



Billing Code: 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR part 52**

**[EPA-R09-OAR-2015-0489; FRL-9932-74-Region 9]**

Revision to the California State Implementation Plan; San Joaquin Valley; Demonstration of Creditable Emission Reductions from Economic Incentive Programs

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a demonstration of creditable emission reductions submitted by California for approval into the San Joaquin Valley (SJV) portion of the California State Implementation Plan (SIP). This SIP submittal demonstrates that certain state mobile source incentive funding programs have achieved specified amounts of reductions in emissions of nitrogen oxides (NO<sub>x</sub>) and fine particulate matter (PM<sub>2.5</sub>) in the SJV area by 2014. The effect of this action would be to approve these amounts of emission reductions for credit toward an emission reduction commitment in

the California SIP. We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R09-OAR-2015-0489, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: steckel.andrew@epa.gov
3. *Mail or deliver*: Andrew Steckel (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information

unless you provide it in the body of your comment. If you send email directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* Generally, documents in the docket for this action are available electronically at [www.regulations.gov](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 at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. **FOR FURTHER INFORMATION CONTACT:** Idalia Perez, EPA Region IX, [perez.idalia@epa.gov](mailto:perez.idalia@epa.gov), (415) 972-3248.

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

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#### **I. Background**

On July 18, 1997, EPA established new national ambient air quality standards (NAAQS) for particles less than or equal to 2.5 micrometers ( $\mu\text{m}$ ) in diameter ( $\text{PM}_{2.5}$ ), including an annual standard of 15.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) based on a 3-year average of annual mean  $\text{PM}_{2.5}$  concentrations, and a 24-hour (daily) standard of 65  $\mu\text{g}/\text{m}^3$  based on a 3-year average of 98th percentile 24-hour  $\text{PM}_{2.5}$  concentrations.<sup>1</sup> EPA established these standards after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to  $\text{PM}_{2.5}$  concentrations above these levels.

Following promulgation of a new or revised NAAQS, EPA is required under Clean Air Act (CAA) section 107(d) to designate

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<sup>1</sup> 62 FR 36852 (July 18, 1997) and 40 CFR 50.7. Effective December 18, 2006, EPA strengthened the 24-hour  $\text{PM}_{2.5}$  NAAQS by lowering the level to 35  $\mu\text{g}/\text{m}^3$ . 71 FR 61144 (October 17, 2006) and 40 CFR 50.13. Effective March 18, 2013, EPA strengthened the annual  $\text{PM}_{2.5}$  NAAQS by lowering the level to 12  $\mu\text{g}/\text{m}^3$ . 78 FR 3086 (January 15, 2013) and 40 CFR 50.18. In this preamble, all references to the  $\text{PM}_{2.5}$  NAAQS, unless otherwise specified, are to the 1997 24-hour standard (65  $\mu\text{g}/\text{m}^3$ ) and annual standard (15.0  $\mu\text{g}/\text{m}^3$ ) as codified in 40 CFR 50.7.

areas throughout the nation as attaining or not attaining the NAAQS. On January 5, 2005, EPA published initial air quality designations for the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS, using air quality monitoring data for the three-year periods of 2001-2003 and 2002-2004.<sup>2</sup> These designations became effective April 5, 2005.<sup>3</sup> EPA designated the San Joaquin Valley (SJV) area<sup>4</sup> as nonattainment for both the 1997 annual PM<sub>2.5</sub> standard (15.0 µg/m<sup>3</sup>) and the 1997 24-hour PM<sub>2.5</sub> standard (65 µg/m<sup>3</sup>).<sup>5</sup>

Between 2007 and 2011, California made six SIP submittals to address nonattainment area planning requirements for the 1997 PM<sub>2.5</sub> NAAQS in the SJV.<sup>6</sup> We refer to these submittals collectively as the "2008 PM<sub>2.5</sub> Plan." On November 9, 2011, EPA approved all elements of the 2008 PM<sub>2.5</sub> Plan except for the contingency measures, which EPA disapproved.<sup>7</sup> As part of this action, EPA approved, *inter alia*, commitments by the California Air Resources Board (CARB) and the SJVUAPCD to achieve specific amounts of NO<sub>x</sub> and PM<sub>2.5</sub> emission reductions by 2014.<sup>8</sup> In July

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<sup>2</sup> 70 FR 944 (January 5, 2005).

<sup>3</sup> *Id.*

<sup>4</sup> The SJV area encompasses over 23,000 square miles and includes all or part of eight counties in California's central valley: San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and Kern. For a precise description of the geographic boundaries of the San Joaquin Valley nonattainment area, see 40 CFR 81.305.

<sup>5</sup> 40 CFR 81.305.

<sup>6</sup> 76 FR 69896 at n. 2 (November 9, 2011).

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

<sup>8</sup> 76 FR 69896, 69926 (codified at 40 CFR 52.220(c) (356) (ii) (B) (2) and 52.220(c) (392) (ii) (A) (2)).

2013, the State submitted a revised PM<sub>2.5</sub> contingency measure plan for the SJV, which EPA fully approved in May 2014.<sup>9</sup>

On May 20, 2015, the Ninth Circuit Court of Appeals issued its decision in a challenge to EPA's November 9, 2011 action on the 2008 PM<sub>2.5</sub> Plan.<sup>10</sup> In *Committee for a Better Arvin et. al v. EPA* (Case Nos. 11-73924 and 12-71332) (*CBA*), the court held that EPA violated the CAA by approving the 2008 PM<sub>2.5</sub> Plan even though the plan did not include certain state-adopted mobile source emission standards on which the plan relied to achieve its emission reduction goals.<sup>11</sup> The *CBA* court remanded EPA's action on the 2008 PM<sub>2.5</sub> Plan for further proceedings consistent with the decision but did not vacate EPA's action.<sup>12</sup> Thus, absent an EPA rulemaking to withdraw or revise the Agency's November 2011 approval of the emission reduction commitments in the 2008 PM<sub>2.5</sub> Plan, these commitments remain enforceable components of the California SIP.<sup>13</sup>

## **II. The State's Submittal**

CARB adopted the "Report on Reductions Achieved from Incentive-based Emission Reduction Measures in the San Joaquin Valley" (Emission Reduction Report) on October 24, 2014 and

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<sup>9</sup> 79 FR 29327 (May 22, 2014).

<sup>10</sup> *Committee for a Better Arvin et al v. EPA*, Case Nos. 11-73924 and 12-71332, 2015 U.S. App. LEXIS 8295 (9th Cir. 2015).

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

<sup>12</sup> *Id.*

<sup>13</sup> See n. 8, *supra*.

submitted it to EPA as a revision to the California SIP on November 17, 2014. On May 17, 2015, the Emission Reduction Report submittal became complete by operation of law under CAA section 110(k)(1)(B).

The purpose of the Emission Reduction Report is to demonstrate that certain mobile source incentive funding programs implemented in the SJV area have achieved specified amounts of NO<sub>x</sub> and PM<sub>2.5</sub> emission reductions by January 1, 2014 and to thereby satisfy a portion of the 2014 emission reduction commitments approved into the SIP as part of EPA's November 2011 action on the 2008 PM<sub>2.5</sub> Plan.<sup>14</sup> Specifically, the Emission Reduction Report documents the State's bases for concluding that a total of 2,286 incentive projects implemented in the SJV pursuant to the Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program) and the Proposition 1B: Goods Movement Emission Reduction Program (Prop 1B Program) have achieved a total of 7.8 tons per day (tpd) of NO<sub>x</sub> emission reductions and 0.2 tpd of PM<sub>2.5</sub> emission reductions in the SJV, which may be credited toward the State's 2014 emission reduction commitment.<sup>15</sup>

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<sup>14</sup> Emission Reduction Report at 1-2.

<sup>15</sup> Emission Reduction Report at 24, Table 3 ("Total 2014 Incentive-Based Emission Reductions"), Appendix H.1 ("SIP Creditable Incentive Projects in the San Joaquin Valley (Moyer Program)") and Appendix H.2 ("SIP Creditable Incentive Projects in the San Joaquin Valley (Prop 1B)").

The SIP submittal for the Emission Reduction Report includes eight appendices containing documentation to support the State's conclusions. First, Appendix A through Appendix E contain relevant excerpts from the Carl Moyer Program and Prop 1B Program guidelines<sup>16</sup> that apply to specifically identified types of incentive projects. Table 1 identifies the selected project types and relevant portions of the incentive program guidelines that govern their implementation.

**Table 1.**

<b>Project type</b>	<b>Applicable Guideline (relevant portions)</b>
Carl Moyer Program: off-road equipment repower, replacement, and retrofit projects	The Carl Moyer Program Guidelines, Approved Revision 2005, part I, "Program Overview and Administrative Requirements," and part II, chapter 5, "Compression-Ignition Off-Road Equipment"
	The Carl Moyer Program Guidelines, Approved Revision 2008, part I, chapter 5, "Off-Road Compression-Ignition Equipment," and Part III, "Program Administration"
	The Carl Moyer Program Guidelines, Approved Revisions 2011, part I, chapter 3, "Program Administration," and chapter 7, "Off-Road Compression-Ignition Equipment"
Carl Moyer Program: portable and stationary agricultural source	The Carl Moyer Program Guidelines, Approved Revision 2005, part I, "Program Overview and Administrative Requirements," and part II, chapter 10,

<sup>16</sup> Under both the Carl Moyer Program and the Prop 1B Program, CARB adopts or approves program "guidelines" that specify, among other things, terms and conditions that must apply to each grant of incentive funds to an applicant. See California Health & Safety Code sections 44275 *et seq.* (establishing Carl Moyer Program) and 39625 *et seq.* (establishing Prop 1B Program).

repower projects	"Agricultural Sources"
	The Carl Moyer Program Guidelines, Approved Revision 2008, part I, chapter 10, "Agricultural Sources," and Part III, "Program Administration"
	The Carl Moyer Program Guidelines, Approved Revisions 2011, part I, chapter 3, "Program Administration," and chapter 10, "Portable and Stationary Agricultural Sources"
Prop 1B Program: on-road vehicle replacement projects	Proposition 1B: Goods Movement Emission Reduction Program, Final Guidelines for Implementation, 2008, Section II, "ARB Program Administration," Section III, "Local Agency Project," Section IV, "General Equipment Project Requirements," and appendix A, "Trucks Serving Ports and Intermodal Rail Yards"
	Proposition 1B: Goods Movement Emission Reduction Program, Final Guidelines for Implementation, 2008, Section II, "ARB Program Administration," Section III, "Local Agency Project," Section IV, "General Equipment Project Requirements," and appendix B, "Other Heavy Duty Diesel Trucks"
	Proposition 1B: Goods Movement Emission Reduction Program, Final Guidelines for Implementation, 2010, Section II, "ARB Program Administration," Section III, "Local Agency Project Proposal," Section IV, "Local Agency Project Implementation," Section V, "State Agency Project Implementation," Section VI, "General Equipment Project Requirements," and appendix A, "Heavy Duty Diesel Trucks"

Source: Emission Reduction Report at 5, 10, 14, and 17.

Second, Appendix F and Appendix G contain CARB's demonstrations that the identified portions of the Carl Moyer Program and Prop 1B Program guidelines adequately address EPA's

recommended "integrity elements" by ensuring that the resulting emission reductions are quantifiable, surplus, enforceable, and permanent.<sup>17</sup> We refer to these analyses as the State's "integrity demonstrations" for these components of the Carl Moyer Program and Prop 1B Program.

Third, Appendix H lists each of the 832 Carl Moyer Program projects and 1,454 Prop 1B Program projects funded pursuant to the identified program guidelines that the State has relied upon in the Emission Reduction Report. For each of these projects, Appendix H identifies the "equipment project ID," contract term (project life), post-inspection date, adoption year of the applicable incentive program guideline, and NO<sub>x</sub> and/or PM<sub>2.5</sub> emission reductions achieved in 2014, in pounds per year (lbs/yr).

The Carl Moyer Program is a California grant program established in 1998 that provides funding to encourage the voluntary purchase of cleaner-than-required engines, equipment,

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<sup>17</sup> Under longstanding EPA guidance, emission reductions achieved through economic incentives and other nontraditional emission reduction measures must be quantifiable, surplus, enforceable, and permanent in order to qualify for SIP emission reduction credit under the CAA. See, e.g., "Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs)," October 24, 1997 ("1997 VMEP") at 6-7; "Improving Air Quality with Economic Incentive Programs," U.S. EPA, Office of Air and Radiation, January 2001 (EPA-452/R-01-001) ("2001 EIP Guidance") at section 4.1; "Incorporating Emerging and Voluntary Measures in a State Implementation Plan," September 2004 ("2004 Emerging and Voluntary Measures Guidance") at 3-4; and "Diesel Retrofits: Quantifying and Using Their Emission Benefits in SIPs and Conformity," February 2014 ("2014 Diesel Retrofits Guidance") at 27-29.

and other emission reduction technologies.<sup>18</sup> In its first 12 years, the Carl Moyer Program provided over \$680 million in state and local funds to reduce air pollution from equipment statewide, e.g., by replacing older trucks with newer, cleaner trucks, retrofitting controls on existing engines, and encouraging the early retirement of older, more polluting vehicles.<sup>19</sup>

The Prop 1B Program is a California grant program established in 2007, as a result of State bond funding approved by voters, which provides \$1 billion in funding to CARB to reduce air pollution emissions and health risks from freight movement along California's priority trade corridors. Under the enabling legislation (California Senate Bill 88 and Assembly Bill 201 (2007)), CARB awards grants to fund projects proposed by local agencies that are involved in freight movement or air quality improvements associated with goods movement activities. Upon receipt of such grants, the local agencies are then responsible for providing financial incentives to owners of equipment used in freight movement to upgrade to cleaner

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<sup>18</sup> See generally CARB, "The Carl Moyer Program Guidelines, Approved Revisions 2011," Release Date: February 8, 2013, at Chapter 1 (available electronically at <http://www.arb.ca.gov/msprog/moyer/moyer.htm>).

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

technologies, consistent with program guidelines adopted by CARB.<sup>20</sup>

### **III. EPA's Evaluation of the State's Submittal**

#### *A. SIP Procedural Requirements*

Sections 110(a)(2) and 110(l) of the Act require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

CARB's November 17, 2014 SIP submittal includes public process documentation for the Emission Reduction Report, including documentation of a duly noticed public hearing held by the State on October 24, 2014. On October 24, 2014, CARB adopted the Emission Reduction Report as a revision to the California SIP and submitted it to EPA on November 17, 2014 for action pursuant to CAA section 110(k) of the Act. We find that the process followed by CARB in adopting the Emission Reduction

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<sup>20</sup> See generally "Strategic Growth Plan Bond Accountability, Goods Movement Emission Reduction Program," Approved February 27, 2008 (available at [http://www.arb.ca.gov/bonds/gmbond/docs/gm\\_accountability\\_with\\_links\\_2-27-08.pdf](http://www.arb.ca.gov/bonds/gmbond/docs/gm_accountability_with_links_2-27-08.pdf)).

Report complies with the procedural requirements for SIP revisions under CAA section 110 and EPA's implementing regulations.

*B. EPA Policy on Economic Incentives*

The CAA explicitly provides for the use of economic incentives as one tool for states to use to achieve attainment of the NAAQS.<sup>21</sup> Economic incentive programs (EIPs) use market-based strategies to encourage the reduction of emissions from stationary, area, and/or mobile sources in an efficient manner. EPA has promulgated regulations for statutory EIPs required under section 182(g) of the Act and has issued guidance for discretionary EIPs.<sup>22</sup> In light of the increasing incremental cost associated with further stationary and mobile source emission reductions and the difficulty of identifying such additional sources of emissions reductions in many areas, EPA encourages innovative approaches to reducing emissions through EIPs and other nontraditional measures and programs, including "voluntary" and "emerging" measures.<sup>23</sup>

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<sup>21</sup> See, e.g., CAA section 110(a)(2)(A) (requiring that each SIP "include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of [the Act]"); see also sections 172(c)(6), 183(e)(4).

<sup>22</sup> See 59 FR 16690 (April 7, 1994) (codified at 40 CFR part 51, subpart U) and 2001 EIP Guidance.

<sup>23</sup> See generally 1997 VMEP; 2004 Emerging and Voluntary Measures Guidance; 2014 Diesel Retrofits Guidance; and "Guidance on Incorporating Bundled

We provide below a summary of our evaluation of the Emission Reduction Report and related incentive program guidelines. Our Technical Support Document (TSD) contains a more detailed evaluation of the SIP submittal.

1. *Programmatic "integrity elements"*

Where a State relies upon a discretionary EIP or other nontraditional emission reduction measure in a SIP submittal, EPA evaluates the programmatic elements of the measure to determine whether the resulting emission reductions are *quantifiable, surplus, enforceable and permanent*.<sup>24</sup> These four fundamental "integrity elements," which apply to all discretionary EIPs and other innovative measures relied on for SIP purposes, are designed to ensure that such measures satisfy the applicable requirements of the Act.<sup>25</sup> EPA has generally defined the four fundamental integrity elements for discretionary EIPs and other innovative emission reduction programs as follows:

- *Quantifiable*: emission reductions are quantifiable if they can be measured in a manner that is reliable and replicable by different users;

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Measures in a State Implementation Plan," August 16, 2005 ("2005 Bundled Measures Guidance").

<sup>24</sup> See, e.g., 2001 EIP Guidance at section 4.1.

<sup>25</sup> See, e.g., 2001 EIP Guidance at section 4.1; 1997 VMEP at 6-7; 2004 Emerging and Voluntary Measures Guidance at 3-4; and 2014 Diesel Retrofits Guidance at 27-29.

- *Surplus*: Emission reductions are surplus if they are not otherwise required by or assumed in a SIP-related program (e.g., an attainment or reasonable further progress plan or a transportation conformity demonstration), any other adopted State air quality program, a consent decree, or a federal rule designed to reduce emission of a criteria pollutant or its precursors (e.g., a new source performance standard or federal mobile source requirement); additionally, emission reductions are "surplus" only for the remaining useful life of the vehicle, engine, or equipment being replaced.
- *Enforceable*: emission reductions and other required actions are enforceable if they are independently verifiable; program violations are defined; those liable can be identified; the State and EPA may apply penalties and secure appropriate corrective action where applicable; citizens have access to all emissions-related information obtained from participating sources; citizens may file suit against a responsible entity for violations; and the required reductions/actions are practicably enforceable consistent with EPA guidance on practical enforceability.

- *Permanent*: emission reductions are permanent if the State and EPA can ensure that the reductions occur for as long as they are relied upon in the SIP. The time period that the emission reductions are used in the SIP can be no longer than the remaining useful life of the retrofitted or replaced engine, vehicle, or equipment.<sup>26</sup>

The Emission Reduction Report documents CARB's bases for concluding that the portions of the incentive program guidelines identified in Table 1 adequately address each of these integrity elements. First, with respect to quantification, the Emission Reduction Report references and describes the formulas that the guidelines require applicants to use to determine annual emissions (*i.e.*, baseline emissions, based on existing equipment or new equipment certified by CARB to current emission standards) and annual emission reductions (*i.e.*, the difference between baseline emissions and reduced emissions from new/upgraded equipment).<sup>27</sup> These requirements ensure that program participants will calculate emission reductions reliably, using widely available methods and assumptions, and in a manner that can be replicated by different users.

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<sup>26</sup> See 2001 EIP Guidance at Section 4.1; 1997 VMEP at 6-7; 2004 Emerging and Voluntary Measures Guidance at 3-4; and 2014 Diesel Retrofits Guidance at 27-29.

<sup>27</sup> Emission Reduction Report at 7-8, 11-12, 15, 19-20, Appendix F, and Appendix G.

Second, with respect to additionality (*i.e.*, ensuring that reductions are “surplus” or non-duplicative to existing requirements), the Emission Reduction Report references and describes the provisions in the guidelines that prohibit the use of program funds for emission reductions that are required by any federal, state or local regulation or other legal mandate and requirements to ensure that equipment or engines being replaced are still in usable form and would not have been replaced by normal fleet turnover.<sup>28</sup> These provisions ensure that projects funded under these guidelines will achieve emission reductions that are not otherwise required by or assumed in a SIP-related program and that are surplus to federal, state, and local requirements.

Third, with respect to enforceability, the Emission Reduction Report references and describes the funding criteria in the guidelines that are designed to ensure that emission reductions will be independently verifiable and practicably enforceable by CARB and the District, including detailed requirements for project applications, contracts, pre- and post-project inspections, and recordkeeping and reporting by both the grantees and the implementing local agencies.<sup>29</sup> These

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<sup>28</sup> Emission Reduction Report at 9, 12, 15-16, 20, Appendix F, and Appendix G.

<sup>29</sup> Emission Reduction Report at 6-7, 10-11, 15, 17-19, Appendix F, and Appendix G.

requirements ensure that emission reductions can be independently verified, that the public has access to emissions-related information, and that required actions are practicably enforceable consistent with EPA guidance on practical enforceability.

Finally, with respect to permanence, the Emission Reduction Report references and describes requirements in the guidelines for program applicants to demonstrate that both the baseline (old) and replacement (new/upgraded) equipment are used similarly in the nonattainment area and to document the destruction of the baseline (old) equipment, as well as requirements to identify in each contract the timeframe during which the State/District attribute emission reductions to the project.<sup>30</sup> These requirements ensure that emission reduction calculations are based on reasonable assumptions concerning equipment/vehicle activity; that baseline (old) equipment and vehicles do not continue in operation; and that EPA and the public can determine whether emission reductions attributed to a project adequately cover the period for which those reductions are relied upon in a SIP.

Based on these evaluations, we find that the portions of the Carl Moyer Program and Prop 1B Program guidelines identified

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<sup>30</sup> Emission Reduction Report at 9-10, 13-14, 16, 21-22, Appendix F, and Appendix G.

in Table 1 establish emission reduction quantification protocols, grant conditions, recordkeeping and reporting obligations, and other requirements that adequately address EPA's recommended integrity elements for economic incentive programs.

## *2. Enforceable Commitment*

Where a State relies on a discretionary EIP or other voluntary measure to satisfy an attainment planning requirement under the CAA (e.g., to demonstrate that specific amounts of emission reductions will occur by a future milestone date), the State must take responsibility for assuring that SIP emission reduction requirements are met through an enforceable commitment, which becomes federally enforceable upon approval into the SIP.<sup>31</sup> The purpose of the Emission Reduction Report, however, is to demonstrate that a portion of the emission reductions required under a previously-approved SIP commitment have in fact been achieved, not to satisfy a future emission reduction requirement. Accordingly, it is not necessary to require the State to submit additional commitments for this purpose.

## *C. Sections 110(1) and 193 of the Act*

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<sup>31</sup> See, e.g., 1997 VMEP at 4-7; 2004 Emerging and Voluntary Measures Guidance at 8-12; and 2005 Bundled Measures Guidance at 7-12.

Section 110(1) of the CAA prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and RFP or any other applicable CAA requirement. The Emission Reduction Report documents CARB's bases for concluding that specific incentive projects implemented by January 1, 2014, in accordance with the identified portions of the Carl Moyer Program and Prop 1B Program guidelines, have achieved a total of 7.8 tpd of NO<sub>x</sub> emission reductions and 0.2 tpd of PM<sub>2.5</sub> emission reductions in the SJV area which may be credited toward the State's 2014 emission reduction commitment in the 2008 PM<sub>2.5</sub> Plan. These calculations of emission reductions are based on actions taken by grantees before January 1, 2014 which reduced emissions of NO<sub>x</sub> and PM<sub>2.5</sub> in the SJV (e.g., through replacement of older, higher-polluting vehicles operating in the SJV area with newer, cleaner vehicles). The Emission Reduction Report does not establish or revise any emission limitation, control measure, or other requirement in the applicable SIP. We propose to determine that our approval of the Emission Reduction Report would comply with CAA section 110(1) because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for attainment of the NAAQS and other CAA provisions are met.

Section 193 of the Act does not apply to this proposed action because the Emission Reduction Report does not modify any SIP-approved control requirement in effect before November 15, 1990.

#### **IV. Proposed Action and Public Comment.**

Under section 110(k)(3) of the Act, EPA is proposing to fully approve the submitted Emission Reduction Report and, based on CARB's documentation therein of actions taken by grantees in accordance with the identified incentive program guidelines, to approve 7.8 tpd of NO<sub>x</sub> emission reductions and 0.2 tpd of PM<sub>2.5</sub> emission reductions for credit toward the State's 2014 emission reduction commitment in the 2008 PM<sub>2.5</sub> Plan.

We will accept comments from the public on this proposed action until the date noted in the **DATES** section above.

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and

does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, 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 proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Nitrogen dioxide, Particulate matter, Reporting and  
recordkeeping requirements.

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

Dated: August 6, 2015.

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

[FR Doc. 2015-20749 Filed:  
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