

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone regulations in 33 CFR 165.1123 for the Big Bay Boom Fourth of July Fireworks regulated area from 8 p.m. until 10 p.m. on July 4, 2021. This action is being taken to provide for the safety of life on navigable waterways during the fireworks event. Our regulation for Southern California Annual Firework Events for the San Diego Captain of the Port Zone, § 165.1123, identifies the regulated areas for the Big Bay Boom Fourth of July Fireworks event which encompasses multiple portions of San Diego Bay. Under the provisions of § 165.1123, a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port, or his designated representative. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or Local law enforcement agencies in enforcing this regulation.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, and local advertising by the event sponsor.

If the Captain of the Port or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: May 14, 2021.

**T.J. Barelli,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2021-10737 Filed 5-20-21; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2019-0440; FRL-10022-39-Region 9]

### Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; Western Nevada County, California

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to

approve, or conditionally approve, all or portions of a state implementation plan (SIP) revision submitted by the State of California to meet Clean Air Act (CAA or “Act”) requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS or “standards”) in the Nevada County (Western part), California ozone nonattainment area (“Western Nevada County”). The SIP revision is the “Ozone Attainment Plan, Western Nevada County, State Implementation Plan for the 2008 Primary Federal 8-Hour Ozone Standard of .075 ppm” (“2018 Western Nevada County Ozone Plan” or “Plan”). The 2018 Western Nevada County Ozone Plan addresses the “Serious” nonattainment area requirements for the 2008 ozone NAAQS, including the requirements for emissions inventories, attainment demonstration, reasonable further progress, reasonably available control measures, and contingency measures, among others; and establishes motor vehicle emissions budgets. The EPA is approving the 2018 Western Nevada County Ozone Plan as meeting all the applicable ozone nonattainment area requirements except for the contingency measure requirement, which the EPA is conditionally approving.

**DATES:** This rule is effective on June 21, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2019-0440. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** T. Khoi Nguyen, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947-4120, or by email at [nguyen.thien@epa.gov](mailto:nguyen.thien@epa.gov).

## SUPPLEMENTARY INFORMATION:

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### I. Summary of the Proposed Action

On January 12, 2021, the EPA proposed to approve, under CAA section 110(k)(3), and to conditionally approve, under CAA section 110(k)(4), a submittal from the California Air Resources Board (CARB) and the Northern Sierra Air Quality Management District (NSAQMD or “District”) as a revision to the California SIP for the Western Nevada County nonattainment area.<sup>1</sup> The SIP revision is the 2018 Western Nevada County Ozone Plan.<sup>2</sup> We refer to our January 12, 2021, proposed rule as the “proposed rule.”

In our proposed rule, we provided background information on the ozone standards,<sup>3</sup> area designations, and related SIP revision requirements under the CAA and the EPA’s implementing regulations for the 2008 ozone standards, referred to as the 2008 Ozone SIP Requirements Rule (“2008 Ozone SRR”).<sup>4</sup> To summarize, the Western Nevada County ozone nonattainment area is classified as Serious for the 2008 ozone NAAQS, and the 2018 Western Nevada County Ozone Plan was developed to address the statutory and regulatory requirements for revisions to the SIP for the Western Nevada County Serious ozone nonattainment area.

Our proposed conditional approval of the 2018 Western Nevada County Ozone Plan relied on specific commitments: (1) From the District to adopt a rule that

<sup>1</sup> 86 FR 2318 (January 12, 2021). The Western Nevada County nonattainment area for the 2008 ozone NAAQS consists of the portion of Nevada County west of the ridge of the Sierra Nevada mountains. For a precise definition of the boundaries of the Western Nevada County 2008 ozone nonattainment area, see 40 CFR 81.305.

<sup>2</sup> Letter dated December 2, 2018, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, U.S. Environmental Protection Agency Region IX. The 2018 Western Nevada County Ozone Plan was submitted electronically through the EPA’s State Planning Electronic Collaboration System on December 7, 2018, making this date the effective date of submittal. The Plan was deemed complete by operation of law six months after submittal, on June 7, 2019. Our proposed rule incorrectly identified the December 2, 2018 letter date as the submittal date, and June 2, 2019 as the date that the Plan was deemed complete by operation of law.

<sup>3</sup> The 1-hour ozone NAAQS is 0.12 parts per million (ppm) (one-hour average), the 1997 ozone NAAQS is 0.08 ppm (eight-hour average), and the 2008 ozone NAAQS is 0.075 ppm (eight-hour average).

<sup>4</sup> 2008 Ozone SRR, 80 FR 12264, 12283 (March 6, 2015).

would provide for additional emissions reductions in the event that Western Nevada County fails to meet a reasonable further progress (RFP) milestone or fails to attain the 2008 ozone NAAQS by the applicable attainment date, and (2) from CARB to submit the adopted District rule to the EPA as a SIP revision within 12 months of our final action.<sup>5</sup> For more information on the SIP revision submittals and related commitments, please see our proposed rule.

In our proposed rule, we reviewed the various SIP elements contained in the 2018 Western Nevada County Ozone Plan, evaluated them for compliance with statutory and regulatory requirements, and concluded that they meet all applicable requirements, except for the contingency measure requirement, for which the EPA proposed conditional approval. More specifically, in our proposed rule, we based our proposed actions on the following determinations:

- CARB and the District met all applicable procedural requirements for public notice and hearing prior to the adoption and submittal of the 2018 Western Nevada County Ozone Plan;<sup>6</sup>
- The 2011 base year emissions inventory from the 2018 Western Nevada County Ozone Plan is comprehensive, accurate, and current, and therefore meets the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115. Additionally, the future year baseline projections reflect appropriate calculation methods and the latest planning assumptions and are properly supported by the SIP-approved stationary and mobile source measures;<sup>7</sup>

- The process followed by the District to identify reasonably available control measures (RACM) is generally consistent with the EPA's recommendations; the District's rules provide for the implementation of RACM for stationary and area sources of oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC);<sup>8</sup> CARB and

the Nevada County Transportation Commission (NCTC) provide for the implementation of RACM for mobile sources of NO<sub>x</sub> and VOC; there are no additional RACM that would advance attainment of the 2008 ozone NAAQS in Western Nevada County by at least one year; and therefore, the 2018 Western Nevada County Ozone Plan provides for the implementation of all RACM as required by CAA section 172(c)(1) and 40 CFR 51.1112(c);<sup>9</sup>

- The photochemical modeling in the 2018 Western Nevada County Ozone Plan shows that existing CARB and District control measures are sufficient to attain the 2008 ozone NAAQS by the applicable attainment date in Western Nevada County; given the documentation in the 2018 Western Nevada County Ozone Plan of modeling procedures and good model performance, the modeling is adequate to support the attainment demonstration; and therefore the 2018 Western Nevada County Ozone Plan meets the attainment demonstration requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108;<sup>10</sup>

- The 15 percent rate-of-progress (ROP) demonstration element in the 2018 Western Nevada County Ozone Plan meets the requirements of CAA section 182(b)(1);<sup>11</sup>

- The RFP demonstration in the 2018 Western Nevada County Ozone Plan provides for emissions reductions of VOC or NO<sub>x</sub> of at least 3 percent per year on average for each three-year period, beginning 6 years after the baseline year until the attainment date, and thereby meets the requirements of CAA sections 172(c)(2) and 182(c)(2)(B) and 40 CFR 51.1110(a)(2)(ii);<sup>12</sup>

- The motor vehicle emissions budgets in the 2018 Western Nevada County Ozone Plan are consistent with the RFP demonstration, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements in 40 CFR 93.118(e), including the adequacy criteria in 40 CFR 93.118(e)(4) and (5);<sup>13</sup> and

- Through previous EPA approvals of the 1993 Photochemical Assessment Monitoring Station SIP revision, the "Annual Network Plan Covering Monitoring Operations in 25 California Air Districts, July 2020" with respect to the Western Nevada County element,<sup>14</sup>

and CARB's enhanced monitoring plan submittal for Western Nevada County,<sup>15</sup> the enhanced monitoring requirements under CAA section 182(c)(1) and 40 CFR 51.1102 for Western Nevada County have been met.<sup>16</sup>

In light of the decision from the Ninth Circuit Court of Appeals in *Bahr v. EPA* ("Bahr"),<sup>17</sup> the District<sup>18</sup> and CARB<sup>19</sup> committed to supplement the contingency measure element through submission, as a SIP revision (within one year of our final conditional approval action), of a revised District rule or rules that would add new limits or other requirements if an RFP milestone is not met or if the area fails to attain the 2008 ozone NAAQS by the applicable attainment date.<sup>20</sup> The EPA proposed to conditionally approve the contingency measure element as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9).

For the emissions statement element, the proposed rule states that District Rule 513, "Emissions Statements and Recordkeeping," approved as a revision to the California SIP on June 21, 2017,<sup>21</sup> fulfills the relevant emissions statement requirements of CAA section 182(a)(3)(B)(i).<sup>22</sup> Accordingly, the emissions statement element was previously satisfied through the EPA's approval of Rule 513 on June 21, 2017. However, the EPA's December 11, 2017 finding of failure to submit action incorrectly identified the emissions statement element for Western Nevada County as not having been submitted.<sup>23</sup> Additionally, we note that language in

EPA Region IX, to Ravi Ramalingam, Chief, Consumer Products and Air Quality Assessment Branch, Air Quality Planning and Science Division, CARB.

<sup>15</sup> Letter dated November 9, 2020, from Dr. Michael T. Benjamin, Chief, Air Quality Planning and Science Division, CARB, to Meredith Kurpius, Assistant Director, EPA Region IX, enclosing the "2020 Monitoring Network Assessment (October 2020)." The assessment includes a five-year network assessment and an updated enhanced monitoring plan, as required by 40 CFR 58, Appendix D, Section 5(a).

<sup>16</sup> 86 FR 2318, 2336.

<sup>17</sup> *Bahr v. EPA*, 836 F.3d 1218 (9th Cir. 2016) (rejecting early-implementation of contingency measures and concluding that the contingency measure requirement of CAA section 172(c)(9) can only be satisfied by a measure that takes effect at the time the area fails to make RFP or attain by the applicable attainment date, not before).

<sup>18</sup> Letter dated October 26, 2020, from Gretchen Bennett, NSAQMD Air Pollution Control Officer, to Richard Corey, CARB Executive Officer.

<sup>19</sup> Letter dated November 16, 2020, from Richard Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX. CARB's letter also forwarded the District's commitment letter to the EPA.

<sup>20</sup> 86 FR 2318, 2332–2333.

<sup>21</sup> 82 FR 28240 (June 21, 2017).

<sup>22</sup> 86 FR 2318, 2323.

<sup>23</sup> 82 FR 58118 (December 11, 2017).

<sup>5</sup> Letter dated November 16, 2020, from Richard Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX. CARB's letter also forwarded the District's commitment letter to the EPA. The District's letter is dated October 26, 2020, from Gretchen Bennett, NSAQMD Air Pollution Control Officer, to Richard Corey, CARB Executive Officer.

<sup>6</sup> 86 FR 2318, 2321.

<sup>7</sup> Id. at 2321–2322 and 2326–2330.

<sup>8</sup> Ground-level ozone pollution is formed from the reaction of VOC and NO<sub>x</sub> in the presence of sunlight. CARB refers to reactive organic gases (ROG) in some of its ozone-related submittals. The CAA and the EPA's regulations refer to VOC, rather than ROG, but both terms cover essentially the same set of gases. In this final rule, we use the term VOC to refer to this set of gases.

<sup>9</sup> 86 FR 2318, 2323–2326.

<sup>10</sup> Id. at 2326–2328.

<sup>11</sup> Id. at 2330.

<sup>12</sup> Id. at 2330–2332.

<sup>13</sup> Id. at 2334–2335.

<sup>14</sup> Letter dated November 5, 2020, from Gwen Yoshimura, Manager, Air Quality Analysis Office,

the proposed rule stating that the EPA was “propos[ing] to find” that Rule 513 meets the emissions statement requirements could be read to indicate that the EPA was proposing to address this element in the proposed rule. Therefore, we now clarify that the EPA’s June 21, 2017 approval of Rule 513 satisfied the emissions statement element for Western Nevada County prior to the finding of failure to submit action and prior to the proposed rule.<sup>24</sup>

For the clean fuels fleet program element, the proposed rule states that through the 1994 “Opt-Out Program” SIP revision, the clean fuels fleet program requirements in CAA sections 182(c)(4) and 246 and 40 CFR 51.1102 for Western Nevada County have been met with respect to the 2008 ozone NAAQS.<sup>25</sup> However, CAA section 246(a)(3) applies only to certain ozone nonattainment areas with a 1980 population of 250,000 or more. As indicated in our proposed rule, Western Nevada County has a population of 83,000,<sup>26</sup> and the area’s population was below 250,000 in 1980.<sup>27</sup> Therefore, we now clarify that Western Nevada County is not subject to the clean fuels fleet program element for the 2008 ozone NAAQS.

Please see our proposed rule for more information concerning the background for this action and for a more detailed discussion of the rationale for approval or conditional approval of the above-listed elements of the 2018 Western Nevada County Ozone Plan.

## II. Public Comments and EPA Responses

The public comment period on the proposed rule opened on January 12, 2021, the date of its publication in the **Federal Register**, and closed on February 11, 2021. During this period, the EPA received one comment letter submitted by Air Law for All, Ltd. on behalf of the Center for Biological Diversity and the Center for Environmental Health (collectively referred to herein as “CBD”). We address CBD’s comments in the following paragraphs of this final rule.

*Comment #1:* CBD asserts that the EPA has conflated the requirements for contingency measures under subparts 1 and 2 of part D of title I of the CAA. CBD distinguishes the generally applicable

subpart 1 RFP requirements for attainment plans under section 172(c)(2) (the commenter refers to these as “attainment RFP” requirements) from the subpart 2 RFP requirements applicable to “Moderate” and above and also Serious and above ozone nonattainment areas under CAA 182(b)(1)(A)(i) and 182(c)(2)(B) respectively (the commenter refers to these as “VOC RFP” requirements). Similarly, CBD distinguishes the subpart 1 contingency measure requirements at CAA 172(c)(9) (which, according to the commenter, are applicable upon a failure to make “attainment RFP” or to attain a NAAQS by the applicable attainment date) from the subpart 2 contingency measure requirements at CAA 182(c)(9) (which, according to the commenter, are applicable upon a failure to meet any applicable “VOC RFP” milestone). CBD argues that under CAA 182(c)(9), the subpart 2 VOC RFP contingency measure requirements are “in addition to” the subpart 1 attainment RFP contingency measures, and that this language compels the EPA to require separate, distinct VOC RFP contingency measures, including not only the triggers for these measures, but the substantive contingency measures themselves. CBD asserts that the subpart 1 RFP and contingency measure requirements are distinct in purpose from the subpart 2 RFP and contingency measure requirements, and that CAA 172(c)(9) attainment RFP contingency measures are intended to make progress towards attainment while a state assesses the additional reductions needed to timely attain the ozone standards, whereas CAA 182(c)(9) VOC RFP contingency measures are intended to make progress in VOC emission reductions if the state elects to trigger them instead of reclassification or adoption of an economic incentive program.

Additionally, CBD asserts that the EPA entirely fails to discuss CAA 182(c)(9)’s clear language, the structural distinction between what the commenter asserts are separate attainment RFP and VOC RFP requirements, and the corresponding need to have distinct attainment RFP contingency measures and VOC RFP contingency measures. Given this distinction, CBD says, the EPA cannot approve the single submitted contingency measure as meeting both attainment RFP and VOC RFP contingency measure requirements. CBD concludes that the EPA must propose for comment its theory for how it can reconcile these distinct RFP

requirements in order to approve the submission as meeting the contingency measure requirement for both.

*Response to Comment #1:* As the commenter notes, Serious ozone nonattainment areas are subject to both the general requirements for nonattainment plans in subpart 1, and the specific requirements for ozone areas in subpart 2, including the requirements related to RFP and contingency measures. This is consistent with the structure of the CAA as modified under the 1990 amendments, which introduced additional subparts to part D of title I of the CAA to address requirements for specific NAAQS pollutants, including ozone (subpart 2), carbon monoxide (CO) (subpart 3), particulate matter (subpart 4), and sulfur oxides, nitrogen dioxide, and lead (subpart 5).

These subparts apply tailored requirements for these pollutants, including those based on an area’s designation and classification, in addition to and often in place of the generally applicable provisions retained in subpart 1. While CAA 172(c)(2) of subpart 1 states only that nonattainment plans “shall require reasonable further progress,” CAA 182(b)(1) and 182(c)(2)(B) of subpart 2 provide specific percent reduction targets for ozone nonattainment areas to meet the RFP requirement. Put another way, subpart 2 further defines RFP for ozone nonattainment areas by specifying the incremental amount of emissions reduction required by set dates for those areas.<sup>28</sup> In the context of section 182(c)(2)(B), the percentage reduction target constitutes an RFP “milestone” as described in section 182(g), by which the EPA determines a Serious ozone nonattainment area’s compliance with the RFP requirements. For Serious and above ozone nonattainment areas, CAA section 182(c)(2)(B) defines RFP by setting specific annual percent reductions and allows averaging over a 3-year period, and 182(g) establishes an RFP tracking mechanism called a “milestone” such that failure to meet a milestone equates to failure to meet the RFP requirement; they are one and the

<sup>28</sup> CAA 171(1) defines reasonable further progress as “such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.” As the commenter notes, the words “this part” in the statutory definition of RFP refer to part D of title I of the CAA, which contains both the general requirements in subpart 1 and the pollutant-specific requirements in subparts 2–5 (including the ozone-specific RFP requirements in CAA 182(b)(1) and 182(c)(2)(B) for Serious areas).

<sup>24</sup> 82 FR 28240, 28241 (finding that Rule 513 fulfills relevant emission statement requirements of CAA 182(a)(3)(B)(i)).

<sup>25</sup> See 86 FR 2318, 2335.

<sup>26</sup> See *id.* at 2320.

<sup>27</sup> See Demographic Information About the County, County of Nevada, California, available at <https://www.mynevadacounty.com/378/Demographic-Information-About-the-County>.

same.<sup>29</sup> Similarly, while CAA 172(c)(9) establishes the general requirement for nonattainment plans to provide contingency measures that are triggered in the event that the area fails to make RFP or to attain a NAAQS by the applicable attainment date, CAA 182(c)(9) specifies that a Serious area nonattainment plan for an ozone NAAQS must provide for the implementation of contingency measures to address a failure to meet a milestone, which, per the terms of CAA 182(g), is the same as failing to make RFP. Likewise, for CO nonattainment areas, section 187(a)(3) of subpart 3 addresses contingency measure provisions based on consistency between previously projected and actual or subsequently projected VMT levels, as well as failure to attain by the required deadline. These pollutant-specific contingency measure provisions are described in the EPA's General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 ("General Preamble"), which explains that the additional contingency measure provisions in subparts 2 and 3 are similar to the general contingency measure requirements at CAA 172(c)(9), except that the focus is on the planning requirements applicable to ozone and CO.<sup>30</sup>

As CBD notes, CAA 182(c)(9) specifies that plans for ozone nonattainment areas classified as Serious or above must provide for the implementation of contingency measures for failure to meet an ozone RFP milestone, "[i]n addition to the contingency provisions" required under CAA 172(c)(9). The commenter argues that this language requires states to submit contingency measures specifically allocated to address the section 182(c)(9) RFP milestones, in addition to other separate contingency measures to address the general RFP and attainment requirements in CAA 172(c)(9). This interpretation is based upon the commenter's related interpretation of the subpart 2 RFP milestones as distinct requirements separate from the general RFP requirements in subpart 1, reflected in the commenter's distinction of "attainment RFP" and "VOC RFP."

These interpretations run counter to the EPA's longstanding approach to the RFP and contingency measure provisions for the ozone NAAQS, and we disagree that the statutory text

compels the commenter's suggested approach. Contrary to the commenter's suggestion, an area that is subject to the subpart 2 RFP milestones is not subject to any separate milestones or requirements for demonstrating ozone RFP under the general RFP provisions in subpart 1. This point is specifically addressed in the General Preamble, which specifies that a state that meets the specific subpart 2 milestones "will also satisfy the general RFP requirements of section 172(c)(2) for the time period discussed."<sup>31</sup> This approach is retained in the implementation rules for the 1997 and 2008 ozone NAAQS, which specify RFP milestones for ozone nonattainment areas that incorporate both the general RFP requirements in subpart 1 as well as the ozone-specific RFP requirements in subpart 2, depending on the area's classification and whether the area already has an approved 15 percent rate-of-progress plan for a prior ozone NAAQS.<sup>32</sup>

We disagree with the commenter that the subpart 1 and subpart 2 RFP requirements have distinct purposes that require the EPA to establish separate milestones or requirements for each. Under either subpart, the purpose of RFP is to ensure attainment by the applicable attainment date.<sup>33</sup> As described above, the RFP requirements in CAA 182(b)(1) and 182(c)(2)(B) define specific RFP milestones applicable to, respectively, Moderate and above and Serious and above ozone nonattainment areas, for purposes of demonstrating compliance with the general RFP requirement at CAA 172(c)(2).

Because there are no separate milestones or requirements for demonstrating ozone RFP under the general RFP provisions in subpart 1, and because the purposes of RFP are the same under each subpart, we similarly disagree with the commenter that a state would be required to submit separate contingency measures to address the RFP and milestone requirements of subparts 1 and 2. The commenter asserts that the language in CAA 182(c)(9) stating the requirements for contingency

measures in Serious and above ozone nonattainment areas are "in addition to the contingency provisions required under section [172(c)(9)]" refers to both the triggers for contingency measures and the contingency measures themselves. In other words, the commenter asserts that the EPA must require the state to submit contingency measures to address RFP failures under subpart 1 and additional contingency measures to address such failures under subpart 2.

As explained above, CAA 182(c)(9) requires state nonattainment plans for Serious and above ozone nonattainment areas to provide for the implementation of contingency measures to be undertaken if an area fails to meet an applicable milestone, *i.e.*, RFP. Because a "milestone," as the term is used in CAA section 182(g), is applicable only to areas classified as Serious and above, CAA 182(c)(9) represents an additional requirement that states must address in an ozone nonattainment plan submission for these areas. Section 182(c)(9) requires that certain state submissions must provide for the implementation of contingency measures in the event of a failure to meet a milestone; it does not require the state to submit separate and distinct contingency measures allocated exclusively for a failure to meet a milestone. Serious and above areas remain subject to the general contingency measure requirement described at CAA 172(c)(9), including the requirement for contingency measures to take effect in the event of a failure to attain the NAAQS by the applicable attainment date (which is not provided for in CAA 182(c)(9)), as well as the requirement for contingency measures to address a failure to make RFP (*i.e.*, under CAA 182(c)(9), a failure to meet an applicable milestone under CAA 182(g)). CAA 182(c)(9) therefore applies a more specific requirement "in addition to" the general requirements at CAA 172(c)(9), by establishing failure to meet a CAA 182(g) milestone as a specific trigger for contingency measures in Serious and above ozone nonattainment areas.<sup>34</sup>

This is consistent with the EPA's longstanding interpretation of the contingency measure requirements, as set out in the General Preamble and the

<sup>31</sup> General Preamble, 57 FR 13498, 13510 (for CAA 182(b)(1) milestones); *id.* at 13518 (for 182(c)(2)(B) milestones).

<sup>32</sup> 40 CFR 51.1110; see also 70 FR 71612, 71615 (November 29, 2005); 80 FR 12264, 12271 (March 6, 2015).

<sup>33</sup> See CAA 171(1); see also 70 FR 71612, 71648 (November 29, 2005) ("[W]hether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (*i.e.*, the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2)), the purpose of RFP is to ensure attainment by the applicable attainment date.").

<sup>29</sup> See CAA 182(g)(1) (explaining that an "applicable milestone" is the emissions reduction required to be achieved by the end of an interval pursuant to the RFP provisions at CAA 182(b)(1) and the corresponding RFP requirements of 182(c)(2)(B) and (C) for Serious areas).

<sup>30</sup> 57 FR 13498, 13511 (April 16, 1992).

<sup>34</sup> As explained above and in the proposed rule, the District and CARB have met this requirement by committing to supplement the contingency measures element by submitting, within one year of our final conditional approval action, a SIP revision that establishes contingency measures that will be triggered if the area fails to meet an RFP milestone for the 2008 ozone NAAQS or fails to reach attainment by the applicable attainment date. See 86 FR 2318, 2320.

EPA's implementation rules for the 1997 and 2008 ozone NAAQS. For all of the foregoing reasons, this interpretation is reasonable and appropriate.

We also disagree with the commenter's suggestion that the EPA would be required to re-propose and take comment on our rationale for reconciling the subpart 1 and subpart 2 contingency measures requirements. As described above, our approach in this action reflects the EPA's longstanding interpretation of the statutory requirements as set out in the General Preamble and in the ozone NAAQS implementation rules, including the implementation rule for the 2008 ozone NAAQS, for which the EPA solicited and received public comment on our proposed approaches to RFP, contingency measures, and other topics.

*Comment #2:* CBD notes that the milestone provisions at CAA 182(g) provide an enforceable tracking and triggering mechanism for subpart 2 contingency measures, and asserts that because the EPA has conflated attainment RFP contingency measures and VOC RFP contingency measures, it has not created any separate, enforceable mechanism for tracking and triggering the subpart 1 contingency measures. CBD asserts that the EPA cannot reasonably approve contingency measures that cannot be triggered, and argues that the EPA's failure to provide an enforceable tracking and triggering mechanism for the subpart 1 contingency measures is an impermissible interpretation of CAA 172(c)(9) because it is unmoored from the purposes and concerns of that part. CBD asserts that without an enforceable commitment by the state to track and report on annual emission reductions, the EPA's discretionary authorities, such as a SIP call under CAA 110(k)(5), are inadequate to address this failure, and that those authorities do not allow the EPA to trigger the subpart 1 contingency measures by determining that attainment RFP has not been met.

*Response to Comment #2:* Under CAA 172(c)(9), attainment contingency measures are triggered by the EPA's finding under CAA 181(b)(2) that an area has failed to attain a NAAQS by the applicable attainment date. This finding is based on the design value for the area as of the attainment date, which represents ambient ozone concentration data collected for the area. A finding of failure to attain by the attainment date triggers contingency measures to be implemented in the area, without further action by the state or the EPA.<sup>35</sup> Therefore, the enforceable tracking and

triggering mechanism for attainment contingency measures are the EPA's determinations under CAA 181(b)(2) regarding whether the ozone nonattainment areas are in attainment by their applicable attainment date. Further, contingency measures are also triggered by an area's failure to reach an RFP milestone, as described by the commenter.

As explained above, the RFP requirements for the 2008 ozone NAAQS are described in the 2008 ozone SRR<sup>36</sup> and codified at 40 CFR 51.1110. These requirements incorporate the subpart 1 and subpart 2 RFP requirements as they apply to nonattainment areas for the 2008 ozone NAAQS, depending on classification and whether the area has an approved 15 percent rate-of-progress plan for the 1-hour or 1997 ozone NAAQS. The percentage reductions described therein represent the applicable subpart 1 and subpart 2 obligations for an area to demonstrate RFP for the 2008 ozone NAAQS,<sup>37</sup> and a failure to meet these obligations will trigger RFP contingency measures as described above and in the proposed rule. Accordingly, we disagree with the commenter that there is not an enforceable mechanism for tracking and triggering the RFP contingency measures under subpart 1.

*Comment #3:* CBD recounts the backgrounds and outcomes of the *Bahr* decision and the recent *Sierra Club* decision from the D.C. Circuit Court of Appeals,<sup>38</sup> and discusses policy implications of those decisions. CBD also negatively critiques the *LEAN* decision from the Fifth Circuit Court of Appeals,<sup>39</sup> which the commenter asserts was in error.

*Response to Comment #3:* Our proposed rule explains that we have reviewed the contingency measures element of the 2018 Western Nevada County Ozone Plan in light of the *Bahr* decision which is applicable within the jurisdiction of the Ninth Circuit Court of Appeals. The more recent *Sierra Club* decision, issued after our proposed rule, is consistent with the *Bahr* decision's treatment of contingency measures. For the purposes of our review and action

on the 2018 Western Nevada County Ozone Plan, we agree that the *Bahr* and *Sierra Club* decisions govern our review of the contingency measures element.

*Comment #4:* CBD notes that longstanding EPA policy states contingency measures should equal one year of RFP, and states that the EPA is nonetheless proposing to conditionally approve contingency measures that fall far short of this amount, based on surplus emission reductions from already-implemented measures. CBD asserts that consideration of surplus emissions reductions from already-implemented measures in evaluating the adequacy of contingency measures is functionally no different than simply approving the already-implemented measures as contingency measures, which the commenter says is inconsistent with the *Bahr* and *Sierra Club* decisions.

CBD views the EPA's consideration of surplus reductions from already-implemented measures as relying on a factor Congress has not intended the Agency to consider in evaluating the adequacy of contingency measures under CAA section 172(c)(9). According to CBD, the plain language of sections 172(c)(9) and 182(c)(9), as explained by the *Bahr* and *Sierra Club* decisions, explicitly limits the factors that the EPA may consider by prohibiting use of already implemented measures either as *de jure* or *de facto* contingency measures. CBD indicates that it disagrees with the EPA's response to recent similar comments that CBD submitted for our action on the Ventura County 2008 ozone plan.<sup>40</sup>

*Response to Comment #4:* Neither the CAA nor the EPA's implementing regulations for the ozone NAAQS establish a specific amount of emissions reductions that implementation of contingency measures must achieve. However, consistent with our longstanding guidance, we agree that contingency measures should generally provide for emissions reductions approximately equivalent to one year's worth of progress, which, for Serious ozone nonattainment areas such as Western Nevada County, amounts to reductions of 3 percent of the RFP baseline emissions inventory for the nonattainment area.

As we described in the prior response document referenced in this comment, in recommending that contingency measures typically achieve one year's worth of RFP, the EPA considers the overarching purpose of such measures in the context of attainment planning. The purpose of emissions reductions

<sup>36</sup> 80 FR 12264, 12263 (March 6, 2015).

<sup>37</sup> See General Preamble, 57 FR 13498, 13510 and 13518 (explaining that an area that meets the RFP milestones specified in subpart 2 "will also satisfy the general RFP requirements of section 172(c)(2) for the time period discussed.").

<sup>38</sup> *Sierra Club v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021).

<sup>39</sup> *Louisiana Environmental Action Network v. EPA*, 382 F.3d 575 (5th Cir. 2004) ("*LEAN*") (upholding contingency measures that were previously required and implemented where they were in excess of the attainment demonstration and RFP SIP).

<sup>40</sup> 85 FR 38081, 38084 (June 25, 2020).

<sup>35</sup> See General Preamble, 57 FR 13498, 13512.

from implementation of contingency measures is to ensure that, in the event of a failure to meet an RFP milestone or a failure to attain the NAAQS by the applicable attainment date, the state will continue to make progress toward attainment through additional emissions reductions at a rate similar to that specified under the RFP requirements. The intent is that the state will achieve the emissions reductions from the contingency measures while conducting additional control measure development and implementation, as necessary to correct the RFP shortfall to meet the next applicable milestone or as part of a new attainment demonstration plan.<sup>41</sup> The facts and circumstances of a given nonattainment area may justify larger or smaller amounts of emissions reductions for contingency measure purposes.

In reviewing a SIP revision for compliance with CAA sections 172(c)(9) and 182(c)(9), the EPA evaluates whether the contingency measure or measures would provide emissions reductions that, when considered with surplus emissions reductions from other measures not otherwise required or relied upon in the plan, ensure sufficient continued progress in the event of a failure to achieve an RFP milestone or to attain the ozone NAAQS by the applicable attainment date. We continue to evaluate the sufficiency of continued progress that will result from contingency measures in light of our guidance, but in appropriate circumstances do not believe that the contingency measures themselves must provide for one year's worth of RFP. Such appropriate circumstances include situations in which sufficient progress would be maintained by the contingency measures and surplus emissions reductions from other sources, while the state proceeds to develop and implement additional control measures as necessary to correct the RFP shortfall or as part of a new attainment demonstration plan. In other words, if there are additional emissions reductions projected to occur after the RFP milestone years or the attainment year that a state has not relied upon for purposes of RFP or attainment or to meet other nonattainment plan requirements, and that result from measures the state has not adopted as contingency measures, then those reductions may support EPA approval of contingency measures identified by the state even if the contingency measures would result in less than one year's worth of RFP in appropriate circumstances.

We disagree that this approach contradicts Congressional intent. The specific explicit factors Congress intended the Agency to use in evaluating the contingency measures at issue here are set forth in CAA sections 172(c)(9) and 182(c)(9) and include specificity ("implementation of specific measures"), timing ("measures to be undertaken" and "to take effect"), triggers (if the area fails to attain the NAAQS by the applicable [NAAQS] or if the area fails to meet any applicable milestone), federal enforceability ("included in the [SIP]"), and readiness (measures must be designed to take effect without further action by the state or the EPA). However, neither CAA section 172(c)(9) nor 182(c)(9) contains language implying that these are the only factors for the EPA to consider. Neither section specifies the magnitude of emissions reductions that contingency measures must achieve as an explicit factor for the EPA to consider, although consideration of the magnitude is appropriate in determining whether the contingency measure or measures submitted by the state meet the requirements of CAA sections 172(c)(9) and 182(c)(9). Consideration of the magnitude of emissions reductions is appropriate because contingency measures serve a remedial function where an area fails to achieve an RFP milestone or fails to attain the NAAQS by the applicable attainment date, and RFP and attainment are achieved through emissions reductions.<sup>42</sup>

Just as the CAA does not include the magnitude of emissions reductions as a specific explicit consideration, the CAA also does not prescribe how the EPA is to evaluate that question. As such, the EPA is not relying on a factor that Congress did not intend the EPA to consider when the Agency considers the emissions reductions from already-implemented measures that are surplus to those needed for RFP or attainment within a given nonattainment area when evaluating whether the state's contingency measure submittal meets CAA sections 172(c)(9) and 182(c)(9).

*Comment #5:* CBD states that the EPA does not say whether the surplus emissions reductions considered in evaluating the adequacy of contingency measures will remain surplus if the

contingency measures are triggered. CBD asserts that because these surplus reductions are not contingency measures approved into the SIP (which the commenter notes would contravene the *Bahr* decision), the EPA might consider them surplus even after the area had failed to make RFP, and use the surplus reductions as context to approve inadequate contingency measures.

*Response to Comment #5:* As described in the proposed rule, the 2018 Western Nevada County Ozone Plan provides surplus emissions reductions from CARB's already-adopted mobile source control program in the two RFP milestone years and in the year following the attainment year. CARB's estimates of surplus reductions in the RFP milestone years are 11 to 15 times greater than the amount required to show one year's worth of RFP.<sup>43</sup> In the year after the attainment year, CARB estimates that NO<sub>x</sub> emissions in Western Nevada County will be approximately 0.23 tons per day (tpd) lower in 2021 than in the 2020 attainment year due to mobile source controls and vehicle turnover.<sup>44</sup> On this basis, we found that the District's contingency measures do not need to achieve one year's worth of RFP alone, because these contingency measures and other surplus emission reductions will ensure sufficient continued progress in the event of a failure to achieve an RFP milestone or a failure to attain the NAAQS by the applicable attainment date. We therefore conditionally approved the Plan based on the District's commitment to adopt and submit specific enforceable contingency measures as described in letters from the District and CARB.

In the event that contingency measures were triggered for failure to meet an RFP milestone, the District would be required to adopt new contingency measures to take effect in the event of any subsequent failure that would trigger a contingency measure.<sup>45</sup> As described above and in the proposed rule, the EPA evaluates any contingency measures submission to ensure that the submitted measures will continue to

<sup>43</sup> CARB estimates surplus reductions of 1.9 tpd of NO<sub>x</sub> in 2017 and 2.6 tpd of NO<sub>x</sub> in 2020, compared to the 0.17 tpd of NO<sub>x</sub> that represents one year's worth of RFP. These estimates are derived from the surplus percentages listed in Table 4 of the proposed rule (34 percent in 2017 and 45.9 percent in 2020) multiplied by the 2011 baseline NO<sub>x</sub> emissions level of 5.69 tpd. See 86 FR 2318, 2331.

<sup>44</sup> See 86 FR 2318, 2333.

<sup>45</sup> See, e.g., General Preamble, 57 FR 13498, 13520 (explaining that a state is required to adopt additional measures to replace previously used contingency measures, to assure the continuing availability of contingency measures).

<sup>41</sup> 57 FR 13498, 13512 (April 16, 1992).

<sup>42</sup> See, e.g., CAA sections 107(d)(3)(E)(iii), 171(1), 182(c)(1). Under CAA 182(g)(3), in the event that a Serious or Severe ozone nonattainment area fails to meet an applicable milestone, the state may elect to implement contingency measures determined by the EPA as adequate to meet the next milestone, to have the area reclassified to the next higher classification, or to adopt an economic incentive program. If the state elects to implement contingency measures, the EPA may require further measures as necessary to meet the next milestone.

make progress toward attainment in the event of a milestone or attainment failure through additional emissions reductions at a rate similar to that specified under the RFP requirements, given the facts and circumstances of the nonattainment area. Therefore, an evaluation of what emissions reductions are surplus would occur when a new contingency measure is submitted, following a failure to meet an RFP milestone or a failure to attain by the attainment date.

*Comment #6:* CBD asserts that the proposed rule approaches arbitrary and capricious decision making because it states that it is useful to distinguish RFP contingency measures and attainment contingency measures but does not apply any relevant distinction between the two. CBD asserts that the proposed rule is arbitrary and capricious because it abandons a theory from a previous rulemaking that measures the adequacy of attainment contingency measures by attempting to predict what is necessary to make up a shortfall for a failure to attain without providing an explanation. CBD says that the EPA needs to find a measure for attainment contingency measures that aligns with the statute and is rational. CBD suggests that the EPA could require a state to use RACM measures not needed for expeditious attainment as contingency measures. CBD notes that these measures might be de minimis, and that the EPA could require one year of RFP as a fallback.

*Response to Comment #6:* As explained in the proposed rule, for purposes of the ozone NAAQS the EPA distinguishes RFP contingency measures from attainment contingency measures, respectively, as contingency measures to address potential failures to achieve RFP milestones and to address potential failure to attain the NAAQS.<sup>46</sup> This distinction is useful for the purposes of evaluating the adequacy of the emissions reductions from the contingency measures (once adopted and submitted), relative to the facts and circumstances of the area, and the anticipated needs to address a shortfall in the relevant years.

CBD's reference to the EPA's theory for measuring the adequacy of attainment contingency measures includes a citation to our proposed rulemaking for the Sacramento Metro nonattainment area. This appears to refer to the EPA's finding for that area that the committed contingency measures that served as the basis for our conditional approval were projected to be sufficient to correct a failure to attain in less than a year from the attainment

date, and therefore reflect continued progress for purposes of the attainment contingency measure requirements.<sup>47</sup> As described in the proposed rule, the 2018 Western Nevada County Ozone Plan shows that reductions from the proposed contingency measure, combined with additional emissions reductions from other sources that the state does not rely upon to meet other requirements in the nonattainment plan in the year following the attainment year, will exceed one year's worth of RFP.<sup>48</sup> For this reason and for the reasons described above, we disagree that our conditional approval of the attainment contingency measures is arbitrary and capricious.

As described above, we disagree that the EPA's longstanding approach to evaluating attainment contingency measures is not rational or does not align with the CAA. To CBD's specific suggestion that an area should use RACM measures not needed for expeditious attainment as contingency measures, we agree that this option may be available to some districts and states<sup>49</sup> but disagree with the commenter's suggestion that the EPA would be constrained against approving other measures that are consistent with the Act and the EPA's implementing regulations with respect to contingency measure requirements.

*Comment #7:* CBD's Appendix provides numerous comments directed at the EPA's NO<sub>x</sub> Substitution Guidance, contending that the EPA's NO<sub>x</sub> Substitution Guidance is illegitimate. These comments assert generally that the NO<sub>x</sub> Substitution Guidance contradicts CAA section 182(c)(2)(C) by recommending a procedure that fails to demonstrate any equivalence between VOC and NO<sub>x</sub> reductions, relies on incorrect policy assumptions, and gives legal justifications that are without merit.

*Response to Comment #7:* Comments relating solely to the NO<sub>x</sub> Substitution Guidance are outside the scope of this rulemaking action. As noted in our proposed rule, our approval of the District's use of NO<sub>x</sub> substitution is supported by local conditions and needs as documented in the modeling and

<sup>47</sup> See 85 FR 68509, 68529 (October 29, 2020). See General Preamble, 57 FR 13498, 13511 (explaining that where a failure to attain or meet RFP can be corrected in less than one year, the EPA may consider contingency measures that are proportionally less than one year's worth of RFP sufficient to correct the identified failure).

<sup>48</sup> 86 FR 2318, 2333 (January 12, 2021).

<sup>49</sup> See, e.g., 81 FR 58010, 58066 (August 24, 2016) (suggesting measures identified as possible RACM or RACT that are not needed for expeditious attainment may be suitable as contingency measures).

analysis included in the 2018 Western Nevada County Ozone Plan, and is consistent with the requirements in CAA section 182(c)(2)(C).

### III. Final Action

No comments were submitted that change our assessment of the 2018 Western Nevada County Ozone Plan as described in our proposed action. Therefore, for the reasons discussed in detail in the proposed rule and summarized herein, under CAA section 110(k)(3), the EPA is taking final action to approve as a revision to the California SIP the following portions of the 2018 Western Nevada County Ozone Plan for the 2008 ozone NAAQS submitted by CARB on December 7, 2018:

- Base year emissions inventory element as meeting the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115;
- RACM demonstration element as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1112(c);
- Attainment demonstration element as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108;
- ROP demonstration element as meeting the requirements of CAA 182(b)(1) and 40 CFR 51.1110(a)(4)(i);
- RFP demonstration element as meeting the requirements of CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B), and 40 CFR 51.1110(a)(4)(iii); and
- Motor vehicle emissions budgets for the RFP milestone and attainment year of 2020, as shown below, because they are consistent with the RFP and attainment demonstrations for the 2008 ozone NAAQS approved herein and meet the other criteria in 40 CFR 93.118(e).

TABLE 1—TRANSPORTATION CONFORMITY BUDGETS FOR 2020 FOR THE 2008 OZONE NAAQS IN WESTERN NEVADA COUNTY

[Summer planning inventory, tpd]

	2020	
	VOC	NO <sub>x</sub>
Motor vehicle emissions budget .....	0.8	1.7

Source: Table 7 of the 2018 Western Nevada County Ozone Plan.

We are also taking final action to find that the:

- Requirements for enhanced monitoring under CAA section 182(c)(1) and 40 CFR 51.1102 for Western Nevada County for the 2008 ozone NAAQS have been met; and

<sup>46</sup> 86 FR 2318, 2333.



• The submitted 2020 budgets from the 2018 Western Nevada County Ozone Plan are adequate for transportation conformity purposes.<sup>50</sup>

Lastly, we are conditionally approving, under CAA section 110(k)(4), the contingency measures element of the 2018 Western Nevada County Ozone Plan as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9) for RFP and attainment contingency measures. Our approval is based on commitments by the District and CARB to supplement the element through submission, as a SIP revision (within one year of our final conditional approval action), of a District rule that would add new limits or other requirements that would apply if an RFP milestone is not met or if Western Nevada County fails to attain the 2008 ozone NAAQS by the applicable attainment date.<sup>51</sup>

#### IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The EPA will submit a report containing this action 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).

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 July 20, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 13, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

For the reasons stated in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations 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)(554) to read as follows:

##### § 52.220 Identification of plan—in part.

\* \* \* \* \*

(c) \* \* \*

(554) The following plan was submitted on December 7, 2018 by the Governor's designee.

(i) [Reserved]

(ii) *Additional materials.* (A) Northern Sierra Air Quality Management District (1) Ozone Attainment Plan, Western Nevada County, State Implementation Plan for the 2008 Primary Federal 8-Hour Ozone Standard of .075 ppm, adopted on October 22, 2018.

(2) [Reserved]

(B) [Reserved]

- 3. Section 52.244 is amended by adding paragraph (a)(12) to read as follows:

##### § 52.244 Motor vehicle emissions budgets.

(a) \* \* \*

(12) Nevada County (Western part), approved June 21, 2021.

\* \* \* \* \*

<sup>50</sup> Pursuant to 40 CFR 93.118(f)(2)(iii), the EPA's adequacy determination is effective upon publication of this final rule in the **Federal Register**. The proposed rule proposed to find that Western Nevada County had met the clean fuels fleet program requirements in CAA sections 182(c)(4) and 246 and 40 CFR 51.1102 for the 2008 ozone NAAQS through the State's 1994 "Opt-Out Program" SIP revision. However, as explained above, the area is not subject to this element because its 1980 population was less than 250,000.

<sup>51</sup> Letter dated November 16, 2020, from Richard Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX. CARB's letter also forwarded the District's commitment letter to the EPA. The District's letter is dated October 26, 2020, from Gretchen Bennitt, NSAQMD Air Pollution Control Officer, to Richard Corey, CARB Executive Officer.



■ 4. Section 52.248 is amended by adding paragraph (l) to read as follows:

**§ 52.248 Identification of plan—conditional approval.**

\* \* \* \* \*

(l) The EPA is conditionally approving the California State Implementation Plan (SIP) for Nevada County (Western part) for the 2008 ozone NAAQS with respect to the contingency measures requirements of CAA sections 172(c)(9) and 182(c)(9). The conditional approval is based on a commitment from the Northern Sierra Air Quality Management District (District) in a letter dated October 26, 2020, to adopt a specific rule revision, and a commitment from the California Air Resources Board (CARB) dated November 16, 2020, to submit the amended District rule to the EPA within 12 months of the effective date of the final conditional approval. If the District or CARB fail to meet their commitments within one year of the effective date of the final conditional approval, the conditional approval is treated as a disapproval.

[FR Doc. 2021–10510 Filed 5–20–21; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA–R10–OAR–2020–0190; FRL–10023–66–Region 10]

### Air Plan Approval; ID: Logan Utah-Idaho PM<sub>2.5</sub> Redesignation to Attainment and Maintenance Plan

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is redesignating the Idaho portion of the Logan, Utah-Idaho fine particulate matter (PM<sub>2.5</sub>) nonattainment area (Logan UT-ID NAA) to attainment for the 2006 PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS). EPA is also approving a maintenance plan for the area demonstrating continued compliance with the 2006 PM<sub>2.5</sub> NAAQS through 2031, which the Idaho Department of Environmental Quality (IDEQ) submitted along with the redesignation request on September 13, 2019, for inclusion in the Idaho State Implementation Plan (SIP). Additionally, EPA is approving the 2031 motor vehicle emissions budgets included in Idaho's maintenance plan for PM<sub>2.5</sub>, nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC). EPA

is taking this final action pursuant to the Clean Air Act (CAA or the Act).

**DATES:** This rule is effective on June 21, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2020–0190. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:**

Adam Clark, (206) 553–1495, [clark.adam@epa.gov](mailto:clark.adam@epa.gov), EPA Region 10, 1200 6th Avenue, Suite 155, Seattle, Washington, 98101.

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to EPA.

### I. Background

On October 17, 2006, EPA revised the level of the 24-hour PM<sub>2.5</sub> NAAQS, lowering the primary and secondary standards from the 1997 standard of 65 micrograms per cubic meter (µg/m<sup>3</sup>) to 35 µg/m<sup>3</sup> (71 FR 61144). On November 13, 2009, EPA designated a portion of Franklin County, Idaho and portions of Cache County, Utah nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS (74 FR 58688). This cross-boundary nonattainment area is referred to as the Logan, UT-ID PM<sub>2.5</sub> NAA. On September 13, 2019, IDEQ submitted to EPA a request to redesignate the Idaho portion of the Logan UT-ID PM<sub>2.5</sub> NAA to attainment, per CAA section 107(d)(3)(E). IDEQ also submitted a CAA section 175A maintenance plan to demonstrate continued attainment of the 2006 PM<sub>2.5</sub> NAAQS in the area for at least 10 years after approval of the redesignation. On February 17, 2021, EPA proposed to redesignate the Franklin County, ID portion of the Logan UT-ID PM<sub>2.5</sub> NAA to attainment and approve into the Idaho SIP the associated maintenance plan (86 FR 9884). As described in detail in that action, EPA's proposed approval of the redesignation request and maintenance plan is based upon our determination that the area attains the 2006 24-hour PM<sub>2.5</sub> NAAQS and that all other CAA

section 107(d)(3)(E) redesignation criteria have been met for the area.

### II. Response to Comments

EPA received comments from three individuals during the 30-day comment period following publication of the proposed approval in the **Federal Register**. A summary of these comments and EPA's responses is provided below.

*Comment 1:* Two of the commenters expressed concern about the current air quality in the Logan, UT-ID PM<sub>2.5</sub> NAA, commonly referred to as the Cache Valley. One of these commenters stated that attainment had only been achieved “on paper,” but that air quality in the Cache Valley remained poor. This commenter suggested different local causes of poor air quality, including an increase in the number of diesel pickup trucks and snowmobiles in the area, the burning of agricultural fields and ditches, the burning of slashed trees by the U.S. Forest Service, and non-adherence to idling restrictions. Both commenters asserted that the poor air quality in the area caused negative health impacts for them (including the need to purchase indoor air purifiers), and often prevented them from recreating outdoors.

*Response 1:* The comments speak generally about air quality in the area, but do not provide any specific information to contradict EPA's proposed finding that the Logan UT-ID area meets the criteria for redesignation under CAA Section 107(d)(3)(E) for the 2006 PM<sub>2.5</sub> NAAQS. As discussed in detail in the proposal, EPA's review of air monitoring data in the Logan UT-ID PM<sub>2.5</sub> NAA demonstrates that the area has attained the 2006 24-hour PM<sub>2.5</sub> NAAQS continuously since the 2015–2017 design value period which was the basis for our October 19, 2018 determination of attainment by the attainment date and clean data determination (86 FR 9886). These comments do not provide a basis to reconsider EPA's determination that the area meets the criteria under CAA Section 107(d)(3)(E) or to otherwise disapprove IDEQ's redesignation request or associated maintenance plan for the Idaho portion of the Logan UT-ID NAA.

*Comment 2:* Two of the commenters provided suggestions to improve air quality in the Cache Valley. One commenter stated that the Cache Valley needs access to Tier 3 gasoline and more electric vehicle (EV) charging stations. Another commenter asserted that the state “thwarts efforts to induce private citizens to own appropriate vehicles that can reduce air pollution by proposing to increasing personal property taxes from 200–400%+ on