Similarly, of the 43.1 tpd VOC commitments, 29.3 tpd are from measures already adopted by the District. This leaves only 8.5 tpd $NO_X$ and 13.8 tpd VOC (or approximately 3% $NO_X$ and 11% VOC) reductions that are needed for attainment from the State's commitments. The State has committed to achieve 20 tpd $NO_X$ and 15 tpd VOC which is more than is needed for attainment in 2010. Given the difficulty of controlling the State's sources and the near term adoption and implementation dates, we believe the portion of reductions from enforceable commitments in the 2004 SIP is acceptable and the first factor is satisfied.

ii. The State and District are capable of fulfilling their commitments. As discussed above, the District has already adopted the rules needed to fulfill the commitments made in its 2004 SIP and the only commitment that remains to be fulfilled is that of the State to achieve 20 tpd $NO_X$ and 15 tpd VOC reductions by 2010. The 2004 SIP at section 4.7 and State Strategy at I–7 through I–9 and I–23 through I–26 identify the State's development, adoption and implementation schedule for achieving its commitment.

Since the development of the 2004 SIP, the State has in fact adopted many controls that have the potential to contribute to meeting this obligation. Previous ARB regulatory achievements are listed in chronological order in a table in chapter 3 (page 38) of the ''Air Resources Board's Proposed State Strategy for California's 2007 State Implementation Plan,'' Revised Draft (Release date: April 26, 2007). The controls typically represent the most stringent regulations yet enacted in the Country and include In-Use Diesel Agricultural Engine Requirements, Consumer Product Lower Emission Limits, Zero Emission Bus Rule Amendments, etc. Finally, the State has an ongoing rulemaking agenda for 2008 posted at: *http://www.arb.ca.gov/regact/2008calfin.pdf.*

We believe that this consistent record of achievement shows that the State will be able to meet its enforceable commitments to achieve 20 tpd $NO_X$ and 15 tpd VOC by 2010. We, therefore, conclude that the second factor is satisfied.

iii. The commitments are for a reasonable and appropriate period of time. The State is not obligated to fulfill its emission reduction commitments until 2010. This schedule is reasonable given the type of measures that remain to be pursued, *e.g.,* retrofit controls for existing heavy-duty off-road diesel equipment. 2003 State Strategy, Measure OFF–RD CI–1. These types of measures typically require substantial time to develop, adopt and implement. Therefore, the State's schedule is reasonable and appropriate, and we conclude that the third factor is satisfied.

iv. Conclusion. For the above reasons, we believe that the three factors EPA considers in determining whether to approve enforceable commitments are satisfactorily addressed with respect to the District's and the State's commitments. We are therefore proposing to approve the State's enforceable commitment in the 2004 SIP, ARB Board Resolution 04–29 and

[13] The 2004 SIP at Table 5–1 includes 2010 baseline inventory numbers which reflect control measures adopted through September 2002. The ARB Staff Report for the 2004 SIP at Table III–6 refers to the measures adopted as of September 2002 as the adopted measures. Thus, for the 2004 SIP, measures adopted as of September 2002 are considered to be the baseline adopted measures.

[14] Includes the updated VOC and $NO_X$ emissions reductions from the ''Achieved Emission Reductions'' column of Table 1 above and in the 2008 SIP Clarification and 2.4 tpd VOC and 12.2 tpd of $NO_X$ from measures adopted after September 2002, but prior to the adoption of the 2004 SIP by the District and State, and which have since been approved by EPA. See ARB Staff Report for the 2004 SIP at Tables III–6 and III–7, 68 FR 51187, 68 FR 52510, 69 FR 60962, 69 FR 28061, 70 FR 28826, 69 FR 30006, 30026–30027.

Final 2003 State Strategy to achieve 20 tpd NOX and 15 tpd VOC reductions by 2010. We also propose to approve the District's enforceable commitments in the 2004 SIP to adopt specific rules by specified dates to achieve in 2010 the reductions in the column labeled ''Achieved Emission Reductions'' in Table 1 in the 2008 SIP Clarification (and Table 1 above). Final approval of these commitments would make the commitments enforceable by EPA and by citizens.

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

Additional information submitted in the 2008 SIP Clarification and reproduced in Table 2 above show that on-road mobile source emissions of VOC and $NO_X$ decline steadily from 2000 to 2011. Because emissions decline each year for both VOC and $NO_X$, the plan need not include TCMs to offset growth; therefore, we propose to find that this CAA requirement is met.

*E. Does the plan show the CAA-required rate of progress?*

1. What are the applicable CAA provisions?

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

CAA sections 182(c)(2) and (e) require that serious and above area SIPs include ROP quantitative milestones that are to be achieved every 3 years after 1996 until attainment. For ozone areas classified as serious and above, section 182(c)(2) requires that the SIP must provide for reductions in ozone-season, weekday VOC emissions of at least 3 percent per year net of growth averaged over each consecutive 3-year period. This is in addition to the 15 percent reduction over the first 6-year period required by CAA section 182(b)(1) for areas classified as moderate and above. The CAA requires that these milestones be calculated from the 1990 inventory after excluding, among other things, emission reductions from ''[a]ny measure related to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990 and emission reductions from certain federal gasoline volatility requirements.'' CAA section 182(b)(1)(B)–(D). EPA has issued guidance on meeting 1-hour ozone ROP requirements. See General Preamble at 13516 and ''Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration,'' EPA–452/R–93–015, OAQPS, EPA, February 18, 1994 (corrected).

CAA section 182(c)(2)(C) allows for $NO_X$ reductions which occur after 1990 to be used to meet the post-1996 ROP emission reduction requirements, provided that such $NO_X$ reductions meet the criteria outlined in the CAA and EPA guidance. The criteria require that: (1) The sum of all creditable VOC and $NO_X$ reductions must meet the 3 percent per year ROP requirement; (2) the substitution is on a percent-for-percent of adjusted base year emissions for the relevant pollutant; and (3) the sum of all substituted $NO_X$ reductions cannot be greater than the cumulative $NO_X$ reductions required by the modeled attainment demonstration. See General Preamble at 13517 and ''$NO_X$ Substitution Guidance,'' OAQPS, EPA, December 1993.

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

2. How does the plan address these provisions?

Chapter 7 of the 2004 SIP, updated by Table 2 in the 2008 SIP Clarification, provides a demonstration that the SJV meets both the 2008 and 2010 ROP milestones.[15] We have summarized this ROP demonstration in Table 4.

TABLE 4—SAN JOAQUIN RATE OF PROGRESS DEMONSTRATION

[Summer planning tons per day]

| | Base year | Milestone year | |
|---|---|---|---|
| | 1990 | 2008 | 2010 |
| **VOC Calculations** | | | |
| A. 1990 Baseline VOC | 633.2 | 633.2 | 633.2 |
| B. CA Pre-1990 MV standards adjustment | ..... | 120.1 | 123.8 |
| C. Adjusted 1990 baseline VOC in the milestone year (Line A – Line B) | ..... | 513.1 | 509.4 |
| D. Cumulative VOC reductions needed to meet milestone | ..... | 261.7 | 209.4 |
| E. Target level of VOC needed to meet ROP requirement (Line C – Line D) | ..... | 251.4 | 219.0 |
| F. Projected level (baseline) of VOC in milestone year with adopted controls only | ..... | 369.4 | 362.7 |
| G. VOC ROP shortfall (Line F – Line E) | ..... | 118.0 | 143.7 |
| H. VOC ROP shortfall (% of adjusted baseline) | ..... | 23.0% | 28.2% |
| **$NO_X$ Calculations** | | | |
| A. 1990 Baseline $NO_X$ | 805.1 | 805.1 | 805.1 |
| B. CA Pre-1990 MV standards adjustment | ..... | 114.0 | 116.6 |
| C. Adjusted 1990 baseline $NO_X$ in the milestone year (Line A – Line B) | ..... | 691.1 | 688.5 |
| D. Projected level (baseline) of $NO_X$ in milestone year with adopted controls only | ..... | 411.0 | 384.5 |
| E. Change in $NO_X$ since 1990 (Line C – Line D) | ..... | 280.1 | 304.0 |
| F. Change in $NO_X$ since 1990 (% of adjusted baseline) | ..... | 40.5% | 44.2% |
| G. VOC ROP shortfall | ..... | 23.0% | 28.2% |

[15] On January 8, 1997 (62 FR 1150, 1172), we approved the ROP demonstrations for the 1996 and 1999 milestones in the serious area 1-hour ozone SIP for the SJV, which was submitted in November 1994 and revised on July 12, 1996. Following reclassification of the area to severe, ROP demonstrations were prepared and submitted for the 2002 and 2005 milestones as part of the severe area SIP. The District prepared and submitted to EPA milestone compliance reports, as required by CAA section 182(g)(1) and (2), demonstrating achievement of the 2002 and 2005 milestones. See 2004 SIP at section 7.6.2 and letter from Scott Nestor, SJVAPCD, to Catherine Witherspoon, ARB, March 30, 2006, with attachment (''San Joaquin Valley Air Basin Rate of Progress Milestone Compliance Demonstration for 2005 the 1-hr Ozone National Ambient Air Quality Standards'').

TABLE 4—SAN JOAQUIN RATE OF PROGRESS DEMONSTRATION—Continued

[Summer planning tons per day]

| | Base year | Milestone year | |
|---|---|---|---|
| | 1990 | 2008 | 2010 |
| H. % Surplus $NO_X$ reductions after offsetting VOC ROP shortfall available for contingency measures (Line F − Line G) | ..... | 17.5% | 16.0% |

Because there are insufficient VOC reductions to meet the milestones, the ROP demonstration relies on $NO_X$ substitution, consistent with EPA's guidance, to show that the area meets the emission reduction requirements for 2008 and 2010. The demonstration does not depend on reductions from any measures that are in the 2004 SIP [16] or on reductions from any measures that are not creditable under the terms of section 182(b)(1).

3. Does the plan meet the CAA provisions for rate of progress?

The 2008 SIP Clarification follows EPA's guidance on addressing the pre-1990 motor vehicle program adjustments, using the pre-1990 California motor vehicle exhaust and evaporative standards in lieu of the national motor vehicle control program.[17] Because the 2004 SIP and the 2008 SIP Clarification demonstrate that sufficient emission reductions have or will be achieved to meet the 2008 and 2010 ROP milestones, we propose to approve the ROP provisions in these documents. As stated above, if the ROP milestones are met, we deem the general RFP requirements of CAA section 172(c)(2) to also have been met. Therefore, we also propose to approve the ROP provisions as meeting the requirements of CAA sections 172(c)(2) and 182(c)(2).

*F. Does the plan provide for attainment by the CAA-required deadline?*

1. What are the applicable CAA provisions?

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

2. How does the plan address these provisions?

The 2004 SIP's air quality modeling identified the SJV's ''carrying capacity'' or 2010 attainment target as 343.5 tpd $NO_X$ and 314.4 tpd VOC. 2004 SIP at section 5.6; ARB Staff Report for the 2004 SIP at section III.C. See also Table 3 above. We discuss the modeling in section II.C. above. The ''carrying capacity'' represents the maximum level of emissions that can be emitted in the SJV without causing exceedances of the 1-hour ozone standard. The EPA-approved rules and the commitments in the 2004 SIP as updated by the 2008 SIP Clarification and the remaining State commitments for the SJV in the 2003 State Strategy reduce the 2000 projected baseline emissions (556.8 tpd $NO_X$ and 443.5 tpd VOC) to these levels by the 2010 attainment deadline for extreme areas. These levels represent a 38% $NO_X$ and 29% VOC decrease in emissions from the 2000 baseline.

3. Does the plan meet the CAA provisions for attainment?

The 2004 SIP provides an attainment demonstration that shows sufficient reductions will be achieved to attain by the CAA deadline of November 15, 2010. Table 5 provides a summary of the 2004 SIP attainment demonstration. This attainment demonstration is based on air quality modeling that is consistent with the CAA and EPA modeling guidance. See section II.C. of this proposed rule.

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

| | $NO_X$ (tpd) | VOC (tpd) |
|---|---|---|
| 2000 Baseline | 556.8 | 443.5 |
| 2010 Attainment Target | 343.5 | 314.4 |
| Total Reductions Needed to Attain in 2010 | 213.3 | 129.1 |
| Reductions from 2004 Baseline Measures, pre-9/02 | 160.0 | 78.4 |
| Reductions from 2004 EPA-Approved Rules | 35.6 | 7.6 |
| Reductions from Remaining District and State Commitments | 29.2 | 44.3 |
| Total Reductions Achieved from Approved Rules and Commitments | 224.8 | 130.3 |

As can be seen from Table 5, the total reductions achieved from EPA-approved rules and the commitments in the 2004 SIP as updated by the 2008 SIP Clarification are greater than the total reductions needed to attain the 1-hour ozone NAAQS by 2010.

The 2004 SIP attainment reductions are not ''backloaded'' but rather derive from ambitious State and District rule development projects to adopt or amend new regulations to tighten controls expeditiously on existing sources and to regulate a few previously uncontrolled sources. Moreover, both agencies typically set tight compliance schedules for amended and newly adopted rules,

[16] The ROP demonstration relies on ''the emission control program as it existed when the Valley's 2004 SIP was submitted * * *.'' 2008 SIP Clarification at 6.

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

requiring full compliance in most cases within one year or less and the District has been able to achieve considerably more reductions than the 2004 SIP anticipated.

Attainment reductions also come from the benefits of mobile source fleet turnover to meet increasingly stringent Federal and State emission standards. California now has in place ambitious programs to accelerate this turnover.[18]

We propose to conclude that the 2004 SIP's demonstration of attainment meets the requirements of CAA sections 172 and 181 that areas classified as extreme demonstrate attainment ''as expeditiously as practicable'' but no later than November 15, 2010.

*G. Do the contingency measures meet CAA requirements?*

1. What are the applicable CAA provisions?

Sections 172(c)(9) and 182(c)(9) of the CAA require that SIPs contain contingency measures that will take effect without further action by the state or EPA if an area fails to attain the NAAQS by the applicable date or fails to meet ROP milestones. The Act does not specify how many contingency measures are needed or the magnitude of emission reductions that must be provided by these measures. However, EPA provided initial guidance interpreting the contingency measure requirements of 172(c)(9) and 182(c)(9) in the General Preamble at 13510. Our interpretation is based upon the language in sections 172(c)(9) and 182(c)(9) in conjunction with the control measure requirements of sections 172(c), 182(b) and 182(c)(2)(B), the reclassification and failure to attain provisions of section 181(b) and other provisions. In the General Preamble, EPA indicated that states with moderate and above ozone nonattainment areas should include sufficient contingency measures so that, upon implementation of such measures, additional emission reductions of up to 3 percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure is identified. The states must show that the contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions. In subsequent guidance, EPA stated that contingency measures could be implemented early, *i.e.*, prior to the milestone or attainment date.[19]

2. How does the plan address these provisions?

Table 2 in the 2008 SIP Clarification provides an updated ROP demonstration that shows that, after meeting the VOC ROP milestones for 2008 and 2010 with $NO_X$ substitution, there are still creditable $NO_X$ reductions for both the 2008 and 2010 milestones in excess of the 3 percent sufficient to satisfy the contingency measure requirement. See also Table 4 in this proposed rule. Table 2 in the 2008 SIP Clarification includes reductions from measures adopted before September 2002 and does not rely on any of the measures adopted after September 2002, such as those in Table 1 in the 2008 SIP Clarification (and Table 1 above).

In addition, Table 3 in the 2008 SIP Clarification, which is reproduced as Table 2 above, shows that onroad fleet turnover will continue to deliver substantial reductions in 2011, *i.e.*, an additional 10 tpd $NO_X$ and 5 tpd VOC beyond the reductions shown in Tables 1 and 2 in the 2008 SIP Clarification. These reductions are available to serve as additional contingency reductions in 2011.

3. Does the plan meet the CAA requirements for contingency measures?

We find that there are sufficient excess $NO_X$ reductions shown in Table 2 of the 2008 SIP Clarification and Table 4 above to satisfy the contingency measure requirement for the milestone year 2008. These reductions are above and beyond those needed for ROP for 2008 and occur prior to the year the milestone demonstrations will be made, 2009.

For the attainment year, 2010, the requirement is to show that there are contingency measures that will provide continued ROP, *i.e.*, 3 percent reductions from the pre-1990 adjusted baseline, if attainment is not achieved. Consistent with the ROP demonstration, an additional 3 percent in the attainment year equates to approximately 15.3 tpd of VOC or 20.7 tpd of $NO_X$ with $NO_X$ substitution. These contingency measure reductions would be required by 2011. Table 2 above shows that there are 10 tpd of additional reductions in 2011 beyond the 2010 attainment. Table 5 above shows that there are 11.5 tpd of excess reductions not needed for attainment in 2010. In addition, Tables 2 and 5 show that there are excess VOC reductions of approximately 6 tpd.

Thus, we believe that there are sufficient excess reductions to satisfy the contingency measure requirement for the attainment year which are above and beyond attainment for 2010 and will be achieved prior to the year attainment would be determined, 2011.

As discussed above, the use of excess reductions from already adopted measures to meet the CAA sections 172(c)(9) and 182(c)(9) is consistent with EPA policy and has been approved by EPA in numerous SIPs. See 62 FR 15844 (April 3, 1997); 62 FR 66279 (December 18, 1997); 66 FR 30811 (June 8, 2001); 66 FR 586 and 66 FR 634 (January 3, 2001). The key is that the CAA requires extra reductions that are not relied on for ROP or attainment and that are in the demonstrations to provide a cushion while the plan is being revised. Nothing in the CAA precludes a state from implementing such measures before they are triggered. A recent court ruling upheld this approach. See *LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004). 70 FR 71611, 71651. Thus we propose to approve the contingency measure provisions in Tables 2 and 3 of the 2008 SIP Clarification as meeting the contingency measure requirements in CAA sections 172(c)(9) and 182(c)(9).

*H. Are the motor vehicle emissions budgets approvable?*

1. What are the applicable CAA provisions?

Under section 176(c) of the CAA, transportation plans, programs and projects in nonattainment or maintenance areas that are funded or approved under title 23 U.S.C. and the Federal Transit Laws (49 U.S.C. Chapter 53) must conform to the applicable SIP. In short, a transportation plan and program are deemed to conform to the applicable SIP if the emissions resulting from the implementation of that transportation plan and program are less than or equal to the motor vehicle emissions budgets (MVEBs) established in the control strategy SIPs for the attainment year, ROP years, maintenance year and other analysis years. See, generally, 40 CFR part 93.

[18] The State and District have a variety of regulatory and incentive programs to accelerate the retrofit or replacement of existing sources including the District's school bus fleet regulation (Rule 9310), which is given specific emission reductions in the 2004 SIP. The 2004 SIP does not claim emission reduction credit for incentive programs and from the recently adopted State in-use off-road diesel vehicles rule (available at: *http://www.arb.ca.gov/regact/2007/ordiesl07/frooal.pdf*), ARB's various incentive programs (described at: *http://www.arb.ca.gov/ba/fininfo.htm#grants*), and the District's incentive programs (described at: *http://www.valleyair.org/Grant_Programs/GrantPrograms.htm*).

[19] See Memorandum from G.T. Helms, EPA, to EPA Air Branch Chiefs, Regions I–X, entitled ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' August 13, 1993.

In addition to meeting the criteria for attainment, as a control strategy SIP, this ROP and attainment plan must contain MVEBs that, in conjunction with emissions from all other sources, are consistent with attainment. A MVEB is the total emissions from on-road vehicles projected to the attainment year and consistent with the attainment demonstration. The budget must have been developed using the latest planning assumptions and consistent with the control measures in the attainment plan. All of the criteria by which we determine whether a SIP's MVEBs are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have described our process for determining the adequacy of submitted SIP budgets in the preamble to revisions to EPA's conformity regulations. 68 FR 38974 (June 30, 2003) and 69 FR 40004 (July 1, 2004).

2. How does the plan address these provisions?

The MVEBs for the SJV were developed using emission factors generated using ARB's EMFAC2002 model, version 2.2 (April 2003) and using the latest assumptions regarding VMT. EMFAC2002 was approved by EPA on April 1, 2003, 68 FR 15720, for use in SIPs and transportation conformity analyses. EMFAC2002 produces emissions for a wide range of motor vehicles (passenger cars, trucks, motorcycles, buses and motor homes) for calendar years out to 2040. The MVEBs were developed for the ROP and attainment years of 2008 and 2010, respectively. The MVEBs are for both VOC and $NO_X$ as precursors to ozone formation, and were applicable for the SJV upon the effective date of the MVEB adequacy finding.

The 2004 SIP includes county-by-county subarea MVEBs for 2008 and 2010 for VOC and $NO_X$. The 2004 SIP budgets are summarized in the 2004 SIP at Table 3–4. Additional details regarding the budgets are presented in Appendix A to the 2004 SIP.

3. Does the plan meet the CAA provisions for MVEBs?

On February 7, 2005, we found adequate for transportation conformity purposes the MVEBs in the 2004 SIP. Letter from Deborah Jordan, EPA to Catherine Witherspoon, ARB, February 7, 2005. A table attached to the letter summarized our adequacy determination. Our notice of adequacy for these budgets was published in the **Federal Register** on February 15, 2005, at 70 FR 7734 and was effective 15 days later, on March 2, 2005.

We are now proposing to approve the VOC and $NO_X$ MVEBs contained in the 2004 SIP (and in Table 5 below) for transportation conformity purposes. We propose to approve the budgets because we conclude that they are consistent with and clearly related to the emission inventory and control measures identified in the 2004 SIP, and that the 2004 SIP as a whole demonstrates timely attainment with the 1-hour ozone standard and the required rate of progress. We also propose to approve the individual county level subarea budgets for VOC and $NO_X$, as shown in Table 5 below, consistent with 40 CFR 93.124(d), which allows for a nonattainment area with more than one Metropolitan Planning Organization (MPO) to establish subarea emission budgets for each MPO. Note that if an individual MPO lapses, then the remaining MPOs in the SJV cannot make new conformity determinations.[20] If approved, the 2008 and 2010 MVEBs must be used for transportation conformity purposes. As mentioned earlier, the county subarea motor vehicle emissions budgets that we are proposing to approve are listed in Table 5 below.

TABLE 5—MOTOR VEHICLE EMISSIONS SUBAREA BUDGETS IN THE 2004 SIP

[Tons per day]

| County | VOC | | $NO_X$ | |
|---|---|---|---|---|
| | 2008 | 2010 | 2008 | 2010 |
| Fresno | 15.8 | 13.0 | 33.7 | 27.7 |
| Kern (part) | 11.5 | 9.6 | 32.7 | 27.2 |
| Kings | 2.5 | 2.1 | 6.2 | 5.4 |
| Madera | 3.9 | 3.3 | 8.4 | 7.2 |
| Merced | 5.0 | 4.0 | 11.4 | 9.1 |
| San Joaquin | 9.3 | 7.7 | 22.4 | 17.9 |
| Stanislaus | 8.5 | 7.0 | 17.4 | 14.0 |
| Tulare | 8.5 | 6.9 | 18.8 | 15.3 |
| Total | 65.0 | 53.6 | 151.0 | 123.8 |

While we are proposing to approve these 1-hour ozone budgets into the SIP, it should be noted that we anticipate that these motor vehicle emissions budgets will be used in few, if any, future transportation conformity determinations. Because EPA has revoked the 1-hour ozone standard, transportation conformity determinations are no longer required for that air quality standard. Additionally, while these budgets have been used in the initial conformity determinations in the SJV for the 1997 8-hour ozone standard, these budgets only serve that purpose until motor vehicle emissions budgets are found adequate or are approved for the 8-hour ozone standard.

## III. Summary of Proposed Actions

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

(1) The emission inventories as meeting the requirements of CAA sections 172(c)(3) and 182(a)(1);

[20] CAA section 176(c) states that conformity applies to SIPs in nonattainment and maintenance areas, rather than individual metropolitan planning areas within a single state. When subarea budgets area created for each MPO, the sum of the subarea budgets equals the total amount of emissions the area can have from the transportation sector and still attain and maintain the NAAQS. When one subarea lapses, then the other MPOs cannot show that their planned transportation activities would conform to the SIP for the whole area until the lapse is resolved. See ''Companion Guidance for the July 1, 2004, Final Transportation Conformity Rule: Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards'' (EPA 420–B–04–012).

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

(3) the attainment demonstration as meeting the requirements of 182(c)(2)(A) and 181(a);

(4) the District's commitments in the 2004 SIP to adopt specific rules by specified dates to achieve in 2010 the reductions in the column labeled ''Achieved Emission Reductions'' in Table 1 in the 2008 SIP Clarification as meeting the requirements of CAA sections 110(a)(2)(A) and 172(c)(6);

(5) the contingency measures as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9); and

(6) the VOC and $NO_X$ MVEBs for transportation conformity purposes as meeting the requirements of CAA section 176(c).

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

C. EPA is proposing to approve pursuant to CAA section 110(k)(3) the 2004 SIP, the Final 2003 State Strategy and the 2008 SIP Clarification as meeting the RACM requirements of CAA section 172(c) only.

## IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to approve a State-adopted attainment plan for the San Joaquin Valley Air Basin and does not impose any additional requirements. Accordingly, the Administrator certifies that this proposed action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the plan is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action merely proposes to approve a State adopted ozone attainment plan and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency actions by directing agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. Today's action involves a proposed approval of a State adopted ozone attainment plan. It will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

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

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, National parks, Nitrogen oxides, Volatile organic compounds, Ozone, Particulate matter, Reporting and recordkeeping requirements, Wilderness areas.

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

Dated: October 7, 2008.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

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