

proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

**Submitting comments.** We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2024–0198 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

**Viewing material in docket.** To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

**Personal information.** We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; and DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. Amend § 117.911 by revising paragraph (f) to read as follows:

#### § 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

\* \* \* \* \*

(f) *Lady’s Island (Woods Memorial) Bridge, across the Beaufort River, mile 536.0, at Beaufort.* The draw shall operate as follows:

(1) Monday through Friday, except Federal holidays:

(i) From 6 a.m. to 9:29 a.m. and 3:31 p.m. to 7 p.m., the draw need not open to navigation; and,

(ii) Between 9:30 a.m. and 3:30 p.m., the draw need open only once an hour on the half hour.

(2) At all other times the draw shall open on signal.

Dated: October 21, 2024.

**Douglas M. Schofield,**

*Rear Admiral, U.S. Coast Guard, Commander, Coast Guard Seventh District.*

[FR Doc. 2024–24847 Filed 10–24–24; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R09–OAR–2024–0338; FRL–12118–01–R9]

#### Conditional Approval; Contingency Measure State Implementation Plan for the 2008 Ozone Standard; San Joaquin Valley, California

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to conditionally approve a state implementation plan (SIP) submission under the Clean Air Act (CAA or “Act”) that addresses the contingency measure requirements for the 2008 ozone national ambient air quality standards (NAAQS or “standards”) for the San Joaquin Valley ozone nonattainment area. The SIP submission, titled the “Ozone Contingency Measure State Implementation Plan Revision for the

2008 and 2015 8-hour Ozone Standards” (“2024 SJV Ozone Contingency Measure Plan,” “Contingency Measure Plan,” or “Plan”) relies on two ozone contingency measures that the EPA has already approved in separate rulemakings. The proposed approval is conditional because it also relies on commitments by the State air agency and regional air district to supplement the 2024 SJV Ozone Contingency Measure Plan with submission of specific additional contingency measures within one year of the EPA’s final conditional approval. The EPA is proposing conditional approval of the SIP submission because the Agency has preliminarily determined that the existing approved contingency measures, the commitments to submit additional contingency measures, and the justification for not adopting contingency measures that would achieve the recommended amount for such measures, meet the applicable requirements for such SIP submissions under the CAA and the EPA’s implementation regulations for the San Joaquin Valley for the 2008 ozone NAAQS. The proposed conditional approval, if finalized, would add the 2024 SJV Ozone Contingency Measure Plan to the federally enforceable California SIP.

**DATES:** Written comments must arrive on or before November 25, 2024.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0338 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on

making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Andrew Ledezma, Air Planning Office (ARD-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3985, or by email at [Ledezma.Andrew@epa.gov](mailto:Ledezma.Andrew@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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### I. Background for Proposed Action

#### A. The 2008 Ozone National Ambient Air Quality Standards, Designation, Classification, and Plans

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) in the presence of

sunlight.<sup>1</sup> These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on-and-off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment, architectural coatings, and other types of consumer products.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.<sup>2</sup>

Under section 109 of the Clean Air Act (CAA or “Act”), the EPA has established national ambient air quality standards (NAAQS or “standards”) for certain pervasive air pollutants, such as ozone. The EPA has previously promulgated NAAQS for ozone in 1979 and 1997.<sup>3</sup> In 2008, the EPA revised and further strengthened the ozone NAAQS by setting the acceptable level of ozone in the ambient air at 0.075 parts per million (ppm), averaged over an 8-hour period.<sup>4</sup> Although the EPA further tightened the 8-hour ozone NAAQS to 0.070 ppm in 2015, this action relates to the requirements for the 2008 ozone NAAQS.<sup>5 6</sup>

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas throughout the country as attaining or not attaining the NAAQS. In 2012, the EPA designated the San Joaquin Valley as nonattainment for the 2008 ozone standards and classified that area as “Extreme.”<sup>7</sup>

In California, the California Air Resources Board (CARB or “State”) is

<sup>1</sup> The State of California refers to reactive organic gases (ROG) in some of its ozone-related submissions. The CAA and the EPA’s regulations refer to VOC, rather than ROG, but both terms cover essentially the same set of gases. In this proposed rule, we use the federal term (VOC) to refer to this set of gases.

<sup>2</sup> See “Fact Sheet—2008 Final Revisions to the National Ambient Air Quality Standards for Ozone” dated March 2008.

<sup>3</sup> The ozone NAAQS promulgated in 1979 was 0.12 parts per million (ppm) averaged over a 1-hour period. See 44 FR 8202 (February 8, 1979). The ozone NAAQS promulgated in 1997 was 0.08 ppm averaged over an 8-hour period. See 62 FR 38856 (July 18, 1997).

<sup>4</sup> See 73 FR 16436 (March 27, 2008).

<sup>5</sup> Information on the 2015 ozone NAAQS is available at 80 FR 65292 (October 26, 2015).

<sup>6</sup> Although the district’s submittal included submissions to address requirements for both the 2008 and 2015 ozone NAAQS, at this time we are taking action on the submittal as it pertains to the 2008 ozone requirements. The EPA plans to act on the submittal with respect to the 2015 ozone requirements at a later date.

<sup>7</sup> See 77 FR 30088 (May 21, 2012).

the state agency responsible for the adoption and submission to the EPA of California SIP revisions, and it has broad authority to establish emissions standards and other requirements for mobile sources. Local and regional air pollution control districts in California are responsible for the regulation of stationary sources and are generally responsible for the development of regional air quality plans. In the San Joaquin Valley, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or “District”) is responsible for stationary source regulation, and it also develops and adopts air quality management plans to address CAA planning requirements applicable to that region. Such plans are then submitted to CARB for adoption and submittal to the EPA as revisions to the California SIP.

Under CAA section 110(k), the EPA is charged with evaluation of each SIP revision submitted by states for compliance with applicable CAA requirements and with taking action on each submission. The EPA evaluates SIP submissions and takes action to approve or disapprove them through notice-and-comment rulemaking published in the **Federal Register**. CAA section 110(k)(4) authorizes the EPA to conditionally approve a SIP submission based on a commitment of the State to adopt specific enforceable measures by a date certain, but no later than one year after the date of approval of the SIP submission. Where appropriate, the EPA may act on separate portions of a SIP submission in separate rulemaking actions.

Under the CAA, ozone nonattainment areas classified under subpart 2 as “Serious” or above, such as the San Joaquin Valley area for the 2008 ozone NAAQS, must include in their SIPs, among other requirements, contingency measures consistent with CAA sections 172(c)(9) and 182(c)(9). Contingency measures are additional controls or measures to be implemented in the event the area fails to make reasonable further progress (RFP), meet any applicable milestone, or attain the NAAQS by the attainment date. Additional information about the requirements for contingency measures can be found in section II of this document.

#### B. The San Joaquin Valley Ozone Nonattainment Area

The San Joaquin Valley nonattainment area for the 2008 ozone standards consists of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, and Kings counties, and the western portion of Kern County. The

San Joaquin Valley nonattainment area stretches over 250 miles from north to south, averages a width of 80 miles, and encompasses over 23,000 square miles. It is partially enclosed by the Coast Mountain range to the west, the Tehachapi Mountains to the south, and the Sierra Nevada range to the east.<sup>8</sup> The population of the San Joaquin Valley in 2020 was estimated to be more than 4.4 million people and is projected to increase to nearly 5 million people by 2035.<sup>9</sup>

### C. Previous EPA Actions Related to Contingency Measures for the 2008 Ozone NAAQS in the San Joaquin Valley

In March 2019, the EPA took final action to approve, or conditionally approve, certain SIP revisions submitted by CARB to meet CAA requirements for the 2008 ozone NAAQS in the San Joaquin Valley, California, ozone nonattainment area.<sup>10</sup> Specifically, the EPA approved the base year emissions inventory, RFP demonstration, and motor vehicle emissions budgets, and we conditionally approved the contingency measure element for the 2008 ozone NAAQS. The approval was conditional because it relied on a commitment by the District to amend the District's Rule 4601 (Architectural Coatings) to include contingency provisions and a commitment by CARB to submit the amended District rule to the EPA within a year of final conditional approval of the contingency measure element for the San Joaquin Valley.<sup>11</sup> We justified a conditional approval of the contingency measure element, even though the contingency measure itself would only achieve a small fraction of the recommended amount of emissions reductions for contingency measures, on two bases: (1) surplus emissions reductions anticipated from already-implemented measures in the milestone years and year after the attainment year and (2) a commitment by the State to achieve additional emissions reductions by the attainment year in the San Joaquin Valley that would reduce the chances for failure to attain the 2008 ozone

NAAQS by the applicable attainment date.<sup>12</sup>

Our final conditional approval of the contingency measure element was the subject of a legal challenge and, in a 2021 Ninth Circuit Court of Appeals decision in the *Association of Irrigated Residents v. EPA* case, the Court remanded the conditional approval action back to the Agency.<sup>13</sup> In so doing, the Court found that, by taking into account the emissions reductions from already-implemented measures to find that the contingency measure would suffice to meet the applicable requirement, the EPA was circumventing the Court's 2016 holding in *Bahr v. EPA*.<sup>14</sup> The Court also held that the EPA could not avoid the need for robust contingency measures by assuming that they would not be needed.<sup>15</sup>

In October 2022, in light of the *Association of Irrigated Residents v. EPA* decision, the EPA took final action to withdraw our previous conditional approval and to partially disapprove the contingency measure element submitted to address the contingency measure requirements for the San Joaquin Valley for the 2008 ozone NAAQS.<sup>16</sup> We did so because we found that, if we did not take into account the likelihood the District would need contingency measures or surplus emissions reductions from already implemented measures, then the one contingency measure that was included in the contingency measure element would have to shoulder the entire burden of achieving the recommended amount for contingency measures (if triggered). Moreover, that one contingency measure would have only achieved a small fraction of the recommended amount of emissions reductions for contingency measures.<sup>17</sup>

Pursuant to section 179 of the CAA and 40 CFR 52.31, the EPA's partial disapproval of the contingency measure element triggered sanctions clocks. More specifically, as explained in our final partial disapproval action, under

40 CFR 52.31, the offset sanction in CAA section 179(b)(2) would be imposed 18 months after the effective date of the partial disapproval action (the disapproval took effect November 2, 2022), and the highway funding sanction in CAA section 179(b)(1) would be imposed six months after the offset sanction was imposed, unless the EPA determined that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline.<sup>18</sup> In addition, the EPA's partial disapproval of the contingency measure SIP submissions triggered an obligation on the EPA to promulgate a federal implementation plan (FIP) within two years of the November 2, 2022 effective date, pursuant to CAA section 110(c)(1), unless we approved a subsequent SIP submission that corrects the plan deficiencies before the applicable deadline.<sup>19</sup>

In April 2024, in response to our final partial disapproval, the State of California adopted and submitted the 2024 SJV Ozone Contingency Measure Plan, which is the subject of this proposed action, to correct the deficiencies that the EPA identified in the previous contingency measure SIP submissions that were the basis for the EPA's October 2022 disapproval. We describe the 2024 SJV Ozone Contingency Measure Plan in more detail in sections III and IV of this document and present our evaluation of the SIP submission in section V of this document. Based on this proposed conditional approval, in the Rules and Regulations section of this issue of the **Federal Register**, we are issuing an interim final determination to stay the application of the offset sanction and to defer the application of the highway sanction that were triggered by the EPA's October 2022 partial disapproval.

In addition to the submission of the 2024 SJV Ozone Contingency Measure Plan, the District has adopted, and CARB has submitted, revisions to the District's architectural coatings rule (*i.e.*, District Rule 4601) to include a contingency measure for the 2008 ozone NAAQS ("Architectural Coatings Contingency Measure"). The EPA approved the amended architectural coatings rule in December 2022.<sup>20</sup> The Architectural Coatings Contingency Measure will, if triggered, remove the rule's small container exemption (*i.e.*, one liter or less) for certain types of coatings.<sup>21</sup> More recently, CARB

<sup>8</sup> For a precise definition of the boundaries of the San Joaquin Valley 2008 ozone nonattainment area, see 40 CFR 81.305.

<sup>9</sup> The population estimates and projections include all of Kern County, not just the portion of Kern County within the San Joaquin Valley Air Basin. See Chapter 2 and table 2-1 of the District's "2022 Ozone Plan for the 2015 8-Hour Ozone Standard."

<sup>10</sup> 84 FR 11198 (March 25, 2019).

<sup>11</sup> *Id.* at 11207.

<sup>12</sup> 83 FR 61346, at 61357 (November 29, 2018) (proposed conditional approval), finalized at 84 FR 11198, at 11205-11206.

<sup>13</sup> *Association of Irrigated Residents v. EPA*, 10 F.4th 937 (9th Cir. 2021).

<sup>14</sup> *Id.*, at 946. The reference to "*Bahr v. EPA*" is to *Bahr v. EPA*, 836 F.3d 1218, at 1235-1237 (9th Cir. 2016). Under the *Bahr* holding, contingency measures under CAA section 172(c)(9) must be designed so as to be implemented prospectively; already-implemented control measures may not serve as contingency measures even if they provide emissions reductions beyond those needed for any other CAA purpose.

<sup>15</sup> *Id.* at 947.

<sup>16</sup> 87 FR 59688 (October 3, 2022).

<sup>17</sup> *Id.* at 59690.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> 87 FR 78544 (December 22, 2022).

<sup>21</sup> SJVUAPCD Rule 4601, section 4.3.

adopted and submitted a contingency measure for the vehicle inspection and maintenance (“Smog Check”) program. As adopted, the “Smog Check Contingency Measure” would narrow the Smog Check inspection exemption for newer model year vehicles in certain California nonattainment areas upon a triggering event for certain NAAQS, including the 2008 ozone NAAQS for the San Joaquin Valley.<sup>22</sup> The EPA recently approved the Smog Check Contingency Measure as a revision to the California SIP.<sup>23</sup>

In our actions approving the Architectural Coatings Contingency Measure and the Smog Check Contingency Measure, we indicated that we were approving the contingency measures as individual contingency measures but that we were not determining in those actions whether the State had met the contingency measure SIP requirements under CAA sections 172(c)(9) and 182(c)(9) for the areas to which the contingency measures apply.<sup>24</sup> Instead, we indicated that we would take into account the emissions reductions associated with the Architectural Coatings Contingency Measure and the Smog Check Contingency Measure when we take action on the contingency measure element submitted by the State to demonstrate compliance with CAA sections 172(c)(9) and 182(c)(9) for a given area. As expected, we are taking into account the emissions reductions associated with the Architectural Coatings Contingency Measure and the Smog Check Contingency Measure in this proposed action on the 2024 SJV Ozone Contingency Measure Plan, which was submitted to satisfy the contingency measure SIP requirements under CAA sections 172(c)(9) and 182(c)(9) for the 2008 ozone NAAQS for the San Joaquin Valley.

## II. Contingency Measure Requirements, Guidance, and Legal Precedent

The EPA first provided its views on the CAA’s requirements for ozone plans under part D, title I of the Act in the following guidance documents: (1) “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990” (“General Preamble”);<sup>25</sup> and

(2) “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental.”<sup>26</sup> More recently, in the Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements, “2008 Ozone SIP Requirements Rule (SRR),” the EPA provided further interpretive guidance on the statutory SIP requirements that apply to areas designated nonattainment for the 2008 ozone NAAQS.<sup>27</sup>

### A. Statutory and Regulatory Requirements

Under CAA section 172(c)(9), states required to make an attainment plan SIP submission must include contingency measures to be implemented if the area fails to meet RFP (“RFP contingency measures”) or to attain the NAAQS by the applicable attainment date (“attainment contingency measures”). For ozone nonattainment areas classified Serious or above, CAA section 182(c)(9) further specifies that states must include contingency measures to be implemented if the area fails to meet any applicable milestone. An EPA determination that the state failed to meet an RFP milestone or to attain the NAAQS by the applicable attainment date is referred to as a “triggering event” because it triggers the requirement to implement the contingency measures.

Contingency measures must be fully adopted rules or control measures that are ready to be implemented upon a triggering event.<sup>28</sup> In general, the EPA expects all actions needed to effect full implementation of the measures to occur within 60 days after the EPA notifies the state of a failure to meet RFP or to attain.<sup>29</sup> Moreover, we generally expect the additional emissions reductions from the contingency measures to be achieved within a year of the triggering event.<sup>30</sup>

The purpose of contingency measures is to continue progress in reducing emissions while a state revises its SIP to meet the missed RFP requirement or to correct the failure to attain. Neither the CAA nor the EPA’s implementing regulations establish a specific level of emission reductions that implementation of contingency measures must achieve, but the EPA has traditionally recommended that contingency measures should provide for emission reductions equivalent to

approximately one year of reductions needed for RFP in the nonattainment area.<sup>31</sup> As part of the contingency measure SIP submission, the EPA expects states to explain the amount of anticipated emissions reductions that the contingency measures will achieve. In the “Draft: Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter (DRAFT—3/17/23—Public Review Version)” (herein referred to as the “Draft Revised Contingency Measure Guidance”) <sup>32</sup> (discussed in section I.B below), the EPA recommends that, in the event that a state is unable to identify and adopt contingency measures that will provide for approximately one year’s worth of emissions reductions, the state should provide a reasoned justification why the smaller amount of emissions reductions is appropriate.<sup>33 34</sup>

To satisfy the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9), the contingency measures adopted as part of a 2008 ozone NAAQS attainment plan must consist of control measures for the area that are not otherwise required to meet other attainment plan requirements (e.g., to meet reasonably available control measure (RACM)/reasonably available control technology (RACT) requirements). By definition, contingency measures are measures that are over and above what a state must adopt and impose to provide for RFP and to provide for attainment by the applicable attainment date.

In addition, to comply with CAA sections 172(c)(9) and 182(c)(9), contingency measures must be both conditional and prospective, i.e., measures that go into effect and achieve emission reductions in the event of a future triggering event, but not before the triggering event. In the 2016 *Bahr v.*

<sup>31</sup> 80 FR 12264, 12285. See also General Preamble, 13511.

<sup>32</sup> EPA, Office of Air Quality Planning and Standards, “DRAFT: Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter,” Draft—3/17/2023—Public Review Version. The Draft Revised Contingency Measure Guidance is available at: <https://www.epa.gov/air-qualityimplementation-plans/draft-contingency-measuresguidance>.

<sup>33</sup> Draft Revised Contingency Measure Guidance, p. 29.

<sup>34</sup> We note, the reasoned justification process outlined in the Draft Revised Contingency Measure Guidance is intended, first and foremost, as a means of identifying feasible measures rather than a justification for achieving less than the recommended emissions reductions needed for contingency measures.

<sup>22</sup> 89 FR 56222 (July 9, 2024).

<sup>23</sup> *Id.*

<sup>24</sup> 87 FR 57161, at 57164 (September 19, 2022) (proposed approval of Architectural Coatings Contingency Measure), finalized at 87 FR 78544; and 89 FR 56222, at 56229–56230 (July 9, 2024) (final approval of Smog Check Contingency Measure).

<sup>25</sup> 57 FR 13498 (April 16, 1992), referred to as the “General Preamble.”

<sup>26</sup> 57 FR 18070 (April 28, 1992).

<sup>27</sup> 80 FR 12264, 12285–12286 (March 6, 2015).

<sup>28</sup> 80 FR 12264, 12285.

<sup>29</sup> General Preamble 13512, 13543–13544.

<sup>30</sup> General Preamble, 13511.

*EPA*<sup>35</sup> decision, the Ninth Circuit Court of Appeals held that CAA section 172(c)(9) does not allow the EPA to approve already-implemented control measures as contingency measures. In other words, a state must develop, adopt, and submit one or more contingency measures to be implemented upon a triggering event, regardless of the extent to which already-implemented measures would achieve surplus emission reductions beyond those necessary to meet other applicable CAA requirements.

As noted in section I.C of this document, the recent *AIR* decision held that, under the EPA's current guidance, the surplus emissions reductions from already-implemented measures could not be relied upon to justify the approval of a contingency measure that would achieve far less than one year's worth of RFP as sufficient to meet the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9) for the nonattainment area.<sup>36</sup>

#### *B. Draft Revised Contingency Measure Guidance*

In March 2023, the EPA published a notice of availability announcing new draft guidance (*i.e.*, the Draft Revised Contingency Measure Guidance) addressing the contingency measure SIP requirements of CAA sections 172(c)(9) and 182(c)(9) and provided the opportunity for public comment.<sup>37</sup> The principal differences between the draft revised guidance and existing guidance on contingency measures relate to the EPA's recommendations concerning the specific amount of emission reductions that implementation of contingency measures should achieve and the timing for when the emissions reductions from the contingency measures should occur. The Draft Revised Contingency Measure Guidance also provides recommended procedures for developing a demonstration, if applicable, that the area lacks sufficient feasible contingency measures to achieve the recommended amount of reductions, which builds on existing guidance that the state provide a reasoned justification for why the smaller amount of emissions reductions from contingency measures is appropriate.<sup>38</sup>

Under the Draft Revised Contingency Measure Guidance, the recommended level of emissions reductions that contingency measures should achieve is

one year's worth of "progress" as opposed to one year's worth of RFP (the previous recommended amount of reductions).<sup>39</sup> One year's worth of "progress" is calculated by determining the average annual reductions between the base year emissions inventory and the projected attainment year emissions inventory, determining what percentage of the base year emissions inventory this amount represents, and then applying that percentage to the projected attainment year emissions inventory to determine the amount of reductions needed to ensure ongoing progress if contingency measures are triggered.

With respect to the time period within which reductions from contingency measures should occur, the EPA previously recommended that contingency measures take effect within 60 days of being triggered and that the resulting emission reductions generally occur within one year of the triggering event. Under the Draft Revised Contingency Measure Guidance, in instances where there are insufficient contingency measures available to achieve the recommended amount of emissions reductions within one year of the triggering event, the EPA recommends that contingency measures that provide reductions within up to two years of the triggering event could be appropriate to consider toward achieving the recommended amount of emissions reductions. The Draft Revised Contingency Measure Guidance does not alter the 60-day recommendation for the contingency measures to take initial effect.

If, after adequately evaluating additional control measures, the state is unable to identify contingency measures that would provide approximately one year's worth of emissions reductions, the Draft Revised Contingency Measure Guidance recommends that the state should provide a reasoned justification (referred to herein as an "infeasibility demonstration"). This reasoned justification should explain and document the state's evaluation of all existing and potential control measures relevant to the appropriate source categories and pollutants in the nonattainment area and the state's conclusions regarding whether such measures are feasible.<sup>40</sup>

As explained in the Draft Revised Contingency Measure Guidance, CAA section 172(c)(9) and section 182(c)(9) do not explicitly provide for consideration of whether specific

measures are feasible. However, the Agency does not read these statutory provisions to require states to adopt contingency measures that are not feasible.<sup>41</sup> The statutory provisions applicable to other nonattainment area plan control measure requirements, including RACM/RACT (for ozone and PM), best available control measure (BACM)/best available control technology (BACT) (for PM), and most stringent measures (MSM) (for PM), allow air agencies to exclude certain control measures that are deemed unreasonable or infeasible (depending on the requirement). For example, the MSM provision in CAA section 188(e) requires plans to include "the most stringent measures that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area." While the contingency measures provisions do not include such caveats, the EPA does not conclude that the contingency measures provisions should be read to require plans to include infeasible measures. Thus, the EPA anticipates that a demonstrated lack of feasible measures would be a reasoned justification for adopting contingency measures that achieve less than the recommended amount of emission reductions.

### **III. Summary of SIP Submission and Evaluation for Compliance With SIP Revision Procedural Requirements**

#### *A. Summary of SIP Submission*

On April 29, 2024, CARB submitted the 2024 SJV Ozone Contingency Measure Plan as a revision to the California SIP.<sup>42</sup> The District adopted the 2024 SJV Ozone Contingency Measure Plan on April 25, 2024, and submitted it to CARB for adoption and submission to EPA as a SIP revision.<sup>43</sup> The April 29, 2024 SIP submission includes the 2024 SJV Ozone Contingency Measure Plan (including appendices), as well as supporting material including the resolutions of adoption, CARB evaluation and completeness forms, and evidence of public notice and hearing.

<sup>41</sup> *Id.*

<sup>42</sup> CARB adopted the 2024 SJV Ozone Contingency Measure Plan as a SIP revision on April 26, 2024, through CARB Executive Order S-24-2003, and submitted the SIP revision to the EPA electronically on April 29, 2024, as an attachment to a letter dated April 26, 2024, from Steven S. Cliff, Ph.D., Executive Officer, CARB to Martha Guzman, Regional Administrator, EPA Region IX.

<sup>43</sup> See SJVUAPCD Board Resolution 2024-4-11 and letter dated April 25, 2024, from Jonathan Klassen, Director of Air Quality Planning and Science, SJVUAPCD to Sylvia Vanderspek, Branch Chief, Rule Evaluations section, CARB.

<sup>35</sup> *Bahr v. EPA*, 836 F.3d 1218, 1235-1237 (9th Cir. 2016). See also *Sierra Club v. EPA*, 21 F.4th 815, 827-28 (D.C. Cir. 2021).

<sup>36</sup> *Association of Irrigated Residents v. EPA*, 10 F.4th 937, 946-47 (9th Cir. 2021).

<sup>37</sup> 88 FR 17571 (March 23, 2023).

<sup>38</sup> 81 FR 58010 (August 24, 2016), at 58067/3.

<sup>39</sup> Draft Revised Contingency Measure Guidance, p. 22.

<sup>40</sup> Draft Revised Contingency Measure Guidance, p. 29.

The 2024 SJV Ozone Contingency Measure Plan includes a general discussion of contingency measures and related guidance, including the EPA's Draft Revised Contingency Measure Guidance. The Plan also contains a calculation of emissions equal to one year's worth of progress, a discussion of the two adopted contingency measures that apply to this area, namely, the contingency provisions in District Rule 4601 (referred to as the Architectural Coatings Contingency Measure) and CARB's Smog Check Contingency Measure, and an estimate of reductions from each adopted contingency measure. The submittal also includes a commitment to adopt and submit to the EPA, within one year of the EPA's final conditional approval of the 2024 SJV Ozone Contingency Measure Plan, amendments to certain District rules, to include additional contingency provisions.<sup>44</sup> These rules are District Rule 4601 (Architectural Coatings) ("Architectural Coatings Rule"), Rule 4603 (Surface Coating of Metal Parts and Products, Plastic Parts and Products, and Pleasure Crafts) ("Surface Coating of Metal Parts and Products Rule"), Rule 4604, (Can and Coil Coating Operations) ("Can and Coil Coatings Rule"), Rule 4653 (Adhesives and Sealants) ("Adhesives and Sealants Rule"), and Rule 4663 (Organic Solvent Cleaning, Storage, and Disposal) ("Solvent Cleaning Rule"). We describe the specific contingency measure provisions that would be included in amendments to these rules in section IV.D of this document. The submission also includes infeasibility demonstrations to address the fact that the total reductions estimated from the two adopted contingency measures fall short of the recommended emissions reductions (equivalent to one year's worth of progress).

#### B. Evaluation for Compliance With SIP Revision Procedural Requirements

Under CAA sections 110(a) and 110(l), SIPs and SIP revisions must be

<sup>44</sup> After the Plan was submitted, the District and CARB submitted letters clarifying the timeline for adopting and submitting to the EPA the five additional contingency measures that they have committed to develop. Letter from Samir Sheikh, Executive Director/Air Pollution Control Officer, SJVUAPCD, to Dr. Steven S. Cliff, Executive Officer, CARB and Martha Guzman, Regional Administrator, EPA Region IX, dated June 18, 2024. Letter from Michael Benjamin, D. Env., Division Chief, Air Quality Planning & Science Division, CARB, to Martha Guzman, Regional Administrator, EPA Region IX, dated June 24, 2024.

adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Pursuant to 40 CFR 51.102, states must provide at least 30-days' notice of any public hearing to be held on a proposed SIP revision. States must provide the opportunity to submit written comments and allow the public the opportunity to request a public hearing within that period.

The District adopted the 2024 SJV Ozone Contingency Measure Plan on April 25, 2024, through Resolution No. 2024-4-11, following a public hearing held on the same day. Prior to adoption, the District published notice of the April 25, 2024 public hearing via an email to members of a District electronic mailing list and provided 30 days for submission of written comments. CARB subsequently adopted the 2024 SJV Ozone Contingency Measure Plan as a revision to the SIP on April 26, 2024, through Executive Order S-24-003. CARB then submitted the 2024 SJV Ozone Contingency Measure Plan on April 29, 2024, as an attachment to a transmittal letter dated April 26, 2024. Copies of all of these documents can be found in the docket for this proposed rule.

Based on the materials provided in the April 29, 2024 SIP submission, we propose to find that the District and CARB have met the procedural requirements for adoption and submission of SIPs and SIP revisions under CAA sections 110(a) and 110(l), and 40 CFR 51.102.

#### IV. Summary of the San Joaquin Valley Ozone Contingency Measure Plan

The 2024 SJV Ozone Contingency Measure Plan includes a calculation of one year's worth of progress, an analysis of top source categories in the emissions inventory, a list of existing contingency measures and commitments to adopt and submit additional contingency measures, and a contingency measure feasibility analysis. In this section we describe each of these components of the plan.

##### A. One Year's Worth of Progress

Section 3 of the 2024 SJV Ozone Contingency Measure Plan contains calculations for the contingency measure reduction targets that are equivalent to one year's worth of progress.<sup>45</sup> One year's worth of progress

<sup>45</sup> 2024 SJV Ozone Contingency Measure Plan, 6-7. All emissions inventory data represent summer

is calculated by determining the average annual reductions between the base year emissions inventory and the projected attainment year emissions inventory, determining what percentage of the base year emissions inventory this amount represents, then applying that percentage to the projected attainment year emissions inventory.

The resulting emissions reductions targets are shown in table 1.

TABLE 1—ONE YEAR'S WORTH OF PROGRESS CONTINGENCY MEASURE REDUCTION TARGETS FOR THE 2008 OZONE NAAQS

[Tons per day, summer average emissions]

Base year	Attainment year	NO <sub>x</sub>	VOC
2012 .....	2031	4.22	1.87

Source: Table 2, 2024 San Joaquin Valley Ozone Contingency Measure Plan.

##### B. Emissions Inventory Analysis and Contingency Measures

The District reviewed the 2017, 2031, and 2037 baseline summer average emissions inventories for NO<sub>x</sub> and VOC to identify the principal source categories that contribute to regional emissions totals and thereby to identify the source categories for which meaningful emissions reductions from contingency measures might be achievable.<sup>46</sup> Its analysis also included an evaluation of select source categories that comprise less than 1% of the total VOC emissions inventory.<sup>47</sup> Year 2017 represents the base year of the most recent emissions inventory for San Joaquin Valley, 2031 represents the attainment year for the 2008 ozone NAAQS, and 2037 represents the attainment year for 2015 ozone NAAQS.

Table 2 shows that emissions from the top ten source categories for NO<sub>x</sub> and VOC constituted approximately 82% and 74% of the total inventory of NO<sub>x</sub> and VOC, respectively, in the San Joaquin Valley in 2017.<sup>48</sup> Appendix A to the 2024 SJV Ozone Contingency Measure Plan contains additional tables showing these emissions categories and their magnitudes.

average emissions, specifically from the months of May through October.

<sup>46</sup> 2024 SJV Ozone Contingency Measure Plan, section 5, 13-18.

<sup>47</sup> 2024 SJV Ozone Contingency Measure Plan, section 5.12, p. 74.

<sup>48</sup> 2024 SJV Ozone Contingency Measure Plan, table 6.

TABLE 2—TOP TEN SOURCE CATEGORIES OF NO<sub>x</sub> AND VOC EMISSIONS, SAN JOAQUIN VALLEY, 2017  
[Summer average]

Ozone precursor	Source category	Emissions (tpd)	Emissions as a percentage of a total inventory
NO <sub>x</sub>	Heavy Heavy Duty Trucks (HHDT) <sup>a</sup>	56.65	24.63
	Farm Equipment	50.45	21.93
	Off Road Equipment	24.01	10.44
	Trains	13.12	5.70
	Medium Heavy Duty Trucks (MHDT) <sup>b</sup>	9.22	4.01
	Light Heavy Duty Trucks (LHDT1) <sup>c</sup>	7.94	3.45
	Food and Agricultural Processing	7.12	3.09
	Medium Duty Trucks (MDT) <sup>d</sup>	6.86	2.98
	Light Duty Passenger (LDA)	6.47	2.81
	Off Road Equipment (PERP) <sup>e</sup>	5.87	2.55
VOC	Total of Top Ten Source Subcategories—NO <sub>x</sub>	187.71	81.59
	Farming Operations <sup>f</sup>	93.76	27.93
	Consumer Products	25.78	7.68
	Other (Waste Disposal) <sup>g</sup>	21.54	6.42
	Pesticides/Fertilizers <sup>h</sup>	20.81	6.20
	Recreational Boats	20.37	6.07
	Managed Burning and Disposal	16.38	4.88
	Off-Road Equipment	14.95	4.45
	Food and Agriculture	12.76	3.80
	Oil and Gas Production	11.46	3.41
	Light Duty Passenger (LDA)	10.82	3.22
Total of Top Ten Source Subcategories—VOC	248.63	74.06	

<sup>a</sup> HHDT have a gross vehicle weight rating (GVWR) greater than 33,000 pounds.

<sup>b</sup> MHDT have a GVWR of 14,001 to 33,000 pounds.

<sup>c</sup> LHDT1 have a GVWR of 8,501 to 10,000 pounds.

<sup>d</sup> MDT have a GVWR of 5,751 to 8,500 pounds.

<sup>e</sup> Off Road Equipment (PERP) refers to off-road equipment registered under CARB's Portable Equipment Registration Program. Owners or operators of portable engines and other types of equipment can register their units under the CARB Statewide Portable Equipment Registration Program (PERP) in order to operate their equipment throughout California without having to obtain individual permits from local air districts.

<sup>f</sup> Most of the VOC emissions within this source category is associated with livestock husbandry, particularly silage and dairy cattle waste.

<sup>g</sup> Most of the VOC emissions within this source category is associated with composting.

<sup>h</sup> Most of the VOC emissions within this source category is association with agricultural pesticide use.

Source: 2024 SJV Ozone Contingency Measure Plan, table 6.

Based on the emissions inventory information, SJVUAPCD identified existing and planned future controls for each sector in the nonattainment area. In this context, existing controls refer to the limits and requirements for different source categories set forth in the District, CARB, and EPA rules and regulations. Planned future controls refer to the commitments to develop and propose control measures found in District plans<sup>49</sup> and in CARB's Valley State SIP Strategy and the 2022 State SIP Strategy.<sup>50</sup> Next, the District conducted a search for potential additional controls by source category that could achieve additional emission reductions that are not already adopted

or implemented.<sup>51</sup> In accordance with the Draft Contingency Measures Guidance, the District evaluated the technological and economic feasibility of the potential measures and whether the potential measure could be implemented within 60 days of being triggered and achieve the necessary reductions within two years of being triggered.<sup>52</sup> Based on the feasibility of the potential contingency measures, the District conducted a further evaluation of specific source categories and contingency measure opportunities.<sup>53</sup>

Concurrently, CARB identified existing and planned future controls for mobile and area sources that could achieve additional emissions reductions that are not already adopted or implemented.<sup>54</sup> CARB then evaluated the technological and economic feasibility of the potential measures, and

whether the potential measure could be implemented within 60 days of being triggered and achieve the necessary reductions within two years of being triggered.<sup>55</sup>

The 2024 SJV Ozone Contingency Measure Plan identifies two already-adopted contingency measures (*i.e.*, rules that contain contingency provisions to be triggered in the event of a failure to attain or to meet an RFP milestone) and five additional contingency measures that the District has committed to adopt and CARB has committed to submit to the EPA as a revision to the California SIP. The two existing contingency measures are described in section IV.C of this document, and the five additional contingency measures are described in section IV.D of this document.

*C. Adopted Contingency Measures*

The 2024 SJV Ozone Contingency Measure Plan identifies two existing contingency measures that have already

<sup>49</sup> See 2024 SJV Ozone Contingency Measure Plan, table 3, and section 5.

<sup>50</sup> CARB, "San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan" ("Valley State SIP Strategy"), table 7, approved at 85 FR 44192 (July 22, 2020); and CARB, "2022 State Strategy for the State Implementation Plan (adopted September 22, 2022)" ("2022 State SIP Strategy"), submitted on February 23, 2023, table 3.

<sup>51</sup> 2024 SJV Ozone Contingency Measure Plan, sections 5.1–5.7, and 5.11, 19–54 and 72–74.

<sup>52</sup> Id.

<sup>53</sup> 2024 SJV Ozone Contingency Measure Plan, section 5.12, 74–89.

<sup>54</sup> 2024 SJV Ozone Contingency Measure Plan, section 5.8, 5.9 and 5.10, and appendix B.

<sup>55</sup> 2024 SJV Ozone Contingency Measure Plan, table 9.

been adopted as revisions to the SIP and submitted to EPA: the District’s Architectural Coatings Contingency Measure and CARB’s Smog Check Contingency Measure. See section I.C of this document for a description of the two adopted contingency measures. The Plan calculated the emissions reductions expected from these measures, in the event that they are triggered. Those estimates are shown in table 3.

**TABLE 3—OZONE SEASON EMISSIONS REDUCTIONS FROM DISTRICT AND CARB CONTINGENCY MEASURES**  
[Ozone season, tpd]<sup>a</sup>

Contingency measure	NO <sub>x</sub>	VOC
Architectural Coatings <sup>b</sup> .....	0.000	0.650
CARB Smog Check <sup>c</sup> .....	0.079	0.025
Total .....	0.079	0.675

<sup>a</sup> 2024 SJV Ozone Contingency Measure Plan, section 4.2.

<sup>b</sup> The District’s estimate of emissions reductions from the Architectural Coatings Contingency Measure (if triggered) represents a 7.5% reduction in area-wide VOC emissions from architectural coatings in 2031 and takes into account the percentage of VOC emissions associated with architectural coatings sold in small containers and the percentage of the small-container emissions associated with the particular coatings affected by the contingency measure provision. See SJVUAPCD, Final Draft Staff Report, Proposed Amendments to Rule 4601 (Architectural Coatings) April 16, 2020, pages 12–13. These emissions reductions do not include reductions associated with the District’s commitment to remove the small container exemption for rust preventative coatings in Rule 4601.

<sup>c</sup> These emissions reductions account for the first triggering event of this contingency measure.

As noted in section I.C. of this document, the EPA approved the District’s Architectural Coatings Contingency Measure as a revision to the California SIP in 2022.<sup>56</sup> Upon a triggering event, this contingency measure would remove the exemption for certain categories of architectural coatings sold in containers with a volume of one liter or less (referred to as the small container exemption (SCE)).

The California Smog Check Program is a vehicle inspection and maintenance program administered by the California Bureau of Automotive Repair (BAR), that identifies vehicles with faulty emission control components. Smog Check Program inspections are required biennially as a part of the vehicle registration process and/or when a vehicle changes ownership or is registered for the first time in

California.<sup>57</sup> Currently, under California law, vehicles up to eight model years old (MYO) are exempt from the requirement to pass a biennial smog check inspection.<sup>58</sup> The Smog Check Contingency Measure adds a contingency provision to the existing program, that, within 30 days of a triggering event, the CARB Executive Officer would direct BAR to amend the California Smog Check Program’s vehicle model-years old (MYO) exemption from the existing eight or less MYO to seven or less MYO, in the San Joaquin Valley nonattainment area.<sup>59</sup> In addition, the California Smog Check Contingency measure can be triggered a second time in the same nonattainment area upon a second triggering event.<sup>60</sup> If triggered a second time, the Smog Check exemption would be amended from seven or less MYO to six or less MYO in the San Joaquin Valley nonattainment area.<sup>61</sup> The EPA recently approved CARB’s Smog Check Contingency Measure as a revision to the California SIP.<sup>62</sup>

*D. Commitments To Adopt Additional Contingency Measures*

The Plan also identifies five additional contingency measures that the District has committed to adopt and submit to CARB, for submission to EPA as a revision to the California SIP. Specifically, the District and CARB have committed to amend the following rules to include contingency provisions: the Architectural Coatings Rule, Surface Coating of Metal Parts and Products Rule, Can and Coil Coatings Rule, Adhesives and Sealants Rule, and Solvent Cleaning Rule. Expected emissions reductions from these yet-to-be-adopted contingency measures have

not been quantified and were not included in the Plan; however, the Plan notes that VOC reductions anticipated through the rule amendments that the district has committed to adopt are expected to be small.<sup>63</sup> No NO<sub>x</sub> reductions would result from these additional contingency measures.

The committed-to revisions to the District’s Architectural Coatings Rule, Surface Coating of Metal Parts and Products Rule, Can and Coil Coatings Rule, Adhesives and Sealants Rule, and Solvent Cleaning Rule are described in section 5.12 of the 2024 SJV Ozone Contingency Measure Plan and are summarized in this document.<sup>64</sup>

The District’s Architectural Coatings Rule establishes VOC content limits for architectural coatings. The District had previously included a contingency measure in the Architectural Coatings Rule that, if triggered, would narrow the SCE for certain architectural coatings, though not for rust preventative coatings. In the potential control measure analysis developed by the District for the 2024 SJV Ozone Contingency Measure Plan, the District found that the rust preventative coatings SCE could also be removed as part of the contingency measure. In the 2024 SJV Ozone Contingency Measure Plan, the District commits to amend Rule 4601 to incorporate the removal of the SCE for rust preventative coatings within the contingency measure provision with respect to the 2008 and 2015 ozone NAAQS.<sup>65</sup>

The District’s Surface Coating of Metal Parts and Products Rule establishes VOC content limits for coatings used in the manufacturing and fabrication of metal parts and products as well as separate VOC limits for coatings used in large appliances and metal furniture. Except for large appliances or metal furniture, the general VOC limits for baked coatings and for air-dried coatings are 275 grams/liter (g/L) (*i.e.*, 2.3 pounds/gallon) and 340 g/L (2.8 pounds/gallon), respectively. The Surface Coating of Metal Parts and Products Rule exempts the stripping of cured coatings, cured adhesives, and cured inks, except the stripping of such materials from spray application equipment. In the 2024 SJV Ozone Contingency Measure Plan, the District commits to revise the Surface Coating of Metal Parts and Products Rule to include a contingency measure that, if triggered, would remove the exemption for stripping agents for metal

<sup>57</sup> 2024 SJV Ozone Contingency Measure Plan, section 4.2, 12.

<sup>58</sup> California Health & Safety Code section 44011(a)(4)(B)(ii).

<sup>59</sup> The 2024 SJV Ozone Contingency Measure Plan, appendix B, 15. The Smog Check Contingency Measure also applies to other NAAQS and nonattainment areas.

<sup>60</sup> The triggering events that would result in the implementation of Smog Check Contingency Measure relate to multiple NAAQS in San Joaquin Valley in addition to the 2008 ozone NAAQS, including the 1997 8-hour ozone NAAQS and multiple PM<sub>2.5</sub> NAAQS. However, because the Smog Check Contingency Measure provides for a second triggering event, it will still be available for a triggering event related to the 2008 ozone NAAQS if it is first triggered by a determination related to one of the other NAAQS. Given the nature of the contingency measure (reducing the model-year exemption from eight to seven upon a first triggering event, and then from seven to six upon a second triggering event), we would expect the associated emissions reductions from implementation of the contingency measure to be roughly the same for both triggering events.

<sup>61</sup> *Id.*

<sup>62</sup> 89 FR 56222.

<sup>63</sup> 2024 SJV Ozone Contingency Measure Plan, 89.

<sup>64</sup> 2024 SJV Ozone Contingency Measure Plan, section 5.12, 74–89.

<sup>65</sup> 2024 SJV Ozone Contingency Measure Plan, 80.



parts and products and subject those stripping agents to a limit of 200 grams/liter.<sup>66</sup>

The District's Can and Coil Coatings Rule applies to can and coil coating operations and to organic solvent cleaning, storage, and disposal associated with can and coil coating operations. The Can and Coil Coatings Rule limits the VOC content of different compliant coatings and allows the use of non-compliant coatings with an emission control device to reduce VOC emissions. The rule contains provisions for organic solvent cleaning, organic solvent storage, disposal requirements, application methods for coatings, monitoring, and recordkeeping. The rule establishes a limit of 250 g/L for organic solvents used for cleaning coating application equipment and sheet coaters for three-piece cans. In the 2024 SJV Ozone Contingency Measure Plan, the District commits to revise the Can and Coil Coatings Rule to include a contingency measure that, if triggered, would lower the VOC limit from 250 g/L to 25 g/L for organic solvents used for cleaning coating application equipment and sheet coaters for three-piece cans.<sup>67</sup>

The District's Adhesives and Sealants Rule sets VOC content limits for adhesive products, sealant products, and associated solvent cleaning operations, and it applies to any person who supplies, sells, offers for sale, or applies any adhesive product, sealant product, or associated solvent, used within the District. The Adhesives and Sealants Rule contains a limit of 510 g/L for PVC welding adhesives. In the 2024 SJV Ozone Contingency Measure Plan, the District commits to revise the Adhesive and Sealants Rule to include a contingency measure that, if triggered, would lower the VOC limit from 510 g/L to 500 g/L for PVC welding adhesives.<sup>68</sup>

The District's Solvent Cleaning Rule controls VOC emissions from organic solvent cleaning outside a degreaser (tank, tray, drum, or other container) as well as storage and disposal of the solvents. The Solvent Cleaning Rule has solvent VOC content requirements for general product cleaning or surface preparation, repair and maintenance cleaning, and cleaning coating/adhesive application equipment (all 25 grams of VOC per Liter (g-VOC/L)). The Rule also imposes VOC content requirements for specific other categories (ranging from 100–800 g-VOC/L) or alternatively requires an equivalent control system with no less than 90% overall control

for the emissions generated and containers for solvent storage and disposal. Currently, the Solvent Cleaning Rule does not include a limit for organic solvents used to sterilize food and manufacturing processing equipment. In the 2024 SJV Ozone Contingency Measure Plan, the District commits to revise the Solvent Cleaning Rule to include a contingency measure that, if triggered, would establish a limit of 200 g/L for organic solvents used for sterilizing food and manufacturing processing equipment.<sup>69</sup>

#### *E. Contingency Measure Feasibility Analysis*

The 2024 SJV Ozone Contingency Measure Plan includes infeasibility justifications for providing contingency measures that achieve less than one year's worth of progress, generally following the approach that the EPA describes for such analyses in the EPA's Draft Revised Contingency Measure Guidance. The feasibility analysis for source categories under District jurisdiction is found in sections 5.1–5.7 of the 2024 SJV Ozone Contingency Measure Plan, and further evaluation of select source categories under SJV District jurisdiction is found in section 5.12. The feasibility analysis for source categories under State jurisdiction is found in sections 5.8–5.10 and appendix B. For certain source categories, such as boilers, steam generators, and process heaters with total rated heat input greater than five million British thermal units per hour (MMBtu/hr) and commercial charbroiling, the District relies on and refers to previous analysis that the District included in the PM<sub>2.5</sub> Contingency Measure SIP Revision.<sup>70</sup> Lastly, in section 5.11 of the 2024 SJV Ozone Contingency Measure Plan, the District addresses opportunities for transportation control measures (TCMs) to be adopted as contingency measures.

With respect to source categories under District jurisdiction, the District analyzed the wide range of stationary and area sources for contingency measure opportunities, which included identifying potential control measures, analyzing the technological and economic feasibility of such measures, and assessing whether the measures could be implemented within 60 days and achieve emission reductions within one to two years. The District analyzed

<sup>69</sup> Id.

<sup>70</sup> SJVUAPCD, PM<sub>2.5</sub> Contingency Measure State Implementation Plan Revision, May 18, 2023 ("PM<sub>2.5</sub> Contingency Measure SIP Revision"). The EPA proposed approval of the PM<sub>2.5</sub> Contingency Measure SIP Revision at 88 FR 87988 (December 20, 2023).

potential control measures in the fuel combustion, waste disposal, cleaning and surface coating, petroleum production and marketing, industrial processes, solvent evaporation, and miscellaneous processes emissions inventory source categories. Based on this analysis, the District further analyzed certain specific categories for contingency measure opportunities. More specifically, the District analyzed Rule 4565 (Biosolids, Animal Manure, and Poultry Litter Operations), Rule 4570 (Confined Animal Facilities), Architectural Coatings Rule, Surface Coating of Metal Parts and Products Rule, Can and Coil Coating Rule, Rule 4605 (Aerospace Assembly and Component Coating Operations), Adhesives and Sealants Rule, Organic Solvent Cleaning Rule, Rule 4684 (Polyester Resin Operations), and Rule 4694 (Wine Fermentation and Storage Tanks).

Through this process, the District identified additional possible contingency measures, through amendments to Rule 4601 (Architectural Coatings), Rule 4603 (Surface Coating of Metal Parts and Products, Plastic Parts and Products, and Pleasure Crafts), Rule 4604 (Can and Coil Coating Operations), Rule 4653 (Adhesives and Sealants) and Rule 4663 (Organic Solvent Cleaning, Storage and Disposal), as noted in section IV.D of this document. The 2024 SJV Ozone Contingency Measure Plan included commitments to adopt the amendments to these rules, as described in section III.A of this document. Additionally, the District and CARB have committed to adopt and submit the amended rules to the EPA as revisions to the California SIP within one year of the EPA's final conditional approval of the commitments.<sup>71</sup>

With respect to the other source categories under District jurisdiction, the District's analysis found that it was infeasible to adopt additional contingency measures for these categories. A detailed accounting of reasons for which new contingency measures in each source category were determined to be infeasible is contained in sections 5.1 through 5.7, and 5.12 of the 2024 SJV Ozone Contingency

<sup>71</sup> The timing for the adoption and submittal of the amended rules to the EPA for inclusion in the SIP was clarified by letter, after submission of the 2024 SJV Ozone Contingency Measure Plan. See letter from Samir Sheikh, Executive Director/Air Pollution Control Officer, SJVUAPCD, to Dr. Steven S. Cliff, Executive Officer, CARB and Martha Guzman, Regional Administrator, EPA Region IX, dated June 18, 2024, and letter from Michael Benjamin, D. Env., Division Chief, Air Quality Planning & Science Division, CARB, to Martha Guzman, Regional Administrator, EPA Region IX, dated June 24, 2024.

<sup>66</sup> 2024 SJV Ozone Contingency Measure Plan, 81.

<sup>67</sup> 2024 SJV Ozone Contingency Measure Plan, 82.

<sup>68</sup> 2024 SJV Ozone Contingency Measure Plan, 83.

Measure Plan. These reasons include conclusions that further controls are not technologically or economically feasible, that rules have recently been amended and owners or operators in affected source categories are still working to comply with recently adopted rule changes, that the source category does not lend itself to a rule that has a trigger mechanism, and that the District is already implementing the most stringent controls feasible. Additional reasons include that the rule meets or exceeds federal RACT requirements and that the rulemaking process, including public process, to develop such a rule would take longer than two years.

With respect to source categories under State jurisdiction, CARB stated that opportunities for contingency measures that would achieve the recommended amount of emission reductions are limited due to the stringency of their existing mobile source control program and the fact that the portion of emissions due to federally-regulated sources is expected to increase in the coming years.<sup>72</sup> CARB further noted that a relatively limited portion of NO<sub>x</sub> emissions are regulated by local air districts in California and that additional control measures to achieve the one year's worth of emission reductions are scarce or nonexistent.

CARB stated that if such measures were identified, they would be adopted to improve air quality and help attain the NAAQS, rather than held in reserve as contingency measures, and that control measures to achieve large emission reductions often take longer than two years to implement—beyond the one- to two-year timeframe for achieving emission reductions for contingency purposes.<sup>73</sup> For example, CARB stated that the three largest NO<sub>x</sub> reduction measures committed to in the 2022 State SIP Strategy rely on accelerated turnover of engines and trucks and shifting to zero-emission equipment, which is limited by infrastructure and equipment options.<sup>74</sup> CARB further stated that a central difficulty in considering contingency measures is that CARB has already committed to zero emission standards where feasible and as expeditiously as possible to fulfill goals established in California Executive Order N-79-20 for mobile sources ranging from light-duty

cars by 2035 to heavy-duty trucks by 2045.<sup>75</sup>

More specifically, CARB analyzed all mobile sources under its authority to identify potential contingency measures using three criteria: CAA requirements, court decisions, and the EPA's Draft Revised Contingency Measure Guidance.<sup>76</sup> First, CARB assessed whether the measure could be implemented within 60 days of a triggering event and achieve the recommended amount of emission reductions within one to two years. Second, CARB assessed the technological and economic feasibility of implementing the measure, particularly within the one- to two-year timeframe. Third, CARB evaluated whether it could adopt the measure and secure EPA approval by the September 30, 2024 consent decree deadline for the EPA to promulgate a PM<sub>2.5</sub> contingency measures FIP or alternatively, approve PM<sub>2.5</sub> contingency measure SIP submissions meeting the contingency measure requirements.<sup>77</sup>

Regarding mobile source contingency measures, CARB described several challenges that limit the control measure options that would meet contingency measure requirements. For new engine standards, CARB stated that engine manufacturers need lead time to “design, plan, certify, manufacture, and deploy cleaner engines.”<sup>78</sup> Regarding consumer-related challenges, CARB stated that additional time would be required for “procurement implementation and there may be additional infrastructure needed to meet new requirements.”<sup>79</sup> Based on the time required for implementing such measures, CARB concluded that measures that require fleet turnover or new engine standards are not appropriate for contingency measures.

In addition to mobile source control measures, CARB noted that vehicular emissions can be reduced through implementation of TCMs.<sup>80</sup> CARB stated that county planning and

transportation districts, and local jurisdictions are responsible for identifying, adopting, and implementing TCMs. Because of timing concerns associated with the transportation planning process, CARB concluded that TCMs are not feasible contingency measures.

Furthermore, CARB stated that its regulations are technology-forcing, which requires time for industry to plan, develop, and implement new technologies and that it is driving mobile sources to zero-emissions where feasible to achieve criteria, air toxic, and climate pollutant goals. Similarly, CARB argued that the technology-forcing and zero-emission-based nature of its mobile source regulations reduce or eliminate opportunities for contingency measure emission reductions. Lastly, CARB stated that its full rulemaking process for most mobile source measures takes about five years to develop and adopt, which would not be possible prior to the September 30, 2024 consent decree deadline for the EPA to promulgate a PM<sub>2.5</sub> contingency measure FIP or approve PM<sub>2.5</sub> contingency measure SIP submissions meeting the contingency measure requirements.<sup>81</sup>

Through its review of potential contingency measures, CARB identified certain revisions to the California Smog Check program as feasible for adoption as a contingency measure, culminating in the adoption and submission to the EPA of the Smog Check Contingency Measure. As noted previously, the EPA has approved the Smog Check Contingency Measure as a revision to the California SIP. The Smog Check Contingency Measure complements the District contingency measure for architectural coatings and the commitments to submit additional contingency measures to the EPA. A detailed accounting of the reasons CARB cites in determining that additional mobile source contingency measures are infeasible is contained in appendix B of the 2024 SJV Ozone Contingency Measure Plan.<sup>82</sup>

CARB also evaluated VOC area source emissions categories and controls for potential contingency measures.<sup>83</sup> The specific source categories evaluated by CARB include consumer products, crude oil and natural gas facilities, petroleum marketing (vehicle refueling and cargo tanks), portable fuel containers (gas cans), and pesticides. CARB concluded that there are no

<sup>72</sup> 2024 SJV Ozone Contingency Measure Plan, appendix B, pages 7 and 8.

<sup>73</sup> 2024 SJV Ozone Contingency Measure Plan, appendix B, page 7.

<sup>74</sup> CARB, “2022 State Strategy for the State Implementation Plan,” adopted September 22, 2022, Chapter 5 (“State SIP Measures”).

<sup>75</sup> Executive Department, State of California, Executive Order N-79-20, September 23, 2020.

<sup>76</sup> 2024 SJV Ozone Contingency Measure Plan, appendix B, page 45.

<sup>77</sup> The consent decree to which CARB is referring is the consent decree in the *Comite' Progreso de Lamont, et al. v. United States Environmental Protection Agency, et al.*, No. 3:21-cv-08733-WHA (N.D. Cal.). See 87 FR 71631 (November 23, 2022). With respect to mobile sources, CARB is relying on the same infeasibility demonstration in connection with the contingency measure elements for San Joaquin Valley for both the PM<sub>2.5</sub> NAAQS and the ozone NAAQS.

<sup>78</sup> *Id.*

<sup>79</sup> 2024 SJV Ozone Contingency Measure Plan, appendix B, pages 45–46.

<sup>80</sup> 2024 SJV Ozone Contingency Measure Plan, section 5.11, pages 72–74.

<sup>81</sup> 2024 SJV Ozone Contingency Measure Plan, appendix B, page 46.

<sup>82</sup> 2024 SJV Ozone Contingency Measure Plan, appendix B, table 51, pages 46–58.

<sup>83</sup> 2024 SJV Ozone Contingency Measure Plan, section 5.10.

feasible contingency measures for these sources categories and summarized the Agency’s assessment and rationale in table 9 of the 2024 SJV Ozone Contingency Measure Plan.<sup>84</sup>

In sum, based on the adoption of the Architectural Coatings Contingency Measure and the Smog Check Contingency Measures, the commitments to adopt and submit five additional District contingency measures, and the infeasibility demonstrations, CARB and the District conclude that the 2024 SJV Ozone Contingency Measure Plan fulfills the contingency measure requirements for the 2008 ozone NAAQS for San Joaquin Valley.

**V. EPA Evaluation**

*A. One Year’s Worth of Progress*

As noted previously, neither the CAA nor the EPA’s implementing regulations establish a specific level of emission reductions that implementation of

contingency measures must achieve, but the EPA Draft Revised Contingency Measure Guidance recommends that contingency measures should provide for emission reductions equivalent to approximately one year’s worth of progress in the nonattainment area. As part of the attainment plan SIP submission, the EPA expects states to explain the amount of anticipated emissions reductions that the contingency measures will achieve. In the event that a state is unable to identify and adopt contingency measures that will provide for approximately one year’s worth of emissions reductions, then the EPA recommends that the state provide a reasoned justification why the smaller amount of emissions reductions is appropriate.

We have reviewed the calculations in the 2024 SJV Ozone Contingency Measure Plan, as summarized in table 1 of this document, and are proposing to find that the District calculated one

year’s worth of progress for VOC and NO<sub>x</sub> for the 2008 ozone NAAQS in San Joaquin Valley in a manner consistent with the EPA’s recommendations in the Draft Revised Contingency Measure Guidance. We have also reviewed the calculations in the 2024 SJV Ozone Contingency Measure Plan used to compare the emissions reductions from the Architectural Coatings Contingency Measure and the Smog Check Contingency Measure with one year’s worth of progress and are proposing to generally find them to be acceptable, with the exception that the calculation for the Architectural Coatings Contingency Measure should reflect more recent emission inventory data for the architectural coatings source category.<sup>85</sup>

Table 4 presents the estimated emissions reductions as percentages of one year’s worth of progress, consistent with the EPA’s Draft Revised Contingency Measure Guidance.

**TABLE 4—EPA EVALUATION OF DISTRICT AND CARB CONTINGENCY MEASURES AS PERCENTAGE OF ONE YEAR’S WORTH (OYW) OF PROGRESS**

Pollutant	OYW of progress: reductions target (tpd)	Reductions expected from contingency measures (tpd)	% OYW expected to be achieved
NO <sub>x</sub> .....	4.22 .....	0.079	1.88
VOC .....	1.87 .....	<sup>a</sup> 0.355	<sup>b</sup> 18.98

<sup>a</sup> The estimate in table 4 of the 2024 SJV Ozone Contingency Measure Plan for the 2015 8-hour ozone standard has been substituted for the estimate shown for the 2008 8-hour ozone standard because the former reflects updated emissions inventory data for the architectural coatings source category.

<sup>b</sup> Reflects the sum of 0.33 tpd VOC emissions reductions from the Architectural Coatings Contingency Measure and 0.025 tpd VOC emissions reductions from the Smog Check Contingency Measure.

Source: 2024 SJV Ozone Contingency Measure Plan, tables 2, 4, and 5, unless otherwise noted.

As noted in a footnote to table 4 in this document, we have used the emissions reductions estimates for the 2015 8-hour ozone standard from 2024 SJV Ozone Contingency Measure Plan in place of the emissions reductions estimates for the 2008 8-hour ozone standard from the Plan because the estimates for the 2015 standard reflects updated emissions inventory data for the architectural coatings source category. Consequently, our estimates of the emissions from the contingency measures relative to one year’s worth of progress differ from those contained in the 2024 SJV Ozone Contingency Measure Plan. Nevertheless, our conclusion is the same as the conclusion drawn by the District and CARB, namely, that the emissions reductions would provide only a

portion of one year’s worth of progress for VOC and NO<sub>x</sub>. Thus, we would expect the State to provide a “reasoned justification” to support approval of the contingency measures as meeting the requirements under CAA sections 172(c)(9) and 182(c)(9) for the San Joaquin Valley even though the contingency measures would not provide for the magnitude of emissions reductions recommended by the EPA. The District and CARB have included their reasoned justifications in the form of feasibility analyses in Chapter 5 and appendix B of the 2024 SJV Ozone Contingency Measure Plan. We provide our review of the feasibility analyses in section V.D of this document.

*B. Contingency Measures*

As previously discussed, to meet the applicable requirements, contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the relevant NAAQS by the applicable attainment date. In general, we expect all actions needed to effect full implementation of the measures to occur within 60 days after the EPA notifies the state of a failure to meet RFP or to attain. Moreover, we expect the additional emissions reductions from the contingency measures to be partially achieved within a year or two of the triggering event. To satisfy the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9), the contingency measures adopted as

<sup>84</sup> 2024 SJV Ozone Contingency Measure Plan, table 9, pages 69–71.

<sup>85</sup> We are relying on the District’s emissions estimate of the VOC reductions for the Architectural Coatings Contingency Measure in table 4 of the 2024 SJV Ozone Contingency Measure Plan that is

shown for the 2015 8-hour ozone standard because that estimate reflects updated emissions inventory data for the architectural coatings source category.

part of a 2008 ozone NAAQS attainment plan must consist of control measures for the area that are not otherwise required to meet other attainment plan requirements (e.g., to meet RACM or RACT requirements).

The 2024 SJV Ozone Contingency Measure Plan relies on two adopted contingency measures: the Architectural Coatings Contingency Measure and the Smog Check Contingency Measure. As noted previously, we have already approved both contingency measures and, in each instance, determined that the contingency measures meet the requirements for such measures under CAA sections 172(c)(9) and 182(c)(9).<sup>86</sup>

### C. Commitments To Adopt Additional Contingency Measures

In addition to the adopted contingency measures, the 2024 SJV Ozone Contingency Measure Plan includes commitments to adopt and submit additional contingency measures. We have evaluated the commitments made by the District to adopt an expansion of the contingency measure in the Architectural Coatings Rule to remove the SCE for rust preventative coatings and to adopt new contingency measures in the Surface Coating of Metal Parts and Products Rule, Can and Coil Coatings Rule, Adhesives and Sealants Rule, and Solvent Cleanings Rule. We have also evaluated the commitments by the District and CARB to adopt and submit the rule revisions to the EPA within one year of the EPA's final approval.

We are proposing to find that the measures that the District has committed to adopt represent additional controls or measures that are not already implemented and that would provide emissions reductions beyond those needed for any other CAA purpose, and thus, they may be relied upon as contingency measures for the 2008 ozone NAAQS. We will review the specifics of each revised or new contingency measure for compliance with the requirements for such measures under CAA sections 172(c)(9) and 182(c)(9) when the amended rules are adopted and submitted to the EPA for approval as revisions to the California SIP.

Also, as clarified by the letters submitted by the District and CARB,<sup>87</sup>

<sup>86</sup> 87 FR 78544 (Architectural Coatings Contingency Measure approval) and 89 FR 5622 (July 9, 2024) (Smog Check Contingency Measure approval).

<sup>87</sup> Letter from Samir Sheikh, Executive Director/Air Pollution Control Officer, SJVUAPCD, to Dr. Steven S. Cliff, Executive Officer, CARB and Martha Guzman, Regional Administrator, EPA Region IX, dated June 18, 2024. Letter from Michael Benjamin,

we are proposing to find that the commitments in the Plan to adopt new or amended contingency measures within one year of a final conditional approval are the type of commitments to adopt "specific enforceable measures by a date certain" that allow the EPA to propose a conditional approval of the 2024 SJV Ozone Contingency Measure Plan under CAA section 110(k)(4).<sup>88</sup> In this regard, we note that the District and CARB have clarified that the District has committed to transmit the revised rules to CARB in a timely manner such that CARB can meet its commitment to transmit the revised rules to the EPA as SIP revisions within one year of the effective date of the final conditional approval.

### D. Contingency Measure Feasibility Analysis

The EPA has reviewed the State's infeasibility demonstrations for not adopting contingency measures beyond the Architectural Coatings Contingency Measure, Smog Check Contingency Measure, and the five new or amended contingency measures that the District has committed to adopt, including both the processes used by the District and CARB and their assessments specific to a wide range of stationary, area, and mobile source categories. Notably, in connection with the EPA's proposed contingency measure FIP for the San Joaquin Valley, the EPA recently prepared a detailed evaluation of source categories and measures that we considered as potential additional contingency measures but determined to be infeasible or otherwise unsuitable for contingency measures. Although the EPA proposed the FIP to address the fine particulate matter (PM<sub>2.5</sub>) contingency measure requirement, some of the analysis is relevant for ozone, as NO<sub>x</sub> was evaluated in the FIP as a PM<sub>2.5</sub> precursor, and is also a precursor for ozone. See "EPA Source Category and Control Measure Assessment and Reasoned Justification Technical Support Document, Proposed Contingency Measures Federal Implementation Plan for the Fine Particulate Matter Standards for San Joaquin Valley, California," July 2023 ("EPA's Reasoned Justification TSD").

D. Env., Division Chief, Air Quality Planning & Science Division, CARB, to Martha Guzman, Regional Administrator, EPA Region IX, dated June 24, 2024.

<sup>88</sup> CAA section 110(k)(4) provides that the EPA may approve a SIP revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

We have relied on that TSD given its breadth and depth, as well as the expertise of EPA Region IX staff, to review the District's and CARB's infeasibility demonstrations with respect to NO<sub>x</sub> measures, understand where the State's and the EPA's analyses draw largely similar conclusions, and identify those source categories where the control measure analyses differ.<sup>89</sup> As described in the following paragraphs, the EPA proposes to find that the District's and CARB's infeasibility demonstrations adequately justify the collection of contingency measures selected by the State to meet the contingency measure requirement under CAA sections 172(c)(9) and 182(c)(9) for the San Joaquin Valley for the 2008 ozone NAAQS.

In terms of process, the District and CARB identified and evaluated existing and potential control measures using components of the process recommended in the EPA's Draft Revised Contingency Measures Guidance.<sup>90</sup> As described in section IV.E of this proposed rule, for the wide range of stationary and area sources under its jurisdiction, the District described its ongoing stationary source regulatory efforts, identified potential control measures as candidate contingency measures, and analyzed the technological and/or economic feasibility of each candidate measure, including the feasibility of implementing such measures within 60 days and achieving the resulting emission reductions within one to two years.<sup>91</sup> The District also provided more in-depth analysis of potential control measures for ten source categories, ultimately adopting commitments for new or amended contingency measures for five source categories and providing a reasoned justification for not adopting such measures for the other five source categories.<sup>92</sup> We are proposing to find that the District employed a reasonable process to identify and assess the feasibility and suitability of potential control measures as contingency

<sup>89</sup> While the EPA Reasoned Justification TSD was prepared in connection with a PM<sub>2.5</sub> contingency measure FIP, the analysis contained therein is relevant for our review of the 2024 SJV Ozone Contingency Measure Plan to the extent it addresses NO<sub>x</sub> emissions sources and controls given that NO<sub>x</sub> is a precursor for both ozone and PM<sub>2.5</sub> in the San Joaquin Valley.

<sup>90</sup> EPA's Draft Contingency Measure Guidance, section 4 ("Reasoned Justification for Less Than [One Year's Worth] of Progress").

<sup>91</sup> 2024 SJV Ozone Contingency Measure Plan, sections 5.1 through 5.7, and 5.11.

<sup>92</sup> 2024 SJV Ozone Contingency Measure Plan, section 5.12, and the PM<sub>2.5</sub> Contingency Measure SIP Revision (for the boilers, steam generators, and process heaters >5 MMBtu/hour source category).

measures for stationary and area sources in the San Joaquin Valley.

Similarly, CARB identified potential mobile source and area source control measures, assessed whether each candidate measure could be implemented within 60 days of a triggering event and emission reductions achieved within one to two years, and then analyzed their technological and/or economic feasibility.<sup>93</sup> Regarding timing of emission reductions from mobile sources, CARB concluded that new engine standards are not appropriate for contingency measures given the time needed for manufacturers to design, develop, and deploy cleaner engines or equipment at scale, especially for zero-emission equipment.

As described in the EPA's Reasoned Justification TSD,<sup>94</sup> as a general matter, new mobile source engine or vehicle emission standards require significant lead time (more than two years) to allow manufacturers time to retool factories to produce compliant engines or vehicles. Retrofit or replacement requirements also require significant lead time to allow owners and operators to manage the process of retrofitting or replacing old engines or vehicles. Therefore, we agree with CARB that such mobile source control measures (that require significant lead time to implement) would not achieve emission reductions within one to two years of a contingency measure triggering event. In sum, we are proposing to find that CARB employed a reasonable process to identify and assess the feasibility and suitability of potential control measures as contingency measures for mobile sources in the San Joaquin Valley.

With respect to the District's and CARB's justifications that it is infeasible to adopt additional contingency measures, the EPA notes that technological and economic feasibility are generally acceptable considerations for evaluating the feasibility of additional contingency measure controls for relevant source categories. Accordingly, we are proposing to find the infeasibility demonstrations are adequately justified for the following reasons (as described in the 2024 SJV Contingency Measure Plan): further controls for specific source categories are not technologically or economically feasible, the source category does not lend itself to a rule that has a trigger mechanism, or the District is already

implementing the most stringent controls possible.

However, the EPA notes that the fact that a particular rule meets or exceeds federal RACT requirements is not a sufficient justification for concluding that additional controls for that category are infeasible. Contingency measures are intended to be measures that achieve reductions beyond the reductions associated with other applicable CAA requirements for the nonattainment area. Therefore, additional controls that exceed what is required to implement RACT could very well be viable candidates for contingency measures. Additionally, the length of the rulemaking process is not a valid consideration for finding a control measure infeasible that would otherwise be feasible to adopt. We expect states with nonattainment area contingency measure requirements to proactively identify relevant candidate measures such that the rulemaking process does not impede timely development of contingency measures. We are therefore proposing to find that the District's and CARB's stated reasons of already meeting or exceeding RACT for the relevant source category, or expecting a lengthy rulemaking process, are not relevant justifications for not adopting additional contingency measures. In this instance, however, neither CARB nor the District found potential contingency measures infeasible solely because additional controls would exceed the RACT requirement or because the rulemaking process would take too long.

For each of the stationary and area source categories examined that relate primarily to NO<sub>x</sub> emissions, the EPA is proposing to find that additional control measures cannot feasibly reduce emissions within one to two years. In the following paragraphs, we describe those source categories where we agree with the bases presented by the District. We then discuss those source categories where the basis of the EPA's conclusion differs from that of the District, even while the conclusion itself is the same—that the additional control measure evaluated cannot feasibly reduce emissions within one to two years.

The District's analyses are substantially the same as those of the EPA for the following source categories: flares (Rule 4311), solid fuel-fired boilers, steam generators, and process heaters (Rule 4352), glass melting furnaces (Rule 4354), internal combustion engines (Rule 4702), stationary gas turbines (Rule 4703), and natural gas-fired, fan type residential central furnaces (Rule 4905).

We note that the candidate NO<sub>x</sub> control measures evaluated for internal

combustion engines, stationary gas turbines, boilers, steam generators, and process heaters would require installation of costly and engineering-intensive devices (e.g., oxyfuel fired furnaces and natural gas furnaces equipped with selective catalytic reduction (SCR) for glass melting). As described in the EPA's Reasoned Justification TSD, while these technologies may be available and feasible in some contexts, we concluded there that it would be technologically infeasible for these measures to be implemented and achieve meaningful emission reductions within one to two years.<sup>95</sup> We are therefore proposing to agree with the District's determinations that such measures are technologically infeasible as contingency measures at this time.

We note that the EPA's Reasoned Justification TSD does not evaluate potential contingency measures specifically related to District Rules 4309 and 4352 and, thus, we provide our review and evaluation in this document.

With respect to sources covered by Rule 4309, the District considered controls for dryers, dehydrators, and ovens, citing to their analysis of this source category for the 2022 Ozone Plan.<sup>96</sup> The District found that additional controls such as low NO<sub>x</sub> burners could not feasibly be implemented within the relevant timeframes for contingency measures for this source category. The District noted that the time associated with design, planning, and installation of controls would not be feasible to implement within 60 days of triggering and would exceed the one- to two-year timeline for a contingency measure to achieve emissions reductions as recommended in EPA's Draft Contingency Measure Guidance. Further, the District states that, in certain applications (e.g., dehydrators for onions), the controls may have an adverse effect on food product quality, which diminishes the technical feasibility of using such controls until the technology is further improved.<sup>97</sup> We have reviewed the District's infeasibility demonstration and are proposing to agree that additional emissions reductions for this source category could not feasibly be achieved within one to two years or are

<sup>95</sup> See, e.g., EPA's Reasoned Justification TSD, pp. 9–22 (the EPA's evaluation of contingency measures for boilers, steam generators, and process heaters).

<sup>96</sup> SJVUAPCD, *2022 Plan for the 2015 8-Hour Ozone Standard*, December 15, 2022 ("2022 Ozone Plan"), submitted as a SIP revision on February 23, 2023.

<sup>97</sup> 2024 SJV Ozone Contingency Measure Plan, page 44.

<sup>93</sup> 2024 SJV Ozone Contingency Measure, section 5.10, and appendix B, pages 44–58.

<sup>94</sup> EPA's Reasoned Justification TSD, pp. 141–144.

not technically feasible in the case of dehydrators for certain products, and they are therefore not feasible as contingency measures. The EPA recommends that the District continue to evaluate dryers, dehydrators, and ovens for opportunities to further reduce NO<sub>x</sub> emissions in developing subsequent plans.

With respect to Rule 4352, which covers solid fuel fired boilers, steam generators, and process heaters, the State's submittal notes that the District adopted amendments to Rule 4352 in December 2021. The District's analysis associated with the 2021 amendments to Rule 4352 found that all control alternatives that would further reduce emissions require technology that had prohibitively high capital costs and therefore were not cost effective.<sup>98</sup> Given the economic infeasibility of additional controls for the sources covered by Rule 4352, we are proposing to agree with the District's conclusion with respect to Rule 4352.

For several other source categories, the EPA finds that the NO<sub>x</sub> contingency measure analyses by the District and the EPA differ in certain respects that warrant further discussion. Notwithstanding these differences, both the District's analyses and the EPA's analyses supporting our recent contingency measure FIP proposal support our proposed conclusion that the measures evaluated are technologically infeasible because they cannot feasibly reduce emissions within one to two years. We discuss each of these source categories in the paragraphs that follow.

With respect to residential water heaters (Rule 4902) and residential furnaces (Rule 4905), the District evaluated a candidate contingency measure to adopt electrification requirements (*i.e.*, requiring newly purchased furnaces and water heaters to be zero-emission units) on a more expedited timeline than the state-wide building electrification measure, to which CARB committed, that would achieve emission reductions starting in 2030.<sup>99</sup> The District deemed this contingency measure option technologically infeasible, citing the lead time necessary for manufacturers to design and produce electric units, the need for collaboration with energy and building code regulators, the desire for consistency with State and local efforts, the potential for housing cost and

affordability impacts, and the impact on equity considerations for low-income and environmental justice communities.<sup>100</sup> While we note that some of these factors do not necessarily align with the feasibility criteria outlined in the EPA's Draft Revised Contingency Measures Guidance,<sup>101</sup> the EPA is proposing to find that the building electrification contingency measure option is not feasible because we expect that the measure would not result in emissions reductions within two years after trigger.<sup>102</sup> The EPA also recommends that the District consider developing control measures or programs that would incentivize the early replacement of existing gas space and water heaters with electric appliances, as such actions could significantly reduce emissions from this significant source category in the longer-term future.

With respect to District Rules 4306 and 4320, which cover oil and gas production combustion equipment requirements, the District evaluated numerous control options including electrification of oilfield steam generators and solar powered oilfield steam generators, citing its analysis for this source category for the PM<sub>2.5</sub> Contingency Measure SIP Revision.<sup>103</sup> For each of these options, the District provided technological and/or economic infeasibility justifications. The District also evaluated imposing lower emission limits for boilers and steam generators.<sup>104</sup> In this evaluation, the District explained that the EPA has determined that Rule 4306 meets MSM requirements and that Rule 4320 goes beyond MSM by establishing even lower emissions limits. The District noted that equipment operators are already in the process of investing in and installing technology to meet the recently amended Rule 4320 limits and suggested that the time needed to plan, prepare for installation, and install control equipment to meet lower limits would exceed the one- to two-year timeline for a contingency measure to achieve emissions reductions.

The EPA's evaluation focused on lowering emission limits for boilers and steam generators, including identification of lower emission limits

adopted by the South Coast AQMD for oilfield steam generators than those adopted in Rule 4306. While the EPA's evaluation does not indicate that control requirements required to meet the lower limits would be technologically infeasible altogether (in light of the lower limits adopted by South Coast AQMD), we are proposing to determine that it would be technologically infeasible to meet the lower limits within the two-year timeframe for contingency measures due to the likely requirement that affected units would need to install SCR to meet the lower limits. The District noted that the time associated with design, planning, and installation of SCR would exceed the one- to two-year timeline for a contingency measure to achieve emissions reductions.

The District also included evaluations for boilers, steam generators, and process heaters that are covered by District Rules 4307 and 4308.<sup>105</sup> The District's assessments for these rules focus on economic and technological feasibility, citing dollar per ton cost effectiveness values for numerous control options and adding technological feasibility concerns for EMx<sup>TM</sup> (formerly SCONox). The EPA's evaluation for boilers does not provide cost effectiveness values to suggest that lower emission limits for boilers, steam generators, and process heaters are economically infeasible. However, as described in the EPA's evaluation, we are proposing to find that units required to meet lower limits than those already adopted in Rules 4307 and 4308 would require installation of SCR and that this cannot be feasibly achieved within the two-year timeframe for contingency measures.<sup>106</sup>

As noted previously, the EPA's Reasoned Justification TSD for the EPA's proposed San Joaquin Valley PM<sub>2.5</sub> contingency measure FIP focused solely on controls of direct PM<sub>2.5</sub> and NO<sub>x</sub>. Thus, unlike source categories that are entirely or substantially associated with NO<sub>x</sub> emissions, the EPA could not rely on its previous evaluation in EPA's Reasoned Justification TSD for that FIP action to inform our review of the District's analysis of VOC emissions sources and controls in the 2024 SJV Ozone Contingency Measure Plan.

For this proposed action, the EPA reviewed the District's evaluation of the seven stationary or area source categories under District jurisdiction and the numerous existing District rules that apply to sources in those categories

<sup>98</sup> For further discussion of these factors, see CARB, "2022 State Strategy for the State Implementation Plan," adopted September 22, 2022, pp. 101–103 ("Proposed Measures: Residential and Commercial Buildings").

<sup>99</sup> EPA's Draft Revised Contingency Measures Guidance, pp. 35–38.

<sup>100</sup> EPA's Reasoned Justification TSD, pp. 43–51.

<sup>101</sup> PM<sub>2.5</sub> Contingency Measure SIP Revision, pages 44–47.

<sup>102</sup> PM<sub>2.5</sub> Contingency Measure SIP Revision, pages 47–49.

<sup>103</sup> 2024 SJV Ozone Contingency Measure Plan, pages 20–22.

<sup>104</sup> EPA's Reasoned Justification TSD, pp. 9–22.

<sup>98</sup> SJVUAPCD, "appendix C, Cost Effectiveness Analysis for Proposed Amendments to Rule 4352 (Solid Fuel Fired Boilers, Steam Generators, and Process Heaters)," December 16, 2021.

<sup>99</sup> 2024 Ozone Contingency Measure Plan, pages 52–54.

for potential VOC contingency measures. For most of the rules that were evaluated, the District concluded that further controls would not be economically or technologically feasible but identified ten rules in five source categories for further analysis. With respect to the sources and rules that the District did not identify for further analysis, we propose to find that the District's evaluation and rationale for its conclusion that there are no feasible contingency measures available, due to the small contribution from these source categories to the overall emissions inventory, is adequately supported.

Of the ten rules that the District identified for further analysis,<sup>107</sup> the District has committed to adopt contingency measures for five of them, as described in section IV.D of this document. For the other five rules, the District concluded that there are no feasible contingency measures to adopt. We evaluate the District's rationale in the following paragraphs.

With respect to Rule 4565, which covers biosolids, animal manure, and poultry litter operations, the District's analysis concluded that no technologies were currently available to further achieve emissions reductions from organic material composting. The District further concluded that requiring additional controls for small to medium sized facilities was not cost-effective.<sup>108</sup> We are proposing to agree that there are no technologically feasible contingency measures for organic material composting and that there are no economically feasible contingency measures for small to medium sized facilities, although we recommend that the District further evaluate Rule 4565 for opportunities to further reduce VOC emissions in developing subsequent plans.

With respect to Rule 4605, which covers aerospace assembly and component coating operations, and Rule 4684, which covers polyester resin operations, the District's analysis concluded that additional emission reductions from these two source categories would be insignificant, given that the sources under these two rules emit 0.18 tpd of VOC emissions, representing only 0.054 percent of the entire VOC emissions inventory.<sup>109</sup>

<sup>107</sup> The District's evaluation for the ten rules for which the District concluded further analysis is warranted is found in section 5.12 of the 2024 SJV Ozone Contingency Measure Plan.

<sup>108</sup> The District presents its cost-effectiveness estimates for various Class 1 and Class 2 mitigation measures for medium- and small-sized facilities on pages 78 and 79 of the 2024 SJV Ozone Contingency Measure Plan.

<sup>109</sup> Aerospace assembly and component coating operations represent 0.004 percent of the San

Therefore, the District did not identify contingency measure opportunities for either of these source categories. We are proposing to agree with the District's conclusions with respect to Rules 4605 and 4684, given that the emission reductions from these two source categories would be insignificant, representing an insignificant percentage of the VOC emissions inventory.<sup>110</sup>

With respect to Rule 4694, which covers wine fermentation and storage tanks, the District's analysis concluded that the most stringent controls are already in place, and additional control technologies have not been proven at the scale of the wineries found in the San Joaquin Valley or in the climatic conditions that prevail in the San Joaquin Valley. Specifically, the District analyzed a published BACT guideline, which established a 67 percent combined capture and control efficiency requirement, averaged over the fermentation season for closed-top wine fermentation tanks with capacities equal to or less than 30,000 gallons.<sup>111</sup> This analysis found that the majority of wine fermentation tanks in the San Joaquin Valley are significantly greater than 30,000 gallons in capacity, and that winemaking practices are significantly different in the San Joaquin Valley.<sup>112</sup> As such, the District concluded that a contingency measure would be incompatible with the technologies involved in reducing emissions in this source category due to the time needed for necessary construction activities such as engineering, redesigning facilities, procuring materials, equipment, utilities, scheduling contractors, and installing and testing the fermentation controls.<sup>113</sup> We propose to find that the District's evaluation and rationale for its conclusion that no feasible contingency measures exist for this source category is adequately supported because additional control technologies have not been proven at this time at the scale of the wineries found in the San Joaquin Valley or in the climatic conditions that prevail in the valley.

Joaquin Valley's VOC emissions inventory, and polyester resin operations represent 0.05 percent of the inventory. See the 2024 SJV Ozone Contingency Measure Plan, pp. 82, 84.

<sup>110</sup> Based on the District's estimates, we note that the sources covered by these two rules represent approximately 9.6 percent of OYW of progress.

<sup>111</sup> Santa Barbara Air Pollution Control District BACT Guideline 4.1, available at <https://www.ourair.org/wp-content/uploads/BACT-Guideline-4.1.pdf>.

<sup>112</sup> 2024 SJV Ozone Contingency Measure Plan, pp. 84–89.

<sup>113</sup> 2024 SJV Ozone Contingency Measure Plan, pp. 84–89.

With respect to Rule 4570, which covers confined animal facilities, the District's analysis concluded that the District is implementing the most stringent measures feasible and determined that further controls of this source category would be technologically infeasible. The District based this conclusion on the absence of more stringent requirements that have been achieved in practice anywhere in the country.<sup>114</sup> We are proposing to agree with the District's conclusions with respect to Rule 4570.

Similar to our evaluation of the District's feasibility analysis for potential NO<sub>x</sub> contingency measures for sources it regulates, we have evaluated CARB's feasibility analysis for the sources it regulates, in part by comparing the bases and conclusions of the State's analysis against those presented in the EPA's Reasoned Justification TSD.<sup>115</sup> Both CARB and the EPA note the importance of mobile source emissions in the San Joaquin Valley, particularly given that the large majority of NO<sub>x</sub> emissions are from mobile sources, and describe the breadth of control measures considered by CARB to reduce NO<sub>x</sub> emissions for broader CAA purposes in the San Joaquin Valley. These include new vehicle and engine emission standards for both on-road and non-road applications that generally apply to manufacturers and achieve emission reductions through vehicle turnover; retrofit or replacement requirements for existing vehicles and fleets; and inspection and maintenance (I/M) program requirements, such as the requirements implemented under California's Smog Check program for light-duty passenger cars and trucks and the requirements that CARB has started to implement under California's Heavy-Duty I/M program. We agree that the adopted measures and on-going development of mobile sources measures by CARB, including zero-emission standards, further constrain the available opportunities for

<sup>114</sup> 2024 SJV Contingency Measure Plan, pp. 79–80. The District identified an analogous rule adopted by another air district (Imperial County APCD) that has a lower applicability threshold for the "other cattle" category when compared to SJVUAPCD Rule 4570. However, Imperial County APCD indicated that Imperial County APCD does not have any large "other cattle" confined animal facilities (CAF's) operating in their region and therefore do not have any facilities that would have to comply with this lower threshold. See ICAPCD. Rule 217 Large Confined Animal Facilities. (Revised February 9, 2016). Retrieved from: <https://apcd.imperialcounty.org/wp-content/uploads/2020/01/1RULE217.pdf>.

<sup>115</sup> EPA's Reasoned Justification TSD, section H ("Mobile Sources").

additional emission reductions via contingency measures.<sup>116</sup>

With respect to contingency measure requirements, CARB examined potential controls across the wide range of mobile source categories, including on-road light-duty passenger cars, trucks, and motorcycles; medium- and heavy-duty trucks and buses and transportation refrigeration units; commercial harbor craft, recreational boats, and ocean going vessels; off-road industrial, construction, and mining equipment; airport ground equipment, port and rail operations, and locomotives; lawn and garden equipment; and space and water heaters. As potential controls, CARB considered and evaluated pulling forward compliance dates and/or phase-in requirements; setting more stringent standards (often atop recently tightened standards) through mechanisms such as emission standards, emissions caps, thresholds for compliance, testing frequency, making optional standards required, or percentage of sales requirements; and removing exemptions and/or compliance options. In virtually all cases, CARB found that control measures beyond those already adopted or in development to fulfill commitments (e.g., under the 2022 State SIP Strategy) were not technologically feasible.<sup>117</sup> In all cases (except the adopted Smog Check Contingency Measure), CARB found that the measures were not technologically feasible as contingency measures because the lead time to develop, certify, adopt, and/or implement the measures is too long, and because that the potential measures could not be implemented within 60 days of a triggering event and achieve emission reductions within one or two years of the triggering event.

We have reviewed CARB's specific control measure analyses and are

<sup>116</sup> EPA's Reasoned Justification TSD, pp. 139–142. See also, 2024 SJV Ozone Contingency Measure Plan, appendix B, pp. 8–10.

<sup>117</sup> CARB identified three measures as technologically feasible. One is the Smog Check Contingency Measure that CARB has adopted and submitted, and that the EPA has approved. A second was a different Smog Check measure that would require testing on an annual basis (rather than the current biennial basis) or require testing on an annual basis only for high mileage vehicles; however, CARB found that the compliance burden would disproportionately fall on low-income populations and disadvantaged communities. 2024 SJV Ozone Contingency Measure Plan, appendix B, p. 47. The third was to increase the testing frequency under the Heavy-Duty I/M program; however, CARB found that the compliance burden would disproportionately fall on small businesses and low-income populations. 2024 SJV Ozone Contingency Measure Plan, appendix B, p. 49. In the latter two cases, CARB also found that, even if the measure were technologically feasible, the measures could not be effectuated within the timeframe necessary for contingency measures.

proposing to agree that such potential control measures are not feasible within the timeframe necessary for contingency measures and, in many cases, are not technologically feasible to the extent that they build upon measures currently in development that are already technology- or market-forcing. The EPA has not identified any engine or vehicle emission standards for consideration as contingency measures, which remains consistent with the evaluation presented in the EPA's Reasoned Justification TSD.<sup>118</sup> Beyond the wide range of source types and control approaches examined by CARB, the EPA also examined a handful of potential additional controls in the EPA's Reasoned Justification TSD, and our conclusion that they too were not suitable as contingency measures remains unchanged. Specifically, we have determined that including expansion of Enhanced I/M requirements to areas currently subject to "Basic" I/M or "Partial Enhanced" I/M requirements in the San Joaquin Valley,<sup>119</sup> provisions to expand the applicability of and to add requirements to District Rule 9510 ("Indirect Source Review"),<sup>120</sup> and additional transportation control measures<sup>121</sup> are not suitable as contingency measures. Therefore, we propose to find that CARB's infeasibility demonstration adequately justifies the contingency measures selected by CARB for the San Joaquin Valley for the 2008 ozone NAAQS.

CARB supplemented the NO<sub>x</sub> mobile source control measure evaluation that CARB provides in the Smog Check Contingency Measure SIP, which is included as appendix B of the 2024 SJV Ozone Contingency Measure Plan, with an evaluation of VOC area source categories that fall under State jurisdiction.<sup>122</sup> The area source categories include Pesticides, Oil and

<sup>118</sup> EPA's Reasoned Justification TSD, pp. 138–144.

<sup>119</sup> EPA's Reasoned Justification TSD, section IV.E. In addition, CARB noted in its comment letter on the EPA's proposed PM<sub>2.5</sub> contingency measure FIP that, under the I/M measure evaluated by the EPA, 50% of the vehicles that would be newly subject to Enhanced I/M would be in disadvantaged communities whereas only 35% of San Joaquin Valley population live in such disadvantaged communities. Letter dated September 22, 2023, from Steven S. Cliff, Ph.D., Executive Officer, CARB to Martha Guzman, Regional Administrator, EPA Region IX. In other words, the compliance burden would disproportionately fall on low-income populations and disadvantaged communities.

<sup>120</sup> EPA's Reasoned Justification TSD, section IV.B.

<sup>121</sup> EPA's Reasoned Justification TSD, pp. 144–146.

<sup>122</sup> CARB's evaluation of VOC area sources is found in section 5.10 of the 2024 SJV Ozone Contingency Measure Plan.

Gas, Consumer Products, Portable Fuel Containers (Gas Cans), Cargo Tanks and Petroleum Marketing. Based on that evaluation, CARB explained for each of the source categories why it would be infeasible to achieve additional emissions reductions from these source categories within one or two years of triggering. We have reviewed CARB's evaluation and propose to find that contingency measures for these area source categories would be technologically infeasible because they will not achieve emissions reductions within one or two years of the triggering event.

#### E. Conclusion

Based on the one year's worth of progress for NO<sub>x</sub> and VOC reductions that would be achieved from adopted contingency measures that meet the requirements of CAA sections 172(c)(9) and 182(c)(9), supplemented by contingency measures that the District and CARB have committed to adopt and submit within one year of EPA's final conditional approval, and their reasoned justification for achieving less than one year's worth of progress contained in the feasibility analyses, the EPA proposes to find that the 2024 SJV Ozone Contingency Measure Plan, adopted rules, and rule commitments together fulfill the contingency measure requirements for the 2008 ozone NAAQS for the San Joaquin Valley.

#### VI. Proposed Action and Request for Public Comment

For reasons discussed above, under CAA section 110(4)(4), we are proposing to conditionally approve the 2024 SJV Ozone Contingency Measure Plan as a revision of the California SIP as it pertains to the 2008 ozone NAAQS. We are doing so based on our preliminary determination that, considered together with the existing approved contingency measures and the commitments to submit additional contingency measures, the 2024 SJV Ozone Contingency Measure Plan meets the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9) for the San Joaquin Valley for the 2008 ozone NAAQS. Thus, we preliminarily find that the 2024 SJV Ozone Contingency Measure Plan, including the already adopted contingency measures and commitments, corrects the deficiencies in the previous contingency measure element submissions for San Joaquin Valley for the 2008 ozone NAAQS that we partially disapproved in October 2022. Our proposal is conditional because it relies on commitments by CARB and the District to supplement the 2024 SJV



Ozone Contingency Measure Plan through submission of additional contingency measures within one year of final conditional approval, should we finalize this action as proposed.

In this same issue of the **Federal Register**, we are also issuing an interim final determination, effective upon publication, to stay and defer sanctions. Specifically, the determination will stay application of the offset sanction and defer application of the highway sanction that were triggered by the EPA's October 3, 2022 partial disapproval of SIP revisions submitted to address the contingency measure requirements for the 2008 ozone NAAQS for the San Joaquin Valley.<sup>123</sup> The determination to stay and defer sanctions is based upon our proposed conditional approval action detailed in this document, with respect to the revised SIP submissions addressing the contingency measure SIP requirement. Please see the interim final determination document for further information concerning sanctions and the basis for issuing the interim final determination.

The EPA is soliciting public comments on the proposed action, our rationale for the proposed action, and any other pertinent matters related to the issues discussed in this document. We will accept comments from the public on this proposal for the next 30 days and will consider comments before taking final action.

## VII. 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, the 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 conditionally approve a state plan 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is 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 (Pub. L. 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); and
- 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.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies

to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on communities with Environmental Justice (EJ) concerns to the greatest extent practicable and permitted by law. The EPA defines EJ as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." The EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

Neither CARB nor the District evaluated EJ considerations as part of the SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this action, if finalized, is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for communities with EJ concerns.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 16, 2024.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

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<sup>123</sup> See 40 CFR 52.31(d)(2)(ii).