

impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- 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 (59 FR 7629, February 16, 1994).

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

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides, Reporting recordkeeping requirements.

Dated: September 29, 2017.

**Catherine R. McCabe,**

*Acting Regional Administrator, Region 2.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2017–0580; FRL–9969–81–Region 9]**

### Contingency Measures for the 1997 PM<sub>2.5</sub> Standards; California; San Joaquin Valley; Correction of Deficiency

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to determine that the deficiency that formed the basis for a disapproval of the contingency measures submitted for the San Joaquin Valley nonattainment area for the 1997 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards has been corrected. The proposed determination is based on the Agency’s approval of revisions to the California State Implementation Plan that include regulations establishing standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines and a finding that the purposes of the contingency measure requirement, as applicable to the San Joaquin Valley based on its initial designation as a nonattainment area for the 1997 PM<sub>2.5</sub> standards, have been fulfilled. If finalized as proposed, the sanctions clocks triggered by the disapproval will be permanently stopped.

**DATES:** Any comments must arrive by November 22, 2017.

**ADDRESSES:** Submit your comments, identified by docket number EPA–R09–OAR–2017–0580 at <https://www.regulations.gov>, or via email to Rory Mays at [mays.rory@epa.gov](mailto:mays.rory@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Rory Mays, EPA Region IX, (415) 972–3227, [mays.rory@epa.gov](mailto:mays.rory@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, whenever “we,” “us,” or “our” is used, we mean the EPA.

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#### I. Background

Under sections 108 and 109 of the Clean Air Act (CAA or “Act”), the EPA establishes national ambient air quality standards (NAAQS). Over the years, the EPA has established NAAQS for particulate matter, ozone, carbon monoxide, lead, nitrogen dioxide, and sulfur dioxide. Under CAA section 110, each state must adopt and submit state implementation plans (SIPs) to implement, maintain, and enforce the NAAQS within such state. Under CAA section 107, the EPA designates areas of the country as “nonattainment” if the area does not meet a particular NAAQS or if the area contributes to ambient air quality in a nearby area that does not meet the NAAQS. In response to a nonattainment designation, states must revise their SIPs to provide for, among other things, reasonable further progress (RFP), attainment by the most expeditious date practicable but no later than the applicable attainment date, and contingency measures in the event the area fails to meet RFP or attainment by the applicable attainment date. *See*, generally, part D of title I of the CAA. Under CAA section 110(k), the EPA is charged with review of each SIP and SIP revision submitted by each state for compliance with applicable CAA requirements and for approval or disapproval (in whole or in part) through notice-and-comment

rulemaking published in the **Federal Register**.

Under CAA section 179(a), disapproval of a required SIP or SIP revision (in whole or in part) triggers a sanctions clock that runs from the effective date of the final action. Under 40 CFR 52.31, the offset sanctions in CAA section 179(b)(2) apply in the nonattainment area 18 months after the effective date of the disapproval action, and the highway sanctions in CAA section 179(b)(1) apply in the area six months thereafter, unless the state submits, and the EPA approves, prior to the implementation of the sanctions, a SIP submission that corrects the deficiencies identified in the disapproval action.<sup>1</sup>

On July 18, 1997, the EPA established new NAAQS for particles less than or equal to 2.5 micrometers in diameter (PM<sub>2.5</sub>), including an annual standard of 15.0 micrograms per cubic meter (µg/m<sup>3</sup>) based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations and a 24-hour (daily) standard of 65 µg/m<sup>3</sup> based on a 3-year average of 98th percentile 24-hour PM<sub>2.5</sub> concentrations.<sup>2</sup> PM<sub>2.5</sub> can be emitted directly into the atmosphere as a solid or liquid particle (primary PM<sub>2.5</sub> or direct PM<sub>2.5</sub>) or can be formed in the atmosphere as a result of various chemical reactions from precursor emissions of nitrogen oxides (NO<sub>x</sub>), sulfur oxides (SO<sub>x</sub>), volatile organic compounds, and ammonia (secondary PM<sub>2.5</sub>).<sup>3</sup>

Effective April 5, 2005, the EPA designated the San Joaquin Valley in California as nonattainment for the 1997 PM<sub>2.5</sub> NAAQS.<sup>4</sup> The San Joaquin Valley PM<sub>2.5</sub> nonattainment area is located in the southern half of California's central valley and includes all of San Joaquin, Stanislaus, Merced, Madera, Fresno,

Tulare, and Kings counties, and the valley portion of Kern County.<sup>5</sup> The local air district with primary responsibility for developing SIPs to attain the NAAQS in this area is the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District). Once the District adopts the regional plan, the District submits the plan to the California Air Resources Board (CARB) for adoption as part of the California SIP. CARB is the state agency responsible for adopting and revising the California SIP and for submitting the SIP and SIP revisions to the EPA.

Between 2007 and 2011, CARB made six SIP submittals to address nonattainment area planning requirements for the 1997 PM<sub>2.5</sub> NAAQS in the San Joaquin Valley.<sup>6</sup> We refer to these submittals collectively as the "2008 PM<sub>2.5</sub> Plan." On November 9, 2011, the EPA approved all elements of the 2008 PM<sub>2.5</sub> Plan except for the contingency measures, which the EPA disapproved for failure to satisfy the requirements of CAA section 172(c)(9).<sup>7</sup> In approving the 2008 PM<sub>2.5</sub> Plan (*i.e.*, excluding the contingency measures), we approved an attainment date of April 5, 2015, but the plan provided a demonstration of attainment in 2014 (*i.e.*, the calendar year prior to the attainment date), and thus we refer to 2014 as the attainment year.<sup>8</sup>

Section 172(c)(9) requires states with nonattainment areas to revise the SIP to provide for the implementation of specific measures to be undertaken if the area fails to meet RFP or fails to attain the NAAQS by the applicable attainment date. As the EPA has explained in guidance to the states regarding the contingency measure requirements in section 172(c)(9), contingency measures should, at a minimum, ensure that an appropriate level of emission reduction progress continues to be made if attainment or RFP is not achieved and additional planning by the state is needed.<sup>9</sup> The purpose of such measures is to provide a cushion of emissions reductions while

the plan is being revised to meet the missed milestone.<sup>10</sup> The contingency measures are to be implemented in the event that the area does not meet RFP or attain the NAAQS by the attainment date, and should represent a portion of the actual emission reductions necessary to bring about attainment in the area.<sup>11</sup> Accordingly, the EPA has recommended that the emission reductions anticipated by the contingency measures should be equal to approximately one year's worth of emission reductions needed to achieve RFP for the area.<sup>12</sup>

The contingency measure element of the 2008 PM<sub>2.5</sub> Plan included several different types of measures including a new commitment to an action by the District, surplus reductions in the RFP demonstration, post-2014 emissions reductions, contingency provisions in an adopted rule, reductions from incentive funds, and reductions from specifically-identified implemented rules that were not otherwise relied on in the attainment and RFP demonstrations.<sup>13</sup>

We disapproved the contingency measure element of the 2008 PM<sub>2.5</sub> Plan because the submittal failed to meet the requirements of section 172(c)(9) because, while some of the individual measures appeared to have merit for contingency measure purposes, the plan failed to provide sufficient information for the EPA to determine whether the emissions reductions from those individual measures that were creditable for contingency measure purposes provided for roughly one year's worth of RFP in excess of the 2012 RFP milestone target or in the year following the 2014 attainment year.<sup>14</sup> More specifically, based on the emissions estimates in the 2008 PM<sub>2.5</sub> Plan, one year's worth of RFP was calculated to be 31.6 tons per day (tpd) of NO<sub>x</sub>, 2.5 tpd of direct PM<sub>2.5</sub>, and 0.2 tpd of SO<sub>x</sub>. While the plan provided sufficient information with respect to SO<sub>x</sub>, the plan did not provide sufficient

<sup>1</sup> The offset sanction applies to New Source Review (NSR) permits for new major stationary sources or major modifications proposed in a nonattainment area, and it increases the ratio of emissions reductions (*i.e.*, offsets) to increased emissions from the new or modified source, which must be obtained to receive an NSR permit, to 2 to 1. The highway sanction prohibits, with certain exceptions, the U.S. Department of Transportation from approving or funding transportation projects in a nonattainment area.

<sup>2</sup> 62 FR 36852 (July 18, 1997) and 40 CFR 50.7. Effective December 18, 2006, the EPA strengthened the 24-hour PM<sub>2.5</sub> NAAQS by lowering the level to 35 µg/m<sup>3</sup>. 71 FR 61144 (October 17, 2006) and 40 CFR 50.13. Effective March 18, 2013, the EPA strengthened the primary annual PM<sub>2.5</sub> NAAQS by lowering the level to 12.0 µg/m<sup>3</sup>. 78 FR 3086 (January 15, 2013) and 40 CFR 50.18. In this preamble, all references to the PM<sub>2.5</sub> NAAQS, unless otherwise specified, are to the 1997 24-hour standard (65 µg/m<sup>3</sup>) and annual standard (15.0 µg/m<sup>3</sup>) as codified in 40 CFR 50.7.

<sup>3</sup> See 72 FR 20586 at 20589 (April 25, 2007).

<sup>4</sup> 70 FR 944 (January 5, 2005), codified at 40 CFR 81.305.

<sup>5</sup> For a precise description of the geographic boundaries of the San Joaquin Valley nonattainment area, see 40 CFR 81.305.

<sup>6</sup> 76 FR 69896 at n.2 (November 9, 2011) (final action on 2008 PM<sub>2.5</sub> Plan).

<sup>7</sup> *Id.*, at 69924.

<sup>8</sup> In connection with the motor vehicle emissions budgets (MVEBs) developed for the plan, the EPA approved a trading ratio of 9 tons per day (tpd) of NO<sub>x</sub> to 1 tpd of direct PM<sub>2.5</sub>. See 76 FR 41338, at 41361 (July 13, 2011) (proposed rule); and 76 FR 69896, at 69924 (November 9, 2011) (final rule). Later in this document, we rely on the trading ratio to determine that post-2014 attainment year emissions reductions from mobile sources are equivalent to approximately one year's worth of RFP with respect to direct PM<sub>2.5</sub> emissions.

<sup>9</sup> 57 FR 13498, at 13511 (April 16, 1992).

<sup>10</sup> 72 FR 20586, at 20642–20643 (April 25, 2007).

<sup>11</sup> *Id.*, at 20643.

<sup>12</sup> *Id.*, and 59 FR 41998, at 42014–42015 (August 16, 1994).

<sup>13</sup> See section 9.2 ("Contingency Measures") in the 2008 PM<sub>2.5</sub> Plan; EPA Region 9, Technical Support Document (TSD) and Responses to Comments, Final Rule on the San Joaquin Valley 2008 PM<sub>2.5</sub> State Implementation Plan, September 30, 2011, pages 126–136.

<sup>14</sup> One year's worth of RFP is the yardstick the EPA has cited historically as the approximate quantity of emissions reductions that contingency measures must provide to satisfy CAA section 172(c)(9). See the EPA's September 30, 2011 TSD, pages 133–134.

information with respect to NO<sub>x</sub> and direct PM<sub>2.5</sub>.<sup>15</sup>

Several environmental and community organizations filed a petition for review challenging the EPA's November 9, 2011 approval of the attainment demonstration and reasonable further progress (RFP) demonstrations in the 2008 PM<sub>2.5</sub> Plan, arguing, among other things, that the 2008 PM<sub>2.5</sub> Plan had calculated the necessary emissions reductions and forecasts in part based on state-adopted mobile source measures that were not themselves incorporated into the federally enforceable plan, in violation of the CAA. The court case is known as *Committee for a Better Arvin v. EPA*, Case No. 11–73924 (9th Cir.). At that time, the EPA's longstanding and consistent practice had been to allow California SIPs to rely on emission reduction credit for state mobile source rules waived or authorized by the EPA under section 209 of the Act ("waiver measures") to meet certain SIP requirements, including RFP, attainment and contingency measures, without requiring approval of those control measures into the SIP under section 110 of the Act.

On July 3, 2013, CARB made a new submittal to meet the contingency measure requirements for the 1997 PM<sub>2.5</sub> NAAQS in the San Joaquin Valley ("2013 Contingency Measure SIP") and to correct the deficiencies identified in the EPA's November 2011 action disapproving the contingency measure element of the 2008 PM<sub>2.5</sub> Plan.<sup>16</sup> The 2013 Contingency Measure SIP contained the District's demonstration that actual emission levels in the San Joaquin Valley in 2012 were below the milestone year targets identified in the 2008 PM<sub>2.5</sub> Plan that had been approved by the EPA for the 2012 RFP year, and identified contingency measures that provided 2015 (*i.e.*, post-2014 attainment year) emission reductions not relied on for RFP or attainment that were equivalent to one year's worth of RFP. The specific measures that were relied upon included CARB's mobile source measures, the District's residential wood burning control measure (District Rule 4901), the District's implementation of incentive programs, and substitution of surplus direct PM<sub>2.5</sub> reductions for NO<sub>x</sub> reductions.<sup>17</sup> CARB's mobile source

measures (and associated vehicle fleet turnover) were credited with providing 65 percent of the contingency-related emissions reductions in 2015 for NO<sub>x</sub>. The District's residential wood burning control measure, implementation of incentive measures, and substitution ratio were credited as providing the rest of the emissions reductions needed for NO<sub>x</sub> and the necessary quantity of reductions for direct PM<sub>2.5</sub>.

On May 22, 2014, the EPA fully approved the 2013 Contingency Measure SIP based on the Agency's conclusion that the SIP submittal corrected the outstanding deficiencies in the CAA section 172(c)(9) contingency measures for the 1997 PM<sub>2.5</sub> NAAQS.<sup>18</sup> In its May 22, 2014 final action on the 2013 Contingency Measure SIP, the EPA determined that the requirement for contingency measures for failure to meet RFP requirements was moot because the District had already met the RFP requirements relevant to the 2008 PM<sub>2.5</sub> Plan by the time of EPA's May 22, 2014 action.<sup>19</sup> With respect to the requirement for contingency measures for failure to attain, the EPA determined that CARB's continuing implementation of the mobile source control measures in 2015, together with other fully-adopted measures implemented by the District in the same timeframe, would provide for an appropriate level of continued emission reduction progress should the San Joaquin Valley fail to attain the 1997 PM<sub>2.5</sub> NAAQS by the applicable attainment date, thereby meeting the requirement for contingency measures for failure to attain.<sup>20</sup>

At the time of the EPA's 2014 action, there was not yet a decision in the *Committee for a Better Arvin v. EPA* challenge to our 2011 approval. Environmental and community organizations filed a petition for review of the EPA's May 22, 2014 action on the 2013 Contingency Measure SIP. They again argued that the EPA violated the CAA by approving that submittal even though it did not include the waiver measures on which it relied to achieve the necessary emissions reductions to meet contingency measure requirements.<sup>21</sup>

On May 20, 2015, the U.S. Court of Appeals for the Ninth Circuit issued its decision in *Committee for a Better Arvin v. EPA*. The court held that the EPA violated the CAA by approving the 2008

PM<sub>2.5</sub> Plan even though the SIP did not include the waiver measures on which the plan relied to achieve its emission reduction goals.<sup>22</sup> The court rejected the EPA's arguments supporting the Agency's longstanding practice, finding that section 110(a)(2)(A) of the Act plainly mandates that all control measures on which states rely to attain the NAAQS must be "included" in the SIP and subject to enforcement by the EPA and citizens. The court remanded the EPA's November 9, 2011 action for further proceedings consistent with the decision.

On June 10, 2015, the EPA filed an unopposed motion for voluntary remand of the May 22, 2014 final rule without vacatur based, *inter alia*, on the Agency's substantial and legitimate need to reexamine this rulemaking in light of the Ninth Circuit's May 20, 2015 decision in *Committee for a Better Arvin*. On June 15, 2015, the Ninth Circuit granted the EPA's motion and remanded the final rule to the EPA.<sup>23</sup>

On remand, consistent with the court's ruling in *Committee for a Better Arvin*, we withdrew our May 22, 2014 approval of the 2013 Contingency Measure SIP because it was predicated on an interpretation of the CAA that the Court rejected as being inconsistent with the CAA.<sup>24</sup> In that same action, we disapproved the 2013 Contingency Measure SIP for failure to satisfy the requirements of section 179(c)(9) of the Act because of the reliance on California waiver measures that the EPA had not approved into the California SIP.<sup>25</sup> The disapproval action became effective on June 13, 2016 and started a sanctions clock for imposition of offset sanctions 18 months after June 13, 2016 and highway sanctions 6 months later, pursuant to CAA section 179 and our regulations at 40 CFR 52.31. As a result, offset sanctions would apply on December 13, 2017 and highway sanctions would apply on June 13, 2018, unless the EPA were to determine that the deficiency forming the basis of the disapproval has been corrected.

On August 14, 2015, CARB submitted a SIP revision consisting of certain state regulations establishing standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines. The regulations submitted on August 14, 2015 had previously been

<sup>15</sup> See Table 10 on page 41359 of the EPA's proposed action on the 2008 PM<sub>2.5</sub> Plan at 76 FR 41338 (July 13, 2011).

<sup>16</sup> 78 FR 53313 at 53115–53116 (August 28, 2013) (proposed action on the 2013 Contingency Measure SIP).

<sup>17</sup> SJVUAPCD, "Quantification of Contingency Reductions for the 2008 PM<sub>2.5</sub> Plan," June 30, 2013.

<sup>18</sup> 79 FR 29327 (May 22, 2014) (final action on the 2013 Contingency Measure SIP).

<sup>19</sup> 79 FR 29327 at 29350.

<sup>20</sup> 78 FR 53113 at 53123 and 79 FR 29327 at 29350.

<sup>21</sup> *Medical Advocates for Healthy Air v. EPA*, Case No. 14–72219 (9th Cir.).

<sup>22</sup> *Committee for a Better Arvin v. EPA*, 786 F.3d 1169 (9th Cir. 2015) ("Committee for a Better Arvin") (partially granting and partially denying petition for review).

<sup>23</sup> *Medical Advocates for Healthy Air v. EPA*, Case No. 14–72219 (9th Cir.), Order, Docket Entry 30.

<sup>24</sup> 81 FR 29498 (May 12, 2016).

<sup>25</sup> *Id.*, at 29500.

issued waivers or had been authorized by the EPA under CAA section 209, and constitute the “waiver measures” relied upon in California air quality plans to reduce emissions and meet various nonattainment area requirements, such as RFP, attainment, and contingency measures. The regulations cover a wide range of mobile sources, including on-road passenger cars, trucks, and motorcycles; in-use transport refrigeration units, off-road diesel-fueled fleets, and portable diesel-fueled engines; commercial harbor craft, auxiliary diesel engines on ocean-going vessels, and spark-ignition marine engines and boats; off-road large spark-ignition and compression-ignition engines; and mobile cargo handling equipment, small off-road engines, and off-highway recreational vehicles and engines.<sup>26</sup> On June 16, 2016, the EPA took final action to approve the mobile source regulations and incorporate them as part of the federally-enforceable California SIP.<sup>27</sup> Since the 2014 attainment year, the waiver measures and related vehicle fleet turnover have reduced emissions from mobile sources in the San Joaquin Valley by 44.5 tpd of NO<sub>x</sub> and 1.5 tpd of direct PM<sub>2.5</sub>.<sup>28</sup>

## II. Proposed Determination and Termination of Sanctions

The EPA’s approval into the SIP of the comprehensive set of California waiver measures on June 16, 2016 as described above addresses the specific deficiency that formed the basis of our May 12, 2016 disapproval of the 2013 Contingency Measure SIP. In addition, the emissions reductions from the SIP-approved waiver measures have achieved post-attainment year emission reductions equivalent to approximately one year’s worth of RFP as calculated for the 2008 PM<sub>2.5</sub> Plan,<sup>29</sup> and are

thereby providing for sufficient progress towards attainment of the 1997 PM<sub>2.5</sub> standards while a new attainment plan is being prepared.<sup>30</sup> Therefore, we find that the purpose of the contingency measure requirement, as applicable to the San Joaquin Valley based on the area’s designation in 2005 for the 1997 PM<sub>2.5</sub> NAAQS, have been fulfilled. Accordingly, we are proposing to determine that the deficiency that formed the basis for the disapproval of the 2013 Contingency Measure SIP has been corrected. If finalized as proposed, the determination would permanently stop the sanctions clocks triggered by the disapproval. See CAA section 179(a) and 40 CFR 52.31(d)(5).

## III. Request for Public Comment

For the next 30 days, we will accept comments from the public on this proposal to determine that the deficiency that formed the basis of our disapproval of the 2013 Contingency Measure SIP has been corrected by the approval of the waiver measures as a revision to the California SIP and the finding that the waiver measures have achieved post-2014 attainment year emissions reductions sufficient to fulfill the purposes of the contingency measure requirement in CAA section 172(c)(9). The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this preamble.

## IV. Statutory and Executive Order Reviews

This proposed action makes a determination that a deficiency that is the basis for sanctions has been corrected and imposes no additional requirements. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

trading ratio of 9 tpd of NO<sub>x</sub> to 1 tpd of direct PM<sub>2.5</sub> that the EPA approved for the MVEBs in the 2008 PM<sub>2.5</sub> Plan.

<sup>30</sup>In response to the EPA’s determination of failure to attain the 1997 PM<sub>2.5</sub> NAAQS, 81 FR 84481 (November 23, 2016), the District and CARB are preparing a new attainment demonstration with new contingency measures for the 1997 PM<sub>2.5</sub> NAAQS for the San Joaquin Valley.

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

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

In addition, this proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have a substantial direct effect on one or more Indian tribes, 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Sulfur oxides, Particulate matter.

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

Dated: October 10, 2017.

**Douglas Luehe,**

*Acting Regional Administrator, Region IX.*

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<sup>26</sup> 81 FR 39424, at 39424–39428 (June 16, 2016).

<sup>27</sup> 81 FR 39424 (June 16, 2016). Later in 2016, CARB submitted a second set of mobile source regulations waived or authorized by the EPA under CAA section 209, including regulations establish new or revised standards and other requirements relating to the control of emissions from such sources as on-road heavy-duty trucks, off-road large spark-ignition and compression-ignition engines, and small off-road engines. The EPA recently took final action to approve CARB’s second set of mobile source regulations as a revision to the California SIP. 82 FR 1446 (March 21, 2017).

<sup>28</sup> Emissions projections for the San Joaquin Valley were made using CARB’s criteria emissions model, “CEPAM: 2016 SIP—Standard Emission Tool,” for years 2014 and 2017 using a base year of 2012, reflecting growth and control factors, and representing tpd on an annual average basis.

<sup>29</sup> Emissions reductions of NO<sub>x</sub> exceed those necessary for NO<sub>x</sub> for contingency measures purposes (44.5 tpd achieved – 31.6 tpd needed) and provide excess emissions reductions sufficient to cover the shortfall of 1.0 tpd of direct PM<sub>2.5</sub> (2.5 tpd needed – 1.5 tpd achieved) by applying the