

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2008-0693; FRL-8965-2]

#### Approval and Promulgation of Implementation Plans: 1-Hour Ozone Attainment Contingency Measures for the San Joaquin Valley, CA

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

**ACTION:** Proposed rule.

**SUMMARY:** On July 14, 2009, EPA proposed to disapprove the attainment contingency measures in the extreme area plan for attainment of the 1-hour ozone standard in California's San Joaquin Valley. EPA is now proposing to approve these contingency measures and to withdraw its proposed disapproval. This proposed approval is based on technical information provided to EPA by the California Air Resources Board.

**DATES:** Comments must be submitted by November 2, 2009.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2008-0693, by one of the following methods:

1. *Agency Web site:* <http://www.regulations.gov>. EPA prefers receiving comments through this electronic public docket and comment system. Follow the online instructions to submit comments.
2. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions.
3. *E-mail:* [wicher.frances@epa.gov](mailto:wicher.frances@epa.gov).
4. *Mail or deliver:* Ms. Marty Robin, Office of Air Planning (AIR-2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal, or e-mail. The agency Web site and eRulemaking portal are anonymous access systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address

will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. **FOR FURTHER INFORMATION CONTACT:** Frances Wicher, U.S. EPA Region 9, 415-972-3957, Office of Air Planning (AIR-2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901, [wicher.frances@epa.gov](mailto:wicher.frances@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms "we," "us," and "our" mean U.S. EPA.

#### I. Summary of EPA's July 14, 2009 Proposed Action on the SJV 1-Hour Ozone Plan

On July 14, 2009 at 74 FR 33933, EPA proposed to approve in part and disapprove in part State implementation plan (SIP) revisions submitted to EPA by the State of California. California made these submittals to meet the Clean Air Act (CAA) requirements applicable to the San Joaquin Valley, California ozone nonattainment area (SJV area). The SJV area became subject to these requirements following its 2004 reclassification from severe to extreme for the 1-hour ozone national ambient air quality standard (NAAQS). 69 FR 20550 (April 15, 2004). In 1997, we revised the ozone NAAQS by lowering the level to 0.08 ppm and extending the averaging time to eight hours<sup>1</sup> and subsequently revoked the 1-hour ozone standard. The SJV area, however, remains subject to most of these CAA requirements for the 1-hour ozone standard through the anti-backsliding provisions in EPA's rule implementing the 8-hour ozone standard (Phase 1 Rule). See 40 CFR 51.905(a).

EPA proposed to approve California's 1-hour ozone SIP submissions for the

SJV area as meeting the applicable 1-hour requirements as provided under the CAA and interpreted in the Phase 1 Rule for attainment demonstrations, rate-of-progress (ROP) demonstrations and related contingency measures, and other control requirements. EPA also proposed to disapprove the contingency measures that would take effect if the area failed to attain the 1-hour ozone standard by the applicable attainment date. A complete discussion of EPA's proposed actions is in the July 14, 2009 proposal.

The three SIP submissions that are the subject of our July 14, 2008 proposal are, first, the "Extreme Ozone Attainment Demonstration Plan" adopted by the San Joaquin Valley Air Pollution Control District (SJVAPCD) in 2004 and amended in 2005. We refer to the plan and its amendment, collectively, as the "2004 SIP" in this proposed rule. The 2004 SIP addresses CAA requirements for extreme 1-hour ozone areas including control measures, ROP and attainment demonstrations, and contingency measures.

The second SIP submission addressed in the July 14 proposal, is "Clarifications Regarding the 2004 Extreme Ozone Attainment Demonstration Plan" (2008 Clarifications) adopted by the SJVAPCD in 2008. The 2008 Clarifications provide updates to the 2004 SIP related to reasonably available control technology (RACT) measures adopted by the SJVAPCD, the ROP demonstrations, and contingency measures.

The third SIP submission addressed in the July 14 proposal is the "2003 State and Federal Strategy for the California State Implementation Plan," adopted by the California Air Resources Board (ARB) in October, 2003 (2003 State Strategy). This strategy document, as modified by the ARB resolution adopting it, identifies ARB's regulatory agenda to reduce ozone and particulate matter in California, including specific commitments to reduce emissions in the San Joaquin Valley. The 2004 SIP relies in part on the 2003 State Strategy for the reductions needed to demonstrate attainment and ROP for the 1-hour ozone standard. A complete description of each of these SIP submittals can be found in the July 14, 2009 proposal.

#### II. Contingency Measures

##### A. Requirements for Contingency Measures for the 1-Hour Ozone Standard

CAA sections 172(c)(9) and 182(c)(9) require that SIPs contain contingency measures that will take effect without further action by the State or EPA if an

<sup>1</sup> See 62 FR 38856 (July 18, 1997). In 2008 we lowered the 8-hour ozone standard to 0.075 ppm. See 73 FR 16436 (March 27, 2008). The references in this proposed rule to the 8-hour standard are to the 1997 standard as codified at 40 CFR 50.10.

area fails to attain the ozone standard by the applicable date (section 172(c)(9)) or fails to meet a ROP milestone (section 182(c)(9)).

In 1992, EPA issued a General Preamble describing our preliminary views on how we intended to review 1-hour ozone plans submitted to meet these and other CAA requirements. See “General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990.” 57 FR 13498 (April 16, 1992). The General Preamble as well as other EPA guidance documents related to 1-hour ozone plans continue to guide our review of the 1-hour ozone requirements that remain applicable following revocation of that standard.

The Act does not specify how many contingency measures are needed or the magnitude of emission reductions that must be provided by these measures. However, EPA provided initial guidance interpreting the contingency measure requirements in the General Preamble at 13510. Our interpretation is based upon the language in sections 172(c)(9) and 182(c)(9) in conjunction with the control measure requirements of sections 172(c), 182(b) and 182(c)(2)(B), the reclassification and failure to attain provisions of section 181(b) and other provisions. In the General Preamble, EPA indicated that States with moderate and above ozone nonattainment areas should include sufficient contingency measures so that, upon implementation of such measures, additional reductions of 3 percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure is identified. States may use reductions in either of the two precursors to ozone formation—volatile organic compounds (VOC) or nitrogen oxides (NO<sub>x</sub>)—to meet the contingency measure requirement. See General Preamble at 13520. States may also use a combination of NO<sub>x</sub> and VOC reductions to meet the requirement. See General Preamble at 13520, footnote 6. Finally, States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions.

In subsequent guidance, EPA stated that contingency measures could be implemented early, *i.e.*, prior to the milestone or attainment date.<sup>2</sup> Under this policy, States are allowed to use

excess reductions from already adopted measures to meet the CAA sections 172(c)(9) and 182(c)(9) contingency measures requirement. The key is that the CAA requires extra reductions that are not relied on for ROP or attainment and that will provide a cushion while the plan is being revised to fully address the failure. Nothing in the CAA precludes a State from implementing such measures before they are triggered. This approach has been approved by EPA in numerous SIPs. See 62 FR 15844 (April 3, 1997); 62 FR 66279 (December 18, 1997); 66 FR 30811 (June 8, 2001); 66 FR 586 and 66 FR 634 (January 3, 2001). In the only adjudicated challenge to this approach, the court upheld it. See *LEAN v. EPA*, 382 F.3d 575 (5th Cir. 2004). 70 FR 71611, 71651.

In 2004, EPA designated and classified most areas of the country under the 1997 8-hour ozone standard. 69 FR 23858 (April 30, 2004). At the same time, we issued the Phase 1 rule. 69 FR 23951 (April 30, 2004). The Phase 1 rule provided that the 1-hour ozone standard would be revoked in most areas of the country (including the SJV area), effective June 15, 2005. See 40 CFR 50.9(b); 69 FR at 23996 and 70 FR 44470 (August 3, 2005).

The Phase 1 rule also set forth anti-backsliding principles to ensure continued progress toward attainment of the 8-hour ozone standard by identifying which 1-hour ozone standard requirements remain applicable after revocation of that standard. 40 CFR 51.900(f). In the Phase I rule, EPA initially determined that contingency measures for the 1-hour ozone standard would not be required once the standard was revoked. See 70 FR 30592 (May 26, 2005). However, the DC Circuit in *South Coast Air Quality Management District, et al., v. EPA*, 472 F.3d 882 (DC Cir. 2006), rehearing denied 489 F.3d 1245 (2007), vacated the provision of the Phase 1 rule that waived the 1-hour contingency measure requirements. Consequently, areas subject to the anti-backsliding requirements, such as the SJV area, must continue to meet the CAA sections 172(c)(9) and 182(c)(9) requirements. We have proposed to revise 40 CFR 51.900(f), the regulatory definition of “applicable requirement” for purposes of the anti-backsliding provisions in 40 CFR 51.905, in order to remove the vacated provision and to add language consistent with the Court’s holding that contingency measures for failure to attain or to make reasonable further progress toward attaining the 1-hour standard continue to apply in such areas. See 74 FR 2936 (January 16, 2009).

*B. EPA’s July 14, 2009 Proposal on the Attainment Contingency Measures in the SJV 1-Hour Ozone Plan*

One-hour ozone nonattainment areas classified as extreme under CAA section 181(b)(3) must demonstrate attainment “as expeditiously as practicable” but not later than the date specified in CAA section 181(a), November 15, 2010. The 2004 SIP contains a demonstration that the SJV area will attain the 1-hour ozone standard by that date. In our July 14, 2009 proposed action on the 2004 SIP, we proposed to approve the attainment demonstration. 74 FR at 33942. The attainment contingency measure requirement calls for a showing that there are fully adopted contingency measures that will achieve emission reductions in excess of the levels needed for attainment and sufficient to provide continued ROP in the year after the attainment date, *i.e.*, 3 percent reductions from the pre-1990 adjusted baseline in 2011 if triggered by a failure to attain. Table 4 in our July 14, 2009 proposal reproduces the ROP demonstrations in the 2004 SIP. 74 FR at 33941. Based on the 2010 adjusted baseline in this ROP demonstration, an additional 3 percent in the year after the attainment year equates to approximately 15.3 tpd of VOC or 20.7 tpd of NO<sub>x</sub> with NO<sub>x</sub> substitution.

Table 5 in the July 14, 2009 proposal shows that there are no excess reductions from adopted measures in the 2004 SIP’s attainment demonstration and that, in addition to the adopted measures that make significant reductions toward attainment, the plan relies on commitments to adopt measures to achieve the additional reductions needed to demonstrate attainment. However, Table 6 in the July 14 proposal shows that there are 10 tpd NO<sub>x</sub> and 5 tpd VOC in reductions in 2011 from adopted and creditable on-road mobile source measures that could serve to fulfill a portion of the attainment contingency measure requirement. These amounts collectively provide just a 2.4 percent rate of progress in 2011, short of the suggested 3 percent.

The SJV 1-hour ozone plan did not provide any information on post-2010 emission reductions in any source category other than on-road motor vehicles.

Based on the information available to EPA at the time of the July 14, 2009 proposal, the State had not demonstrated that there were sufficient excess reductions to satisfy the attainment contingency measure requirement. We therefore proposed to disapprove the attainment contingency

<sup>2</sup> See Memorandum from G.T. Helms, EPA, to EPA Air Branch Chiefs, Regions I–X, entitled “Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas,” August 13, 1993.

measures provision in the SJV 1-hour ozone plan as not meeting the requirements of CAA section 172(c)(9). See 74 FR at 33944. We stated in that proposal that the State could remedy this failure by submitting either new contingency measures or a demonstration that existing creditable measures provide, consistent with the guidance cited above, sufficient emission reductions in 2011. *Id.*

*C. Additional Information Submitted by California*

In an August 28, 2009 letter, ARB provided information on the effect on emission levels in the SJV area of fleet turnover in the off-road mobile source category. ARB also provided a demonstration that these emission reductions, combined with the reductions in the on-road mobile source

sector, are more than the 3 percent of adjusted base inventory emissions suggested by EPA guidance, and that these reductions are not relied upon to satisfy rate of progress and attainment demonstration requirements. See letter, James Goldstene, ARB, to Marty Robins, EPA (Goldstene letter). We have reproduced ARB's demonstration, contained in the attachment to the Goldstene letter, in Table 1 below.

**TABLE 1—EMISSION REDUCTIONS AVAILABLE TO SATISFY THE CLEAN AIR ACT CONTINGENCY MEASURE REQUIREMENT FOR “FAILURE TO ATTAIN”**  
[San Joaquin Valley, Summer Season]

Line	NO <sub>x</sub>	ROG <sup>3</sup>
A. 1990 Adjusted Baseline Emissions in 2010 (Note 1) .....	689	509
B. Emission Reductions from California's Existing On-road Motor Vehicle Emission Control Program (2010 to 2011) (Note 2) .....	10	5
C. Emission Reductions from California's Existing Off-road Equipment Emission Control Program (2010 to 2011) .....	5.7	3.6
D. Total Mobile Source Emission Reductions (2010–2011) .....	16	9
E. Mobile Source Emission Reductions as a Percent of the 1990 Adjusted Baseline Emissions in 2010 ....	2.3%	1.7%
F. Total Mobile Source Emission Reductions as a Percent of the 1990 Adjusted Baseline Emissions in 2010 .....	4.0%	

**Note 1.** From Table 2 “San Joaquin Valley Rate of Progress” in the 2008 Clarification.  
**Note 2.** From Table 3 “Baseline Motor Vehicle Emissions 2000–2010” in the 2008 Clarification.

The reductions in the off-road engine category were taken from baseline emission inventories developed as inputs to the air quality modeling supporting the attainment demonstration in the 2004 SIP. These baseline emission inventories include reductions only from measures adopted prior to September 2002; therefore, the estimate of emission reductions from the off-road engines category reflect only these measures. See e-mail, Jeff Lindberg, ARB, to Frances Wicher, EPA, “2011 Off-Road Emission Estimates for the San Joaquin Valley’s 1-hour Ozone Plan,” September 10, 2009.

By 2002, California already had in place a comprehensive off-road mobile source control program that included both VOC and NO<sub>x</sub> emissions standards for lawn and garden equipment, recreational boats, off-road recreational vehicles, and many other off-road engine categories. A list of ARB’s adopted off-road measures can be found in Table 15 of the technical support document (TSD) for our July 14, 2009 proposal.<sup>4</sup> California has been granted a waiver or has applied for a waiver under

CAA section 209 for these measures<sup>5</sup> and/or the California emission limits are identical or very similar to EPA regulations. EPA had also adopted by September 2002 measures that reduce emissions from new construction and farm equipment and locomotives that apply in California.<sup>6,7</sup> As described in our July 14, 2009 proposal, emission reductions from both section 209 waiver measures and Federal measures are fully creditable for contingency measures. See 74 FR at 33936, 33938.

As shown in Table 1 above, creditable State and Federal on-road and off-road measures provide a combined 4 percent rate of progress in 2011 which is more than the 3 percent ROP suggested in EPA guidance on contingency measures. Therefore, we propose to approve the attainment contingency measures provision in the SJV 1-hour ozone plan as meeting the requirements of CAA section 172(c)(9) and the anti-backsliding requirements of EPA’s Phase 1 implementation rule and to

withdraw our July 14, 2009 proposed disapproval of this provision.

**III. Summary of Proposed Action**

Based on our review of the additional information provided by ARB, we are proposing to approve the contingency measure provisions in the SJV 1-hour ozone plan as meeting the requirements of CAA section 172(c)(9) for contingency measures that must be implemented if an area fails to attain by its attainment date. We are also proposing to withdraw our July 14, 2009 proposed disapproval of these contingency measures.

These proposals to approve and withdraw address only the contingency measures provision for failure to attain in the SJV 1-hour ozone plan. The public comment period for the July 14, 2009 proposal closed on August 31, 2009. 74 FR 40123 (August 11, 2009). EPA is not reopening the comment period on any other aspects of its July 14, 2009 proposed action on the SJV 1-hour ozone plan. Therefore, comments in response to the proposals herein must be limited to issues related to the proposed approval of the attainment contingency measures in the SJV 1-hour ozone plan and the proposed withdrawal of the July 14, 2009 proposed disapproval of these measures.

<sup>3</sup> ARB uses the term “reactive organic gases” (ROG) in its documents. For the purposes of this proposed rule, VOC and ROG are interchangeable.

<sup>4</sup> Because this proposed action supplements our July 14, 2009 proposal, the docket number, EPA–R09–OAR–2008–0693, for both proposed actions is the same.

<sup>5</sup> Under CAA sections 209(a) and (e)(1), States are pre-empted from adopting or enforcing emission standards for both on-road or non-(off-) road new vehicles and new vehicle engines. Under CAA section 209(b) and (e)(2), California must be granted a waiver of this pre-emption upon certain findings by EPA although we may not waive pre-emption for locomotives and for certain new construction or agricultural engines. See CAA section 209(e)(1).

<sup>6</sup> Tier 2 and 3 non-road engines standards, 63 FR 56968 (October, 23, 1998).

<sup>7</sup> Locomotive standards, 63 FR 18978 (May 16, 1998).

#### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory action” and therefore is not subject to either review by the Office of Management and Budget or to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

This action merely proposes to approve a portion of a State-adopted attainment plan for the San Joaquin Valley Air Basin and withdraw a previous proposal and does not impose any additional requirements. Accordingly, the Administrator certifies that this proposed action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed action does not impose any additional enforceable duties, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the plan is not approved to apply in Indian country located in the State. It will not impose substantial direct costs on Tribal governments or preempt Tribal law.

This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action merely proposes to approve a portion of a State-adopted plan and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency actions by directing agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. Today’s action involves a proposed approval of a State-adopted plan. It will not have disproportionately high and adverse effects on any

communities in the area, including minority and low-income communities.

This proposed action also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant. The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

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

Dated: September 23, 2009.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E9–23796 Filed 10–1–09; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 55

[EPA–R02–OAR–2009–0680; FRL–8965–1]

#### Outer Continental Shelf Air Regulations Consistency Update for New Jersey

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations Requirements applying to OCS sources located within 25 miles of states’ seaward boundaries which must be promulgated into the regulations and updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources in the State of New Jersey. The intended effect of approving the OCS requirements for the State of New Jersey is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

**DATES:** Comments must be received on or before November 2, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R02–OAR–2009–0680, by one of the following methods:

A. *Federal eRulemaking Portal:* <http://www.regulations.gov>: Follow the on-line instructions for submitting comments;

B. *E-Mail:* [riva.steven@epa.gov](mailto:riva.steven@epa.gov);

C. *Mail:* Steven Riva, U.S.

Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, New York, NY 10007;

D. *Hand Delivery:* U.S. Environmental Protection Agency, Region 2, Attn: Steven Riva, 290 Broadway, New York, NY 10007, 25th Floor. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R02–OAR–2009–0680. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some