



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R09-OAR-2015-0489; FRL-9950-19-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:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of 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 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 specific amounts of emission reductions for credit toward an emission reduction commitment in the California SIP. We are approving these emission reductions under the Clean Air Act (CAA or the Act).

**DATES:** This rule is effective on September 30, 2016.

**ADDRESSES:** The EPA has established docket number EPA-R09-OAR-2015-0489 for this action. Generally, documents in the docket for this action are available electronically at

<http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (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 Pérez, EPA Region IX, (415) 972 3248, *Perez.Idalia@epa.gov*.

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

#### Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

#### **I. Proposed Action**

On August 24, 2015 (80 FR 51147), the EPA proposed to approve the “Report on Reductions Achieved from Incentive-based Emission Reduction Measures in the San Joaquin Valley” (Emission Reduction Report) and, based on California’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 commitments in its 2008 plan to provide for attainment of the 1997 PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS) in the San Joaquin Valley (hereafter “2008 PM<sub>2.5</sub> Plan”).<sup>1</sup> The California Air Resources Board (CARB) adopted the Emission Reduction Report on October 24, 2014 and submitted it to EPA as a revision to the California SIP on November 17, 2014. We proposed to approve the Emission Reduction Report based on a determination that it satisfied the applicable CAA requirements. Our proposed action contains more information on the Emission Reduction Report and our evaluation.

## **II. Public Comments and EPA Responses**

The EPA’s proposed action provided a 30-day public comment period. During this period, we received comments from Adenike Adeyeye, Earthjustice, by e-mail dated and received September 16, 2015. The comments and our responses are summarized below.

**Comment 1:** Earthjustice asserts that the emission reductions identified in the Emission Reduction Report are not enforceable by the public and therefore should not be approved into the SIP. According to Earthjustice, the Carl Moyer program allows air districts to enter into emission reduction agreements with grant recipients, with CARB added to contracts as a third party with enforcement rights, but does not enable the public to enforce these emission reduction agreements entered into among CARB, the air district, and the grant recipient. Earthjustice argues that the EPA’s enforceability criteria require that citizens have access to all emissions-related information obtained from participating sources and be able to file suit against a responsible entity for violations, and that the Emission Reduction Report does not meet these criteria.

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<sup>1</sup> The 2014 emission reduction commitments are codified at 40 CFR 52.220(c)(356)(ii)(B)(2) and 52.220(c)(392)(ii)(A)(2). 76 FR 69896, 69926 (November 9, 2011).

**Response 1:** We agree with the commenter's statement that the public cannot enforce the agreements entered into among CARB, an air district and a grant recipient but disagree with the commenter's suggestion that this renders the Emission Reduction Report inconsistent with the EPA's enforceability criteria. This Emission Reduction Report was submitted 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 -- and thus it does not need to provide a citizen enforcement mechanism.

As we explained in our proposed rule, where a state relies on a discretionary economic incentive program (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. 80 FR 51147, 51150. Thus, had CARB submitted the Emission Reduction Report to satisfy a future emission reduction requirement under the CAA, an enforceable state commitment to assure that the required emission reductions occur would be necessary to satisfy the Act's enforceability requirements. 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. *See id.* at 51150-51151. Accordingly, it is not necessary to require the State to submit, as part of this particular SIP submission, additional commitments to achieve future emission reductions.

The EPA evaluated the Emission Reduction Report in accordance with the Agency's guidance on discretionary EIPs. *See* 80 FR 51147, 51149-50 (citing, *inter alia*, U.S. EPA, "Improving Air Quality with Economic Incentive Programs," January 2001 (hereafter "2001 EIP Guidance")). A discretionary EIP uses market-based strategies to encourage the reduction of emissions from stationary, area, and/or mobile sources in an efficient manner. *See* 2001 EIP Guidance at 3. To qualify for approval as a discretionary EIP, emission reductions or actions leading to reductions must be enforceable either by the State or by the EPA, and the State must be directly responsible for ensuring that program elements are implemented. *See id.* at 157-158 (states may use the 2001 EIP Guidance where "[a]ctions and/or emission reductions by identifiable sources are enforceable by [the State] and/or by the EPA").

A "financial mechanism EIP" is an EIP that indirectly reduces emissions by increasing costs for high emitting activities – e.g., through subsidies targeted at promoting pollution-reducing activities or products. *See* 2001 EIP Guidance at 119-122. The EPA has identified several attributes that may make subsidy financial mechanism EIPs successful, including: (1) the relevant governmental body possesses legal authority to provide subsidies; (2) the subsidies address activities reasonably related to actual emissions or potential emissions; (3) where projected emission reductions are based on changes in behavior, methods for verifying that such reductions have taken place to the degree projected are generally accepted as unbiased and trustworthy; and (4) if needed, adequate penalty provisions are in place to ensure that the subsidy is used as expected. *See* 2001 EIP Guidance at 27 ("Attributes That Make Subsidy Financial Mechanism EIPs Successful").

As explained further in Response 2 below, the portions of the Proposition 1B: Goods Movement Emission Reduction Program (Prop 1B program) and Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program) guidelines discussed in the Emission Reduction Report are consistent with the EPA's recommendations for "financial mechanism EIPs" in the 2001 EIP Guidance. First, CARB and the District are directly responsible for ensuring that the Prop 1B program and Carl Moyer Program are implemented in accordance with State law. *See* 2010 Prop 1B guidelines at 1-4 ("Overview") and 2011 Carl Moyer Program Guidelines at Chapter 1 ("Program Overview"). Second, the incentive programs discussed in the Emission Reduction Report address actions reasonably related to actual air pollutant emissions, *e.g.*, by requiring grant recipients to purchase and operate newer, cleaner vehicles or equipment in place of older, more-polluting vehicles or equipment, subject to detailed contract requirements. Third, the relevant portions of the 2008 and 2010 Prop 1B guidelines and the 2005, 2008 and 2011 Carl Moyer Program Guidelines establish a number of methods for verifying that projected emission reductions have taken place through compliance with the terms and conditions of each funding contract. Finally, under the applicable guidelines, actions by grantees that lead to emission reductions are directly enforceable by the State and/or the District – *e.g.*, CARB and/or the District may assess fiscal penalties and take certain corrective actions where contract violations are identified. Consistent with the EPA's recommendations for "financial mechanisms EIPs," these provisions in the 2008 and 2010 Prop 1B guidelines and the 2005, 2008 and 2011 Carl Moyer Program Guidelines are adequate to ensure that program funds are used as expected – *i.e.*, to reduce emissions from higher-polluting vehicles and equipment by replacing them with newer, lower-polluting equipment and vehicles. Based on our more detailed

evaluations of 11 randomly selected projects from among those listed in the Emission Reduction Report, we find that the projects identified in the Emission Reduction Report were implemented as required under the applicable program guidelines and achieved the emission reductions projected for those projects, with the exception of one source category. *See* Response 2.

In sum, although an enforceable state commitment would ordinarily be necessary for a SIP submission that relies on a discretionary EIP to satisfy CAA enforceability requirements, such a commitment is not necessary in this case because the Emission Reduction Report was not submitted to satisfy a future emission reduction requirement and, instead, demonstrates only that certain Prop 1B program and Carl Moyer Program incentive projects achieved specified amounts of emission reductions in the past. The portions of the Prop 1B program and Carl Moyer Program guidelines that apply to the identified incentive projects ensure that program funds are used as expected and that the EPA and citizens have access to all emissions-related information obtained from participating sources. Based on our review of the available project records for a subset of the projects identified in the Emission Reduction Report, we find that the identified projects achieved the necessary emission reductions, with the exception of one source category discussed further below. Therefore, it is not necessary for the Emission Reduction Report to provide a mechanism for citizen suits against a responsible entity.

**Comment 2:** Earthjustice argues that, based on the information presented in the Emission Reduction Report, citizens cannot even obtain the information necessary to quantify and verify emission reductions. For example, Earthjustice states that the total project life for each stationary and portable farm engine funded through the Carl Moyer program varies from two years to ten years and that project life varies, in part, because emission reductions cannot be counted as

surplus after the compliance date for a regulation applicable to that project. Earthjustice states that CARB is required to ensure that emission reductions from projects are no longer counted as SIP-creditable emission reductions after that compliance date but argues that “[n]either EPA nor the public has any way of knowing whether or not these projects were counted during only the years in which they were surplus because CARB does not provide enough information to determine a project’s compliance date.”

According to Earthjustice, to determine whether the stationary and portable farm engine projects were counted only for the years during which they could be considered surplus, one would need to know: what type of engine was used as a replacement; the horsepower of the engine used as a replacement; tier of the original agricultural engine; and fleetwide particulate matter (PM) levels.

**Response 2:** We disagree with the commenter’s claim that citizens cannot obtain the information necessary to quantify and verify emission reductions. As we explained in the technical support document supporting our proposed rule and as explained in further detail below, the emission reductions identified in the Emission Reduction Report can be independently verified and the public has access to emissions-related information due to several requirements in the 2008 and 2010 Prop 1B guidelines and the 2005, 2008 and 2011 Carl Moyer Program guidelines. *See* U.S. EPA Region 9, Air Division, “Technical Support Document for EPA’s Notice of Proposed Rulemaking for the California State Implementation Plan, Report on Reductions Achieved from Incentive-Based Emission Reduction Measures in the San Joaquin Valley,” August 2015 (“Proposal TSD”) at 7-15. We discuss the relevant guideline provisions in more detail below.

First, actions required of grantees under the applicable portions of the Prop 1B and Carl Moyer Program guidelines are independently verifiable through (1) pre-project and post-project on-site inspections (with photographic documentation) that the District and/or CARB must carry out pursuant to the applicable guidelines, and (2) documents that each grantee is required to maintain and/or submit to the District in accordance with detailed contract provisions. *See generally* 2008 Prop 1B guidelines at Section III.D (“Local Agency Project Implementation Requirements”), Section IV (“General Equipment Project Requirements”), and Appendix A, Section C (“Recordkeeping Requirements”) and Section D (“Annual Reporting Requirements”); 2010 Prop 1B guidelines at Section IV.A (“Project Implementation Requirements”), Section VI (“General Equipment Project Requirements”), and Appendix A, Section F (“Recordkeeping Requirements”) and Section G (“Annual Reporting Requirements”); 2005 Carl Moyer Guidelines, Part I, Chapter 2 (“Administration of the Carl Moyer Program”); 2008 Carl Moyer Guidelines, Part III (“Program Administration”) and 2011 Carl Moyer Program Guidelines, Part I, Chapter 3 (“Program Administration”).

For example, the 2008 and 2010 Prop 1B guidelines require, among other things, that (1) all project applications include documentation of current equipment and activity information (e.g. engine make, model, horsepower and fuel type, annual vehicle miles of travel (VMT) in California, and estimated percentage of annual VMT in trade corridors); (2) that the District conduct a “pre-inspection” of each application deemed eligible for funding, to verify information regarding the baseline engine, vehicle, or equipment; (3) that the District conduct a “post-inspection” of each funded project to record, among other things, identifiers and specifications for the new engine/equipment (e.g., Vehicle Identification Numbers (VIN) for new trucks, serial

numbers for new engines), and verification that the new engine/equipment is operational and consistent with the old/replaced equipment, where applicable; and (4) that the District's pre-inspection and post-inspection project files include photographic documentation of each piece of equipment being inspected, including an engine serial number, visible distinguishing identification (e.g., a license plate), and a full view of the equipment. *See* 2008 Prop 1B guidelines at Section III.D.8 ("Equipment project pre-inspections"), Section III.D.14 ("Equipment project post-inspections"), Section IV.D ("Equipment Project Application Requirements") and Appendix A, Section F ("Application Information"); 2010 Prop 1B guidelines at Section IV.A.10 ("Equipment project pre-inspections"), Section IV.A.16 ("Equipment project post-inspections"), Section VI.D ("Equipment Project Application Requirements") and Appendix A, Section F ("Application Information"); *see also* Proposal TSD at 14-15.

Similarly, the 2005, 2008 and 2011 Carl Moyer Program Guidelines require, among other things, that (1) all project applications include documentation of existing engine usage in previous years (e.g. miles traveled, hours operated, or fuel consumed per year); (2) that the District conduct a "pre-inspection" of each application deemed eligible for funding, to verify information regarding the baseline engine, vehicle, or equipment; (3) that the District conduct a "post-inspection" of each funded project to record, among other things, information regarding the new engines, vehicles/equipment, and retrofit devices as needed to provide a basis for emission calculations and to ensure contract enforceability; and (4) that the District's pre-inspection and post-project files include photographic documentation of the engine, vehicle, or equipment information, including a legible serial number and/or other identifying markings. *See*

2005 Carl Moyer Program Guidelines, Part I, Chapter 2 at Section V.D (“Project Applications”), Section IX.A (“Pre-Inspection”), and Section IX.B (“Post-Inspection”); 2008 Carl Moyer Program Guidelines, Part III, Part II at Section 26 (“Minimum Project Application Requirements”), Section 30 (“Project Pre-Inspections”), and Section 31 (“Post-Inspection”); 2011 Carl Moyer Program Guidelines, Part I, Chapter 3, at Section W (“Minimum Project Application Requirements”), Section AA (“Project Pre-Inspection”), and Section BB (“Project Post-Inspection”); *see also* Proposal TSD at 8-9.

Second, the applicable portions of the 2008 and 2010 Prop 1B guidelines and the 2005, 2008 and 2011 Carl Moyer Program guidelines specifically define the required elements of each contract and the types of actions that constitute violations of such contracts. For example, under the 2008 and 2010 Prop 1B guidelines, each equipment project contract must include: (1) a unique “tracking number”; (2) the equipment owner’s contact information; (3) the original application submitted by the equipment owner; (4) requirements for the equipment owner to submit reports to the local agency annually or biennially; (5) the equipment owner’s agreement to allow ongoing evaluations and audits of equipment and documentation by the District, CARB, or their designated representative(s); and (6) requirements for the equipment owner to retain all records pertaining to the program (i.e., invoices, contracts, and correspondence) for at least two years after the equipment project ends or three years after final payment, whichever is later. *See* 2008 Prop 1B guidelines at Section III.D.10 (“Equipment project contracts”) and 2010 Prop 1B guidelines at Section IV.A.11 (“Equipment project contracts”); *see also* Proposal TSD at 14-15. Additionally, under the same guidelines, the following actions (among others) are specifically identified as contract violations: (1) failure to meet the terms and conditions of an executed

equipment project contract, including equipment operating conditions and geographic restrictions; (2) failure to allow for an electronic monitoring device or tampering with an installed device or data; (3) insufficient, incomplete, or faulty equipment project documentation; and (4) failure to provide required documentation or reports in a timely manner. *See* 2008 Prop 1B guidelines at Section IV.G (“Equipment Project Non-Performance”) and 2010 Prop 1B guidelines at VI.I (“Equipment Project Non-Performance”); *see also* Proposal TSD at 14-15.

Similarly, under the 2005, 2008 and 2011 Carl Moyer Program Guidelines, each equipment project contract must include: (1) the name and contact information of the grantee; (2) specified timeframes for “project completion” (the date the project post-inspection confirms that the project has become operational) and “project implementation” (the project life used in the project cost-effectiveness calculation); (3) detailed information on both baseline and new vehicles, equipment, and/or engines, including documentation adequate to establish historical annual usage; (4) requirements for the grantee to maintain the vehicle, equipment and/or engine according to the manufacturer’s specifications for the life of the project; (5) annual reporting requirements; (6) a provision authorizing the District, CARB, and their designees to conduct fiscal audits and to inspect the project engine, vehicle, and/or equipment and associated records during the contract term, and (7) requirements to maintain and retain project records for at least two years after contract expiration or three years after final project payment, whichever is later. *See* 2005 Carl Moyer Program Guidelines, Part I, Chapter 2 at Section VIII (“Minimum Contract Requirements”); 2008 Carl Moyer Program Guidelines, Part III, Part III at Section 29 (“Minimum Contract Requirements”); and 2011 Carl Moyer Program Guidelines, Part I, Chapter 3 at Section Z (“Minimum Contract Requirements”). Additionally, the 2011 Carl Moyer Program

Guidelines explicitly require that each contract “specify that by executing the contract, the grantee understands and agrees to operate the vehicle, equipment, and/or engine according to the terms of the contract” and describe the potential repercussions to the grantee for non-compliance with contract requirements. *See* 2011 Carl Moyer Program Guidelines, Part I, Chapter 3 at Section Z.11 (“Repercussions for Non-Performance”) and Section FF (“Nonperforming Projects”); *see also* 2005 Carl Moyer Program Guidelines, Part I, Chapter 2 at Section VIII.G (“Repercussions for Nonperformance”); and 2008 Carl Moyer Program Guidelines, Part III, Part III at Section 35 (“Nonperforming Projects”). The 2011 Carl Moyer Program Guidelines also specifically identify types of actions on the part of the District that CARB may treat as violations of program requirements – e.g., misuse of Carl Moyer Program funds and insufficient, incomplete, or inaccurate project documentation. *See* 2011 Carl Moyer Program Guidelines at Section U (“Program Non-Performance”).

Third, the applicable portions of the Prop 1B guidelines and Carl Moyer Program guidelines require that all grantees submit specific types of project records to the District and also require the District to maintain such records for specified periods of time. Specifically, as discussed above, under the 2008 Prop 1B guidelines, the 2010 Prop 1B guidelines, and the 2005, 2008 and 2011 Carl Moyer Program guidelines, each contract executed by the District must require the grantee to maintain project records for at least two years after contract expiration or three years after final project payment, whichever is later, and to submit annual or biennial reports to the District. *See* 2008 Prop 1B guidelines at Section III.D.10 (“Equipment project contracts”), 2010 Prop 1B guidelines at Section IV.A.11 (“Equipment project contracts”), 2005 Carl Moyer Program Guidelines, Part I, Chapter 2 at Section VIII (“Minimum Contract Requirements”);

2008 Carl Moyer Program Guidelines, Part III, Part III at Section 29 (“Minimum Contract Requirements”); and 2011 Carl Moyer Program Guidelines, Part I, Chapter 3 at Section Z (“Minimum Contract Requirements”); *see also* Proposal TSD at 8-9 and 14-15. Additionally, the 2008 Prop 1B guidelines require the District to retain all “program records” (e.g., invoices, contracts, and correspondence) for at least two years after the project ends or three years after final payment, whichever is later. *See* 2008 Prop 1B guidelines, Chapter II, Section D.10.b (“General Program provisions”). The 2010 Prop 1B guidelines require the District to retain “program records” for 35 years after the bond issuance date providing the funds for the grant, or to send all records to CARB by the end date of the grant agreement. *See* 2010 Prop 1B guidelines, Chapter II, Section E.10.b (“General Program provisions”). Under the Carl Moyer Program Guidelines, the District must keep each “project file” for a minimum of two years after the end of the contract term or a minimum of three years after final payment, whichever is later. *See* 2011 Carl Moyer Program Guidelines, Chapter 3, Section V (“ARB Audit of Air Districts”) at 3-25. A “project file” generally includes a copy of the application, a completed pre- and post-inspection form, and the annual reports submitted by the grantee. *See id.* at Section X.6, Section AA.4, Section BB.1.(G), and Section DD.3. These requirements of the Carl Moyer Program and Prop 1B guidelines ensure that grantees submit, and that the District maintains, project documents sufficient for the EPA and the public to verify the emission reductions attributed to these projects in the Emission Reduction Report.

To demonstrate how the public can quantify and verify the emission reductions identified in the Emission Reduction Report, we randomly selected 0.5% of the projects in Appendix H of the Emission Reduction Report and requested that CARB provide to us the information necessary to

verify the emission reduction calculations for these projects. From Appendix H.1, which lists the Carl Moyer projects included in the Emission Reduction Report, we randomly selected the projects identified in Table 1.

**Table 1.** Selection of Carl Moyer Projects from the Emission Reduction Report.

Project Number	Carl Moyer Guideline Year	Source Category	Technology	Post Inspection Date	Project Life	2014 NO <sub>x</sub> (tpy)	2014 PM <sub>2.5</sub> (tpy)
G-0014-A	2008	Off-Road Equipment – Construction	Retrofit	12/28/10	5	0.000	0.018
S-1301	2005	Off-Road Equipment - Mobile Agricultural	Repower	10/16/09	7	2.610	0.092
				08/17/09	7	4.040	0.120
C-2570	2005	Stationary and Portable Agricultural Engines	Repower	01/12/10	10	9.880	0.331
				01/12/10	5	7.070	0.129
C-14205	2011	Stationary and Portable Agricultural Engines	Repower	04/25/14	10	1.570	0.055

From Appendix H.2, which lists the Prop 1B Heavy Duty Diesel Truck Replacement projects included in the Emission Reduction Report, we randomly selected the projects identified in Table 2.

**Table 2.** Selection of Prop 1B Projects from the Emission Reduction Report.

Equipment Project ID	Prop 1B Guideline Year	Contract Term	Post-Inspection Date	2014 NO <sub>x</sub> (lbs/yr)	2014 PM <sub>2.5</sub> (lbs/yr)
G08GMCT1_03079	2010	5	01/02/13	10281.31771	229.6259777
G08GMCT1_00642	2010	5	08/21/12	1724.9954	164.035448
G08GMCT1_02930	2010	5	07/25/13	0	0
G07GMCT3_01246	2008	5	06/01/10	8012.6276	235.703448

G07GMCT3_00301	2008	5	09/30/10	394.2153	22.0965876
G07GMCT3_00437	2008	5	01/01/11	3756.22742	110.4951004
G07GMCT3_00377	2008	5	03/04/11	2909.28645	92.691702

We independently calculated the emission reductions for the selected projects using additional project information submitted by CARB at our request and found that the emission reduction calculations for all of the selected projects were replicable, with the exception of one project that was erroneously included in the Emission Reduction Report and accounted for 0 reductions. *See* U.S. EPA Region 9, Memorandum to File dated April 26, 2016, “Sample emission reduction calculations for selected Carl Moyer and Prop 1B projects,” Docket No. EPA-R09-OAR-2015-0489 and references therein. Additionally, at our request, CARB submitted the project application, grant agreement and documentation of destruction for one Carl Moyer Program project (Project Number C-2570, Stationary and Portable Agricultural Engines, Repower, 2005 Carl Moyer Guidelines) and one Prop 1B Program project (Equipment Project ID G07GMCT3\_01246, Heavy Duty Diesel Truck Replacement, 2008 Prop 1B Guidelines). *See* e-mail dated April 19, 2016, from Sylvia Vanderspek (CARB) to Jeanhee Hong (USEPA Region 9), including attachments. We evaluated the information contained in these project records to verify CARB’s emission reduction calculations in the Emission Reduction Report.

For Carl Moyer project C-2570, the project application contains information about the existing and new engine (including engine make, model year, horsepower, and tier), engine function and type (e.g., stationary or portable), the project life, the hours of operation, and percentage of usage in the San Joaquin Valley. *See* San Joaquin Unified Valley Air Pollution Control District (SJVUAPCD), Application C-2570, Heavy-Duty Engine Program Agricultural

Pump Engine Component, Diesel Engine to Electric Motor Repower Option (“Carl Moyer Application C-2570”) at section 2, section 3 and accompanying table (“For Internal Use Only”).<sup>2</sup> The project agreement, which is the contract between the grantee and the SJVUAPCD, includes a description of the engines, a requirement to destroy the existing engine, the duration of the terms of the agreement, annual reporting requirements, a noncompliance provision for reporting, and provisions concerning District audits. *See* SJVUAPCD, Agreement C-2570, Heavy-Duty Engine Emission Reduction Incentive Program Funding Agreement (Electric Agricultural Pump Motor Repower), July 30, 2009 (“Carl Moyer Agreement C-2570”) at section 2, section 3, section 5, section 6, and section 21. Finally, pre- and post-inspection monitoring reports for project C-2570 include photographic evidence of engine information and destruction of the old engine. *See* Heavy-Duty Program Monitoring Report, pre-inspection and post inspection, project number C-2570 (“Carl Moyer Monitoring Reports C-2570”). Consistent with the requirements of the 2005 Carl Moyer Program guidelines at Part I, chapter 2, sections V.D, VIII, and IX, these project records contain all of the information necessary to verify whether project C-2570 was implemented as required and achieved the emission reductions calculated for this project.

Similarly, for Prop 1B project G07GMCT3\_01246, the project application contains information about the existing and new engine (including engine make, model year, gross vehicle weight rating (GVWR), Vehicle Identification Number (VIN), and horsepower), the annual vehicle-miles-traveled (VMT) for both the existing and new engine, and percentage of

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<sup>2</sup> Personal information has been redacted from each document for privacy reasons.

usage in the San Joaquin Valley. *See* SJVUAPCD, Application P-0442,<sup>3</sup> Proposition 1B: Good Movement Emission Reduction Program Component, Truck Replacement (“Prop 1B Application G07GMCT3\_01246”) at sections 2-4.<sup>4</sup> The project agreement, which is the contract between the grantee and the SJVUAPCD, includes a description of the existing and new engines, a requirement to destroy the existing engine, the duration of the terms of the agreement, annual reporting requirements, nonperformance provisions, and provisions concerning District audits. *See* SJVUAPCD, Agreement P-0442-A, Proposition 1B: Goods Movement Emission Reduction Program Funding Agreement (Truck Replacement), March 16, 2010 (“Prop 1B Agreement G07GMCT3\_01246”) at sections 2, 3, 5, 6.F, 7, 12, and 23. Finally, post-inspection monitoring reports for project G07GMCT3\_01246 include photographic evidence of engine information and destruction of the old engine. *See* Proposition 1B Program Truck Replacement Option, Exist (Old) Truck Post-Monitoring Inspection, Project Number P-0442-A (“Prop 1B Monitoring Reports G07GMCT3\_01246”). Consistent with the requirements of the 2008 Prop 1B Guidelines at sections III.D.10, III.D.14, IV.D and Appendix A, Section F, these project records contain all of the information necessary to verify whether Project G07GMCT3\_01246 was implemented as required and achieved the emission reductions calculated for this project.

Any member of the public can obtain project-related documents maintained by the State and/or District by submitting a request for such documents under the California Public Records Act. *See* Ca. Gov’t Code §§ 6250-6276.48. Accordingly, the EPA and citizens can obtain the

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<sup>3</sup> These project documents are labeled with the District-only identification number “P-0442.” According to CARB, the Goods Movement Online Database (GMOD) includes both the District identifier (P-0442) and the CARB Equipment Project ID (G07GMCT3\_01246). *See* e-mail dated May 9, 2016, from Austin Hicks (CARB) to Idalia Pérez (USEPA Region 9), RE: “Prop 1B Application I Numbers” and Memorandum dated May 2, 2016, from Idalia Pérez (USEPA Region 9) to File, RE: “Call with ARB regarding questions on Prop 1B documentation.”

<sup>4</sup> Personal information has been redacted from each document for privacy reasons.

information necessary to quantify and verify the emission reductions identified in the Emission Reduction Report.

We also disagree with Earthjustice's assertion that there is no way to verify whether the emission reductions attributed to the projects identified in the Emission Reduction Report are "surplus" to existing requirements. As an initial matter, we note that both the Carl Moyer Program guidelines and the Prop 1B guidelines generally require that funded projects achieve emission reductions not required by any federal, state or local regulation or other legal mandate. *See* 2005 Carl Moyer Guidelines, Part I, Section VIII.D; 2008 Carl Moyer Guidelines, Part III, Section (27)(i); 2011 Carl Moyer Guidelines, Part 1, Chapter 2; 2008 Prop 1B Guidelines, Section III.B.1 at 47; and 2010 Prop 1B Guidelines, Section III.B.1 at 57.

Earthjustice highlights "stationary and portable farm engines" as a source category for which the project life varies from two to ten years and claims that there is no way to know whether or not these projects were counted for only the years in which their emission reductions were surplus. We assume the commenter intended to refer to the "Stationary and Portable Agricultural Engines" source category under the Carl Moyer Program. Two of the Carl Moyer projects that we randomly selected for evaluation (identified in Table 1) are within this source category (project numbers C-2570 and C-14205). According to CARB, these two projects were of the equipment type "Stationary Agricultural Irrigation Pump." *See* e-mail dated November 12, 2015, from Sylvia Vanderspek (CARB) to Andrew Steckel (USEPA Region 9). These engines are subject to CARB's Airborne Toxic Control Measure (ATCM) for Stationary Compression Ignition (CI) Engines in title 17, sections 93115 – 93115.15 of the California Code of Regulations (17 CCR §§ 93115 – 93115.15) (hereafter "Stationary Engine ATCM"). Table 7 of

the Stationary Engine ATCM provides a summary of requirements for in-use noncertified stationary diesel-fueled engines used in agricultural operations and Table 8 of the Stationary Engine ATCM provides a summary of requirements for certified in-use Tier 1 and Tier 2 engines used in agricultural operations. *See* 17 CCR § 93115.8, Table 7 and Table 8.

The emission reductions attributed to project C-14205 and project C-2570 engine #1 during the January 1 – December 31, 2014 timeframe were surplus to the requirements of the Stationary Engine ATCM because they occurred before the earliest ATCM compliance deadline applicable to these engines, which was December 31, 2014. The emission reductions attributed to project C-2570 engine #2 during the January 1 – December 31, 2014 timeframe, however, were not entirely surplus because that engine was required to comply with the Stationary Engine ATCM's NO<sub>x</sub> and PM<sub>2.5</sub> emission limits for in-use noncertified stationary diesel-fueled engines used in agricultural operations by December 31, 2010.<sup>5</sup> *See* Table 3.

**Table 3.** Stationary Engine ATCM Compliance Deadlines Applicable to Carl Moyer Program projects C-2570 and C-14205.

Project Number	Equipment Identifier	Fuel Type	Horsepower	Existing Engine Certification	Deadline for Compliance with Stationary Engine ATCM <sup>6</sup>	New Engine	Project Life	Post Inspection Date
C-2570	1	Diesel	385	Tier 1 Standard	Later of 12/31/14 or 12 years after the date of initial installation.	Electric	10	01/12/10

<sup>5</sup> Because the existing uncertified engine for project C-2570 engine #2 was replaced with an electric unit, this project did achieve some surplus emission reductions beyond those required by the Stationary Engine ATCM.

<sup>6</sup> *See* 17 CCR § 93115.8, Table 7 and Table 8.

C-2570	2	Diesel	420	Uncontrolled (uncertified)	12/31/10	Electric	5	01/12/10
C-14205	1	Diesel	335	Tier 3 Standard	N/A	Electric	10	04/25/14

Source: E-mail dated December 3, 2015 from Austin Hicks (CARB) to Andrew Steckel (USEPA Region 9), RE: "Additional information request to support final action on ARB Incentive Report," including attachments.

Given this information, we have assumed conservatively that all emission reductions attributed to Carl Moyer Program projects in the "Stationary and Portable Agricultural Engines" source category in the Emission Reduction Report are not surplus and, therefore, are not creditable for SIP purposes at this time. Stationary and portable agricultural engine projects account for 2.829 tpd of the NO<sub>x</sub> emission reductions and 0.066 tpd of the direct PM<sub>2.5</sub> emission reductions identified in the Emission Reduction Report as shown in Table 4. *See* Emission Reduction Report, Appendix H1 at pp. 8-29.

**Table 4.** Emission Reductions from Carl Moyer Stationary and Portable Agricultural Engine Repower Projects.

Carl Moyer Guideline Year	2014 NO <sub>x</sub> (tpd)	2014 PM <sub>2.5</sub> (tpd)
2005	2.675	0.063
2008	0.132	0.002
2011	0.022	0.001
<b>Total Reductions</b>	<b>2.829</b>	<b>0.066</b>

Source: Emission Reduction Report, Appendix H1 at pp. 27-29.

We are therefore subtracting these amounts from the total amounts of NO<sub>x</sub> and direct PM<sub>2.5</sub> emission reductions identified in the Emission Reduction Report (7.8 tpd of NO<sub>x</sub> emission reductions and 0.2 tpd direct PM<sub>2.5</sub> emission reductions), and crediting the Emission Reduction Report with only 4.971 tpd of NO<sub>x</sub> emission reductions and 0.134 tpd of direct PM<sub>2.5</sub> emission reductions toward the State's 2014 emission reduction commitment in the 2008 PM<sub>2.5</sub> Plan.

Earthjustice argues that in order to determine whether these projects were counted only for the years during which they could be considered surplus, one would need to know the type of engine that was used as a replacement; the horsepower of the engine used as a replacement; the tier of the original agricultural engine; and fleetwide particulate matter (“PM”) levels. We agree that information about the type of engine that was used as a replacement, the horsepower of the new engine, and the tier of the original agricultural engine is necessary to determine whether the emission reductions attributed to a particular Carl Moyer project are surplus. As explained above, project documents that the District is required to maintain under the Carl Moyer and Prop 1B program guidelines, which CARB submitted to the EPA at our request, identify all of this information. With respect to fleetwide PM levels, we note that this information is not necessary to determine the ATCM compliance date applicable to a stationary agricultural engine, because the requirements of the Stationary Engine ATCM do not vary based on fleetwide PM levels. *See generally* 17 CCR §§ 93115 – 93115.15. Carl Moyer projects C-2570 and C-14205 are stationary agricultural engines subject to the Stationary Engine ATCM. *See* e-mail dated November 12, 2015, from Sylvia Vanderspek (CARB) to Andrew Steckel (USEPA Region 9). Thus, information about fleetwide PM levels is not necessary to determine whether these projects achieved surplus emission reductions. We agree with Earthjustice that information concerning fleetwide PM levels is necessary to determine certain compliance dates under the ATCM for diesel particulate matter from portable engines. *See* 17 CCR § 93116.3. To the extent the commenter intended to argue that this information is necessary to determine whether a Carl Moyer project for a portable engine will achieve emission reductions that are surplus to existing requirements, we understand that CARB would provide such information upon request under the

California Public Records Act and that the public can, therefore, verify whether the emission reductions attributed to any such project are surplus.

Based on these reviews, we find that the Emission Reduction Report contains information adequate to enable the EPA and citizens to obtain emissions-related information necessary to quantify and verify the emission reductions attributed to the identified Carl Moyer Program and Prop 1B projects.

**Comment 3:** Earthjustice states that incentive programs should not “be approved into the SIP as a replacement for emission reductions from regulations without fulfilling the four fundamental integrity elements” and urges the EPA to require that emission reductions be enforceable and quantifiable before approving them into the SIP.

**Response 3:** This action does not incorporate any portion of the Prop 1B program or Carl Moyer Program, or any related guidelines, into the SIP. To the extent Earthjustice intended to state that the EPA should not approve emission reductions from the projects identified in the Emission Reduction Report for credit toward a SIP commitment unless the applicable incentive programs satisfy the EPA’s integrity elements, we agree. As explained in our proposed rule and further in Responses 1 and 2 above, the portions of the Prop 1B program and Carl Moyer Program guidelines that apply to the projects identified in the Emission Reduction Report adequately address the EPA’s recommended integrity elements for discretionary EIPs. Based on our review of project-specific documentation submitted by CARB at our request, however, we have found that the emission reductions attributed to one Carl Moyer Program project within the “Stationary and Portable Agricultural Engines” category were not entirely surplus to existing requirements and, therefore, are not creditable for SIP purposes at this time, or until properly adjusted to

account for existing regulations. As a result, we have conservatively assumed that all of the Stationary and Portable Agricultural Engine Carl Moyer projects identified in the Emission Reduction Report are not SIP-creditable and subtracted the emission reductions attributed to these projects from the total amounts of NO<sub>x</sub> and direct PM<sub>2.5</sub> emission reductions identified in the Emission Reduction Report. *See* Response 2. We find that, with this one exception, the Carl Moyer Program and Prop 1B projects identified in the Emission Reduction Report have achieved the NO<sub>x</sub> and PM<sub>2.5</sub> emission reductions attributed to them in the Emission Reduction Report. We are therefore approving 4.971 tpd of NO<sub>x</sub> emission reductions and 0.134 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.

### **III. EPA Action**

Under sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing a limited approval and limited disapproval of the Emission Reduction Report and crediting the incentive projects identified therein with 4.971 tpd of NO<sub>x</sub> reductions and 0.134 tpd of PM<sub>2.5</sub> reductions toward the State's 2014 emission reduction commitments in the 2008 PM<sub>2.5</sub> Plan. We are finalizing a limited approval of the Emission Reduction Report because it largely satisfies the applicable CAA requirements. We are simultaneously finalizing a limited disapproval of the Emission Reduction Report because the demonstration therein concerning the Carl Moyer Stationary and Portable Agricultural Engines source category does not satisfy CAA requirements for SIP credit. Our reasons for disapproving the submitted demonstration on this basis are explained in our responses to comments above.

This limited disapproval does not trigger any sanctions clocks under CAA section 179(a) because the Emission Reduction Report was not submitted to address a requirement of part D, title I of the Act or in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (*i.e.*, a “SIP Call”). The limited disapproval also does not trigger any obligation on the EPA to promulgate a federal implementation plan (FIP) because the disapproval does not create any deficiency in the SIP that must be corrected.

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

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

##### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

##### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

##### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

##### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It 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.

*F. Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. *National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. *Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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 **[insert date 60 days after the date of publication in the Federal Register]**. 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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 21, 2016.

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.

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

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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)(477) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(477) The following plan revision was submitted on November 17, 2014 by the Governor’s designee.

(i) [Reserved]

(ii) Additional Material.

(A) California Air Resources Board.

(I) “Report on Reductions Achieved from Incentive-based Emission Reduction Measures in the San Joaquin Valley,” adopted on October 24, 2014, including appendices F-H.