

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[CA258-0397A; FRL-7528-8]

**Approval and Promulgation of Ozone Attainment Plan; State of California, San Francisco Bay Area****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a state implementation plan (SIP) revision, the 2001 San Francisco Bay Area Ozone Attainment Plan (2001 Plan), submitted by the State of California to EPA to attain the 1-hour ozone national ambient air quality standard (NAAQS) in the San Francisco Bay Area as meeting the requirements of the Clean Air Act (CAA). The plan contains the following components: Emission inventories, a reasonably available control measure demonstration, control measure commitments, an attainment assessment and its associated motor vehicle emissions budgets, commitments to study specified measures to determine if additional emissions reductions can be achieved, a commitment to complete a mid-course review by December 15, 2003, and a commitment to adopt a revised plan by March 2004, to submit the revised plan by April 15, 2004, and to adopt additional measures as necessary to attain the standard by 2006.

In 2001, EPA disapproved certain components of the 1999 ozone attainment plan for the Bay Area: The RACM demonstration, the attainment demonstration, and the motor vehicle emissions budgets. Because of this disapproval the Bay Area became subject to the imposition of the 2 to 1 offset sanction under CAA section 179(b)(2) on April 22, 2003. Elsewhere in this *Federal Register* we are making an interim final determination that the 2001 Plan corrects these deficiencies. As a result of this determination the offset sanction will be stayed while EPA considers whether to issue a final full approval. A final full approval action on these elements would terminate the sanctions; if EPA disapproves the attainment plan on the basis that one or more of the disapproved components is still insufficient, the offset sanction will be reapplied at that time.

**DATES:** Comments on the proposed actions must be received on or before August 15, 2003.

**ADDRESSES:** Comments may be mailed to: Ginger Vagenas, Planning Office,

[AIR-2], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901; or to [vagenas.ginger@epa.gov](mailto:vagenas.ginger@epa.gov).

The 2001 Plan is available on the Bay Area Air Quality Management District's Web site at <http://www.baaqmd.gov/planning/2001sip/2001sip.htm> and at their offices at 939 Ellis Street, San Francisco, California, 94109. A copy of this proposed rule and related information are available in the air programs section of EPA Region 9's Web site, <http://www.epa.gov/region09/air>. The docket for this rulemaking is available for inspection during normal business hours at EPA Region 9, Planning Office, Air Division, 75 Hawthorne Street, San Francisco, California 94105. A reasonable fee may be charged for copying parts of the docket. Please call (415) 972-3964 for assistance.

**FOR FURTHER INFORMATION CONTACT:**

Ginger Vagenas (415) 972-3964, Planning Office (AIR-2), Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; [vagenas.ginger@epa.gov](mailto:vagenas.ginger@epa.gov).

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**I. Background****A. 1998 Redesignation to Nonattainment**

In 1978, the San Francisco Bay Area (Bay Area) was originally designated under section 107 of the CAA, as amended in 1977, as nonattainment for the federal 1-hour ozone standard. Following the 1990 Clean Air Act Amendments, the Bay Area retained its nonattainment designation and was classified as "moderate" under section 181 of the CAA by operation of law. 56 FR 56694 (Nov. 6, 1991). EPA redesignated the Bay Area to attainment in 1995 based on then current air quality data (60 FR 27028, May 22,

1995) and subsequently redesignated the area back to nonattainment on July 10, 1998 (63 FR 37258). See 40 CFR 81.305 (1999).<sup>1</sup>

EPA's action in 1998 was prompted by persistent air quality problems in the two years following the redesignation to attainment. Ozone levels exceeded the federal 1-hour ozone standard on 11 days in 1995 and 8 days in 1996. As provided under section 107(d)(3) of the CAA, EPA revised the Bay Area's designation on the basis of those air quality data. The intent of the redesignation was to return healthy air as quickly as possible to the Bay Area.

**B. Nonattainment Area Requirements**

In an effort to focus on near-term air quality gains, EPA set an expedited attainment deadline of November 15, 2000 under CAA section 172(a)(2) in its redesignation action. At that time, EPA believed the Bay Area could attain by that date. EPA also required the State to submit an attainment plan for the Bay Area by June 15, 1999 that addressed the section 172(c) requirements and specifically required a 1995 baseline emissions inventory, an assessment of the emissions reductions needed for attainment, and adopted control measures (or commitments to adopt and implement control measures) sufficient to meet reasonable further progress (RFP) and to attain the 1-hour ozone standard by the attainment deadline. The plan was also required to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable. Finally, the plan was required to include contingency measures that would take effect should attainment not be achieved by November 15, 2000, and new motor vehicle emissions budgets capping on-road emissions of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) emissions for ozone consistent with the new attainment plan. 63 FR at 37275-37276. See also CAA section 172(c)(1)-(3), (6)-(7) and (9).

<sup>1</sup> As a moderate nonattainment area, the Bay Area was subject to the moderate area requirements of title I, part D, subpart 2 of the CAA that were added as part of the 1990 Amendments. In redesignating the Bay Area back to nonattainment, EPA looked at the longstanding general nonattainment provisions of subpart 1 of the CAA as well as the subpart 2 provisions. EPA concluded that the statute was ambiguous as to which subpart should apply and for a number of policy reasons described at length in the proposed and final redesignation actions, determined that the Act is best interpreted as placing the Bay Area under subpart 1 upon redesignation back to nonattainment. Thus the Bay Area was not classified under Section 181 upon redesignation. (See 62 FR 66578, December 19, 1997; 63 FR 3725, July 10, 1998).

### C. 1999 Ozone Attainment Plan Submission and EPA Action

On August 13, 1999, the California Air Resources Board (CARB) submitted the 1999 San Francisco Bay Area Ozone Attainment Plan (1999 Plan) to EPA. The attainment plan was submitted as a proposed revision to the California SIP by CARB on behalf of the Bay Area Air Quality Management District (BAAQMD), the Metropolitan Transportation Commission (MTC), and the Association of Bay Area Governments (ABAG) (the co-lead agencies).

On September 20, 2001, EPA partially approved and partially disapproved the 1999 Plan. Specifically, EPA approved the baseline emissions inventory, RFP demonstration, a commitment to reduce VOC emissions by 11 tons per day (tpd) by adopting and implementing specified control measures, and contingency measures as meeting the requirements of the CAA applicable to the Bay Area ozone nonattainment area. EPA also approved the removal of transportation control measures (TCMs) 6, 11, 12, and 16 from the ozone portion of the California SIP. EPA disapproved the attainment assessment, its associated motor vehicle emissions budgets, and the RACM demonstration. The effective date of the final disapproval (October 22, 2001) started an 18-month clock for the imposition of sanctions pursuant to CAA section 179(a) and 40 CFR 52.31, and a 2-year clock for EPA to promulgate a federal implementation plan (FIP) under CAA section 110(c)(1). The disapproval also activated a conformity freeze under 40 CFR 93.120(a)(2). 62 FR 43796 (August 15, 1997).

EPA's September 20, 2001 notice also included a finding that the Bay Area failed to attain the 1-hour NAAQS for ozone by its November 15, 2000 attainment deadline. In response to the finding of failure to attain, the EPA required the State to submit a SIP revision for the Bay Area to EPA by September 20, 2002 that meets the requirements of CAA sections 110 and 172 and provides for attainment "as expeditiously as practicable" but no later than September 20, 2006. CAA section 179(d).

For details about EPA's evaluation of the 1999 Plan elements and failure to attain finding, please see the proposed rulemaking at 66 FR 17379 (March 30, 2001) and final rulemaking at 66 FR 48340 (September 20, 2001).

### D. 2001 Ozone Attainment Plan Submittal

On November 30, 2001, CARB submitted the 2001 Plan to EPA. The attainment plan was submitted as a proposed revision to the California SIP by CARB on behalf of the co-lead agencies. The 2001 Plan includes the following elements:

- Emissions inventories for 1995 and 2000 and projected inventories for 2001–2006.
- Reasonably available control measure demonstration.
- Commitments to adopt new, specified control measures.
- Attainment assessment, including a commitment to develop additional control measures as needed to attain the standard by 2006.
- Motor vehicle emissions budgets for the attainment year.
- Commitments by CARB and the co-lead agencies to: (1) Study specified measures to determine whether significant additional emission reductions can be achieved and whether implementation is feasible; (2) conduct a mid-course review by December 15, 2003 that will include an evaluation of the modeling from the Central California Ozone Study (CCOS)<sup>2</sup> and the latest technical information (inventory data, monitoring, *etc.*) to determine the level of emission reductions needed to attain the 1-hour ozone standard; (3) adopt a SIP revision by March 2004 that includes a revised attainment target and new control measures as needed to attain by 2006; and (4) submit the revision to EPA by April 15, 2004.

On February 14, 2002 we found the motor vehicle emissions budgets adequate for transportation conformity purposes.<sup>3</sup> The plan became complete by operation of law on April 30, 2002. CAA section 110(k)(1)(B).

## II. Evaluation of the State's Submittal

EPA evaluated the 2001 Plan according to the general nonattainment plan requirements contained in section 172(c) of the CAA. For a more complete discussion of section 172(c) as it applies to the Bay Area ozone plan, please refer to the proposed redesignation, 62 FR 66580.

<sup>2</sup> The Central California Ozone Study is a large field measurement program conducted during the summer of 2000 to provide a more comprehensive and liable data base for future ozone analyses. Information regarding the CCOS is available on-line at <http://www.arb.ca.gov/airways/ccos/ccos.htm>.

<sup>3</sup> See Letter, Jack Broadbent, EPA Region 9 to Michael Kenney, California Air Resources Board (ARB), dated February 14, 2001. A copy of this letter can be found in the docket. We published this finding in the Federal Register on February 21, 2002. (See 67 FR 8017.) Our adequacy determination was effective on March 8, 2002.

### A. Emissions Inventories

CAA section 172(c)(3) requires nonattainment plans to include a comprehensive, accurate and current inventory of actual emissions from all sources. The purpose of this inventory is to provide a benchmark for attainment planning, and it is often referred to as a baseline inventory. To satisfy this requirement, the State submitted 1995 and 2000 emissions inventories and projected emissions inventories for 2001–2006 for VOC and NO<sub>x</sub> (2001 Plan, Table 4). They are seasonal inventories (typical summer day) representing emissions when ozone levels are at their highest.

The inventories are divided into stationary sources (point, area, and biogenic) and on-road motor vehicle and non-road mobile sources. Stationary source emissions were determined using reported emissions estimates derived from engineering calculations using emission factors from local or outside test data. Emission computation methodology by source categories is set forth in the BAAQMD publication "Source Category Methodologies." For on-road motor vehicles, EMFAC 2000 was used to develop the inventories. The inventories also take rule effectiveness into account and were based on the best data available at the time. Because the emissions inventories are comprehensive and current and accurately incorporate the best data available at the time, EPA proposes to approve them as meeting the requirements of section 172(c)(3).

In the course of studying certain measures (identified as further study measures in the 2001 Plan) to identify additional sources of VOC reductions, the BAAQMD has prepared draft documents that show that emissions from certain sources in the 2001 Plan inventories may be underestimated.<sup>4</sup> Should these findings be confirmed, the emissions inventories that will be submitted with the revised ozone plan in 2004 must incorporate the corrected emissions levels. In addition, the co-lead agencies must use the most recent model developed by CARB and accepted by EPA to determine emissions from motor vehicles.

<sup>4</sup> The BAAQMD has prepared draft technical assessment documents (TADs) that describe its findings with respect to further study measures 8, 9, and 11. The TADs can be viewed on-line at [http://www.baaqmd.gov/enf/refineryfsm/REFINERY\\_WEBSITE.htm](http://www.baaqmd.gov/enf/refineryfsm/REFINERY_WEBSITE.htm). The further study measures are discussed in Section 5 of the 2001 Plan and are listed in Table 1 below.

*B. Reasonably Available Control Measure Demonstration*

CAA Section 172(c)(1) requires nonattainment area plans to provide for the implementation of all RACM as expeditiously as practicable. EPA's principal guidance interpreting the Act's RACM requirement is found in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 at 57 FR 13498, 13560 (April 16, 1992). We interpret section 172(c)(1) to impose a duty on states to consider all available control measures (including those identified in public comments) and to adopt and implement such measures that are reasonably available for implementation in the particular nonattainment area. Under this interpretation, a state does not need to adopt measures that are technologically or economically infeasible for the area or would not contribute to expeditious attainment of the applicable standard in the area, that is, would not advance the attainment date by at least one year.<sup>5</sup>

In our action on the Bay Area's 1999 Plan (66 FR 48341), we disapproved the RACM demonstration, noting that the 1999 Plan was silent on the RACM requirement and did not address all measures suggested by the public. The staff report prepared for the 1999 Plan (dated June 9, 1999) mentions just four

measures suggested by the public and lacks an analysis of other potentially available measures.

In contrast, the 2001 Plan includes an extensive analysis that addresses more than 125 potential stationary source, area source, mobile source, and transportation control measures. See 2001 Plan, Appendix C. This analysis covers a broad range of potential RACM such as controls in the California Clean Air Plan, controls in place in the South Coast, TCMs listed in CAA section 108(f), smart growth measures, and transportation pricing measures. It also covers the measures suggested in public comments on the plan. When viewed in combination with the area's existing measures and strategies and those newly adopted for the plan, the RACM analysis covers the range of potential measures for the area's non-trivial sources of emissions.

A number of people commented during the co-lead agencies' public process that the 2001 Plan did not address or incorrectly characterized transportation control measures that were suggested by the public at the time the 2001 Plan was being developed. We found no persuasive evidence<sup>6</sup> that the plan excludes significant unique measures (as opposed to variations of those that were evaluated) that are

reasonable and would likely result in more expeditious attainment.

For each identified potential RACM, the plan generally evaluates its technological and economic feasibility as well as (qualitatively or quantitatively) its potential to reduce emissions in the Bay Area prior to the attainment date. For each measure evaluated, the 2001 Plan provides for the adoption of the measure or a reasonable and adequately supported justification for not including the measure in the plan.

The 2001 Plan identifies 13 new measures to be implemented and a schedule for adoption and implementation. See 2001 Plan, Appendix B, and the discussion under section II.C. below. The 2001 Plan also includes a list of 11 measures that are not currently reasonably available but may become so in the future. The 2001 Plan includes a commitment to study those measures and dates for the completion of the studies. (See 2001 Plan, Table 9 and Appendix E and Table 1, below.) EPA is proposing to approve this commitment under section 110(k)(3) of the CAA as strengthening the SIP. EPA agrees that establishing such further study measures is an appropriate way to move forward on measures that are not currently RACM, but do appear to hold some promise.

TABLE 1.—FURTHER STUDY MEASURES

2001 SIP #	Measure	Timeline for completion <sup>7</sup>
FS-1	Study Potential for Accelerating Particulate Trap Retrofit Program for Urban Buses	April 2002. <sup>8</sup>
FS-2	Update MTC High-Occupancy Vehicle Lane Master Plan	December 2002.
FS-3	Study Air Quality Effects of High-Speed Freeway Travel	April 2003.
FS-4	Evaluate Parking Management Incentive Program	July 2003.
FS-5	Enhanced Housing Incentive Program	December 2003.
FS-6	Further Smog Check Program Improvements	December 2003.
FS-7	Parking Cash-Out Pilot Program	December 2003.
FS-8	Refinery Pressure Vessels, Blowdown Systems, and Flares	December 2003.
FS-9	Refinery Wastewater Systems	December 2003.
FS-10	Organic Liquid Storage Tanks	December 2002.
FS-11	Marine Tank Vessel Activities	December 2003.

<sup>5</sup> In 1999, EPA reaffirmed its position on this topic in the memorandum, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas," John S. Seitz, Director, Office of Air Quality Planning and Standards, dated November 30, 1999. In this memorandum, we state that in order to determine whether a state has adopted all RACM necessary for attainment and as expeditiously as practicable, the state will need to provide a justification as to why

measures within the arena of potential reasonable measures have not been adopted. The justification would need to support that a measure was not reasonably available for that area.

<sup>6</sup> For example, the general nature of some comments precluded detailed analysis.

<sup>7</sup> With the exception of FS-10, all measures with completion dates that have passed have been completed. A workgroup has been convened for FS-10 and a technical assessment is underway. See the co-lead agencies' April 10, 2003 progress report,

which is in the docket and available on line at <http://www.baaqmd.gov/planning/2001sip/rfpreportfinal.pdf>. MTC's report on further study measures 1-5 is available online at [http://www.mtc.ca.gov/whats\\_happening/AirQuality/FSM.pdf](http://www.mtc.ca.gov/whats_happening/AirQuality/FSM.pdf).

<sup>8</sup> For commitments in the plan that do not identify the day of the month, as here, or the month, as in Table 2, EPA interprets the deadline to be no later than the last day of the month or December 31st of the noted year, respectively.

Based on our evaluation, we conclude that the 2001 Plan presents an adequate RACM demonstration, and are therefore proposing to approve it.<sup>9</sup>

C. Control Measures

In order to attain the ozone standard by 2006, the Bay Area must reduce VOC emissions by 148 tons per day from 554 tons per day (2000 VOC emissions) to 406 tons per day. NO<sub>x</sub> will be reduced by 123 tons per day, from 647 tons per day (2000 NO<sub>x</sub> emissions) to 524 tons per day. To provide for attainment by the applicable date, the 2001 Plan relies

on reductions from previously adopted measures and enforceable commitments to adopt 13 new stationary, area, mobile source, and transportation control measures that will provide additional reductions. The new measures and their expected emissions reductions are listed in the tables below and are described in Appendix B of the 2001 Plan. The Plan also includes an enforceable commitment to adopt additional measures needed for attainment. Section II.D. below discusses EPA's authority to approve commitments and our rationale

for approving the commitments in the 2001 Plan.

In this action, EPA is proposing to approve as part of the attainment assessment (discussed below) required by CAA section 172(c)(1) the adoption and implementation dates of the new measures and the total emissions reductions they are cumulatively projected to achieve. We are approving all dates, including those that have passed, in order to make the commitments enforceable by EPA and citizens under the CAA.

TABLE 2.—NEW STATIONARY AND AREA SOURCE CONTROL MEASURES <sup>10</sup>

2001 SIP No.	BAAQMD Regulation No.	Source category	Adoption date	Implementation date	Estimated VOC reduction (tpd), 2000 to 2006	Estimated NO <sub>x</sub> reduction (tpd), 2000 to 2006
Measures to be adopted by the BAAQMD						
SS-11	8-3	Improved Architectural Coatings Rule	2001	2003-2004	2.9	
SS-12	8-5	Improved Storage of Organic Liquids Rule	2002	2002	1.9	
SS-13	8-14 and 8-19	Surface Preparation and Cleanup Standards for Metal Parts Coating.	2002	2003	0.3	
SS-14	8-16	Aqueous Solvents	2002	2003	3.0	
SS-15	TBD	Petroleum Refinery Flare Monitoring	2003	2004	<sup>11</sup> TBD	
SS-16	8-18	Low-Emission Refinery Valves	2003	2004	TBD	
SS-17	8-10	Improved Process Vessel Depressurization Rule.	2003	2004	0.1	
Total					8.2	0.0

<sup>10</sup> Adopted regulations will be submitted to EPA within six months of adoption. See 2001 Plan, page 31.

<sup>11</sup> At the time of plan adoption, the BAAQMD was not able to determine the amount of emissions reductions that could be achieved by adoption of rules implementing SS-15 and 16. The District indicated that the reductions were to be determined (TBD). Therefore, the emission reduction total for SS-11 through SS-17 does not include reductions from these two measures.

TABLE 3.—NEW MOBILE SOURCE CONTROL MEASURE

2001 SIP No.	Source category	Request <sup>12</sup> date	Implementation date	Estimated VOC reduction (tpd), 2000 to 2006	Estimated NO <sub>x</sub> reduction (tpd), 2000 to 2006
Measures to be requested by the BAAQMD					
MS-1	Motor Vehicle Inspection and Maintenance Program—Liquid Leak Inspection and Improved Evaporative System Test.	2002	2002-2003	4.0	
Total				4.0	0.0

<sup>12</sup> California Health & Safety Code (H&SC) 44003 gives California Air Pollution Control Districts the authority to request that the Department of Consumer Affairs (DCA) implement all or parts of the motor vehicle inspection and maintenance program in their areas. In the 2001 Plan, the BAAQMD, which was subject only to the basic smog check program, committed to opting into the Liquid Leak Inspection and Improved Evaporative System Test elements of enhanced smog check. DCA is already implementing the liquid leak inspection component within the Bay Area. DCA expects implementation of the full enhanced I/M program to begin in October 2003, yielding greater emissions reductions than the MS-1 commitment. Moreover, State law was amended in 2002 (AB 2637—Cardoza) to mandate expeditious DCA implementation of full enhanced inspection and maintenance in the Bay Area, which delivers substantially greater emissions reductions than the commitments in the 2001 Plan.

<sup>9</sup> Of course, what is "reasonably available" changes over time. Measures that were not considered to be RACM in 2001 could potentially become RACM by 2004, when the Bay Area's new ozone attainment plan is due. For example, the

further study measures that have been undertaken to examine refinery emissions and marine loading operations could yield information that demonstrates additional emissions reductions from these sectors are reasonably available. We expect

that the Bay Area's next plan will include an updated analysis that, among other things, revisits measures that were previously determined to not be RACM.

TABLE 4.—NEW TRANSPORTATION CONTROL MEASURES

2001 SIP No.	Control measure description	Description and implementation steps	Schedule	Estimated VOC reduction (tpd), 2000 to 2006	Estimated NO <sub>x</sub> reduction (tpd), 2000 to 2006
TCM A .....	Regional 1 Express Bus Program.	Program includes purchase of approximately 90 low emission buses to operate new or enhanced express bus services. Buses will meet all applicable CARB standards, and will include particulate traps or filters. MTC will approve \$40 million in funding to various transit operators for bus acquisition. Program assumes transit operators can sustain service for a five year period. Actual emission reductions will be determined based on routes selected by MTC.	FY 2003. Complete once \$40 million in funding pursuant to Government Code Section 14556.40 is approved by the California Transportation Commission and obligated by bus operators.	See Below .....	See Below.
TCM B .....	Bicycle/Pedestrian Program.	Fund high priority projects in country-wide plans consistent with TDA funding availability. MTC would fund only projects that are exempt from CEQA, have no significant environmental impacts, or adequately mitigate any adverse environmental impacts. Actual emission reductions will be determined based on the projects funded.	FY 2004—2006. Complete once \$15 million in TDA Article 3 is allocated by MTC.	See Below .....	See Below.
TCM C .....	Transportation for Livable Communities (TLC).	Program provides planning grants, technical assistance, and capital grants to help cities and nonprofit agencies link transportation projects with community plans. MTC would fund only projects that are exempt from CEQA, have no significant environmental impacts, or adequately mitigate any adverse environmental impacts. Actual emission reductions will be determined based on the projects funded.	FY 2004—2006. Complete once \$27 million in TLC grant funding is approved by MTC.	See Below .....	See Below.
TCM 4 .....	Additional Freeway Service Patrol.	Operation of 55 lane miles of new roving tow truck patrols beyond routes which existed in 2000. TCM commitment would be satisfied by any combination for routes adding 55 miles. Tow trucks used in service are new vehicles meeting all applicable CARB standards.	FY 2001. Complete by maintaining increase in FSP mileage through December 2006.	See Below .....	See Below.
TCM 5 .....	Transit Access to Airports.	Take credit for emission reductions from air passengers who use BART to SFO, as these reductions are not included in the Baseline.	BART—SFO service to start in FY 2003. Complete by maintaining service through 2006.	See Below .....	See Below.
Total	.....	.....	.....	0.5 .....	0.7

D. Attainment Assessment

Under section 172(c)(1) of the CAA, nonattainment areas are required to submit plans that provide for attainment of the national ambient air quality standards. As stated above, the 2001 Plan is required to provide for attainment of the 1-hour ozone standard “as expeditiously as practicable” but no later than September 20, 2006. To provide for expeditious attainment, the 2001 Plan relies on fully adopted regulations, enforceable commitments to adopt new, identified measures (section II.B. above) and, as discussed below, an enforceable commitment to adopt

measures to achieve an additional 26 tpd of VOC emission reductions. To support the attainment assessment, the Plan includes additional enforceable commitments, also discussed below, to submit a SIP revision in 2004.

The 2001 Plan contains a simplified modeling analysis, with an explanation and documentation of the modeling approach (2001 Plan, pp. 14–22), using the relevant available data, which is sparse in the period before the CCOS field study can be employed in a more sophisticated Urban Airshed Modeling

(UAM) analysis.<sup>13</sup> The limitation of the existing modeling assessment are acknowledged in the plan, and are the

<sup>13</sup> EPA modeling guidance provides that states may rely on a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment. The modeling analysis for the Bay Area is governed by 40 CFR part 51, Appendix W (6.0 Models of Ozone, Carbon Monoxide and Nitrogen Dioxide): A control agency with jurisdiction over areas with significant ozone problems and which has sufficient resources and data to use a photochemical dispersion model is encouraged to do so. However, empirical models fill the gap between more sophisticated photochemical dispersion models and may be the only applicable procedure if the available data bases are insufficient for refined modeling.

direct result of the shortage of key input data pending completion of the new model. The 2001 Plan employs several different methods, including precursor emission and concentration trends, rollback, and isopleth analyses, to calculate the emissions reductions necessary for attainment. The attainment target is conservatively based on the 2000 ozone isopleth analysis, which generates the largest amount of emissions reductions required for attainment of the various methods employed, and thereby reduces the potential for underestimation of reduction requirements (2001 Plan, p. 22). Given the limitations in the data and considering the conservative approach taken in setting the attainment target, EPA believes that the modeling approach employed in the 2001 Plan reasonably approximates the attainment target.

According to the 2001 Plan's modeling analysis, reductions from the previously adopted and new measures are still not sufficient to attain the 1-hour ozone standard. The estimated shortfall is approximately 26 tons per day (tpd) of VOC reductions. The co-lead agencies indicated that adopting measures to fill the 26 tpd shortfall would require further study. Thus, the co-lead agencies and CARB made an enforceable commitment as part of their 2001 Plan to adopt and submit measures to fill this shortfall (2001 Plan, pages 22, 24, and 34). The State has also made enforceable commitments to submit a SIP revision by April 15, 2004 using the CCOS to reassess attainment needs, and to adopt any additional measures needed to provide for attainment by the 2006 deadline. The CCOS currently under way will provide the data necessary for a more detailed modeling analysis and is expected to be available for the co-lead agencies to use in their mid-course review.

EPA believes—consistent with past practice—that the CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted

measures.<sup>14</sup> <sup>15</sup> once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.

As an initial matter, EPA believes that circumstances in the San Francisco Bay Area warrant the consideration of enforceable commitments. With respect to the commitment to adopt additional measures to ensure attainment by 2006, we have concluded that, at the time of plan adoption, the State and co-lead agencies had adopted, or had committed to adopt, all reasonably available VOC control measures and that no additional measures could be identified. As discussed in more detail below, the great bulk of emission reductions needed for attainment comes from stringent regulations already fully adopted by the co-lead agencies, the State, or the federal government. These previously adopted measures include CARB regulations governing area and mobile sources, BAAQMD regulations governing stationary sources, and

<sup>14</sup> Commitment approved by EPA under section 110(k)(3) of the CAA are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments: See, e.g., *American Lung Ass'n of N.J. v. Kean*, 670 F. Supp. 1285 (D.N.J. 1987), *aff'd*, 871 F.2d 319 (3rd Cir. 1989); *NRDC, Inc. v. N.Y. State Dept. of Env. Cons.*, 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't v. Deukmejian*, 731 F. Supp. 1448, *recon. granted in part*, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air v. South Coast Air Quality Mgt. Dist.*, No. CV 97-6916-HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under CAA Section 179(a), which starts an 18-month period for the State to correct the nonimplementation before mandatory sanctions are imposed.

<sup>15</sup> CAA section 110(a)(2)(A) provides that each SIP "shall include enforceable emission limitations and other control measures, means or techniques\* \* \* as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirement of the Act." Section 172(c)(6) of the Act, which applies to nonattainment SIPs, is virtually identical to section 110(a)(2)(A). The language in these sections of the CAA is quite broad, allowing a SIP to contain any "means or techniques" that EPA determines are "necessary or appropriate" to meet CAA requirements, such that the area will attain as expeditiously as practicable but no later than the designated date. Furthermore, the express allowance for "schedules and timetables" demonstrates that Congress understood that all required controls might not have to be in place before a SIP could be fully approved.

federal regulations such as standards that apply to diesel engines and locomotives.

Moreover, after reviewing measures included in other SIPs as well as measures recommended by the public, the co-lead agencies concluded that they had already adopted, or were committing in the 2001 Plan to adopt, essentially all VOC measures that were currently in place in other areas of the country (2001 Plan, page 49). Furthermore, the BAAQMD concluded that they have established or committed to establish emissions limits on VOC sources that are equivalent to those in place in the one extreme area in the country—the South Coast. See 2001 Plan, page 49.

In July 2001, the co-lead agencies and CARB notified EPA that they were unable at the time to identify and therefore adopt any additional programs that would reduce VOC emissions sufficient to fill the shortfall. Because the State and co-lead agencies need additional time to consider technologies still in the developmental stages, EPA determined that it is appropriate to consider enforceable commitments for the remaining necessary reductions.

EPA has also concluded that it was not practicable for the co-lead agencies to complete the rule development and adoption processes prior to plan submittal for the 13 new, identified control measures to which the plan commits and therefore consideration of enforceable commitments is warranted. Because the vast majority of VOC sources are already subject to stringent, adopted rules, it is increasingly difficult to develop regulations for the remaining universe of uncontrolled sources. For example, BAAQMD has committed to adopt an improved architectural coatings rule (see table 2 above). This effort requires an assessment of the emissions reduction potential of establishing coatings restrictions for very small sources, including time-consuming industry surveys and the refinement of emissions factors and emissions inventories. Adoption of stringent new coatings limits also involves collection or development of information to resolve coating performance issues for a large variety of different coatings and applications. Other rules require similar complex research and development work, analysis of compliance options and necessary exemptions, examination of test methodologies (an especially important concern where the VOC emissions standards, as in the Bay Area, approach the monitoring detection limits), and development of provisions to prevent increased reliance on toxic

air pollutants and stratospheric ozone depleting compounds as the means of compliance with very tight VOC restrictions.

Finally, EPA has determined that the submission of enforceable commitments for the adoption of identified control measures and additional measures necessary to achieve attainment by 2006 will not interfere with the Bay Area's ability to make reasonable progress toward attainment of the standard. By the end of 2003, which is the midpoint between the date of the plan and the attainment year, 46% of the required VOC reductions will have been achieved.<sup>16</sup>

As provided above, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do in the San Francisco Bay Area—EPA will consider three factors in determining whether to approve the submitted commitments. These factors are satisfactorily addressed with respect to CARB's and the co-lead agencies' commitments to adopt and submit both the specified control measures and additional measures to fill the shortfall of VOC emissions reductions.

#### 1. The Commitments Address a Limited Portion of the 2001 Plan

According to the 2001 Plan, 148 tpd of VOC reductions and 123 tpd of NO<sub>x</sub> reductions are required to attain the 1-hour ozone standard. As noted above, the State, the co-lead agencies and the federal government have previously adopted measures that will in large part achieve the required reductions by providing 108.6 tpd of VOC reductions and 122.8 tpd of NO<sub>x</sub> reductions. (2001 Plan, Tables 10 and 11.) This is reflected in the Bay Area planning inventory, which incorporates future year emission reductions from all regulations adopted as of December 31, 2000. Table 4 of the 2001 Plan shows that previously adopted mobile source regulations will reduce on-road motor vehicle VOC emissions from 227.0 tpd in 2001 to 168.5 tpd in 2006, and off-road mobile source emissions from 67.3 tpd to 54.0 tpd. As a result of previously adopted consumer products regulations, VOC emissions from this category will be reduced from 52.2 tpd to 46.4 tpd for the same period. These sharp reductions take into account substantial growth in population and activity levels. Previously adopted BAAQMD regulations contribute additional reductions in VOC emissions from industrial and commercial sources,

whose emissions are reduced from 171.2 tpd in 2001 to 157.0 tpd in 2006.

In contrast, the new, identified control measures to which the BAAQMD commits in the plan are expected to reduce VOC emissions by only 12.7 tpd and NO<sub>x</sub> emissions by 0.7 tpd by 2006. The 2001 Plan's commitment to adopt additional unspecified measures to fill the shortfall needed to reach attainment will achieve 26 tpd of VOCs. Thus, these combined commitments represent a relatively small amount of the total reductions needed for attainment, only 0.6% of NO<sub>x</sub> reductions and 26% of VOC reductions, or 14% of total reductions needed to reach attainment.

#### 2. The State and the Co-lead Agencies Are Capable of Fulfilling their Commitment

In many cases the new measures that are the subject to commitments in the 2001 Plan have already been adopted and/or implemented and emissions reductions are being achieved. For example, Rule 8-3 (SS-11) was adopted on November 21, 2001 and submitted to EPA on June 18, 2002; Rule 8-5 (SS-12) was adopted on November 27, 2002 and submitted to EPA on January 21, 2003; Rules 8-14 and 8-19 (SS-13) and Rule 8-16 (SS-14) were adopted on October 16, 2002 and submitted to EPA on April 1, 2003.<sup>17</sup> Furthermore, we are confident that CARB and the co-lead agencies will be able to meet the 26 tpd commitment. They have made progress on their further study measures and, if necessary, could adopt a declining VOC cap applicable to stationary sources.

#### 3. The Commitments Are for a Reasonable and Appropriate Period of Time

The adoption, implementation, and submittal dates for the new control measures reflect a reasonable amount of time for the development and implementation of each measure. The commitment to identify the control measures that will enable the Bay Area to reach attainment must be fulfilled by March 2004, when the revised plan is to be adopted by the co-lead agencies. In light of the co-lead agencies' demonstration that they need additional time to consider technologies that are still in the developmental stages, this time frame is reasonable and appropriate.

For the above reasons, EPA is proposing to approve as one element of the attainment assessment the 2001 Plan's enforceable commitments to

adopt and submit the specified control measures listed in II.C. above and to adopt additional measures as necessary to attain the 1-hour ozone standard by 2006, which we find to be the most expeditious attainment date practicable. Based on the previously adopted measures and these commitments, the 2001 Plan demonstrates that the Bay Area will achieve sufficient reductions to attain the 1-hour ozone standard by 2006. Therefore we are proposing to approve these commitments and the attainment assessment as meeting the requirements of section 172(c)(1) of the CAA.

#### E. Motor Vehicle Emissions Budgets for Use in Transportation Conformity

EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs, and projects conform to the SIP and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will produce no new air quality violations, will not worsen existing violations, and will not delay timely attainment of the NAAQS (CAA section 176(c)(1)).

One of the primary tests for conformity is to show that transportation plans and improvement programs will not cause motor vehicle emissions higher than the levels needed to make progress toward and to meet the air quality standards. The motor vehicle emissions levels needed to make progress toward and to meet the air quality standards are set in the area's air quality implementation plans and are known as the "motor vehicle emissions budgets." Emissions budgets are established for specific years and specific pollutants. See 40 CFR Part 93.118(a). The 2001 Plan (page 30) includes budgets of 164.0 tpd for VOC and 270.3 tpd for NO<sub>x</sub>, both for the attainment year, 2006. These budgets are based on projected emissions for motor vehicles in the attainment year and take into account expected growth and were developed using San Francisco Bay Area EMFAC 2000.<sup>18</sup>

On February 14, 2002 we found the 2006 motor vehicle emission budgets in the 2001 Plan adequate for transportation conformity purposes. The adequacy finding was based on our preliminary determination that the plan provides for timely attainment of the 1-hour ozone standard in the San Francisco Bay Area and that the criteria

<sup>16</sup> For additional detail, see the co-lead agencies' April 10, 2003 progress report.

<sup>17</sup> For additional detail, see the co-lead agencies' April 10, 2003 progress report.

<sup>18</sup> EMFAC is California's motor vehicle emissions model and is similar to EPA's Mobile 6 model, which is used elsewhere outside of California. EPA approved EMFAC 2000 for use in the Bay Area on January 11, 2002 (67 FR 1464).

in 40 CFR 93.118(e)(4) of the conformity rule were satisfied. As a result of our adequacy finding, the Metropolitan Transportation Commission and the Federal Highway Administration are required to use these budgets in conformity analyses.

Upon further review, EPA has confirmed its preliminary determination that the submitted plan demonstrates attainment in the Bay Area by 2006 and that the motor vehicle emissions budgets are consistent with the plan. The budgets were derived using the most accurate and up-to-date planning assumptions and emissions model available at the time of the plan submittal. We are therefore proposing to approve the 2006 motor vehicle emissions budgets.

The co-lead agencies and CARB have committed to completing a mid-course review of the plan by December 15, 2003 and to submit a revised plan by April 15, 2004. In order to be approvable, the new plan must derive its inventory and motor vehicle emissions budgets using EMFAC2002, which is an updated and improved revision to EMFAC2000 that was recently approved and is now available for SIP planning (68 FR 15720, April 1, 2003).

Because EMFAC2000 has certain technical limitations, EPA approved it only for use in development of ozone motor vehicle emissions factors for SIP development and future conformity determinations in the San Francisco Bay Area. It was superior to prior models available for use in the area and the improved EMFAC 2002 was not yet available.

EPA is proposing to approve the EMFAC2000-derived motor vehicle emission budgets in the Bay Area ozone SIP only until new budgets developed with the new model are submitted pursuant to commitments in the SIP and found adequate for conformity purposes. See 67 FR 1464, January 11, 2002. Normally, new budgets cannot replace existing budgets in approved plans if they are for the same Clean Air Act requirement and year until the new budgets are approved as part of the SIP (see 40 CFR 93.118(e)). In this case, our approval of the budgets in the 2001 Plan will expire upon EPA's determination that the new budgets, which will be developed using EMFAC2002 and are scheduled to be submitted in April 2004, are adequate. We have taken this approach because budgets developed with EMFAC2002 will be more accurate than those developed using EMFAC2000. An adequacy determination can usually be made within a few months of plan

submission. Therefore, by limiting the duration of our approval of the EMFAC2000-derived budgets to the point when the updated budgets are found to be adequate, the updated budgets may be in place within a few months of their submission, rather than when the SIP is finally approved, which could take as long as 18 months.

### III. Mid-Course Review and 2004 Plan

The co-lead agencies and CARB have made an enforceable commitment to perform a mid-course review by December 15, 2003 that will include an evaluation of the modeling from the CCOS and the latest technical information (e.g., inventory and monitoring data) to determine the level of emission reductions needed to attain the ozone standard. The co-lead agencies have also committed to adopt a SIP revision by March 2004 that includes a revised attainment target and new control measures as needed to attain by 2006. In addition, the co-lead agencies and CARB committed to submit a revised ozone attainment plan by April 15, 2004 that will include new control measures as needed to attain by 2006. As discussed in section II.D. above, EPA is proposing to approve these commitments as part of the attainment assessment under CAA section 172(c)(1).

The commitments have been adopted by CARB and the co-lead agencies for several reasons. As noted in Section II.D. above, the 2001 Plan's modeling assessment has its limitations, which are the direct result of the shortage of key input data. This lack of input data has resulted in some uncertainty regarding the amount of emissions reductions that will be necessary to attain the 1-hour ozone standard. However, the CCOS will provide a more comprehensive and reliable data base for future ozone analyses. The modeling for the 2004 Plan will use recent episodes from 1999 and 2000 and will be supported by more extensive field measurements.<sup>19</sup> It will also rely on improved emission inventory modeling and meteorological inputs. This information should result in a more reliable determination of whether the amount of emissions reductions required in the 2001 Plan will be sufficient for the Bay Area to attain the ozone standard. The information will be used to establish revised attainment targets, if necessary, in the 2004 plan. In addition, the CCOS should illuminate

<sup>19</sup> An overview of the photochemical modeling for the Bay Area's 2004 ozone attainment plan is available on line at <http://www.baaqmd.gov/planning/2004sip/modelpg.htm>.

the contribution that pollution generated in the Bay Area makes to air quality in downwind areas.

The mid-course review and 2004 plan revision will also provide the co-lead agencies an opportunity to update key information in the plan that is currently being refined by additional study. As noted above, EPA recently approved EMFAC2002, California's new motor vehicle emissions model. Use of EMFAC2002 will improve the accuracy of the motor vehicle emissions inventory, which will allow planners to better forecast the impact of transportation projects on air quality and to adjust the motor vehicle emissions budgets. In addition, the co-lead agencies and CARB have committed to study specified measures to determine whether significant additional emission reductions can be achieved and whether implementation is feasible. As noted in section II.B. above, EPA is proposing to approve this commitment. The MTC's and BAAQMD's ongoing work on their further study measures is providing new information, particularly with regard to refinery and marine vessel loading emissions, that will result in inventory corrections and should lead to the adoption of new control measures. The information generated by the further study measures and work being done in other areas of the country will also enable the co-lead agencies to update their RACM analysis. The progress that has been made in all of these areas, both locally and nationally, should enable the co-lead agencies and CARB to submit a more technically advanced plan in 2004.

### IV. Summary of Proposed Action

Because EPA has determined that these plan elements meet the requirements of CAA section 172(c), the Agency is proposing to approve the emissions inventory and the RACM demonstration. EPA is also proposing to approve, as meeting the requirements of section 172(c)(1), the attainment assessment and associated motor vehicle emissions budgets, and commitments to (1) adopt 13 new stationary, area, mobile source, and transportation control measures; (2) conduct a mid-course review by December 15, 2003 that will include an evaluation of the modeling from the Central California Ozone Study and the latest technical information (inventory data, monitoring, etc.) to determine whether the level of emission reductions in the 2001 Plan is sufficient to attain the 1-hour ozone standard; (3) to adopt a SIP revision by March 2004 that includes a revised attainment target

and new control measures as needed to attain by 2006; and (4) to submit the SIP revision to EPA by April 15, 2004. Finally, we are proposing to approve under section 110(k)(3) as strengthening the SIP the commitment to study specified measures to determine whether significant additional emission reductions can be achieved and whether implementation is feasible.<sup>20</sup>

Elsewhere in this **Federal Register** we are making an interim final determination that the 2001 Plan corrects the deficiencies in the 1999 Plan. As a result of this determination, the offset sanction is stayed while EPA considers whether to issue a final full approval. A final full approval action on these elements would terminate the sanctions clock that was started as a result of the earlier disapproval; if we disapprove the 2001 Plan on the basis that one or more of the disapproved components is still insufficient, the offset sanction will apply on the effective date of the disapproval.

#### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and

responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 7, 2003.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

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<sup>20</sup>EPA is aware of the pending lawsuit regarding the 2001 Plan in California Superior Court in San Francisco, *Communities for a Better Environment et al. v. Bay Area Air Quality Management District et al.*, Case No. 323849. Prior to taking final action on the plan, we will evaluate any decision of the Court in that case to determine what effect, if any, it has on our rulemaking.