

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. annex I, sec. 3(a)	After mast-head light less than 2 ship's length aft of forward mast-head light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS DULUTH	LPD 6	N/A	N/A	X	56.8

Dated: September 1, 1998.

Approved:

**R.R. Pixa,**

*Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 207-0121; FRL-6214-5]

**Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) proposed in the **Federal Register** on August 7, 1998. This final action will incorporate this rule into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rule controls VOC emissions from a variety of sources. Thus, EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because this revision, while maintaining the SIP, also does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves a correction to the identified

deficiency within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal Implementation Plan (FIP) unless the deficiency is corrected within 24 months of the effective date of this disapproval.

**EFFECTIVE DATE:** This action is effective on February 16, 1999.

**ADDRESSES:** Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are available for inspection at the following locations:

Rulemaking Office, (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite #200, Fresno, CA 93721

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, Rulemaking Office, (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1199.

**SUPPLEMENTARY INFORMATION:**

**I. Applicability**

The rule being approved into the California SIP is San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4661, Organic Solvents. This rule was submitted by the California Air Resources Board (CARB) to EPA on March 10, 1998. Eighteen rules from the San Joaquin Valley Air Basin's eight counties are being replaced by SJVUAPCD Rule 4661 and are being rescinded from their respective SIPs with this action. A

detailed list of the rules being rescinded from the county SIPs can be found in the Technical Support Document (TSD) for Rule 4661 (dated July 1, 1998), which is available from the U.S. EPA, Region IX office.

**II. Background**

On August 7, 1998 in 63 FR 42308, EPA proposed granting limited approval and limited disapproval of SJVUAPCD Rule 4661, Organic Solvents into the California SIP. Rule 4661 was adopted by SJVUAPCD on December 17, 1992. This rule was submitted by the CARB to EPA on March 10, 1998. This rule was submitted in response to EPA's 1988 SIP Call and the CAA section 110(a)(2)(A) requirement. A detailed discussion of the background for the above rule and nonattainment area is provided in the proposed rule cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the EPA policy guidance document referenced in the proposed rule. EPA is finalizing the limited approval of this rule in order to provide a uniform set of requirements for the entire San Joaquin Valley Air Basin, maintain the SIP, and alleviate problems associated with the listing of all applicable requirements in Title V source permits. EPA is also finalizing the limited disapproval of this rule and requiring the correction of the remaining deficiency. Section 4.2 of Rule 4661 states that Rule 4661 shall not apply to any source which is in full compliance with the provisions of other applicable rules in Regulation IV (Prohibitions). This exemption does not specify that it applies only in situations where sources are in compliance with other SIP-approved rules. Because of this deficiency, the rule is not fully approvable pursuant to section 110(a)(2)(A) of the CAA because it is not consistent with the interpretation of Section 172 of the 1977 CAA as found in the Blue Book and may lead to compliance problems. A detailed

discussion of the rule provisions and evaluation has been provided in the proposed rule and in the TSD available at EPA's Region IX office.

### III. Response to Public Comments

A 30-day public comment period was provided in 63 FR 42308. EPA received no comment letters on the proposed rule.

### IV. EPA Action

EPA is finalizing a limited approval and a limited disapproval of the above-referenced rule. The limited approval of this rule is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by maintaining the SIP. The approval is limited in the sense that the rule maintains the SIP but contains a deficiency, as discussed in the proposed rule, that does not meet the section 110(a)(2)(A) CAA requirement. Thus, in order to maintain the SIP, EPA is granting limited approval of this rule under sections 110(k)(3) and 301(a) of the CAA. This action approves the rule into the SIP as a federally enforceable rule.

At the same time, EPA is finalizing the limited disapproval of this rule because it contains a deficiency that has not been corrected as required by section 110(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of Part D of the Act. As stated in the proposed rule, upon the effective date of this final rule, the 18 month clock for sanctions and the 24 month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required correction and EPA does not approve the submittal within 18 months of the effective date of the final rule, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rule covered by this final rule has been adopted by the SJVUAPCD and is currently in effect. EPA's limited disapproval action will not prevent SJVUAPCD or EPA from enforcing this rule.

### V. Administrative Requirements

#### A. Executive Order 12866

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

#### B. Executive Order 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal

government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

#### C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

#### D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with

those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to

State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

#### G. Submission to Congress and the Comptroller General

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

#### H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference,

Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

**Note:** Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 18, 1998.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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) (254)(i)(A)(4) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(254) \* \* \*

(i) \* \* \*

(A) \* \* \*

(4) Rule 4661, adopted on December 17, 1992.

\* \* \* \* \*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 095-0107; FRL-6213-9]

#### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) proposed in the **Federal Register** on August 3, 1998. This final action will incorporate this rule into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of sulfur dioxide (SO<sub>2</sub>) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls SO<sub>2</sub> emissions by establishing a limit on the sulfur content

of fuels. Thus, EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions. There will be no sanctions clock as the Ventura County Air Pollution Control District is in attainment for SO<sub>2</sub>.

**EFFECTIVE DATE:** This action is effective on February 16, 1999.

**ADDRESSES:** Copies of the rule revisions and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office, (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003

**FOR FURTHER INFORMATION CONTACT:** Stanley Tong, Rulemaking Office, (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1191.

#### SUPPLEMENTARY INFORMATION:

#### I. Applicability

The rule being approved into the California SIP is: Ventura County Air Pollution Control District (VCAPCD), Rule 64, Sulfur Content of Fuels. This rule was submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994.

#### II. Background

On August 3, 1998 in 63 FR 41220, EPA proposed granting limited approval and limited disapproval of the following rule into the California SIP: VCAPCD, Rule 64, Sulfur Content of Fuels. Rule 64 was adopted by VCAPCD on June 14, 1994. This rule was submitted by the CARB to EPA on July 13, 1994. A detailed discussion of the background for the above rule is provided in the proposed rule (PR) cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA's