

I encourage commenters to comment on whether the Commission's proposal sufficiently addresses the practical and operational issues, and whether it gives sufficient time for firms to implement and comply with a final rule.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0352; FRL-10399-01-R9]

RIN 2009-AA05

Federal Implementation Plan for Contingency Measures for the Fine Particulate Matter Standards; San Joaquin Valley, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to promulgate a Federal Implementation Plan (FIP) under the Clean Air Act (CAA) that consists of contingency measures for the 1997, 2006, and 2012 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS or "standards") for the San Joaquin Valley PM_{2.5} nonattainment area. The contingency measures would apply to residential wood burning heaters and fireplaces and rural open areas. The proposed FIP, if finalized, would be implemented by the EPA, unless and until replaced through the EPA's approval of a contingency measure state implementation plan (SIP) submission.

DATES:

Comments: Comments must be received on or before September 22, 2023. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before September 7, 2023.

Public Hearing: The EPA will hold a virtual public hearing on August 23, 2023. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-R09-OAR-2023-0352; via the Federal eRulemaking Portal: [https://](https://www.regulations.gov)

www.regulations.gov (our preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For questions regarding this proposed rule, please contact Rory Mays, Planning and Analysis Branch (AIR-2), Air and Radiation Division, EPA Region IX, (415) 972-3227. For questions regarding the virtual public hearing, please contact Kobi Cook, Communities and Partnerships Branch (AIR-4), Air and Radiation Division, EPA Region IX, (415) 972-3989. Both can be reached by emailing SFVPublicMeetings@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us," and "our" refer to the EPA.

Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0352 at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on

making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

B. Participation in Virtual Public Hearing

The EPA will begin pre-registering speakers for the hearing no later than 1 business day after publication of this document in the **Federal Register**. To register to speak at the virtual hearing, please visit <https://www.epa.gov/sanjoaquinvalley> for online registration. The last day to pre-register to speak at the hearing will be August 21, 2023. The EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: <https://www.epa.gov/sanjoaquinvalley>.

The virtual public hearing will be held via teleconference on August 23, 2023. The virtual public hearing will convene at 4 p.m. Pacific Time (PT) and will conclude at 7 p.m. PT. The EPA may close the session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. For information or questions about the public hearing, please contact Kobi Cook, per the **FOR FURTHER INFORMATION CONTACT** section of this document. The EPA will announce further details at <https://www.epa.gov/sanjoaquinvalley>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to SFVPublicMeetings@epa.gov. The EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/sanjoaquinvalley>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact Kobi Cook, per the **FOR FURTHER INFORMATION CONTACT** section of this document, to determine if there are any updates. The EPA does not intend

to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by August 21, 2023. The EPA may not be able to arrange accommodations without advanced notice.

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I. Background for Proposed Action

In the following sections, we describe the PM_{2.5} standards that this proposed rule addresses, a brief history of the designation and classification of the San Joaquin Valley as nonattainment, the State's air quality planning and EPA rulemaking, and the basis for the current contingency measure FIP proposal for the PM_{2.5} NAAQS in the San Joaquin Valley.

A. Standards, Designations, Classifications, and Plans

Under section 109 of the Clean Air Act (CAA or "Act"), the EPA has established National Ambient Air Quality Standards (NAAQS or "standards") for certain pervasive air pollutants (referred to as "criteria pollutants") and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. To date, the EPA has established NAAQS for particulate matter, ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide and lead. Under CAA section 110, states have primary responsibility for meeting the NAAQS within the state, and must submit an implementation plan that specifies the manner in which the state will attain and maintain the NAAQS. These implementation plans are referred to as "state implementation plans" or "SIPs." Periodically, states must make SIP submissions of different types to meet additional CAA requirements. For example, after the EPA promulgates a new or revised NAAQS, under CAA section 110(a)(1) and (2), states are required to adopt and submit to the EPA a state implementation plan that provides for implementation, maintenance, and enforcement of the NAAQS. Such plans are referred to as "infrastructure SIPs." Similarly, after the EPA promulgates designations for a new or revised NAAQS, states with designated nonattainment areas must make SIP submissions that meet additional requirements for such nonattainment areas, under CAA section 172(c) and, in the case of the PM_{2.5} NAAQS, CAA sections 188 and 189. This type of SIP submission is referred to as an "attainment plan." Under CAA section 110(k), the EPA is charged with evaluation of each SIP submission submitted by states for compliance with applicable CAA requirements, and for approval or disapproval (in whole or in part) of the submission. The EPA evaluates SIP submissions and takes action to approve, disapprove, or conditionally approve them through notice-and-comment rulemaking published in the **Federal Register**. Where appropriate, the EPA may act on specific parts of a SIP submission in separate rulemaking actions.

In 1997, the EPA promulgated new NAAQS for fine particulate matter, using particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ("PM_{2.5}") as the indicator.¹ The EPA established primary

and secondary annual and 24-hour standards for PM_{2.5}. The EPA set the 1997 annual PM_{2.5} NAAQS, both primary and secondary standards, at 15.0 micrograms per cubic meter (µg/m³), based on a 3-year average of annual mean PM_{2.5} concentrations. The EPA set the 1997 24-hour PM_{2.5} NAAQS, both primary and secondary standards, at 65 µg/m³, based on the 3-year average of the 98th percentile of 24-hour PM_{2.5} concentrations. Collectively, we refer herein to the 1997 24-hour and annual PM_{2.5} NAAQS as the "1997 PM_{2.5} NAAQS" or "1997 PM_{2.5} standards." In 2006, the EPA promulgated a new, more stringent 24-hour NAAQS for PM_{2.5} by lowering the primary and secondary standards level from 65 µg/m³ to 35 µg/m³ (referred to herein as the "2006 24-hour PM_{2.5} NAAQS").² In 2012, the EPA promulgated a new, more stringent annual NAAQS for PM_{2.5} by lowering the primary standards level from 15.0 µg/m³ to 12.0 µg/m³ (herein referred to as the "2012 annual PM_{2.5} NAAQS").³ Each iteration of the PM_{2.5} NAAQS remains in effect, and states with designated nonattainment areas for each of them are obligated to meet applicable attainment plan requirements for them.

The EPA established each of these NAAQS after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to PM_{2.5} concentrations above these levels. Epidemiological studies have shown statistically significant correlations between elevated PM_{2.5} levels and premature mortality. Other important health effects associated with PM_{2.5} exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), changes in lung function, and increased respiratory symptoms. Individuals particularly sensitive to PM_{2.5} exposure include older adults, people with heart and lung disease, and children.⁴ PM_{2.5} can be particles emitted by sources directly into the atmosphere as a solid or liquid particle ("primary PM_{2.5}" or "direct PM_{2.5}"), or can be particles that form in the atmosphere as a result of various chemical reactions involving PM_{2.5} precursor emissions emitted by sources ("secondary PM_{2.5}"). The EPA has identified the precursors of PM_{2.5} to be oxides of nitrogen ("NO_x"), sulfur

² 71 FR 61144 (October 17, 2006) and 40 CFR 50.13.

³ 78 FR 3086 (January 15, 2013) and 40 CFR 50.18.

⁴ 78 FR 3086, 3088.

¹ 62 FR 38652 (July 18, 1997) and 40 CFR 50.7.

oxides, volatile organic compounds, and ammonia.⁵

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. As noted previously, for areas the EPA has designated nonattainment, states are required under the CAA to submit attainment plan SIP submissions. These SIP submissions must provide for, among other elements, reasonable further progress (RFP) towards attainment of the NAAQS, attainment of the NAAQS no later than the applicable attainment date, and implementation of contingency measures to take effect if the state fails to meet RFP or to attain the NAAQS by the applicable attainment date.

The San Joaquin Valley is located in the southern half of California's Central Valley and includes all of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, and Kings counties, and the valley portion of Kern County.⁶ The area is home to four million people and is the nation's leading agricultural region. Stretching over 250 miles from north to south and averaging 80 miles wide, it is partially enclosed by the Coast Mountain range to the west, the Tehachapi Mountains to the south, and the Sierra Nevada range to the east. In 2005, the EPA designated the San Joaquin Valley as nonattainment for the 1997 annual PM_{2.5} NAAQS, and nonattainment for the 1997 24-hour PM_{2.5} NAAQS.⁷

The local air district with primary responsibility for developing attainment plan SIP submissions for the PM_{2.5} NAAQS in this area is the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or "District"). Once the District adopts the regional plan, the District submits the plan to the California Air Resources Board (CARB) for adoption as part of the California SIP. CARB is the State agency responsible for adopting and revising the California SIP and for submitting the SIP and SIP revisions to the EPA. Under California law, generally speaking, CARB is responsible for regulation of mobile sources while the local air districts are responsible for regulation of stationary sources.

Originally, the EPA designated areas for the 1997 annual and 24-hour PM_{2.5}

NAAQS under subpart 1 (of part D of title I of the CAA), *i.e.*, without specifying the classifications of nonattainment required by subpart 4. Later, in response to a court decision,⁸ the EPA classified nonattainment areas for the 1997 annual and 24-hour PM_{2.5} NAAQS, consistent with the classifications set forth in subpart 4. With respect to San Joaquin Valley, the EPA classified the San Joaquin Valley as a "Moderate" nonattainment area,⁹ and then later reclassified the area as a "Serious" nonattainment area for the 1997 annual and 24-hour PM_{2.5} NAAQS.¹⁰

In 2016, the EPA determined that the San Joaquin Valley had failed to attain the 1997 annual and 24-hour PM_{2.5} NAAQS by the applicable "Serious" area attainment date.¹¹ As a result, the State of California was required, under CAA section 189(d), to submit a new SIP submission that, among other elements, provides for expeditious attainment of the 1997 annual and 24-hour PM_{2.5} NAAQS and for a minimum five percent annual reduction in the emissions of direct PM_{2.5} or a PM_{2.5} plan precursor pollutant in the San Joaquin Valley (herein, referred to as a "Five Percent Plan"). The Five Percent Plan for the 1997 annual and 24-hour PM_{2.5} NAAQS was due no later than December 31, 2016.¹²

With respect to the 2006 24-hour PM_{2.5} NAAQS, the EPA initially designated San Joaquin Valley as nonattainment under subpart 1 (*i.e.*, without classification)¹³ but, in 2014, in response to the court decision referred to previously, the EPA classified the area as Moderate.¹⁴ In 2016, the EPA reclassified San Joaquin Valley as a Serious nonattainment area for the 2006 24-hour PM_{2.5} NAAQS based on the EPA's determination that the area could not practicably attain these NAAQS by the applicable attainment date of December 31, 2015.¹⁵ The EPA established an August 21, 2017 deadline for California to adopt and submit a SIP submission addressing the Serious

nonattainment area requirements for the 2006 24-hour PM_{2.5} NAAQS.¹⁶

With respect to the 2012 annual PM_{2.5} NAAQS, the EPA designated San Joaquin Valley as a Moderate nonattainment area in 2015.¹⁷ Under CAA section 189 and the EPA's PM_{2.5} SIP Requirements Rule,¹⁸ the deadline for the state to submit an attainment plan SIP submission addressing the Moderate nonattainment area requirements for the 2012 annual PM_{2.5} NAAQS is 18 months from the effective date of the designation of the area.¹⁹ The effective date of the designation of the San Joaquin Valley as a Moderate nonattainment area for the 2012 annual PM_{2.5} NAAQS was April 15, 2015, and thus, the deadline for a SIP submission addressing the Moderate area requirements was October 15, 2016.

B. Findings and Contingency Measure Disapprovals

In the wake of these EPA actions, CARB and the District worked together to prepare a comprehensive SIP submission to address the nonattainment area requirements for the 1997, 2006, and 2012 PM_{2.5} NAAQS for San Joaquin Valley, but did not meet the various SIP submission deadlines. In late 2018, the EPA issued a finding of failure to submit to the State for the required attainment plan SIP submissions for the 1997 annual and 24-hour PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 2012 annual PM_{2.5} NAAQS for the San Joaquin Valley.²⁰ The EPA's finding of failure to submit was effective January 7, 2019. Under CAA section 110(c), the EPA is obligated to promulgate a Federal Implementation Plan (FIP) within two years of a finding that a state has failed to make a required SIP submission, unless the state submits a SIP submission that corrects the deficiency, and the EPA approves that SIP submission, before the EPA promulgates such FIP.²¹ In this case, the finding of failure to submit established a deadline of January 7, 2021, for the EPA to promulgate a FIP to address all applicable attainment plan requirements for the 1997 annual and 24-hour PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and 2012 annual PM_{2.5}

¹⁶ *Id.* at 3000.

¹⁷ 80 FR 2206 (January 15, 2015).

¹⁸ 81 FR 58010 (August 24, 2016); codified at 40 CFR part 51, subpart Z.

¹⁹ 40 CFR 51.1003(a).

²⁰ 83 FR 62720 (December 6, 2018).

²¹ The finding of failure to submit also started an 18-month New Source Review (NSR) offset sanction clock and a 24-month highway sanction clock for the State of California. CAA section 179(a) and 40 CFR 52.31.

⁵ EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P-99/002aF and EPA/600/P-99/002bF, October 2004.

⁶ For a precise description of the geographic boundaries of the San Joaquin Valley nonattainment area, see 40 CFR 81.305.

⁷ 70 FR 944 (January 5, 2005), codified at 40 CFR 81.305.

⁸ In *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013), the U.S. Court of Appeals for D.C. Circuit concluded that the EPA erred in implementing the 1997 PM_{2.5} standards solely pursuant to the general implementation requirements of subpart 1, without also considering the requirements specific to PM₁₀ nonattainment areas in subpart 4, part D of title I of the CAA.

⁹ 79 FR 31566 (June 2, 2014).

¹⁰ 80 FR 18528 (April 7, 2015).

¹¹ 81 FR 84481 (November 23, 2016).

¹² *Id.* at 84482.

¹³ 74 FR 58688 (November 13, 2009).

¹⁴ 79 FR 31566.

¹⁵ 81 FR 2993 (January 20, 2016).

NAAQS for San Joaquin Valley, for which the EPA had not received and approved an adequate SIP submission from the State.

On May 10, 2019, CARB submitted two SIP submissions to address the nonattainment area requirements for all four of the relevant PM_{2.5} NAAQS for the San Joaquin Valley, including the contingency measure requirement.²² As discussed in the following paragraph, the EPA has previously taken a series of actions on these SIP submissions to address different nonattainment area requirements for each of the NAAQS. In this proposed action, we are focused only on the contingency measure requirements.

In 2020, the EPA approved the portion of the SIP submissions related to the 2006 24-hour PM_{2.5} NAAQS, but deferred action on the contingency measure element.²³ In 2021, the EPA approved the portion of the SIP submissions related to the Moderate area requirements for the 2012 annual PM_{2.5} NAAQS except for the contingency measure element, which the EPA disapproved.²⁴ The EPA also disapproved the previously-deferred contingency measure element for the 2006 24-hour PM_{2.5} NAAQS.²⁵ In another 2021 action, the EPA disapproved the portion of the SIP submissions related to the 1997 annual PM_{2.5} NAAQS except for the emissions inventory, which the Agency approved.²⁶ In 2022, the EPA approved the portion of the SIP submission related to the 1997 24-hour PM_{2.5} NAAQS, with the exception of the contingency measure element.²⁷ In our action on the SIP submission related to the 1997 24-hour PM_{2.5} NAAQS, we disapproved the contingency measure element, but also found that the contingency measure requirement was moot for that particular PM_{2.5} NAAQS

²² The SIP revisions submitted on May 10, 2019 include the “2016 Moderate Area Plan for the 2012 PM_{2.5} Standard” (“2016 PM_{2.5} Plan”) and the “2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards” (“2018 PM_{2.5} Plan”), which incorporates by reference the “San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan” (“Valley State SIP Strategy”). On February 11, 2020, CARB submitted a revised version of App. H (“RFP, Quantitative Milestones, and Contingency”) that replaces the version submitted with the 2018 PM_{2.5} Plan on May 10, 2019. The EPA found the SIP submissions complete in a letter dated June 24, 2020, from Elizabeth J. Adams, Director, EPA Region IX, to Richard W. Corey, Executive Officer, CARB. The EPA’s completeness determination terminated the NSR offsets and highway sanctions started by the December 6, 2018 finding of failure to submit but did not affect the FIP obligation.

²³ 85 FR 44192 (July 22, 2020).

²⁴ 86 FR 67343 (November 26, 2021).

²⁵ *Id.*

²⁶ 86 FR 67329 (November 26, 2021).

²⁷ 87 FR 4503 (January 28, 2022).

because of the EPA’s concurrent determination of attainment by the applicable attainment date for San Joaquin Valley for the 1997 24-hour PM_{2.5} NAAQS.²⁸

The EPA’s various actions in 2020 and 2021 on the SIP submissions for San Joaquin Valley for the 1997, 2006, and 2012 PM_{2.5} NAAQS have served to narrow the scope of the EPA’s FIP duty arising from the December 6, 2018 finding of failure to submit (effective January 7, 2019) to: (1) the contingency measure requirement for the 2006 24-hour PM_{2.5} NAAQS and the 2012 annual PM_{2.5} NAAQS, and (2) certain nonattainment area requirements (including the contingency measure requirement) for the 1997 annual PM_{2.5} NAAQS other than the base year emissions inventory requirement.²⁹ This proposed rule addresses only the Serious Area contingency measure requirements for the 1997 annual PM_{2.5} NAAQS and the 2006 24-hour PM_{2.5} NAAQS, and the Moderate Area contingency measure requirement for the 2012 annual PM_{2.5} NAAQS for San Joaquin Valley. We are proposing this contingency measure FIP at this time to fulfill the EPA’s statutory duties by deadlines established under a consent decree in a lawsuit brought against the EPA to compel promulgation of a FIP arising from the finding of failure to submit.³⁰ The EPA has proposed action on the various other nonattainment area requirements for the 1997 annual PM_{2.5} NAAQS in a separate rulemaking.³¹

²⁸ *Id.*

²⁹ The disapprovals published by the EPA on November 26, 2021, for certain elements of the SIP submissions for the 1997 annual PM_{2.5} NAAQS and the contingency measures elements for the 2006 24-hour PM_{2.5} NAAQS and 2012 annual PM_{2.5} NAAQS started new 18-month NSR offset sanction clocks and 24-month highway sanctions clocks, that began on the effective date of the disapprovals (December 27, 2021).

³⁰ *Comité Progreso de Lamont v. EPA*, N.D. Cal., 21–cv–08733.

³¹ 88 FR 45276 (July 14, 2023). Specifically, these nonattainment requirements include a section 189(d) plan that demonstrates expeditious attainment of the 1997 annual PM_{2.5} NAAQS within the time period provided under CAA section 179(d) and provides for annual reductions in emissions of direct PM_{2.5} or a PM_{2.5} plan precursor pollutant within the area of not less than five percent per year from the most recent emissions inventory for the area until attainment; provisions for the implementation of BACM, including best available control technology (BACT), for sources of direct PM_{2.5} and all PM_{2.5} plan precursors no later than four years after the area is reclassified; provisions that require reasonable further progress (RFP); quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate RFP toward attainment by the applicable date.

II. Contingency Measure Requirements, Guidance, and Legal Precedent

The EPA first provided its views on the CAA’s requirements for particulate matter plans under part D, title I of the Act in the following guidance documents: (1) “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990” (“General Preamble”);³² (2) “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental”;³³ and (3) “State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990” (“General Preamble Addendum”).³⁴ More recently, in the PM_{2.5} SIP Requirements Rule, the EPA established regulatory requirements and provided further interpretive guidance on the statutory SIP requirements that apply to areas designated nonattainment for all PM_{2.5} NAAQS.³⁵

A. Statutory and Regulatory Requirements

Under CAA section 172(c)(9), states required to make an attainment plan SIP submission must include contingency measures to be implemented if the area fails to meet RFP (“RFP contingency measures”) or fails to attain the NAAQS by the applicable attainment date (“attainment contingency measures”). Under the PM_{2.5} SIP Requirements Rule, states must include contingency measures that provide that the state will implement them following a determination by the EPA that the state has failed: (1) to meet any RFP requirement in the approved SIP; (2) to meet any quantitative milestone (QM) in the approved SIP; (3) to submit a required quantitative milestone report; or (4) to attain the applicable PM_{2.5} NAAQS by the applicable attainment date.³⁶ Contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the relevant NAAQS by the applicable attainment date.³⁷ In general, we expect all actions needed to effect full implementation of

³² 57 FR 13498 (April 16, 1992).

³³ 57 FR 18070 (April 28, 1992).

³⁴ 59 FR 41998 (August 16, 1994).

³⁵ 81 FR 58010.

³⁶ 40 CFR 51.1014(a).

³⁷ 81 FR 58010, 58066 and General Preamble Addendum, 42015.

the measures to occur within 60 days after the EPA notifies the state of a failure to meet RFP or to attain.³⁸ Moreover, we expect the additional emissions reductions from the contingency measures to be achieved within a year of the triggering event.³⁹

The purpose of contingency measures is to continue progress in reducing emissions while a state revises its SIP to meet the missed RFP requirement or to correct ongoing nonattainment. Neither the CAA nor the EPA's implementing regulations establish a specific level of emission reductions that implementation of contingency measures must achieve, but the EPA recommends that contingency measures should provide for emission reductions equivalent to approximately one year of reductions needed for RFP in the nonattainment area. For PM_{2.5} NAAQS SIP planning purposes, the EPA recommends that RFP should be calculated as the overall level of reductions needed to demonstrate attainment divided by the number of years from the base year to the attainment year. As part of the attainment plan SIP submission, the EPA expects states to explain the amount of anticipated emissions reductions that the contingency measures will achieve. In the event that a state is unable to identify and adopt contingency measures that will provide for approximately one year's worth of emissions reductions, then EPA recommends that the state provide a reasoned justification why the smaller amount of emissions reductions is appropriate.⁴⁰

To satisfy the requirements of 40 CFR 51.1014, the contingency measures adopted as part of a PM_{2.5} NAAQS attainment plan must consist of control measures for the area that are not otherwise required to meet other attainment plan requirements (*e.g.*, to meet RACM/RACT requirements). By definition, contingency measures are measures that are over and above what a state must adopt and impose to meet RFP and to provide for attainment by the applicable attainment date.

Contingency measures serve the purpose of providing additional emission reductions during the period after a failure to meet RFP or failure to attain as the state prepares a new SIP submission to rectify the problem. Accordingly, contingency measures must provide such additional emission

reductions during an appropriate period of time and must specify the timeframe within which their requirements would become effective following any of the EPA determinations specified in 40 CFR 51.1014(a).

In addition, to comply with CAA section 172(c)(9), contingency measures must be both conditional and prospective, so that they will go into effect and achieve emission reductions only in the event of a future triggering event such as a failure to meet RFP or a failure to attain. In a 2016 decision called *Bahr v. EPA* ("*Bahr*"),⁴¹ the Ninth Circuit Court of Appeals held that CAA section 172(c)(9) does not allow EPA approval of already-implemented control measures as contingency measures. Thus, already-implemented measures cannot serve as contingency measures under CAA section 172(c)(9). For purposes of the PM_{2.5} NAAQS, a state must develop, adopt, and submit one or more contingency measures to be triggered upon a failure to meet any RFP requirement, failure to meet a quantitative milestone requirement, or failure to attain the NAAQS by the applicable attainment date, regardless of the extent to which already-implemented measures would achieve surplus emission reductions beyond those necessary to meet RFP or quantitative milestone requirements and beyond those predicted to achieve attainment of the NAAQS.

In a recent decision on the EPA's approval of a SIP contingency measure element for the ozone NAAQS, the Ninth Circuit Court of Appeals held that, under the EPA's current guidance, the surplus emissions reductions from already-implemented measures cannot be relied upon to justify the approval of a contingency measure that would achieve far less than one year's worth of RFP as sufficient by itself to meet the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9) for the nonattainment area.⁴²

B. Draft Revised Contingency Measure Guidance

In March 2023, the EPA published notice of availability announcing a new draft guidance addressing the contingency measures requirement of section 172(c)(9), entitled: "*DRAFT: Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter (DRAFT-*

3/17/23—Public Review Version)" (herein referred to as the "Draft Revised Contingency Measure Guidance") and opportunity for public comment.⁴³ The principal differences between the draft revised guidance and existing guidance on contingency measures relate to the EPA's recommendations concerning the specific amount of emission reductions that implementation of contingency measures should achieve, and the timing for when the emissions reductions from the contingency measures should occur.

Under the draft revised guidance, the recommended level of emissions reductions that contingency measures should achieve would represent one year's worth of "progress" as opposed to one year's worth of RFP. One year's worth of "progress" is calculated by determining the average annual reductions between the base year emissions inventory and the projected attainment year emissions inventory, determining what percentage of the base year emissions inventory this amount represents, then applying that percentage to the projected attainment year emissions inventory to determine the amount of reductions needed to ensure ongoing progress if contingency measures are triggered.

With respect to the time period within which reductions from contingency measures should occur, the EPA previously recommended that contingency measures take effect within 60 days of being triggered, and that the resulting emission reductions generally occur within one year of the triggering event. Under the draft revised guidance, in instances where there are insufficient contingency measures available to achieve the recommended amount of emissions reductions within one year of the triggering event, the EPA believes that contingency measures that provide reductions within up to two years of the triggering event would be appropriate to consider towards achieving the recommended amount of emissions reductions. The draft revised guidance does not alter the 60-day recommendation for the contingency measures to take initial effect.

III. Proposed FIP Contingency Measures

A. General Considerations

1. Legal Authority

CAA section 110(c)(1) authorizes and obligates the EPA to promulgate a FIP

³⁸ 81 FR 58010, 58066. See also General Preamble 13512, 13543–13544, and General Preamble Addendum, 42014–42015.

³⁹ General Preamble, 13511.

⁴⁰ 81 FR 58010, 58067.

⁴¹ *Bahr v. EPA*, 836 F.3d 1218, 1235–1237 (9th Cir. 2016). See also, *Sierra Club v. EPA*, 21 F.4th 815, 827–828 (D.C. Cir. 2021).

⁴² *Assoc. of Irrigated Residents v. EPA*, 10 F.4th 937 (9th Cir. 2021) ("*AIR v. EPA*" or "*AIR*").

⁴³ 88 FR 17571 (March 23, 2023). The Draft Revised Contingency Measure Guidance is available at: <https://www.epa.gov/air-quality-implementation-plans/draft-contingency-measures-guidance>.

when the EPA finds that a state has failed to make a required submission or finds that the plan or plan revision submitted by the state does not satisfy the minimum completeness criteria set forth in 40 CFR part 51, Appendix V, or when the EPA disapproves a SIP submission in whole or in part, unless the state first makes a complete SIP submission that corrects the deficiency, and the EPA approves that submission, before the EPA promulgates such FIP. In this instance, on December 6, 2018, we published our finding that California had failed to submit attainment plan SIP submissions addressing various nonattainment area SIP requirements for the 1997 annual and 24-hour PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and 2012 annual PM_{2.5} NAAQS in the San Joaquin Valley. As a result of that finding of failure to submit, the EPA was authorized and obligated to promulgate a FIP for all of those SIP requirements covered by the finding, except those for which the EPA has subsequently approved SIP submissions or that the EPA has subsequently found to be no longer applicable. CAA section 302(y) defines the term “Federal Implementation Plan” to mean “a plan (or portion thereof) promulgated by the [EPA] to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a [SIP], and which includes enforceable emission limitations or other control measures, means, or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant [NAAQS].”

In promulgating regulations in a FIP, the EPA may rely on its authority under section 110(c) or under authority it has under other provisions of the CAA. Under CAA section 110(c), the EPA “stands in the shoes” of the state and may exercise all authority that the state may exercise under the CAA.⁴⁴ For this particular proposed FIP, the measures that the EPA is proposing are measures that the state has the authority to adopt.

2. Implementation and Enforcement

Congress has determined that the primary responsibility for air pollution prevention and control at its source rests with state and local governments. CAA section 101(a)(3). Accordingly, the EPA has attempted to design the FIP contingency measures to ensure that, wherever possible, state and local

⁴⁴ Under CAA section 110(c), the EPA “stands in the shoes of the defaulting state, and all of the rights and duties that would otherwise fall to the state accrue instead to EPA.” *Central Ariz. Water Conservation Dist. v. EPA*, 990 F.2d 1531, 1541 (9th Cir. 1993).

implementation is encouraged and facilitated by the proposed FIP’s regulatory approach. Thus, for example, the FIP generally employs local California rule organization and terminology in the proposed measures.

With respect to enforcement of the FIP, we note that the EPA has a comprehensive enforcement program as specified in section 113(a) of the CAA. Under this program, the EPA is authorized to take enforcement actions to ensure compliance with the CAA and the rules and regulations promulgated under the CAA. Such actions include the issuance of an administrative order requiring compliance with the applicable implementation plan; the issuance of an administrative order requiring the payment of a civil penalty for past violations; and the commencement of a civil judicial action. Orders issued under CAA section 113(a) require subject entities to comply with the requirements set forth in the order as expeditiously as practicable, but in no event longer than one year after the date the order was issued. Issuance of any such order does not prohibit the EPA from assessing any penalties. Under CAA section 113(b), civil judicial enforcement may require assessment of penalties of up to \$117,468 per day for each violation.⁴⁵ Additionally, under CAA section 113(c), any person who knowingly violates any requirement or prohibition of an implementation plan may be subject to criminal enforcement, with penalties including fines and imprisonment.

3. FIP Obligation for 2012 Annual PM_{2.5} NAAQS Contingency Measures

The EPA’s December 6, 2018 finding of failure to submit relates, in relevant part, to an overdue Moderate area attainment plan SIP submission for San Joaquin Valley for the 2012 annual PM_{2.5} NAAQS. In 2021, we approved the portion of the SIP submissions that demonstrate that attainment of that NAAQS by the Moderate area attainment date of December 31, 2021, was impracticable, and thus we reclassified San Joaquin Valley as a Serious area for the 2012 annual PM_{2.5} NAAQS.^{46 47} Unlike statutory

⁴⁵ Pursuant to the EPA’s Civil Monetary Penalty Inflation Adjustment final rule, 88 FR 986 (January 6, 2023), codified at 40 CFR 19.4.

⁴⁶ 86 FR 67343.

⁴⁷ The reclassification action triggered statutory deadlines for California to submit SIP submissions addressing the Serious area attainment plan requirements for the 2012 annual PM_{2.5} NAAQS: June 27, 2023, for emissions inventories, BACM, and nonattainment new source review (NSR), and December 31, 2023, for the attainment demonstration and related planning requirements. While we anticipate that the State’s SIP submission

provisions applicable to other NAAQS, section 189(a)(1)(B) authorizes a state to make a nonattainment plan SIP submission for an area classified as Moderate demonstrating that it is impractical to attain the NAAQS in an area by the outermost statutory attainment date.

The EPA does not interpret the requirement for contingency measures for failing to attain the NAAQS by the applicable attainment date to apply to a Moderate area that a state adequately demonstrates cannot practicably attain the NAAQS by the statutory attainment date. Because it is a given that the area at issue could not attain by the attainment date, it would be illogical to require contingency measures (*i.e.*, conditional and prospective measures) that would be triggered specifically in the event of such a failure to attain. Rather, the EPA believes it is appropriate for the state to identify and adopt these contingency measures in a timely way as part of the Serious area attainment plan that it will develop once the EPA reclassifies such an area. However, if a state with a Moderate area that the EPA has found cannot practicably attain the NAAQS by the attainment date fails to meet RFP, when reviewed as part of the quantitative milestone either 4.5 or 7.5 years after designation, then the requirement to implement contingency measures would be triggered as required by CAA section 172(c)(9).⁴⁸ Thus, contingency measures for failure to meet RFP, failure to submit a quantitative milestone report, or failure to meet the quantitative milestones, are necessary for the San Joaquin Valley, even if they are not required for purposes of a failure to attain under these specific circumstances.

We note that the EPA will separately review SIP submission(s) for the Serious area contingency measure requirements for the 2012 annual PM_{2.5} NAAQS, which are outside the scope of the EPA’s FIP obligation for the San Joaquin Valley. This action addresses the Moderate area plan contingency measures requirement for the 2012 annual PM_{2.5} NAAQS.

4. Applicable PM_{2.5} Precursors

Under the CAA, states are required to regulate not only direct emissions of PM_{2.5} in an attainment plan, but also all

for the latter will address contingency measures, we note that the requirement for Serious area contingency measures for the 2012 annual PM_{2.5} NAAQS is outside the scope of this proposed rule; there is no requirement for the EPA to promulgate a Serious area contingency measures FIP for the 2012 annual PM_{2.5} NAAQS.

⁴⁸ 81 FR 58010, 58067.

PM_{2.5} precursors. Section 189(e) explicitly requires that states do so for major stationary sources, unless such sources do not significantly contribute to violations of the NAAQS in the nonattainment area at issue. The EPA has interpreted this provision to authorize states to establish that it is not necessary to regulate precursor emissions from other source categories under the same conditions. Courts have upheld this approach.⁴⁹

Under the EPA's PM_{2.5} SIP Requirements Rule, states must identify, adopt, and implement control measures, including control technologies, on sources of direct PM_{2.5} emissions and sources of emissions of PM_{2.5} plan precursors located in PM_{2.5} nonattainment areas.⁵⁰ PM_{2.5} plan precursors are those PM_{2.5} precursors (which are SO₂, NO_x, volatile organic compounds (VOCs), and ammonia) that the state must regulate in the applicable attainment plan.⁵¹ A state may elect to submit to the EPA precursor demonstrations for a specific nonattainment area in order to establish that regulation of one or more precursors is not necessary for attainment in the nonattainment area at issue.⁵² A precursor demonstration refers to an optional set of analyses provided by a state that are designed to show that emissions of a particular PM_{2.5} precursor do not contribute significantly to PM_{2.5} levels that exceed the relevant PM_{2.5} standards in a particular nonattainment area.⁵³ If a comprehensive precursor demonstration is approved by the EPA, then the state is not required to control emissions of the relevant precursor from existing sources in the current attainment plan.⁵⁴ Accordingly, the state would not need to address the precursor in order to meet attainment plan requirements, including RFP, in QMs and associated QM reports, or be required to adopt contingency measures to reduce the precursor at issue.⁵⁵

For San Joaquin Valley, we have considered the State's precursor demonstrations with respect to the 1997 annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 2012 annual PM_{2.5} NAAQS in taking action on the portions of the SIP submissions applicable to those NAAQS. For the 1997 annual PM_{2.5} NAAQS, we

disapproved the comprehensive precursor demonstration from the 2019 SIP submissions.⁵⁶ More recently, however, the EPA proposed to approve the comprehensive precursor demonstration in connection with the State's 2021 submission of a revised attainment plan for the 1997 annual PM_{2.5} NAAQS.^{57 58} The State's comprehensive precursor demonstration documents indicate that SO₂, VOC, and ammonia emissions do not contribute significantly to PM_{2.5} levels that exceed the 1997 annual PM_{2.5} NAAQS in the San Joaquin Valley. On the basis of our proposed approval of the comprehensive precursor demonstration for the 1997 annual PM_{2.5} NAAQS, we are not proposing FIP contingency measures for SO₂, VOC, or ammonia but do identify such measures for direct PM_{2.5} and NO_x. If we do not finalize our proposed approval of the comprehensive precursor demonstration for the 1997 annual PM_{2.5} NAAQS, we will reconsider the potential need for FIP contingency measures for emissions sources of those PM_{2.5} precursors for purposes of this NAAQS.

For the 2006 24-hour PM_{2.5} NAAQS, the EPA approved the comprehensive precursor demonstration that established that SO₂, VOC, and ammonia emissions do not contribute significantly to PM_{2.5} levels that exceed the 2006 24-hour PM_{2.5} NAAQS in the San Joaquin Valley.⁵⁹ A petition for review challenged the EPA's approval of the portions of the 2019 SIP submissions related to the 2006 24-hour PM_{2.5} NAAQS, and in 2021, the Ninth Circuit Court of Appeals vacated the approval of aggregate commitments to the extent such commitments relied on inadequately-funded incentive-based control measures and remanded to the EPA for further consideration of the aggregate commitments, and for further proceedings consistent with the decision, but denied the petition in all other respects.⁶⁰ The EPA's approval of the comprehensive precursor demonstration was not the subject of the court challenge, and thus, based on our approval of the comprehensive precursor demonstration for the 2006 24-hour PM_{2.5} NAAQS, we are not proposing FIP contingency measures for SO₂, VOC, or ammonia for the 2006 24-

hour PM_{2.5} NAAQS but do identify such measures for direct PM_{2.5} and NO_x. If, in response to the court's remand, we withdraw our approval of the comprehensive precursor demonstration for the 2006 24-hour PM_{2.5} NAAQS in whole or in part, we will reconsider the potential need for FIP contingency measures for emissions sources of the relevant PM_{2.5} precursors for purposes of this NAAQS.

With respect to the San Joaquin Valley as a Moderate nonattainment area for the 2012 annual PM_{2.5} NAAQS, the EPA approved the comprehensive precursor demonstration that established that SO₂, VOC, and ammonia emissions do not contribute significantly to PM_{2.5} levels that exceed the 2012 annual PM_{2.5} NAAQS in the San Joaquin Valley.⁶¹ Based on that approval, we are not proposing FIP contingency measures for SO₂, VOC, or ammonia for the 2012 annual PM_{2.5} NAAQS (as a Moderate area) but do identify such measures for direct PM_{2.5} and NO_x. Our decision not to propose FIP contingency measures for SO₂, VOC, or ammonia for the 2012 annual PM_{2.5} NAAQS relates to San Joaquin Valley as a Moderate nonattainment area for that NAAQS, which is the relevant classification for the purposes of the proposed FIP. We will consider the issue of PM_{2.5} precursors for San Joaquin Valley for the 2012 annual PM_{2.5} NAAQS once again as part of our evaluation of the to-be-submitted Serious area plan for the San Joaquin Valley for that NAAQS.

5. Magnitude of Emissions Reductions From Contingency Measures

As noted previously, neither the CAA nor the EPA's implementing regulations establish a specific level of emission reductions that implementation of contingency measures must achieve, but the EPA has recommended in existing guidance that contingency measures should provide for emission reductions equivalent to approximately one year of reductions needed for RFP in the nonattainment area. For PM_{2.5}, one year of reduction needed for RFP is calculated as the overall level of reductions needed to demonstrate attainment by the applicable attainment year, divided by the number of years from the base year to the attainment year. For example, if the attainment plan provides for attainment in five years, then each year RFP would generally be one-fifth of the required overall emission reductions needed for attainment. Thus, contingency measures

⁴⁹ See, e.g., *Assoc. of Irrigated Residents v. EPA, et al.*, 423 F.3d 989 (9th Cir. 2005).

⁵⁰ See generally 40 CFR 51.1009(a) and 40 CFR 51.1010(a).

⁵¹ 40 CFR 51.1000.

⁵² 40 CFR 51.1006(a).

⁵³ 40 CFR 51.1000.

⁵⁴ 40 CFR 51.1006(a)(1)(iii).

⁵⁵ 40 CFR 51.1009(a)(4)(i).

⁵⁶ 86 FR 67329.

⁵⁷ CARB submitted the "Attainment Plan Revision for the 1997 Annual PM_{2.5} Standard (August 19, 2021)" ("15 µg/m³ SIP Revision") to the EPA as a SIP revision on November 8, 2021.

⁵⁸ 88 FR 45276.

⁵⁹ 85 FR 17382, 17390–17396 (March 27, 2020), finalized at 85 FR 44192.

⁶⁰ *Medical Advocates for Healthy Air v. EPA*, Case No. 20–72780, Dkt. #58–1 (9th Cir., April 13, 2022).

⁶¹ 86 FR 49100, 49107–49112 (September 1, 2021), finalized at 86 FR 67343.

should achieve approximately that amount of emission reductions to be triggered in the event of a failure to meet RFP, or a failure to attain.

Using the longstanding approach, contingency measures should provide for emissions reductions of approximately one year's worth of RFP for each of the relevant PM_{2.5} NAAQS. For the 1997 annual PM_{2.5} NAAQS and the 2006 24-hour PM_{2.5} NAAQS, one year's worth of RFP is calculated by dividing the emission reductions from the base year emissions inventory to the attainment year emissions inventory by the number of years between those

years. For the 2012 annual PM_{2.5} NAAQS, one year's worth of RFP is calculated by dividing the emission reductions from the base year emissions inventory to the outermost Moderate area RFP milestone year emissions inventory by the number of years between those years. For the 2012 annual PM_{2.5} NAAQS in this case, RFP is based on the outermost Moderate area RFP milestone year rather than the attainment year because, as an area for which we approved an impracticability demonstration, the attainment year and emissions level providing for attainment

have not yet been determined and approved.

As shown in Table 1, for the San Joaquin Valley, one year's worth of RFP and the amount of emissions reductions that contingency measures should provide for is approximately 0.44 tons per day (tpd) for direct PM_{2.5} and 16.7 tpd for NO_x for the 1997 annual PM_{2.5} NAAQS, approximately 0.58 tpd for direct PM_{2.5} and 18.4 tpd for NO_x for the 2006 24-hour PM_{2.5} NAAQS, and approximately 0.46 tpd for direct PM_{2.5} and 15.3 tpd for NO_x for the 2012 annual PM_{2.5} NAAQS.

TABLE 1—ONE YEAR'S WORTH OF RFP FOR THE PM_{2.5} NAAQS IN SAN JOAQUIN VALLEY

Applicable PM _{2.5} NAAQS	Pollutant	Emissions (annual average, tpd) ^{a b c}		Difference (tpd)	Number of years between base year and attainment/ RFP year	One year's worth of RFP (tpd)
		Base year inventory	Projected attainment/RFP inventory			
1997 Annual PM _{2.5} NAAQS ..	Direct PM _{2.5}	62.5	58.1	4.4	10	0.44
	NO _x	317.2	150.6	166.6	10	16.7
2006 24-hour PM _{2.5} NAAQS	Direct PM _{2.5}	62.5	56.1	6.4	11	0.58
	NO _x	317.2	115.0	202.2	11	18.4
2012 Annual PM _{2.5} NAAQS ..	Direct PM _{2.5}	62.5	58.4 (RFP in 2022)	4.1	9	0.46
	NO _x	317.2	179.8 (RFP in 2022)	137.4	9	15.3

^a Base year and 2023 attainment year emissions for the 1997 annual PM_{2.5} NAAQS are from Table H-6 (page H-12) of the revisions to the 2018 PM_{2.5} Plan adopted for the 1997 annual PM_{2.5} NAAQS on August 19, 2021 ("15 µg/m³ SIP Revision").

^b Base year and 2024 attainment year emissions for the 2006 24-hour PM_{2.5} NAAQS are from 85 FR 17382, 17421, Table 10, citing 2018 PM_{2.5} Plan, Appendix H (rev. February 11, 2020), Table H-5.

^c Base year and 2022 RFP year emissions for the 2012 annual PM_{2.5} NAAQS are from 86 FR 49100, 49121, Table 5, citing 2018 PM_{2.5} Plan, Appendix H (rev. February 11, 2020), Table H-11.

Using the new approach described in the EPA's Draft Revised Contingency Measure Guidance, the EPA recommended that contingency measures should provide for emissions reductions of approximately one year's worth of progress for each of the relevant PM_{2.5} NAAQS. For the 1997 annual PM_{2.5} NAAQS and the 2006 24-hour PM_{2.5} NAAQS, one year's worth of progress is calculated by determining the average annual reductions between the base year emissions inventory and the projected attainment year emissions inventory, determining what percentage of the base year emissions inventory this amount represents, then applying that percentage to the projected attainment

year emissions inventory. For the 2012 annual PM_{2.5} NAAQS, one year's worth of progress is calculated by determining the average annual reductions between the base year emissions inventory and the projected outermost Moderate area RFP milestone year emissions inventory, determining what percentage of the base year emissions inventory this amount represents, then applying that percentage to the projected outermost Moderate area RFP milestone year emissions inventory. For the 2012 annual PM_{2.5} NAAQS in this case, the calculation of one year's worth of progress is based on the outermost Moderate area RFP milestone year rather than the attainment year because, as an

area for which we approved an impracticability demonstration, the attainment year and emissions level providing for attainment have not yet been determined and approved.

As shown in Table 2, for the San Joaquin Valley, one year's worth of progress and the amount of emissions reductions that contingency measures should provide for is approximately 0.41 tpd for direct PM_{2.5} and 7.9 tpd for NO_x for the 1997 annual PM_{2.5} NAAQS, approximately 0.52 tpd for direct PM_{2.5} and 6.7 tpd for NO_x for the 2006 24-hour PM_{2.5} NAAQS, and approximately 0.43 tpd for direct PM_{2.5} and 8.7 tpd for NO_x for the 2012 annual PM_{2.5} NAAQS.

TABLE 2—ONE YEAR'S WORTH OF PROGRESS FOR THE PM_{2.5} NAAQS IN SAN JOAQUIN VALLEY

Applicable PM _{2.5} NAAQS	Pollutant	Emissions (annual average, tpd) ^{a b c}		One year's worth of RFP (tpd) ^d	RFP as a percentage of the base year inventory (%)	One year's worth of progress (tpd)
		Base year inventory	Projected attainment/RFP inventory			
1997 Annual PM _{2.5} NAAQS ..	Direct PM _{2.5}	62.5	58.1	0.44	0.7	0.41
	NO _x	317.2	150.6	16.7	5.3	7.9
2006 24-hour PM _{2.5} NAAQS	Direct PM _{2.5}	62.5	56.1	0.58	0.9	0.52
	NO _x	317.2	115.0	18.4	5.8	6.7
2012 Annual PM _{2.5} NAAQS ..	Direct PM _{2.5}	62.5	58.4 (RFP in 2022)	0.46	0.7	0.43

TABLE 2—ONE YEAR’S WORTH OF PROGRESS FOR THE PM_{2.5} NAAQS IN SAN JOAQUIN VALLEY—Continued

Applicable PM _{2.5} NAAQS	Pollutant	Emissions (annual average, tpd) ^{a b c}		One year’s worth of RFP (tpd) ^d	RFP as a percentage of the base year inventory (%)	One year’s worth of progress (tpd)
		Base year inventory	Projected attainment/RFP inventory			
	NO _x	317.2	179.8 (RFP in 2022)	15.3	4.8	8.7

^a Base year and 2023 attainment year emissions for the 1997 annual PM_{2.5} NAAQS are from Table H–6 (page H–12) of the 15 µg/m³ SIP Revision.

^b Base year and 2024 attainment year emissions for the 2006 24-hour PM_{2.5} NAAQS are from 85 FR 17382, 17421, Table 10, citing 2018 PM_{2.5} Plan, Appendix H (rev. February 11, 2020), Table H–5.

^c Base year and 2022 RFP year emissions for the 2012 annual PM_{2.5} NAAQS are from 86 FR 49100, 49121, Table 5, citing 2018 PM_{2.5} Plan, Appendix H (rev. February 11, 2020), Table H–11.

^d From Table 1 of this proposed rule.

6. Substitution Between Direct PM_{2.5} and NO_x Emissions

To determine whether a set of contingency measures would be capable of achieving one year’s worth of RFP or one year’s worth of progress, excess emissions reductions of one precursor may be substituted for a shortfall in emissions reductions from another precursor or direct PM_{2.5} if supported by the attainment modeling results. The PM_{2.5} SIP Requirements Rule supports the concept of states using reductions in one pollutant to meet the RFP requirement for another pollutant.⁶² It envisages an air quality-based RFP analysis with an “equivalency determination,” in which “a state . . . could rely upon attainment demonstration modeling results that link emissions reductions with air quality improvements.” The EPA considers it reasonable also to apply the interpollutant trading (IPT) concept to contingency measures, which should provide one year’s worth of RFP reductions. The EPA previously approved IPT for contingency measures in the 2008 San Joaquin Valley plan for the 1997 annual PM_{2.5} NAAQS, as well as for other plan actions.⁶³

⁶² 81 FR 58010, 58057 and 40 CFR 51.1012. See also proposed rule, 80 FR 15340, 15387 (March 23, 2015).

⁶³ 79 FR 29327 (May 22, 2014); see discussion in proposed approval, 78 FR 53113, 53122 (August 28, 2013). The EPA later withdrew the approval of the contingency measure SIP at 81 FR 29498 (May 12, 2016) for reasons unrelated to IPT. At 82 FR 58747 (December 14, 2017), the EPA found that the deficiency that had been the basis for the May 12, 2016 disapproval had been resolved. The EPA has approved IPT for showing that aggregate commitments for emissions reductions have been met for example in approving the 2018 PM_{2.5} Plan for the 2006 24-hour PM_{2.5} NAAQS. 85 FR 44192. See also, discussion in the preamble of the affiliated proposed rule. 85 FR 17382, 17407 and 17429. See also, South Coast Air Quality Management District (SCAQMD), “2016 Air Quality Management Plan,” App. VI, VI–D–5 and VI–D–6; SCAQMD, “Technical clarification regarding emission reductions associated with contingency measures for the 2006 24-hour PM_{2.5} standard attainment and 2012 annual PM_{2.5} standard Reasonable Further

Our longstanding guidance on contingency measures did not directly address this particular issue, but in our Draft Revised Contingency Measure Guidance, citing the PM_{2.5} SIP Requirements Rule, we noted that the attainment demonstration modeling in an attainment plan SIP submission may provide a reasonable basis to identify ratios for the effectiveness of reductions of one precursor to reduce ambient concentrations relative to other precursors. If that is the case, it may be appropriate for a state to use the ratio to substitute contingency measure reductions of one precursor for a shortfall in contingency measure reductions of another precursor.⁶⁴ While, with respect to the PM_{2.5} NAAQS, the Draft Revised Contingency Measure Guidance refers to substitution of emissions reductions among PM_{2.5} plan precursors, the same holds true for substitution of emissions reductions between direct PM_{2.5} and PM_{2.5} plan precursors.

For San Joaquin Valley, modeling conducted by the State for the SIP submissions for the 1997 annual PM_{2.5} NAAQS and the 2012 annual PM_{2.5} NAAQS supports the use of a 10.3 to 1 ratio for the relative effectiveness of NO_x and direct PM_{2.5} emissions reduction to reduce ambient PM_{2.5} concentrations. For the 2006 24-hour PM_{2.5} NAAQS, the corresponding ratio is 2.6 to 1. Thus, for example, one tpd of excess direct PM_{2.5} emissions reductions (*i.e.*, beyond one year’s worth of RFP or progress) could substitute for a shortfall of 10.3 tpd of NO_x reductions for the purposes of the 1997 annual PM_{2.5} NAAQS or the 2012 annual PM_{2.5} NAAQS, or for a shortfall of 2.6 tpd for the purposes of the 2006 24-hour PM_{2.5} NAAQS. For further detail on our interpollutant trading analysis, please see the EPA’s

Progress,” February 2020, 4; and 85 FR 71264 (November 9, 2020).

⁶⁴ Draft Revised Contingency Measure Guidance, 25.

Interpollutant Trading Technical Support Document (TSD) in the docket for this action.

7. Using Same Contingency Measures for More Than One Triggering Event, NAAQS

Under CAA section 172(c)(9), SIPs must provide for the implementation of specific contingency measures if the area fails to meet RFP or to attain the NAAQS by the applicable attainment date. For PM_{2.5}, there are four potential triggering events: failure to meet any RFP requirement, failure to submit a QM report, failure to meet a QM, and failure to attain the NAAQS by the applicable attainment date.⁶⁵

To meet the contingency measure requirement, states may adopt different measures for different triggering events but are not required to do so. If the state adopts the same set of contingency measures for all of the triggering events, however, then the contingency measures may all be implemented by earlier-occurring triggering events leaving no contingency measures for potential later-occurring events. In that case, if a state has no remaining approved contingency measures, then the EPA believes that states must adopt and submit additional contingency measures to be available for potential later-occurring triggering events.

The potential for states to have used all approved contingency measures, and thus to lack contingency measures for potential later-triggering events is compounded by the reliance on the same set of contingency measures for more than one iteration of the PM_{2.5} NAAQS. For this proposed rule, we have identified a single set of contingency measures that could be triggered by any of the regulatory triggers in 40 CFR 51.1014(a) and that would apply to the 1997 annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 2012 annual PM_{2.5} NAAQS (for purposes of the Moderate

⁶⁵ 40 CFR 51.1014(a).

area attainment plan). However, in light of the potential for triggering the contingency measures for one PM_{2.5} NAAQS and the resultant absence of contingency measure for the other PM_{2.5} NAAQS, we are proposing regulatory text that would commit the Agency to promulgate additional contingency measures if all the contingency measures are implemented for one of the PM_{2.5} NAAQS with the result that no FIP contingency measures would be left to be implemented for the other PM_{2.5} NAAQS.

B. Candidate Measure Identification Process

The EPA has used several guiding principles in identifying candidate contingency measures for this FIP proposal. These include consideration of:

- Larger emission sources of direct PM_{2.5} and NO_x, based on our review of the State’s emissions inventories (*i.e.*, where the potential magnitude of reductions may be greater),
- Past recommendations of new control measures or improvements to existing control measures by the EPA and community and environmental groups (to leverage the considerable past efforts to identify potential additional emission reduction opportunities),
- Awareness of recent and ongoing emission reduction strategies by CARB and the District (whose adoption and submission to meet another SIP

requirement, or whose status as an already implemented measure, would render the measure ineligible as a potential contingency measure),

- Timing limitations that prevent the measure from being implemented without significant further action by the state or the EPA as required for contingency measures, or that prevent the potential resulting emissions reductions from being achieved within one year of a triggering event for the contingency measure (such as the statutory four-year lead time for mobile source vehicle and engine standards),⁶⁶ and
- The potential for changing the EPA’s FIP contingency measures into SIP contingency measures (*i.e.*, measures that the State could adopt, in whole or in part, or adapt in combination with other measures), that would achieve comparable emission reductions, as part of a contingency measure SIP submission to replace the FIP in future).⁶⁷

Furthermore, as necessary parts of the process for selecting measures for inclusion in the proposed contingency measure FIP, the EPA evaluated the measures for their emission reduction potential; technological and economic feasibility; and suitability as contingency measures (*i.e.*, they can be implemented within 60 days of triggering, reductions can occur within two years of triggering, etc.).

1. Emissions Inventory (Direct PM_{2.5} and NO_x)

We reviewed emissions inventories in the 2018 PM_{2.5} Plan and CARB’s CEPAM standard emissions tool (2019v1.03) for San Joaquin Valley to identify the principal source categories that contribute to regional emissions totals and thereby to identify the source categories for which meaningful emissions reductions from contingency measures might be most achievable. As shown in Table 3, based on the 2018 PM_{2.5} Plan emissions inventory,⁶⁸ the top ten source categories for direct PM_{2.5} emissions in the San Joaquin Valley in 2023 will contribute approximately 78% of the regional total direct PM_{2.5} emissions. Most of the top ten direct PM_{2.5} sources are stationary and area sources, including direct PM_{2.5} combustion sources such as Cooking and Residential Fuel Combustion and direct PM_{2.5} dust sources such as Farming Operations and Fugitive Windblown Dust. With respect to NO_x emissions, the top ten source categories will contribute approximately 77% of the regional total in 2023. Most of the top ten NO_x sources are mobile sources, including on-road sources such as Heavy Heavy-Duty Diesel Trucks and Light-Duty Vehicles and non-road sources such as Farm Equipment and Trains.

TABLE 3—TOP TEN SOURCE CATEGORIES FOR DIRECT PM_{2.5} AND NO_x EMISSIONS, SAN JOAQUIN VALLEY, 2023 [Annual average]

Pollutant or precursor	Source category	Emissions (tpd) ^a	Emissions as percentage of total inventory
Direct PM _{2.5}	Farming Operations	13.0	22.3
	Fugitive Windblown Dust	7.2	12.3
	Paved Road Dust	5.5	9.4
	Cooking	4.2	7.2
	Unpaved Road Dust	3.7	6.3
	Residential Fuel Combustion	3.3	5.7
	Managed Burning and Disposal	3.0	5.1
	Farm Equipment	1.8	3.1
	Light-Duty Vehicles (LDA, LDT1, LDT2)	1.8	3.1
	Mineral Processes	1.7	2.9
	Total of Top Ten Source Categories		45.2
NO _x	Heavy Heavy-Duty Diesel Trucks (HHDV)	33.1	21.5
	Farm Equipment	30.1	19.6
	Off-Road Equipment	14.7	9.6
	Trains	8.8	5.7
	Light-Duty Vehicles (LDA, LDT1, LDT2)	6.4	4.2

⁶⁶In our Draft Revised Contingency Measure Guidance, in instances where there are insufficient contingency measures available to achieve the recommended amount of emission reductions within one year, we are considering a change to our guidance to allow for up to two years of being triggered for achieving emissions reductions from contingency measures.

⁶⁷The facility of translating proposed FIP contingency measures into SIP contingency measures has two potential benefits: first, implementation and enforcement build on existing structures with which the regulated communities are familiar, resulting in swift implementation consistent the statutory requirements for contingency measures; and second, drafting the FIP

measures within the context of existing rules may be more readily adapted by the state in its contingency measure SIP submission.
⁶⁸ 2018 PM_{2.5} Plan, App. B, Table B–1 (direct PM_{2.5}) and Table B–2 (NO_x).

TABLE 3—TOP TEN SOURCE CATEGORIES FOR DIRECT PM_{2.5} AND NO_x EMISSIONS, SAN JOAQUIN VALLEY, 2023—
Continued
[Annual average]

Pollutant or precursor	Source category	Emissions (tpd) ^a	Emissions as percentage of total inventory
	Residential Fuel Combustion	5.8	3.8
	Manufacturing and Industrial	5.3	3.5
	Medium Heavy-Duty Diesel Trucks (MHDV)	5.0	3.3
	Service and Commercial	4.6	3.0
	Aircraft	4.6	3.0
	Total of Top Ten Source Categories	118.4	77.1

^aSource: 2018 PM_{2.5} Plan, Appendix B, tables B-1 and B-2.

2. Identification of Current and Future Planned Controls for Source Categories

Using the emission inventory information, we identified the existing controls for these sources in the EPA approved SIP for the San Joaquin Valley, and the planned future controls that apply (or will apply) to the source categories or subcategories present in the nonattainment area. Existing controls refer to the limits and requirements for different source categories set forth in the District, CARB, and EPA rules and regulations. Planned future controls refer to the commitments to develop and propose control measures found in District plans⁶⁹ and in CARB’s Valley State SIP Strategy and the 2022 State SIP Strategy.⁷⁰

For example, the District and CARB have adopted many measures from 2018 to the present that address top ten sources of direct PM_{2.5} and/or NO_x in the San Joaquin Valley, including but not limited to the following by adoption year:

- Residential Fuel Combustion (2019 amendments to Rule 4901 (“Wood Burning Fireplaces and Wood Burning Heaters”) and 2021 residential wood burning incentive measure),
- Managed Burning and Disposal (2021 agricultural burning phase-out measure),
- Farming Equipment (2019 agricultural equipment incentive measure),
- Heavy-Duty Diesel Trucks (2020 Advanced Clean Trucks Regulation and 2021 Heavy-Duty Inspection and Maintenance Regulation)

⁶⁹ See, e.g., 2018 PM_{2.5} Plan, Ch. 4, Table 4-4; and SJVUAPCD, “2022 Plan for the 2015 8-Hour Ozone Standard,” adopted December 15, 2022, section 3.3.3, 3-9.

⁷⁰ Valley State SIP Strategy, Table 7; and CARB, “2022 State Strategy for the State Implementation Plan (adopted September 22, 2022),” submitted electronically to the EPA on February 23, 2023, as an enclosure to a letter dated February 22, 2023.

The District and CARB continue to workshop and evaluate control measures for other top ten source categories, including Farming Operations (e.g., potential amendments to Rule 4550 (“Conservation Management Practices”))⁷¹ and Cooking (e.g., commercial under-fired charbroiling).⁷² The exact form and timing of such control measures remain uncertain and subject to the State’s further evaluation of technological and economic feasibility and interaction with other governmental entities.

In addition, as examples of federal action, the EPA has finalized Heavy-Duty vehicle and engine standards for model year 2027 and beyond,⁷³ proposed more stringent emission standards for criteria pollutants, including NO_x, for both Light-Duty and Medium-Duty vehicles for model years 2027–2032,⁷⁴ and proposed new greenhouse gas standards for Heavy-Duty vehicles starting in model year 2028 that would also reduce Heavy-Duty vehicle emissions of NO_x and other criteria pollutant precursors.⁷⁵

Regarding the fourth largest source of NO_x in the San Joaquin Valley (trains), in November 2022 the EPA responded to a petition from the District that sought action by the EPA to address harmful emissions from locomotives.⁷⁶ The EPA committed in the response to

⁷¹ SJVUAPCD, “PM_{2.5} Contingency Measure State Implementation Plan Revision,” May 18, 2023, 23–24. See also, SJVUAPCD, “Public Workshop for Potential Amendments to District Rule 4550 (Conservation Management Practices),” November 7, 2022.

⁷² SJVUAPCD, “PM_{2.5} Contingency Measure State Implementation Plan Revision,” May 18, 2023, 32–41.

⁷³ 88 FR 4296 (January 24, 2023).

⁷⁴ 88 FR 29184 (May 5, 2023).

⁷⁵ 88 FR 25926 (April 27, 2023).

⁷⁶ Letter dated November 9, 2022, from Joe Goffman, Principal Deputy Assistant Administrator, EPA, to Liane M. Randolph, Chair, CARB, and letter dated November 9, 2022, from Joe Goffman, Principal Deputy Assistant Administrator, EPA, to Samir Sheikh, Executive Director, SJVUAPCD.

undertake a notice and comment rulemaking process to reconsider existing locomotive preemption regulations to ensure that they don’t inappropriately limit California’s and other states’ authorities under the CAA to address their air quality issues. In April 2023, the EPA proposed changes to the locomotive preemption regulations delivering on the Agency’s commitment.⁷⁷

The EPA also committed to engage with stakeholders including locomotive and locomotive engine manufacturers, technology suppliers, environmental justice communities, environmental and public health non-governmental organizations, other federal partners, state and local air quality agencies, railroad companies, and labor unions as the Agency develops options for how new locomotives can achieve the greatest degree of emission reduction achievable through the application of technology. That engagement, which is ongoing, has already highlighted that potential opportunities may exist to reduce emissions from locomotives through possible changes to the EPA’s regulations to control unnecessary idling by new and remanufactured locomotives. Technologies that reduce the time that large high-emitting locomotive engines operate at idle have the potential to directly reduce PM and NO_x emissions from locomotives. The EPA is actively considering how best to address the emissions from idling locomotives among the suite of regulatory options being considered for new and remanufactured locomotives.

With respect to the State’s current and planned controls specifically for contingency measures in the San Joaquin Valley, on June 8, 2023, the State submitted the “PM_{2.5} Contingency Measure State Implementation Plan Revision” to the EPA as a revision to the California SIP (“June 2023 Contingency

⁷⁷ 88 FR 25926, 26092–26096 (April 27, 2023).

Measure SIP Submission’’).⁷⁸ In that SIP submission, the District and CARB present their evaluation of potential contingency measures, amendments to the contingency provisions of Rule 4901 (“Wood Burning Fireplaces and Wood Burning Heaters”), a commitment to evaluate potential contingency provisions for Rule 8051 (“Open Areas”), analysis of one year’s worth of emission reductions, and infeasibility justification for rejecting other potential contingency measures. The residential wood burning contingency measure would, upon a first triggering event, lower the episodic wood burning curtailment thresholds for registered and unregistered devices in five non-hot spot counties to match the thresholds that currently apply in the three hot-spot counties and, upon a second triggering event, would further lower the curtailment threshold for unregistered devices in all eight counties of the San Joaquin Valley. The District estimates that the residential wood burning contingency measures for the first and second triggering events would achieve annual average emission reductions of 0.69 tpd direct PM_{2.5} and 0.10 tpd NO_x in the San Joaquin Valley.⁷⁹

In addition, by letter dated June 23, 2023, CARB committed to bring to the CARB Board for consideration no later than February 28, 2024, and submit to the EPA no later than March 31, 2024, a contingency measure to implement a change to the exemptions for light-duty motor vehicles in the California vehicle emissions inspection and maintenance (I/M) program—the Smog Check Program—if triggered by an EPA determination under 40 CFR 51.1014(a).⁸⁰ CARB indicates that the contingency measure for San Joaquin Valley for the PM_{2.5} NAAQS will, within 30 days of the effective date of the EPA determining that an applicable triggering event occurred, obligate CARB to transmit a letter to the California Bureau of Automotive Repair and Department of Motor Vehicles finding that providing an exception from Smog Check for certain vehicles will prohibit the State from meeting the State’s commitments with respect to the SIP required by the CAA, effectuating a change to the Smog Check exemption

for motor vehicles from eight or less model-years old to seven or less model-years old throughout the San Joaquin Valley.⁸¹

The EPA is evaluating the June 2023 Contingency Measure SIP Submission and June 23, 2023 commitment and will propose action on the submission and commitment in a separate rulemaking.

3. Past EPA Recommendations

When the EPA reviews individual District rules in SIP submissions for approval, the EPA routinely includes recommendations for changes to the rules to strengthen or clarify them, even if the particular change is not required for approval as meeting applicable stringency requirements. These recommendations are generally found in the EPA’s technical support documents prepared for individual rulemakings. We have reviewed past recommendations in numerous technical support documents prepared in connection with past SIP actions to identify potential rule changes that might be suitable as contingency measures.

4. Environmental and Community Group Recommendations

In 2021, a group of 18 environmental justice, environmental and community groups in the San Joaquin Valley sent the EPA a letter in which they attached a list of specific control measures that the group believes should be adopted or strengthened in the San Joaquin Valley area.⁸² These groups later supplemented the 2021 letter with additional information concerning the list of control measures.⁸³ We have taken into account the information contained in the two letters and attachments in developing this proposed contingency measure FIP.

C. Residential Wood Burning

1. Background

Residential wood burning includes wood-burning heaters (*i.e.*, woodstoves, pellet stoves, and wood-burning fireplace inserts), which are used primarily for heat generation, and wood-burning fireplaces, which are used primarily for aesthetic purposes. All of these devices emit direct PM_{2.5} and

NO_x. However, wood-burning heaters, that are certified under the EPA’s New Source Performance Standards (NSPS) emit lower levels of PM_{2.5} compared to wood-burning fireplaces and non-certified heaters when properly installed, operated, and maintained.

Residential wood-burning is included within the “Residential Fuel Combustion” emissions inventory category within the 2018 PM_{2.5} Plan’s emissions inventories. In the 2018 PM_{2.5} Plan, the District estimates emissions of 2.82 tpd of PM_{2.5} and 0.42 tpd NO_x (annual average) specifically from residential wood burning for each year from 2017 onward. However, these estimates do not account for the effect of the 2019 amendments to Rule 4901, discussed in the following section of this document.

2. Regulatory History

District Rule 4901 establishes requirements for the sale/transfer, operation, and installation of wood-burning devices and on the advertising of wood for sale intended for burning in a wood-burning fireplace, wood-burning heater, or outdoor wood-burning device within the San Joaquin Valley.

One of the most effective ways to reduce wintertime smoke is a curtailment program that restricts use of wood-burning heaters and fireplaces on days that are conducive to buildup of PM concentrations (*i.e.*, days where ambient PM_{2.5} and/or PM₁₀ concentrations are forecast to be above a particular level, known as a “curtailment threshold”).

Rule 4901 includes a tiered mandatory curtailment program that establishes different curtailment thresholds based on the type of devices (*i.e.*, registered clean-burning devices⁸⁴ vs. unregistered devices) and different counties (*i.e.*, hot spot vs. non-hot spot). During a Level One Episodic Wood Burning Curtailment, operation of wood-burning fireplaces and other unregistered wood-burning heaters or devices is prohibited, but properly operated, registered wood-burning heaters may be used.⁸⁵ During a Level Two Episodic Wood Burning Curtailment, operation of any wood-

⁸⁴ In order to be registered, a device must either be certified under the NSPS at time of purchase or installation and at least as stringent as Phase II requirements or be a pellet-fueled wood burning heater exempt from EPA certification requirements at the time of purchase or installation (section 5.9.1). The rule includes requirements for documentation and inspection to verify compliance with these standards (sections 5.9.2 and 5.10).

⁸⁵ Rule 4901, section 5.7.1.

⁷⁸ Letter dated June 7, 2023, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX.

⁷⁹ June 2023 Contingency Measure SIP Submission, 31.

⁸⁰ Letter dated June 23, 2023, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX.

⁸¹ *Id.*

⁸² Letter dated October 22, 2021, from Tom Frantz, Association of Irrigated Residents, et al., to Michael S. Regan, EPA Administrator, including Attachment.

⁸³ Letter dated May 18, 2022, from Tom Frantz, Association of Irrigated Residents, et al., to Michael S. Regan, EPA Administrator, including Attachments A, B, and C.

burning device is prohibited.⁸⁶ However, the rule includes an exemption from the curtailment provisions for (1) locations where piped natural gas service is not available and (2) residences for which a wood-burning fireplace or wood-burning heater is the sole available source of heat.⁸⁷

In order to implement the curtailment program under Rule 4901, the District develops daily air quality forecasts, based on EPA and CARB guidance,

which include a projection of the maximum PM_{2.5} concentration in each county for the following day.⁸⁸ District staff then compare this maximum county PM_{2.5} concentration forecast with the curtailment thresholds in Rule 4901. If a county’s PM_{2.5} forecast exceeds the applicable threshold, then the District’s Air Pollution Control Officer declares a curtailment for the county for the following day.

In 2019, the District lowered the curtailment thresholds in Madera, Fresno, and Kern counties, which the District identified as “hot spot” counties, because they were “either new areas of gas utility or areas deemed to have persistently poor air quality.”⁸⁹ Table 4 presents the residential curtailment thresholds in District Rule 4901, as revised in 2019.

TABLE 4—RESIDENTIAL WOOD BURNING CURTAILMENT THRESHOLDS IN RULE 4901

	Hot spot counties (Madera, Fresno, and Kern)	Non-hot spot counties (San Joaquin, Stanislaus, Merced, Kings, and Tulare)
Level One (No Burning Unless Registered)	12 µg/m ³	20 µg/m ³ .
Level Two (No Burning for All)	35 µg/m ³	65 µg/m ³ .

The 2019 revision by the District also added a provision to the rule to operate as a contingency measure, which would lower the curtailment levels for any county that failed to attain the applicable standards to levels consistent with current thresholds for hot spot counties. However, the EPA disapproved this provision because it did not meet all of the CAA requirements for contingency measures.⁹⁰ Specifically, it did not address three of the four required triggers for contingency measures in 40 CFR 51.1014(a) and was not structured to achieve any additional emissions reductions if the EPA found that the monitoring locations in the “hot spot” counties (*i.e.*, Fresno, Kern, or Madera) were the only counties in the San Joaquin Valley that are violating the applicable PM_{2.5} NAAQS as of the attainment date.⁹¹ Accordingly, the SIP-approved version of Rule 4901 does not include any contingency provision.

On May 18, 2023, the District adopted a new contingency measure in section 5.7.3 of Rule 4901, and CARB submitted this contingency measure as part of the June 2023 Contingency Measure SIP Submission. The contingency measure would be triggered by a final determination by the EPA that the District failed to meet one or more of the following triggering events of the applicable PM_{2.5} NAAQS:

- (1) Any Reasonable Further Progress requirement;
- (2) Any quantitative milestone;

- (3) Submission of a quantitative milestone report; or
- (4) Attainment of the applicable PM_{2.5} NAAQS by the applicable attainment date.

Following the first such triggering event, the measure would lower the thresholds for the non-hot spot counties to the current thresholds for hot spot counties (*i.e.*, 12 µg/m³ for unregistered devices; 35 µg/m³ for registered devices). Following the second such event, the measure would further lower the threshold for unregistered devices to 11 µg/m³.

3. Proposed Measure

As described further in the EPA’s Proposed Contingency Measures TSD, we considered various possible contingency measures that could apply to the wood-burning source category and concluded that strengthening the curtailment program would be the most effective means of providing meaningful emissions reductions from this source category within one to two years of the triggering event.

Specifically, the proposed contingency measure for this source category would strengthen the curtailment program in Rule 4901 by lowering the curtailment levels for the five non-hot-spot counties to the current thresholds for hot spot counties (*i.e.*, 12 µg/m³ for unregistered devices; 35 µg/m³ for registered devices). Curtailments would continue to be determined on a county-by-county basis, so restrictions

would continue to be tailored based on the air quality for the particular county.

We estimate the annual average emissions reductions associated with this contingency measure would be 0.579 tpd of direct PM_{2.5} and 0.082 tpd of NO_x. Please refer to the EPA’s Proposed Contingency Measures TSD for more detail on the proposed measure and associated reductions.

D. Rural Open Areas Dust

1. Background

In areas where there is open, uncovered land, a natural crust will form and minimize dust emissions. However, activities such as earthmoving activities, material dumping, weed abatement, and vehicle traffic will disturb otherwise naturally stable land and allow windblown fugitive dust emissions to occur. As a contingency measure, the EPA is proposing to add to an existing District measure to further reduce emissions from this category. The contingency measure would lower the applicability threshold of the District’s Rule 8051 from 3.0 acres to 1.0 acres for rural open areas, thereby reducing windblown fugitive dust, including the direct PM_{2.5} portion of such dust emissions.

2. Regulatory History

SJVUAPCD adopted Regulation VIII (containing the 8000 series rules) on November 15, 2001, to address RACM/RACT and BACM/BACT attainment plan requirements for the 1987 PM₁₀

the 1997 annual PM_{2.5} NAAQS and 86 FR 49100, 49125 and 49133–49134 (proposed rule on contingency measure element for the 2012 annual PM_{2.5} NAAQS and 2006 24-hour PM_{2.5} NAAQS, respectively).

⁸⁶ Rule 4901, section 5.7.2.

⁸⁷ Rule 4901, section 5.7.4.

⁸⁸ Email dated October 9, 2019, from Jon Klassen, SJVUAPCD to Meredith Kurpius, EPA Region IX, Subject: “RE: Info to support Rule 4901.”

⁸⁹ 2018 PM_{2.5} Plan, App. J, 60.

⁹⁰ 86 FR 67329, 67338 (for the 1997 annual PM_{2.5} NAAQS) and 86 FR 67343, 67345 (for the 2006 24-hour PM_{2.5} NAAQS and 2012 annual PM_{2.5} NAAQS).

⁹¹ Id. See also, 86 FR 38652, 38669 (July 22, 2021) (proposed rule on contingency measure element for

NAAQS.⁹² The EPA found that new provisions in Regulation VIII “significantly strengthened” the prior existing rules by tightening standards, covering more activities, and adding more requirements to control dust-producing activities.⁹³ Subsequently, the District adopted amendments to Regulation VIII on August 19, 2004, and September 16, 2004, that the EPA approved into the San Joaquin Valley portion of the California SIP in 2006.⁹⁴ More recently the EPA has reviewed Regulation VIII for RACM/RACT, BACM/BACT, and most stringent measures requirements in acting on San Joaquin Valley plans for the 2006 24-hour PM_{2.5} NAAQS.⁹⁵ Among the rules of Regulation VIII, Rule 8051 applies to open areas and the 2004 amendments added applicability thresholds for rural and urban areas required to meet both the conditions for a stabilized surface (defined in Rule 8011) and a 20% opacity standard. In addition, under Rule 8051, upon evidence of vehicle trespass, owners/operators must apply a measure(s) that effectively prevents access to the lot.

3. Proposed Measure

The proposed contingency measure for this source category would lower the applicability threshold from 3.0 acres to 1.0 acres in rural areas. As a result, if triggered by a failure to meet RFP requirements or a failure to attain, Rule 8051 would then apply to any rural open area having 1.0 acre or more and

containing at least 1,000 square feet of disturbed surface area.

This measure will require these additional areas to meet the existing requirements in Rule 8051. Specifically, Section 5 (Requirements) of Rule 8051 requires that:

Whenever open areas are disturbed or vehicles are used in open areas, an owner/operator shall implement one or a combination of control measures indicated in Table 8051–1 to comply with the conditions of a stabilized surface at all times and to limit VDE to 20% opacity. In addition to the requirements of this rule, a person shall comply with all other applicable requirements of Regulation VIII.⁹⁶

Table 8051–1 contains the following control measures for open areas:

A. Open Areas:

Implement, apply, maintain, and reapply if necessary, at least one or a combination of the following control measures to comply at all times with the conditions for a stabilized surface and limit VDE to 20% opacity as defined in Rule 8011:

A1. Apply and maintain water or dust suppressant(s) to all unvegetated areas; and/or

A2. Establish vegetation on all previously disturbed areas; and/or

A3. Pave, apply and maintain gravel, or apply and maintain chemical/organic stabilizers/suppressant(s).

B. Vehicle Use in Open Areas:

Upon evidence of trespass, prevent unauthorized vehicle access by:

Posting ‘No Trespassing’ signs or installing physical barriers such as fences, gates, posts, and/or other appropriate barriers to effectively prevent access to the area.

The District makes available certain forms through the District’s website that owners or operators may use to document compliance with the requirements of the rules under Regulation VIII.⁹⁷ For open areas, these include “Form A—Area Water Application” and/or “Form C—For Permanent/Long Term Dust Controls,” consistent with the measure an owner or operator would select from Table 8051–1. The EPA would require owners and operators of rural open areas newly subject to the requirements of Rule 8051 (*i.e.*, those with open areas 1.0 to 3.0 acres in size) to use the two forms,

which the EPA intends to adapt for use in connection with this proposed FIP contingency measure. The EPA would apply the same recordkeeping requirements found in the District rule to newly subject owners and operators—*i.e.*, generally one year following project completion except for owners/operators subject to Rule 2520 who must retain records for five years. The EPA, however, would add a requirement that owners and operators of rural open areas newly subject to the requirements of Rule 8051 pursuant to this FIP submit copies of records prepared during a calendar year to the EPA by March 31st of the following year.

Given the availability and variability of county-based parcel data, which inform the location, number, and size of open areas in the 1.0 acre to 3.0 acres size range, and the differences in emission factors for fugitive windblown dust by county, it is difficult to precisely quantify the emission reductions associated with lowering the applicability threshold for rural open area in Rule 8051 from 3.0 acres to 1.0 acre. Nonetheless, based on the information available, we estimate that lowering the applicability threshold in rural areas from 3.0 acres to 1.0 acre would result in direct PM_{2.5} emission reductions of 0.01 tpd (after applying a compliance rate of 75%). However, given uncertainties in our methodology for this estimate, we are seeking comment on our estimated emissions reductions. This contingency measure requires the same kinds of dust control options as currently apply to rural areas larger than 3.0 acres. We estimate that the annual cost of controlling the dust emission would range from \$160/acre/year to \$360/acre/year, depending on the control option selected from Table 8051–1 of Rule 8051. Please refer to the EPA’s Proposed Contingency Measures TSD for more detail on the proposed measure and associated reductions and annual cost estimates.

E. Summary of EPA Analysis and Conclusion

Table 5 summarizes the estimated emissions reductions from the proposed contingency measures.

⁹² Regulation VIII includes eight rules. Rule 8011 (“General Requirements”) provides definitions and the general requirements on which the seven other rules rely. In turn, those seven rules apply to different sources of fugitive windblown dust based on activity type. They include Rule 8021 (“Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities”), Rule 8031 (“Bulk Materials”), Rule 8041 (“Carryout and Trackout”), Rule 8051 (“Open Areas”), Rule 8061 (“Paved and Unpaved Roads”), Rule 8071 (Unpaved Vehicle/Equipment Traffic Area), and Rule 8081 (“Agricultural Sources”). In this proposed rule, the EPA proposes a contingency measure for rural open areas by adding to Rule 8051.

⁹³ 67 FR 15345, 15346–15447 (April 1, 2002) (proposed rule on 2001 version of Regulation VIII).

⁹⁴ 71 FR 8461 (February 17, 2006).

⁹⁵ See, *e.g.*, 85 FR 17382, 17431 (proposal on BACM/BACT and MSM for the 2006 24-hour PM_{2.5} NAAQS); and EPA Region IX, “Technical Support Document, EPA Evaluation of BACM/MSM, San Joaquin Valley PM_{2.5} Plan for the 2006 PM_{2.5} NAAQS,” February 2020.

⁹⁶ VDE is Visible Dust Emissions.

⁹⁷ https://www.valleyair.org/busind/comply/PM10/forms/Regulation_VIII_RecordKeeping_Forms.pdf.

TABLE 5—ANNUAL AVERAGE EMISSIONS REDUCTIONS FROM PROPOSED FIP CONTINGENCY MEASURES

Proposed FIP contingency measure	Direct PM _{2.5} emissions reductions (tpd)	NO _x emissions reductions (tpd)
Residential Wood Burning	0.579	0.082
Rural Open Areas	0.010
Total	0.589	0.082

Table 6 presents the estimated emissions reductions as percentages of one year’s worth of RFP and one year’s worth of progress both with and without trading between direct PM_{2.5} and NO_x emissions. As noted previously in this proposed rule, one year’s worth of RFP is the longstanding recommendation by the EPA to states regarding the magnitude of emissions reductions that contingency measures should be capable of achieving. One year’s worth of progress is the new recommendation

described in the EPA’s Draft Revised Contingency Measure Guidance. In addition, as discussed in section III.A.6 of this proposed rule, we are proposing to trade excess direct PM_{2.5} emission reductions to substitute for a portion of the shortfall in NO_x emission reductions compared to one year’s worth of RFP and one year’s worth of progress.⁹⁸

Specifically, based on modeling conducted for the SIP submissions, we are proposing a ratio of 10.3 to 1 for the

1997 annual PM_{2.5} NAAQS and 2012 annual PM_{2.5} NAAQS and a ratio of 2.6 to 1 for the 2006 24-hour PM_{2.5} NAAQS, where an excess of one tpd of direct PM_{2.5} emission reductions would substitute for 10.3 tpd of NO_x for the 1997 or 2012 annual PM_{2.5} NAAQS or 2.6 tpd of NO_x for the 2006 24-hour PM_{2.5} NAAQS. For further detail on our interpollutant trading analysis, please see the EPA’s Interpollutant Trading TSD.

TABLE 6—PROPOSED FIP CONTINGENCY MEASURES AS PERCENTAGE OF ONE YEAR’S WORTH OF RFP AND ONE YEAR’S WORTH OF PROGRESS^a

PM _{2.5} NAAQS	Pollutant	One year’s worth of RFP			One year’s worth of progress		
		Reductions target	% OYW (no trading)	% OYW (with trading)	Reductions target	% OYW (no trading)	% OYW (with trading)
1997 Annual	Direct PM _{2.5} ...	0.44	134	100	0.41	144	100
	NO _x	16.7	0.5	9.7	7.9	1.0	24.5
2006 24-hour ...	Direct PM _{2.5} ...	0.58	101	100	0.52	113	100
	NO _x	18.4	0.4	0.6	6.7	1.2	3.9
2012 Annual	Direct PM _{2.5} ...	0.46	129	100	0.43	138	100
	NO _x	15.3	0.5	9.6	8.7	0.9	20.4

^a See tables 1 and 2 of this proposed rule for the derivation of one year’s worth of RFP and one year’s worth of progress for the 1997 annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 2012 annual PM_{2.5} NAAQS.

As shown in Table 5, the sum of the emissions reductions from the two proposed FIP contingency measures is approximately 0.589 tpd direct PM_{2.5} and 0.082 tpd NO_x. Without taking into account the substitution principle, these reductions would exceed one year’s worth of RFP for direct PM_{2.5} and provide a portion of one year’s worth of RFP for NO_x for the 1997 annual PM_{2.5} NAAQS, 2006 24-hour PM_{2.5} NAAQS, and the 2012 annual PM_{2.5} NAAQS, as shown in Table 6. With respect to one year’s worth of progress, these reductions would exceed one year’s worth of progress for direct PM_{2.5} and provide a portion of one year’s worth of progress for NO_x for all three PM_{2.5} NAAQS, as shown in Table 6.

Taking into account the substitution principle, under which, in this case, excess direct PM_{2.5} emissions are substituted for a shortfall in NO_x emissions, the reductions would

amount to 100% of one year’s worth of RFP for direct PM_{2.5} and the following amounts of one year’s worth of RFP for NO_x by NAAQS: 1997 annual PM_{2.5} NAAQS (9.7%), 2006 24-hour PM_{2.5} NAAQS (0.6%), and 2012 annual PM_{2.5} NAAQS (9.6%). Similarly, the reductions would amount to 100% of one year’s worth of progress for direct PM_{2.5} and the following amounts of one year’s worth of progress for by NAAQS: 1997 annual PM_{2.5} NAAQS (24.5%), 2006 24-hour PM_{2.5} NAAQS (3.9%), and 2012 annual PM_{2.5} NAAQS (20.4%).

In the preamble to the PM_{2.5} SIP Requirements Rule and the EPA’s Draft Revised Contingency Measures Guidance, we have stated that, in those instances where a state is unable to identify contingency measures for a given nonattainment area that would provide approximately one year’s worth of emissions reductions, the state should provide a reasoned justification

why the smaller amount of emissions reductions is appropriate. For this proposed contingency measure FIP, we have evaluated a broad range of source categories and a broad range of potential emission controls in order to identify possible contingency measures. As a result of that analysis, we are proposing the two specific contingency measures described in sections III.C and III.D of this proposed rule. The proposed contingency measures in this FIP would not provide for one year’s worth of emissions reductions measured by the longstanding RFP method or the new progress method, and we are therefore providing a reasoned justification for proposing contingency measures that will achieve less than the amount of emission reductions that the EPA normally recommends.

The justification is based on the EPA’s determination that we are unable to identify and adopt feasible contingency

⁹⁸ While this trading would not make up the entire shortfall in NO_x emission reductions, it gives

a sense for the magnitude of the relative ambient effect of the excess direct PM_{2.5} emission reductions

towards meeting one year’s worth of RFP or one year’s worth of progress.

measures that provide the recommended one year's worth of emission reductions. While the EPA notes that CAA section 172(c)(9) and section 182(c)(9) do not explicitly provide for consideration of whether specific measures are feasible, the Agency believes that it is reasonable to infer that the statute does not require control measures regardless of any technological or cost constraints whatsoever. It is more reasonable to interpret the contingency measure requirement not to require air agencies to adopt and impose infeasible measures. The statutory provisions applicable to other nonattainment area plan control measure requirements, including RACM/RACT (for ozone and PM), BACM/BACT (for PM), and most stringent measures (for PM), allow air agencies to exclude certain control measures that are deemed unreasonable or infeasible (depending on the requirement). For example, the most stringent measures provision in CAA section 188(e) requires plans to include "the most stringent measures that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area." The EPA considers it reasonable to conclude that Congress similarly did not expect air agencies to satisfy the contingency measure requirement with infeasible measures. Thus, the EPA anticipates that a demonstrated lack of feasible measures would be a reasoned justification for adopting contingency measures that only achieve a lesser amount of emission reductions.

When promulgating a FIP, the EPA is "standing in the shoes" of the state to meet a SIP requirement that the state has thus far not fulfilled. Accordingly, the EPA considers it appropriate to interpret the requirements of section 172(c)(9) in the same fashion in the context of a FIP. Thus, when the EPA evaluates control measures for adoption as potential contingency measures, it is reasonable for the Agency to consider such factors as technological and economic feasibility. Even a control measure that may theoretically be available as a contingency measure, and otherwise meet other legal parameters for a contingency measure, may nonetheless be so technologically or economically infeasible as to render it unviable as a contingency measure. Thus, with a reasoned justification establishing that there are no additional feasible measures, it is appropriate for the Agency to promulgate a FIP for contingency measures that might result

in less than the recommended amount of emission reductions.

To further explain the basis for the EPA's determination that it is unable to identify and adopt additional feasible contingency measures that would achieve one year's worth of RFP or progress reductions, we have prepared a detailed evaluation of source categories and measures that we considered as potential additional contingency measures but determined to be infeasible or otherwise unsuitable for contingency measures and therefore did not include in the proposed FIP. This evaluation is presented in the Reasoned Justification TSD (for measures not included in this proposed contingency measures FIP). See, for example, our evaluation for commercial charbroiling, almond harvesting, light-duty vehicles, and large boilers, steam generators, and process heaters.

IV. Environmental Justice Considerations

Executive Order 12898 (59 FR 7629, February 16, 1994) requires that federal agencies, to the greatest extent practicable and permitted by law, identify and address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. Additionally, Executive Order 13985 (86 FR 7009, January 25, 2021) directs federal government agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups, and Executive Order 14008 (86 FR 7619, February 1, 2021) directs federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.

To identify environmental burdens and susceptible populations in underserved communities in the San Joaquin Valley nonattainment area and to better understand the context of our proposed FIP on these communities, we conducted a screening-level analysis for PM_{2.5} in the San Joaquin Valley using the EPA's environmental justice (EJ) screening and mapping tool ("EJSCREEN").⁹⁹ The results of this

⁹⁹ EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at: <https://www.epa.gov/ejscreen/what-ejscreen>. The EPA used EJSCREEN to obtain environmental and demographic indicators representing each of the eight counties in the San Joaquin Valley. We note that the indicators for Kern County are for the entire county. While the indicators might have slightly different numbers for the San Joaquin Valley portion of the county, most of the county's

analysis are being provided for informational and transparency purposes.

Our screening-level analysis indicates that all eight counties in the San Joaquin Valley score above the national average for the EJSCREEN "Demographic Index" (*i.e.*, ranging from 48% in Stanislaus County to 61% in Tulare County, compared to 36% nationally).^{100 101} The Demographic Index is the average of an area's percent minority and percent low income populations, *i.e.*, the two populations explicitly named in Executive Order 12898.¹⁰² All eight counties also score above the national average for demographic indices of "linguistically isolated population" and "population with less than high school education."

With respect to pollution, all eight counties score at or above the 97th percentile nationally for the PM_{2.5} index and seven of the eight counties in the San Joaquin Valley score at or above the 90th percentile nationally for the PM_{2.5} EJ index, which is a combination of the Demographic Index and the PM_{2.5} index.¹⁰³ Most counties also scored above the 80th percentile for each of 11 additional EJ indices included in the EPA's EJSCREEN analysis. In addition, several counties scored above the 90th percentile for certain EJ indices, including, for example, the Ozone EJ Index (Fresno, Kern, Madera, Merced,

population is in the San Joaquin Valley portion, and thus the differences would be small. These indicators are included in EJSCREEN reports that are available in the rulemaking docket for this action.

¹⁰⁰ EPA Region IX, "EJSCREEN Analysis for the Eight Counties of the San Joaquin Valley Nonattainment Area," August 2022.

¹⁰¹ By comparison, the eight counties score above the State average for the EJSCREEN "Demographic Index" (*i.e.*, ranging from 52% in Stanislaus County to 71% in Tulare County, compared to 47% in California).

¹⁰² EJSCREEN reports environmental indicators (*e.g.*, air toxics cancer risk, Pb paint exposure, and traffic proximity and volume) and demographic indicators (*e.g.*, people of color, low income, and linguistically isolated populations). The score for a particular indicator measures how the community of interest compares with the state, the EPA region, or the national average. For example, if a given location is at the 95th percentile nationwide, this means that only five percent of the U.S. population has a higher value than the average person in the location being analyzed. EJSCREEN also reports EJ indexes, which are combinations of a single environmental indicator with the EJSCREEN Demographic Index. For additional information about environmental and demographic indicators and EJ indexes reported by EJSCREEN, see EPA, "EJSCREEN Environmental Justice Mapping and Screening Tool—EJSCREEN Technical Documentation," section 2 (September 2019).

¹⁰³ By comparison, two counties score at or above the 97th percentile in California for the PM_{2.5} index and five counties score at or above the 80th percentile in California for the PM_{2.5} EJ index (rather than seven of eight counties that score at or above the 90th percentile nationally).

and Tulare counties), the National Air Toxics Assessment (NATA) Respiratory Hazard EJ Index (Madera and Tulare counties), and the Wastewater Discharge Indicator EJ Index (Merced, San Joaquin, Stanislaus, and Tulare counties).¹⁰⁴

As discussed in the EPA's EJ technical guidance, people of color and low-income populations, such as those in the San Joaquin Valley, often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.¹⁰⁵ Underserved communities may have a compromised ability to cope with or recover from such exposures due to a range of physical, chemical, biological, social, and cultural factors.¹⁰⁶ The EPA is committed to environmental justice for all people, and we acknowledge that the San Joaquin Valley nonattainment area includes minority and low income populations that are subject to higher levels of PM_{2.5} and other pollution relative to State and national averages, and that such concerns could be affected by this action.

Regarding the specific contingency measures proposed herein, we have considered the geographic scope of each proposed contingency measure on PM_{2.5} concentrations in each county of the San Joaquin Valley, as well as other environmental considerations that pertain to applicable pollutant (*i.e.*, combustion PM_{2.5}, dust PM_{2.5}, or NO_x) and the applicable source category or categories.

For residential wood burning, our proposed contingency measure would lower the No Burn (*i.e.*, curtailment) thresholds for the five non-hot spot counties (Kings, Merced, San Joaquin, Stanislaus, and Tulare counties) to match the tighter No Burn thresholds for the three hot spot counties (Fresno, Madera, and Kern counties). A prominent effect of this change would be to provide similar protections to people in the two southern-most non-hot spot counties that record among the highest year-to-year PM_{2.5} design values in the San Joaquin Valley (*i.e.*, Kings County, including Corcoran and Hanford monitoring sites, and Tulare County, including Visalia monitoring site).¹⁰⁷ Were No Burn days to be called

in Kings or Tulare County according to the more stringent thresholds, we also anticipate there would be smaller but still beneficial effect in the adjacent Fresno or Kern counties, depending on the meteorology of the day.

Where these direct PM_{2.5} emission reductions from combustion occur, we also note that they do not require further chemical transformation in the atmosphere to form PM_{2.5} (*i.e.*, the benefit is immediate) and, as they include fine particulate matter under one micron and toxic air chemicals, the reduction of such sub-micron particles would similarly reduce exposure of all residents in these areas, including minority and low-income populations to these environmental stressors. These reductions would also specifically reduce emissions on the winter days with the highest ambient PM_{2.5} levels. We also note that environmental and community groups have recommended several measures to reduce direct PM_{2.5} emissions from residential wood burning, including a recommendation that requirements apply District-wide, rather than distinguishing between hot spot and non-hot spot counties.¹⁰⁸ The proposed measure, if triggered, would align all counties to the tighter No Burn thresholds of the hot spot counties.

For open areas, the proposed contingency measure, if triggered, would lower the applicability threshold for the rural open area requirements of Rule 8051 (*i.e.*, for parcels having at least 1,000 square feet of disturbed soil) from 3.0 acres to 1.0 acre. Based on our analysis of land use to date, such rural open areas are found in all counties of the San Joaquin Valley, though with some variation from county to county consistent with overall land use types (*e.g.*, San Joaquin County has the smallest proportion of rural open areas, while Madera County has the highest proportion of rural open areas). Furthermore, there is variation in the number of rural open areas that would be newly subject to the rule, *i.e.*, those between 1.0 to 3.0 acres in size (*e.g.*,

is 18.4 µg/m³ for the 2012 annual PM_{2.5} NAAQS and 65 µg/m³ for the 2006 24-hour PM_{2.5} NAAQS. EPA design value workbook dated May 23, 2023, "PM25_DesignValues_2020_2022_FINAL_05_23_23.xlsx," worksheets "Table5a. Site Status Ann" and "Table5b. Site Status 24hr." The certified design value includes all available data; no data flagged for exceptional events have been excluded. The EPA's Air Quality System (AQS) contains ambient air pollution data collected by federal, state, local, and tribal air pollution control agencies from thousands of monitors. More information is available at: <https://www.epa.gov/aqs>.

¹⁰⁸ Letter dated May 18, 2022, from Tom Frantz, Association of Irrigated Residents, et al., to Michael S. Regan, EPA Administrator, May 18, 2022, Attachment A, Attachment 2; Attachment B, 2, 7; and Attachment C, 2, 16–17, 38–48, and 69.

Kern County has the most total rural open area acreage from parcels between 1.0 to 3.0 acres in size, while Tulare County has the least). Given the overall land use and emission factors, as discussed further in the EPA's Proposed Contingency Measures TSD, and assuming roughly equal levels of activity in each county (*i.e.*, soil disturbances over 1,000 square feet), we anticipate that the proposed contingency measure would provide air quality benefits in all counties of the San Joaquin Valley, with most air quality benefits occurring in Fresno, Kern, Kings and Madera counties.

Given that Rule 8051 for open areas was originally introduced as a PM₁₀ control measure, we anticipate that the proposed measure would provide co-benefits to limiting PM₁₀ levels in the San Joaquin Valley, with the same geographical distribution as discussed herein for direct PM_{2.5} emission reductions.¹⁰⁹

V. Proposed Action and Request for Public Comment

The EPA is proposing to promulgate a FIP under CAA section 110(c) intended to meet the CAA section 172(c)(9) requirements for contingency measures for purposes of the 1997 annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 2012 annual PM_{2.5} NAAQS (Moderate area requirements only) for the San Joaquin Valley PM_{2.5} nonattainment area. The contingency measures would apply to residential wood burning heaters and fireplaces and rural open areas. Unless and until replaced through the EPA's approval of a contingency measure SIP submission, the proposed FIP, if finalized, would be implemented by the EPA, or by the State or District if the EPA delegates that authority to the State or District.

We will accept comments from the public on these proposals for the next 45 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this proposed rule.

¹⁰⁹ We also note that environmental and community groups have recommended that fugitive dust sources in the San Joaquin Valley be subject to specific requirements rather than having the option to select from a menu of control requirements in Rule 8011 (where the definition for open areas is found). Letter dated May 18, 2022, from Tom Frantz, Association of Irrigated Residents, et al., to Michael S. Regan, EPA Administrator, Attachment B, 7. The proposed measure would not alter the existing structure but rather tighten the applicability threshold for rural open areas.

¹⁰⁴ Notably, Tulare County scores above the 90th percentile on six of the 12 EJ indices in the EPA's EJSCREEN analysis, including the PM_{2.5} EJ Index, which is the highest count among all San Joaquin Valley counties.

¹⁰⁵ EPA, "Technical Guidance for Assessing Environmental Justice in Regulatory Analysis," June 2016, section 4.

¹⁰⁶ *Id.* at section 4.1.

¹⁰⁷ For example, the certified 2020–2022 PM_{2.5} design value for Visalia (AQS Site ID 061072003)

VI. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This 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 14094 (88 FR 21879, April 11, 2023).

B. Paperwork Reduction Act

The information collection activities in this proposed rule have been submitted to the Office of Management and Budget (OMB) for approval under the PRA. The Information Collection Request (ICR) document that the EPA has prepared has been assigned EPA ICR number 2782.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

This ICR covers information collection requirements in a CAA FIP for contingency measures for the 1997 annual, 2006 24-hour, and 2012 annual fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) in the San Joaquin Valley PM_{2.5} nonattainment area in California (40 CFR part 52, subpart F, § 52.249), herein referred to as the SJV FIP.

The EPA's proposed FIP will include provisions to lower the existing applicability threshold of District Rule 8051 for rural areas from 3.0 acres or larger with at least 1,000 square feet of disturbed surface area to 1.0 acres or larger with the same square footage of disturbed surface area. If this FIP contingency measure is enacted and triggered, dust minimization control measures and recordkeeping and annual reporting would be required for the newly regulated parcels when owners or operators disturb the surface of the applicable rural open areas. In general, such owners or operators will be required to maintain records of rule compliance consistent with the requirements applicable to those owners or operators already subject to the rule, with two additional requirements. First, the EPA would add a requirement that owners and operators of rural open areas newly subject to the requirements of Rule 8051 pursuant to this FIP use two existing District forms for such recordkeeping, which the EPA intends to adapt for use in connection with this proposed FIP contingency measure.

Second, while the EPA generally would apply the same record retention requirements found in the District rule to newly subject owners and operators—*i.e.*, the requirement to maintain records for one year following project completion, except for owners/operators subject to Rule 2520, who must retain records for five years—the EPA would also add a requirement that the owners and operators of rural open areas who perform such recordkeeping pursuant to the FIP contingency measure submit copies of the records prepared during a calendar year to the EPA by March 31st of the following year. These records and reports are essential in determining compliance and are required of all sources subject to this proposed FIP that disturb the surface of applicable rural open areas.

Respondents/affected entities:

Potential respondents are owners or operators of open area parcels that range in size of at least 1.0 acre but less than 3.0 acres and which contain at least 1,000 square feet of disturbed surface area in the San Joaquin Valley PM_{2.5} nonattainment area.

Respondents' obligation to respond:

Mandatory (CAA sections 110 and 114(a)).

Estimated number of respondents:

3,546.

Frequency of response: An annual report is required for any year in which an owner or operator's rural open area parcel triggers the FIP's open area dust control requirements. Records showing adherence to such requirements must be maintained for one year, or for five years for certain sources, when the control requirements are triggered.

Total estimated burden: 3,546 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$360,923 (per year), includes \$0 in annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at <https://www.reginfo.gov/public/do/PRAMain>.

Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. OMB must receive comments no later than September 7, 2023.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This proposed rule includes two separate contingency measures: one applicable to residential wood burning heaters and fireplaces and one applicable to rural open areas. The proposed residential wood burning measure primarily applies to private residents, which do not qualify as small entities, but also applies to businesses, such as restaurants and hotels, some of which constitute "small entities." However, the proposed measure is not expected to impose any additional costs because any increase in heating costs during additional curtailment days would be offset by savings on purchases of seasoned wood or pellets, which these entities would otherwise be allowed to burn.¹¹⁰

The "small entities" subject to the requirements of the rural open areas measure are those that are owners/operators of residential and commercial lots in rural areas with open areas (*i.e.*, vacant portions of residential or commercial lots and contiguous parcels) of 1.0 acre or more and less than 3.0 acres in the San Joaquin Valley, and which contain at least 1,000 square feet of disturbed surface area, as defined in District Rule 8011, section 3.36. These "small entities" may include industrial entities such as construction, oilfield, equipment and vehicle storage, and truck stop owners/operators, as identified in the District's "Regulation VIII Recordkeeping Reporting Forms" (revised June 1, 2009), as well as other residential, industrial, institutional, governmental, or commercial lot owners/operators. To identify the small entities for these industries, the EPA identified North American Industry Classification System (NAICS) codes, the applicable small entity thresholds (based on the U.S. Small Business Administration's table of small business size standards), and then compared the cost of the proposed rural open areas measure against average annual receipts data available from the Census Bureau's Statistics of U.S. Businesses for 2017 (the latest year for which annual receipts are listed by NAICS). The

¹¹⁰ June 2023 Contingency Measure SIP Submission, App. D ("Economic Analysis for Rule 4901"), D-3.

Agency has determined that, while most potentially affected entities in these industries are small, such entities in the San Joaquin Valley may experience an impact of 0% to 0.58% of annual revenues (*i.e.*, not a significant impact). Details of this analysis are presented in section III.F of the EPA's Proposed Contingency Measures TSD.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments. To the extent that the contingency measures of this proposed rule, if triggered, would impose costs on the private sector, they would collectively be less than the \$100 million expenditure threshold identified in 2 U.S.C. 1532(a).

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

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

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required

under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not economically significant under Executive Order 12866 and because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule will reduce emissions of direct PM_{2.5} or NO_x (as a PM_{2.5} precursor), the rule will have a beneficial effect on children's health by reducing air pollution.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

Executive Order 12898 (59 FR 7629 (February 16, 1994)) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.” Consistent with the EPA's discretion under the CAA, the EPA has evaluated the environmental justice considerations of this action, as is described in section IV (“Environmental Justice Considerations”) of this proposed rule. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the

action being proposed, this proposed action is expected to have a neutral to positive impact on the air quality of the San Joaquin Valley. In addition, the information in the record is sufficient to support the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects 40 CFR Part 52

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

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

Michael S. Regan,
Administrator.

For the reasons stated in the preamble, part 52 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.249 is added to read as follows:

§ 52.249 Contingency measures—San Joaquin Valley Air Basin.

(a) The requirements of section 172(c)(9) of the Clean Air Act and 40 CFR 51.1014 are not met in the San Joaquin Valley Air Basin for the 1997 Annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 2012 annual PM_{2.5} NAAQS.

(1) *Triggers for implementation of contingency measures.* The provisions in paragraphs (a)(2) and (3) of this section shall apply 60 days after the effective date of a final EPA determination under 40 CFR 51.1014(a) for the 1997 Annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, or the 2012 annual PM_{2.5} NAAQS.

(2) *Wood burning fireplaces and wood burning heaters.* The requirements of § 52.220(c)(535)(i)(A)(1) shall apply except as provided in paragraphs (a)(2)(i), (ii) and (iii) of this section.

(i) The episodic wood burning curtailment provisions of Paragraphs 5.7.1.2 and 5.7.2.2 shall apply throughout the entire jurisdiction of the San Joaquin Valley Unified Air Pollution Control District.

(ii) The episodic wood burning curtailment provisions in Paragraphs 5.7.1.1 and 5.7.2.1 are deleted.

(iii) The EPA shall notify the public of each episodic wood burning curtailment required pursuant to this paragraph (a)(2) of this section by any of the following methods:

(A) Provide notice to newspapers of general circulation within the San Joaquin Valley.

(B) Broadcast of messages presented by radio or television stations operating in the San Joaquin Valley.

(C) A recorded telephone message for which the telephone number is published.

(D) Messages posted on the EPA's website.

(E) Any other method as the EPA determines is appropriate.

(3) *Rural open areas dust.* The requirements of § 52.220(c)(334)(i)(B)(2) shall apply except as provided in paragraphs (a)(3)(i) and (ii) of this section.

(i) The Applicability provision in Paragraph 2.0 is revised to the following:

This rule applies to any open area having 0.5 acres or more within urban areas, or 1.0 acres or more within rural areas; and contains at least 1,000 square feet of disturbed surface area.

(ii) The Recordkeeping provision in Paragraph 6.2 is revised to the following:

An owner/operator shall comply with the recordkeeping requirements of § 52.220(c)(334)(i)(B)(2), except that owners/operators of open areas of 1.0 acres or more to less than 3.0 acres within rural areas shall use forms made available by the EPA and shall submit copies of the forms prepared during a calendar year to the EPA by March 31st of the following year.

(iii) Records that are required to be submitted under this rule must be sent to: U.S. EPA Region IX, Rules Section Manager, Air and Radiation Division (Air-3-2), 75 Hawthorne Street, San Francisco, CA 94105.

(b) In the event that paragraphs (a)(2) and (3) of this section are triggered, and within one year of the triggering of paragraphs (a)(2) and (3) of this section,

the Administrator shall undertake rulemaking to promulgate any contingency measures that are determined to be appropriate for the EPA and needed to meet the contingency measure requirement for the 1997 annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, or the 2012 annual PM_{2.5} NAAQS in the San Joaquin Valley.

(c) This section shall not 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.

(d) The Administrator may delegate the authority to implement the measures in paragraph (a)(2) or (3) of this section to the San Joaquin Valley Unified Air Pollution Control District or to the California Air Resources Board. Nothing in this paragraph shall prevent the Administrator from implementing or enforcing the measures in paragraphs (a)(2) and (3) of this section.

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