Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 21, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2014–11428 Filed 5–16–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0754; FRL–9911–01–Region–9]

Revision to the California State Implementation Plan; San Joaquin Valley Unified Air Pollution Control District; Quantification of Emission Reductions From Incentive Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve a regulation submitted for incorporation into the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) portion of the California State Implementation Plan (SIP). This regulation establishes requirements and procedures for the District's quantification of emission reductions achieved through incentive funding programs implemented in the San Joaquin Valley. The effect of this action would be to make these requirements and procedures federally enforceable as part of the California SIP. We are taking comments on this proposal and plan to follow with a final action.

DATES: Written comments must be received on or before June 18, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R09–OAR–2013–0754, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: steckel.andrew@epa.gov.*
3. *Fax:* 415–947–3579.
4. *Mail or deliver:* Andrew Steckel (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, *perez.idalia@epa.gov,* (415) 972–3248.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Background

The San Joaquin Valley (SJV) [1] is currently designated as nonattainment for several of the national ambient air quality standards (NAAQS) promulgated by EPA under the Clean Air Act (CAA) for ozone and fine particulate matter ($PM_{2.5}$). *See* 40 CFR 81.305. Despite numerous air pollution control measures and programs that the SJVUAPCD has implemented over the years to reduce air pollution, the SJV continues to experience some of the worst air quality in the nation. *See, e.g.,* 76 FR 57846 (September 16, 2011) (discussing California ozone plan for SJV) and 76 FR 41338 (July 13, 2011) (discussing California $PM_{2.5}$ plan for SJV). As a result, the District has increasingly relied upon incentive programs and other innovative strategies to reduce air pollution in the SJV. *See* San Joaquin Valley Unified Air Pollution Control District, ''Final Staff Report: Proposed Rule 9610 (State Implementation Plan Credit for Emission Reductions Generated through Incentive Programs),'' dated June 20, 2013 (''Rule 9610 Staff Report'') at 2, 3.

In recent years, federal, state and local governments have begun to use a broader array of tools to manage environmental quality, including market-based economic incentives and other innovative strategies to reduce air pollution. Economic incentives are defined broadly as instruments that use financial means to motivate polluters to reduce the health and environmental risks posed by their facilities, processes, or products. *See* U.S. EPA (Office of Policy, Economics, and Innovation) and National Center for Environmental Economics, ''The United States Experience with Economic Incentives for Protecting the Environment,'' EPA–240–R–01–001, January 2001, Executive Summary. In light of the increasing incremental cost associated with further stationary and mobile source emissions reductions in many nonattainment areas, EPA supports and encourages the development of innovative approaches to air quality improvement, including economic incentives, to supplement traditional regulatory programs. *See, e.g.,* ''Guidance on Incorporating

[1] The SJV encompasses over 23,000 square miles and includes all or part of eight counties in California's central valley: San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and the valley portion of Kern.

Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs),'' October 24, 1997 (''1997 VMEP''); ''Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP),'' September 2004 (''2004 Emerging and Voluntary Measures Guidance''); and ''Guidance on Incorporating Bundled Measures in a State Implementation Plan,'' August 16, 2005 (''2005 Bundled Measures Guidance'').

To qualify for emission reduction credit in a SIP, however, economic incentive programs and other innovative emission reduction control measures must satisfy certain minimum CAA requirements for SIP creditability. *See id.* In prior rulemaking actions on several California SIP submissions, EPA has noted that California's incentive programs would not qualify for SIP emission reduction credit without the requisite demonstration of SIP creditability. *See, e.g.,* 76 FR 69896 at 69915 (November 9, 2011) (final action on SJV $PM_{2.5}$ SIP for 1997 $PM_{2.5}$ NAAQS) and 76 FR 26609 at 26613 (May 9, 2011) (final action on SJVUAPCD Rule 9510, ''Indirect Source Review (ISR)''). The SJVUAPCD's stated intent in adopting Rule 9610 was to establish a regulatory framework to address these requirements for SIP creditability and obtain SIP emission reduction credit for incentive programs implemented in the SJV, including the Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program), the Proposition 1B: Goods Movement Emission Reduction Program (Prop 1B Program), and the Environmental Quality Incentives Program (EQIP) implemented by the U.S. Department of Agriculture. *See* Rule 9610 Staff Report at 2–13.

The Carl Moyer Program is a California grant program established in 1998 that provides funding to encourage the voluntary purchase of cleaner-than-required engines, equipment, and other emission reduction technologies. *See generally* CARB, ''The Carl Moyer Program Guidelines, Approved Revisions 2011,'' Release Date: February 8, 2013, at Chapter 1 (*available electronically at http://www.arb.ca.gov/msprog/moyer/moyer.htm).* In its first 12 years, the Carl Moyer Program provided over $680 million in state and local funds to reduce air pollution from equipment statewide, *e.g.,* by replacing older trucks with newer, cleaner trucks, retrofitting controls on existing engines, and encouraging the early retirement of older, more polluting vehicles. *Id.*

The Prop 1B Program is a California grant program established in 2007, as a result of State bond funding approved by voters, which provides $1 billion in funding to CARB to reduce air pollution emissions and health risks from freight movement along California's priority trade corridors. Under the enabling legislation (California Senate Bill 88 and Assembly Bill 201 (2007)), CARB awards grants to fund projects proposed by local agencies that are involved in freight movement or air quality improvements associated with goods movement activities. Upon receipt of such grants, the local agencies are then responsible for providing financial incentives to owners of equipment used in freight movement to upgrade to cleaner technologies, consistent with program guidelines adopted by CARB. *See generally* ''Strategic Growth Plan Bond Accountability, Goods Movement Emission Reduction Program,'' Approved February 27, 2008 (*available electronically at http://www.arb.ca.gov/bonds/gmbond/docs/gm_accountability_with_links_2-27-08.pdf).*

The U.S. Department of Agriculture (USDA) administers the Environmental Quality Incentives Program (EQIP), which Congress established under section 334 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–12, 16 U.S.C. 3839aa–3839aa–9). USDA has delegated authority to administer the program to the Natural Resources Conservation Service (NRCS). 7 CFR 2.61(a)(13)(viii). The purpose of EQIP is to promote agricultural production, forest management, and environmental quality as compatible goals, and to optimize environmental benefits. 16 U.S.C. 3839aa. Through this voluntary program, NRCS assists enrolled agricultural producers in implementing conservation measures on their private land to address soil, water, air, and related natural resources concerns, wildlife habitat, surface and groundwater conservation, and related natural resource concerns. 7 CFR 1466.1(a). The financial and technical assistance provided by NRCS under the program helps producers comply with environmental regulations and enhance agricultural and forested lands in a cost-effective and environmentally beneficial manner. Id. Funding for EQIP is currently authorized by section 2601(a)(5) of the Agricultural Act of 2014 (Pub. L. 113–79, 16 U.S.C. 3841(a)(5).[2]

Since 1992, the District has disbursed over $500 million in incentive funds through the Carl Moyer and Prop 1B programs, which has been matched by over $400 million in cost-sharing investments by participants and has resulted in the retrofit or replacement of hundreds of trucks, buses, tractors, forklifts and other equipment operating in the SJV. *See* 2013 Annual Demonstration Report at 4 and Data Sheet. Similarly, since 2009, NRCS has provided over $105 million in incentive grants through EQIP to replace over one thousand high-emitting pieces of farm equipment in the SJV. *See* Rule 9610 Staff Report at 11 and 2013 Annual Demonstration Report, Appendix B.

II. The State's Submittal

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the SJVUAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	9610	State Implementation Plan Credit for Emission Reductions Generated through Incentive Programs.	06/20/13	06/26/13

On December 26, 2013, the submittal for SJVUAPCD Rule 9610 was deemed by operation of law under CAA section 110(k)(1)(B) to meet the minimum completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

Rule 9610 establishes requirements and procedures for the District to quantify, for air quality planning purposes, emission reductions achieved

[2] *See* email dated March 31, 2014, from Stephanie Johnson, USDA Office of General Counsel, to Kerry Drake, EPA Region 9, Air Division, and email dated April 23, 2014, from Joshua Schnell, USDA Office of General Counsel, to Jeanhee Hong, USEPA Region 9, Office of Regional Counsel, RE: ''Summaries of 1619 and EQIP''.

through implementation of incentive programs in the San Joaquin Valley. The stated purpose of the rule is to ''provide an administrative mechanism for the District to receive credit towards State Implementation Plan requirements for emission reductions achieved in the San Joaquin Valley Air Basin through incentive programs administered by'' the District, NRCS, or CARB. Rule 9610, section 1.0; *see also* Rule 9610 Staff Report at 12.

Rule 9610 contains several key components designed to establish a regulatory framework for the District's quantification of emission reductions achieved through incentive programs and to provide opportunities for EPA, CARB, and the public to review and comment on the District's evaluations on an annual basis. First, the rule establishes definitions of key terms that apply to the District's evaluations and actions under Rule 9610, including definitions for the terms ''surplus,'' ''quantifiable,'' ''enforceable,'' and ''permanent.'' *See* Rule 9610, section 2.0. As explained elsewhere in this notice, these terms apply to all discretionary EIPs and innovative measures that are relied on for SIP purposes and are intended to ensure that such programs and measures comply with the Act.

Second, the rule identifies a number of incentive program ''guidelines'' [3] that specify, among other things, the terms and conditions that apply to each grant of incentive funds under three specific incentive funding programs implemented in the SJV: (1) The Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program), which is implemented jointly by CARB and the District; (2) the California Proposition 1B Goods Movement Emission Reduction Program (Prop 1B Program), also implemented jointly by CARB and the District; and (3) the Environmental Quality Incentives Program (EQIP), implemented by NRCS. *See* Rule 9610, section 3.1.

Third, the rule contains provisions requiring the District to make publicly available a ''Manual of Procedures'' that identifies each of the incentive program guidelines the District uses to quantify emission reductions under Rule 9610, *i.e.,* any guidelines specifically listed under section 3.1 of the rule and any additional program guidelines not specifically listed that satisfy the conditions in section 3.2. *See* Rule 9610, sections 3.2 and 3.3.

Fourth, the rule contains provisions requiring the District to submit each year to CARB and EPA, following public review, an ''annual demonstration report'' that provides updated information on emission reductions achieved in the SJV through these incentive programs and the District's progress in satisfying related SIP commitments. *See* Rule 9610, section 4.0.

Finally, Rule 9610 specifies minimum requirements that the District must address in each SIP submittal that relies on projections of emission reductions from incentive programs to satisfy CAA requirements. Among other things, each such SIP submittal must contain a demonstration that the applicable incentive program guidelines provide for ''SIP-creditable emission reductions'' (*i.e.,* emission reductions that are surplus, quantifiable, enforceable, and permanent) [4] and must contain an ''enforceable commitment'' on the District's part to track emission reductions on an annual basis and to adopt and submit substitute measures to EPA by a date certain if there is any shortfall in required emission reductions. *See* Rule 9610, section 7.0; *see also* Rule 9610 Staff Report at 23.

In sum, Rule 9610 establishes an administrative mechanism designed to ensure that each SIP submittal in which the District relies upon emission reductions achieved through implementation of incentive programs in the SJV will adequately address the requirements of the Act. The rule does not establish any emission limitation, control measure, or other requirement that applies directly to an emission source (*e.g.,* any farm or truck that is the subject of an incentive grant).[5] As discussed elsewhere in this notice, the requirements and procedures in the rule apply only to the District and lay the groundwork for the District's incorporation of incentive programs into air quality plans going forward. These requirements and procedures would become federally enforceable against the District upon EPA's final approval of the rule into the California SIP.

III. EPA's Evaluation of the State's Submittal

A. SIP Procedural Requirements

Sections 110(a)(2) and 110(l) of the Act require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

CARB's June 26, 2013 SIP submittal includes public process documentation for Rule 9610, including documentation of a duly noticed public hearing held by the District on June 20, 2013 on the proposed rule. On June 26, 2013, CARB adopted SJVUAPCD Rule 9610 as a revision to the California SIP and submitted it to EPA for action pursuant to CAA section 110(k) of the Act. We find that the process followed by the SJVUAPCD and CARB in adopting Rule 9610 complies with the procedural requirements for SIP revisions under CAA section 110 and EPA's implementing regulations.

B. EPA Policy on Economic Incentives

The CAA explicitly provides for the use of economic incentives as one tool for states to use to achieve attainment of the NAAQS. *See, e.g.,* CAA section 110(a)(2)(A) (requiring that each SIP ''include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of [the Act]''); *see also* sections 172(c)(6), 183(e)(4). Economic incentive programs (EIPs) use market-based strategies to encourage the reduction of emissions from stationary, area, and/or mobile sources in an efficient manner. EPA has promulgated regulations for statutory EIPs required under section 182(g) of the Act and has issued guidance for discretionary EIPs.[6] *See* 59 FR 16690 (April 7, 1994) (codified at 40 CFR part 51, subpart U) and ''Improving Air Quality with Economic Incentive Programs,'' U.S.

[3] Rule 9610 defines the term ''incentive program guidelines'' as ''administrative procedures, quantification methodologies, eligibility criteria, cost effectiveness criteria, reporting practices, and/or other procedures and methodologies used to implement incentive programs.'' Rule 9610, section 2.15.

[4] Rule 9610 defines the term ''SIP-creditable emission reduction'' to mean ''reductions of emissions achieved through incentive programs that are Surplus, Quantifiable, Enforceable, and Permanent, as those terms are defined in this rule.'' Rule 9610, section 2.25.

[5] Accordingly, Rule 9610 is not intended to implement the reasonably available control technology (RACT) standard or any other control standard under the Act.

[6] A ''discretionary economic incentive program'' is ''any EIP submitted to EPA as an implementation plan revision for purposes other than to comply with the statutory requirements of sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act.'' 40 CFR 51.491.

EPA, Office of Air and Radiation, January 2001 (EPA–452/R–01–001) (''2001 EIP Guidance'').

In light of the increasing incremental cost associated with further stationary and mobile source emissions reductions and the difficulty of identifying such additional sources of emissions reductions in many areas, EPA encourages innovative approaches to generating emissions reductions through EIPs and other nontraditional measures and programs, including ''voluntary'' and ''emerging'' measures. *See generally* 1997 VMEP; ''Guidance on SIP Credits for Emission Reductions from Electric-Sector Energy Efficiency and Renewable Energy Measures,'' August 5, 2004 (''2004 Electric-Sector Guidance''); 2004 Emerging and Voluntary Measures Guidance; 2005 Bundled Measures Guidance; ''Roadmap for Incorporating Energy Efficiency/Renewable Energy Policies and Programs into State and Tribal Implementation Plans,'' July 2012 (''2012 EE/RE Guidance''); and ''Diesel Retrofits: Quantifying and Using Their Emission Benefits in SIPs and Conformity,'' February 2014 (''2014 Diesel Retrofits Guidance''). EPA recognizes, however, that these nontraditional measures raise novel issues related to enforceability and quantification of the associated emission reductions. Accordingly, EPA's policies addressing nontraditional measures provide for some flexibility in meeting established SIP requirements for enforceability and quantification, provided the State takes clear responsibility for ensuring that the emission reductions necessary to meet applicable CAA requirements are achieved. *See, e.g.,* 1997 VMEP at 5–7; 2004 Emerging and Voluntary Measures Guidance at 9; 2005 Bundled Measures Guidance at 7; and 2012 EE/RE Guidance at 37–38.

Importantly, EPA has consistently stated that nontraditional emission reduction measures submitted to satisfy SIP requirements under the Act must be accompanied by appropriate enforceable ''backstop'' commitments from the State to monitor emission reductions achieved and to rectify shortfalls in a timely manner. *See, e.g.,* 1997 VMEP at 4–5; 2004 Emerging and Voluntary Measures Guidance at 8–12; 2005 Bundled Measures Guidance at 7–12; and 2004 Electric-Sector Guidance at 6–7. For example, where a SIP submittal relies on emission reductions achieved through a program dependent on voluntary actions that the State does not directly implement, the State must be obligated to monitor, assess and report on the implementation of the program and the associated emission reductions, and to remedy emission reduction shortfalls in a timely manner should the voluntary measure not achieve the projected emission reductions. *See* 1997 VMEP at 6–7.

We provide below a summary of our evaluation of Rule 9610 and the extent to which the requirements and procedures contained in the rule establish a framework for development of SIP submittals that satisfy the requirements of the Act, as interpreted in EPA policy on discretionary EIPs and other nontraditional emission reduction measures. In addition to reviewing the rule itself, EPA has reviewed several of the incentive program ''guidelines'' identified in the rule and in the District's supporting materials. Although these incentive program guidelines themselves are not part of Rule 9610,[7] EPA has evaluated them as supporting material for the SIP submittal because the quantification protocols and other program requirements specified in these guidelines inform EPA's review of the criteria and procedures set out in Rule 9610. Our Technical Support Document (TSD) contains a more detailed evaluation of the rule and each of the three incentive programs that it addresses, including the applicable guidelines. EPA will review each SIP submittal developed pursuant to Rule 9610 on a case-by-case basis, following notice-and-comment rulemaking, to determine whether the applicable requirements of the Act are met.

1. Programmatic ''Integrity Elements''

Where a State relies upon a discretionary EIP or other nontraditional emission reduction measure in a SIP submittal, EPA evaluates the programmatic elements of the measure to determine whether the resulting emission reductions are *quantifiable, surplus, enforceable and permanent. See, e.g.,* 2001 EIP Guidance at Section 4.1. These four fundamental ''integrity elements,'' which apply to all discretionary EIPs and other innovative measures relied on for SIP purposes, are designed to ensure that such programs and measures satisfy the applicable requirements of the Act. *See, e.g.,* 2001 EIP Guidance at Section 4.1; 1997 VMEP at 6–7; 2004 Emerging and Voluntary Measures Guidance at 3–4; and 2014 Diesel Retrofits Guidance at 27–29. EPA has generally defined the four fundamental integrity elements for discretionary EIPs and other innovative emission reduction programs as follows:

- *Quantifiable:* Emission reductions are quantifiable if they are measured in a reliable manner and can be replicated;
- *Surplus:* Emission reductions are surplus if they are not otherwise required by or assumed in a SIP-related program (*e.g.,* an attainment or reasonable further progress plan or a transportation conformity demonstration), any other adopted State air quality program, a consent decree, or a federal rule designed to reduce emission of a criteria pollutant or its precursors (*e.g.,* a new source performance standard or federal mobile source requirement); additionally, emission reductions are ''surplus'' only for the remaining useful life of the vehicle, engine, or equipment being replaced.
- *Enforceable:* Emission reductions and other required actions are enforceable if they are independently verifiable; program violations are defined; those liable can be identified; the State and EPA may apply penalties and secure appropriate corrective action where applicable; citizens have access to all emissions-related information obtained from participating sources; and the required reductions/actions are practicably enforceable consistent with EPA guidance on practical enforceability.
- *Permanent:* Emission reductions are permanent if the State and EPA can ensure that the reductions occur for as long as they are relied upon in the SIP; the time period that the emission reductions are used in the SIP can be no longer than the remaining useful life of the retrofitted or replaced engine, vehicle, or equipment.

See 2001 EIP Guidance at Section 4.1; 1997 VMEP at 6–7; 2004 Emerging and Voluntary Measures Guidance at 3–4; and 2014 Diesel Retrofits Guidance at 27–29.

Rule 9610 contains specific definitions for each of these terms that are consistent with EPA policy. First, with respect to the term ''quantifiable,'' the rule states that ''emission reductions are quantifiable if they can be reliably determined through the use of well-established, publicly available emission factors and calculation methodologies.'' Rule 9610, section 2.23. This definition ensures that the District will treat as ''quantifiable'' only those emission reductions that can consistently be measured in a reliable manner using widely available methods and assumptions, consistent with EPA's policy definition of this term.

Second, with respect to the term ''surplus,'' Rule 9610 states that

[7] The guidelines themselves are not subject to EPA action under CAA section 110(k) as they are neither contained within Rule 9610 nor incorporated by reference therein, and the State has not separately submitted any of these guidelines for approval into the SIP.

''emission reductions are surplus when they are not otherwise required by any federal, state, or local regulation, or other legal mandate, and are in excess of the baseline emission inventories underlying a SIP attainment demonstration.'' Rule 9610, section 2.27. This definition ensures that the District will treat as ''surplus'' only those emission reductions that are not otherwise required by or assumed in a SIP-related program (*e.g.,* an attainment or reasonable further progress plan or a transportation conformity demonstration), any other adopted State or local regulation, a consent decree, or a federal rule designed to reduce emission of a criteria pollutant or its precursors, consistent with EPA's policy definition of this term.

Third, with respect to the term ''enforceable,'' Rule 9610 states that ''emission reductions are enforceable if the incentive program includes provisions for ensuring the following: [1] The emission reductions are independently and practicably verifiable through inspections, monitoring, and/or other mechanisms; [2] Incentive program violations are defined through legally binding contracts, including identifying the party or parties responsible for ensuring that emission reductions are achieved; [3] Grantees are obligated to provide all records needed to demonstrate that emission reductions are achieved; and [4] The public has access to all emissions-related information for reductions claimed in the annual demonstration report, as outlined in Section 4.0 [of the rule].'' Rule 9610, section 2.8. Consistent with EPA's policy definition of the term ''enforceable,'' this definition ensures that the District will treat as ''enforceable'' only those emission reductions that can, as a practical matter, be independently verified and that result from a program or measure that defines violations clearly, allows for identification of responsible parties, requires grantees to provide all records needed to demonstrate that emission reductions are achieved, and provides for public access to emissions-related information.

Finally, with respect to the term ''permanent,'' Rule 9610 states that ''emission reductions are permanent if actions are taken to physically destroy or permanently disable existing or baseline equipment or vehicles, or to permanently amend practices to ensure the reduction of emissions for the duration of the project life.'' Rule 9610, section 2.18. This definition ensures that the District will treat as ''permanent'' only those emission reductions for which both the State/District and EPA can ensure that the reductions will occur for as long as they are relied upon in the SIP, consistent with EPA's policy definition of this term.

These definitions in Rule 9610 adequately represent the four fundamental ''integrity elements'' that EPA has defined as guidelines for discretionary EIPs and other innovative emission reduction programs. Under Rule 9610, the term ''SIP-creditable emission reductions'' [8] incorporates these integrity elements and is at the core of the key substantive requirements in the rule. For example, sections 3.1 and 3.2 of Rule 9610 require the District to quantify emission reductions in accordance with incentive program guidelines that ''provide for *SIP-creditable emission reductions*''; section 7.0 identifies required SIP elements ''[w]here the District intends to rely on projections of *SIP-creditable emission reductions* under this rule to satisfy a federal Clean Air Act SIP requirement''; and section 4.0 requires the District to ''annually prepare a report that demonstrates the quantity of *SIP-creditable emission reductions.*'' Rule 9610, sections 3.0, 4.0, 7.0. These provisions in Rule 9610 ensure that, in each SIP submittal that relies on an incentive program and in each subsequent annual demonstration report, the District will be obligated to demonstrate that the emission reductions relied upon to satisfy SIP requirements are surplus, quantifiable, enforceable, and permanent.

Rule 9610 does not specify the requirements that govern the incentive programs themselves and instead makes clear that the program ''guidelines,'' which specify (among other things) the terms and conditions that apply to each grant of funds to an owner/operator of an emission source, contain the provisions necessary to determine whether a particular incentive program provides for ''SIP-creditable emission reductions.'' For example, section 3.1 of the rule requires the District to quantify emission reductions in accordance with specified ''incentive program guidelines that provide for SIP-creditable emission reductions,'' and similarly section 3.2 states that the District may quantify emission reductions using other guidelines ''provided the District submits to EPA, pursuant to Section 7.0, a demonstration that each such guideline provides for SIP-creditable emission reductions.'' Rule 9610, sections 3.1 and 3.2. In the TSD accompanying this proposed rule, EPA has evaluated the guidelines listed in section 3.1 of the rule, together with several guidelines listed in the District's ''Manual of Procedures,'' for consistency with the four integrity elements. Although EPA is not proposing to take any particular action on these guidelines,[9] we provide our evaluation of them as a preliminary guide to assist the District in its effort to address CAA requirements in SIP submittals that rely on incentive programs going forward.

Many of the guidelines that we have reviewed establish emission reduction quantification protocols, reporting requirements, administrative procedures, and other requirements that are generally consistent with EPA's recommendations for nontraditional emission reduction programs. EPA will review each SIP submittal developed pursuant to Rule 9610 on a case-by-case basis, following notice-and-comment rulemaking, to determine whether the applicable requirements of the Act are met.

2. Required Components of SIP Submittals

EPA policies identify several key components that should be included in each SIP submittal that relies on an EIP or other innovative emission reduction program, to ensure that the program satisfies the requirements of the Act. First, the SIP submittal should contain a demonstration that the emission reductions resulting from the program are quantifiable, surplus, enforceable and permanent and should include reliable methodologies for quantifying the emission reductions [10]—*i.e.,* assumptions and protocols for measuring emission reductions that can be understood and replicated by different users. *See, e.g.,* 1997 VMEP at 6–9; 2001 EIP Guidance at 34–36 and 61–67; 2004 Emerging and Voluntary Measures Guidance at 2–4; and 2014 Diesel Retrofits Guidance at 27–29; *see also* discussion above in Section III.B.1 (''Programmatic 'integrity elements'''').

Second, the SIP submittal should include enforceable commitments by the State to monitor emission reductions

[8] *See* n. 4, *supra.*

[9] *See* n. 7, *supra.*

[10] To account for uncertainties in the emission reduction estimates, EPA recommends that states apply an appropriate downward ''adjustment'' to calculations of projected emission reductions. *See, e.g.,* 2004 Emerging and Voluntary Measures Guidance at 16 (identifying an assumed discount of 20 percent) and 1997 VMEP at 7. The actual amount of the discount factor should reflect: (1) The degree of uncertainty associated with quantifying the emissions reductions from the measures; (2) the amount of the emissions reductions being credited in the SIP; and (3) the degree of uncertainty associated with verifying the emissions reductions actually achieved by the measure(s). *See* 2005 Bundled Measures Guidance at 16.

achieved and to rectify any shortfall in required emission reductions in a timely manner. *See, e.g.,* 1997 VMEP at 5–7; 2005 Bundled Measures Guidance at 7, 11–12, and 22; and 2014 Diesel Retrofits Guidance at 28, 31–32. EPA policy places clear responsibility on the State to ensure that the emission reductions necessary to meet applicable CAA requirements are achieved. *See id.* To this end, the State's commitment should ensure that any shortfall in required emission reductions will be corrected as soon as possible, and generally no later than 1 year after the State learns of a shortfall. *See* 2005 Bundled Measures Guidance at 11 and 2004 Emerging and Voluntary Measures Guidance at 12. Importantly, however, if the emission reductions from the measure are necessary to show attainment or reasonable further progress (RFP), the deadline for correcting a shortfall cannot extend past the statutory attainment or RFP milestone date for the nonattainment area. *See id.*

Third, the SIP submittal should include documentation that clearly shows how the emission reductions will be addressed in the emissions inventory, RFP plan, and attainment or maintenance plan, as applicable. *See, e.g.,* 1997 VMEP at 8–9 and 2014 Diesel Retrofits Guidance at 27. Such documentation is important for purpose of demonstrating that the program or measure is consistent with SIP attainment, RFP, or maintenance requirements and other applicable requirements of the Act. *See id.* For example, to address potential double-counting of emission reductions, the SIP submittal should explain how the State will ensure that emission reductions already accounted for in the projected ''baseline'' emissions underlying an attainment or RFP demonstration will not also be relied upon for SIP credit in the control strategy. *See* 2005 Bundled Measures Guidance at 24 (''emission reductions are not surplus for [ ] an attainment demonstration if they have already been assumed in that same attainment demonstration'') and 2004 EE/RE Guidance at 13–14 (noting that states may seek SIP credit only for emission reduction measures ''beyond [those] already included in the baseline assumptions'').

Finally, the SIP submittal must demonstrate that the State has adequate funding, personnel, implementation authority, and other resources to implement the program/measure on schedule. *See* CAA section 110(a)(2)(E)(i) (requiring that each SIP provide ''necessary assurances that the State [or local government as appropriate] will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan * * *); *see also* 1997 VMEP at 7; 2005 Bundled Measures Guidance at 22, 26; and 2014 Diesel Retrofits Guidance at 29–30.

Rule 9610 contains several provisions designed to ensure that each SIP submittal in which the District seeks to rely on incentive programs for emission reduction credit will contain the necessary components and supporting documentation described in these policies. First, under section 7.0, each SIP submittal in which the District relies on projected emission reductions from incentive programs must ''contain a demonstration that the applicable incentive program guideline(s) continues to provide for SIP-creditable emission reductions''—*i.e.,* emission reductions that are surplus, quantifiable, enforceable, and permanent.[11] *See* Rule 9610, section 7.0. This demonstration must identify the *specific* guideline(s) applicable to the relevant projects (by title, year, and relevant chapters) and provide the District's rationale for concluding that the identified reductions are ''SIP-creditable emission reductions'' in accordance with the requirements of Rule 9610. EPA expects that the District's integrity demonstration will reflect appropriate adjustments to emission reduction calculations to account for uncertainties in the emission reduction estimates, in particular where the District seeks to rely on incentive programs for larger amounts of SIP credit and/or there is a high degree of uncertainty in the means for verifying the emissions reductions actually achieved. *See* 2005 Bundled Measures Guidance at 16 (''[t]he greater the uncertainty or amount of reductions claimed, the greater the appropriate adjustment factor''). Additionally, consistent with the definition of ''SIP-creditable emission reductions'' in the rule, the demonstration must show that reliance on the identified Carl Moyer Program source categories for SIP emission reduction credit is consistent with SIP attainment, RFP, or maintenance requirements.

For the specific guidelines currently identified in the District's Manual of Procedures (including a number of those listed under section 3.1 of Rule 9610), we expect the District to rely as appropriate on the technical discussion in EPA's TSD, which contains EPA's preliminary assessment of whether the specified guidelines provide for SIP-creditable emission reductions and whether additional documentation is needed to ensure the integrity of the emission reductions. For all other guidelines not specifically addressed in the TSD, EPA commits to work with the District to develop the necessary demonstrations consistent with the requirements of Rule 9610 and the CAA, in the context of specific SIP submittals that rely on emission reductions quantified pursuant to those guidelines.

Second, section 7.0 of Rule 9610 requires that each SIP submittal in which the District relies on projected emission reductions from incentive programs contain an ''enforceable commitment'' that: (1) Identifies incentive program guidelines used to generate projected SIP-creditable emission reductions; (2) identifies emission reductions not to exceed the amount projected to be achieved through the use of secured or reasonably anticipated incentive program funding and the estimated availability of emission reduction projects and willing participants, (3) is specifically adopted by the District as part of the SIP and accounted for in the annual demonstration reports, and (4) states that ''if either the District or EPA finds that there is a SIP shortfall for a particular year, the District will adopt and submit to EPA, by specified dates, substitute rules and measures that will achieve equivalent emission reductions as expeditiously as practicable and no later than any applicable implementation deadline in the [CAA] or EPA's implementing regulations.'' Rule 9610, sections 7.1–7.4; *see also* Rule 9610 Staff Report at 23. To ensure that any necessary substitute measures are implemented by the statutory implementation deadline(s), we note that each SIP commitment should identify specific dates, well in advance of the applicable implementation deadline(s), by when the District will determine whether a SIP shortfall necessitates the development of substitute measures.

Third, each SIP submittal in which the District relies on projected emission reductions from incentive programs must ''identify specific amounts of SIP-creditable emission reductions for a particular year or years in the relevant SIP.'' Rule 9610, section 7.0. For example, if the District intends to seek SIP credit in an ozone attainment plan for NOx emission reductions achieved through the Carl Moyer program, the ozone SIP submittal must specifically identify, among other things, the years for which the District is relying on those NO_X reductions; the amounts of NO_X reductions projected to be achieved in each of those years; the specific source categories relied on to achieve those

[11] *See* n. 4, *supra.*

NO_X reductions; and the specific Carl Moyer Program guidelines applicable to those source categories (identified by title, year, and relevant chapters). Consistent with the definition of ''SIP-creditable emission reductions'' in the rule, the SIP submittal must include a demonstration that reliance on the identified Carl Moyer Program source categories for SIP emission reduction credit is consistent with SIP attainment, RFP, or maintenance requirements for the relevant years (*e.g.,* that there is no double-counting of emission reductions).

Finally, with respect to the required demonstration that the State has adequate funding, personnel, implementation authority, and other resources to implement the program/measure on schedule, this is a statutory requirement that is not specifically addressed by Rule 9610 but nonetheless applies to each SIP submitted by a State. *See* CAA section 110(a)(2)(E)(i). Once the State submits an adequate demonstration that the State and District have adequate personnel, funding, and legal authority to carry out their implementation responsibilities with respect to the relevant incentive programs, we expect that future SIP submittals may rely, as appropriate, on such prior demonstration to satisfy this requirement.

3. Procedures for Public Disclosure of Information

Like all other SIP control measures, discretionary incentive programs and other innovative emission reduction measures relied on for SIP purposes must ensure that EPA and the public have access to emission data in accordance with the requirements of section 114 of the CAA and EPA's implementing regulations in 40 CFR section 2.301. *See, e.g.,* 2001 EIP Guidance at 59, 60 and 2004 Emerging and Voluntary Measures Guidance at 23 (Attachment A). To this end, EPA has recommended that discretionary EIPs contain program components such as the following: (1) Requirements for participants to disclose violations to the responsible state/local agency in an annual certification of compliance or non-compliance; (2) requirements for sources that violate program provisions to notify the affected community of the violations; (3) procedures for the responsible state/local agency to compile these disclosures into an annual comprehensive report on emissions and violations; and (4) procedures to submit these reports to EPA and make them available to the public. *See id.* EPA has also recommended that states disclose information in a manner that is transparent, allowing the public to easily and accurately calculate the emissions of the participating sources or source categories and to adequately assess the effectiveness of the program. *See id.*

Rule 9610 contains several provisions designed to ensure that EPA and the public have access to adequate information regarding the specific incentive programs and associated emission reductions that the District intends to rely upon for SIP purposes. First, under section 3.3 of the rule, the District is required to make publicly available a ''Manual of Procedures'' [12] that includes each of the incentive program guidelines the District uses to quantify emission reductions under Rule 9610, *i.e.,* both those guidelines specifically listed under section 3.1 of the rule and any additional program guidelines not specifically listed that satisfy certain conditions. *See* Rule 9610, section 3.3; *see also* section 3.2 (allowing for use of other guidelines not listed in section 3.1 ''provided the District submits to EPA, pursuant to Section 7.0, a demonstration that each such guideline provides for SIP-creditable emission reductions * * *''). Under subsection 3.3.2, the Manual of Procedures must ''include[ ] a description of how the incentive program guidelines ensure that incentive program emission reductions are SIP-creditable.'' EPA expects that the information in the MOP, together with the project-specific information in the annual demonstration reports, will enable the public to calculate the emission reductions for each project relied upon for emission reduction credit in a SIP.

Second, under section 4.0 of Rule 9610, each year the District must prepare an ''annual demonstration report'' that provides updated information on emission reductions achieved through implementation of incentive programs in the SJV and includes the following: (1) A description of each incentive program guideline used by the District, NRCS, or CARB to implement those programs that the District seeks to rely upon for SIP purposes; (2) information about the types and quantities of emission reductions generated through these programs (*e.g.,* the specific pollutants at issue, the years that the emission reductions occur, the relevant funding amounts, and the project types); (3) adjustments to emission reductions calculated for prior annual demonstration reports, as necessary to reflect updated project information or the adoption of new local, state, or federal requirements; (4) identification of SIP commitments adopted by the District that it has satisfied, in whole or in part, through SIP-creditable emission reductions; (5) specific information concerning each project [13] relied upon for emission reductions (including the unique project identification number, project location, project type, and project life); (6) identification of projects that do not satisfy contractual requirements; and additional project details as necessary to demonstrate that the emission reductions relied upon for SIP purposes are surplus, quantifiable, enforceable, and permanent. *See* Rule 9610, sections 4.0–4.6. Under section 5.0 of Rule 9610, the District must submit this annual demonstration report and information described in section 4.0 of the rule to both CARB and EPA no later than August 31 of each year, after providing an opportunity for public review of a draft report, and the final report must be made publicly available on the District's Web site. *See* Rule 9610, sections 5.1–5.3.

EPA has reviewed the ''2013 Annual Demonstration Report'' [14] submitted by the District as supporting material for Rule 9610 and believes it contains most, though not all, of the information required by Section 4.0 of Rule 9610.[15] To ensure that EPA and other interested parties can track the District's progress

[12] CARB's initial Rule 9610 SIP submittal included a Manual of Procedures dated June 20, 2013, which the District had made publicly available during its rulemaking process. On March 4, 2014, the District submitted a revised and clarified Manual of Procedures. Throughout this proposed rule, references to the Manual of Procedures (or ''MOP'') are to the revised version submitted March 4, 2014 (dated January 31, 2014), which is available in the docket for this rulemaking and online at *http://www.valleyair.org/MOP/mop9610_idx.htm.*

[13] Section 2.19 of Rule 9610 defines the term ''project'' as follows: ''for purposes of this rule, actions taken to reduce emissions through incentive programs, as contracted between the Grantee and the District, NRCS, or CARB using incentive program guidelines at the time of contracting. Such actions include, but are not limited to, replacements, retrofits, new purchases, new practices, and repower.''

[14] CARB's initial Rule 9610 SIP submittal included a ''2013 Annual Demonstration Report'' dated June 20, 2013, which the District had made publicly available (in draft form) during its rulemaking process. On February 20, 2014, the District submitted a revised annual demonstration report containing technical clarifications recommended by EPA. *See* ''2013 Annual Demonstration Report,'' dated January 31, 2014. Throughout this proposed rule, references to the ''2013 Annual Demonstration Report'' are to the revised version dated January 31, 2014. For informational purposes, however, we provide both versions of the report in the docket for this rulemaking.

[15] Our TSD provides a detailed evaluation of the 2013 Annual Demonstration Report and our recommendations for improvement.

in satisfying its SIP commitments, we expect that going forward each annual demonstration report will identify the specific projects (by unique project identification number) that the District has relied upon for emission reduction credit in a particular SIP, including necessary adjustments to emission reduction calculations.[16] *See* Rule 9610, Section 4.3 and Section 4.5. EPA believes that a list of individual projects relied upon for each specific SIP would enable EPA and the public to enforce the District's SIP emission reduction commitments but requests public comment on other possible mechanisms for tracking compliance with SIP commitments through the annual demonstration reports.

Finally, under section 6.1 of Rule 9610, ''[a]ll documents created and/or used in implementing the requirements of Section 4.0 shall be kept and maintained as required by the applicable incentive program guidelines'' and ''shall be made available for public review'' consistent with the requirements of the California Public Records Act and related requirements. *See* Rule 9610, section 6.1. Additionally, the annual demonstration report must include information regarding the process for public review of such records. *See id.* Consistent with this requirement, the 2013 Annual Demonstration Report submitted by the District states that the public may request documents created and/or used in implementing the requirements of Section 4.0 (of Rule 9610) through the District's Public Records Release Request form, which is available on the District Web site. See 2013 Annual Demonstration Report at 8.

Rule 9610 appears to contain one exception to the general public disclosure requirement in section 6.1 that applies only to documents associated with NRCS's implementation of the EQIP program. Section 6.2 of Rule 9610 states that ''[r]ecords related to implementation of the NRCS Program Combustion System Improvement of Mobile Engines incentive program are prohibited from mandatory disclosure, pursuant to the Federal Food Security Act of 1985 (7 U.S.C. 608d(2)).'' We note that 7 U.S.C. section 608d(2) concerns information relating to ''marketing agreements'' and ''marketing order programs'' under the Agricultural Adjustment Act (7 U.S.C. 601 *et. seq.*) and does not apply to the NRCS's implementation of EQIP. The key statutory provision that governs disclosure of information submitted by agricultural producers or owners of agricultural land to participate in EQIP is section 1619 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, 7 U.S.C. 8791).[17] *See* email dated April 23, 2014, from Joshua Schnell, USDA, to Jeanhee Hong, EPA Region 9, RE: ''Summaries of 1619 and EQIP.'' We discuss below this statutory provision and certain information that we understand NRCS may make publicly available consistent with this provision.

Under section 1619 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, 7 U.S.C. 8791), Congress has prohibited the Secretary of USDA and any officer or employee of USDA from disclosing ''information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in'' a USDA program. 7 U.S.C. 8791. Any contractor or cooperator of the USDA is similarly prohibited from disclosing such information. *Id.* There are several exceptions to this prohibition, including that USDA may disclose information if it is transformed into a statistical or aggregate form without naming any individual owner, operator or producer or a specific data gathering site. *See* email dated March 31, 2014, from Stephanie Johnson, USDA, to Kerry Drake, EPA Region 9, RE: ''Summaries of 1619 and EQIP.''

Taking these statutory prohibitions into account, in March 2014, NRCS, EPA, CARB and the District signed the ''Addendum to the December 2010 Statement of Principles Regarding the Approach to State Implementation Plan Creditability of Agricultural Equipment Replacement Incentive Programs Implemented by the USDA Natural Resources Conservation Service and the San Joaquin Valley Air Pollution Control District'' (''2014 Addendum''). The purpose of the 2014 Addendum is to identify information and documentation that NRCS will, consistent with its statutory responsibilities under 7 U.S.C. 8791, make publicly available to ensure that EPA and the District can carry out their respective implementation responsibilities under the CAA and Rule 9610. Among other things, the 2014 Addendum states that NRCS will provide to EPA and the District an annual report that includes information regarding emission reductions achieved by individual EQIP projects and that will be certified by the NRCS California State Conservationist. We believe the certified annual reports described in the 2014 Addendum, which NRCS has agreed to submit to EPA and the District by March 31 of each year, will provide information adequate to enable the District, EPA, and the public to verify the emissions of participating sources and to adequately assess the effectiveness of the EQIP program.

To avoid confusion, however, EPA strongly recommends that the District revise section 6.2 of Rule 9610 at its earliest opportunity to remove the incorrect reference to 7 U.S.C. section 608d(2) and to provide an accurate description of NRCS's statutory obligations with respect to disclosure of information under 7 U.S.C. section 8791.

Our TSD contains a more detailed discussion of the 2014 Addendum and EPA's understanding of the information-sharing activities that the signatory agencies have agreed to undertake, to enable the public to verify emission reductions relied upon for SIP purposes. *See* TSD at 10–11. Additionally, the TSD contains a more detailed evaluation of both the 2013 Annual Demonstration Report and the Manual of Procedures and provides recommendations for improvement to ensure that these documents provide the information necessary to satisfy CAA requirements concerning public availability of emission data. *See* TSD at 52–55.

4. Provisions To Measure and Track Programmatic Results

EPA recommends that each SIP submittal that relies on an EIP or other innovative emission reduction program contain specific evaluation procedures to retrospectively determine the overall effectiveness of the program and procedures to correct emissions projections as appropriate. *See, e.g.,* 1997 VMEP at 9; 2001 EIP Guidance at 70–76; 2005 Bundled Measures Guidance at 17–20; and 2014 Diesel Retrofits Guidance at 33. For example, EPA recommends that the SIP submittal include a State commitment to conduct program evaluations at least once every 3 years, to determine whether the program is in fact achieving projected emissions benefits; a schedule for submitting the results of these evaluations to EPA, following

[16] The key purpose of the annual demonstration report is to specifically document the District's progress in achieving necessary emission reductions and to enable EPA and citizens to enforce the SIP emission reduction commitments by requesting project-specific documentation. It is not necessary, however, for the list of projects relied on in a particular SIP to be identical from year to year, as the District may appropriately eliminate those projects found to be in violation of contract requirements or otherwise not achieving expected emission reductions. *See* Rule 9610, Section 4.3.

[17] The general Freedom of Information Act exemptions in 5 U.S.C. section 552(b) also apply to EQIP information.

opportunities for public comment; and ''reconciliation procedures'' to correct any differences between forecasted and actual emission reductions. *See id.*

Rule 9610 establishes procedures for the District to annually report on the emission reductions achieved through specified incentive programs and to evaluate programmatic effectiveness on a periodic basis. Specifically, the provisions concerning annual demonstration reports under section 4.0 of the rule contain both substantive and procedural requirements for the District's development and submission of these reports to EPA. *See* discussion above in Section III.B.3 (''Procedures for public disclosure of information''). Additionally, under section 4.7 of the rule, the District is required to ''perform a retrospective assessment of the performance of its incentive program to evaluate overall incentive program performance and develop recommendations for future enhancements to incentive program implementation'' and to include in this assessment ''a summary of the public process to receive comments on the draft [annual demonstration] report, as required by Section 5.0.'' Rule 9610, section 4.7.

EPA supports the District's effort to keep EPA, CARB, and the public informed of its incentive program evaluations on an annual basis through the annual demonstration reports developed pursuant to section 4.0 of Rule 9610. It is not clear, however, what sort of ''retrospective assessment'' the District intends to conduct under section 4.7 of the rule and how this provision differs, if at all, from the requirements of section 4.0. We recommend that the District revise section 4.7 to clarify its procedures for evaluating program performance and whether it will retrospectively assess only those incentive programs that it directly implements, or whether the District will also assess the performance of the EQIP program implemented by NRCS and/or incentive programs implemented by CARB. Our TSD provides more detailed recommendations for these program evaluations. As previously explained, EPA will review each SIP submittal developed pursuant to Rule 9610 on a case-by-case basis, following notice-and-comment rulemaking, to determine whether the applicable requirements of the Act are met.

C. Sections 110(l) and 193 of the Act

Section 110(l) of the CAA prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and RFP or any other applicable CAA requirement. Rule 9610 does not establish any emission limitation, control measure, or other requirement that applies directly to an emission source or that is necessary to meet CAA requirements. Additionally, the rule does not revise any requirement in the applicable SIP. The requirements and procedures in Rule 9610 apply only to the District and are designed to ensure that each SIP submittal in which the District relies upon emission reductions achieved through incentive programs in the SJV will adequately address the requirements of the Act. Nothing in Rule 9610 supplants the applicable requirements of the CAA.[18] We propose to determine that our approval of Rule 9610 would comply with CAA section 110(l) because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for attainment of the NAAQS and other CAA provisions are met.

Section 193 of the Act does not apply to this proposed action because Rule 9610 does not modify any SIP-approved control requirement in effect before November 15, 1990.

IV. Proposed Action and Public Comment

Under section 110(k)(3) of the Act, EPA is proposing to fully approve the submitted rule as a revision to the California SIP. We will accept comments from the public on this proposed action until the date noted in the **DATES** section above.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, (October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255 (August 10, 1999));
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885 (April 23, 1997));
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355 (May 22, 2001));
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629 (February 16, 1994)).

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249(November 9, 2000)), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: May 6, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

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[18] EPA will review each SIP submittal developed pursuant to Rule 9610 on a case-by-case basis, following notice-and-comment rulemaking, to determine whether the applicable requirements of the Act are met.