ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0938; FRL–9925–86–Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Transportation Conformity and Conformity of General Federal Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On February 10, 2015, the Environmental Protection Agency (EPA) published a direct final rule approving revisions to the New Mexico State Implementation Plan (SIP). These revisions amend the State transportation conformity provisions and remove the State general conformity provisions from the SIP, as allowed by the 2005 amendments to the Clean Air Act (CAA). The direct final rule was published without prior proposal because EPA anticipated no adverse comments. EPA stated in the direct final rule that if EPA received relevant, adverse comments by March 12, 2015, EPA would publish a timely withdrawal in the **Federal Register**. EPA received a relevant, adverse comment on March 10, 2015, and accordingly is withdrawing the direct final rule, and in a separate subsequent final rulemaking will address the comment received. The withdrawal is being taken pursuant to section 110 of the CAA.

DATES: The direct final rule published on February 10, 2015 (80 FR 7341), is withdrawn effective April 8, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Riley (6PD–L), Air Planning Section, telephone (214) 665–8542, fax (214) 665–6762, email: *riley.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: On February 10, 2015, EPA published a direct final rule approving revisions to the New Mexico SIP. These revisions amend the State transportation conformity provisions and remove the State general conformity provisions from the SIP, as allowed by the 2005 amendments to the CAA. The direct final rule was published without prior proposal because EPA anticipated no adverse comments. EPA stated in the direct final rule that if relevant, adverse comments were received by March 12, 2015, EPA would publish a timely withdrawal in the **Federal Register**. EPA received a comment on March 10, 2015 from the Sierra Club stating in relevant part, that an Acting Regional Administrator cannot sign approvals, disapprovals, or any combination of approvals or disapproval, in whole or in part, due to the fact that the authority to act on agency actions on state implementation plans is delegated only to, and therefore can only be signed by, the Regional Administrator. EPA considers this a relevant, adverse comment and accordingly is withdrawing the direct final rule. In a separate subsequent final rulemaking EPA will address the comment received. The withdrawal is being taken pursuant to section 110 of the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 31, 2015.

Ron Curry,

Regional Administrator, Region 6.

Accordingly, the amendments to 40 CFR 52.1620 published in the **Federal Register** on February 10, 2015 (80 FR 7341), which were to become effective on April 13, 2015, are withdrawn.

[FR Doc. 2015–07995 Filed 4–8–15; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0754; FRL–9924–69-Region 9]

Revisions 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: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) 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. Under authority of the Clean Air Act (CAA or the Act), this action simultaneously approves the local rule and directs California to correct rule deficiencies.

DATES: This rule will be effective on May 11, 2015.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2013–0754 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (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 Pérez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

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I. Proposed Action

On May 19, 2014 (79 FR 28650), EPA proposed to fully approve the following rule, which the California Air Resources Board (CARB) submitted for incorporation into the California SIP.

Local agency	Rule #	Rule title	Adopted	Submitted
SJVUAPCD	9610	State Implementation Plan Credit for Emission Reductions Generated through Incentive Programs.	06/20/13	06/26/13

We proposed to fully approve Rule 9610 based on a proposed conclusion that the rule satisfied the applicable CAA requirements. We noted, however, that section 6.2 of the rule contained an incorrect statutory reference and inaccurately described the statutory obligations of the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) with respect to disclosure of information concerning implementation of the Environmental Quality Incentives Program (EQIP). *See* 79 FR 28650 at 28657 (May 19, 2014). We strongly recommended that the District revise section 6.2 of the rule at its earliest convenience to remove the incorrect reference and to provide an accurate description of NRCS's statutory obligations with respect to disclosure of information related to EQIP. *See id.*

Based on additional evaluation of this rule and in response to public comments, we continue to believe that Rule 9610 largely satisfies the applicable CAA requirements but find that the deficiencies in section 6.2 of the rule, as described in our proposed rule, necessitate a limited disapproval. We provide our rationale for this limited disapproval in our responses to comments below.

II. Public Comments and EPA Responses

EPA's proposed rule provided a 30-day public comment period. During this period, we received comments from the following entities:

1. Paul Cort, Earthjustice; letter dated June 18, 2014.

2. Seyed Sadredin, SJVUAPCD; letter dated June 17, 2014.

We summarize these comments and provide our responses below.

Comment 1: Earthjustice states that EPA should withdraw its proposed approval of Rule 9610 because approval of the rule will ''create legal confusion over the requirements that must be met for approval of voluntary incentive measures into the State Implementation Plan ('SIP').'' Earthjustice further claims that the rule adds no value to the SIP and that EPA's proposal does not fully identify all of the ''legal defects'' in the rule. ''At best,'' according to Earthjustice, ''EPA's approval of Rule 9610 does nothing, because compliance with Rule 9610 will not be enough to support approval of future incentive programs into the SIP,'' and at worst ''it will create legal confusion over the governing criteria'' and waste resources by encouraging the development of faulty programs.

Response 1: We disagree with these comments. We believe Rule 9610 is consistent with the flexibility accorded states in incorporating discretionary, innovative and non-traditional emission reduction programs in their SIPs, under CAA sections 110(a)(2)(A) and 172(c)(6). The CAA establishes a system of cooperative federalism in which EPA provides national leadership, sets standards for environmental protection and conducts oversight of state implementation, while states play a larger role in implementation of these standards including developing SIPs and adopting emission reduction measures. *See* CAA sections 101 and 102. Under section 110 of the Act, states have broad discretion to choose the mix of emission limitations and other control measures, means, or techniques (including economic incentive programs) that they will implement to provide for attainment of the national ambient air quality standards (NAAQS). *See Union Electric Co.* v. *EPA,* 427 U.S. 246 (1976) (''So long as the national standards are met, the State may select whatever mix of control devices it desires.'').

As we explained in our proposal, Rule 9610 contains key provisions 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. *See* 79 FR 28650 at 28652. We believe the criteria and procedures in Rule 9610 establish a useful starting point for the District's development of such programs and for public participation in the District's development of air quality plans that rely on such programs.[1] Upon incorporation of Rule 9610 into the SIP, the requirements and procedures in the rule become federally enforceable against the District, enabling EPA and citizens to hold the District accountable for compliance with these requirements.

As we also stated in the proposed rule, nothing in Rule 9610 supplants the applicable requirements of the CAA, and EPA will review each SIP submittal developed pursuant to Rule 9610 and EPA guidance on a case-by-case basis, following notice-and-comment rulemaking, to determine whether the applicable requirements of the Act are met. *See* 79 FR 28650 at 28658. EPA specifically identified a number of shortcomings in Rule 9610 to ensure that the State and District are aware of the rule's limitations. *See, e.g.,* 79 FR 28650 at 28656 (noting that Rule 9610 does not specifically address CAA requirements concerning funding, personnel, and implementation authority) and 28657 (discussing incorrect statutory reference in section 6.2 of Rule 9610). To the extent our proposal did not make clear that Rule 9610 in no way substitutes for the requirements of the CAA, we hereby clarify that the requirements of the CAA continue to apply to each SIP submitted by the State and District, notwithstanding any provision in Rule 9610, and that our action on this rule does not constitute an endorsement of its content as an adequate representation of the requirements of the Act. Additionally, we are finalizing a limited approval and limited disapproval of Rule 9610 because of the deficiencies in section 6.2 concerning disclosure of records related to the NRCS's implementation of the EQIP program. We explain our reasons for disapproving the rule on this basis in Response 3.h below.

Given that the District's stated purpose in adopting Rule 9610 was to establish an administrative mechanism for crediting emission reductions achieved through incentive programs toward SIP requirements, EPA discussed in the proposed rule ''the extent to which the requirements and procedures contained in the rule

[1] EPA has promulgated regulations for statutory EIPs required under section 182(g) of the Act. *See* 40 CFR part 51, subpart U. For discretionary EIPs, EPA has issued guidance entitled ''Improving Air Quality with Economic Incentive Programs,'' U.S. EPA, Office of Air and Radiation, January 2001 (EPA–45/R–01–001) (''2001 EIP Guidance''). Because the 2001 EIP Guidance is non-binding and does not represent final agency action on discretionary EIPs, EPA uses the 2001 EIP Guidance as an initial screen to evaluate potential approvability issues. Final action on any discretionary EIP occurs when EPA acts on it after its submission as a SIP revision.

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.'' 79 FR 28650 at 28653. In the Technical Support Document (TSD), EPA also provided evaluations of the specific incentive program guidelines listed in Section 3.1 of the rule, 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.'' 79 FR 28650 at 28654; *see also* U.S. EPA Region 9 Air Division, ''Technical Support Document for EPA's Notice of Proposed Rulemaking for the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District's Rule 9610, State Implementation Plan Credit for Emission Reductions Generated through Incentive Programs,'' May 2014 (hereafter ''Proposal TSD''). We provided these evaluations to explain the minimum statutory requirements that apply to SIPs that rely on economic incentive programs; to inform the District of both provisions in Rule 9610 that adequately represent these requirements and shortcomings in the rule that should be corrected to avoid confusion; and to invite public comment on EPA's understanding of the way in which the District would implement Rule 9610 going forward. *See, e.g.,* 79 FR 28650 at 28653 (discussing EPA's recommended programmatic ''integrity elements'' for innovative measures), 28654 (discussing EPA's recommended SIP components for innovative measures); and 28657 (recommending rule corrections to avoid confusion concerning NRCS's statutory obligations and requesting public comment on mechanisms for tracking the District's compliance with SIP commitments). EPA's limited approval and limited disapproval of Rule 9610 into the SIP does not, in any way, constitute endorsement of the rule as a substitute for CAA requirements.

Section 110 of the CAA requires each state to submit to EPA for approval a ''plan which provides for implementation, maintenance, and enforcement'' of each primary and secondary NAAQS, and EPA is required to approve a SIP submittal that relates to these purposes and satisfies the applicable federal requirements. *See* CAA section 110(k)(3), 42 U.S.C. 7410(k)(3) and 40 CFR 52.02(a). Rule 9610 establishes requirements and procedures for the District's quantification of reductions in emissions of NAAQS pollutants (*e.g.,* nitrogen oxides (NOx) and fine particulate matter ($PM_{2.5}$)) achieved through incentive programs and, therefore, relates to the requirements of CAA section 110. *See generally* 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),'' June 20, 2013. With the exception of the deficiencies in section 6.2 of the rule, Rule 9610 satisfies the requirements concerning enforceability in section 110(a)(2)(A) and SIP revisions in section 110(l) of the Act. *See* 79 FR 28650 at 28652 (summarizing rule provisions enforceable against the District) and 28658 (explaining that approval of Rule 9610 would not interfere with applicable requirements concerning attainment and other CAA requirements) and Proposal TSD at 3–8; *see also* Response 3.h (discussing deficiencies in section 6.2 of Rule 9610). Additionally, EPA has reviewed Rule 9610 for conflicts with CAA requirements and identified one provision (section 6.2 of the rule) that clearly conflicts with the requirements of the Act. Based on these evaluations, we conclude that Rule 9610 satisfies the statutory requirements for approval into the SIP, except for the disclosure provision in section 6.2, which we are disapproving. *See* Response 3.h.

We expect the District to address the applicable requirements of the CAA in each individual SIP submittal that relies on incentive programs, and our recommendations in both the proposal and today's final rule are intended to provide the District with general guidance on how these requirements, as interpreted in EPA guidance, apply to future SIP submittals developed pursuant to Rule 9610 and the requirements of the Act. To the extent our action on Rule 9610 and the related public process provide a forum for EPA and the public to comment on the statutory requirements that the District must address in future SIP submittals that rely on incentive programs, we view this as an important step toward clarifying the applicable CAA requirements and ensuring transparency in SIP actions going forward. In any case, as EPA stated in the proposed rule, EPA will review each SIP submittal developed pursuant to Rule 9610 (including the necessary evaluation of the applicable incentive program guidelines) on a case-by-case basis, following notice-and-comment rulemaking, to determine whether the applicable requirements of the Act are met. *See* 79 FR 28650 at 28654, 28658. Nothing in today's action prohibits EPA from disapproving a SIP relying on incentive-based emission reductions that fails to satisfy the requirements of the CAA.

Comment 2: Earthjustice states that the CAA requires emission reductions resulting from incentive programs to be ''quantifiable, surplus, enforceable and permanent'' and asserts that the District's new definitions for these terms in Rule 9610 are an attempt to redefine these four integrity elements for ''SIP creditability.'' Quoting EPA's statement that ''[n]othing in Rule 9610 supplants the applicable requirements of the CAA,'' Earthjustice states that ''compliance with the SIP-creditability definitions in Rule 9610 does not mean that a given incentive program is, in fact, SIP creditable.'' Earthjustice claims that the potential confusion and conflict caused by EPA's action beg the question why EPA is approving Rule 9610 and claims that the purpose of the rule and EPA's action are not evident in the proposal. In support of these claims, Earthjustice cites a statement in the Proposal TSD in which EPA disagrees with the District's claims that Rule 9610 identifies ''pre-approved incentive program guidelines'' for claiming SIP credit and that certain Carl Moyer programs provide SIP creditable emission reductions. Earthjustice further asserts that the District's definitions in Rule 9610 do not meet all of EPA's criteria and that EPA's analysis of the District's definitions ''notes some of these deficiencies but ignores others,'' leaving readers to ''puzzle through'' the reason for EPA's approval of the rule.

Response 2: We agree that the CAA requires emission reductions resulting from incentive programs to be ''quantifiable, surplus, enforceable and permanent'' in order to qualify for emission reduction credit in a SIP. We disagree, however, with the commenter's claim that the definitions of the terms ''quantifiable,'' ''surplus,'' ''enforceable'' and ''permanent'' in Rule 9610 represent an attempt by the District to redefine the CAA's requirements for SIP creditability. As we stated in our proposed action, the SJVUAPCD's stated intent in adopting Rule 9610 was to establish a regulatory framework to address the CAA's requirements for crediting incentive-based emission reductions in SIPs. *See* 79 FR 28650 at 28651. Upon incorporation of Rule 9610 into the SIP, its requirements will become federally enforceable under the CAA and thereby supplement, but not supplant, the requirements of the Act.

As we explained in the proposed rule and further in the Proposal TSD, Rule 9610 does not represent all of the CAA requirements applicable to SIPs that rely on incentive programs for emission reduction credit (*see, e.g.,* 79 FR 28650 at 28656, 28657 and Proposal TSD at 50–52), and we agree with Earthjustice that compliance with the SIP-creditability definitions in Rule 9610 does not necessarily mean that a given incentive program is, in fact, SIP creditable under the CAA. Additionally, as Earthjustice notes, EPA's Proposal TSD identifies several statements in the District's 2013 Annual Demonstration Report that improperly characterize the effect of compliance with the rule (*e.g.,* the District's statement that ''Section 3.1 of Rule 9610 identifies pre-approved incentive program guidelines''). *See* Proposal TSD at 53. As we explained in both the proposed rule and the Proposal TSD, EPA is taking no action on the incentive program guidelines as the guidelines themselves are not part of Rule 9610, and the State has not separately submitted any of these guidelines for approval into the SIP. *See* 79 FR 28650 at 28653, n. 7 and 28654. It follows that EPA cannot, in today's action, approve (or ''pre-approve'') any of these guidelines for use in quantifying SIP emission reduction credit.[2]

We continue to believe, however, that the definitions of the terms ''quantifiable,'' ''surplus,'' ''enforceable'' and ''permanent'' in Rule 9610 generally represent the four fundamental ''integrity elements'' defined in EPA guidance for discretionary EIPs and other innovative emission reduction programs, provided the District interprets these terms consistent with our interpretations in this rulemaking, which are the bases for our limited approval of the rule.[3] If the District implements Rule 9610 (including its definitions) in a manner that is consistent with EPA's interpretation and the recommendations provided in our proposed and final rulemaking documents, we expect that future SIPs developed in accordance with Rule 9610 would adequately address EPA's policy recommendations with respect to these four integrity elements.[4] Conversely, to the extent the District implements Rule 9610 in a manner that departs significantly from EPA's understanding of the rule and related recommendations, we expect such future SIPs would not adequately address the requirements of the Act. Although we make no determination today concerning SIP emission reduction credit for any particular incentive program, we believe that our interpretations of Rule 9610, our related recommendations for corrections or clarifications to the rule, and our preliminary reviews of the incentive program guidelines referenced in the rule (as discussed in the Proposal TSD) provide general guidance to the State and District that will help clarify the applicable CAA requirements for future SIPs, compared to EPA inaction on Rule 9610.

Comment 3: Earthjustice claims that Rule 9610 does not ensure ''surplus'' and ''enforceable'' emission reductions and disagrees with several aspects of EPA's evaluation of the rule's definitions of these terms.

Response 3: EPA is finalizing a limited approval and limited disapproval of Rule 9610 based on our conclusion that the rule relates to the requirements of CAA section 110 and, with one exception, satisfies the statutory criteria for approval into the SIP. *See* Response 1 and Response 2, above; *see also* Response 3.h (discussing deficiencies in section 6.2 of Rule 9610).

Nonetheless, the commenter raises a number of important concerns regarding the adequacy of Rule 9610 as a legal framework for quantifying SIP emission reduction credit for incentive programs, and in an effort both to respond to these comments and to provide the District with specific guidance on the requirements of the Act that each SIP must satisfy, we respond below (in Response 3.a through Response 3.j) to each of these concerns.

Comment 3.a: Earthjustice states that according to EPA, ''emission reductions are surplus only if they are not otherwise required by or assumed in a SIP-related program,'' any other adopted State air quality program, a consent decree, or a federal rule designed to reduce emissions of a criteria pollutant or its precursors, and that measures are only surplus for ''the remaining useful life of the vehicle, engine, or equipment being replaced.'' Rule 9610, on the other hand, defines ''surplus'' to mean that the emission reductions 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'' (citing Rule 9610, section 2.27). Earthjustice claims that this definition in Rule 9610 is not consistent with EPA's definition, for example because ''the District's definition leaves out various other assumptions built into SIP-related programs, such as growth factors in attainment and other plans, turnover assumptions in conformity demonstrations, etc.'' and does not incorporate the ''useful life'' concept into its definition. Earthjustice claims that EPA's proposal gives only ''short shrift'' to these differences and provides an unsupported claim that the District's new definition will ''treat as 'surplus' only those emission reductions'' that meet EPA's definition of the term.

Response 3.a: We disagree with the commenter's claims about the definition of ''surplus'' in Rule 9610 and believe that this definition is generally consistent with EPA's guidance on ''additionality'' of emission reductions, provided the District interprets the term consistent with EPA's interpretation, as explained further below.

Section 2.27 states that ''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.'' First, we understand that ''any federal, state, or local regulation, or other legal mandate'' would include: (1) Any federal rule designed to reduce emissions of a criteria pollutant or its precursors (*e.g.,* a new source performance standard or federal mobile source requirements); (2) any State or local regulation concerning air pollutant emissions; and (3) any obligation in a consent decree, settlement agreement, or other legal mandate. Read accordingly, the definition would prohibit emission reductions required by any of these types of legal obligations from being treated as ''surplus.'' Second, we understand that the phrase ''baseline emission inventories underlying a SIP attainment demonstration'' means the projection year emission inventories that provide the basis for the attainment-related demonstrations in a SIP. Read accordingly, emission reductions ''in excess of the baseline emission inventories underlying a SIP attainment demonstration'' would mean

[2] We understand that CARB and the District do not intend to submit any incentive program guidelines to EPA for approval into the SIP, given that SIP-approval of an incentive program guideline *per se* is not necessary to demonstrate that the emission reductions associated with that program satisfy CAA requirements for SIP emission reduction credit.

[3] Should the District's implementation of Rule 9610 going forward reveal a conflict between a provision of the rule and the requirements of the CAA, EPA may exercise its authorities under CAA sections 110(k)(5) or 110(k)(6) to issue a SIP call or to revise this action as appropriate.

[4] Nothing in the comments submitted by the District on EPA's proposed rule (see Comment 6) indicates that the District disagrees with EPA's interpretation of Rule 9610, as provided in the proposed rule and Proposal TSD.

emission reductions that go *beyond* those already assumed in a SIP-related program, taking into account growth factors, assumptions concerning fleet turnover, and other relevant planning assumptions—that is, any emission reductions assumed in a SIP-related program (*e.g.,* an attainment or reasonable further progress plan or a transportation conformity demonstration) would not be treated as ''surplus.''

Read in its entirety, section 2.27 provides that only those emission reductions that are *not* otherwise required by or assumed in a SIP-related program, any other adopted State air quality program, a consent decree, or a federal rule designed to reduce criteria pollutant or precursor emissions will qualify for treatment as ''surplus'' emission reductions, consistent with EPA's definition of the term in longstanding guidance. *See, e.g.,* ''Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs),'' EPA, Office of Air and Radiation, October 24, 1997 (hereafter ''1997 VMEP'') at 6; ''Improving Air Quality with Economic Incentive Programs,'' EPA, Office of Air and Radiation, January 2001 (hereafter ''2001 EIP Guidance'') at 35; ''Incorporating Emerging and Voluntary Measures in a State Implementation Plan,'' EPA, Office of Air and Radiation, September 2004 (hereafter ''2004 Emerging and Voluntary Measures Guidance'') at 3; and ''Diesel Retrofits: Quantifying and Using Their Emission Benefits in SIPs and Conformity,'' EPA, Office of Transportation and Air Quality, February 2014 (hereafter ''2014 Diesel Retrofits Guidance'') at 27.

One component of EPA's various policy recommendations that the definition of ''surplus'' in section 2.27 does not explicitly address is the recommendation concerning the remaining useful life of the vehicle, engine, or equipment being replaced. *See* 2014 Diesel Retrofits Guidance at 30 (recommending that states ''consider factors that may affect emission reductions and their surplus status overtime, including changing patterns of operations or use, vehicle deterioration factors, equipment useful life, and government emission standards''). Rule 9610 does, however, contain a definition of ''project life'' in section 2.20 that addresses this recommendation. Specifically, section 2.20 defines ''project life'' to mean ''the period of time over which an incentive program project achieves SIP-creditable emission reductions'' and states that ''[p]roject life shall not exceed the useful life of equipment, vehicles, or practices funded through incentive programs, and may vary across incentive programs and project types.'' As we explained in the Proposal TSD, in future SIP submittals developed pursuant to Rule 9610, we expect the State and/or District will demonstrate: (1) How the ''project life'' for each funded project relied on for SIP credit takes into account the remaining useful life of the vehicle, engine, or equipment being replaced, and (2) how the State and/or District ensure that the emission reductions relied on for SIP credit are in excess of the reductions attributed to normal fleet turnover and other assumptions built into future year emissions inventories (*i.e.,* that the same emission reductions are not ''double counted''). *See* Proposal TSD at 18 and 48.

Comment 3.b: Earthjustice asserts that EPA's analysis of the District's definition of ''enforceable'' is arbitrary. Quoting from section 110(a)(2)(A) of the CAA and EPA's interpretative statements in ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992) (hereafter ''General Preamble''), Earthjustice states that even those ''nontraditional techniques'' for reducing pollution authorized by section 110(a)(2)(A) must be ''enforceable.'' Additionally, Earthjustice quotes from an EPA docket memorandum for a rulemaking entitled ''State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction,'' February 4, 2013 (hereafter ''2013 SSM Memo''), in which EPA highlights the importance of the EPA and citizen enforcement authorities established by Congress to ensure compliance with CAA requirements and states that SIP provisions that function to bar effective enforcement by the EPA or citizens for violations would be inconsistent with the regulatory scheme established in title I of the Act. Earthjustice quotes from this memorandum to support its assertion that according to EPA policy, SIPs must be built upon emission reductions that are ''enforceable,'' meaning that ''EPA and citizens must have the ability to bring enforcement actions to assure compliance.'' For example, Earthjustice states, EPA will not approve control measures that include ''director discretion'' to define or redefine compliance requirements and also will ''not allow SIPs to include state affirmative defenses that would foreclose EPA or other enforcement.'' Earthjustice further asserts that ''[a] state cannot claim SIP credit from control measures that shield pollution sources from independent enforcement actions.'' Earthjustice also references the 2001 EIP Guidance in support of these arguments.

Response 3.b: We agree that under the CAA, as interpreted in EPA policy, all measures approved into a SIP, including those ''nontraditional techniques'' for reducing pollution identified in section 110(a)(2)(A) of the Act, must be ''enforceable'' to qualify for SIP emission reduction credit and that EPA and citizens must be able to bring enforcement actions to assure compliance. *See, e.g.,* General Preamble at 13556. We disagree, however, with the claim that EPA's analysis of the definition of ''enforceable'' in Rule 9610 is arbitrary.

In our proposed rule and Proposal TSD, we compared the Rule 9610 definition of ''enforceable'' with EPA's recommended enforceability factors for voluntary and other nontraditional emission reduction measures, and we found the Rule 9610 definition to be generally consistent with EPA's recommendations. *See* 79 FR 28650 at 28654 (discussing components of Rule 9610, section 2.8 that reflect EPA recommendations) and Proposal TSD at 8–11. Specifically, we highlighted key components of EPA's policy recommendations concerning enforceability and found that the District's definition of the term ''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.'' *See* 79 FR 28650 at 28653, 28654. We provided these analyses not to support a regulatory determination concerning the enforceability of any particular incentive program or air quality plan that relies on incentive programs, as no such program or plan is before us in this action, but rather to highlight the District's obligation under Rule 9610 to ensure that any incentive program relied upon in a SIP requires documentation adequate for EPA and the public to independently verify that the necessary emission reductions have occurred. *See* 79 FR 28650 at 28654 (noting District's obligation to demonstrate, in each SIP submittal that relies on an incentive program, that the

emission reductions relied upon to satisfy SIP requirements are surplus, quantifiable, enforceable, and permanent).[5] That is, we highlighted these provisions of section 2.8 of Rule 9610 in an effort to ensure that future SIPs that rely on incentive programs in the SJV will, at minimum, satisfy the rule's enforceability requirements, which reflect important components of EPA's recommendations concerning enforceability under the CAA. *See* 79 FR 28650 at 28654.

Earthjustice asserts generally that ''[a] state cannot claim SIP credit from control measures that shield pollution sources from independent enforcement actions.'' But nothing in Rule 9610 shields pollution sources from independent enforcement actions and Earthjustice does not identify any provision that does so. As further explained in Response 3.d., the CAA authorizes EPA and citizens to enforce requirements of an ''applicable implementation plan'' [6] and certain requirements of the Act. *See* CAA sections 113 and 304(a), 42 U.S.C. 7413, 7604(a). Specifically, under section 113 of the Act, EPA may bring an enforcement action against any individual or government agency for violation of ''any requirement or prohibition of an applicable implementation plan,'' [7] and under section 304(a) citizens may bring suit against any individual or government agency alleged to be in violation of ''an emission standard or limitation,'' including a schedule or timetable of compliance which is in effect under an applicable implementation plan.[8] To the extent Earthjustice intended to argue that Rule 9610 would ''shield'' pollution sources from an action to enforce the requirements of an ''applicable implementation plan''—*e.g.,* the requirements of an EPA-approved SIP—we disagree as Rule 9610 does not apply to any pollution source. *See* 79 FR 28650 at 28652 (''the requirements and procedures in [Rule 9610] apply *only to the District* . . . [and] would become federally enforceable *against the District* upon EPA's final approval of the rule into the California SIP'') (emphases added). Earthjustice does not identify any provision in Rule 9610 that would apply to a pollution source or preclude enforcement of SIP requirements against a pollution source.

We understand that Earthjustice may have intended to argue that Rule 9610 would encourage *future* development of programs that preclude EPA or citizen enforcement against pollution sources, rather than to comment on the enforceability of Rule 9610 itself.[9] Under CAA section 110(a)(2)(A), however, the relevant inquiry is not whether EPA or citizens may directly sue pollution sources but whether the ''measure,'' ''means,'' or ''technique'' for reducing emissions is ''enforceable.'' Section 110 of the Act requires 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 Act's requirements. CAA 110(a)(2)(A), 42 U.S.C. 7410(a)(2)(A). Thus, according to the plain language of the statute, SIPs may contain ''means'' or ''techniques'' including economic incentives and/or ''schedules and timetables for compliance'' that EPA considers ''appropriate'' for attainment, so long as they are ''enforceable.'' Courts have long held that citizen suits can be brought to enforce specific measures, strategies, or commitments by state or local agencies that are designed to ensure compliance with the NAAQS. *See, e.g., BCCA Appeal Group* v. *EPA,* 355 F.3d 817 (5th Cir. 2003), *reh'g denied, BCCA Appeal Group* v. *EPA,* 2004 U.S. App. LEXIS 215 (5th Cir. 2004); *Conservation Law Foundation, Inc.* v. *James Busey et al.,* 79 F.3d 1250, 1258 (1st Cir. 1996) (citing, *inter alia, Wilder* v. *EPA,* 854 F.2d 605 at 613–14) and *Citizens for a Better Env't* v. *Deukmejian,* 731 F. Supp. 1448, 1454–59 (N.D. Cal.), modified, 746 F. Supp. 976 (1990).

Nothing in Rule 9610 undermines the ability of EPA or citizens to bring enforcement actions to assure compliance with SIP requirements, nor does the rule contain or authorize the District to develop any ''director discretion'' or ''affirmative defense'' provision that will apply to SIP requirements. To the contrary, section 7.0 of Rule 9610 requires that the District maintain responsibility for ensuring that SIP emission reductions occur through an ''enforceable commitment,'' which becomes federally enforceable by EPA and citizens upon approval into the SIP under CAA section 110(k). *See* 79 FR 28650 at 28655 (citing Rule 9610, section 7.0). EPA has approved enforceable commitments in the past and courts have enforced these commitments against states that failed to comply with them. *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 par, 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). We believe it is appropriate to allow California to rely in its SIP on voluntary incentive programs, provided the State and/or District retain clear responsibility through an enforceable commitment to ensure that the emission reductions necessary to meet applicable CAA requirements are achieved, which EPA or citizens may enforce under sections 113 or 304 of the Act, respectively.

As we noted previously, following the State's submittal of a specific air quality plan or measure that relies on incentive programs for necessary emission reductions, EPA will evaluate that plan or measure to determine whether it satisfies the enforceability requirements of the Act. We provide these responses to the commenter's concerns only as a preliminary explanation of the enforceability requirements that future SIPs developed through the Rule 9610 process must satisfy, and we encourage the commenter and the public at large

[5] Such documentation is necessary to hold the District accountable for any SIP commitments developed in accordance with Section 7.0 of Rule 9610, as explained further in Response 3.h.

[6] Section 302(q) of the CAA defines ''applicable implementation plan,'' in relevant part, as ''the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110 of [title I of the Act] . . . and which implements the relevant requirements of [the Act].'' 42 U.S.C. 7602(q).

[7] Section 113 of the CAA authorizes EPA to issue notices and compliance orders, assess administrative penalties, and bring civil actions against any ''person,'' including a state agency, who ''has violated or is in violation of any requirement or prohibition of an applicable implementation plan. . . .'' CAA 113(a)(1)–(2), 42 U.S.C. 7413(a)(1)–(2); CAA 302(e), 42 U.S.C. 7602(e) (defining ''person'' to include a State or political subdivision thereof).

[8] Section 304(a)(1) of the CAA authorizes any person to bring a civil action against any ''person,'' including a state agency (to the extent permitted by the Eleventh Amendment to the Constitution), ''who is alleged to have violated or to be in violation of . . . an emission standard or limitation. . . .'' 42 U.S.C. 7604(a)(1); CAA 302(e), 42 U.S.C. 7602(e) (defining ''person'' to include a State or political subdivision thereof). An ''emission standard or limitation'' is defined in section 304(f), in relevant part, to mean ''a schedule or timetable of compliance'' which is in effect under the Act ''or under an applicable implementation plan.'' 42 U.S.C. 7604(f)(1). ''Schedule and timetable of compliance'' is broadly defined in section 302(p) to mean ''a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.'' 42 U.S.C. 7602(p).

[9] Earthjustice does not appear to question EPA's statement that Rule 9610 itself is enforceable against the District and that our approval of the rule would make it federally enforceable by EPA and citizens under the CAA.

to participate in future rulemakings on specific air quality plans or measures that rely on incentive programs for SIP emission reduction credit.

Comment 3.c: Citing a 2004 guidance entitled, ''Incorporating Emerging and Voluntary Measures in a State Implementation Plan'' (September 2004) (hereafter ''2004 Emerging and Voluntary Measures Guidance''), Earthjustice states that according to EPA, ''emission reductions are 'voluntary,' and therefore subject to a cap on SIP credit, when the emission reductions are not enforceable against individual sources.'' According to Earthjustice, ''Rule 9610 suggests that measures could be SIP creditable even if EPA and the public have to rely entirely on the State and local air District to ensure source compliance,'' and that this runs counter to EPA's longstanding policy and statutory interpretations, under which EPA ''has only been willing to allow such programs with a cap on the SIP credit that can be claimed.''

Response 3.c: We agree with Earthjustice's characterization of ''voluntary'' measures as those that are not directly enforceable against individual emission sources. *See, e.g.,* 1997 VMEP at 4; 2004 Emerging and Voluntary Measures Guidance at 1, 19; and 2005 Bundled Measures Guidance at 2, n. 1. We disagree, however, with the commenter's suggestion that emission reductions from voluntary measures are ''subject to'' a specific cap on SIP emission reduction credit because they are unenforceable for SIP purposes under the CAA.

Under longstanding guidance, EPA has recommended presumptive limits (sometimes referred to as ''caps'') on the amounts of emission reductions from certain voluntary and other nontraditional measures that may be credited in a SIP. Specifically, for voluntary mobile source emission reduction programs (VMEPs),[10] EPA has identified a presumptive limit of three percent (3%) of the total projected future year emission reductions required to attain the appropriate NAAQS, and for any particular SIP submittal to demonstrate attainment or maintenance of the NAAQS or progress toward attainment (RFP), 3% of the specific statutory requirement. *See* 1997 VMEP at 5. As explained in the 2001 EIP Guidance, EPA recommended this 3% cap (per pollutant) on the credit allowed for VMEPs because states are ''not required to play a direct role in implementing these programs, the programs are not directly enforceable against participating parties, and there may [be] less experience in quantifying the emission benefits from these programs.'' 2001 EIP Guidance at 158; *see also* 1997 VMEP at 5 (recommending 3% cap due to ''innovative nature of voluntary measures and EPA's inexperience with quantifying their emission reductions''). For voluntary stationary and area source measures, EPA has identified a presumptive limit of 6% of the total amount of emission reductions required for RFP, attainment, or maintenance demonstration purposes. *See* 2004 Emerging and Voluntary Measures Guidance at 9 (''EPA believes it is appropriate to limit these measures to a small portion of the SIP given the untested nature of the control mechanisms'') and ''Incorporating Bundled Measures in a State Implementation Plan (SIP),'' August 2005 (hereafter ''2005 Bundled Measures Guidance'') at 8 (recommending limits ''[d]ue to the innovative nature of voluntary and emerging measures''). EPA has also long stated, however, that states may justify higher amounts of SIP emission reduction credit for voluntary programs on a case-by-case basis, and that EPA may approve measures for SIP credit in excess of the presumptive limits ''where a clear and convincing justification is made by the State as to why a higher limit should apply in [its] case.'' 2004 Emerging and Voluntary Measures Guidance at 9; *see also* 2005 Bundled Measures Guidance at 8, n. 6 and 2014 Diesel Retrofits Guidance at 12. Thus, the presumptive ''cap'' on SIP credit referenced by Earthjustice is not a specific regulatory cap but a general policy recommendation, which states and EPA may justify departing from on a case-by-case basis, subject to notice-and-comment rulemaking on a particular SIP.

Importantly, EPA has consistently stated that SIP credit may be allowed for a voluntary or other nontraditional measure only where the State submits enforceable mechanisms to ensure that the emission reductions necessary to meet applicable CAA requirements are achieved—*e.g.,* an enforceable commitment to monitor and report on emission reductions achieved and to rectify any shortfall in a timely manner. *See* 79 FR 28650 at 28653 (citing, *inter alia,* 1997 VMEP at 4–7; 2004 Emerging and Voluntary Measures Guidance at 8–12; 2005 Bundled Measures Guidance at 7–12; and 2004 Electric-Sector EE/RE Guidance at 6–7). Thus, if California intends to satisfy a SIP requirement through reliance on an incentive program that EPA and citizens may not directly enforce against participating sources, the State/District must take responsibility for assuring that SIP emission reduction requirements are met through an enforceable commitment, which EPA and citizens may enforce against the State/District upon EPA's approval of the commitment into the SIP. EPA continues to believe that voluntary incentive measures accompanied by an enforceable commitment to monitor emission reductions achieved and timely rectify any shortfall meet the SIP control measure requirements of the Act. *See* Response 3.b above.

Should California submit a SIP that relies on incentive programs to satisfy a CAA requirement, EPA intends to evaluate the submittal to determine whether the necessary emission reductions may be enforced by EPA and citizens through an enforceable State/District commitment. Additionally, should such a SIP rely on incentive-based emission reductions in amounts that exceed EPA's presumptive limits, as discussed in EPA's longstanding guidance, EPA intends to evaluate the SIP submittal to determine whether the State and/or District have provided a clear and convincing justification for such higher amounts.

Comment 3.d: Citing both the 2001 EIP Guidance and the 2004 Emerging and Voluntary Measures Guidance, Earthjustice states that emission reductions are ''enforceable'' against the source if: (1) They are independently verifiable; (2) program violations are defined; (3) those liable for violations can be identified; (4) the District, State and EPA maintain the ability to apply penalties and secure appropriate corrective actions where applicable; (5) citizens have access to all the emissions-related information obtained from the source; (6) citizens can file suits against sources for violations; and (7) they are practicably enforceable in accordance with other EPA guidance on practicable enforceability. Earthjustice states that EPA's proposed rule recites all of these criteria except for citizen suit enforceability and questions whether this was an oversight or a deliberate attempt to mislead the public on the criteria for enforceability. In any case, Earthjustice contends that ''nothing in Rule 9610 would require incentive programs to provide for such citizen enforcement'' and that the rule ''would only require that violations be defined through contracts, [which] can only be

[10] A voluntary mobile source emission reduction program (VMEP) is a mechanism that supplements traditional emission reduction strategies through voluntary, nonregulatory changes in local transportation sector activity levels or changes in in-use vehicle and engine fleet composition, among other things. *See* 1997 VMEP at 3.

enforced by the parties to the contract.'' Earthjustice asserts that citizens would have no recourse to ''file suits against sources for violations,'' and that EPA's proposal includes ''no explanation of how this requirement is met or why it does not apply.'' To the extent EPA believes it is the latter, Earthjustice states, ''it has now afforded the public no opportunity to respond to any reasoning behind that assertion.''

Response 3.d: First, to the extent the commenter argues that all SIP emission reduction techniques must provide for citizen suits directly against emission sources, we disagree. Section 110(a)(2)(A) of the Act explicitly includes ''economic incentives'' among the ''control measures, means, or techniques'' that states may use to meet SIP requirements, and EPA has long interpreted the Act to allow SIPs to rely on nontraditional emission reduction techniques—including voluntary measures that are not directly enforceable against emitting sources—provided the State submits enforceable mechanisms to assure that the requirements of the Act are met. *See* Response 3.b and Response 3.c, above. As Earthjustice correctly notes, EPA's 2001 EIP Guidance states that emission reductions and related actions are ''enforceable'' if, among other things, ''[c]itizens can file suits against sources for violations. . . .'' 2001 EIP Guidance at 35–36.[11] As with all guidance, however, the 2001 EIP Guidance provides only non-binding recommendations and does not represent final agency action concerning the requirements for SIPs containing discretionary EIPs. *See id.* at 12, 19, and 119. Moreover, in several other policies concerning nontraditional measures, EPA has indicated that provisions for citizen suits against a state or other responsible entity (other than the emission source) may suffice to meet the Act's enforceability requirements. *See* Response 3.c above. For example, the 2004 Emerging and Voluntary Measures Guidance recommends provisions authorizing citizen suits against sources for ''emerging measures'' [12] but states that for ''voluntary measures,'' emission reductions and other required actions are enforceable if, among other things, ''EPA maintains the ability to apply penalties and secure appropriate corrective action *from the State* where applicable and *the State* maintains the [ability to] secure appropriate corrective action with respect to portions of the program that are directly enforceable against the source. . . .'' 2004 Emerging and Voluntary Measures Guidance at 3, 4 (emphases added); *see also* 2005 Bundled Measures Guidance at 25 (also discussing EPA enforcement against State) and 1997 VMEP at 6–7 (''[a] *State's* obligations with respect to VMEPs must be enforceable at the State and Federal levels'') (emphasis added). In other guidance concerning nontraditional emission reduction measures, EPA has indicated that provisions for enforcement against a ''responsible party'' may be acceptable in lieu of enforcement directly against the emitting source. *See, e.g.,* ''Guidance on SIP Credits for Emission Reductions from Electric-Sector Energy Efficiency and Renewable Energy Measures,'' August 5, 2004 (hereafter ''2004 Electric-Sector EE/RE Guidance'') at 5, 6 (distinguishing emission reductions that are ''enforceable directly against the source'' from those that are ''enforceable against *another party responsible* for the energy efficiency or renewable energy activity'') and 2014 Diesel Retrofits Guidance at 28 (emission reductions are federally enforceable only if, among other things, ''[c]itizens can file lawsuits against *the responsible party* for violations'') (emphases added). Thus, a number of EPA policies concerning nontraditional measures indicate that provisions for EPA and citizen enforcement against the State or against some other ''responsible party'' other than the source may satisfy the Act's requirements for enforceability. Earthjustice fails to identify any statutory or regulatory support for a claim that all emission reduction measures approved into a SIP must provide for citizen suits directly against emitting sources.

Second, Earthjustice's claim that Rule 9610 ''would only require that violations be defined through contracts'' which ''can only be enforced by the parties to the contract'' overlooks an important provision in the rule that requires the District to provide a mechanism for EPA and citizen enforcement in *each* submitted SIP that relies on an incentive program. Specifically, section 7.0 of Rule 9610 requires that each SIP submission in which the District relies on projections of SIP-creditable emission reductions to satisfy a CAA SIP requirement contain, among other things, an ''enforceable commitment'' that: (1) Identifies the applicable incentive program guidelines; (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 projects and willing participants, based on historical participation and estimates of remaining equipment; (3) is specifically adopted by the District as part of the SIP and accounted for in 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 Clean air Act or EPA's implementing regulations.'' *See* 79 FR 28650 at 28655 (citing Rule 9610, sections 7.1–7.4). A District commitment adopted in accordance with these requirements would, upon approval into the SIP, become enforceable by EPA and citizens under sections 113 and 304 of the Act, respectively. *See* Response 3.b. Thus, although Rule 9610 does not require that incentive programs provide for citizen enforcement directly against emission sources for contract violations,[13] the rule does require that each SIP in which the District relies on incentive program emission reductions contain, among other things, an enforceable commitment that enables EPA and citizens to hold the *District* accountable for violations of the SIP. We therefore disagree with the commenter's suggestion that Rule 9610 deprives citizens of the ability to enforce SIP emission reduction requirements.

Finally, with respect to Earthjustice's claim that EPA's proposal provides ''no explanation of how this requirement is met or why it does not apply,'' it appears that Earthjustice is referring to

[11] The 2001 EIP Guidance states that ''[e]mission reductions use, generation, and other required actions are enforceable if'': (1) They are independently verifiable; (2) program violations are defined; (3) those liable for violations can be identified; (4) the State and EPA maintain the ability to apply penalties and secure appropriate corrective actions where applicable; (5) citizens have access to all the emissions-related information obtained from the source; (6) citizens can file suits against sources for violations; and (7) they are practicably enforceable in accordance with other EPA guidance on practicable enforceability. *See* 2001 EIP Guidance at 35–36.

[12] EPA has described ''emerging measures'' as new emission reduction measures for which pollutant reductions are more difficult to accurately quantify than traditional SIP emission reduction measures. *See* 2004 Emerging and Voluntary Measures Guidance at 13 and 2005 Bundled Measures Guidance at 2.

[13] Under the Carl Moyer, Prop 1B, and EQIP funding programs, each grantee must sign a contract specifying terms and conditions of the grant which are enforceable by the funding agency. *See, e.g.,* CARB, ''The Carl Moyer Program Guidelines, Approved Revisions 2011,'' Release Date: July 11, 2014, at Chapter 3, Section Y (''Minimum Contract Requirements'') (available electronically at *http://www.arb.ca.gov/msprog/moyer/guidelines/2011gl/2011cmpgl_12_30_14.pdf).*

EPA's policy recommendation concerning citizen suits against *emission sources* as a ''requirement.'' As discussed above in this response, however, the CAA does not limit SIPs to those emission reduction techniques that citizens may directly enforce against an emission source, nor do EPA's guidance documents establish any requirement that nontraditional emission reduction measures provide specifically for citizen suits against sources. In our proposed rule, we referenced numerous EPA guidance documents addressing nontraditional emission reduction measures that ''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.'' 79 FR 28650 at 28653 (citing, *inter alia,* 1997 VMEP, 2004 Emerging and Voluntary Measures Guidance, and 2005 Bundled Measures Guidance). Consistent with these guidance documents, our proposed rule highlighted the importance of the enforceable ''backstop'' commitment from the State to monitor emission reductions achieved and to rectify shortfalls in a timely manner, which must accompany any nontraditional emission reduction measure submitted for SIP purposes. *Id.* and 79 FR 28650 at 28654–55 (discussing necessary components of a SIP submittal that relies on nontraditional emission reduction measures). Our proposed rule also discussed the requirements concerning enforceable SIP commitments in section 7.0 of Rule 9610 and provided specific recommendations for the District to consider in its development and adoption of such commitments, to ensure that the requirements of the Act are met. *Id.* at 28655. We believe these explanations are adequate to inform the public of EPA's policies concerning enforceability of nontraditional emission reduction measures and to provide a preview of the factors that EPA intends to apply in reviewing enforceable commitments submitted by the District going forward. As EPA also explained at proposal, EPA will review each SIP submittal developed pursuant to Rule 9610 (including the necessary evaluation of the applicable incentive program guidelines) on a case-by-case basis, following notice-and-comment rulemaking, to determine whether the applicable requirements of the Act are met. *See* 79 FR 28650 at 28654, 28658.

To the extent the commenter disagrees with EPA's interpretations of the Act, we encourage the commenter to submit comments on the SIP rulemakings through which EPA takes final action on air quality plans or measures that rely on incentive program emission reductions. Nothing in our approval of Rule 9610 today deprives the public of these opportunities to comment on these future SIP actions.

Comment 3.e: Earthjustice states that ''[t]he structure of the CAA reinforces EPA's conclusion that Congress was not willing to rely on states alone to guarantee that the claimed emission reductions would occur or be enforced.'' According to Earthjustice, section 113 of the Act gives EPA authority to ensure compliance whenever any person is in violation of any requirement of the Act and section 304 allows citizens to enforce the requirements of the Act. Earthjustice also quotes from the Supreme Court's decision in *Pennsylvania* v. *Del. Valley Citizens' Council for Clean Air,* 478 U.S. 546, 560 (1986), to support its statement that Congress enacted section 304 specifically to encourage citizen participation in the enforcement of standards and regulations established under the Act and ''to afford citizens very broad opportunities to participate in the effort to prevent and abate air pollution.''

Response 3.e: We do not dispute the importance of federal enforcement under section 113 of the Act and citizen enforcement under section 304 of the Act. As explained in our proposed rule and further in these responses to comments, EPA has consistently stated in longstanding guidance that SIP credit may be allowed for a voluntary or other nontraditional emission reduction measure only where the State submits enforceable mechanisms to ensure that the emission reductions necessary to meet applicable CAA requirements are achieved (*e.g.,* an enforceable commitment to monitor and report on emission reductions achieved and to timely rectify any shortfall), which EPA and citizens may enforce under CAA sections 113 and 304, respectively, upon approval into the SIP. *See* 79 FR 28650 at 28653–28655 and Response 3.b above. We encourage citizens to participate in the effort to prevent and abate air pollution by requesting information from the District concerning the commitments it has adopted under Rule 9610 and enforcing these commitments in the U.S. district courts in accordance with section 304 of the Act.

Comment 3.f: Earthjustice claims that the Rule 9610 definition of ''enforceable'' would not only waive any notion that citizens can file a suit to enforce the reductions but ''would also waive any requirement that EPA have any 'ability to apply penalties and secure appropriate corrective actions' against the source.'' The commenter asserts that EPA cannot enforce the conditions of a contract between the District and the source and that ''the State and District are free to shield sources from enforcement, or even amend or rescind these contracts altogether without EPA oversight.'' According to Earthjustice, ''EPA simply has no claim that it can apply penalties or secure corrective actions against the sources responsible for reducing emissions'' and ''no basis for asserting that [the enforceability] criterion is met.''

Response 3.f: Although we agree that EPA cannot enforce the conditions of a contract issued by the District pursuant to a state incentive program that is not approved into the SIP under CAA section 110, we disagree with the claim that this renders the emission reductions achieved by such a program unenforceable by citizens under the Act. As explained in response to comment 3.d., above, Rule 9610 requires the District to provide a mechanism for EPA and citizen enforcement in *each* submitted SIP that relies on an incentive program. Specifically, section 7.0 of Rule 9610 requires that each SIP submission in which the District relies on projections of SIP-creditable emission reductions to satisfy a CAA SIP requirement contain, among other things, an ''enforceable commitment'' containing specific provisions to ensure that the District remains accountable for the required emission reductions. Upon EPA's approval of an enforceable SIP commitment by the District, section 113 of the Act authorizes EPA to apply penalties and secure appropriate corrective actions to enforce the requirements of the commitment against the District. *See* Response 3.b. A SIP-approved commitment cannot be modified except through a SIP revision adopted by the State after reasonable notice and public hearing and approved by the EPA through notice-and-comment rulemaking. *See* CAA section 110(l); 5 U.S.C. 553; 40 CFR 51.105. Consequently, should the District's amendment or rescission of contracts issued to participating sources result in a shortfall in the emission reductions required under a SIP commitment, EPA may enforce the District's obligation to implement a remedy, provided the District's SIP commitment includes a schedule for adoption and submittal of

substitute measures to remedy any shortfalls as required by Rule 9610. *See* Rule 9610, section 7.4; *see also* Response 3.d above (discussing requirements of Rule 9610, section 7.0). EPA would not approve a submitted SIP revision under Rule 9610 that did not contain such a schedule.

Comment 3.g: Earthjustice states that ''EPA seems to imply that it is enough that EPA can push for the District to fulfill any shortfall in emission reductions through other means'' but claims that EPA ''has not analyzed this rule through the relevant criteria for enforceable SIP commitments, which are subject to limits on quantity, etc.'' As a result, Earthjustice asserts that commenters have no basis for unraveling EPA's legal rationale.

Response 3.g: Because we are not approving any State or District commitments in today's action, it is not necessary to evaluate this SIP submittal in accordance with the criteria that EPA has historically applied in approving enforceable commitments. We will apply the relevant criteria for evaluating enforceable SIP commitments when we take action on a SIP that relies on a commitment to satisfy the control measure requirements of the Act.

Comment 3.h: Earthjustice claims that the Rule 9610 definition of enforceable does not allow for independent verification or even the identification of liable sources. Earthjustice states that EPA identified several defects in the District's rule that would limit the disclosure of information necessary to verify compliance, such as ''problems in [the] Annual Report'' and ''the District's mistaken interpretation of, and reference to, the Federal Food Security Act.'' Based on these defects alone, the commenter claims that it is unclear why EPA is still proposing to approve the rule.

Response 3.h: We continue to believe that the definition of ''enforceable'' in Rule 9610 generally allows for independent verification of emission reductions and identification of liable sources. As we explained in our proposed rule, 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 Rule 9610].'' 79 FR 28650 at 28654 (citing Rule 9610, section 2.8). Additionally, Rule 9610 requires that each SIP in which the District relies on emission reductions achieved through incentive programs contain an ''enforceable commitment'' by the District to adopt and submit substitute measures to EPA by specified dates if there is a shortfall in required emission reductions for a particular year, among other things. *See* Rule 9610, section 7.4. Read together, these provisions of Rule 9610 obligate the District to include, with each SIP submittal that relies on incentive programs for necessary emission reductions, an enforceable commitment that enables EPA and citizens to obtain records adequate to independently confirm whether necessary emission reductions have occurred. Going forward, we intend to review each SIP commitment submitted by the District for compliance with these ''enforceability'' requirements in section 2.8 and the provisions concerning commitments in section 7.0 of Rule 9610, in addition to the applicable requirements of the Act.

One significant exception to the general enforceability provisions in Rule 9610 is the provision in section 6.2 that categorically prohibits public disclosure of records related to NRCS's implementation of the EQIP program. As explained in our proposed rule (*see* 79 FR 28650 at 28657 and Proposal TSD at 9–10), section 6.2 of Rule 9610 does not accurately describe NRCS's statutory obligations with respect to disclosure of information concerning the EQIP program. Based on further evaluation of this provision and in response to Earthjustice's comments, we find that this provision necessitates a limited disapproval of Rule 9610 because, in addition to stating NRCS's statutory obligations incorrectly, the provision creates a potential conflict between the requirements of Rule 9610 and the requirements of the CAA concerning public availability of emission data. *See* CAA 114(c) and 40 CFR 2.301(a)(2); *see also* 2001 EIP Guidance at section 5.1d (''Procedures for public disclosure of information''). Therefore, EPA is finalizing a limited approval and limited disapproval of Rule 9610 on the basis of this deficiency in section 6.2 of the rule. This limited disapproval does not trigger any sanctions clocks under CAA section 179(a) because Rule 9610 was not submitted to address a requirement of part D, title I of the Act or in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (*i.e.,* a ''SIP Call''), but it does trigger an obligation on EPA to promulgate a federal implementation plan (FIP) to correct the deficiency, unless the State submits and EPA approves a corrective SIP revision within two years of the disapproval (*see* CAA section 110(c)(1)(B)). EPA expects the District to revise section 6.2 at its earliest opportunity to correct the errors in this provision and to ensure that the rule does not preclude disclosure of emission data related to the EQIP program.

With respect to any future SIP submittal that relies on emission reductions achieved through EQIP to satisfy a CAA requirement, we expect that the annual reports certified by NRCS, as described in the March 2014 Addendum signed by NRCS, EPA, CARB and the District,[14] will provide information that enables EPA and the public to verify the emissions of participating sources with an adequate level of accuracy and to determine whether the District has violated any SIP emission reduction commitment. *See* 79 FR 28650 at 28657 and Proposal TSD at 10–11. Additionally, in order for emission reductions achieved through EQIP to be enforceable under the CAA, the District will have to submit an enforceable SIP commitment to specifically describe the information obtained from NRCS in the relevant annual demonstration reports, to incorporate project-specific information obtained from NRCS in the electronic ''Data Sheet'' associated with each of these annual demonstration reports, and to make the NRCS's certified annual reports themselves available to the public upon request. *See id.* and Rule 9610, sections 6.1 and 7.0. EPA would not approve any SIP submittal that relies on emission reductions achieved through EQIP (or any other incentive program) if it does not provide for public availability of emission data consistent with CAA requirements. 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. We encourage the District to consult with us during its

[14] *See* ''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'' (''NRCS Addendum'').

development of any SIP commitments under section 7.0 of Rule 9610 to ensure that these commitments will be legally and practically enforceable by EPA and citizens, in accordance with the requirements of the Act. *See* Response 3.i, below.

With respect to the 2013 Annual Demonstration Report, we provided suggestions for future reports in the Proposal TSD. *See* Proposal TSD at 52–55. We expect the District to consider these recommendations as it develops its annual demonstration reports for future years.

Comment 3.i: Earthjustice argues that EPA's analysis ignores ''the more fundamental defect which is that EPA and citizens can only rely on data submitted to, or collected by the District'' and that this defect undermines any claim that the rule will ensure that citizens have access to all emissions-related information obtained from participating sources. According to Earthjustice, EPA has no authority to inspect sources for compliance with the contracts between the District and the source—*i.e.,* EPA cannot collect its own information, conduct inspections, demand additional reporting, or enforce the failure to submit required reports. Earthjustice contends that EPA's ability to verify any of these emission reductions is limited because the emission reductions are secured through contracts that do not include EPA. Thus, Earthjustice claims, EPA ''lacks the ability to independently verify compliance and instead must rely on the District and State to determine compliance.'' For example, with respect to information regarding sources of EQIP funding, Earthjustice argues that because EPA and the public will not be provided with any information that can be independently verified or that identifies the participating sources, there is no way for EPA or the public to ''verify compliance by 'the source' as EPA's definition of enforceability requires'' or to ''even identify sources liable for violations.''

Response 3.i: We disagree with the commenter's claim that EPA's definition of enforceability ''requires'' that EPA and the public have the ability to verify compliance by ''the source.'' The commenter cites two guidance documents (the 2001 EIP Guidance and 2004 Emerging and Voluntary Measures Guidance [15]) to support its claim that, to be ''enforceable,'' an emission reduction measure must allow citizens to ''file suits against sources for violations.'' As explained above in Response 3.d, however, the CAA does not limit SIPs to those emission reduction techniques that citizens may directly enforce against emission sources, and EPA has indicated in a number of other guidance documents that provisions for EPA and citizen enforcement against a state or against some other ''responsible party'' (other than the source) may satisfy the Act's requirements for enforceability. *See* Response 3.d above.

We continue to believe that Rule 9610 generally ensures that citizens will have access to all emissions-related information obtained by the District from sources participating in incentive programs, with one significant exception in section 6.2 of the rule. As we explained in the proposed rule, section 6.1 of Rule 9610 specifically requires the District to keep and maintain ''[a]ll documents created and/or used in implementing the requirements of Section 4.0'' of the rule and to make these documents available for public review consistent with the requirements of the California Public Records Act and related requirements. *See* 79 FR 28650 at 28657 (citing Rule 9610, section 6.1). Section 4.0 of Rule 9610, in turn, requires the District to annually prepare a public report that contains, among other things, identification of the amounts of ''SIP-creditable emission reductions'' from incentive programs that the District is relying on for SIP purposes; descriptions of the applicable incentive program guidelines; and detailed information about the individual projects relied upon to achieve the required emission reductions. *See* 79 FR 28650 at 28656 (citing Rule 9610, sections 4.0–4.6). Additionally, section 7.0 of the rule requires the District to make enforceable commitments that enable EPA and citizens to obtain records adequate to independently confirm whether necessary emission reductions have occurred. *See* Response 3.d and Response 3.h, above. Many of the incentive program guidelines identified in section 3.1 of Rule 9610 require that the District maintain specific documentation of pre-project and post-project inspections for each funded project and that all grantees submit detailed compliance-related documentation to the District on an annual or biennial basis. *See, e.g.,* Proposal TSD at 15–16 (discussing provisions of Carl Moyer program guidelines) and 44–45 (discussing provisions of Prop 1B program guidelines). Provided the District commits to make these project records and other compliance-related documents available to the public upon request, consistent with the requirements of sections 6.1 and 7.0 of Rule 9610, EPA and citizens would have access to emissions-related information that the District obtains from participating sources.[16]

Finally, we disagree with the commenter's claim that EPA lacks authority to collect information relevant to source compliance with the contracts issued by the District. Rule 9610 requires the District to maintain, with respect to all projects that the District relies upon for SIP emission reduction credit, reports submitted by grantees and records of all inspections and enforcement actions, among other things. *See* Rule 9610, section 6.1. Upon EPA's approval of a District commitment into the SIP, section 114(a) of the Act authorizes EPA to require information from ''any person'' who may have information necessary for the purpose of determining whether the District has violated such a SIP commitment—including all compliance-related documentation that the District maintains in accordance with the applicable incentive program guidelines. *See* CAA section 114(a) (authorizing the EPA to require submission of information from ''any person'' who may have information necessary for the purpose of determining whether a SIP requirement has been violated) and section 302(e) (defining ''person'' to include a State or political subdivision thereof). Additionally, both EPA and citizens may obtain compliance-related records from the District under the California Public Records Act. *See* Rule 9610, section 6.1. Thus, although EPA is not authorized to *enforce* the individual contracts between the District and the source, both EPA and citizens may collect information concerning source compliance from the District and, in

[15] As explained in Response 3.d., the 2004 Emerging and Voluntary Measures Guidance recommends provisions authorizing citizen suits against sources for ''emerging measures'' but states that for ''voluntary measures,'' emission reductions and other required actions are enforceable if, among other things, ''EPA maintains the ability to apply penalties and secure appropriate corrective action *from the State* where applicable and *the State* maintains the [ability to] secure appropriate corrective action with respect to portions of the program that are directly enforceable against the source. . . .'' 2004 Emerging and Voluntary Measures Guidance at 3, 4 (emphases added).

[16] Although EPA or citizen enforcement of a SIP commitment adopted in accordance with section 7.0 of Rule 9610 generally depends upon project-related information maintained by the District, this does not preclude independent verification of the emission reductions if the applicable incentive program guidelines require participating sources to regularly submit compliance-related documentation to the District and require the District to maintain these records for specified amounts of time. *See, e.g.,* 2011 Carl Moyer Guidelines at 3–31 and Proposal TSD at 15.

some cases directly from participating sources,[17] to the extent this information is necessary for the purpose of determining whether the District has violated a SIP commitment.

We expect an enforceable commitment that obligates the District to comply with adequate monitoring and recordkeeping requirements would ensure that emission reductions can be independently verified. In any case, EPA will review each submitted SIP commitment on a case-by-case basis to determine whether the commitment is legally and practically enforceable by EPA and citizens, in accordance with the requirements of the Act.

Comment 3.j: Earthjustice argues that ''[t]o the extent EPA wishes to allow credit for unenforceable emission reduction programs, it has a policy for doing so''—*i.e.,* ''[t]hese programs can be included with a cap on the credit they can receive.'' Alternatively, Earthjustice contends, to the extent EPA wishes to treat these programs as enforceable SIP commitments, it also has a policy for reviewing and approving those, but the analysis of Rule 9610 is not consistent with those policies.

Response 3.j: We disagree with the commenter's suggestions that emission reductions from voluntary incentive measures are entirely ''unenforceable'' under the CAA or subject to a specific ''cap'' on the credit allowed in a SIP. As explained above in Response 3.c, EPA has consistently stated in longstanding guidance that SIP credit may be allowed for a voluntary or other nontraditional measure only where the State takes responsibility for assuring that SIP emission reduction requirements are met through an enforceable commitment, which EPA and citizens may enforce upon EPA's approval of the commitment into the SIP. That is, emission reductions achieved by voluntary measures are enforceable under the Act where they are accompanied by such an enforceable commitment. In addition, the ''cap'' on SIP credit for voluntary measures that Earthjustice refers to is not a specific regulatory cap but a general policy recommendation. States and EPA may justify departing from these caps on a case-by-case basis, subject to notice-and-comment rulemaking on a particular SIP. *See* Response 3.c and EPA guidance documents referenced therein.

In any case, we are not approving any State or District commitments in today's action and therefore do not have reason to evaluate this SIP submittal in accordance with EPA's policy criteria for approving enforceable commitments. As EPA stated in the proposed rule, 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. *See* 79 FR 28650 at 28654, 28658. We will apply the relevant criteria for evaluating SIP commitments when we take action on a SIP that contains such a commitment. Nothing in Rule 9610 supplants the applicable requirements of the Act, nor does anything in EPA's approval of Rule 9610 alter the requirements of the Act as they apply to SIPs that rely on emission reductions achieved through voluntary incentive programs.

Comment 4: Earthjustice claims that the ''best option for proceeding . . . would be to adopt backstop control measures that are fully SIP-creditable and use incentive programs to address cost-effectiveness concerns and incentivize early adoption and turnover.''

Response 4: We continue to support the use of incentive programs to address cost-effectiveness concerns and to incentivize early adoption and turnover to cleaner, less-polluting mobile sources, and we encourage the commenter to provide these recommendations, together with any recommendations it may have concerning ''backstop'' control measures, to the State and/or District during their state and local rulemaking processes on air quality plans that rely on incentive programs for necessary emission reductions.

Comment 5: Earthjustice claims that ''Rule 9610 is a flawed attempt to make programs 'SIP creditable' by *fiat''* and that this is not legitimate under the CAA. Earthjustice also asserts that ''EPA's inconsistent analysis of the rule does not help in this effort.'' In conclusion, Earthjustice asserts that if the desired goal is to promote the adoption of incentive programs, EPA, the State, and the District should go back to the drawing board and work with stakeholders to come up with a legally viable approach.''

Response 5: For the reasons provided in Response 1 through Response 3 above, we disagree with Earthjustice's claims that Rule 9610 is a flawed attempt to make programs SIP creditable by *fiat* and that EPA has provided an inconsistent analysis of the rule. As previously explained, nothing in Rule 9610 supplants the applicable requirements of the Act, and 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. *See* 79 FR 28650 at 28654, 28658.

We agree, however, with Earthjustice's suggestion that EPA, the State, the District and interested stakeholders should work together toward the development of air quality plans and measures that satisfy CAA requirements as applied to discretionary incentive programs and other nontraditional emission reduction measures. We look forward to the public's continued involvement, both during the State and local rulemaking processes through which the District and ARB adopt these plans and during the EPA rulemakings through which EPA takes final action on these plan submittals under section 110 of the CAA.

Comment 6: The SJVUAPCD states that incentive funds to reduce mobile source emissions have become a critical component of the District's clean air strategy in the SJV and expresses appreciation for EPA's work with the District and with CARB, NRCS, and other stakeholders throughout the development of Rule 9610 and related documents. The District states that it supports EPA's proposal to fully approve Rule 9610 as a revision to the California SIP.

Response 6: For the reasons provided in our proposed rule (79 FR 28650 at 28657) and further explained in Response 3.h, EPA is finalizing a limited approval and limited disapproval of Rule 9610. We look forward to the District's submittal of a revised rule that corrects the deficiencies we have identified in section 6.2 of the rule and addresses the recommendations provided in our proposed rule and Proposal TSD.

EPA supports and encourages the continuing efforts by CARB, the District, and NRCS to make voluntary economic incentive programs an effective part of the SJV's strategy for clean air. We commit to continue our work with these agencies to develop reliable methods for documenting and verifying the emission reductions achieved through these programs and to ensure that future air

[17] For example, under certain Prop 1B program guidelines, each grantee must be subject to detailed contract provisions requiring the grantee to maintain certain documents for specified periods and/or submit these documents to the District on a regular basis. *See, e.g.,* 2008 Prop 1B guidelines at Section III.D (''Local Agency Project Implementation Requirements''), Section IV (''General Equipment Project Requirements''), and Appendix A, Section C (''Recordkeeping Requirements'') and Section D (''Annual Reporting Requirements''); 2010 Prop 1B guidelines at Section IV.A (''Project Implementation Requirements''), Section VI (''General Equipment Project Requirements''), and Appendix A, Section F (''Recordkeeping Requirements'') and Section G (''Annual Reporting Requirements'').

quality plans for the SJV area that rely on economic incentives will satisfy the requirements of the Act.

III. Final Action

Under CAA sections 110(k)(3) and 301(a) of the Act and for the reasons set forth above and in our May 19, 2014 proposed rule, EPA is finalizing a limited approval and limited disapproval of Rule 9610 as submitted June 26, 2013. We are finalizing a limited approval of the submitted rule because we continue to believe that the rule improves the SIP and is largely consistent with the applicable CAA requirements. This action incorporates the submitted rule, including those provisions identified as deficient, into the SJV portion of the federally-enforceable California SIP.

We are finalizing a limited disapproval of Rule 9610 because section 6.2 of the rule incorrectly describes NRCS's statutory obligations with respect to disclosure of information concerning the EQIP program and creates a potential conflict with the requirements of the CAA concerning public availability of emission data. Our reasons for disapproving the rule on these bases are explained in the proposed rule and further in our responses to comments above.

This limited disapproval does not trigger any sanctions clocks under CAA section 179(a) because Rule 9610 was not submitted to address a requirement of part D, title I of the Act or in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (*i.e.,* a ''SIP Call''). The limited disapproval does trigger an obligation on EPA to promulgate a federal implementation plan (FIP) to correct the deficiency, unless the State submits and EPA approves a corrective SIP revision within two years of the disapproval (*see* CAA section 110(c)(1)(B)). EPA expects the District to revise section 6.2 at its earliest opportunity to correct the errors in this provision and to ensure that the rule does not preclude disclosure of emission data related to the EQIP program.

Note that the submitted rule has been adopted by the SJVUAPCD, and EPA's final limited disapproval does not prevent the local agency from enforcing it. The limited disapproval also does not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: *http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf.*

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the SJVUPACD rule described in the amendments to 40 CFR 52 set forth below. EPA has made, and will continue to make, these documents available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals and limited approvals/limited disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this limited approval/limited disapproval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local

governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on May 11, 2015.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 8, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: February 26, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(455) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(455) New and amended regulations for the following APCDs were submitted on June 26, 2013.

(i) Incorporation by reference.

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

(*1*) Rule 9610, ''State Implementation Plan Credit for Emission Reductions Generated through Incentive Programs,'' adopted on June 20, 2013.

[FR Doc. 2015–07972 Filed 4–8–15; 8:45 am]

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