

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

CENTER FOR BIOLOGICAL	)	
DIVERSITY and CENTER FOR	)	
ENVIRONMENTAL HEALTH,	)	
	)	
<i>Petitioners,</i>	)	
	)	
v.	)	No.
	)	
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY and ANDREW	)	
WHEELER, Administrator, United States	)	
Environmental Protection Agency,	)	
	)	
<i>Respondents.</i>	)	

**PETITION FOR REVIEW**

Pursuant to Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1); Rule 15 of the Federal Rules of Appellate Procedure; and Circuit Rule 15-1, the Center for Biological Diversity and the Center for Environmental Health hereby petition the Court for review of the final action taken by Respondents United States Environmental Protection Agency (EPA) and Administrator Andrew Wheeler, entitled “Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; Determination of Attainment by the Attainment Date; Imperial County, California.” EPA assigned this action Docket Number EPA–R09–OAR–2018–0562. Notice of this action was published in the Federal Register on February 27, 2020. *See* 84 Fed. Reg. 11,817 (Feb. 27, 2020), attached as Exhibit 1.

DATED: April 27, 2020      Respectfully submitted,

/s/ Steven M. Odendahl

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*Counsel for Center for Biological Diversity and  
Center for Environmental Health*

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	)	
<i>Respondents.</i>	)	

**RULE 26.1 DISCLOSURE STATEMENT**

Center for Biological Diversity and Center for Environmental Health have no parent corporations. There are no publicly held corporations that have a 10 percent or greater ownership interest in Center for Biological Diversity or Center for Environmental Health.

DATED: April 27, 2020      Respectfully submitted,

/s/ Steven M. Odendahl

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*Counsel for Center for Biological Diversity and  
Center for Environmental Health*

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Petition for Review on those listed below by sending a copy via First Class Mail to each of the following addresses on the 27th day of April, 2020.

Andrew Wheeler, Administrator  
Office of the Administrator (MC 1101A)  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Jeffrey B. Clark, Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

United States Environmental Protection Agency  
Office of General Counsel (MC 2310A)  
1200 Pennsylvania Avenue, N.W.  
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Sylvia Quast, Regional Counsel  
Office of Regional Counsel (MC ORC-1)  
U.S. EPA Pacific Southwest, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

/s Steven M. Odendahl

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## **EXHIBIT 1**

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 April 27, 2020. 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:** January 29, 2020.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

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 paragraphs (c)(514)(ii)(A)(4) and (c)(532) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(514) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(4) 2018 Updates to the California State Implementation Plan, adopted on October 25, 2018, chapter III (“SIP Elements for Ventura County”), excluding section III.C (“Contingency Measures”); and pages A–7 through A–10 of appendix A (“Nonattainment Area Inventories”), only.

\* \* \* \* \*

(532) The following plan was submitted on April 11, 2017, by the Governor’s designee.

(i) [Reserved]

(ii) *Additional materials.* (A) Ventura County Air Pollution Control District.

(1) Final 2016 Ventura County Air Quality Management Plan, adopted February 14, 2017, excluding chapter 7 (“Contingency Measures”).

(2) [Reserved]

(B) [Reserved]

■ 3. Section 52.244 is amended by adding paragraph (a)(9) to read as follows:

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

(a) \* \* \*

(9) Ventura County, approved March 30, 2020.

\* \* \* \* \*

[FR Doc. 2020–03246 Filed 2–26–20; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R09–OAR–2018–0562; FRL–10005–51–Region 9]

#### Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; Determination of Attainment by the Attainment Date; Imperial County, California

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving two state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA or “Act”)

requirements for the 2008 ozone national ambient air quality standards (NAAQS) in the Imperial County nonattainment area, as follows. The EPA is approving the “Imperial County 2017 State Implementation Plan for the 2008 8-Hour Ozone Standard” (“Imperial Ozone Plan” or “Plan”) and the portions of the “2018 Updates to the California State Implementation Plan” (“2018 SIP Update”) that address the requirement for a reasonable further progress (RFP) demonstration for Imperial County for the 2008 ozone standards. In addition, the EPA is determining, based on the “Imperial County Clean Air Act Section 179B(b) Retrospective Analysis for the 75 ppb 8-hour Ozone Standard” (“Imperial Ozone Retrospective Demonstration”), that the Imperial County nonattainment area would have attained the 2008 ozone NAAQS by the “Moderate” area attainment date of July 20, 2018, but for emissions emanating from Mexico, and therefore is not subject to the CAA requirements pertaining to reclassification upon failure to attain. As a result of these final actions, the Imperial County nonattainment area will remain classified as a Moderate nonattainment area for the 2008 ozone NAAQS.

**DATES:** This rule will be effective on March 30, 2020.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2018–0562. 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.

**FOR FURTHER INFORMATION CONTACT:** Ginger Vagenas, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3964, or by email at [vagenas.ginger@epa.gov](mailto:vagenas.ginger@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA. The EPA is approving portions of the Imperial Ozone Plan that address the requirements for emissions statements, a base year emissions inventory, a reasonably available control measures

(RACM) demonstration, a demonstration of attainment of the standards by the applicable attainment date but for emissions emanating from Mexico, and motor vehicle emissions budgets. We are finalizing our proposed determination that Imperial County met its RFP requirements and therefore determining the requirement for contingency measures for failing to meet RFP is moot. We are also finalizing our proposed approval of the State's determination of attainment by the attainment date but for international emissions, and therefore determining that contingency measures for failing to attain the standard are not required. The EPA is also approving the portions of the 2018 SIP Update that address the requirement for a reasonable further progress demonstration for Imperial County for the 2008 ozone standards.

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### I. Summary of the Proposed Action

On November 1, 2019 (84 FR 58641), the EPA proposed to approve, under CAA section 110(k)(3), two submittals from the California Air Resources Board (CARB or "State") and the Imperial County Air Pollution Control District ("District") as revisions to the California SIP for the Imperial County ozone nonattainment area.<sup>1</sup> The relevant SIP revisions include the Imperial Ozone Plan and the portions of the 2018 SIP Update that address the requirement for an RFP demonstration for Imperial County for the 2008 ozone standards. We also proposed to determine, based on a separate demonstration submitted by the State of California, that the Imperial County nonattainment area would have attained the 2008 ozone NAAQS by the "Moderate" area attainment date of July 20, 2018, but for emissions emanating from outside of the United States (specifically, from Mexico), and therefore is not subject to the CAA requirements pertaining to reclassification upon failure to attain. For more information on these submittals, please see our proposed rule.

In our proposed rule, we provided background information on the ozone

standards,<sup>2</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"), including information on the provisions of CAA section 179B, entitled "International Border Areas."<sup>3</sup> To summarize, the Imperial County ozone nonattainment area is classified as Moderate for the 2008 ozone standards, and the Imperial Ozone Plan that is the subject of this final action was developed to address the requirements for this Moderate nonattainment area for the 2008 ozone NAAQS.

In our proposed rule, we also discussed a decision issued by the D.C. Circuit Court of Appeals in *South Coast Air Quality Management Dist. v. EPA* ("South Coast II")<sup>4</sup> that vacated certain portions of the EPA's 2008 Ozone SRR. The only aspect of the *South Coast II* decision that affects this action is the vacatur of the provision in the 2008 Ozone SRR that allowed states to use an alternative baseline year for demonstrating RFP. To address this issue, CARB submitted an updated RFP demonstration in the 2018 SIP Update that relied on a 2011 baseline year, along with updated motor vehicle emissions budgets (MVEBs) associated with the new RFP milestone years.

For our proposed rule, we reviewed the various SIP elements contained in the Imperial Ozone Plan and the portions of the 2018 SIP Update that address the requirement for an RFP demonstration for Imperial County for the 2008 ozone standards, evaluated them for compliance with statutory and regulatory requirements, and concluded that they meet all applicable requirements. More specifically, in our

<sup>2</sup> Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) in the presence of sunlight. 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 standard is 0.075 ppm (eight-hour average). 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 federal term (VOC) to refer to this set of gases.

<sup>3</sup> 80 FR 12264 (March 6, 2015).

<sup>4</sup> *South Coast Air Quality Management Dist. v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018). The term "South Coast II" is used in reference to the 2018 court decision to distinguish it from a decision published in 2006 also referred to as "South Coast." The earlier decision involved a challenge to the EPA's Phase 1 implementation rule for the 1997 ozone standard. *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006).

proposed rule, we proposed to approve the following:

- Emissions statement certification as meeting the requirements of CAA section 182(A)(3)(B);
- Base year emissions inventory as meeting the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115 with respect to attainment planning;
- RACM demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1112(c);
- RFP demonstration as meeting the requirements of CAA sections 182(b)(1), and 40 CFR 51.1110(a)(4)(i); and
- Motor vehicle emissions budgets for the 2017 RFP milestone year because they are consistent with the RFP demonstration and the demonstration of attainment but for international emissions that are approved herein and meet the other criteria of 40 CFR 93.118(e);<sup>5</sup>

We also proposed that finalization of this action regarding the 179B demonstration would render the RFP contingency measure requirement of CAA section 172(c)(9) moot and that attainment contingency measures would no longer be required.

We also note that since signature of our proposed action on the Imperial Ozone Plan, we have finalized a separate action approving in part and conditionally approving in part certain portions of the Imperial Ozone Plan (Chapter 7, "Reasonably Available Control Technology Assessment" and App. B, "Reasonably Available Control Technology Analysis for the 2017 Imperial County State Implementation Plan for the 2008 8-Hour Ozone Standard").<sup>6</sup>

Given our proposal that the Imperial Ozone Plan meets all requirements for the Imperial County Moderate ozone nonattainment area, other than the requirement to demonstrate attainment, and our evaluation of the State's lines of evidence that together support the conclusion that Imperial County's SIP submission demonstrated the area would have attained the 2008 ozone

<sup>5</sup> In light of CARB's request to limit the duration of the approval of the budgets in the Imperial Ozone Plan and in anticipation of the EPA's approval, in the near term, of an updated version of CARB's EMFAC (short for EMISSION FACTOR) model for use in SIP development and transportation conformity in California to include updated vehicle mix and emissions data, we proposed to limit the duration of our approval of the budgets until replacement budgets have been found adequate. 84 FR 58641, 58658–58659.

<sup>6</sup> The final action on the Imperial RACT SIP for the 2008 ozone standard has been signed but has not yet published in the **Federal Register**; therefore, we have included a copy of the signed final action in the docket for this action. See also, 84 FR 58647, note 54.

<sup>1</sup> The Imperial County ozone nonattainment area for the 2008 ozone standards includes the entire county. Both the Quechan Tribe of the Fort Yuma Indian Reservation and the Torres Martinez Desert Cahuilla Indians have lands within Imperial County. A precise description of the Imperial County ozone nonattainment area is contained in 40 CFR 81.305.

NAAQS by the July 20, 2018 attainment date but for emissions emanating from Mexico, under CAA section 179B(a), the EPA proposed to approve the Imperial Ozone Plan's section 179B attainment demonstration as meeting the requirements of CAA sections 172(c)(1), 182(b)(1)(A), and 179B(a) and 40 CFR 51.1108.

Concurrently, we proposed to determine, consistent with our evaluation of the Imperial Ozone Plan, the 2018 Update, and the Imperial Ozone Retrospective Demonstration, that the Imperial County nonattainment area would have attained the 2008 ozone NAAQS by the Moderate area attainment date of July 20, 2018, but for emissions emanating from Mexico, under CAA section 179B(b). We also stated that, if our proposed determination were finalized, the EPA's obligation under CAA section 181(b)(2)(A) to determine whether the area attained by its attainment date would not apply and the area would not be reclassified.

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 of the above-listed elements of the Imperial Ozone Plan and our determination that Imperial County would have attained the 2008 ozone NAAQS by the Moderate area attainment date of July 20, 2018, but for emissions emanating from Mexico.

## II. Public Comment and EPA Responses

The public comment period on the proposed rule opened on November 1, 2019, the date of its publication in the **Federal Register**, and closed on December 2, 2019. During this period, the EPA received one set of comments from the Center for Biological Diversity, Comite Civico del Valle, Inc., and Air Law for All, Ltd., and one anonymous comment.

The anonymous commenter describes ozone generators and safety sensors, issues that are outside the scope of this rulemaking. With respect to the other commenter, we provide summaries of the comments and our responses thereto in the following paragraphs. All the comments received are included in the docket for this action.

*Comment 1:* The commenter argues that any “but for” determination should be conditioned on California following through on its commitment to enhance and fund border pollution activities, including the creation and funding of a CARB assistant executive officer position for border pollution. The commenter asserts that CARB has acknowledged the need to create and

fund such a position with staff to focus on border pollution issues, referencing, among other things, statements made at a CARB public meeting on December 13, 2018 to consider a particulate matter plan for Imperial County. The commenter contends that the State's failure to fund and staff the assistant executive officer position for border pollution indicates that Imperial County does not have adequate personnel and funding to carry out the plan, as required by CAA section 110(a)(2)(E)(i).

*Response:* The commenter correctly asserts that CAA section 110(a)(2)(E)(i) requires the State and District to have adequate personnel and funding to meet their obligations under the SIP, and with respect to the specific obligations of the SIP submission at issue in this action. The EPA has previously determined that California met the CAA section 110(a)(2)(E)(i) requirements for the 2008 ozone standard.<sup>7</sup> The commenter expresses concern that the State and District have not yet created, filled, or funded a specific position for an individual who will focus on international transport issues, as the State and District have previously had under consideration. The EPA agrees with the State, District, and commenters that the creation of an official position to focus on international transport issues might be a helpful approach to making progress on such problems. However, at this time neither the State nor the District included the creation of an assistant executive officer position for border pollution as an element or a commitment of the pre-existing SIP or in the submitted Imperial Ozone Plan at issue in this action.<sup>8</sup> Thus, the creation, filling, or funding of such a position is not part of the SIP or the Imperial Ozone Plan, and thus is not relevant for purposes of section 110(a)(2)(E)(i), or an appropriate basis for the EPA to not finalize its proposed action to approve the Plan.

The commenters also suggest that the EPA should require the creation and funding of such a position as a part of the “but for” determination of CAA section 179B. Neither section 179B(a) nor the relevant statutory provisions applicable to nonattainment plan requirements impose a specific obligation on states to create, fill, or fund a position for personnel focusing on interstate transport. Similarly,

sections 179B(b)–(d) do not explicitly require states to meet a requirement that they have such personnel. Again, the EPA agrees that having such personnel could be useful, but does not agree that it is a requirement for purposes of section 179B. Because the creation and funding of the position is neither a requirement of the existing SIP or an element of the Imperial Ozone Plan, nor an explicit requirement of CAA section 179B, the EPA does not in this case consider it to be a relevant consideration for the “but for” analysis.

*Comment 2:* The commenter states that CAA sections 179B(a)(1) and (2) provide that the EPA shall approve a plan or plan revision if (1) it meets all requirements applicable to it under the Act, other than the requirement to demonstrate attainment and maintenance of the relevant air quality standard, and (2) the submitting state establishes to the EPA's satisfaction that the plan would be adequate to attain and maintain the standard by the relevant attainment date, but for emissions emanating from outside the United States. The commenter states that the EPA's proposed action did not discuss or explain the statutory terms “maintenance” and “maintain” in CAA section 179B(a) and argues that the EPA's failure to give any meaning to these terms constitutes a failure of notice and is contrary to law.

The commenter suggests that the term “maintenance” addresses a gap in the statutory structure of the Act. The commenter states that after an applicable attainment date, areas not affected by international emissions have additional planning obligations. Specifically, the commenter states that areas not affected by international emissions and that do not attain the applicable standard have additional attainment-related requirements, and areas not affected by international emissions that do attain the applicable standard have (at least in practice) maintenance plan requirements. The commenter states that, on the other hand, areas with attainment plans approved under CAA section 179B “may never have additional obligations [even] if the area never attains.” The commenter states that a state may never have the opportunity or obligation to submit a maintenance plan because the EPA can only redesignate an area based on its design value and the design value cannot be modified based on international border emissions. The commenter concludes, “In other words after EPA approves an attainment plan under section 179B(a) and exempts the area from reclassification, there is a gap in the statute: The state has no

<sup>7</sup> 81 FR 18766 (April 1, 2016).

<sup>8</sup> While several board members expressed support for staffing a position dedicated to the coordination of various border-related initiatives at its December 13, 2018 meeting, the Board did not state that it intended to establish an assistant executive officer for border pollution. California Air Resources Board meeting transcript, 258–265, December 13, 2018.

additional obligations to address maintenance of the NAAQS.”

The commenter states that the EPA must address the statutory terms “maintenance” and “maintain.” The commenter identifies a few arguments that it believes the EPA might make in response to this initial comment and puts forth counter arguments to those anticipated EPA arguments. The commenter contends that the EPA cannot show that Congress did not mean “maintenance” and “maintain” as a matter of historical fact (*i.e.*, legislative history) or as a matter of logic and statutory construction, and that the EPA cannot negate the “maintenance” requirement by arguing that it is not an applicable requirement.

Similarly, the commenter states that certain permitting programs (minor new source review, prevention of significant deterioration, and nonattainment new source review) are designed to maintain the NAAQS with respect to emissions from stationary sources and speculates that the EPA might assert that these programs are the portion of the implementation plan to which “maintenance” in CAA section 179B(a) applies. The commenter provides a counter argument that these permitting programs are insufficient to satisfy CAA section 179B(a)’s requirements regarding maintenance because they are not designed to maintain the NAAQS in section 179B areas and do not cover mobile sources, pesticides, fertilizers, and most non-point sources such as confined animal feeding operations.

The commenter suggests one possible way to interpret the meaning of “maintenance” and “maintain” in CAA section 179B would be to require the plan “to show that emissions within the state will not grow after the attainment date in such a way that the root cause of the failure to attain shifts from international border emissions to in-state emissions.”

*Response:* As noted by the commenter, CAA section 179B(a) provides that the EPA must approve a state implementation plan or plan revision if (1) the plan meets all applicable requirements, other than a requirement to demonstrate attainment and maintenance by the applicable attainment date, and (2) the state establishes to the satisfaction of the Administrator that a state plan would be adequate to attain and maintain by the applicable attainment date “but for emissions emanating from outside of the United States.” As further noted by the commenter, CAA section 179B(b) provides that a state that establishes that it would have attained the standard by the attainment date is not subject to

classification to a higher nonattainment classification pursuant to CAA section 181(b)(2)<sup>9</sup> or (5), but does not condition this exemption from reclassification on any demonstration of maintenance of the NAAQS.

The statute provides little guidance regarding the meaning of the terms “maintenance” and “maintain” in CAA sections 179B(a)(1) and (2). For example, regarding the timing of the maintenance requirement, one possible interpretation of the statutory language is that the state’s demonstration must show that the plan revision is adequate to attain and “maintain” the NAAQS “by,” that is, up to, the attainment date. Another possible interpretation is that the statute requires the state to demonstrate that the plan revision is adequate to maintain the NAAQS beyond the attainment date. Under either of these readings, available emissions information from California indicates that its plan is adequate to maintain the NAAQS but for emissions emanating from Mexico, as the State’s emissions are projected to decline into the future. Therefore, we disagree that it is necessary to resolve this ambiguity in this action and we disagree with the commenter’s conclusion that the proposal was “contrary to law” based on a failure to provide notice of the EPA’s interpretation of those terms.

The commenter suggests that if the EPA were to interpret “maintain” in CAA section 179B(a)(1) and (2) as requiring a demonstration of maintenance beyond the attainment date, one way to do so would be to conduct an analysis of the area’s emissions some time into the future. We note that the EPA evaluates these types of prospective emissions projections in other maintenance analyses such as in the context of redesignations of nonattainment areas to attainment under CAA sections 107(d)(3)(E) and 175A, although such provisions are not applicable here.<sup>10</sup>

<sup>9</sup> As we explained in our proposed action, CAA section 179B(b) erroneously refers to section CAA 181(a)(2); the correct cross-reference is section 181(b)(2). 84 FR 58660.

<sup>10</sup> In the EPA’s guidance regarding redesignations, the EPA suggests that maintenance of the NAAQS for areas that have already attained the standard may be demonstrated by either showing that future emissions of a pollutant and its precursors will not exceed the level of the attainment inventory (*i.e.*, emissions at the time the area attained the relevant NAAQS) or by modeling to show that the mix of sources and emission rates will not cause a violation of the NAAQS. Memorandum dated September 4, 1992, from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, Subject: “Procedures for Processing Requests to Redesignate Areas to Attainment.”

Available emissions inventory information from the District and CARB regarding future domestic emissions of ozone precursors (NO<sub>x</sub> and VOC) in Imperial County and regionally indicates that emissions will decline.<sup>11</sup> For example, in February 2019, the District and CARB submitted a redesignation request and maintenance plan for the 1987 PM<sub>10</sub> NAAQS. The District included NO<sub>x</sub> and VOC emissions inventories for 2030 as part of the maintenance plan’s demonstration that Imperial County will maintain the 1987 PM<sub>10</sub> NAAQS. (NO<sub>x</sub> and VOCs are subject to regulation as precursors for both PM<sub>10</sub> and ozone.) The NO<sub>x</sub> and VOC inventories for 2030 in the PM<sub>10</sub> maintenance plan show declining emissions for both pollutants. Specifically, the District projects that annual average NO<sub>x</sub> emissions will decline from 17.14 tons per day (tpd) in 2016 to 11.77 tpd in 2030 and that annual average VOC emissions will decline from 15.26 tpd in 2016 to 14.51 tpd in 2030.<sup>12</sup> In addition, CARB’s California Emissions Projections Analysis Model (CEPAM) emissions database shows that ozone precursors will decline in Imperial County over the same time-period.<sup>13</sup> Specifically, the summer day emissions inventory<sup>14</sup> for ozone precursors shows decreases that are consistent with those in the PM<sub>10</sub> maintenance plan.

Additionally, CARB’s CEPAM emissions database indicates that region-wide domestic emissions of ozone precursors in upwind areas that have potential contribution to ozone levels in Imperial County are also projected to decrease over the next decade.<sup>15</sup> For example, NO<sub>x</sub> emissions in the South Coast Air Basin are projected to decline from 306.5 tpd in

<sup>11</sup> Memorandum dated February 3, 2020, from Carol Bohnenkamp (EPA) to Rulemaking Docket EPA-R09-OAR-2018-0562, Subject: “Ozone Precursor Emission Inventory Trends for Imperial County, California.”

<sup>12</sup> “Imperial County 2018 Redesignation Request and Maintenance Plan for Particulate Matter Less Than 10 Microns in Diameter (PM<sub>10</sub>),” submitted by CARB to EPA on February 13, 2019 as a revision to the Imperial County portion of the California SIP, accessible at <https://ww3.arb.ca.gov/planning/sip/planarea/imperial/sip.pdf>.

<sup>13</sup> CARB’s CEPAM 2016 Standard Emission Tool is accessible at <https://www.arb.ca.gov/app/emsinv/fcemssumcat/fcemssumcat2016.php>.

<sup>14</sup> Because warm weather facilitates the formation of ground-level ozone, attainment demonstrations in ozone plans are based on emissions inventories for summer days. There is not a strong seasonal correlation for PM<sub>10</sub> levels in Imperial County, so the PM<sub>10</sub> inventories are based on annual average days.

<sup>15</sup> CARB’s CEPAM 2016 Standard Emission Tool. Emissions of ozone precursors in the South Coast Basin, as well as other areas in southern California, including San Diego, and Ventura, are projected to decline from 2020 to 2031.

2020 to 204.9 tpd in 2031, and VOC emissions are projected to decline from 388.6 tpd in 2020 to 358.3 tpd in 2031.<sup>16</sup>

In response to the commenter's concern that there is a "gap" in the statute, we note that if domestic emissions were to increase such that the nonattainment problem were to be exacerbated, the EPA has the authority under CAA section 110(k)(5) to call for plan revisions to address substantially inadequate implementation plans.

### III. Final Action

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 Imperial Ozone Plan and the 2018 SIP Update submitted by CARB on November 14, 2017 and December 11, 2018, respectively:

- Emissions statement element, as meeting the requirements of CAA section 182(a)(3)(B) and 40 CFR 51.1102 for the 2008 ozone NAAQS;
- Base year emissions inventory element in the Imperial ozone plan as meeting the requirements of CAA sections 172(c)(3) and 182(a)(1) and 40 CFR 51.1115 for the 2008 ozone NAAQS;

- RACM demonstration element as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1112(c) for the 2008 ozone NAAQS;

- RFP demonstration as meeting the requirements of CAA section 182(b)(1) and 40 CFR 51.1110(a)(2)(i) for the 2008 ozone NAAQS; and

- Motor vehicle emissions budgets for the RFP milestone year of 2017, as shown in Table 1 below, because they are consistent with the RFP demonstration and demonstration of attainment but for international emissions for the 2008 ozone NAAQS finalized for approval herein and meet the other criteria in 40 CFR 93.118(e).

TABLE 1—2017 MOTOR VEHICLE EMISSIONS BUDGETS FOR IMPERIAL COUNTY FOR THE 2008 OZONE NAAQS

	2017	
	NO <sub>x</sub> (tpd)	VOC (tpd)
On-road Mobile Sources .....	6.53	3.13
Safety Margin .....	0.4	0.8
Motor Vehicle Emissions Budget (rounded to nearest whole number) .....	7	4

Source: 2018 SIP Update, Table II-2, and CARB's *Technical Clarification Letter*, Attachment A.

With respect to the MVEBs, we are taking final action to limit the duration of the approval of the MVEBs to last only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets. We are doing so at CARB's request and in light of the benefits of using EMFAC2017-derived budgets<sup>17</sup> prior to our taking final action on the future SIP revision that includes the updated budgets.

In finalizing this action, we are also rendering the RFP contingency measure requirement of CAA section 172(c)(9) moot and determining that attainment contingency measures are no longer required as discussed in section II.J of the proposed rule.

Given our final determination that the Imperial Ozone Plan meets all requirements for the Imperial County Moderate ozone nonattainment area, other than the requirement to demonstrate attainment, and our evaluation of the State's lines of evidence that together support the conclusion that Imperial County would attain the 2008 ozone NAAQS by the July 20, 2018 attainment date but for emissions emanating from Mexico, the EPA is approving the Imperial Ozone Plan's section 179B attainment demonstration as meeting the requirements of CAA sections 172(c)(1),

182(b)(1)(A), and 179B(a) and 40 CFR 51.1108.

Concurrently, we are determining, consistent with our evaluation of the Imperial Ozone Plan, the 2018 SIP Update, and the Imperial Ozone Retrospective Demonstration, that the Imperial County nonattainment area would have attained the 2008 ozone NAAQS by the Moderate area attainment date of July 20, 2018 but for emissions emanating from Mexico, under CAA section 179B(b). Therefore, the EPA's obligation under section 181(b)(2)(A) to determine whether the area attained by its attainment date no longer applies and the area will not be reclassified.

### 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 plans 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);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;

- 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

<sup>16</sup> These projections are included in Table IX-2 of CARB's "2018 Updates to the California State Implementation Plan," which the EPA approved on October 31, 2019 (84 FR 52005).

<sup>17</sup> On August 15, 2019, the EPA approved and announced the availability of EMFAC2017, the latest update to the EMFAC model for use by State

and local governments to meet CAA requirements. 84 FR 41717.

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 disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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).

However, with respect to our determination that Imperial County attained the 2008 ozone NAAQS by July 20, 2018, but for emissions from Mexico, this action has tribal implications. Nonetheless, it neither imposes substantial direct compliance costs on federally recognized tribal governments, nor preempts tribal law. Two tribes have areas of Indian country within or directly adjacent to the Imperial County ozone nonattainment area: The Quechan Tribe of the Fort Yuma Indian Reservation and the Torres Martinez Desert Cahuilla Indians. The EPA contacted both tribes with offers to consult on our proposed action; however, neither tribe requested consultation.

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 April 27, 2020]. 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: February 4, 2020.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

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 paragraphs (c)(514)(ii)(A)(5) and (c)(530)(ii)(A)(3) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(514) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(5) 2018 Updates to the California State Implementation Plan, adopted on October 25, 2018, Chapter II (“SIP Elements for Imperial County”) and pages A–3 through A–6 of Appendix A (“Nonattainment Area Inventories”), only.

\* \* \* \* \*

(530) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(3) Imperial County 2017 State Implementation Plan for the 2008 8-Hour Ozone Standard, adopted September 12, 2017, except Chapter 7 (“Reasonably Available Control Technology Assessment”) and Appendix B (Reasonably Available Control Technology Analysis for the 2017 Imperial County State Implementation Plan for the 2008 8-Hour Ozone Standard”).

\* \* \* \* \*

■ 3. Section 52.244 is amended by adding paragraph (a)(10) to read as follows:

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

(a) \* \* \*

(10) Imperial, approved March 30, 2020.

\* \* \* \* \*

[FR Doc. 2020–03152 Filed 2–26–20; 8:45 am]

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