



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2019-0318; FRL-10011-44-Region 9]

Clean Air Plans; 2006 Fine Particulate Matter Nonattainment Area Requirements; San Joaquin Valley, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or “Agency”) is approving portions of three state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA or “Act”) requirements for the 2006 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS or “standards”) in the San Joaquin Valley (SJV) “Serious” nonattainment area. Specifically, the EPA is approving those portions of the “2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards” and the “San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan” that pertain to the 2006 PM_{2.5} NAAQS and address certain CAA requirements for Serious PM_{2.5} nonattainment areas. In addition, the EPA is approving the “Revision to the California State Implementation Plan for PM_{2.5} Standards in the San Joaquin Valley” (“PM_{2.5} Prior Commitment Revision” or “Revision”) and finding that the State has complied with this commitment. The EPA is also approving motor vehicle emission budgets and inter-pollutant trading ratios for use in transportation conformity analyses for the 2006 PM_{2.5} NAAQS. Finally, as part of this action, the EPA is granting an extension of the Serious area attainment date for the 2006 PM_{2.5} NAAQS in the San Joaquin

Valley from December 31, 2019, to December 31, 2024, based on a determination that the State has satisfied the statutory criteria for this extension.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2019-0318. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

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

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I. Summary of Proposed Rules

On March 27, 2020, the EPA proposed to approve portions of two SIP revisions submitted by the California Air Resources Board (CARB) to meet certain Serious nonattainment

area requirements for the 2006 24-hour PM_{2.5} NAAQS in the San Joaquin Valley.¹ In our proposed rule, we provided background information on the PM_{2.5} standards, area designations and related SIP revision requirements under the CAA, relevant EPA guidance, and the EPA’s implementing regulations for the PM_{2.5} standards, referred to as the “PM_{2.5} SIP Requirements Rule.”²

The EPA proposed to act on certain portions of the following two plan submissions that pertain to the 2006 24-hour PM_{2.5} NAAQS: the “2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards,” adopted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District”) on November 15, 2018, and by CARB on January 24, 2019 (“2018 PM_{2.5} Plan”), including a revised Appendix H submitted by CARB as a technical correction on February 11, 2020; and the “San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan,” adopted by CARB on October 25, 2018 (“Valley State SIP Strategy”). We refer to the relevant portions of these SIP submissions collectively as the “SJV PM_{2.5} Plan” or “Plan.” The SJV PM_{2.5} Plan addresses the Serious area attainment plan requirements for the 2006 24-hour PM_{2.5} NAAQS in the San Joaquin Valley and includes a request under CAA section 188(e) for an extension of the Serious area attainment date for the area for this NAAQS. CARB submitted the SJV PM_{2.5} Plan to the EPA as a revision to the SIP on May 10, 2019.³

The EPA proposed to approve, as a revision to the California SIP, the following portions of the SJV PM_{2.5} Plan for the 2006 PM_{2.5} NAAQS:

¹ 85 FR 17382.

² “Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements.” (August 24, 2016).

³ Letter dated May 9, 2019, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region 9.

- The 2013 base year emission inventories (CAA section 172(c)(3));
- The demonstration that best available control measures (BACM), including best available control technology (BACT), for the control of direct PM_{2.5} and PM_{2.5} plan precursors will be implemented no later than 4 years after the area was reclassified (CAA section 189(b)(1)(B));
- The demonstration (including air quality modeling) that the Plan provides for attainment as expeditiously as practicable but no later than December 31, 2024 (CAA sections 189(b)(1)(A) and 188(e));
- Plan provisions that require reasonable further progress (RFP) toward attainment by the applicable date (CAA section 172(c)(2));
- Quantitative milestones that are to be achieved every three years until the area is redesignated attainment and that demonstrate RFP toward attainment by the applicable attainment date (CAA section 189(c));
- Motor vehicle emissions budgets for 2020, 2023, and 2024 as shown in Table 14 of the EPA's proposed rule (CAA section 176(c) and 40 CFR part 93, subpart A);⁴ and
- The inter-pollutant trading mechanism provided for use in transportation conformity analyses for the 2006 PM_{2.5} NAAQS, in accordance with 40 CFR 93.124(b).

We did not propose any action on the contingency measure element of the SJV PM_{2.5} Plan.

⁴ In light of CARB's request to limit the duration of the approval of the budgets in the 2018 PM_{2.5} Plan and in anticipation of the EPA's approval, in the near term, of an updated version of CARB's EMFAC (short for EMISSION FACTOR) model for use in SIP development and transportation conformity in California to include updated vehicle mix and emissions data, we proposed to limit the duration of our approval of the budgets to the period before replacement budgets have been found adequate. 85 FR 17382, 17428-17430.

The EPA also proposed to grant the State's request for extension of the Serious area attainment date from December 31, 2019, to December 31, 2024, based on a conclusion that the State has satisfied the requirements for such extensions in section 188(e) of the Act. To support this proposal, we proposed to find that the SJVUAPCD had complied with its aggregate commitment in the 2012 PM_{2.5} Plan to achieve total emission reductions of 1.9 tons per day (tpd) of direct PM_{2.5} by 2017.⁵ We also noted, however, that the 2018 PM_{2.5} Plan included updated emissions inventories for the residential wood burning source category that differed from previous inventory estimates and showed a 0.86 tpd reduction in winter season direct PM_{2.5} emissions from wood burning devices between 2013 and 2017.⁶ We sought comment as to whether the State and District had met their commitment. In response to the EPA's proposed finding and request for comment, CARB developed the PM_{2.5} Prior Commitment Revision to revise the State's aggregate commitment in the 2012 PM_{2.5} Plan to reflect the updated inventories submitted in the 2018 PM_{2.5} Plan and submitted it to the EPA on April 24, 2020, for parallel processing. In a supplemental proposal published May 12, 2020, the EPA proposed to approve the PM_{2.5} Prior Commitment Revision via parallel processing and proposed to determine that the State has met the 0.86 tpd commitment.⁷

On June 19, 2020, CARB submitted the final version of the PM_{2.5} Prior Commitment Revision. We have reviewed this submittal and find that it fulfills the SIP completeness criteria of 40 CFR part 51, appendix V. The SIP submission also includes evidence that adequate public notice was given and that an opportunity for a public hearing was provided consistent with the

⁵ 85 FR 17382, 17409.

⁶ Id. See also, 2018 PM_{2.5} Plan, App. C, C-257 and letter dated August 12, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, transmitting "Attachment: Supplemental Information and Clarifications to 2017 Quantitative Milestones."

⁷ 85 FR 27976 (May 12, 2020).

EPA's implementing regulations in 40 CFR 51.102. Specifically, CARB provided public notice and opportunity for public comment prior to its May 28, 2020 public hearing on and adoption of the PM_{2.5} Prior Commitment Revision.⁸ The SIP submission includes proof of publication of notices for the public hearing and includes copies of the written and oral comments received during the State's public review processes and CARB's responses thereto.⁹ Therefore, we find that the PM_{2.5} Prior Commitment Revision meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and 40 CFR 51.102.

Our proposed rule, supplemental proposal, and associated technical support documents (TSDs)¹⁰ provide a more detailed discussion of the rationale for our proposed actions.

II. Public Comments and EPA Responses

The public comment period on the EPA's March 27, 2020 proposed rule closed on April 27, 2020. During this period, the EPA received two letters requesting a 30-day extension of the comment period on our proposed rule.¹¹ The EPA denied these requests for extension of the comment period because our statutory timeframe for considering California's request for an

⁸ California Air Resources Board, "Notice of Public Meeting to Consider Adoption of a Technical Revision to the San Joaquin Valley PM_{2.5} State Implementation Plan," dated April 24, 2020.

⁹ J&K Court Reporting, LLC, "Videoconference Meeting, State of California Air Resources Board," May 28, 2020 (transcript of CARB's public hearing), and "Responses to Comments Received on the Technical Revision to the San Joaquin Valley PM_{2.5} State Implementation Plan."

¹⁰ The docket includes the following four technical support documents for the March 27, 2020 proposed rule: (1) "Technical Support Document, General Evaluation, San Joaquin Valley PM_{2.5} Plan for the 2006 PM_{2.5} NAAQS," February 2020 ("EPA's General Evaluation TSD"); (2) "Technical Support Document, EPA Evaluation of PM_{2.5} Precursor Demonstration, San Joaquin Valley PM_{2.5} Plan for the 2006 PM_{2.5} NAAQS," February 2020 ("EPA's PM_{2.5} Precursor TSD"); (3) "Technical Support Document, EPA Evaluation of BACM/MSM, San Joaquin Valley PM_{2.5} Plan for the 2006 PM_{2.5} NAAQS," February 2020 ("EPA's BACM/MSM TSD"); and (4) "Technical Support Document, EPA Evaluation of Air Quality Modeling, San Joaquin Valley PM_{2.5} Plan for the 2006 PM_{2.5} NAAQS," February 2020 ("EPA's Modeling TSD").

¹¹ Letter received April 6, 2020, from Mark Rose, Sierra Nevada Program Manager, National Parks Conservation Association (NPCA) and Nayamin Martinez, Executive Director, Central California Environmental Justice Network (CCEJN) to Rory Mays, EPA; and letter received April 15, 2020, from Catherina Garoupa White, Executive Director, CVAQ, et al to Rory Mays, EPA.

extended attainment date under section 188(e) of the CAA for the 2006 PM_{2.5} NAAQS for the San Joaquin Valley ends on June 30, 2020.¹²

The EPA received four comment submissions on the EPA's March 27, 2020 proposed rule, from the following entities: (1) an anonymous commenter,¹³ (2) the SJVUAPCD,¹⁴ (3) a coalition of seven environmental and community organizations (collectively referred to herein as "NPCA"),¹⁵ and (4) the California Safflower Growers Association (CSGA).¹⁶

The public comment period on the EPA's May 12, 2020 supplemental proposal closed on June 11, 2020. During this period, the EPA received one comment submission from a private citizen.¹⁷

We respond below to a selection of the most significant comments on our March 27, 2020 proposed rule. We respond to all other comments that are germane to the proposed rule and all comments on the supplemental proposal in our separate Response to Comments document available at <https://www.regulations.gov>, Docket ID No. EPA-R09-OAR-2019-0318.

Comment 1: NPCA claims that the EPA's approval of the State's and District's aggregate commitments in the SJV PM_{2.5} Plan would be arbitrary and capricious. Specifically, NPCA states that, although the vast majority of these tonnage commitments are to be achieved through

¹² Email dated April 8, 2020, from Rory Mays, EPA to Mark Rose, Sierra Nevada Program Manager, NPCA and Nayamin Martinez, Executive Director, CCEJN; and email dated April 21, 2020, from Rory Mays, EPA to Catherine Garoupa White, Executive Director, CVAQ, et al.

¹³ Anonymous comment received March 29, 2020.

¹⁴ Comment letter dated and received April 27, 2020, from Samir Sheikh, Executive Officer/APCO, SJVUAPCD to Administrator Wheeler, EPA.

¹⁵ Comment letter dated and received April 27, 2020, from Mark Rose, NPCA, et al to Rory Mays, EPA, including Appendices A through G. The seven environmental and community organizations, in order of appearance in the letter, are NPCA, Earthjustice, Central Valley Air Quality Coalition, Coalition for Clean Air, Central Valley Environmental Justice Network, The Climate Center, and Central Valley Asthma Collaborative (collectively "NPCA").

¹⁶ Comment letter dated and received April 27, 2020, from Laura Brown, Executive Director, California Safflower Growers Association to Rory Mays, EPA.

¹⁷ Email dated June 10, 2020, from Thomas Menz to Rory Mays, EPA Region IX, with attachments.

incentive programs to accelerate the turnover of mobile sources, most of the EPA's discussion for finding these commitments reasonable focuses on the rulemaking commitments that provide relatively little toward meeting these aggregate tons of emission reductions. NPCA also states that the bulk of the aggregate tonnage commitments rely on unfunded incentive measures that the EPA proposes to approve with no record to support their likelihood of success.

Response 1: For the reasons provided in Response 2 through Response 3.C below, and further in our Response to Comments document, we disagree with NPCA's claim that our approval of the aggregate commitments in the Plan would be arbitrary and capricious.

We also disagree with NPCA's suggestion that the vast majority of the aggregate tonnage commitments must necessarily be achieved through incentive programs. As we explained in our proposed rule, CARB has committed to present to its Board each of 15 regulatory and incentive-based control measures listed in Attachment A to the resolution of adoption (i.e., Resolution 18-49), according to the schedule set forth in Attachment A,¹⁸ and to achieve a total of 32 tpd of NO_x emissions reductions and 0.9 tpd of PM_{2.5} emissions reductions in the San Joaquin Valley by 2024 either through the listed measures or through appropriate substitute measures.¹⁹

Although the Valley State SIP Strategy indicates that CARB anticipates achieving 23 tpd of the necessary NO_x emission reductions and 0.8 tpd of the necessary PM_{2.5} emissions reductions through implementation of the incentive-based measures listed in Attachment A,²⁰ CARB has not specifically committed to adopt any of these listed measures and may ultimately achieve the required emission reductions through adoption and implementation of other enforceable control

¹⁸ The list of proposed SIP measures included in Attachment A to CARB Resolution 18-49 is also provided in tables 7 and 8 of the Valley State SIP Strategy and in tables 4-8 and 4-9 of the 2018 PM_{2.5} Plan. See also, 85 FR 17382, 17413-17414 (Table 7).

¹⁹ CARB Resolution 18-49 (October 25, 2018), 5. See also 85 FR 17382, 17413.

²⁰ Valley State SIP Strategy, 38 (Table 8) (identifying expected emission reductions from proposed State measures).

measures. By email dated November 12, 2019, CARB identified a number of potential additional State measures on which it intends to begin public rule development processes this year, including a Tier 5 offroad diesel engine standard, a “state green contracting” measure, and a “reduction in growth of single-occupancy vehicle travel” measure.²¹ Under the terms of its commitment, CARB may adopt and implement any of these new control measures or other substitute measures to achieve its aggregate tonnage commitment.

Similarly, the District has committed to present to its Board each of 12 regulatory and incentive-based control measures listed in Table 4-4 and Table 4-5 of the 2018 PM_{2.5} Plan, according to the schedule set forth in those tables,²² and to “achieve the aggregate emissions reductions of 1.88 tpd of NO_x and 1.3 tpd of PM_{2.5} by 2024/2025” through adoption and implementation of these listed measures or appropriate substitute control measures “in the same implementation timeframes or in the timeframes needed to meet CAA milestones.”²³ The 2018 PM_{2.5} Plan provides, in Table 4-3, anticipated emission reductions for each of the nine District rules listed in Table 4-4 but does not quantify the emission reductions anticipated from implementation of the incentive-based measures listed in Table 4-5. Like CARB, the District has not specifically committed to adopt any of the listed measures and may ultimately achieve the required emission reductions through adoption and implementation of other enforceable control measures.

Thus, CARB and the SJVUAPCD will not necessarily achieve the aggregate tonnage commitments through incentive programs, as NPCA suggests. Instead, although both CARB and

²¹ Email dated November 12, 2019, from Sylvia Vanderspek, CARB to Anita Lee, EPA Region IX, “RE: SJV PM_{2.5} information” (attaching “Valley State SIP Strategy Progress”).

²² See also 85 FR 17382, 17414-17415 (Table 8).

²³ SJVUAPCD Governing Board Resolution 18-11-16 (November 15, 2018), 10-11. See also 85 FR 17382, 17413.

the SJVUAPCD must take action to develop and propose specific regulatory and incentive-based measures identified in the Plan, they may ultimately elect to meet the NO_x and PM_{2.5} aggregate tonnage commitments through adoption and implementation of these listed measures or appropriate substitute control measures by January 1, 2024. See Response 2.

Finally, NPCA states that the bulk of the aggregate tonnage commitments rely on unfunded incentive measures that the EPA “proposes to approve with no record to support their likelihood of success.” To the extent NPCA intended to assert that the EPA has proposed to approve all of the incentive-based measures listed in the State’s and District’s control measure commitments, this is factually incorrect. The EPA proposed to approve the State’s and District’s commitments to take action with respect to the listed measures, including the identified incentive-based measures, and to achieve emission reductions by 2024. To date, the EPA has proposed to approve only one of the three incentive-based measures listed in CARB’s control measure commitment (i.e., the “Agricultural Equipment Incentive Measure” or “Valley Incentive Measure”)²⁴ and has not yet proposed action on any of the other incentive-based measures that CARB or the District have committed to develop and present to their respective boards, as neither agency has yet adopted and submitted any such additional measures.

To the extent NPCA intended to argue, with respect to the Valley Incentive Measure, that the EPA is proposing to approve this measure with no record to support its likelihood of success, this comment is outside the scope of this action. The EPA proposed to approve the Valley Incentive Measure in a separate rulemaking²⁵ and will respond to all comments received on that proposal, as appropriate, in a separate final rule.

²⁴ 85 FR 16588 (March 24, 2020) (proposal to approve Valley Incentive Measure).

²⁵ Id.

Comment 2: NPCA states that the aggregate emission reduction commitments are not enforceable as required by section 110(a)(2)(A) of the CAA. Citing an EPA memorandum to the docket for a rulemaking entitled “State Implementation Plans: Response to Petition for Rulemaking; Finding of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction,” NPCA states that to be “enforceable,” a measure must be enforceable by the state, the EPA, and citizens. NPCA also states that the mere approval of a measure into the SIP does not convert an unenforceable provision into an enforceable one, and that the EPA’s SIP rulemaking must explain how the aggregate emission reduction commitments can be enforced.

Response 2: We agree with NPCA’s statement that the mere approval of a measure into the SIP does not convert an unenforceable provision into an enforceable one, but we disagree with NPCA’s claim that the aggregate commitments in the SJV PM_{2.5} Plan are not enforceable. We explain below how the EPA and citizens may enforce the provisions of CARB’s and the District’s respective SIP commitments in the SJV PM_{2.5} Plan. We respond to NPCA’s more specific comments concerning enforceability in our responses to comments 2.A through 2.E, in the Response to Comments document.

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

Control measures, including commitments in SIPs, are enforced through CAA section 304(a), which provides for citizen suits to be brought against any “person,” including a state,²⁶ who is alleged “to be in violation of . . . an emission standard or limitation . . .” “Emission standard or limitation” is defined in subsection (f) of section 304.²⁷ As observed in *Conservation Law Foundation, Inc. v. James Busey et al.*, 79 F.3d 1250, 1258 (1st Cir. 1996):

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

Thus, courts have found that the citizen suit provision cannot be used to enforce the aspirational goal of attaining the NAAQS but can be used to enforce specific strategies to achieve that goal.²⁸

SIP control measures and commitments may also be enforced by the EPA under section 113(a)(1) of the Act, which authorizes the EPA to issue notices and compliance orders, assess

²⁶ CAA section 302(e) (defining “person” to include a State or political subdivision thereof).

²⁷ Section 304(f) of the CAA defines “emission standard or limitation,” in relevant part, to mean “a schedule or timetable of compliance” which is in effect under the Act “or under an applicable implementation plan.” Section 302(p) of the Act defines “schedule and timetable of compliance” to mean “a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.” Section 302(q) of the Act defines “[a]pplicable implementation plan,” in relevant part, as “the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110 of [title I of the Act]. . . and which implements the relevant requirements of [the Act].”

²⁸ See also *Committee for a Better Arvin, et al. v. EPA*, 786 F.3d 1169, 1181 (9th Cir. 2015) (finding that California’s commitments to propose and adopt emission control measures and to achieve aggregate emission reductions are enforceable “emission standards or limitations” under the CAA).

administrative penalties, and bring civil actions against any “person,” including a state, who “has violated or is in violation of any requirement or prohibition of an applicable implementation plan. . . .”²⁹

CARB’s commitments are contained in CARB Resolution 18-49 (October 25, 2018) and the Valley State SIP Strategy and consist of two parts: a control measure commitment and an aggregate tonnage commitment.³⁰ CARB’s control measure commitment is to “begin the measure’s public process and bring to the Board for consideration the list of proposed SIP measures outlined in the *Valley State SIP Strategy* and included in Attachment A, according to the schedule set forth.”³¹ By email dated November 12, 2019, CARB clarified that it intended to begin the public process on each listed measure by discussing the proposed regulation or program at a public meeting (workshop, working group, or Board hearing) or in a publicly-released document, after which it would propose the regulation or program to its Board.³² CARB’s aggregate tonnage commitment is “to achieve the aggregate emissions reductions outlined in the *Valley State SIP Strategy* of 32 tpd of NO_x and 0.9 tpd of PM_{2.5} emissions reductions in the San Joaquin Valley by 2024.”³³ In the Valley State SIP Strategy, CARB describes this commitment as a “commitment for new emission reductions” that the State must achieve by 2024 through implementation of control measures, incentive-based measures, or other

²⁹ CAA section 113(a)(1)-(2) (establishing EPA’s SIP enforcement authorities), section 302(e) (defining “person” to include a state or political subdivision thereof), and section 302(q) (defining “applicable implementation plan” to include the portion(s) of the implementation plan approved under CAA section 110 that implement relevant CAA requirements).

³⁰ 85 FR 17382, 17413.

³¹ CARB Resolution 18-49 (October 25, 2018), 5. The list of proposed SIP measures included in Attachment A to CARB Resolution 18-49 is also provided in tables 7 and 8 of the Valley State SIP Strategy and in tables 4-8 and 4-9 of the 2018 PM_{2.5} Plan.

³² Email dated November 12, 2019, from Sylvia Vanderspek, CARB to Anita Lee, EPA Region IX, “RE: SJV PM_{2.5} information” (attaching “Valley State SIP Strategy Progress”) and CARB Staff Report, 14.

³³ CARB Resolution 18-49 (October 25, 2018), 5.

enforceable measures.³⁴ CARB further describes its aggregate tonnage commitment in the Valley State SIP Strategy as follows:

While Table 8 [of the Valley State SIP Strategy] includes estimates of the emission reductions from each of the individual measures, final measures as proposed by staff to the Board or adopted by the Board may provide more or less than the initial emission reduction estimates. CARB's overall commitment is to achieve the total emission reductions necessary to attain the federal air quality standards while reflecting the combined reductions from the existing control strategy and new measures. Therefore, if a particular measure does not get its expected emission reductions, the State is still committed to achieving the total aggregate emission reductions. If actual emission decreases occur that exceed the projections reflected in the current emissions inventory and the Valley State SIP Strategy, CARB will submit an updated emissions inventory to U.S. EPA as part of a SIP revision. The SIP revision would outline the changes that have occurred and provide appropriate tracking to demonstrate that aggregate emission reductions sufficient for attainment are being achieved through enforceable emission reduction measures.³⁵

The District's commitments are contained in SJVUAPCD Governing Board Resolution 18-11-16 (November 15, 2018) and Chapter 4 of the 2018 PM_{2.5} Plan and similarly consist of two parts: a control measure commitment and an aggregate tonnage commitment.³⁶ The control measure commitment is to "take action on the rules and measures committed to in Chapter 4 of the Plan by the dates specified therein, and to submit these rules and measures, as appropriate, to CARB within 30 days of adoption for transmittal to EPA as a revision to the [SIP]."³⁷ By email dated November 12, 2019, the District clarified that it intended to take action on the rules and measures listed in Chapter 4 of the 2018 PM_{2.5} Plan by beginning the public process on each measure, i.e., discussing the proposed regulation or program at a public meeting, including a workshop, working group, or Board hearing, or in a publicly-released document, after which it

³⁴ Valley State SIP Strategy, 35 and 37.

³⁵ Id. at 37.

³⁶ 85 FR 17382, 17413.

³⁷ SJVUAPCD Governing Board Resolution 18-11-16 (November 15, 2018), 10-11.

would propose the rule or measure to the SJVUAPCD Governing Board.³⁸ The District’s aggregate tonnage commitment is to “achieve the aggregate emissions reductions of 1.88 tpd of NO_x and 1.3 tpd of PM_{2.5} by 2024/2025” through adoption and implementation of these measures or, if the total emission reductions from these rules or measures are less than these amounts, “to adopt, submit, and implement substitute rules and measures that achieve equivalent reductions in emissions of direct PM_{2.5} or PM_{2.5} precursors in the same implementation timeframes or in the timeframes needed to meet CAA milestones.”³⁹ Because the District’s 2019 amendment to Rule 4901 (“Wood Burning Fireplaces and Wood Burning Heaters”) achieves 0.2 tpd of SIP-creditable direct PM_{2.5} emissions reductions in 2024, the District’s remaining PM_{2.5} emissions reduction commitment for 2024 is 1.1 tpd.⁴⁰

Upon the EPA’s approval of these commitments into the SIP under CAA section 110, the commitments will become federally enforceable requirements of an “applicable implementation plan” as defined in CAA section 302(q). Therefore, as discussed below, both citizens and the

³⁸ Email dated November 12, 2019, from Jon Klassen, SJVUAPCD to Wienke Tax, EPA Region IX, “RE: follow up on aggregate commitments in SJV PM_{2.5} plan” (attaching “District Progress In Implementing Commitments with 2018 PM_{2.5} Plan”). Although neither this submission nor Table 4-3 of the 2018 PM_{2.5} Plan quantifies expected emission reductions from the three proposed incentive-based measures listed in Table 4-5 of the 2018 PM_{2.5} Plan, these proposed incentive-based measures are also measures “committed to in Chapter 4 of the Plan” and are, therefore, covered by the District’s control measure commitment. Thus, the District has committed to begin the public process on each regulatory measure listed in Table 4-4 and on each incentive-based measure listed in Table 4-5 by the relevant “public process begins” date specified in those tables, and to then propose each measure to the SJVUAPCD Governing Board by the relevant “action date” specified in those tables.

³⁹ SJVUAPCD Governing Board Resolution 18-11-16 (November 15, 2018), 10-11.

⁴⁰ 85 FR 17382, 17415. As shown in row C of Table 9 of our proposal, the EPA proposed to credit the District’s Rule 4901 (as amended June 20, 2019) with 0.2 tpd of direct PM_{2.5} reductions in 2024 and to credit the Valley Incentive Measure with 5.9 tpd of NO_x reductions and 0.3 tpd of direct PM_{2.5} reductions in 2024. Because we have not yet taken final action to approve the Valley Incentive Measure, however, we cannot credit this measure with emission reductions at this time. Accordingly, the only SIP-creditable control measure beyond baseline measures in the SJV PM_{2.5} Plan is the District’s Rule 4901 (as amended June 20, 2019). After crediting this rule with 0.2 tpd of direct PM_{2.5} reductions in 2024 (i.e., subtracting 0.2 tpd from the District’s PM_{2.5} tonnage commitment for 2024, which is 1.3 tpd), the District’s remaining PM_{2.5} tonnage commitment for 2024 is 1.1 tpd.

EPA may enforce these commitments under CAA sections 304(a)(1) and 113(a)(1), respectively. The enforceable components of these commitments are as follows.

First, both CARB and the District have committed to begin a public process on each of the proposed control measures listed in their respective control measure commitments⁴¹ by discussing the proposed regulation or program at a public meeting (workshop, working group, or Board hearing) or in a publicly-released document. If CARB fails to begin a public process on any of its 15 proposed control measures by the date specified under the “public process begins” column in its control measure commitment, that failure would constitute a violation of the SIP commitment. Likewise, if the District fails to begin a public process on any of its 12 proposed control measures by the date specified under the “public process begins” column in its control measure commitment, that failure would constitute a violation of the SIP commitment.

Second, both the State and District have committed to propose, to their respective boards, each of the control measures listed in their respective control measure commitments by specific dates. If CARB fails to propose to its Board any of its 15 proposed control measures by the relevant “action” date specified in its control measure commitment, that failure would constitute a violation of the SIP commitment. Likewise, if the District fails to propose to its Board any of its 12 proposed control measures by the relevant “action” date specified in its control measure commitment, that failure would constitute a violation of the SIP commitment.

⁴¹ CARB’s 15 proposed control measures and the related schedules for starting public process, action, and implementation are listed in Attachment A to Board Resolution 18-49 and in Table 7 of the Valley State SIP Strategy. The SJVUAPCD’s 12 proposed control measures and the related schedules for starting public process, action, and implementation are listed in tables 4-4 and 4-5 of the 2018 PM_{2.5} Plan. We refer to these tables as CARB’s and the District’s “control measure commitments.” Table 7 of our proposed rule summarizes the information in CARB’s control measure commitment, and Table 8 of our proposed rule summarizes the information in the SJVUAPCD’s control measure commitment. 85 FR 17382, 17413-17415.

Finally, both the State and District have committed to an aggregate tonnage commitment – i.e., to “achieve” specific amounts of NO_x and direct PM_{2.5} emissions reductions in the San Joaquin Valley by 2024, through implementation of either the measures listed in their respective control measure commitments or appropriate substitute measures. Because the deadline for implementation of all control measures necessary for attainment in this plan is January 1, 2024,⁴² we understand that both the State and District have committed to achieve the necessary emission reductions no later than January 1, 2024.⁴³ To “achieve” specified amounts of emissions reductions through implementation of control measures, a regulatory agency must require compliance with measures designed to accomplish such reductions. To require such compliance by January 1, 2024, in turn, necessitates a sequence of regulatory actions well in advance of that date, ultimately leading to full adoption of measures that achieve the requisite amounts of emission reductions, following adequate public process.⁴⁴ Thus, all of the rules and other control measures that CARB or the SJVUAPCD adopt to satisfy their respective tonnage commitments will be subject to state rulemaking processes through which the EPA and the public may track the agencies’ progress in achieving the requisite emissions reductions in the years leading up to 2024 and before the December 31, 2024 attainment date.

⁴² 40 CFR 51.1011(b)(5) (requiring implementation of all control measures needed for attainment as expeditiously as practicable and no later than the beginning of the year containing the applicable attainment date).

⁴³ This interpretation is consistent with CARB’s statement in its resolution of adoption that “CARB’s mobile source reduction schedule for the Valley provides measures to be considered throughout the years with all emissions reductions in place by January 1, 2024.” CARB Resolution 18-49 (October 25, 2018), 4.

⁴⁴ The California Administrative Procedure Act (Cal. Gov’t Code, section 11340 et. seq.) requires all state agencies to provide, at minimum, a 45-day opportunity to comment in writing, by fax, or e-mail on any new or revised regulation, with limited exceptions. Cal. Gov’t Code, section 11346.4. The 45-day opportunity to submit comments starts with publication in the California Regulatory Notice Register of a notice of proposed rulemaking, which must be posted on the rulemaking agency’s website and mailed to “every person who has filed a request for notice of regulatory actions with the state agency,” among others. *Id.* For proposed regulations involving “complex proposals” or a large number of proposals, the state agency must involve the public in workshops or other public discussions well before the start of the formal rulemaking process. Cal. Gov’t Code, section 11346.45.

CARB regularly informs the public of ways to participate in its rulemaking processes⁴⁵ and provides guidelines for accessing public records under the State Public Records Act.⁴⁶ Should either CARB or the SJVUAPCD fail to commence, prior to January 1, 2024, rulemaking proceedings as necessary to require full implementation of (i.e., compliance with) measures achieving the required tonnages of emission reductions by January 1, 2024, CARB or the District would be in violation of its SIP commitment.⁴⁷ CARB must also submit each adopted measure to the EPA for approval into the SIP, after which the EPA determines, through notice-and-comment rulemaking, whether to approve the measure under CAA section 110 and the appropriate amounts of SIP emission reduction credit to attribute to the measure, if approved.

These procedures mandated by the State and District commitments constitute a specific enforceable strategy designed to bring the San Joaquin Valley into attainment of the PM_{2.5} NAAQS by the end of 2024. The fact that CARB and the District may meet their SIP commitments by adopting measures that are not specifically identified in the SIP, or through one of several available techniques, does not render the requirement to achieve the aggregate emissions reductions unenforceable.⁴⁸ For over 20 years, the EPA has approved aggregate tonnage commitments under which the state is required to achieve specified amounts of emission

⁴⁵ See, e.g., CARB's rulemaking schedules at <https://ww2.arb.ca.gov/rulemaking-activity>.

⁴⁶ "Guidelines for Accessing Public Records," available at <http://www.arb.ca.gov/html/pubrecsguidelines.htm>.

⁴⁷ Furthermore, if either agency fails to meet its commitments, the EPA could make a finding of failure to implement the SIP under CAA section 179(a), which starts an 18-month period for the State to correct the non-implementation before mandatory sanctions are imposed.

⁴⁸ *Citizens for a Better Environment v. Deukmejian*, 731 F. Supp. 1448, 1454-59 (N.D. Cal.) ("the basic commitment to adopt and implement additional measures, should the identified conditions occur, constitutes a specific strategy, fully enforceable in a citizens action, although the exact contours of those measures are not spelled out"), modified, 746 F. Supp. 976 (1990) (holding state and district liable for failing to satisfy SIP commitment).

reductions through enforceable control measures to be adopted and implemented by a later date.⁴⁹

For all of these reasons, we conclude that these enforceable commitments to adopt and implement additional control measures to achieve aggregate emission reductions on a fixed schedule are appropriate means, techniques, or schedules for compliance under sections 110(a)(2)(A) and 172(c)(6) of the Act.

Comment 3: NPCA states that approval of the aggregate commitments under the EPA's three-factor test is unreasonable, and that the EPA's analysis of these factors is conclusory and contrary to the record.

Response 3: For the reasons provided in Response 3.A through Response 3.C below, we disagree with the commenter's claim that our approval of the commitments in the Plan is unreasonable and that our analysis of the commitments under the three-factor test is unsupported.

Comment 3.A: With respect to the first factor, NPCA states that the EPA acknowledges that 13.8 percent (%) of the necessary NO_x reductions and over a quarter of the necessary PM_{2.5} reductions will supposedly come from these new aggregate commitments. NPCA asserts that the

⁴⁹ See, e.g., [HYPERLINK](#)

"http://www.lexis.com/research/buttonTFLink?_m=b8271650ac023d9ce93fab43ee478a8f&_xfercite=%3ccite%20c%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20FR%2057160%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=24&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b62%20FR%201150%2cat%201187%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAW&_md5=6d0b8c64e7cb22f330ae9f1798feea9b" 62 FR 1150, 1187 (Jan. 8, 1997)

(approving ozone attainment demonstration for the South Coast Air Basin); [HYPERLINK](#)

"http://www.lexis.com/research/buttonTFLink?_m=b8271650ac023d9ce93fab43ee478a8f&_xfercite=%3ccite%20c%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20FR%2057160%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=25&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b65%20FR%2018903%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAW&_md5=6721a3f19a584849c189d2c9f3765afa" 65 FR 18903 (Apr. 10, 2000) (approving revisions to ozone attainment demonstration for the South Coast Air Basin); 66 FR 57160 (Nov. 14, 2001) (approving ozone attainment demonstration for Houston/Galveston, Texas); 67 FR 5170 (Feb. 4, 2002) (approving ozone attainment demonstration for New York); 69 FR 30005 (May 26, 2004) (approving PM₁₀ attainment demonstration for San Joaquin Valley); and 76 FR 69896 (Nov. 9, 2011) (approving PM_{2.5} attainment demonstration for San Joaquin Valley).

level of these commitments is unprecedented and far from “limited,” and that the EPA offers no record of support for its conclusion, pointing instead to the difficulty in identifying additional measures and suggesting that it is reasonable for the State and District to seek additional time to adopt the last increment of emission reductions. NPCA claims that the EPA’s conclusion regarding the need for more time has nothing to do with whether the commitments represent a limited portion of the needed reductions. NPCA states that these percentages far exceed guidance on the use of voluntary measures, and that the ton per day levels of aggregate tonnage are beyond the levels of commitments approved in any prior SIP.

NPCA also states that the “expectation that even larger tonnage reductions than have previously been approved in a SIP can magically be found is inconsistent with EPA's own conclusion that additional measures are more difficult to find,” and that the EPA's conclusion is an admission that the State and District have not identified the necessary measures. NPCA states that, unlike plans for ozone, the CAA does not allow PM_{2.5} plans to include this sort of “black box” that permits plans to put off identification of measures, and that the EPA's approval undermines the Act's basic planning requirements by suggesting that a plan need only include “a blanket commitment to achieve necessary reductions, even if there is no identified path to actually doing so.”

Response 3.A: The commenters correctly note that the percentages of needed emission reductions that are addressed by the aggregate tonnage commitments in the SJV PM_{2.5} Plan are higher than those we have approved in any prior SIP. We disagree, however, with NPCA’s claim that the EPA’s approval of these commitments “undermines the Act’s basic planning requirements” and suggests that a plan need only include “a blanket commitment to achieve necessary reductions, even if there is no identified path to actually doing so.”

Our proposed rule stated that the emission reductions remaining as aggregate tonnage commitments in the Plan (after crediting Rule 4901 and the Valley Incentive Measure toward the attainment demonstration) would be 28 tpd of NO_x emission reductions and 1.7 tpd of direct PM_{2.5} emission reductions, which equate to approximately 13.8% of the NO_x reductions and 26.6% of the direct PM_{2.5} reductions needed to attain the 2006 PM_{2.5} NAAQS in the San Joaquin Valley by the end of 2024.⁵⁰ Because the EPA has not yet taken final action to approve the Valley Incentive Measure, however, we cannot credit this measure with emission reductions at this time and have added the NO_x and direct PM_{2.5} reductions attributed to this measure back to the aggregate tonnage commitments. Thus, the emission reductions remaining as aggregate tonnage commitments are now 33.9 tpd of NO_x emission reductions and 2.0 tpd of direct PM_{2.5} emission reductions, which equate to approximately 16.8% of the NO_x reductions and 31.3% of the direct PM_{2.5} reductions necessary for attainment. See Table 1 in section III of this final rule.

Whether a particular aggregate tonnage commitment constitutes a “limited” portion of the required emission reductions is a question that the EPA must evaluate in light of the facts and circumstances of the nonattainment area at issue. Given the nature of the PM_{2.5} challenge in the San Joaquin Valley, the significant reductions in NO_x and direct PM_{2.5} emission levels achieved through implementation of baseline measures over the past several decades, and the difficulty of identifying additional control measures that are feasible for implementation in the area, we find it reasonable for the State and District to seek additional time to adopt the last increment of emission reductions necessary for attainment by 2024.⁵¹ Therefore, we find that the aggregate

⁵⁰ 85 FR 17382, 17415 (Table 9). As shown in row C of Table 9 of our proposal, the EPA proposed to credit the District’s Rule 4901 (as amended June 20, 2019) with 0.2 tpd of direct PM_{2.5} reductions in 2024 and to credit the Valley Incentive Measure with 5.9 tpd of NO_x reductions and 0.3 tpd of direct PM_{2.5} reductions in 2024.

⁵¹ 85 FR 17382, 17416.

tonnage commitments in the Plan constitute a limited portion of the required control strategy for the 2006 PM_{2.5} NAAQS in the San Joaquin Valley and that the first factor of our three-factor test is met.

NPCA's statement that "the Plan's aggregate commitments far exceed guidance on the use of voluntary measures" appears to be in reference to the EPA's longstanding guidance recommending certain presumptive limits on the amounts of emission reductions from voluntary and other nontraditional (e.g., incentive-based) measures that may be credited in a SIP.⁵² For example, the EPA has recommended that SIPs rely on voluntary mobile source emission reduction programs for no more than three percent of the total projected future year emission reductions required to attain the relevant NAAQS, except where the state provides a "clear and convincing justification" for a higher limit.⁵³ These guidance documents and the presumptive limits discussed therein do not apply to our evaluation of the enforceable commitments in the SJV PM_{2.5} Plan because the commitments are not voluntary or incentive-based measures. Although our proposed rule discusses one incentive-based measure (the Valley Incentive Measure) as a component of the attainment demonstration in the Plan,⁵⁴ we have not yet taken final action on the Valley Incentive Measure and are not considering it as part of our final action on the SJV PM_{2.5} Plan. Thus, the SJV PM_{2.5} Plan does not rely on any voluntary or incentive-

⁵² 85 FR 17382, 17412 (describing EPA guidance on SIP credit for voluntary measures).

⁵³ EPA, "Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs)," October 24, 1997, 5; EPA, "Incorporating Emerging and Voluntary Measure in a State Implementation Plan (SIP)," October 4, 2004, 9; EPA, "Guidance on Incorporating Bundled Measures in a State Implementation Plan," August 16, 2005, 8, n. 6; and EPA, "Diesel Retrofits: Quantifying and Using Their Emission Benefits in SIPs and Conformity: Guidance for State and Local Air and Transportation Agencies," March 2018, 12.

⁵⁴ 85 FR 17382, 17412-17413 (discussing justification for SJV PM_{2.5} Plan's reliance on Valley Incentive Measure) and 85 FR 16588 (March 24, 2020) (proposed rule to approve Valley Incentive Measure).

based measure to achieve emission reductions necessary for attainment, and the EPA's guidance documents on the use of voluntary measures in SIPs therefore do not apply to this action.

To the extent NPCA intended to argue that the EPA's presumptive limits on use of voluntary measures in SIPs should apply to our evaluation because of the extent to which CARB anticipates fulfilling its tonnage commitments through adoption and implementation of incentive-based measures, we disagree. As explained in Response 1 and Response 2, although the Valley State SIP Strategy indicates that CARB anticipates achieving 23 tpd of the necessary NO_x emission reductions and 0.8 tpd of the necessary PM_{2.5} emissions reductions through implementation of the incentive-based measures listed in Table 8 of the Valley State SIP Strategy,⁵⁵ CARB has not specifically committed to adopt any of these listed measures and may ultimately achieve the required emission reductions through adoption and implementation of other enforceable control measures. Thus, the SJV PM_{2.5} Plan does not specifically rely on any voluntary or incentive-based measure to achieve emission reductions necessary for attainment. If and when CARB submits to the EPA a voluntary or incentive-based measure to achieve a portion of its aggregate tonnage commitments in the SJV PM_{2.5} Plan, the EPA will evaluate the submitted measure in accordance with the applicable CAA requirements as interpreted in EPA guidance and will take action on it following notice and comment rulemaking. We encourage NPCA to participate in any such rulemaking and to submit its comments on the applicability of the EPA's presumptive limits at that time.

NPCA's claim that the CAA does not allow PM_{2.5} plans to include a "black box" that permits plans to put off identification of measures" appears to be in reference to the provisions in CAA section 182(e)(5) that allow the EPA to approve, for extreme ozone nonattainment areas,

⁵⁵ Valley State SIP Strategy, 38 (Table 8) (identifying expected emission reductions from proposed State measures).

plan provisions that “anticipate development of new control techniques or improvement of existing control technologies.” This provision, often referred to as the “black box” or “new technology” provision of the Act, applies only to ozone nonattainment areas classified as “extreme” nonattainment under subpart 2 of part D, title I of the Act. Although we agree with NPCA’s assertion that the CAA does not contain an analogous provision for PM_{2.5} nonattainment area plans, we disagree with NPCA’s suggestion that the CAA prohibits states from including provisions in PM_{2.5} nonattainment area plans that anticipate adoption and implementation of necessary control measures at a later date. The inclusion of the new technology provision in section 182(e)(5), applicable for different purposes in extreme ozone nonattainment areas, does not preclude the authority of the Agency to approve appropriately structured enforceable commitments for purposes of PM_{2.5} nonattainment area plans. As we explained in our proposed rule, sections 110(a)(2)(A) and 172(c)(6) of the CAA allow for approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.⁵⁶ Courts have confirmed that the agency has this authority.⁵⁷

Finally, we disagree with NPCA’s claim that the Plan’s aggregate commitment is a “blanket commitment to achieve necessary reductions” with no identified path to fulfill it. As explained in Response 2, both CARB and the SJVUAPCD have submitted specific control

⁵⁶ 85 FR 17382, 17416 (noting that the express allowance in CAA sections 110(a)(2)(A) and 172(c)(6) for “schedules and timetables” demonstrates that Congress understood that all required controls might not have to be in place before a SIP could be fully approved).

⁵⁷ The Fifth Circuit Court of Appeals upheld the EPA’s interpretation of CAA sections 110(a)(2)(A) and 172(c)(6) and the Agency’s use and application of the three factor test in approving enforceable commitments in the 1-hour ozone SIP for Houston-Galveston. *BCCA Appeal Group et al. v. EPA et al.*, 355 F.3d 817 (5th Cir. 2003). More recently, the Ninth Circuit Court of Appeals upheld the EPA’s approval of enforceable commitments in ozone and PM_{2.5} SIPs for the San Joaquin Valley, based on the same three factor test. *Committee for a Better Arvin, et al. v. EPA*, 786 F.3d 1169 (9th Cir. 2015).

measure commitments⁵⁸ in addition to aggregate tonnage commitments, all of which necessitate a sequence of regulatory actions ultimately leading to full adoption of measures that achieve the requisite amounts of emission reductions by January 1, 2024, following adequate public process. These procedures mandated by the State and District commitments constitute a specific enforceable strategy designed to bring the San Joaquin Valley into attainment of the PM_{2.5} NAAQS by the end of 2024. See Response 2.

Comment 3.B: NPCA asserts that the EPA’s analysis of the second factor regarding the State’s capacity to fulfill its commitments is unreasonable. According to NPCA, the bulk of the EPA’s discussion focuses on the progress to adopt the identified control measures, while the bulk of the commitment strategy relies on incentives to achieve voluntary turnover in specified categories of mobile sources. NPCA asserts that, for the EPA to conclude that the State is capable of fulfilling its commitment, the EPA must conclude that this incentive-dependent strategy is reasonable. NPCA states that for this strategy to work, CARB and the District must first be able to find the necessary funding, must then be able to use that money to achieve the level of turnover described, and finally must demonstrate that the specified level of turnover will result in the emission reductions anticipated. NPCA claims that the EPA cannot reasonably conclude that the State is capable of achieving any of this.

According to NPCA, the EPA acknowledges that the Plan identifies a total funding need of \$5 billion (including \$3.3 billion for heavy-duty trucks and buses and \$1.4 billion for agricultural equipment) and characterizes the various funding programs as “well-funded” but

⁵⁸ Together, CARB’s and the District’s control measure commitments identify a total of 21 regulatory measures (12 for mobile sources and nine for stationary sources) and six incentive-based measures (three each for mobile and stationary sources) that the agencies must develop and propose to their respective boards on a fixed schedule. See Response 2.

provides no analysis of how these programs line up with the funding need, or any assessment of whether the State is capable of fulfilling the targets. NPCA claims that the 2018 CARB Staff Report shows incentive funding streams providing roughly \$350 million per year over the next seven years, far below the roughly \$850 million per year needed, and that the gap between what CARB and the District asked for in incentives and what they are likely to receive is on track to grow to billions of dollars short of what the Plan specifies is needed for the San Joaquin Valley to attain the NAAQS by 2024. NPCA asserts that CARB offers no strategy for making up that shortfall, and that the shortfall has only grown over time.

Moreover, NPCA claims, in light of the current COVID-19 crisis and anticipated economic fallout, the California Legislature will likely have significantly less funding available over the next five years due to funding shortfalls in CARB's greenhouse gas reduction fund (GGRF), general budget, and other sources that these incentive grant programs rely upon. NPCA argues that, because there is no reason to think that all new sources of funding would go to the San Joaquin Valley, the EPA must explain why it is reasonable to believe that CARB is capable of finding an additional \$1.3 billion per year in new incentive funding—nearly three times as much as currently achieved by CARB's existing programs.

Citing the EPA's reference to a September 2019 CARB meeting at which incentive funding shortfalls were discussed, NPCA claims that the EPA "suggests that the Board's recommendation to develop a 'Plan B' is evidence that CARB is capable of fulfilling its commitment." But according to NPCA, this Board meeting is "evidence of the recognition that the strategy outlined in the Plan is already failing and will not work," and the EPA can point to no new plan that came out of the Board's directive to staff. NPCA also states that neither CARB nor the District have held or scheduled any workshops to "discuss additional reduction

opportunities” despite Board direction to do so. NPCA claims that the EPA proposes to approve a Plan that has no strategy that the State is capable of fulfilling.

NPCA asserts that the scale of voluntary replacement that CARB’s commitment assumes is equally absurd. For example, NPCA claims, CARB’s plan is to use \$3.3 billion over six years (2019-2024) to achieve 10 tpd of NO_x reductions from the accelerated turnover of trucks and buses, and the Plan suggests incentives will replace 33,000 heavy-duty vehicles with newer technologies to achieve that level of emission reductions. NPCA claims that this means over a dozen truck owners per day, every day for the next seven years, will voluntarily choose to retire their trucks and replace them with advanced technology. If thousands of pieces of agricultural and other off-road equipment are also replaced every year, NPCA claims, it is not even clear that the agencies could process this many applications. According to NPCA, over the entire life of the Proposition 1B program and the District’s Truck Voucher Program, the District has replaced 4,500 trucks (roughly 300 per year, or less than one per day). NPCA asserts that the “best year” for South Coast’s passenger vehicle scrappage program was 2,600 vehicles. NPCA states that the EPA “should have at least compared these numbers to truck population numbers and turnover rates in the Valley to see if an additional 15,000 trucks per year is plausible,” and that the EPA needs to provide a rational basis for concluding that CARB can fulfill its strategy for achieving this level of voluntary turnover, even if it obtained the necessary funding.

According to NPCA, the District has a demonstrated track record of failing to use funds to achieve emissions reduction commitments. Citing a 2015 Environmental Impact Report for Kern County’s revised oil and gas ordinance and an accompanying agreement signed by the county and District, NPCA states that the District received almost \$89 million in fee monies to be spent on pollution reduction projects intended to compensate for otherwise unregulated oil

and gas emissions but that the District has struggled to spend these funds, and that its shortfalls in spending and encumbrances have left the District with ending unencumbered balances of more than \$6.4 million for 2017, \$13.6 million for 2018, and \$48 million for 2019. NPCA asserts that these shortfalls in spending mean that air pollution from new oil and gas drilling is increasing unabated and worsening air quality.

Finally, NPCA states that CARB and the District have been using incentive money for years to replace old mobile sources, and that as turnover occurs, the remaining mobile sources are cleaner and cleaner and emission reductions achieved by additional turnovers become smaller and smaller per vehicle. NPCA claims that the EPA “needs to provide some analysis showing that the targeted level of turnover can fulfill the aggregate emission reductions assuming lower marginal reductions and higher marginal costs.”

Response 3.B: We disagree with NPCA’s claim that the EPA has no reasonable basis for finding CARB capable of fulfilling its commitments.

First, both the State and District have made substantial progress in developing and adopting the regulatory measures listed in their respective control measure commitments. The SJV PM_{2.5} Plan indicates that CARB and the SJVUAPCD anticipate achieving approximately 32% of their combined aggregate tonnage commitments for NO_x reductions and 52% of their combined aggregate tonnage commitments for direct PM_{2.5} reductions through adoption and implementation of regulatory control measures.⁵⁹ As we explained in the proposed rule, CARB

⁵⁹ The Valley State SIP Strategy indicates that CARB anticipates achieving 9 tpd of its 32 tpd NO_x emission reduction commitment and 0.1 tpd of its 0.9 tpd PM_{2.5} emission reduction commitment through adoption and implementation of regulatory control measures (Valley State SIP Strategy, 38 (Table 8), and the 2018 PM_{2.5} Plan indicates that the SJVUAPCD anticipates achieving all or most of its 1.9 tpd NO_x emission reduction commitment and 0.94 tpd of its 1.1 tpd PM_{2.5} emission reduction commitment through adoption and implementation of regulatory control measures (2018 PM_{2.5} Plan, 4-12 (Table 4-3) and 2019 Rule 4901 Staff Report). Thus, the total NO_x tonnage attributed to regulatory measures is 10.9 tpd of the 33.9 tpd aggregate commitment (approximately 32%), and the

has adopted or begun the public process on all but one of the 12 regulatory control measures listed in its control measure commitment, and the District has adopted or begun the public process on six of the nine regulatory measures listed in its control measure commitment.⁶⁰ The substantial progress that both agencies have made in the regulatory processes that they have committed to undertake, for purposes of achieving a sizable portion of the aggregate tonnage commitments in the Plan (i.e., 30 and 52% of the NO_x and PM_{2.5} reductions, respectively), supports our conclusion that the State and District are capable of fulfilling their respective commitments.

Second, CARB has also made significant progress in developing and implementing the Valley Incentive Measure, one of three incentive-based measures listed in its control measure commitment.⁶¹ CARB adopted and submitted the Valley Incentive Measure to the EPA in February 2020, consistent with the 2020 “action” date specified in its control measure commitment, and the EPA proposed to approve this measure into the SIP on March 24, 2020.⁶² CARB’s SIP submission for the Valley Incentive Measure indicates that the identified incentive projects, most of which have already been funded and are currently being implemented, would achieve a total of 5.9 tpd of NO_x emission reductions and 0.3 tpd of PM_{2.5} emission reductions in the San Joaquin Valley by 2024.⁶³ Although the EPA has not yet taken final action to approve this measure, CARB’s timely adoption and submission of this measure, together with extensive

total PM_{2.5} tonnage attributed to regulatory measures is 1.04 tpd of the 2.0 tpd aggregate commitment (approximately 52%).

⁶⁰ 85 FR 17382, 17416-17417.

⁶¹ Valley State SIP Strategy, 36, 38 (tables 7 and 8).

⁶² 85 FR 16588 (March 24, 2020).

⁶³ EPA, “Technical Support Document for EPA’s Rulemaking for the California State Implementation Plan, California Air Resources Board Resolution 19-26, San Joaquin Valley Agricultural Equipment Incentive Measure,” February 2020.

documentation to address the CAA's requirements for crediting incentive-based measures in a SIP, supports our conclusion that the State is capable of adopting and implementing incentive-based measures to achieve its aggregate tonnage commitments.

Third, the Plan's identified funding need of \$5 billion (including \$3.3 billion for heavy-duty trucks and buses and \$1.4 billion for agricultural equipment) to incentivize the necessary level of vehicle and equipment turnover represents a projection of the potential amount of incentive funds needed to achieve the aggregate tonnage commitments, and is not necessarily the amount that will ultimately be required. For example, as explained below, it is possible that the agricultural equipment replacement projects could be implemented with less funding than stated in the Plan. Based on information about the cost of agricultural equipment replacement projects provided in CARB's SIP submission for the Valley Incentive Measure, the EPA developed alternative estimates of the additional funding necessary to implement additional agricultural equipment replacement projects in the San Joaquin Valley. Specifically, based on the amounts of incentive funds secured or disbursed to implement the projects identified in the Valley Incentive Measure (a total of approximately \$328 million) and emission reductions summed from those projects, we calculated the average cost-effectiveness values for 1) projects that have already been fully funded and 2) all projects relied upon in the Valley Incentive Measure.⁶⁴ We then used the average cost-effectiveness values to estimate a range of total incentive funds that could achieve an additional 5.1 tpd of NO_x reductions and 0.5 tpd of direct PM_{2.5} reductions from agricultural equipment replacement projects (i.e., the additional reductions necessary to achieve

⁶⁴ Memorandum dated June 22, 2020, from Rebecca Newhouse, EPA Region IX, Air and Radiation Division, Rules Office to docket number EPA-R09-OAR-2019-0318, Subject: "Cost-effectiveness of Emission Reductions from the Valley Incentive Measure and Estimated Future Funding Needs for Additional Agricultural Equipment Replacements" ("EPA Cost-Effectiveness Memo").

the total emission reductions attributed to CARB’s proposed “Accelerated Turnover of Agricultural Equipment” measure).⁶⁵

These calculations resulted in a low estimate of \$480 million and a high estimate of \$547 million to achieve both an additional 5.1 tpd of NO_x reductions and an additional 0.5 tpd of direct PM_{2.5} reductions from CARB’s proposed “Accelerated Turnover of Agricultural Equipment” measure,⁶⁶ both significantly less than the approximately \$1 billion identified in the Plan as necessary to achieve these remaining emission reductions.⁶⁷ Although our calculations are based on a number of assumptions that may differ from those used by CARB and the District in the SJV PM_{2.5} Plan, they provide some indication that the emission reductions attributed in the Plan to agricultural equipment replacement projects may be achievable with less than \$1.4 billion in incentive funds and, by extension, that the emission reductions attributed to all of the incentive-based measures in the Plan may be achievable with less than \$5 billion.

CARB’s Staff Report for the SJV PM_{2.5} Plan indicates that, of the \$5 billion estimated to be necessary from 2019 to 2024 to achieve the needed emission reductions identified in the Plan, over \$2 billion is “identified or anticipated” (\$338 million each year from 2019 to 2024), leaving

⁶⁵ The SJV PM_{2.5} Plan indicates that, in addition to the 5.9 tpd of NO_x reductions and 0.3 tpd of PM_{2.5} reductions to be achieved by the Valley Incentive Measure, CARB anticipates achieving an additional 5.1 tpd of NO_x reductions and 0.5 tpd of PM_{2.5} reductions from other agricultural equipment replacement measures in the San Joaquin Valley. Valley State SIP Strategy, 38 (Table 8) (identifying a total of 11 tpd NO_x reductions and 0.8 tpd PM_{2.5} reductions to be achieved by “Accelerated Turnover of Agricultural Equipment”).

⁶⁶ EPA Cost-Effectiveness Memo, 6 (Table 4). The higher funding estimates for PM_{2.5} reductions would be adequate to also achieve the identified NO_x reductions, for which the EPA calculated significantly lower cost-effectiveness values and funding needs.

⁶⁷ The 2018 PM_{2.5} Plan identifies a total of \$1.4 billion in funding needed to implement the “Accelerated Turnover of Agricultural Equipment” measure. 2018 PM_{2.5} Plan, App. E, Table E-4 (page E-22). Because CARB has already secured \$328 million in incentive funds to implement the Valley Incentive Measure, which is expected to achieve 5.9 of the 11 tpd of NO_x reductions and 0.3 of the 0.8 tpd PM_{2.5} reductions attributed to the “Accelerated Turnover of Agricultural Equipment” measure, the remaining amount of incentive funds that the Plan identifies as needed to fully implement this measure (i.e., to achieve the remaining 5.1 tpd NO_x reductions and 0.5 tpd PM_{2.5} reductions) is approximately \$1.07 billion.

a total “incentive funding gap” of approximately \$2.6 billion over the 2019-2024 period.⁶⁸ That is, the Plan indicates that over 40% of the needed incentive funds are identified or anticipated, leaving a “funding gap” of less than 60% of the needed funds. If we assume a 60% funding gap would result in a failure to achieve 60% of the emission reductions that the Plan attributes to CARB’s incentive-based measures (23 tpd NO_x reductions and 0.8 tpd PM_{2.5} reductions),⁶⁹ the funding gap would result in emission reduction shortfalls of approximately 13.8 tpd for NO_x and 0.5 tpd for PM_{2.5}, which equate to approximately 7% of the total NO_x reductions and 8% of the total PM_{2.5} reductions necessary for attainment.⁷⁰ We believe it is reasonable to provide the State and District additional time to identify the specific measures that will achieve these amounts of reductions.

Fifth, we disagree with NPCA’s suggestion that anticipated economic constraints render the State unable to achieve its tonnage commitments and its claim that the EPA must explain “why it is reasonable to believe that CARB is capable of finding an additional \$1.3 billion per year in new incentive funding” in order to find that CARB is capable of fulfilling its commitments. Although it is possible that CARB and the District will have significantly less funding available over the next several years to implement the incentive-based measures identified in the Plan, it is also possible that the State and District will achieve their respective aggregate tonnage commitments with less than \$5 billion in incentive funds, as suggested by our alternative estimates of the cost-effectiveness and estimated funding needs for additional agricultural equipment replacement projects. Neither CARB nor the District has committed to

⁶⁸ CARB, “Staff Report, Review of the San Joaquin Valley 2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards,” release date December 21, 2018 (“CARB Staff Report”), 27 (Table 9).

⁶⁹ Valley State SIP Strategy, 38 (Table 8).

⁷⁰ 2018 PM_{2.5} Plan, App. H, Table H-6 (identifying totals of 202.2 tpd NO_x reductions and 6.4 tpd PM_{2.5} reductions necessary for attainment of the 2006 PM_{2.5} NAAQS in the San Joaquin Valley by December 31, 2024).

secure \$5 billion in funding for its incentive programs, nor does the Plan establish definitively that this amount is necessary to achieve the identified tonnage commitments. For example, CARB and the District may be able to fulfill a substantial portion of their aggregate tonnage commitments through other measures not identified in the SJV PM_{2.5} Plan, in lieu of or in addition to the identified incentive programs. Although the Valley State SIP Strategy indicates that CARB *anticipates* achieving 23 tpd of the necessary NO_x emission reductions (68% of the total 33.9 tpd NO_x commitment from both agencies) and 0.8 tpd of the necessary PM_{2.5} emissions reductions (40% of the total 2.0 tpd PM_{2.5} commitment from both agencies) through implementation of the incentive-based measures listed in CARB's control measure commitment,⁷¹ CARB has not specifically committed to adopt any of these listed measures and may ultimately satisfy its tonnage commitments through adoption and implementation of other enforceable control measures. See Response 1 and Response 2. Indeed, CARB has recently fulfilled the aggregate tonnage commitments in a previous plan to provide for attainment of the 1997 PM_{2.5} NAAQS in the San Joaquin Valley, in part through adoption and implementation of both regulatory and incentive-based control measures not specifically identified in the approved attainment plan.⁷²

CARB has identified a number of potential additional State measures on which it intends to begin public rule development processes this year, including a Tier 5 off-road diesel engine standard, a "state green contracting" measure, a "reduction in growth of single-occupancy vehicle travel" measure, and a locomotive emission reduction measure.⁷³ In addition, as

⁷¹ Valley State SIP Strategy, 36, 38 (tables 7 and 8).

⁷² 85 FR 17382, 17406-17407. See also, the EPA's General Evaluation TSD, 3-12.

⁷³ Email dated November 12, 2019, from Sylvia Vanderspek, CARB to Anita Lee, EPA Region IX, "RE: SJV PM_{2.5} information" (attaching "Valley State SIP Strategy Progress").

explained in our proposed rule, emission reductions from certain measures in the Plan's control strategy, such as zero emission airport shuttle buses and transportation refrigeration units used for cold storage, have yet to be quantified but are expected to further reduce NO_x and direct PM_{2.5} emissions by 2024.⁷⁴ Finally, CARB implements a number of highly successful incentive programs designed to accelerate turnover to cleaner vehicles, including the Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP), which accelerates the adoption of cleaner, more-efficient trucks and buses.⁷⁵ All of these potential additional control measures or incentive programs are candidate measures that CARB may adopt, implement, and submit to the EPA to achieve its aggregate tonnage commitments.

Finally, although NPCA correctly notes that the District has not fully expended the funds it received from the Kern County Oil and Gas Emission Reduction Agreement (OGERA) during the last several years,⁷⁶ the EPA does not agree that this equates to "a demonstrated track record of failing to use funds to achieve emissions reduction commitments." For example, the District has fulfilled its SIP-approved aggregate tonnage commitment in the 2008 PM_{2.5} Plan for the 1997 PM_{2.5} NAAQS, through adoption and implementation of both regulatory and incentive-based control measures.⁷⁷ Additionally, the District's latest annual financial reports indicate that both its revenues and its expenditures for incentive grant programs have significantly increased

⁷⁴ 85 FR 17382, 17417.

⁷⁵ CARB, "Public Health: HVIP Metrics (Draft)," April 16, 2020, slide 3 (showing significant increases in annual HVIP vouchers for zero-emission and low-NO_x vehicles from 2017 to 2019).

⁷⁶ The SJVUAPCD's 2019 annual report on its indirect source review (ISR) program states that \$48.5 million of the FY2018-2019 Voluntary Emission Reduction Agreement (VERA) program balances were not encumbered as of June 30, 2019, and that \$29.7 million of this unencumbered balance was from the Kern County OGERA.

SJVUAPCD, "2019 Annual Report, Indirect Source Review Program, July 1, 2018 to June 30, 2019" (December 19, 2019), 9. The revenues from the Kern County OGERA may be applied to incentive projects to replace residential wood burning devices, trucks, buses, and diesel-powered off-road equipment, among others. SJVUAPCD, "Item Number 7: Approve Emission Reduction Agreement with Kern County to Fully Mitigate Construction and Operational Air Quality Impacts from Future Growth in the Oil and Gas Industry in Kern County," August 18, 2016.

⁷⁷ 85 FR 17382, 17406-17407. See also, the EPA's General Evaluation TSD, 3-12.

in the past several years, and that grant funds received and appropriated for a given fiscal year may be expended on incentive contracts in subsequent fiscal years.⁷⁸ Both the District's track record to date in fulfilling its SIP-approved aggregate tonnage commitments and the information concerning funds available for incentive grant programs in the District's annual financial reports support our conclusion that the District is capable of fulfilling its aggregate tonnage commitments in the SJV PM_{2.5} Plan.⁷⁹ NPCA fails to substantiate its claim that the District's "shortfalls in spending mean that air pollution from new oil and gas drilling is increasing unabated and worsening air quality."

We therefore find that CARB and the SJVUAPCD are capable of fulfilling their respective aggregate tonnage commitments in the SJV PM_{2.5} Plan and that the second factor of our three-factor test is met.

Comment 3.C: With respect to the third factor, NPCA states that the scale of the funding shortfall and the turnover required undermine the EPA's conclusion that the commitment is for a reasonable and appropriate period of time. NPCA claims that the EPA's conclusory analysis looks only at specific rule commitments with no discussion of the main part of the Plan's strategy, and that any such analysis would have shown that CARB and the District are already falling short on their funding targets and will need even more funding and even greater levels of turnover in the years that remain until 2024. NPCA asserts that there is not enough time to make

⁷⁸ The "non-operating budget" revenues and expenditures identified in the SJVUAPCD's annual financial reports, which represent the grant funds received and disbursed by the District to implement emission reduction incentive programs, have increased from \$99.9 million (revenues) and \$81.6 million (expenditures) for the fiscal year ending June 30, 2017 to \$289.8 million (revenues) and \$139.7 million (expenditures) for the fiscal year ending June 30, 2019. SJVUAPCD, "Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2017," 16-17, "Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2018," 16-17, and "Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2019," 16-17, available at https://www.valleyair.org/General_info/budget.htm.

⁷⁹ The District's aggregate tonnage commitments do not indicate that the District anticipates achieving any portion of the required emission reductions through incentive-based control measures. See Response 2.

up the ground that has been lost, nor is it reasonable to believe that CARB and the District can wait any longer to develop a Plan B to achieve the emission reduction commitment. According to NPCA, rulemaking must be occurring now to achieve the required emission reductions by 2024, and a disapproval of the aggregate commitments will trigger that required effort.

NPCA asserts that the EPA has provided none of the necessary analysis to reasonably conclude that the Plan provides any strategy for achieving the massive aggregate emission reduction commitments in the SIP, and that no such support exists in the record. NPCA claims that CARB has submitted an unenforceable promise with no basis for believing it can be kept. NPCA asserts that the EPA should disapprove the Plan and direct CARB and the District to submit a plan that outlines a strategy that does not rely on unrealistic voluntary incentives, and that if accelerated turnover is required, CARB and the District should “adopt rules to mandate that turnover and use their limited funds to assist with that compliance burden rather than making people who deserve clean air and the success of the plan the ones to pay for any funding shortfall.”

Response 3.C: We disagree with NPCA’s claim that “the scale of the funding shortfall and the turnover required” undermine the EPA’s conclusion that the Plan’s aggregate commitments are for a reasonable and appropriate period of time. As we explained in Response 3.B, the SJV PM_{2.5} Plan identifies an “incentive funding gap” over the 2019-2024 period of approximately \$2.6 billion, almost 60% of the funds needed to implement the incentive projects that the Plan identifies as necessary for attainment.⁸⁰ If we assume a 60% funding gap would result in a failure to achieve 60% of the emission reductions that the Plan attributes to CARB’s

⁸⁰ CARB Staff Report, 27 (Table 9).

incentive-based measures,⁸¹ the funding gap would result in emission reduction shortfalls of approximately 13.8 tpd for NO_x and 0.5 tpd for PM_{2.5}, which equate to approximately 7% of the total NO_x reductions and 8% of the total PM_{2.5} reductions necessary for attainment by 2024.⁸² We believe it is reasonable to provide CARB and the District several years to identify the specific measures that will achieve these relatively small amounts of reductions by January 1, 2024.

Additionally, it is possible that the State and District will achieve their respective aggregate tonnage commitments with less than \$5 billion in incentive funds, as suggested by our alternative estimates of the cost-effectiveness of agricultural equipment replacement projects and related funding needs. See Response 3.B. Neither CARB nor the District has committed to secure \$5 billion in funding for its incentive programs, nor does the Plan establish definitively that this amount is necessary to achieve the identified tonnage commitments. As CARB notes in the CARB Staff Report, “[t]he ultimate goal of the Plan is to achieve the emissions reductions needed to reach attainment, and incentive monies raised and equipment turned over are a critical part of this effort, but not in and of themselves precise targets that must be met.”⁸³ Given the uncertainties about the levels of incentive funding and the numbers of vehicle or equipment replacement projects that are necessary to achieve the aggregate tonnage commitments in the Plan, the time needed by the State and District to develop and adopt new or revised control measures (whether regulatory or incentive-based), and the January 1, 2024 deadline for implementation of all control measures needed for attainment by December 31, 2024, we find the

⁸¹ Valley State SIP Strategy, 38 (Table 8) (attributing 23 tpd NO_x reductions and 0.8 tpd PM_{2.5} reductions to incentive-based measures).

⁸² 2018 PM_{2.5} Plan, Appendix H, Table H-6 (identifying totals of 202.2 tpd NO_x reductions and 6.4 tpd PM_{2.5} reductions necessary for attainment of the 2006 PM_{2.5} NAAQS in the San Joaquin Valley by December 31, 2024).

⁸³ CARB Staff Report, 26.

State's and District's commitments to adopt and implement enforceable control measures that achieve the necessary emission reductions by January 1, 2024 both reasonable and appropriate.

We also disagree with the commenter's claim that we provided none of the necessary analysis to reasonably conclude that the Plan provides a strategy for achieving the aggregate emission reduction commitments in the SIP, and that CARB has submitted "an unenforceable promise with no basis for believing it can be kept." As explained in the proposed rule⁸⁴ and further in Response 2, both CARB and the SJVUAPCD have submitted specific control measure commitments in addition to aggregate tonnage commitments, all of which necessitate a sequence of regulatory actions ultimately leading to full adoption of measures that achieve the requisite amounts of emission reductions by January 1, 2024, following adequate public process. These procedures mandated by the State and District commitments constitute a specific enforceable strategy designed to bring the San Joaquin Valley into attainment of the PM_{2.5} NAAQS by the end of 2024. See Response 2.

As we explained in the proposed rule, both CARB and the District have made progress in developing and adopting the measures listed in their respective control measure commitments. Specifically, CARB has adopted 5 measures and begun the public process on 7 of the remaining 10 measures listed in its control measure commitment.⁸⁵ One of the adopted measures is the Valley Incentive Measure, which CARB adopted and submitted to the EPA in February 2020, consistent with the 2020 "action" date specified in its control measure commitment. The EPA proposed to approve this measure into the SIP on March 24, 2020.⁸⁶ The District has adopted one measure (SJVUAPCD Rule 4901) by the "action" date specified in its control measure

⁸⁴ 85 FR 17382, 17418.

⁸⁵ 85 FR 17382, 17413-17414 (Table 7).

⁸⁶ 85 FR 16588 (March 24, 2020).

commitment and begun the public process on 5 of the remaining 11 measures listed in its control measure commitment.⁸⁷ The EPA has approved Rule 4901, as amended June 20, 2019, into the SIP.⁸⁸ The State has made tangible progress to date in developing, adopting, and submitting these control measures for the EPA’s approval, and we find the remaining steps of the strategy reasonable and appropriate given the January 1, 2024 deadline for implementation of the control measures needed for attainment.

We agree with NPCA’s statement that the State’s rulemaking process needs to occur now to achieve the required emission reductions by January 1, 2024. The control measure commitments in the Plan obligate both CARB and the District to do precisely that: all but one of the potential control measures identified in the State’s and District’s control measure commitments are scheduled for “action” by 2021.⁸⁹ In addition to the 5 listed measures that CARB has already adopted, CARB must also develop and propose to its Board 10 additional control measures (8 regulatory measures and 2 incentive-based measures) by 2021 to fully satisfy its control measure commitment.⁹⁰ Similarly, in addition to the one listed regulatory measure that the SJVUAPCD has adopted and submitted to the EPA, the District must also develop and propose to its Board 11 additional control measures (8 regulatory measures and 3 incentive-based measures) by 2022 to fully satisfy its control measure commitment.⁹¹ Finally, both CARB and the SJVUAPCD must ultimately adopt enforceable control measures, whether listed measures or substitutes, that achieve a total of 33.9 tpd of NO_x reductions and 2.0 tpd of

⁸⁷ 85 FR 17382, 17414 (Table 8).

⁸⁸ EPA, “Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District” (final rule to approve Rule 4901 (“Wood Burning Fireplaces and Wood Burning Heaters”)), signed June 26, 2020.

⁸⁹ The only potential control measure scheduled for “action” by a later date is SJVUAPCD Rule 4550 (“Conservation Management Practices”), which is scheduled for action in 2022. 85 FR 17382, 17414 (Table 8).

⁹⁰ Id. at 17413-17414 (Table 7).

⁹¹ Id. at 17414 (Table 8).

direct PM_{2.5} reductions by January 1, 2024. Upon the EPA’s approval of these commitments into the SIP, citizens or the EPA may bring enforcement actions under sections 304(a) or 113(a) of the CAA, respectively, to compel action by the State or District if either agency fails to begin a public process or to propose a specific measure to its board in accordance with the deadline in its control measure commitment, or fails to adopt enforceable control measures sufficient to fulfill its aggregate tonnage commitments. We therefore disagree with NPCA’s suggestion that disapproval of the SJV PM_{2.5} Plan is the only way to trigger the rulemaking effort necessary to meet the 2024 attainment deadline.

With respect to NPCA’s suggestion that CARB and the District should adopt rules to mandate turnover and use their limited funds to assist with that compliance burden, we note that the Plan indicates CARB’s and the District’s intent to take this approach for certain key emission sources in the San Joaquin Valley. For example, for heavy-duty trucks, one of the largest sources of NO_x emissions in the San Joaquin Valley,⁹² CARB’s control measure commitment obligates it to develop and propose several regulatory control measures by 2020 (e.g., the “Heavy-Duty Vehicle Inspection and Maintenance (I/M) Program” and the “Heavy-Duty Low-NO_x Engine Standard”) followed by an incentive-based measure in 2021 (i.e., the “Accelerated Turnover of Trucks and Buses Incentive Projects” measure) to assist with the compliance burden.⁹³ Similarly, for the residential wood burning and commercial cooking source categories, among the largest sources of direct PM_{2.5} emissions in the San Joaquin Valley,⁹⁴ the District’s control measure commitment obligates it to develop and propose regulatory control measures (i.e., District Rule 4901 and District Rule 4692 (“Commercial Charbroiling”)) in 2019 and 2020, respectively, in

⁹² 2018 PM_{2.5} Plan, App. B (Table B-2).

⁹³ 85 FR 17382, 17413-17414 (Table 7).

⁹⁴ 2018 PM_{2.5} Plan, App. B (Table B-1).

addition to incentive-based measures (i.e., the “Residential Wood Burning Devices Incentive Projects” measure and the “Commercial Under-fired Charbroiling Incentive Projects” measure) in 2020, to assist with the compliance burden.⁹⁵ We find these timetables for development of regulatory and incentive-based measures reasonable.

We therefore find that the State’s and District’s commitments in the SJV PM_{2.5} Plan are for a reasonable and appropriate period of time and that the third factor of our three-factor test is met.

III. Final Action

For the reasons discussed in this final rule, the associated Response to Comment document, and further in our proposed rule, supplemental proposal, and related TSDs, under CAA section 110(k)(3), the EPA is approving the following portions of the SJV PM_{2.5} Plan as meeting CAA requirements for implementation of the 2006 PM_{2.5} NAAQS:

- The 2013 base year emission inventories (CAA section 172(c)(3));
- The demonstration that BACM, including BACT, for the control of direct PM_{2.5} and PM_{2.5} plan precursors will be implemented no later than 4 years after the area was reclassified (CAA section 189(b)(1)(B));
- The demonstration (including air quality modeling) that the Plan provides for attainment as expeditiously as practicable but no later than December 31, 2024 (CAA sections 189(b)(1)(A) and 188(e));
- Plan provisions that require RFP toward attainment by the applicable date (CAA section 172(c)(2));

⁹⁵ 85 FR 17382, 17414 (Table 8).

- Quantitative milestones that are to be achieved every three years until the area is redesignated attainment and that demonstrate RFP toward attainment by the applicable attainment date (CAA section 189(c));
- Motor vehicle emissions budgets for 2020, 2023, and 2024 as shown in Table 3 of this final rule (CAA section 176(c) and 40 CFR part 93, subpart A); and
- The inter-pollutant trading mechanism provided for use in transportation conformity analyses for the 2006 PM_{2.5} NAAQS, in accordance with 40 CFR 93.124(b).

With respect to the Plan's attainment demonstration and control strategy, the EPA proposed to credit the District's Rule 4901 (as amended June 20, 2019) with 0.2 tpd of direct PM_{2.5} reductions in 2024 and to credit the Valley Incentive Measure with 5.9 tpd of NO_x reductions and 0.3 tpd of direct PM_{2.5} reductions in 2024.⁹⁶ Because we have not yet taken final action to approve the Valley Incentive Measure, however, we cannot credit this measure with emission reductions at this time. Accordingly, the only SIP-creditable control measure beyond baseline measures in the SJV PM_{2.5} Plan is the District's Rule 4901 (as amended June 20, 2019). After crediting this rule with 0.2 tpd of direct PM_{2.5} reductions in 2024 (i.e., subtracting 0.2 tpd from the District's PM_{2.5} tonnage commitment for 2024, which is 1.3 tpd), the District's remaining tonnage commitments for 2024 are 1.88 tpd of NO_x and 1.1 tpd of direct PM_{2.5}. CARB's aggregate tonnage commitments for 2024 are 32 tpd of NO_x and 0.9 tpd of direct PM_{2.5}.

Table 1 provides a summary of the total NO_x and direct PM_{2.5} emission reductions necessary for attainment in the San Joaquin Valley by December 31, 2024, the emission

⁹⁶ 85 FR 27976, Table 9, row C.

reductions attributed to baseline measures and new control strategy measures, and the emission reductions remaining as aggregate tonnage commitments.

Table 1. Reductions Needed for Attainment and Aggregate Tonnage Commitments (tpd, 2024)

		NO _x	Direct PM _{2.5}
A	Total reductions needed from baseline and control strategy measures	202.2	6.4
B	Reductions from baseline measures	168.3	4.2
C	Total reductions from approved measures	0.0	0.2
D	Total reductions remaining as commitments (A-B-C)	33.9	2.0
E	Percent (%) of total reductions needed remaining as commitments (D/A)	16.8%	31.3%

Sources: 2018 PM_{2.5} Plan, Ch. 4, Tables 4-3 and 4-7, and Appendix B, Tables B-1 and B-2; and 2019 Rule 4901 Staff Report, 34.

With respect to the motor vehicle emissions budgets, we are taking final action to limit the duration of the approval of the motor vehicle emissions budgets to last only until the effective date of the EPA’s adequacy finding for any subsequently submitted budgets. We are doing so at CARB’s request and in light of the benefits of using EMFAC2017-derived budgets prior to our taking final action on the future SIP revision that includes the updated budgets.

Table 2. Motor Vehicle Emission Budgets for the San Joaquin Valley for the 2006 PM_{2.5} Standard (winter average, tpd)

Budget Year	2017		2020		2023		2024	
	PM _{2.5}	NO _x	PM _{2.5}	NO _x	PM _{2.5}	NO _x	PM _{2.5}	NO _x
Fresno	0.9	29.3	0.9	25.9	0.8	15.5	0.8	15.0
Kern	0.8	28.7	0.8	23.8	0.7	13.6	0.7	13.4
Kings	0.2	5.9	0.2	4.9	0.2	2.9	0.2	2.8
Madera	0.2	5.5	0.2	4.4	0.2	2.6	0.2	2.5
Merced	0.3	11.0	0.3	9.1	0.3	5.5	0.3	5.3
San Joaquin	0.7	15.5	0.6	12.3	0.6	7.9	0.6	7.6
Stanislaus	0.4	12.3	0.4	9.8	0.4	6.2	0.4	6.0
Tulare ^a	0.4	11.2	0.4	8.7	0.4	5.3	0.4	5.1

Source: 2018 PM_{2.5} Plan, Appendix D, Table 3-2. Budgets are rounded to the nearest tenth of a ton.

^a In Table 14 of the EPA’s proposed rule, we inadvertently omitted the last row of motor vehicle emission budgets, for Tulare County, although these budgets were included on page 20 of the EPA’s General Evaluation TSD.

The EPA is also granting the State's request for extension of the Serious area attainment date in the San Joaquin Valley from December 31, 2019, to December 31, 2024, based on a conclusion that the State has satisfied the requirements for such extensions in section 188(e) of the Act.

Finally, the EPA is approving the PM_{2.5} Prior Commitment Revision and determining that the State has met the 0.86 tpd PM_{2.5} emission reduction commitment in the SIP.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this final action merely approves state plans as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

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

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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 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 action 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, Ammonia, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: June 30, 2020.

John W. Busterud,
Regional Administrator,
Region IX.

For the reasons stated in the preamble, EPA amends Chapter I, title 40 of the Code of Federal Regulations 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 paragraphs (c)(478)(ii)(A)(4), (c)(536), (c)(537), and (c)(538) to read as follows:

§ 52.220 Identification of plan - in part.

	*	*	*	*	*
(c)	*	*	*		
(478)	*	*	*		
(ii)	*	*	*		
(A)	*	*	*		

(4) SJVUAPCD's commitments to adopt, submit, and implement substitute rules that will achieve equivalent reductions in emissions of direct PM_{2.5} or PM_{2.5} precursors in the same adoption and implementation timeframes or in the timeframes needed to meet CAA milestones, as stated on p. 4 of SJVUAPCD Governing Board Resolution 2012-12-19, dated December 20, 2012 were revised by CARB Resolution 20-15, dated May 28, 2020, in paragraph (c)(539)(ii)(A)(2) of this section.

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(536) The following plan was submitted on May 10, 2019 by the Governor's designee as

an attachment to a letter dated May 9, 2019.

(i) [Reserved]

(ii) *Additional materials.* (A) California Air Resources Board.

(1) San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan, adopted October 25, 2018 (portions relating to the 2006 PM_{2.5} NAAQS, only) (“Valley State SIP Strategy”).

(2) CARB Resolution No. 18-49 with Attachments A and B, October 25, 2018.

Commitments to begin the public process on, and bring to the Board for consideration, the list of proposed SIP measures outlined in the Valley State SIP Strategy according to the schedule set forth therein, and commitments to achieve the aggregate emissions reductions outlined in the Valley State SIP Strategy of 32 tpd of NO_x and 0.9 tpd of PM_{2.5} emissions reductions in the San Joaquin Valley by 2024.

(B) [Reserved]

(537) The following plan was submitted on May 10, 2019 by the Governor’s designee as an attachment to a letter dated May 9, 2019.

(i) [Reserved]

(ii) *Additional materials.* (A) California Air Resources Board.

(1) CARB Resolution No. 19-1, January 24, 2019.

(2) “Staff Report, Review of the San Joaquin Valley 2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards,” December 21, 2018.

(3) “Attachment A, Clarifying information for the San Joaquin Valley 2018 Plan regarding model sensitivity related to ammonia and ammonia controls.”

(4) “Staff Report, ARB Review of San Joaquin Valley PM_{2.5} State Implementation Plan,”

including Appendix B (“San Joaquin Valley 2015 PM_{2.5} SIP, Additional Emission Reductions Achieved Towards Meeting Aggregate Commitment”), April 20, 2015.

(5) “Technical Clarifications to the 2015 San Joaquin Valley PM_{2.5} State Implementation Plan.”

(6) “Appendix H, RFP, Quantitative Milestones, and Contingency, 2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards, Appendix H Revised February 11, 2020,” (portion pertaining to the 2006 PM_{2.5} NAAQS, only, and excluding section H.3 (“Contingency Measures”)).

(B) San Joaquin Valley Unified Air Pollution Control District.

(I) 2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards (“2018 PM_{2.5} Plan”), adopted November 15, 2018 (portions pertaining to the 2006 PM_{2.5} NAAQS only), excluding Chapter 5 (“Demonstration of Federal Requirements for 1997 PM_{2.5} Standards”), Chapter 7 (“Demonstration of Federal Requirements for 2012 PM_{2.5} Standards”), Appendix H, section H.3 (“Contingency Measures”), and Appendix I (“New Source Review and Emission Reduction Credits”).

(2) SJVUAPCD Governing Board, In the Matter of: Adopting the San Joaquin Valley Unified Air Pollution Control District 2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards, Resolution No. 18-11-16, November 15, 2018. Commitments to take action on the rules and measures committed to in Chapter 4 of the Plan by the dates specified therein, and to submit these rules and measures, as appropriate, to CARB within 30 days of adoption for transmittal to EPA as a revision to the State Implementation Plan. Commitments to achieve the aggregate emissions reductions of 1.88 tpd of NO_x and 1.3 tpd of PM_{2.5} by 2024 and, if the total emission reductions from the adopted rules or measures are less than those committed to in Chapter 4 of

the 2018 PM_{2.5} Plan, to adopt, submit, and implement substitute rules and measures that achieve equivalent reductions in emissions of direct PM_{2.5} or PM_{2.5} precursors in the same implementation timeframes or in the timeframes needed to meet CAA milestones.

(538) The following plan was submitted on June 19, 2020, by the Governor's designee as an attachment to a letter dated June 12, 2020.

(i) [Reserved]

(ii) *Additional materials.* (A) California Air Resources Board.

(1) Revision to the California State Implementation Plan for PM_{2.5} Standards in the San Joaquin Valley, adopted May 28, 2020.

(2) CARB Resolution 20-15, dated May 28, 2020, revising the aggregate emissions reductions commitment in 40 CFR 52.220(c)(478)(ii)(A)(3) to 0.86 tpd of PM_{2.5}.

(B) [Reserved]

3. Section 52.244 is amended by adding paragraph (f) to read as follows:

§ 52.244 Motor vehicle emissions budgets.

* * * * *

(f) Approval of the motor vehicle emissions budgets for the following PM_{2.5} reasonable further progress and attainment SIP will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and EPA has found the budgets to be adequate for conformity purposes.

(1) San Joaquin Valley, for the 2006 PM_{2.5} NAAQS only (but excluding 2026 budgets), approved **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(2) [Reserved]

[FR Doc. 2020-14471 Filed: 7/21/2020 8:45 am; Publication Date: 7/22/2020]