ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0622; FRL–9624–6]

Approval of Air Quality Implementation Plans; California; South Coast; Attainment Plan for 1997 8-Hour Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving state implementation plan (SIP) revisions submitted by California to provide for attainment of the 1997 8-hour ozone national ambient air quality standards in the Los Angeles-South Coast area (South Coast). These SIP revisions are the South Coast 2007 Air Quality Management Plan (South Coast 2007 AQMP) (revised 2011) and South Coast-related portions of the 2007 State Strategy (revised 2009 and 2011). EPA is approving the base year emissions inventory; reasonably available control measures demonstration; provisions for transportation control strategies and transportation control measures; the reasonable further progress (RFP) and attainment demonstrations; the transportation conformity motor vehicle emissions budgets for all RFP milestone years and the attainment year; contingency measures for failure to make reasonable further progress and to attain; and Clean Air Act section 182(e)(5) new technologies provisions and associated commitment to adopt contingency measures. EPA is also approving commitments to measures and reductions by the South Coast Air Quality Management District and the California Air Resources Board.

DATES: This rule is effective on April 30, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0622 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

- California Air Resources Board, 1001 I Street, Sacramento, CA 95812.
- South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

The SIP materials are also electronically available at *http://www.aqmd.gov/aqmp/07aqmp/index.html* and *http://www.arb.ca.gov/planning/sip/2007sip/2007sip.htm.*

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 947–4192, *tax.wienke@epa.gov.*

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

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I. Summary of EPA's Proposed and Final Actions on the 2007 State Implementation Plan for Attainment of the 1997 8-Hour Ozone Standards in the South Coast Nonattainment Area

On September 16, 2011, EPA proposed to approve California's state implementation plan (SIP) for attaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) in the Los Angeles-South Coast Air Basin Area (South Coast).[1] *See* 76 FR 57872. California developed this SIP to provide for expeditious attainment of the 8-hour ozone standards in the South Coast and to meet other applicable 8-hour ozone planning requirements in Clean Air Act (CAA) sections 172(c) and 182 and EPA's 8-hour ozone implementation rule.[2]

California has made five submittals to address the CAA planning requirements for attaining the 1997 8-hour ozone standards in the South Coast. We refer to these submittals collectively as the ''South Coast 2007 8-hour ozone plan'' or the ''8-hour ozone plan.'' The two principal ones are the South Coast Air Quality Management District (SCAQMD or District) Final 2007 South Coast Air Quality Management Plan (AQMP) (amended 2011) and the California Air Resources Board (CARB) Final 2007 State and Federal Strategy (2007 State Strategy) (amended 2009 and 2011).[3] Together, the South Coast 2007 AQMP and the 2007 State Strategy present a comprehensive and innovative strategy for attaining the 1997 8-hour ozone standards in the South Coast.

In our September 2011 notice, EPA proposed to approve the SIP's base year emissions inventory, reasonably available control measures (RACM) demonstration, the reasonable further progress (RFP) and attainment demonstrations, provisions for advanced technology/clean fuels for boilers, provisions for transportation control strategies and transportation control measures (TCMs), transportation conformity motor vehicle emissions budgets (budgets) for all milestone years and the attainment year, contingency

[1] The area referred to as ''Los Angles-South Coast Air Basin'' (South Coast Air Basin or ''South Coast'') includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. For a precise description of the boundaries of the Los Angeles-South Coast Air Basin, see 40 CFR 81.305.

[2] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards—Phase I; Final rule. 69 FR 23951 (April 30, 2004) and and codified at 40 CFR part 51, subpart Z (8-hour ozone implementation rule).

[3] These SIP submittals are:

1. SCAQMD, Final 2007 Air Quality Management Plan (AQMP), adopted on June 1, 2007 by the SCAQMD and September 27, 2007 by CARB, submitted on November 28, 2007.

2. CARB, *Proposed State Strategy for California's 2007 State Implementation Plan,* as amended and adopted on September 27, 2007 by CARB, submitted on November 16, 2007.

3. CARB, *Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revisions to the SIP Reflecting Implementation of the 2007 State Strategy* (pages 11–27 only), adopted on April 24, 2009 by CARB, submitted on August 12, 2009.

4. *Progress Report on Implementation of $PM_{2.5}$ State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins and Proposed SIP Revisions,* adopted on April 28, 2011 by CARB, submitted with the adopting resolution and other supporting documentation by CARB on May 18, 2011.1 See CARB Board Resolution 11–24, April 28, 2011 and letter, James N. Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, May 18, 2011 with enclosures. Appendix F of this SIP revision contained the SCAQMD's *Revisions to the 2007 $PM_{2.5}$ and Ozone State Implementation Plans for the South Coast Air Basin and Coachella Valley (SIP Revisions),* adopted on March 4, 2011 by the SCAQMD Governing Board and approved by the CARB Board on April 28, 2011. This SIP revision includes an update on District rule implementation and commitments provided by SCAQMD for the 2007 AQMP for ozone and $PM_{2.5}$. This SIP revision was included as Appendix F in CARB's 2011 Progress Report and will be referred to as such.

5. CARB, *Proposed 8-Hour Ozone State Implementation Plan Revisions and Technical Revisions to the $PM_{2.5}$ State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins,* adopted on July 21, 2011 by CARB and submitted on July 29, 2011. (2011 Ozone SIP Revision).

measures for failure to make RFP or attain, and CAA section 182(e)(5) new technologies provisions and the associated commitment to adopt contingency measures [4] as meeting the applicable requirements of the CAA. We also proposed to approve enforceable commitments by both the District and CARB to certain measures and emissions reductions.[5] See 76 FR 57872.

A more detailed discussion of each of California's SIP submittals for the South Coast area, the CAA and EPA requirements applicable to them, and our evaluation and proposed actions, can be found in the September 16, 2011 **Federal Register** notice (76 FR 57872) and the technical support document (TSD) for this final action.[6]

EPA is today approving all elements of the South Coast 2007 8-hour Ozone Plan based on our conclusion that they comply with applicable CAA requirements and provide for expeditious attainment of the 1997 8-hour ozone standards in the South Coast nonattainment area.

II. Summary of Public Comments Received on the Proposal and EPA Responses

EPA provided the public an opportunity to comment on our proposed approval of the South Coast 2007 8-hour ozone plan for 30 days following the proposal's September 16, 2011 publication in the **Federal Register**. We received three comment letters in response to our September 16, 2011 proposal. In the following section, we summarize our responses to the most significant comments that we received on the proposals. Our complete responses to comments can be found in the ''Response to Comments'' section of the TSD section III accompanying today's rulemaking.

The first letter came from CARB requesting that we limit the approval of the SIP's transportation conformity motor vehicle emissions budgets until such time the State submits and EPA finds adequate new budgets. *See* letter, Douglas Ito, Chief, Air Quality and Transportation Planning Branch; California Air Resources Board, October 17, 2011. We address CARB's request in Section V below. We received a comment letter from the Natural Resources Defense Council (NRDC) representing various organizations. See letter, Adrian Martinez, Attorney, Natural Resources Defense Council, October 17, 2011. We respond to NRDC's comments below. We also received comments from Ian Scott, a private citizen, on our September proposal. A copy of the comment letters can be found in the docket for today's rule.

A. Control Strategy and Enforceable Commitments

1. Enforceable Commitments

Comment: California Communities Against Toxics, Communities for a Better Environment, Natural Resources Defense Council, and Physicians for Social Responsibility—Los Angeles (commenters) assert that the CARB and District commitments to achieve total tonnage reductions in the South Coast 8-hour ozone plan are not enforceable. Commenters assert that the commitments to achieve total tonnages (which they refer to as ''global commitments'') could be interpreted as ''goals,'' rather than ''strategies,'' and are not enforceable because they are discretionary and open-ended. Commenters cite *Bayview Hunters Point Community Advocates* v. *Metropolitan Transportation Commission,* 366 F.3d 692 (9th Cir. 2004) and *El Comite Para El Bienstar de Earlimart* v. *Warmerdam,* 539 F.3d 1062, 1067 (9th Cir. 2008). Commenters assert that enforcement of the ''global commitments'' by citizens is not possible because neither citizens nor EPA can determine whether CARB has met the ''global commitments,'' and because CARB and the District determine compliance with the ''global commitment'' target, thus leaving them in a situation faced by plaintiffs in *Warmerdam.* Commenters assert that the ''global commitments'' are also not enforceable because there are no measures submitted for inclusion into the SIP to satisfy the tonnage commitment and there are no reporting requirements for ARB and the District, and they cite to EPA's General Preamble at 57 FR 13568 which states, ''[a] regulatory limit is not enforceable if, for example, it is impractical to determine compliance with the published limit.'' Finally, commenters assert that in order to enforce the ''global commitments,'' which depend on how CARB and the District calculate emissions reductions, the methodology that determines how emissions reductions are calculated must also be enforceable. Commenters state that in *Warmerdam* the court found neither the baseline nor methodology enforceable and thus, the plaintiffs were not able to enforce.

Response: Under CAA section 110(a)(2)(A), SIPs must include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the Act, as well as timetables for compliance. Similarly, section 172(c)(6) provides that nonattainment area SIPs must include enforceable emission limitations and such other control measures, means or techniques ''as may be necessary or appropriate to provide for attainment'' of the NAAQS by the applicable attainment date.

Control measures, including commitments in SIPs, are enforced directly by EPA under CAA section 113, and also through CAA section 304(a), which provides for citizen suits to be brought against any person who is alleged ''to be in violation of * * * an emission standard or limitation. * * *'' ''Emission standard or limitation'' is defined in subsection (f) of section 304.[7] As observed in *Conservation Law Foundation, Inc.* v. *James Busey et al.,* 79 F.3d 1250, 1258 (1st Cir. 1996):

> Courts interpreting citizen suit jurisdiction have largely focused on whether the particular standard or requirement plaintiffs

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

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

At the time of our September proposal, the Ninth Circuit had not yet issued its mandate in the *AIR* case, and EPA had not adopted the court's interpretation for the reasons set forth in the Agency's petition for rehearing, pending a final decision by the court. We stated in our proposal that if the court denied the Agency's petition for rehearing and issued its mandate before EPA issued a final rule on the South Coast 2007 8-Hour Ozone SIP, then we anticipated that we would not be able to finalize approval of the South Coast 2007 8-Hour Ozone SIP with respect to the first element (i.e., offsetting emissions growth) of section 182(d)(1)(A). *See* 76 FR 57872, 57890. Therefore, we proposed in the alternative to disapprove the South Coast 2007 8-Hour Ozone SIP with respect to the first element of section 182(d)(1)(A) based on the plan's failure to include sufficient transportation control strategies and TCM to offset the emissions from growth in VMT. *Id.* The court has still not issued its mandate; therefore, we are approving the South Coast 2007 8-Hour Ozone SIP as meeting the requirements of CAA section 182(d)(1)(A).

[6] ''*Final Technical Support Document and Response to Comments for the Final Rulemaking Action on the South Coast 2007 8-hour Ozone Plan and the South Coast Portions of the Revised 2007 State Strategy,''* Air Division, U.S. EPA Region 9, December 2011. The TSD can be found in the docket for this rulemaking.

[7] EPA can also enforce SIP commitments pursuant to CAA section 113.

sought to enforce was sufficiently specific. Thus, interpreting citizen suit jurisdiction as limited to claims ''for violations of specific provisions of the act or specific provisions of an applicable implementation plan,'' the Second Circuit held that suits can be brought to enforce specific measures, strategies, or commitments designed to ensure compliance with the NAAQS, but not to enforce the NAAQS directly. See, e.g., *Wilder, 854 F.2d at 613–14.* Courts have repeatedly applied this test as the linchpin of citizen suit jurisdiction. See, e.g., *Coalition Against Columbus Ctr.* v. *City of New York, 967 F.2d 764, 769–71 (2d Cir. 1992); Cate* v. *Transcontinental Gas Pipe Line Corp., 904 F. Supp. 526, 530–32 (W.D. Va. 1995); Citizens for a Better Env't* v. *Deukmejian, 731 F. Supp. 1448, 1454–59* (N.D. Cal.), modified, *746 F. Supp. 976 (1990).*

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

We describe CARB's and the District's commitments in the 2007 State Strategy (revised in 2009 and 2011) and the 2007 AQMP in detail in our proposal (76 FR 57872).[8] The 2007 State Strategy includes commitments to propose defined new measures and an enforceable commitment for emissions reductions sufficient, in combination with existing measures and the District's commitments, to attain the 1997 8-hour ozone NAAQS in the South Coast by June 15, 2024. *See* CARB Resolution 07–28, Attachment B at p. 4 and 2009 State Strategy Status Report, p. 20. For the South Coast, the State's emissions reductions commitments, as submitted in 2007 and revised by the 2009 State Strategy Update, are to achieve 152 tpd of NO_X and 46 tpd of VOC in the South Coast area by 2014, and 141 tpd NO_X and 54 tpd VOC in the South Coast area by 2023. See 76 FR 57872, at 57881; 2009 State Strategy Status Report, p. 20.

The SCAQMD's commitments as submitted in 2007 (and revised in 2011) were to achieve 9.2 tpd NO_X and 19.3 tpd VOC by 2023. See 76 FR 57872, Table 2, at 57878; see also 2011 Progress Report, Appendix F, Tables 2 and 3, and SCAQMD Board Resolution 11–9, March 4, 2011. As discussed above, the State's total emissions reduction commitment is for 152 tpd of NO_X and 46 tpd of VOC by 2014, and 141 tpd of NO_X and 54 tpd of VOC by 2023, which the State remains obligated to achieve through the adoption of enforceable measures by 2023. *See* TSD, Table D–5; *see also* CARB Resolution 07–28, Attachment B at p. 4. The language used in the Board's resolution adopting the South Coast 2007 AQMP to describe its commitment is mandatory and unequivocal in nature:

> Be it further resolved, that the District *will develop, adopt, submit and implement* the short- and mid-term control measures as identified in Tables 4–2A and 4–2B of the 2007 AQMP (Main Document) as expeditiously as possible in order to meet or exceed the commitments identified in Table 4–10 of the 2007 AQMP (Main Document), and to substitute any other measures as necessary to make up any emission reduction shortfall. [emphasis added]
>
> SCAQMD Board Resolution No. 07–9, p. 10.

Thus, CARB's commitments here are to adopt and implement measures that will achieve specific amounts of NO_X and VOC reductions by specific years. These are not mere aspirational goals to ultimately achieve the standards. Rather, the State and District have committed to adopt enforceable measures that will achieve these specific amounts of emission reductions by the RFP year of 2014 and the attainment year (2023). *See* 40 CFR 51.908(d) (requiring implementation of all control measures needed for expeditious attainment no later than the beginning of the year prior to the attainment date) and 70 FR 71633, 71612 (November 29, 2005). All of these control measures are subject to State and local rulemaking procedures and public participation requirements, through which EPA and the public may track the State/District's progress in achieving the requisite emission reductions. EPA and citizens may enforce these commitments under CAA sections 113 and 304(a), respectively, should the State/District fail to adopt measures that achieve the requisite amounts of emission reductions by the specified year. We conclude that these enforceable commitments to adopt and implement additional control measures to achieve aggregate emission reductions on a fixed schedule are appropriate means, techniques, or schedules for compliance under sections 110(a)(2)(A) and 172(c)(6) of the Act.

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

> Support post-1983 improvements identified in transit operator's 5-year plans, after consultation with the operators adopt ridership increase target for 1983–1987.
>
> Emission Reduction Estimates: These emission reduction estimates are predicated on a 15% ridership increase. The actual target would be determined after consultation with the transit operators.
>
> Following a table listing these estimates, TCM 2 provided that ''[r]idership increases would come from productivity improvements * * *.''

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

The commitments in the 2007 State Strategy (revised in 2009 and 2011) and South Coast 2007 AQMP are in stark contrast to the ridership target that was deemed unenforceable in *Bayview.* The language in CARB's and the District's commitments, as stated multiple times in multiple documents, is specific; the intent of the commitments is clear; and the strategy of adopting measures to achieve the required reductions is completely within CARB's and the District's control. Furthermore, as stated previously, CARB and the District

[8] The 2011 Ozone SIP Revision revised the State's emissions estimates for certain source categories and projection years and provided additional information on the State and District's progress to date in achieving their total emission reduction commitments. In this action, we are approving CARB's and the SCAQMD's emission reduction commitments as submitted in the 2007 State Strategy, as revised by the 2009 State Strategy Update, and South Coast 2007 AQMP because we do not have sufficient information to determine how the 2011 SIP Revision alters the State's near-term and long-term emission reduction commitments. We note that the amount and relative proportion of reductions from measures scheduled for long-term adoption under section 182(e)(5), as compared to measures already adopted or scheduled for near-term adoption, should decrease in any future SIP update.

identify specific emission reductions that they will achieve, how they could be achieved and the time by which these reductions will be achieved, i.e., by the 2023 attainment year. *See* Tables 3 and 4.

CARB's and the District's commitments here are analogous to the terms of the contingency measures in *Citizens for a Better Environment* v. *Deukmejian,* 731 F. Supp. 1448 (N.D. Cal. 1990), [known as *CBE I],* for the transportation sector in the 1982 Bay Area 1-hour ozone SIP. The provision states: ''If a determination is made that RFP is not being met for the transportation sector, MTC will adopt additional TCMs within 6 months of the determination. These TCMs will be designed to bring the region back within the RFP line.'' The court found that ''[o]n its face, this language is both specific and mandatory.'' *Id.* at 1458. In *CBE I,* CARB and MTC argued that TCM 2 could not constitute an enforceable strategy because the provision fails to specify exactly what TCMs must be adopted. The court rejected this argument, finding that ''[w]e discern no principled basis, consistent with the Clean Air Act, for disregarding this unequivocal commitment simply because the particulars of the contingency measures are not provided. Thus we hold that the basic commitment to adopt and implement additional measures, should the identified conditions occur, constitutes a specific strategy, fully enforceable in a citizen's action, although the exact contours of those measures are not spelled out.'' *Id.* at 1457. In concluding that the transportation and stationary source contingency provisions were enforceable, the court stated: ''Thus, while this Court is not empowered to enforce the Plan's overall objectives [footnote omitted; attainment of the NAAQS]—or NAAQS—directly, it can and indeed, must, enforce specific strategies committed to in the Plan.'' *Id.* at 1454; *see also Citizens for a Better Environment* v. *Metropolitan Tranp. Comm'n,* 746 F. Supp. 976, 980 (N.D. Cal. 1990) [known as CBE II] (rejecting defendants' argument that RFP and the NAAQS are coincident and stating that the court's enforcement of the *contingency plan,* an express strategy for attaining NAAQS, is distinct from simply ordering that NAAQS be achieved).

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

Commenters' reliance on *El Comite* (referred to as *Warmerdam)* to argue that CARB's commitments are not enforceable is misplaced. In *El Comite,* The plaintiffs in the district court attempted to enforce a provision of the 1994 California 1-hour ozone SIP known as the Pesticide Element. The Pesticide Element relied on an inventory of pesticide VOC emissions to provide the basis to determine whether additional regulatory measures would be needed to meet the SIP's pesticides emissions target. To this end, the Pesticide Element provided that ''ARB will develop a baseline inventory of estimated 1990 pesticidal VOC emissions based on 1991 pesticide use data * * *.'' *El Comite Para El Bienestar de Earlimart* v. *Helliker,* 416 F. Supp. 2d 912, 925 (E.D. Cal. 2006). CARB subsequently employed a different methodology that it deemed more accurate to calculate the baseline inventory. The plaintiffs sought to enforce the commitment to use the original methodology, claiming that the calculation of the baseline inventory constitutes an ''emission standard or limitation.'' The district court disagreed:

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

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

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

While commenters cite the Ninth Circuit's *El Comite* opinion, its utility in analyzing the CARB and District commitments here is limited to that court's agreement with the district court's conclusion that neither the baseline nor the methodology qualifies as an independently enforceable aspect of the SIP. Rather, it is the district court's opinion, in distinguishing the commitments in *CBE* and *Bayview,* that provides insight into the situation at issue in our action. As the court recognized, a baseline inventory or the methodology used to calculate it, is not a measure to reduce emissions. It instead ''identifies emission sources and then quantifies the amount of emissions attributed to those sources.'' In contrast, as stated previously, in the 2007 State Strategy (revised 2009 and 2011) and South Coast 2007 AQMP, CARB and the District commit to adopt and implement measures sufficient to achieve specified amounts of emission reductions by a date certain. As described above, a number of courts have found commitments substantially similar to CARB's here to be enforceable under CAA section 304(a).

2. Baseline Measures, Baseline Inventories, and Attainment Demonstration

Comment: NRDC asserts that EPA's approval of the inventory in the Plan would violate CAA sections 172(c)(3) and 182(a)(1) because the baseline inventory includes emissions reduction credit for both ''waiver measures'' and ''non-waiver measures'' adopted before 2007 (together referred to as ''baseline measures'') that have not been approved into the SIP. NRDC argues that EPA has not evaluated each of these baseline measures to determine if they are creditable or quantified the emissions reductions attributed to each of these measures. Additionally, NRDC asserts that EPA should disapprove the attainment demonstration because EPA has not approved mobile source baseline measures as part of the SIP. NRDC asserts that ''[t]he total tonnage attributed to these unsubmitted and non-SIP approved measures in the attainment demonstration is not clear, because EPA does not differentiate between reductions from SIP-approved measures, waiver measures, and those

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

NRDC identifies the following rules as examples of ''non-waiver'' baseline measures that have not been SIP-approved:

- Requirements to Reduce Idling Emissions from New and In-Use Trucks (adopted October 20, 2005);
- Heavy Duty Diesel Chip Reflash (adopted March 27, 2004);
- Diesel Particulate Matter Control Measure for On-Road Heavy-Duty Diesel-Fueled Vehicles Owned or Operated by Public Agencies and Utilities (adopted December 8, 2005);
- Solid Waste Collection Vehicle Rule (adopted September 24, 2003);
- Fork Lifts and Other Industrial Equipment (adopted May 26, 2006).

Response: We disagree with these assertions. We explained in our proposal TSD (section II.A.3.) our reasons for concluding both that the 2002 base year inventory in the SIP is comprehensive, accurate, and current as required by CAA section 182(a)(1) and that the projected baseline inventories provide adequate bases and support for the RFP and attainment demonstrations in the South Coast 2007 8-hour Ozone plan.[9]

Specifically, with respect to mobile source emissions, we believe that credit for emissions reductions from implementation of California mobile source rules that are subject to CAA section 209 waivers (''waiver measures'') is appropriate in the attainment and RFP demonstrations and for other SIP purposes notwithstanding the fact that such rules are not approved as part of the California SIP. In the proposal TSD, we explained why we believe such credit is appropriate. *See* proposal TSD at section II.D.3.c.i. Historically, EPA has granted credit for the waiver measures because of special Congressional recognition, in establishing the waiver process in the first place, of the pioneering California motor vehicle control program and because amendments to the CAA (in 1977) expanded the flexibility granted to California in order ''to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare'' (H.R. Rep. No. 294, 95th Congr., 1st Sess. 301–2 (1977)). In allowing California to take credit for the waiver measures notwithstanding the fact that the underlying rules are not part of the California SIP, EPA treated the waiver measures similarly to the Federal motor vehicle control requirements, which EPA has always allowed States to credit in their SIPs without submitting the program as a SIP revision.

EPA's historical practice has been to give SIP credit for motor-vehicle-related waiver measures in attainment and RFP demonstrations and for other SIP purposes by allowing California to include motor vehicle emissions estimates made by using California's EMFAC (and its predecessors) motor vehicle emissions factor model in SIP inventories. EPA verifies the emissions reductions from motor-vehicle-related waiver measures through review and approval of EMFAC, which is updated from time to time by California to reflect updated methods and data, as well as newly-established emissions standards. (Emissions reductions from EPA's motor vehicle standards are reflected in an analogous model known as MOVES.[10]) The South Coast 2007 8-hour ozone plan was developed using a version of the EMFAC model referred to as EMFAC2007, which EPA has approved for use in SIP development in California. *See* 73 FR 3464 (January 18, 2008). Thus, the emissions reductions that are from the California on-road ''waiver measures'' and that are estimated through use of EMFAC are as verifiable as the emissions reductions relied upon by states other than California in developing their SIPs based on estimates of motor vehicle emissions made through the use of the MOVES model. All other states use the MOVES model (and prior to release of MOVES, the MOBILE model) in their baseline inventories without submitting the federal motor vehicle regulations for incorporation into their SIPs.

Similarly, emissions reductions that are from California's waiver measures for non-road engines and vehicles (e.g., agricultural, construction, lawn and garden and off-road recreation equipment) are estimated through use of CARB's OFFROAD emissions factor model.[11] (Emissions reductions from EPA's non-road engine and vehicle standards are reflected in an analogous model known as NONROAD). Since 1990, EPA has treated California non-road standards for which EPA has issued waivers in the same manner as California motor vehicle standards, *i.e.,* allowing credit for standards subject to the waiver process without requiring submittal of the standards as part of the SIP. In so doing, EPA has treated the California non-road standards similarly to the Federal non-road standards, which are relied upon, but not included in, various SIPs. *See* generally TSD at section II.D.3.c.i.

CARB's EMFAC and OFFROAD models employ complex routines that predict vehicle fleet turnover by vehicle model years and include control algorithms that account for all adopted regulatory actions which, when combined with the fleet turnover algorithms, provide future baseline projections. *See* 2007 State Strategy, Appendix F at 7–8. For stationary sources, the California Emission Forecasting System (CEFS) projects future emissions from stationary and area sources (in addition to aircraft and ships) using a forecasting algorithm that applies growth factors and control profiles to the base year inventory.[12] *See id.* at 7. The CEFS model integrates the projected inventories for both stationary and mobile sources into a single database to provide a comprehensive statewide forecast inventory, from which nonattainment area inventories are extracted for use in establishing future baseline planning inventories. *See id.* In 2011, CARB updated the baseline emissions projections for several source categories to account for, among other things, more recent economic forecasts and improved methodologies for estimating emissions from the heavy duty truck and construction source categories. *See* 2011 Ozone SIP Revisions, Appendix B. These methodologies for projecting future emissions based on growth factors and existing Federal, State, and local controls were consistent with EPA guidance on developing projected baseline inventories. *See* TSD at section

[9] For ozone nonattainment areas, a State that satisfies the specific inventory requirements of CAA section 182(a)(1) also satisfies the general inventory requirements of CAA section 172(c)(3). *See* 57 FR 13498, 13503 (April 16, 1992).

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

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

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

II.A; *see also* ''Procedures for Preparing Emissions Projections,'' EPA Office of Air Quality Planning and Standards, EPA–450/4–91–019, July 1991; ''Emission Projections,'' STAPPA/ALAPCO/EPA Emission Inventory Improvement Project, Volume X, December 1999 (available at *http://www.epa.gov/ttnchie1/eiip/techreport/volume10/x01.pdf*). In sum, the 2002 base year and future projected baseline inventories in the South Coast 2007 8-hour Ozone plan were prepared using a complex set of CARB methodologies to estimate and project emissions from stationary sources, in addition to the most recent emissions factors and models and updated activity levels for emissions associated with mobile sources, including: (1) The latest EPA-approved California motor vehicle emissions factor model (EMFAC2007) and the most recent motor vehicle activity data from each of the MPOs in the South Coast area; (2) improved methodologies for estimating emissions from specific source categories; and (3) CARB's non-road mobile source model (the OFFROAD model). *See* TSD, section II.A. (referencing, *inter alia,* 2007 State Strategy at Appendix F) and 2011 Ozone SIP Revision. EPA has approved numerous California SIPs that rely on base year and projected baseline inventories including emissions estimates derived from the EMFAC, OFFROAD, and CEFS models. *See, e.g.,* 65 FR 6091 (February 8, 2000) (proposed rule to approve 1-hour ozone plan for South Coast) and 65 FR 18903 (April 10, 2000) (final rule); 70 FR 43663 (July 28, 2005) (proposed rule to approve PM–10 plan for South Coast and Coachella Valley) and 70 FR 69081 (November 14, 2005) (final rule); 74 FR 66916 (December 17, 2009) (direct final rule to approve ozone plan for Monterey Bay); 76 FR 41338 (July 13, 2011) (proposed rule to approve in part and disapprove in part the $PM_{2.5}$ plan for the San Joaquin Valley) and 76 FR 69896 (November 9, 2011) (final rule); and 76 FR 41562), (July 14, 2011) (proposed rule to approve in part and disapprove in part the $PM_{2.5}$ plan for the South Coast Air Basin) and 76 FR 69928 (November 9, 2011) (final rule). The commenter has provided no information to support a claim that these methodologies for developing base year inventories and projecting future emissions in the South Coast are inadequate to support the RFP and attainment demonstrations in the South Coast 2007 8-hour Ozone plan.

For all of these reasons and as discussed in our proposal (76 FR 57872, 57876), we conclude that the 2002 base year inventory in the 2007 8-hour Ozone plan is a ''comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants'' in the South Coast area, consistent with the requirements for emissions inventories in CAA section 182(a)(1), 40 CFR 51.915, and 40 CFR part 51, subpart A. In addition, we conclude that the projected future year baseline inventories were prepared consistent with EPA's guidance on development of emissions inventories and attainment demonstrations and, therefore, provide an adequate basis for the RFP and attainment demonstrations in the Plan under CAA sections 172(c)(2), 181(a)(1), and 182(c)(2). *See* TSD at section II.A.4.

Finally, we disagree with NRDC's assertion that EPA has not identified the total amount of emission reductions attributed to baseline measures in the projected inventories. The total amounts of emission reductions attributed to baseline measures in the South Coast 2007 8-Hour Ozone SIP, as revised in 2011, are 352 tpd of VOC and 531 tpd of NO_X. *See* 76 FR 57872, 57885, Table 8 at line E; *see also* TSD, Table D–6 at line B.

As to the five specific baseline measures that NRDC asserts should be SIP-approved before crediting in the RFP and attainment demonstrations:

• *Requirements To Reduce Idling Emissions from New and In-Use Trucks (effective November 15, 2006)* [13] and *Fork Lifts and Other Industrial Equipment Rule* (adopted May 26, 2006). Both of these mobile source measures are pending EPA waiver determinations under CAA section 209(b) or section 209(e).[14] We expect that EPA will act on these requests for waivers of preemption or authorization under CAA section 209 in the near term, and that our final approval of the South Coast 2007 8-hour Ozone plan based in part on its reliance on the emissions reductions associated with these rules is, therefore, reasonable and appropriate. If, however, EPA either denies or does not issue the State's requested waiver for any of these measures prior to the effective date of today's action, we will take appropriate remedial action to ensure that our action on the plan is fully supportable or to reconsider that action.

• *Diesel Particulate Matter Control Measure for On-Road Heavy-Duty Diesel-Fueled Vehicles Owned or Operated by Public Agencies and Utilities (adopted December 8, 200*5). CARB's staff report on this measure indicates that the projected emissions reductions from this measures are 0.18 tpd NO_X and 0.11 tpd VOC *statewide* in 2015 and 0.09 tpd NO_X and 0.05 tpd VOC statewide in 2020. *See* Staff Report: Proposed Diesel Particulate Matter Control Measure for On-Road Heavy-Duty Diesel-Fueled Vehicles Owned or Operated by Public Agencies and Utilities, October 2005, at pp. 56–57. South Coast has approximately 35 percent of the statewide fleet (*id.*); therefore, the *de minimis* amounts of emission reductions attributed to this measure in the South Coast 2007 8-hour Ozone plan do not affect our evaluation of its attainment and RFP demonstrations.

• *Solid Waste Collection Vehicle Rule (adopted September 24, 2003).* CARB's staff report on this measure indicates that the projected emissions reductions from this measure are 2.3 tpd NO_X and 0.72 tpd VOC *statewide* in 2015 and 0.6 tpd NO_X and 0.34 tpd VOC *statewide* in 2020. *See* Supplemental Staff Report: Proposed Diesel Particulate Matter Control Measure for On-Road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicles, August 8, 2003, at pg. 20. South Coast has approximately 35 percent of the statewide fleet (*id.*); therefore, the *de minimis* amounts of emission reductions attributed to this measure in the South Coast 2007 8-hour Ozone plan do not affect our evaluation of its attainment and RFP demonstrations.

• *Heavy Duty Diesel Engine-Chip Reflash rule (adopted March 27, 2004)*

[13] EPA is currently reviewing a request from CARB for a determination as to whether certain requirements of these anti-idling rules are preempted by sections 209(a) of the CAA; certain provisions are conditions precedent pursuant to section 209(a) of the Act; certain provisions are within-the-scope of previous waivers and authorizations issued pursuant to sections 209(b) and 209(e) of the Act, respectively; and at least one provision requires and merits a full authorization pursuant to section 209(e) of the Act. *See* 75 FR 43975 (July 27, 2010). CARB estimates that the operational requirement of the anti-idling rule, which is not subject to a CAA section 209 waiver, achieves 1.3 tpd of NO_X in the South Coast. *See Memorandum,* Doris Lo, Air Division, Planning Office (AIR–2), to San Joaquin Valley $PM_{2.5}$ Docket No. EPA–R09–OAR–2010–0516 ''South Coast and San Joaquin Valley Emissions Reductions from ARB's Operational Idling Requirements, ''September 28, 2011, in the docket for today's action.

[14] *See* letter, James Goldstene, Executive Officer, CARB to Stephen L. Johnson, Administrator, EPA RE: Request for Authorization Determination Pursuant to Clean Air Act Section 209(e) for Amendments to California's Off-Road Emissions Standards Regulation for large Spark-Ignition (LSI) Engines and Fleet Requirement for In-Use LSI Forklifts and Other Industrial Equipment and California State Motor Vehicle and Nonroad Engine Pollution Control Standards; Truck Idling Requirements; Opportunity for Public Hearing and Request for Public Comment; Notice Of Opportunity For Public Hearing And Comment. 75 FR 43975 (July 27, 2010)

(''Chip Reflash'' rule). This rule was intended to ensure expeditious compliance with CARB's NO_X emission standard for heavy-duty diesel (HDD) engines by requiring installation of ''Low-NO_X Software.'' The Chip Reflash rule was invalidated in part by a California State Court, and CARB repealed the related regulations in June 2007. The emission reduction credit attributed to Chip Reflash in CARB's baseline inventories is limited to vehicles that have been ''reflashed,'' *i.e.,* physically installed the Low-NO_X Software,[15] removal of which would constitute a violation of the CAA and/or California state law. *See* the statutory anti-tampering laws in CAA section 203(a)(3) and California Vehicle Code section 27156. Thus, the NO_X emissions reductions attributed to ''reflashed'' engines are enforceable under the CAA and/or California state laws.

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

Response: We continue to believe that credit for emissions reductions from implementation of California mobile source rules that are subject to CAA section 209 waivers (''waiver measures'') is appropriate notwithstanding the fact that such rules are not approved as part of the California SIP. In our September 16, 2011 proposed rule and the technical support document (TSD) for that proposal, we explained why we believe such credit is appropriate. *See* 76 FR 57872, at 57879–57880 and the proposal TSD, pp. 86–90. Historically, EPA has granted credit for the waiver measures because of special Congressional recognition, in establishing the waiver process in the first place, of the pioneering California motor vehicle control program and because amendments to the CAA (in 1977) expanded the flexibility granted to California in order ''to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare,'' (H.R. Rep. No. 294, 95th Congr., 1st Sess. 301–2 (1977)). In allowing California to take credit for the waiver measures notwithstanding the fact that the underlying rules are not part of the California SIP, EPA treated the waiver measures similarly to the Federal motor vehicle control requirements, which EPA has always allowed States to credit in their SIPs without submitting the program as a SIP revision. As we explained in the Proposal TSD (p. 87), credit for Federal measures, including those that establish on-road and nonroad standards, notwithstanding their absence in the SIP, is justified by reference to CAA section 110(a)(2)(A), which establishes the following content requirements for SIPs: ''* * * enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), * * *, as may be *necessary or appropriate* to meet the applicable requirements of this chapter.'' (emphasis added). Federal measures are permanent, independently enforceable (by EPA and citizens), and quantifiable without regard to whether they are approved into a SIP, and thus EPA has never found such measures to be ''necessary or appropriate'' for inclusion in SIPs to meet the applicable requirements of the Act. Section 209 of the CAA establishes a process under which EPA allows California's waiver measures to substitute for Federal measures, and like the Federal measures for which they substitute, EPA has historically found, and continues to find, based on considerations of permanence, enforceability, and quantifiability, that such measures are not ''necessary or appropriate'' for California to include in its SIP to meet the applicable requirements of the Act.

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

Second, as to enforceability, we note that the waiver process itself bestows enforceability onto California to enforce the on-road or nonroad standards for which EPA has issued the waiver. CARB has as long a history of enforcement of vehicle/engine emissions standards as EPA, and CARB's enforcement program is equally as rigorous as the corresponding EPA program. The history and rigor of CARB's enforcement program lends assurance to California SIP revisions that rely on the emissions reductions from CARB's rules in the same manner as EPA's mobile source enforcement program lends assurance to other state's SIPs in their reliance on emissions reductions from the FMVCP. While it is true that citizens and EPA are not authorized to enforce California waiver measures under the Clean Air Act (i.e., because they are not in the SIP), citizens and EPA are authorized to enforce EPA standards in the event that

[15] The 2007 State Strategy, Appendix A, ''Emission Inventory Output Tables'' documents the adjustment in the baseline that CARB made to account for Chip Reflash (or Heavy-Duty Diesel Engine Software Upgrade). As described in appendix A, CARB staff estimates that the overall benefits of the software upgrade regulation plus related actions provided approximately 38 tons per day of NO_X emissions reductions statewide in year 2007. CARB also indicates that it took into account the fact that the software upgrade regulation had been invalidated by including no additional emissions reductions from chip reflash other than those that had already occurred due to compliance with the regulation (prior to invalidation by the court), voluntary upgrade programs, ongoing engine rebuilds, engines upgrades by manufacturers exempt from the regulation, and interstate trucks. CARB staff confirmed that the baseline adjustment for chip reflash in the 2007 State Strategy reflects emission reduction credit only for engines that have been ''reflashed.'' *See Memorandum,* Doris Lo, Air Division, Planning Office (AIR–2); to the San Joaquin Valley $PM_{2.5}$ Docket No. EPA–R09–OAR–2010–0516, ''SIP Credit for Heavy-Duty Diesel Engine Low-NO_X Software (''Chip Reflash'');'' September 28, 2011 in the docket for today's action.

vehicles operate in California without either California or EPA certification.

As to quantifiability, EPA's historical practice has been to give SIP credit for motor-vehicle-related waiver measures by allowing California to include motor vehicle emissions estimates made by using California's EMFAC (and its predecessors) motor vehicle emissions factor model in SIP inventories. EPA verifies the emissions reductions from motor-vehicle-related waiver measures through review and approval of EMFAC, which is updated from time to time by California to reflect updated methods and data, as well as newly-established emissions standards. (Emissions reductions from EPA's motor vehicle standards are reflected in an analogous model known as MOVES.) The EMFAC model is based on the motor vehicle emissions standards for which California has received waivers from EPA but accounts for vehicle deterioration and many other factors. The motor vehicle emissions estimates themselves combine EMFAC results with vehicle activity estimates, among other considerations. *See* the 1982 Bay Area Air Quality Plan, and the related EPA rulemakings approving the plan (see 48 FR 5074 (February 3, 1983) for the proposed rule and 48 FR 57130 (December 28, 1983) for the final rule) as an example of how the waiver measures have been treated historically by EPA in California SIP actions.[16] The South Coast 8-hour ozone plan was developed using a version of the EMFAC model referred to as EMFAC2007, which EPA has approved for use in SIP development in California. *See* 73 FR 3464 (January 18, 2008). Thus, the emissions reductions that are from the California on-road ''waiver measures'' and that are estimated through use of EMFAC are as verifiable as are the emissions reductions relied upon by states other than California in developing their SIPs based on estimates of motor vehicle emissions made through the use of the MOVES model.

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

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

Comment: NRDC argues that our reliance on the general savings clause in CAA section 193 for the proposal to grant emissions reduction credit to California's waiver measures without first having California submit and EPA approve them into the SIP is inappropriate for two reasons. First, NRDC argues that CAA section 193 only saves those ''formal rules, notices, or guidance documents'' promulgated before the effective date of the 1990 amendment that are not inconsistent with the CAA. It asserts that the plain language of the CAA requires that California submit the control measures, rules and regulations used to meet CAA requirements as part of the SIP and that nothing in CAA title II or section 209 provide a basis for EPA's position. Second, NRDC argues that there is no automatic presumption that Congress is aware of an agency's interpretations and we have not provided any evidence that Congress was aware of our interpretation regarding the SIP treatment of California's mobile source control measures. NRDC also argues that our positions that Congress must expressly disapprove of EPA's long-standing interpretation and Congressional silence equates to a ratification of EPA's interpretation are incorrect.

Response: In the Proposal TSD (pp. 89–90), we indicated that we believe that section 193 of the CAA, the general savings clause added by Congress in 1990, effectively ratified our long-standing practice of granting credit for the California waiver rules because Congress did not insert any language into the statute rendering EPA's treatment of California's motor vehicle standards inconsistent with the Act. Rather, Congress extended the California waiver provisions to most types of nonroad vehicles and engines, once again reflecting Congressional intent to provide California with the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare. Requiring the waiver measures to undergo SIP review in addition to the statutory waiver process is not consistent with providing California with the broadest possible discretion as to on-road and nonroad vehicle and engine standards, but rather, would add to the regulatory burden California faces in establishing and modifying such standards, and thus would not be consistent with Congressional intent. In short, we believe that Congress intended California's mobile source rules to undergo only one EPA review process (i.e., the waiver process), not two.

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

[16] EPA's historical practice in allowing California credit for waiver measures notwithstanding the absence of the underlying rules in the SIP is further documented by reference to EPA's review and approval of a May 1979 revision to the California SIP entitled, ''Chapter 4, California Air Quality Control Strategies.'' In our proposed approval of the 1979 revision (44 FR 60758, October 22, 1979), we describe the SIP revision as outlining California's overall control strategy, which the State had divided into vehicular sources and non-vehicular (stationary source) controls. As to the former, the SIP revision discusses vehicular control measures as including technical control measures and transportation control measures. The former refers to the types of measures we refer to herein as waiver measures, as well as fuel content limitations, and a vehicle inspection and maintenance program. The 1979 SIP revision included several appendices, including appendix 4–E, which refers to ''ARB vehicle emission controls included in title 13, California Administrative Code, chapter 3 * * *,'' including the types of vehicle emission standards we refer to herein as waiver measures; however, California did not submit the related portions of the California Administrative Code (CAC) to EPA as part of the 1979 SIP revision submittal. With respect to the CAC, the 1979 SIP revision states: ''The following appendices are portions of the California Administrative Code. Persons interested in these appendices should refer directly to the code.'' Thus, the State was clearly signaling its intention to rely on the California motor vehicle control program but not to submit the underlying rules to EPA as part of the SIP. In 1980, we finalized our approval as proposed. See 45 FR 63843 (September 28, 1980).

California with the broadest possible discretion in the development and promulgation of on-road and nonroad vehicle and engine standards.[17]

B. Pre-Baseline Emission Reduction Credits

Comment: NRDC comments that the 8-hour Ozone Plan allows for the use of emissions reduction credits (ERC) from sources that have shutdown prior to the Plan's baseline date of 2002. NRDC asserts that these pre-baseline ERCs represent an allowance for unmitigated growth in emissions. It argues that allowing this growth is inconsistent with the Plan's claim that existing opportunities for controlling emissions do not exist and therefore it is necessary to rely on future technologies to attain the 8-hour standards and undermines EPA's ability to demonstrate compliance with the CAA. It further argues that EPA cannot claim that the Plan provides for expeditious attainment if it allows this unmitigated emissions growth, and that EPA's RACM analysis is undermined because these avoided emissions coupled with reasonably available controls could be adequate to advance attainment by more than a year. Finally, NRDC argues that in order to comply with the RACM requirement of section 172(c)(1), EPA must evaluate what additional reductions would be needed if the combined impact of these VOC and NO_X emissions were avoided.

Response: The District accounted for the existing pre-base year ERCs in its RFP and attainment inventories in a manner consistent with the CAA requirements set forth in Part D and 40 CFR part 51.[18] This means that all emission reductions for which ERCs were granted were modeled as being in the air.[19] The CAA requires this demonstration in anticipation of new sources that will utilize these ERCs as offsets in order to obtain NSR permits.

Under the NSR program, all new major sources (i.e., those with a potential to emit more than 10 tpy of VOC or NO_X) and any increase of permitted emissions of these pollutants, must install control technologies in order to meet the most stringent emissions limitations that have been achieved in practice by comparable sources (that is, they must meet the lowest achievable emissions rate (LAER) as defined in CAA section 171(3)). [South Coast Rule 1303—Requirements (paragraph (a))] Thus, these future emissions already reflect the use of the most stringent technologies currently available to limit emissions. To further reduce these future emissions would require the development of new or improved technologies, as is the case with existing emission sources already subject to RACT. Accordingly, we do not agree with the NRDC's assertion that allowing this emissions growth is inconsistent with the Plan's determination that additional opportunities for controlling emissions do not currently exist and therefore the area must rely on development of new technologies to attain.

Finally, we disagree with NRDC's claims that the 8-hour Ozone Plan cannot provide for expeditious attainment if it allows this growth in emissions and that the RACM analysis is undermined because these ''avoided emissions coupled with reasonably available controls could be adequate to advance attainment by more than a year.'' As stated above, the growth in ozone precursor emissions coming from sources emitting more than 10 tpy, will occur only after the source installs controls that achieve the lowest achievable emission rate, which is a higher control level than RACM. In addition, such sources with emission increases are required to provide emission offsets at a 1 to 1.2 ratio, meaning that for each new ton of emissions a source wishes to emit, it must provide a 1.2 ton reduction from the South Coast 8-hour Ozone Plan emission inventory. [South Coast Rule 1303—Requirements (paragraph (b)(2))] Thus overall, NSR provides a backstop mechanism to ensure attainment is provided as expeditiously as possible.

C. Rule Effectiveness in District Rules

Comment: NRDC asserts that the SCAQMD should not assume a 100 percent rule effectiveness rate for its control measures. Citing EPA's definition of ''rule effectiveness'' in 40 CFR 51.50 and EPA guidance on accounting for rule effectiveness in preparing emissions estimates, NRDC argues that ''EPA recommends an effectiveness factor of 80% for all stationary source and non-tailpipe mobile source control measures for future controlled scenarios'' and that the District's use of a 100 percent rule effectiveness factor is unsupported and inconsistent with EPA guidance. NRDC claims that ''EPA's approval of this plan in light of these unrealistic and unlawful rule effectiveness assumptions would be arbitrary and capricious.''

Specifically, NRDC asserts that the District's use of a 100% rule effectiveness factor amounts to an assertion that it can ''ensure complete and continual compliance at all sources covered by the regulation'' and that the Plan does not meet this standard. NRDC quotes from the 2007 AQMP, in which the District describes enforcement, source monitoring, and compliance verification programs, to argue that the 2007 AQMP ''relies on anecdotal information to support this 100% assumption.'' NRDC asserts that the SCAQMD's approach ignores the need for rule effectiveness improvements when in fact a CARB audit showed lower reported compliance rates. NRDC also states that for the gasoline transfer and dispensing operations category (Rule 461), the SCAQMD had correctly identified an emission-related non-compliance rate of 37% and ''adjusted the base and future year emissions estimates by 75% in this category to reflect a 25% compliance rate.'' In support of these assertions, NRDC references the following EPA guidance documents: ''Rule Effectiveness Guidance: Integration of Inventory, Compliance, and Assessment Applications'' (EPA 452/R–94–001, January 1994) (''1994 RE Guidance''); ''Guidelines for Estimating and Applying Rule Effectiveness for Ozone/CO State Implementation Plan Base Year Inventories,'' EPA–452–R–92–010, November 1992 (''1992 RE Guidelines''); and Memorandum from Sally Shaver, Director, Air Quality Strategies & Standards Division, EPA, to EPA Air Division Directors, Regions I–X, ''Ozone Nonattainment Planning: Decentralization of Rule Effectiveness Policy, April 27, 1995 (''1995 Shaver Memo'').

Response: We note as a threshold matter that it is not clear which specific element of the South Coast 2007 Ozone SIP the commenter's concerns apply to. Assuming that NRDC intended to argue that the SCAQMD's assumption of 100 percent rule-effectiveness in its estimates of base year and/or projected year emissions led to defects in the emissions inventories and in the RACM, RFP or attainment demonstrations that rely on those inventories, we disagree for the reasons provided below.

CAA section 182(a)(1) requires each State having an ozone nonattainment area to submit a ''comprehensive, accurate, current inventory of actual

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

[18] See the South Coast 2007 AQMP, Appendix III, Tables 2–8 and Appendix III, Attachment B, Table B–8.

[19] See the South Coast 2007 AQMP, Appendix III, pg 2–28.

emissions from all sources'' as described in CAA section 172(c)(3) and ''in accordance with guidance provided by the Administrator.'' *See also* 40 CFR 51.915 and part 51, subpart A. This ''base year'' emissions inventory reflects the State's best estimates of actual emissions [20] from all sources of the relevant pollutant(s) in the area in a recent calendar year [21] and provides the starting point for measuring the area's progress toward attainment. *See, e.g.,* CAA sections 182(c)(2)(B) and 182(b)(1)(B); *see also* 70 FR 71612, 71677 (November 29, 2005) (noting that several CAA ozone planning requirements, including milestones that measure progress toward attainment, are ''keyed to'' the emissions inventory). After developing a base year emissions inventory, States use modeling and other analyses to calculate projection year (or future ''baseline'') inventories and target emission levels, which then inform the State's development of progress milestones and control strategies for attaining the NAAQS. *See* General Preamble, 57 FR 13498 at 13507–13510.

Rule effectiveness (''RE'') is a term that describes a method to account for the reality that not all facilities covered by a rule are in compliance with the rule 100% of the time. *See* ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA–454/R–05–001, August 2005, Appendix B (''2005 RE Guidance'') at B–3; *see also* 40 CFR 51.50 (defining ''rule effectiveness'' for purposes of air emissions reporting requirements). Additionally, RE accounts for the fact that control equipment does not always operate at its assumed control efficiency. *See id.* EPA recommends that States consider RE as part of the calculation of emission estimates for stationary point and non-point (or ''area'') sources when developing base year and projection year emissions inventories. *See* 2005 RE Guidance at B–1. Rule effectiveness adjustments are generally not applied to mobile sources because the effects of mobile source noncompliance have been integrated into the inputs of EPA's mobile source emissions factor models. *See* ''Rule Effectiveness Guidance: Integration of Inventory, Compliance, and Assessment Applications'' (EPA 452/R–94–001, January 1994) (''1994 RE Guidance'') at 1–4 and 3–9.

EPA policy on RE applies only to emissions estimates involving the use of a control device or control technique and states that in some cases, even where control devices or techniques are used, RE adjustments may not be necessary. For example, when emissions can be calculated by means of a direct determination, an RE adjustment is not necessary because the emissions estimate is not contingent on the effectiveness of controls. *See* ''Rule Effectiveness Guidance: Integration of Inventory, Compliance, and Assessment Applications'' (EPA 452/R–94–001, January 1994) (''1994 RE Guidance'') See 1994 RE guidance at 3–5; *see also* 2005 RE Guidance at B–3. A direct determination is one in which emissions are calculated directly (e.g., based on explicit records for each type of coating and/or solvent used) rather than from estimates of uncontrolled emissions and level of control. *See* ''Guidelines for Estimating and Applying Rule Effectiveness for Ozone/CO State Implementation Plan Base Year Inventories,'' EPA–452/R–92–010, November 1992 (''1992 RE Guidelines''), at 12. In addition, uncontrolled sources are not subject to an RE adjustment, and sources with directly determined emission estimates in the base year inventory should not have RE applied in a projected inventory. *See* 1994 RE Guidance at 3–19.

Earlier EPA guidance recommended that where a RE should apply, States should generally use a default value of 80 percent RE. *See, e.g.,* ''Guidelines for Estimating and Applying Rule Effectiveness for Ozone/CO State Implementation Plan Base Year Inventories,'' EPA–452/R–92–010, November 1992 (''1992 RE Guidelines'') at 2. In 2005, EPA revised its policy in recognition that RE can vary widely between different types of industry and in different states or areas. *See generally* 2005 RE Guidance; *see also* Memorandum from Sally Shaver, Director, Air Quality Strategies & Standards Division, EPA, to EPA Air Division Directors, Regions I–X, ''Ozone Nonattainment Planning: Decentralization of Rule Effectiveness Policy, April 27, 1995 (''1995 Shaver Memo'') (providing alternatives to EPA's recommended 80 percent default value for RE). The 2005 RE Guidance provides that instead of assuming an across the board 80% default value for RE, States should consider a list of the factors that are most likely to affect RE in developing base year and projection year inventories.

The base year inventory in the South Coast 2007 Ozone SIP is an inventory of actual emissions estimates for year 2002. According to the Plan, information on base year emissions from stationary point sources in California is obtained primarily from the districts, while CARB and the districts share responsibility for developing and updating information on emissions from various non-point (*i.e.,* area) source categories. *See* 2007 State Strategy, Appendix F at 21; South Coast 2007 AQMP, Appendix III at pp. 1–9 through 1–15 (describing the SCAQMD's and CARB's methodologies for developing 2002 base year emissions estimates for stationary point and area sources). The 2002 point source emission inventory was developed using emissions data reported by stationary point sources subject to the 2002/2003 Annual Emissions Reporting (AER) Program, which applies to facilities emitting at least 4 tons per year (tpy) of VOC or NO_X, among other sources. *See* South Coast 2007 AQMP, Appendix III at pp. 1–9. Because these emissions were based on direct emissions data, no RE adjustments were necessary for these emission estimates. The 2002 area source emission inventory was developed using source-specific methodologies based on activity data, emission factors, and other information. *Id.* at 1–10 through 1–15. The SCAQMD included emissions from smaller industrial point sources (emitting <4 tpy) not subject to the AER Program in this area source emissions inventory. *Id.* at 1–9.

The projected year inventories in the South Coast 2007 Ozone SIP were developed based on emissions projections calculated using a CARB model called the California Emission Forecasting System (CEFS). The CEFS model projects future emissions from stationary point and area sources (in addition to aircraft and ships) using a forecasting algorithm that applies growth factors and control profiles to the base year inventory. *See* 2007 State Strategy, Appendix F at 7. Mobile source emission projections are estimated using CARB's EMFAC and OFFROAD emission factor

[20] Base year emissions inventories should include both anthropogenic and biogenic sources of ozone precursor emissions from stationary, area, and mobile sources capable of affecting air quality within the nonattainment area. *See* ''General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498, 13502 (April 16, 1992) (''General Preamble''). Because most emission sources do not monitor and report emissions continuously, emissions inventories are by nature ''estimates of actual releases to the atmosphere.'' 70 FR 71612, 71666 (November 29, 2005).

[21] For areas designated nonattainment for the 1997 8-hour ozone standard in 2004, EPA recommended that States use 2002 as the base year for SIP planning purposes. *See* Memorandum dated November 18, 2002, from Lydia Wegman, Air Quality Strategies and Standards Division, EPA, to Regional Air Division Directors, ''2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, $PM_{2.5}$ and Regional Haze Programs.''

models.[22] *See* 2007 State Strategy, Appendix F at 7–8. The CEFS model then integrates the projected inventories for both stationary and mobile sources into a single database to provide a comprehensive statewide forecast inventory, from which nonattainment area inventories are extracted by the districts for use in establishing future baseline planning inventories. *See id.* at 7, 8.

The South Coast 2007 AQMP describes how the District developed the future baseline inventories [23] in the Plan, based in part on the emissions data and baseline projections provided by CARB and other California agencies. *See generally* South Coast 2007 AQMP, Appendix III. The District's projections took into account the controls implemented under SCAQMD rules adopted as of June 2006, most CARB regulations adopted by June 2005, and a specific set of growth rates from the Southern California Association of Governments (SCAG) for population, industry, and motor vehicle activity, among other factors. *See id.* at 2–3. In 2011, CARB updated the baseline emissions projections for several source categories to account for, among other things, more recent economic forecasts and improved methodologies for estimating emissions from the heavy duty truck and construction source categories. *See* 2011 Ozone SIP Revision at Appendix B. These methodologies for projecting future emissions based on growth factors and existing Federal, State, and local controls were consistent with EPA guidance on developing projected baseline inventories. *See* TSD at section II.A; *see also* ''Procedures for Preparing Emissions Projections,'' EPA Office of Air Quality Planning and Standards, EPA–450/4–91–019, July 1991; ''Emission Projections,'' STAPPA/ALAPCO/EPA Emission Inventory Improvement Project, Volume X, December 1999 (available at *http://www.epa.gov/ttnchie1/eiip/techreport/volume10/x01.pdf*). NRDC correctly notes that the stationary point and the area source emissions projections that the SCAQMD developed as inputs to these projected future baseline inventories generally included an assumption of 100% RE. *See* South Coast 2007 AQMP, Appendix IV at A–7; *see also* Memorandum to File dated December 5, 2011, Wienke Tax, EPA Region 9, RE: ''SCAQMD Emissions Estimation Methodology.'' In response to the comment, we have further evaluated the projected baseline inventories in the Plan to determine whether an assumption of 100% RE was appropriate and to what extent it may have affected the control strategy. As explained below, we believe the SCAQMD's methodologies for projecting emissions were reasonable and that, even assuming that the District should not have used 100% RE for certain source categories, the impact on the overall emissions projections would have been insignificant.

With respect to both NO_X and VOC emissions from stationary point sources, which account for roughly 80% of the total NO_X projections for stationary sources and roughly 13% of the total VOC projections for stationary sources, no RE adjustments were necessary because the base year emissions estimates were developed from reported emissions data (i.e., direct determinations). Moreover, the SCAQMD's compliance and enforcement programs generally meet the recommended criteria in EPA's 2005 RE Guidance for use of the highest range of RE factors for stationary sources.[24] For example, all stationary point sources in the South Coast that emit or have the potential to emit at least 10 tons per year of VOC or NO_X are subject to the District's EPA-approved title V operating permits program in SCAQMD Regulation XXX [25] (*see* SCAQMD Rule 3001), which requires subject facilities to regularly report compliance information to the SCAQMD. *See, e.g.,* SCAQMD Rule 3004(a)(4)(f) (requiring semi-annual reports) and (a)(10) (requiring annual compliance certifications). In addition, the SCAQMD's Regional Clean Air Incentives Market (RECLAIM) program, which generally applies to stationary point sources that emit 4 tons or more per year of NO_X or SO_X in the year 1990 or subsequent years (*see* SCAQMD Rule 2001(b)), also contains stringent compliance monitoring and reporting requirements. *See, e.g.,* SCAQMD Rule 2012(c)(2) (requiring NO_X sources to install, maintain and operate a Continuous Emissions Monitoring System or other equivalent monitoring device) and SCAQMD Rule 2012(c)(3) (requiring NO_X sources to install, maintain and operate a reporting device to electronically report daily NO_X emissions to the District and to submit monthly emissions reports). Thus, even in the absence of direct determination, these compliance requirements and programs would adequately support the SCAQMD's use of the highest range of RE factors (94 to 100%) in projecting emissions from stationary point sources of VOC and NO_X emissions in the South Coast area.

The SCAQMD's regulations for VOC area sources that were accounted for in the projected baseline inventories (*i.e.,* rules adopted as of June 2006) also contain stringent recordkeeping and reporting requirements which generally meet EPA's recommended criteria for use of the highest range of RE factors for area sources.[26] *See, e.g.,* SCAQMD Rule 109 (as amended May 2, 2003) (requiring numerous types of VOC area sources to keep daily records of types of coatings and/or solvents used); *see also* Memorandum to File dated December 9, 2011, Wienke Tax, EPA Region 9, RE: ''SCAQMD Compliance and Enforcement Programs.'' The SCAQMD also administers numerous compliance assistance programs, including classroom instruction, web-based tutorials, and mailings. *See, e.g., http://www.aqmd.gov/comply/index.html*, *http://www.aqmd.gov/aqmd/aqmd_training.htm*, and *http://www.aqmd.gov/pubinfo/Publications/Advisor/2011/Nov2011Advisor.pdf*, page 8). These compliance requirements and programs generally support the SCAQMD's use of the highest range of

[22] CARB's EMFAC and OFFROAD models for estimating emissions from on-road and non-road mobile sources employ complex routines that predict vehicle fleet turnover by vehicle model years and include control algorithms that account for all adopted regulatory actions which, when combined with the fleet turnover algorithms, provide future baseline projections. *See* 2007 State Strategy, Appendix F at 7–8. Information about the EMFAC and OFFROAD models is available at *http://www.arb.ca.gov/msei/msei.htm.* The most recent EMFAC model that EPA has approved for use in SIP development in California is EMFAC2007. *See* 73 FR 3464 (January 18, 2008).

[23] By ''future baseline inventories'' or ''projected baseline inventories,'' we mean projected emissions inventories for future years that account for, among other things, the effects of economic growth and adopted emissions control requirements.

[24] For stationary point sources, the 2005 RE Guidance provides that the following factors, among others, may support the use of the highest RE range (94 to 100%) in developing emissions estimates: the regulatory agency requires source-specific monitoring for compliance purposes and frequent submittal of monitoring records; the agency conducts inspections involving compliance test methods with a high degree of accuracy, such as stack testing or other types of precise emissions measurements; and/or the agency has authority to impose punitive measures, including monetary fines, towards violators such as in delegated title V operating permit programs. *See* 2005 RE Guidance at B–6.

[25] *See* 68 FR 65637 (November 21, 2003) (final rule approving revisions to SCAQMD's title V operating permits program effective January 1, 2004).

[26] For stationary area sources, the 2005 RE Guidance provides that the following factors, among others, may support the use of the highest RE range (86 to 100%) in developing emissions estimates: Over 90% of facilities inspected in the source category are in compliance; the regulatory agency requires sources to submit some type of compliance certification; and/or a compliance assistance program exists and is adequately staffed. *See* 2005 RE Guidance at B–9.

RE factors (86 to 100%) in projecting emissions from area sources of VOC emissions in the South Coast area.

We expect that at least some of these VOC area sources are uncontrolled and therefore do not require any RE adjustment. Additionally, of those VOC area sources that are subject to controls, we understand many are subject to compliance requirements that enable the District to make direct determinations of emissions estimates (*e.g.,* through ''mass balance'' accounting of the types of coatings and/or solvents used), which also would not require any RE adjustment. *See, e.g.,* SCAQMD Rule 109 (as amended May 2, 2003).

Assuming conservatively, however, that some RE adjustments may have been appropriate for area sources, we have evaluated the impact that such adjustments may have had on the overall NO_X and VOC emissions projections for 2023. With respect to NO_X emissions, area sources account for about 20% of projected NO_X emissions from stationary sources and less than 3% of the total NO_X inventory for the 2023 projection year. *See* South Coast 2007 AQMP, Appendix III, Attachment B at Table B–9, and Memorandum to File, Wienke Tax, EPA Region 9 Air Planning Office, dated December 14, 2011. Thus, even assuming conservatively that a lower RE factor is appropriate for *all* area sources of NO_X emissions, the impact of such an adjustment on the future baseline NO_X emission inventory would affect less than 3% of the total projected NO_X inventory (roughly 14 tpd). Assuming that application of an 86% [27] rather than 100% factor would directly increase these NO_X emissions estimates by 14 percent, then the projected 2023 NO_X emissions inventory would increase by less than 3 tpd. This amount is adequately covered by CARB's enforceable commitment to achieve 141 tpd of NO_X by 2023. 76 FR 57872, 57881 (Table 6). CARB's 2011 SIP Revision reduced the 2023 projected NO_X inventory by 12 tpd compared to the Plan as submitted in 2007, indicating a surplus in NO_X reductions of 12 tpd in the Plan as revised. *See* letter dated August 10, 2011, from Lynn Terry, CARB, to Deborah Jordan, EPA Region 9, with attachment (transmitting emission inventory improvement information). Because the State's and District's enforceable commitments have not been revised, CARB remains obligated to achieve the total amount of emission reductions identified in its original commitment (141 tpd). The NO_X surplus of 12 tpd included in this enforceable commitment adequately covers the potential increase of 3 tpd due to RE adjustments.

With respect to VOC emissions, roughly half of the total projected VOC summer planning inventory for 2023 is attributed to stationary point and area sources. *See* South Coast 2007 AQMP, Appendix III, Attachment B at Table B–9. Of these stationary source VOC emissions, approximately 40% are attributed to consumer products (*see id.*), which prior to 2007 were not subject to any SCAQMD VOC regulations that the District would have accounted for in its emissions projections.[28] Most of the remaining VOC emissions (roughly 130 tpd) are attributed to area sources that are either uncontrolled or subject to SCAQMD regulations, such as cleaning and surface coating operations, architectural coating operations, and farming operations (*e.g.,* fertilizer applications). *See* South Coast 2007 AQMP, Appendix III, Attachment B at Table B–9. As NRDC correctly notes (and does not take issue with), the SCAQMD made significant RE adjustments to the gasoline transfer and dispensing source category subject to SCAQMD Rule 461 (petroleum marketing), which accounts for roughly 15% (20 tpd) of these remaining VOC area source emissions. This leaves approximately 110 tpd of VOC emissions attributed to area sources under the SCAQMD's jurisdiction for which RE adjustments may have been appropriate but for which California has not specifically provided data on whether they were made. All together, these area sources account for approximately 20% of the total projected VOC summer planning inventory for 2023. *See* South Coast 2007 AQMP, Appendix III, Attachment B at Table B–9.

Assuming conservatively that *all* of these VOC emissions are from regulated area sources for which direct determinations of emission cannot be made, and that a lower RE factor is appropriate for the emissions projections for all of these sources, the impact of such an adjustment on the future baseline VOC emission inventory for 2023 would affect only about 20% of the total projected VOC inventory (roughly 110 tpd). Further assuming that application of an 86% RE factor would directly increase these VOC emissions estimates by 14 percent, the projected 2023 VOC emissions inventory would increase by approximately 15.4 tpd. We note that CARB's 2011 SIP Revision reduced the 2023 projected VOC inventory by 5 tpd compared to the Plan as submitted in 2007, indicating a surplus in VOC reductions of 5 tpd in the Plan as revised. *See* letter dated August 10, 2011, from Lynn Terry, CARB, to Deborah Jordan, EPA Region 9, with attachment (transmitting emission inventory improvement information). Because the State's and District's enforceable commitments have not been revised, CARB remains obligated to achieve the total amount of VOC emission reductions identified in its original commitment (54 tpd). *See* 76 FR 57872, 57881 (Table 6). Taking into account this 5 tpd surplus in CARB's VOC emission reduction commitments, we assume the potential difference in the State's projected VOC inventory for 2023, had the State applied an 86% RE factor, would have been approximately 10.4 tpd or less than 2% of the total projected VOC inventory for 2023. Given the multiple conservative assumptions leading to this small difference in the emissions estimates for VOC area sources, we do not believe that an RE adjustment for VOC area sources would have altered our evaluation of the South Coast 2007 Ozone plan.

For all of these reasons and as discussed in our proposal (76 FR 57872), we have concluded that the 2002 base year inventory in the South Coast 2007 Ozone SIP is a ''comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants'' in the South Coast area, consistent with the requirements for emissions inventories in CAA section 182(a)(1), 40 CFR 51.915, and 40 CFR part 51, subpart A. In addition, we conclude that the projected baseline inventories for 2011, 2014, 2017, 2020, and 2023 were prepared consistent with EPA's guidance on development of emissions inventories and attainment demonstrations and, therefore, provide an adequate basis for the RACM, RFP and attainment demonstrations in the Plan. *See* TSD at section II.A. Given the continuously-evolving nature of estimating emissions, however, we will continue to work with CARB and the

[27] We believe an RE factor of 86%, which is the lowest factor under ''Range 1'' for non-point (area) sources in EPA's 2005 RE Guidance, is a reasonable assumption for these calculations given the rigorous compliance requirements in SCAQMD's area source regulations and the District's compliance assistance programs.

[28] Consumer products in California are generally subject to CARB's Consumer Products Regulations (CPR) in title 17, sections 94500–94575 of the California Code of Regulations (CCR). In March 2009, the SCAQMD adopted VOC content requirements for certain consumer products not subject to CARB's CPR, but these District regulations are not accounted for in the South Coast 2007 Ozone SIP's emissions inventories. *See* SCAQMD Rule 1143.

SCAQMD to ensure that their base year and projection year SIP emissions inventories accurately account for rule effectiveness and reflect the best available estimates of current and future emissions.

D. CAA Section 182(e)(5) New Technology Provisions

Comment: Commenters (NRDC, CCAT, DCAP, PSR–LA and CBE) state that California's reliance on ''black box'' measures in the South Coast 2007 Ozone SIP fails to meet the requirements and intent of the Clean Air Act by allowing the State to defer its responsibility to attain federal standards. Commenters state that there are three problems with how the State and District are using 182(e)(5).

First, commenters state that it is arbitrary for EPA to approve a ''black box'' with 281 tons per day or 55% of the reductions needed, given its lack of definition. Another commenter (private citizen) also asserts that the SIP relies too heavily on unknown ''black box'' solutions, which the commenter claims make up 49.6% of needed NO_X reductions and 43% of combined VOC and NO_X reductions.

Second, commenters assert that section 182(e)(5) is intended to address new technologies that will develop over time but that in California, ''new technologies alone will not sufficiently reduce pollution to attain federal air quality standards.'' Citing a description in EPA's TSD (at pg. 79) of a potential measure described by CARB as ''prioritizing federal transportation funding to support air quality goals,'' commenters argue that ''[t]his example clearly fails to meet all the criteria required for Black Box use,'' and that while ''tying air quality to transportation planning'' is important for attainment, the black box cannot be used as a basis for not requiring implementation of ''existing'' strategies such as increased public transit that do not require the development of new technologies.

Finally, commenters state that the section 182(e)(5) commitments are vague and insufficient and that EPA cannot approve the attainment demonstration ''unless the Section 182(e)(5) measures comply with the CAA.'' Citing both section 182(e)(5) of the Act and EPA's January 8, 1997 final rule approving the 1-hour ozone plan for several California nonattainment areas (62 FR 1150, 1179), commenters assert that the new technology measures must: (1) Contain sufficient definition; (2) contain schedules for development of the new technologies; (3) contain commitments for funding; (4) depend on development of new technologies; and (5) include an enforceable commitment to develop and adopt necessary contingency measures. Commenters assert that the South Coast 2007 Ozone SIP ''only attempts to comply with requirement number (5),'' that the generalized discussion in the Plan provides little assurance of CARB's ability to develop these measures, and that approval of these measures is therefore arbitrary and capricious.

Response: First, we disagree with the commenters' contention that EPA's proposed approval of the Plan is arbitrary because of the amount of emission reductions attributed to the ''black box'' (or ''long-term strategy''),[29] or because they are undefined. As an initial matter, we note that the commenters' assertions about the percentages of the needed emission reductions attributed to the long-term strategy are not correct.[30] The correct percentages of the needed NO_X and VOC emission reductions attributed to the long-term strategy in the South Coast 2007 Ozone SIP are 26 and 9 percent, respectively, as explained further below.

The CAA does not provide a quantitative limit on the extent to which the attainment demonstration for an extreme ozone nonattainment area may rely on new technology provisions under CAA section 182(e)(5). As we explained in our proposed rule, section 182(e)(5) of the Act authorizes EPA to approve provisions in an extreme area plan which ''anticipate development of new control techniques or improvement of existing control technologies,'' and to approve an attainment demonstration based on such provisions if the State demonstrates that: (1) Such provisions are not necessary to achieve incremental reductions required during the first 10 years after the effective date of designation for the 1997 ozone NAAQS, and (2) the State has submitted enforceable commitments to submit adopted contingency measures meeting certain criteria no later than 3 years before proposed implementation of the new technology measures. *See* 76 FR 57872, 57881–57883. EPA interprets this provision to mean that the measures approved under section 182(e)(5) may include those that anticipate future technological developments as well as those that require complex analyses, decision making and coordination among a number of government agencies. *See* General Preamble at 13524.

The majority of the emissions reductions in the South Coast 2007 Ozone SIP are attributed to already adopted and near-term measures. *See* 76 FR 57872, 57876–89. Our summary of South Coast's 8-hour ozone attainment demonstration in the proposed rule shows that the South Coast area needs to reduce emissions from 2002 levels by a total of 910 tpd of NO_X and 461 tpd of VOC to attain the 8-hour ozone standards by June 15, 2024. *See* 76 FR 57872, 57885 at Table 8. Approximately 74% of these needed NO_X reductions and 91% of the needed VOC reductions are attributed to already adopted or near-term measures (i.e., measures that will be adopted and implemented by 2014). *See* 76 FR 57872, 57886 (Table 9) and 57879–57880 (Tables 3 and 4) (identifying CARB and SCAQMD measures recently adopted or scheduled for near-term consideration). These measures include all reasonably available control measures and generally represent the most stringent air pollution control requirements for stationary, area, and mobile sources nationwide. *See* 76 FR 57872, 57877–57881. This leaves about 26% of the needed NO_X reductions and 9% of the needed VOC reductions to be met through the long-term strategy under CAA section 182(e)(5).[31] *See* 76 FR 57872, 57885 at Table 9.

Given the demonstrated need for emissions reductions from new and improved control techniques to reduce air pollution in the South Coast area (*see* TSD at 79), we believe it is reasonable for the State to attribute these amounts of emission reductions to the long-term strategy.[32] As we stated in

[29] Throughout this notice we use the terms ''long-term strategy'' or ''new technology provisions'' interchangeably to refer to the plan provisions that anticipate development of new or improved control techniques under CAA section 182(e)(5), which the commenters refer to as the ''black box.''

[30] It appears that the commenters overestimated the percentage of ''black box'' emission reductions in the Plan by calculating the amount of needed NO_X and VOC reductions without taking into account the reductions attributed to baseline measures and emissions inventory improvements.

[31] For NO_X, the long-term emission reductions are 241 tpd in 2023 or approximately 26 percent of 910 tons, the total reductions needed. For VOC, the long-term emission reductions are 40 tpd in 2023 or approximately 9 percent of the 461 tons of VOC reductions needed.

[32] During development of the 2007 State Strategy, CARB staff analyzed whether current NO_X technologies for mobile sources are clean enough to provide all the emission reductions needed for ozone attainment in the South Coast and San Joaquin Valley. ARB included in this analysis the phasing in of the cleanest new technology standards from 2007–2017 that ARB and U.S. EPA have already adopted for diesel engines: 0.2 g/bhp-hr on-road truck standards in 2010, full offroad Tier 4 standards in 2014, and the recent U.S. EPA-proposed low-NO_X standards for locomotive engines starting in 2017. The totals of remaining emissions after full clean-up of the legacy diesel fleets in the South Coast air basin still exceed the

our proposed rule, however, we expect the amount and relative proportion of reductions from measures scheduled for long-term adoption under section 182(e)(5) should decrease in any future SIP update, and EPA will not approve any future SIP revisions with an increase in the 182(e)(5) reductions for 2023 without a convincing showing that the technologies relied upon in the near-term rules are infeasible or ineffective in achieving emissions reductions in the near-term. *See* 76 FR 57872, 57883. Moreover, to the extent new modeling performed in any subsequent SIP revision demonstrates that there is an increase in the year 2023 carrying capacity for VOC and NO_X, this change may not be used to decrease the amount of emissions reductions scheduled to be achieved by any near-term measure from the South Coast 2007 Ozone SIP unless CARB or the SCAQMD make the convincing showing described above.

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

The commenters correctly note that EPA's TSD identified ''prioritiz[ation of] federal transportation funding to support air quality goals'' among a number of potential long-term strategies that CARB had identified for further consideration (*see* TSD at 79, citing 2007 State Strategy, pp. 55–56), but they do not describe any specific control measure that such budgetary decisions could support and that is reasonably available for current implementation in the South Coast area. Likewise, although the commenters assert generally that ''increased transit'' and other ''existing strategies'' should be required as control measures because these do not require the development of new technologies, they have not identified any particular control measure that the State should be obligated to include in its plan for attaining the 1997 8-hour ozone NAAQS.

CARB and the SCAQMD have adopted all of the control measures for NO_X and VOC that are reasonably available for current implementation in the South Coast area and have submitted enforceable commitments to adopt additional measures achieving specific amounts of emission reductions by specific years. *See* 76 FR 57872, 57877–57881 and 57886. These measures are not sufficient, however, to achieve the significant amounts of NO_X and VOC reductions necessary to attain the 1997 8-hour ozone NAAQS in the South Coast by June 15, 2024. Absent new information about additional control measures that are cost-effective and technically feasible for current implementation in the area, we believe it is reasonable to allow the State and District time to develop additional control measures based on new or improved control techniques under CAA section 182(e)(5).

Third, we disagree with commenters that the section 182(e)(5) commitments are vague and insufficient. As discussed in our proposed rule, CARB has submitted enforceable commitments to achieve specific amounts of NO_X and VOC reductions by 2023 through the development of new or improved control techniques under CAA section 182(e)(5). The total tonnage commitment in the South Coast is for 241 tpd NO_X and 40 tpd VOC. See 76 FR 57872, 57881–57882 and 2009 State Strategy Status Report, p. 20. With respect to the requirement for contingency measures in CAA section 182(e)(5)(B), we explained in our proposed rule that CARB's 2011 Ozone SIP Revision contains the State's enforceable commitment ''to develop, adopt, and submit contingency measures by 2020 if advanced technology measures do not achieve planned reductions'' (76 FR 57872, 57882, referencing CARB Resolution 11–22, July 21, 2011), and in a letter dated November 18, 2011 to EPA Region 9, CARB confirmed that EPA's understanding of this enforceable commitment is correct. *See* letter dated November 18, 2011, from James N. Goldstene, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region 9.

In addition, as explained in our proposed rule (76 FR at 57882), the South Coast 2007 Plan identifies numerous potential measures currently under consideration as part of the long-term strategy, and CARB has committed to submit a SIP revision by 2020 that will identify the additional strategies and implementing agencies needed to achieve the needed reductions by the beginning of the 2023 ozone season. *See* 2011 Ozone SIP Revision, p. A–8; *see also* letter dated August 29, 2011 from James N. Goldstene, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, U.S. EPA, Region 9 (describing California's climate change programs, clean car technologies, programs to accelerate hybrids and plug-in technologies, greenhouse gas emission reduction targets for passenger vehicles, and SCAQMD's efforts to transition to broad use of zero- and near-zero emission technologies for freight transportation and passenger vehicles and to increase energy efficiency in buildings). We note also that CARB has stated its intent to convene annual strategy meetings with the Districts and EPA to discuss progress in the development of its new technology measures, and to secure resources for continuing research and development of new technologies. *See* letter dated August 29, 2011, from James N. Goldstene, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region 9; *see also* 2009 State Strategy Status Report, pp. 25–27.

Finally, commenters reference CAA section 182(e)(5) and EPA's final rule approving an ozone SIP previously submitted by California (62 FR 1150, 1179) [33] in support of its assertion that the long-term strategy must satisfy five ''requirements,'' of which, commenters contend, the South Coast 2007 Ozone SIP addresses only one. We disagree with this characterization of both the requirements of CAA section 182(e)(5) and the provisions in the South Coast 2007 Ozone SIP.

As explained above and in our proposed rule, EPA interprets the Act to allow EPA to approve the State's

NO_X carrying capacity by 133 tpd. *See* 2007 State Strategy, p. 54.

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

conceptual new technology provisions and credit them toward the attainment demonstration if the state makes the required commitment to submit contingency measures, which then must be submitted to EPA no later than 3 years before proposed implementation and EPA concludes that the measures are not needed to achieve the first 10 years of required rate of progress reductions. *See* 76 FR 57846, 57854. The five ''requirements'' for approval of new technology provisions that commenters reference are not statutory or regulatory requirements but recommended criteria. *See* General Preamble at 13524.[34]

As also explained in the proposed rule, CARB and the District have demonstrated a clear need for additional time to fully develop and adopt the long-term measures under consideration and have met the statutory requirements for approval of such conceptual measures under CAA section 182(e)(5). *See* 76 57872 57881–57883. The General Preamble at 13524 recommends that a SIP relying on new technology provisions under CAA section 182(e)(5) identify all of the specific long-term measures the State intends to adopt, contain a schedule outlining the specific steps leading to final development and adoption, and contain commitments from the agencies that would be involved in developing and implementing these measures, in addition to satisfying the statutory criteria. However, as discussed in our proposed rule and above, both the 2007 State Strategy and the South Coast 2007 AQMP provide lists of the types of technologies and measures that they are pursuing to achieve the emissions reductions needed for attainment of the 8-hour ozone standards in the South Coast. *See* 76 FR 57872, 57882–57853 and TSD, section II.C.2.d*; see also,* 2007 AQMP, Chapters 4 and 7; 2007 State Strategy, pp. 54–57; 2009 State Strategy Update, p. 25; and 2011 Ozone Plan Update, Appendix A. The State has also committed to share the results of its efforts with the public through Board meetings, workshops and other means. *See 2009 State Strategy Update,* p. 25; *see also,* letter, James Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, August 29, 2011. Finally, the State has committed to work to secure resources for continuing research and development and to develop schedules for moving from research to implementation. *Id.* We find that the State and District have adequately addressed the policy criteria in the General Preamble given the significant emissions reductions needed to attain the 1997 8-hour ozone NAAQS in the South Coast and the type of sources (i.e., mobile sources) for which technology must be developed, tested, and deployed in order to achieve these reductions. EPA commits to do its share to support the needed research and development activities of CARB and the District.

Comment: Commenters state that the South Coast will exceed the 1-hour ozone standards by 30% in 2010 and that this is relevant because the South Coast's 1-hour ozone plan relied heavily on ''black box'' measures. Commenters argue that the South Coast area failed to meet the 1-hour standards ''because the commitments to develop and implement Black Box measures never fully came to fruition'' (citing EPA's September 14, 2011 proposal to determine that the South Coast area failed to attain the 1-hour ozone standards by the applicable attainment date (76 FR 56694)) and that EPA cannot reasonably rely on the continued use of the ''black box'' because the District and CARB's track record using this approach has not delivered the pollution reductions that were promised in prior plans. Commenters state that EPA must direct CARB to ''extract from the black box'' needed reductions they know will not come from future technologies, reduce the overall size of the black box to a reasonable level and better define where the remaining black box reductions are expected to come from.

Response: EPA is acting today on the South Coast 2007 Ozone SIP, which the State submitted to meet the requirements of part D, title I of the CAA for the 1997 8-hour ozone standards. Neither the CAA's planning requirements related to attainment of the 1-hour ozone standards nor the State's submittals to meet the Act's requirements for that prior standards are germane to our action on the South Coast 2007 SIP under CAA section 110(k). Additionally, nothing in section 182(e)(5) of the CAA or our implementing regulations requires EPA to take into account the success or failure of a prior plan for a different NAAQS in approving extreme area plan provisions that meet the requirements of CAA section 182(e)(5) for the 1997 8-hour ozone standards. EPA's proposed rule to determine that the South Coast area failed to attain the 1-hour ozone standards by its applicable attainment date (76 FR 56694, September 14, 2011), which commenters reference, likewise has no bearing on our action on the South Coast 2007 Ozone SIP under CAA section 110(k).

Moreover, we disagree with commenters' contention that the South Coast area failed to meet the 1-hour ozone standards ''because the commitments to develop and implement Black Box measures never fully came to fruition.'' The failure of an area to attain a NAAQS by the applicable attainment date does not mean that the State has failed to achieve the emissions reductions anticipated in the SIP, whether under CAA section 182(e)(5) or otherwise. The control strategy (including the ''black box'') that EPA previously approved for the South Coast area (62 FR 1150) was developed long before the attainment date using the best scientific information available at the time, including estimates of the area's carrying capacity using photochemical grid modeling and other technical tools and assumptions. This control strategy, however, has proven insufficient to attain the 1-hour ozone standards by the applicable attainment date of November 15, 2010, due to imperfect estimates as to the carrying capacity of the South Coast air basin with respect to the 1-hour ozone standards and other imperfections in the tools and assumptions upon which the prior plans were based. A State may fully implement all measures that are predicted as necessary to attain a particular NAAQS and still fail to attain that NAAQS.

Finally, we disagree with commenters' argument that EPA must direct CARB to ''extract from the black box needed reductions they know will not come from future technologies, reduce the overall size of the black box to a reasonable level and better define where the remaining black box reductions are expected to come from.'' It is not possible at this point in time to know that certain emission reductions will not come from future technologies, and we do not believe it is reasonable to require the State to reduce the

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

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

Comment: Commenters state that the commitment by CARB to submit a revision to EPA by 2020 provides little assurance that the black box strategies will work. Citing *Association of Irritated Residents (AIR)* v. *EPA,* 632 F.3d 584, 592 n.2 (9th Cir. 2011) (discussing the triennial review process in California law and the triennial inventory requirement under the federal Clean Air Act), commenters state that delaying a revision until 2020 and not requiring more frequent updates is arbitrary and capricious because both California law and the CAA contain requirements for updating clean air plans more frequently than every nine or ten years. Commenters also argue that delaying submittal of an update until 2020 is arbitrary and capricious because this is too late to allow time to remedy any problems that may need CARB regulations, transportation infrastructure and other technology developments that will require more than three years to develop.

Response: As discussed in our proposed approval, CARB has committed to achieve all of the emission reductions attributed to the section 182(e)(5) conceptual new technology measures by the attainment year (2023) and has satisfied the section 182(e)(5) criteria for approval of its new technology provisions by demonstrating that the measures are not relied on for RFP and committing to submit adopted contingency measures by 2020 to be implemented should the anticipated reductions from new or improved technologies not occur. In addition, as discussed above, CARB has stated its intent to continue the State's ambitious clean technology development programs and has committed to public outreach as well as annual meetings to update EPA on its progress. Although we recognize the commenters' concerns about the absence of any specific milestones or updates prior to 2020, the Act does not mandate that the SIP include specific enforceable actions during this period.

The triennial review process cited in *AIR* is a California state law requirement applicable to air quality plans developed pursuant to the California Clean Air Act to meet California's ambient air quality standards. *See* California Health and Safety Code Section 40924(b) and 40925(a). The CAA triennial inventory requirement cited in that decision is an emissions inventory requirement in CAA section 182(a)(3), which requires States with ozone nonattainment areas to submit revised inventories every three years until redesignation to attainment. *See also* 40 CFR part 51, subpart A. Neither the triennial review requirement under the California CAA nor the periodic inventory requirement under the Federal CAA applies to our evaluation of new technology provisions under CAA section 182(e)(5).

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

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

Response: CAA section 182(d)(1)(A) requires the State to ''submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures * * * to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements of [title 1, part D, subpart 2], to comply with the requirements of [sections 182] (b)(2)(B) and (c)(2)(B)'' and ''to consider measures specified in section 108(f) * * * and to choose from among and implement such measures as necessary to demonstrate attainment.''

We have determined that the South Coast 2007 8-hour Ozone plan meets the RFP requirements in sections 182(b)(2)(B) and (c)(2)(B) and demonstrates attainment consistent with the subpart 2 requirements and thus also meets the requirements of section 182(d)(1)(A) to adopt transportation control strategies and TCMs as necessary to demonstrate RFP and attainment. *See* 76 FR 57872, 57890 and TSD, section II.F.3; *see also* TSD, section III.A.2. (responding to comments on the approvability of the baseline emissions inventory and the attainment demonstration). The SIP also includes documentation that the state considered the transportation control measures listed in CAA section 108(f), evaluated their effectiveness in contributing to expeditious attainment, and concluded that they would not. *See* South Coast 2007 AQMP, Appendix IV–C; 76 FR 57872, 57879 and 57890 and TSD, sections II.C.2.b. and II.F.2.

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

F. Comments on Motor Vehicle Emissions Budgets

See section IV. Motor Vehicle Emissions Budgets for Transportation Conformity.

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

A. Approval Status of Control Strategy Measures

As part of its control strategy for attaining the 8-hour ozone standards in the South Coast, the District made specific commitments to adopt or revise fifteen measures for SIP credit on the schedule identified in the revised 2007 AQMP. See SCAQMD, *Revisions to the 2007 $PM_{2.5}$ and Ozone State Implementation Plans for the South Coast Air Basin and Coachella Valley (SIP Revisions),* Tables 2 through 5. The District has now completed most of its adoption actions and EPA has approved most of the adopted rules. See Table 1

below. The rules we have not yet approved have not been credited with emissions reductions in the attainment demonstration.

TABLE 1—APPROVAL AND SUBMITTAL STATUS OF DISTRICT RULES IN THE SOUTH COAST 2007 AQMP

District rule	Adoption date	Current SIP approval status
Rule 445—Woodburning fireplaces and wood stoves.	03/07/08	74 FR 27716, 6/11/09.
Rule 461—Gasoline transfer and dispensing	03/07/08	71 FR 18216, 4/11/06.
Rule 1110.2—Liquid and gaseous fuels—stationary ICEs.	02/01/08	74 FR 18995, 4/27/09.
Rule 1111—Further NO_X reductions from space heaters.	11/06/09	75 FR 46845, 08/04/10.
Rule 1127—Livestock Waste	08/06/04	Under EPA review.
Rule 1138—Restaurant Operations	2012	66 FR 36170, 7/11/01.
Rule 1143—Consumer Paint Thinners and Multi-Purpose Solvents.	12/03/10	76 FR 70888, 11/16/11.
Rule 1144—Vanishing oils and rust inhibitors	07/09/10	76 FR 70888, 11/16/11.
Rule 1145—Plastic, Rubber, Leather and Glass Coatings.	12/3/04	75 FR 40726, 07/14/10.
Rule 1146—NO_X from industrial, institutional, commercial boilers, steam gens, and process heaters.	09/05/08	Proposed limited approval/limited disapproval 76 FR 40303, 7/8/11.
Rule 1146.1—NO_X from small industrial, institutional, commercial boilers, steam gens, and process heaters.	09/05/08	Proposed limited approval/limited disapproval 76 FR 40303, 7/8/11.
Rule 1147—NO_X reductions from miscellaneous sources.	12/05/08	75 FR 46845, 08/04/10.
Rule 1149—Storage Tank and Pipeline Cleaning and Degassing.	05/02/08	74 FR 67821, 12/21/09.
Rule 2002—Further SO_X reductions from RECLAIM.	11/4/10	76 FR 50128, 8/12/11.
Rule 2301—Indirect Source Review	Scheduled for SCAQMD Board adoption in 2012.	
Rule 1123—Refinery Pilot Program	Scheduled for SCAQMD Board adoption in February 2012 [a].	N/A.
Rule 2449—SOON program	5/2/08	Under EPA review.
AB923 Light and medium duty vehicle high emitter program.	No rules associated with these measures	N/A.
AB923 Light and medium duty vehicle high emitter program.	No rules associated with these measures	N/A.

[a] See SCAQMD Governing Board Agenda Item 22, December 2, 2011 Board Meeting.

As part of its control strategy for attaining the 8-hour ozone standards in the South Coast, CARB committed to propose certain measures on the schedule identified in the 2007 State Strategy. These commitments, which were updated in the 2011 Ozone SIP revision, and their current approval status, are shown in Table 2. Of the measures listed in the 2007 State Strategy's updated rulemaking schedule, we note that only reductions from the ''SmogCheck Improvements,'' ''Cleaner In-Use Heavy-Duty Trucks and Buses,'' ''Cleaner In-Use Off-Road Equipment (over 25 hp),'' ''Ship Auxiliary Engine Cold Ironing and Clean Technology,'' ''Cleaner Main Ship Engines and Fuel—Main Engines,'' ''Clean UP Existing Harbor Craft,'' and ''Consumer Products'' are currently credited with emissions reductions in the attainment demonstration. See 76 FR 57872 (Table 5).

Generally, EPA will approve a State plan that takes emissions reduction credit for a control measure only where EPA has approved the measure as part of the SIP, or in the case of certain on-road and nonroad measures, where EPA has issued the related waiver of preemption or authorization under CAA section 209(b) or section 209(e). In our September 2011 proposed rule, in calculating and proposing to approve the State's aggregate emissions reductions commitment in connection with our proposed approval of the attainment demonstration, we assumed that full final approval, waiver, or authorization of a number of CARB rules would occur prior to our final action on the South Coast 8-hour ozone plan. See 76 FR 57872, at 57880–57881 (Table 5). Two specific CARB rules on which the attainment demonstration relies include the Truck Rule and the Drayage Truck Rule. We proposed approval of both rules at 76 FR 40652 (July 11, 2011), but will be unable to take final action on the rules until after taking final action on the plan because, while CARB has adopted the rules, the rules cannot take effect until approved by the California Office of Administrative Law (OAL) and such approval will not happen before EPA's final action must be taken on the plan. On November 9, 2011, OAL approved the Drayage Truck rule, and December 14, 2011 OAL approved the Cleaner In-Use Heavy Duty Truck rule. CARB submitted the drayage rule on December 9, and the truck rule on December 15, and we expect to complete action on these rules prior to the effective date of this rule.

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

• Both rules have been adopted by CARB, approved by the California OAL, and submitted to EPA as a revision to the California SIP,[35] and the adopted

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

versions are essentially the same as those for which EPA proposed approval;

• The comments that we have received on our proposed approval of the CARB rules contend that the rules are costly and may not be economically or technologically feasible, but such considerations cannot form the basis for EPA disapproval of a rule submitted by a state as part of a SIP [see *Union Electric Company* v. *EPA;* 427 U.S. 246, 265 (1976)];

We are confident that the final action on the rules will be completed in the near term and that, as a result, continued reliance by the South Coast 2007 8-hour ozone plan, and our final approval of it, on the emissions reductions associated with the rules is reasonable and appropriate. If, however, we are unable to complete a final action on the rules prior to the effective date of today's action, we will take appropriate remedial action to ensure that our action on the plan is fully supportable or to reconsider that action.

TABLE 2—REVISED 2007 STATE STRATEGY DEFINED MEASURES SCHEDULE FOR CONSIDERATION AND CURRENT STATUS

State measures	Expected action year	Implementation date	Current status
Defined Measures in 2007 State Strategy			
Smog Check Improvements (Bureau of Automotive Repair).	2007–2009	2008–2010; 2013	Elements approved 75 FR 38023 (July 1, 2010).[36]
Expanded Vehicle Retirement (AB 118)	2007	2009	Adopted by CARB, June 2009; by BAR, September 2010.
Modifications to Reformulated Gasoline Program	2007	2010	Approved 75 FR 26653 (May 12, 2010).
Cleaner In-use Heavy Duty Trucks (includes Drayage Truck Rule).	2007, 2008, 2010	2011–2015	Proposed approval 76 FR 40562, July 11, 2011. See discussion above.
Auxiliary Ship Cold Ironing and Other Clean Technologies.	2007–2008	2010	Waiver granted; 76 FR 77515, December 13, 2011.
Cleaner Main Ship Engines and Fuels	Fuel: 2008–2011 Engines: 2008	Fuel: 2009–2015 Engines: 2011.	Proposed approval 76 FR 40562, July 11, 2011. See discussion above.
Port Truck Modernization	2007, 2008, 2010	2008–2020	Adopted December 2007 and December 2008.
Accelerated Introduction of Cleaner Locomotives	2008	2012	Prop 1B funds awarded to upgrade line-haul locomotive engines not already accounted for by enforceable agreements with the railroads. Those cleaner line-hauls will begin operation by 2012.
Clean Up Existing Harbor Craft	2007, 2010	2009–2018	Waiver granted; 76 FR 77521, December 13, 2011.
Cleaner In-Use Off-Road Engines	2007, 2010	2009	Waiver decision pending.
New Emissions Standards for Recreational Boats	2013	tbd	Partially adopted, July, 2008; additional action expected 2013.
Expanded Off-Road Recreational Vehicle Emissions Standards.	2013	tbd	Partially adopted, July, 2008; additional action expected 2013.
Enhanced Vapor Recovery for Above Ground Storage Tanks.	2008	2009–2016	Adopted June, 2007.
Additional Evaporative Emissions Standards	2009	2010–2012	Partial adoption: September, 2008 (outboard marine tanks).
Consumer Products Program (I & II)	2008, 2009, 2011	2010–2014	Approved 74 FR 57074 (November 4, 2009), 76 FR 27613 (May 12, 2011), and approval signed December 7, 2011.

Sources: 2009 State Strategy Status Report, p. 23 (footnotes in original not included) and 2011 Progress Report, Appendix B, Table B–1. Additional information from *www.ca.arb.gov.* Only defined measures with 8-hour ozone, VOC, SO_X or NO_X reductions in South Coast are shown here.

B. Enforceable Commitments

For the 2007 Ozone Plan, the District committed to achieve certain aggregate emissions reductions of NO_X and VOC. See SCAQMD, *Revisions to the 2007 $PM_{2.5}$ and Ozone State Implementation Plans for the South Coast Air Basin and Coachella Valley (SIP Revisions),* Table 1. EPA is approving these aggregate emissions reductions commitments.

TABLE 3—SOUTH COAST AQMD 2007 OZONE PLAN EMISSIONS REDUCTIONS COMMITMENTS

[2023 Tons per summer day]

	NO_X	VOC
2023	9.2	19.3

Source: SCAQMD, 2007 AQMP, Table 4–2A, page 4–10, as revised by Appendix F of the 2011 Progress Report.

In the 2007 State Strategy, CARB committed to achieve certain aggregate emissions reductions of 141 tpd NO_X and 54 tpd VOC in the South Coast by the attainment year of 2023 that are sufficient, in combination with existing SIP-creditable measures, the District's commitments, and commitments for reductions under the CAA section 182(e)(5) new technologies provision, to attain the 1997 8-hour ozone standards in the South Coast by the applicable attainment date of June 15, 2024. CARB also made enforceable commitments to achieve aggregate emissions reductions in the South Coast in the RFP milestone years of 2014 and 2020. See 2007 State Strategy, p. 63; CARB Resolution 07–28, Attachment B, p. 4; and 2009 State Strategy Status Report, p. 20. See Table 4 below.

[36] California Assembly Bill 2289, passed in 2010, requires the Bureau of Automotive Repair to direct older vehicles to high performing auto technicians and test stations for inspection and certification effective 2013.

TABLE 4—CARB COMMITMENTS TO SPECIFIC AGGREGATE EMISSIONS REDUCTIONS

[Tons per summer day]

	NO_X	VOC
2014	152	46
2020 [a]	144	52
2023	141	54
2023 CAA 182(e)(5)	241	40

[a] The 2020 commitment in the South Coast is necessary to provide for attainment in the downwind nonattainment areas. The South Coast 8-hour ozone plan does not rely on this emission reduction commitment for 2020. *Source:* 2009 State Strategy Status Report, p. 20.

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

IV. Approval of Motor Vehicle Emissions Budgets for Transportation Conformity

CARB submitted revised transportation conformity motor vehicle emissions budgets for the South Coast nonattainment area and their documentation in Appendices A and C, respectively, of the 2011 Ozone SIP Revision. The revised budgets are for NO_X and VOC for the RFP years of 2011, 2014, 2017 and 2020, and the attainment year of 2023. No budgets were included for the RFP year of 2008 because it is no longer applicable as a conformity analysis year. Additional information associated with the motor vehicle emission budget calculations were provided in Attachment 1 of the CARB Ozone SIP Revision supplement and an electronic mail from CARB.[37]

As part of our review of the approvability of the budgets, we have evaluated the revised budgets using our adequacy criteria in 40 CFR 93.318(e)(4). We posted the revised budgets on our Web site for adequacy review on September 19, 2011 for a 30-day comment period which ended on October 19, 2011 (see *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*). We received no comments on our adequacy posting. We have completed our adequacy review of these budgets (see the TSD, Section H) and also have completed our detailed review of the South Coast 2007 8-hour ozone plan and supplemental submittals, including the 2011 Ozone SIP Revision, and are approving the SIP's attainment and RFP demonstrations. We have also reviewed the revised budgets submitted with the 2011 Ozone SIP Revision and have found that they are consistent with the attainment and RFP demonstrations and are based on control measures that have already been adopted and implemented. Therefore, we are approving the 2011, 2014, 2017, 2020 and 2023 budgets as shown in Table 5 below.

Now that the approval of the budgets is finalized, the area's metropolitan planning organization, the Southern California Association of Governments (SCAG) and the U.S. Department of Transportation are required to use the revised budgets in transportation conformity determinations after the effective date of the approval. Due to the formatting of the budgets (combining emissions changes, recession impacts and reductions from control measures), CARB will need to provide SCAG with emission reductions associated with the control measures incorporated into the budgets for the appropriate analysis years in future conformity determinations per 40 CFR section 93.122. In addition, for these conformity determinations, the motor vehicle emissions from implementation of the transportation plan should be projected and compared to the budgets at the same level of accuracy as the budgets in the plan, for example, emissions should be rounded to the nearest ton (e.g., 11 tpd).

TABLE 5—MOTOR VEHICLE EMISSIONS BUDGETS IN THE SOUTH COAST 2007 8–HOUR OZONE SIP AS REVISED ON JULY 21, 2011

[Tons per summer day]

	2011		2014		2017		2020		2023	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
South Coast Air Basin	172	328	136	277	119	224	108	185	99	140

Source: "8-Hour Ozone State Implementation Plan Revisions and Technical Revisions to the $PM_{2.5}$ State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins," Appendix C, submitted July 29, 2011.

During the comment period on the proposed approval of the South Coast 2007 8-hour ozone SIP, CARB requested that EPA limit the duration of our approval of the motor vehicle emission budgets submitted on July 29, 2011 until the effective date of EPA's adequacy finding for any subsequently submitted budgets. See letter, Douglas Ito, Chief, Air Quality and Transportation Planning Branch, California Air Resources Board, October 17, 2011.

The transportation conformity rule allows EPA to limit the approval of budgets. See 40 CFR 93.118(e)(1). However, we can only consider a state's request to limit our approval if a state adequately addresses three factors. First, the state must acknowledge and explain why the budgets under consideration have become outdated or deficient; second, the state must make a commitment to update the budgets as part of a comprehensive SIP update. Finally, the state must request that EPA limit the duration of its approval to the point in time when the new budgets have been found to be adequate for transportation conformity purposes. See 67 FR 69141 (November 15, 2002) (limiting our prior approval of budgets in certain California SIPS).

[37] See electronic mail from Douglas Ito, Chief, Air Quality and Transportation Planning Branch, CARB, to Elizabeth Adams, Deputy Director, Air Division, EPA Region 9, dated August 11, 2011.

Because CARB's request does not include all these elements, we cannot address CARB's request at this time. Once CARB has submitted additional information to adequately address these factors, EPA intends to propose to limit the duration of our approval of the budgets in the South Coast 2007 8-hour ozone plan and to provide the public an opportunity to comment.[38] The duration of the approval of the budgets will not be limited until we complete the rulemaking initiated by that proposal.

V. Final Actions

For the reasons discussed in our September 16, 2011 proposal and explained further above, EPA is approving California's SIP for attaining the 1997 8-hour ozone NAAQS in the South Coast nonattainment area. California's 8-hour ozone attainment SIP for the South Coast nonattainment area is composed of the relevant portions of the South Coast 2007 AQMP as revised in 2011 and the South Coast-specific portions of CARB's 2007 State Strategy as revised in 2009 and 2011 that address CAA requirements and EPA regulations for attainment of the 1997 8-hour ozone standards in the South Coast nonattainment area.

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

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

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

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

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

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

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

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

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

9. The SCAQMD's commitments to achieve specific aggregate emission reductions of NO_X and VOC as listed in Table 4–2A of the South Coast 2007 AQMP (as revised March 4, 2011) and as given in Table 3; and

10. CARB's commitments to propose certain defined measures, as listed in Appendix B, Table B–1 of the 2011 Ozone SIP Revision; to achieve specific aggregate emission reductions of 152 tpd of NO_X and 46 tpd of VOC by 2014; 141 tpd of NO_X and 54 tpd of VOC from existing technologies in the South Coast nonattainment area by 2023; and 241 tpd of NO_X and 40 tpd of VOC from new technologies by 2023 as provided in CARB Resolution 07–28, Attachment B, and the 2009 State Strategy update, p. 20; and to achieve the emissions reductions needed to attain the 8-hour ozone standards in the South Coast nonattainment area as provided in CARB Resolution 07–28, Attachment B, p. 4, 2009 State Strategy Status Report, p. 20 and as given in Table 4.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

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

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

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

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in

[38] In the same comment letter, CARB also requested that we limit the duration of our recent approval of the $PM_{2.5}$ motor vehicle budgets. These budgets were also submitted on July 29, 2011 as an appendix to the 2011 Ozone SIP Revision.

estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

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

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

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

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

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

I. National Technology Transfer and Advancement Act

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

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

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

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

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

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective on April 30, 2012.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2012. Filing a petition for reconsideration by

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 15, 2011.

Jared Blumenfeld,

Regional Administrator, Region 9.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraph (c)(397) (ii)(A)(*5*), (c)(398)(ii)(A)(*3*) and (c)(401)(ii)(A)(*1*)*(i)* and (*2*)*(i).*

§ 52.220 Identification of plan.

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(c) * * *

(397) * * *

(ii) * * *

(A) * * *

(*5*) CARB Resolution No. 07–28 with Attachments A and B, September 27, 2007. Commitment to achieve the total emissions reductions necessary to attain the Federal standards in the South Coast air basin, which represent 152 tpd of NO_X and 46 tpd of VOC by 2014, and 54 tpd of VOC and 141 tpd of nitrogen oxides by 2023 for purposes of the 1997 8-hour ozone NAAQS, as described in Resolution No. 07–28 at Attachment B, p. 4, and modified by CARB Resolution No. 09–34 (April 24, 2009) adopting the ''Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revision to the SIP reflecting Implementation of the 2007 State Strategy.''

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(398) * * *

(ii) * * *

(A) * * *

(3) SCAQMD Governing Board Resolution 07–9, ''A Resolution of the Governing Board of the South Coast Air Quality Management District certifying the final Program Environmental Impact Report for the 2007 Air Quality Management Plan, adopting the Final 2007 Air Quality Management Plan (AQMP), to be referred to after adoption as the Final 2007 AQMP, and to fulfill USEPA Requirements for the use of emissions reductions form the Carl Moyer Program in the State Implementation Plan,'' June 1, 2007. Commitments to achieve emissions reductions (including emissions reductions of 19.3 tpd of VOC and 9.2 tpd of nitrogen oxides by 2023) as described by SCAQMD Governing Board Resolution No. 07–9, p. 10, June 1, 2007, and modified by SCAQMD Governing Board Resolution 11–9, p. 3, March 4, 2011, and commitments to adopt and submit control measures as described in Table 4–2A of the Final 2007 AQMP, as amended March 4, 2011.

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(401) * * *

(ii) * * *

(A) * * *

(*1*) * * *

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

(*2*) * * *

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

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[FR Doc. 2012–4673 Filed 2–29–12; 8:45 am]

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