

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814-2308, at the EPA Region III address above, or by e-mail at powers.marilyn@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final action, with the same title, that is located in the Rules and Regulations section of this **Federal Register**.

Dated: September 3, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99-24687 Filed 9-22-99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179-0178; FRL-6442-7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of rules submitted to EPA as revisions to the California State Implementation Plan (SIP) which concern the control of particulate matter (PM-10) emissions from fugitive dust sources in the San Joaquin Valley.

The intended effect of proposing limited approval and limited disapproval of these rules is to regulate PM-10 emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate these rules into the federally approved SIP. EPA has evaluated the rules and is proposing this action under provisions of the CAA 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 and requirements for nonattainment areas.

DATES: Comments must be received on or before November 8, 1999.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

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

San Joaquin Valley Unified Air
Pollution Control District, 1990 E.
Gettysburg Ave., Fresno, CA 93726

FOR FURTHER INFORMATION CONTACT:
Karen Irwin, Rulemaking Office, AIR-4,
Air Division, U.S. Environmental
Protection Agency, Region IX, 75
Hawthorne Street, San Francisco, CA
94105-3901 Telephone: (415) 744-1903.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for incorporation into the California SIP include the following San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Regulation VIII rules: Rule 8010, Fugitive Dust Administrative Requirements for Control of Fine Particulate Matter (PM-10); Rule 8020, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM-10) from Construction, Demolition, Excavation, Extraction Activities; Rule 8030, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM-10) from Handling and Storage of Bulk Materials; Rule 8040, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM-10) from Landfill Disposal Sites; Rule 8060, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM-10) from Paved and Unpaved Roads and; Rule 8070, Fugitive Dust Requirements for Control of Fine Particulate Matter (PM-10) from Vehicle and/or Equipment Parking, Shipping, Receiving, Transfer, Fueling, and Service Areas. These rules were submitted by the California Air Resources Board (CARB) to EPA on July 23, 1996.

II. Background

On March 3, 1978, EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the provisions of the 1977 Clean Air Act, as amended in 1977, that included the San Joaquin Valley Air Basin (43 FR 8964; 40 CFR 81.305). On July 1, 1987 (52 FR 24672) EPA replaced the TSP standards with new PM standards applying only to PM up to 10 microns in diameter

(PM-10).¹ On November 15, 1990, amendments to the CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. On the date of enactment of the 1990 CAA Amendments, PM-10 areas meeting the qualifications of section 107(d)(4)(B) of the Act, including the San Joaquin Valley Air Basin,² were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). Under section 189(a) of the CAA, moderate PM-10 nonattainment areas must implement by December 10, 1993 Reasonably Available Control Measures (RACM) rules for PM-10.

On February 8, 1993, EPA reclassified five moderate nonattainment areas, including the San Joaquin Valley Air Basin, to serious nonattainment pursuant to section 188(b)(58 FR 3334). Section 189(b) requires serious nonattainment areas to implement Best Available Control Measures (BACM) by February 8, 1997, four years after reclassification.³

In response to section 110(a) and part D of the Act, local California air pollution control districts have adopted and the State of California has submitted many PM-10 rules to EPA for incorporation into the California SIP on July 23, 1996, including the rules referenced above that are proposed for action in this document. These rules were adopted by the SJVUAPCD on April 25, 1996 and were found to be

¹ On July 18, 1997 EPA promulgated revised and new standards for PM-10 and PM-2.5 (62 FR 38651). The U.S. Court of Appeals for the D.C. Circuit in *American Trucking Assoc., Inc., et al. v. USEPA*, No. 97-1440 (May 14, 1999) issued an opinion that, among other things, vacated the new standards for PM-10 that were published on July 18, 1997 and became effective September 16, 1997. However, the PM-10 standards promulgated on July 1, 1987 were not an issue in this litigation, and the Court's decision does not affect the applicability of those standards in this area. Codification of those standards continue to be recorded at 40 CFR 50.6. In the notice promulgating the new PM-10 standards, the EPA Administrator decided that the previous PM-10 standards that were promulgated on July 1, 1987, and provisions associated with them, would continue to apply in areas subject to the 1987 PM-10 standards until certain conditions specified in 40 CFR 50.6(d) are met. See 62 FR at 38701. EPA has not taken any action under 40 CFR 50.6(d) for this area. Today's proposed action relates only to the CAA requirements concerning the PM-10 standards as originally promulgated in 1987.

² San Joaquin Valley Air Basin is under the jurisdiction of the SJVUAPCD.

³ Because the statutory RACM and BACM implementation deadlines have passed, RACM and BACM must be implemented "as soon as possible." *Delaney v. EPA*, 898 F.2d 687, 691 (9th Cir. 1990). EPA has interpreted this requirement to be "as soon as practicable." 55 FR 36458, 36505 (September 9, 1990). States are required to develop RACM and BACM that address both the annual and 24-hour PM-10 standards. *Ober v. EPA*, 84 F.3d 304, 308-311 (9th Cir. 1996).

complete on October 30, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.⁴ Rule 8010, Rule 8020, Rule 8030, Rule 8040, Rule 8060 and Rule 8070 control particulate emissions from fugitive dust sources and are being proposed for limited approval and limited disapproval. These rules were adopted and submitted to EPA as part of SJVUAPCD's efforts to meet the RACM requirements of CAA 189(a) for moderate PM-10 nonattainment areas.⁵ PM-10 emissions can harm human health and the environment. The following is EPA's evaluation of and proposed action on the rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a PM-10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules are enforceable and strengthen or maintain the SIP's control strategy.

Finally, in order for EPA to approve the SIP revision, EPA must determine that the SIP submittal complies with CAA section 110(l). Section 110(l) states that the "Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of (the Clean Air) Act."

The statutory provisions relating to RACM and BACM are found in CAA section 189(a) and (b) and are discussed in EPA's "General Preamble," which gives the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the CAA. See 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992), and 59 FR 41998 (August 16, 1994). In this proposed action, EPA is applying these policies to this submittal, taking into consideration the specific factual issues presented.

⁴ EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

⁵ See, e.g., Memorandum from David L. Crow, Executive Director/APCO, to SJVUAPCD Governing Board, dated April 25, 1996. This document was an enclosure in the submittal of the rules that are the subject of this proposed action. See also letter from Michael H. Scheible, CARB, to Felicia Marcus, EPA, dated July 23, 1996; Rule 8010, section 1.0: "The Rules in this Regulation [VIII] have been developed pursuant to United States Environmental Protection Agency guidance for *Moderate Nonattainment Areas*." Emphasis added.

For moderate PM-10 areas reclassified as serious, the nonattainment control requirements (i.e., RACM) are carried over and elevated to a higher level of stringency (i.e., BACM). 59 FR 42009. Thus, generally, if a control measure meets the statutory requirements for BACM, it will also meet those for RACM.⁶ Moreover, since these fugitive dust rules were adopted, the area has been reclassified to serious and the BACM implementation deadline has passed. The reader should consult the General Preamble documents for detailed discussions of both the RACM and BACM requirements.

EPA defines BACM as "the maximum degree of emissions reduction of PM-10 and PM-10 precursors from a source * * * which is determined on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such source through application of production processes and available methods, systems, and techniques for control of each such pollutant." 59 FR 42010. EPA exempts from the BACM requirement de minimis source categories, which do not contribute significantly to nonattainment. 59 FR 42011.

For the purpose of assisting state and local agencies in developing RACM and BACM rules, EPA has prepared a series of guidance documents on PM-10 source categories (See CAA section 190). The technical guidance document applicable to Rules 8010, 8020, 8030, 8040, 8060 and 8070 is entitled "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures" (EPA-450/2-92-004).

There are currently no versions of SJVUAPCD Rules 8010, 8020, 8030, 8040, 8060 and 8070 in the SIP. Earlier versions of these rules were adopted on October 21, 1993 and September 14, 1994 (Rule 8010) and submitted to EPA. However, before EPA acted on these versions, the State submitted the rules that are the subject of today's proposed action. While these later rules supersede the earlier versions, EPA reviewed relevant materials associated with the superseded versions. SJVUAPCD's Rules 8010, 8020, 8030, 8040, 8060 and 8070

⁶ The General Preamble suggests as the starting point for specifying RACM for fugitive dust sources, the list of available control measures in appendix C1 and those put forth during the public period. 57 FR 13540, 18073. If it can be shown that a particular measure is unreasonable because emissions from affected sources are de minimis, it may be excluded from further consideration. The remaining available measures are then evaluated for reasonableness, considering their technological feasibility and the cost of control in the area. 57 FR 13540.

would, if approved, incorporate the following significant provisions into the SIP:

- *Definitions and Requirements:* Rule 8010 establishes definitions that apply to the fugitive dust sources covered under Regulation VIII rules and places requirements on dust suppressants.

- *Construction/Demolition Site Disturbances:* Rule 8020 requires watering or pre-soaking for land clearing and other operations which disturb the soil surface, stabilization of inactive disturbed areas, stabilization of unpaved on-site roads and off-site unpaved access roads, the removal or limitation of mud or dirt track-out onto public paved roads, and use of a dust suppressant or gravel on vehicle and material storage areas per Rule 8070.

- *Bulk Material Handling and Storage:* Rule 8030 requires enclosure or wetting of material on chutes or conveyor devices, fugitive dust controls for transport of bulk materials in open vehicles, trailers, rail cars or containers, cleanup of track-out from transport of bulk materials onto public adjacent paved roads, and stabilization of outdoor storage piles.

- *Landfill Disposal Sites:* Rule 8040 requires cleanup of mud or dirt track-out onto public adjacent paved roads, paving and cleaning a portion of interior landfill site roads to limit track-out, and use of a dust suppressant or gravel on vehicle and material storage areas per Rule 8070.

- *New Paved Roads:* Rule 8060 establishes specific paving or chemical stabilization requirements for curbs and medians of paved roads or road segments 3 miles or more in length that are constructed or modified after December 10, 1993 and experience average daily trips of 500 vehicles or more.

- *New Unpaved Roads:* Rule 8060 establishes surface stabilization requirements that affect at least a portion of the length of unpaved roads or road segments greater than 1/2 mile in length constructed or modified after December 10, 1993.

- *Unpaved Vehicle and Equipment Parking Areas:* Rule 8070 requires the application of a dust suppressant or gravel on all unpaved parking areas that are 1 acre or larger in size on days they are used, and the removal or limitation of mud or dirt track-out onto public paved roads.

EPA has evaluated SJVUAPCD's Rules 8010, 8020, 8030, 8040, 8060, and 8070 for consistency with the CAA, EPA regulations, and EPA policy and has found that although they will strengthen the SIP, the rules contain a number of deficiencies, the most significant of

which are discussed below. A detailed discussion of rule deficiencies and recommended rule improvements can be found in the Technical Support Document (TSD) associated with this rulemaking.

- The Regulation VIII rules containing capacity limits define Visible Dust Emissions (VDE) as 40% opacity for an aggregate period of 3 minutes or more in any one hour. This is the primary standard upon which the Regulation VIII rules are based.

However, considerable PM-10 fugitive dust can be released into the ambient air without exceeding a 40% opacity reading. Moreover, EPA believes, based on the precedent established in other PM-10 nonattainment areas, that this standard does not represent RACM or BACM.

- The Regulation VIII rules lack appropriate standards and/or test methods that would ensure a level of control consistent with RACM or BACM.

- The exemptions (including the thresholds of source coverage selected by SJVUAPCD to represent RACM) found in the Regulation VIII rules are not supported. In order to address this deficiency, either a sufficient demonstration per EPA's BACM guidance⁷ justifying the exemption is required, or the source coverage needs to be revised to reflect a BACM level of control. Some of the more significant exemptions from rule coverage are listed below; all of the exemptions are discussed in the TSD.

- Rule 8060 requirements only apply to paved and unpaved roads that were constructed or modified after December 10, 1993. Also, the rule exempts paved roads/road segments less than 3 miles in length and unpaved roads/road segments less than 1/2 mile in length.

- For unpaved roads that are covered under Rule 8060, control measures are only required on 50% or less of the road length.

- Rule 8030 lacks requirements to control fugitive dust from the loading and unloading of bulk materials, the addition of bulk materials to storage piles, and the removal of bulk materials from storage piles.

- Rule 8070 only applies to unpaved parking lots greater than one (1) acre.

- Rule 8010, sections 3.23 and 3.27, and Rule 8060, section 5.1.4 contain inappropriate Executive Officer discretion which could result in enforceability problems and is therefore inconsistent with the Clean Air Act section 110.

- Rule 8010, section 4.2 and Rule 8020, section 4.2 exempt sources with existing permits or approved PM-10 mitigation programs, respectively, that provide equally stringent control of fugitive PM-10 emissions. There is no means to ensure that the level of control in the permit is as stringent as in Regulation VIII.

- Because the sources subject to Rule 8020 are temporary in nature, there must be a method, e.g., a dust control permit or comparable mechanism, to identify sources so that the rule can be enforced.

- EPA lacks information to evaluate under EPA's BACM guidance the rule's allowance of a 7-day period in which inactive storage piles can remain uncontrolled. A 7-day period does not appear to be warranted, as during this time significant wind erosion emissions can occur and temporary stabilization can be achieved through watering or covering/enclosure of piles. Also, Rule 8020 lacks a definition of storage piles.

- In numerous sections of the Regulation VIII rules, the term "limit" is used. This word does not establish a firm threshold upon which to base compliance with the rules' requirements.

- Rule 8020, section 5.4.3 strongly encourages, but does not require, the use of paved access aprons, gravel strips, wheel washers, or other measures designed to limit mud and dirt deposits on public paved roads. A requirement would better ensure that track-out is prevented. Similar measures for track-out are required in other serious PM-10 nonattainment areas, which suggests that this measure is feasible as a best available practice in SJVUAPCD.

- Rule 8020, section 5.5 and Rule 8040, section 5.4 require that all areas used for storage of construction vehicles, equipment, and materials comply with Rule 8070. The term "storage" needs to be defined in order to clarify the circumstances under which Rule 8070 requirements apply to the parking activities of sources covered under Rules 8020 and 8040. The rules should also clarify whether the 1 acre unpaved parking lot compliance threshold in Rule 8070, below which sources are exempt, also applies to sources covered under Rules 8020 and 8040.

- Rule 8060, section 5.2.2 allows watering the entire length of a new unpaved road surface at least once a week as a control measure option. Rule 8070, section 4.1.1 allows watering unpaved parking lots once a day as a control measure option. EPA believes these control measures are too temporal to represent RACM or BACM on

unpaved surfaces that receive regular vehicle use.

- The Regulation VIII rules lack recordkeeping requirements for sources subject to controls, with the exception of Rule 8060 coverage of new paved roads. Recordkeeping is needed in order to verify compliance with the requirements or limits established by the rules.

These deficiencies may lead to enforceability problems and/or are not supported as representing RACM and BACM and are, therefore, not consistent with sections 172(c)(6), 189(a)(1)(C), and 189(b)(1)(B) of the CAA. Moreover, to the extent that the rules do not represent RACM and BACM, under section 110(l), EPA cannot fully approve them.

As a result, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts that meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules 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 strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SJVUAPCD's submitted Regulation VIII Rules 8010, 8020, 8030, 8040, 8060 and 8070 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this action have been adopted by the SJVUAPCD and are currently in effect in the SJVUAPCD. EPA's final limited

⁷ 59 FR 41998-42017, August 16, 1994.

disapproval action will not prevent SJVUAPCD or EPA from enforcing the rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 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 consults with those governments, Executive Order 12875 requires EPA to provide to the Office of Management and Budget 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, Executive Order 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 Executive Order 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 Executive Order 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 Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 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, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, 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, Executive Order 13084 requires EPA to develop an effective process permitting elected officials 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 Executive Order 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 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 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.

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 compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: September 10, 1999.

David P. Howekamp,

Acting Regional Administrator, Region 9.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 217-0180; FRL-6442-8]

Clean Air Act Approval and Promulgation of California State Implementation Plan for the San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revise the California State Implementation Plan (SIP) by approving rules from the San Joaquin Valley Unified Air Pollution Control District (District). EPA is proposing to approve these rules to meet new source review (NSR) requirements of the Clean Air Act, as amended in 1990 (CAA or Act), for areas that have not attained the National Ambient Air Quality Standards (NAAQS). The State submitted Rules 2020 and 2201 to satisfy these Federal requirements for an approvable NSR SIP. EPA evaluated Rules 2020 and 2201 based on CAA guidelines for EPA action on SIP submittals and general rulemaking authority.

DATES: Comments on this proposed action must be received in writing by October 25, 1999.

ADDRESSES: Comments must be submitted in writing to Ed Pike at the Region IX mailing address listed below. Copies of the rules and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Permits Office (AIR-3), Air Division, 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, Central Region, 1990 E. Gettysburg Avenue, Fresno CA 93726

FOR FURTHER INFORMATION CONTACT: Ed Pike, (telephone 415/744-1211), Air Division (AIR-3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, or pike.ed@epa.gov.

SUPPLEMENTARY INFORMATION:

I. EPA Is Proposing to Approve District Rules 2020 and 2201

EPA is proposing to approve District Rules 2020 and 2201 into the California SIP. Rule 2020 was adopted by the District on September 17, 1998, and submitted to EPA by the California Air Resources Board (CARB) on October 27, 1998. Rule 2201 was adopted by the District on August 20, 1998 and submitted to EPA by CARB on September 29, 1998. This proposed approval does not include §§ 5.9 and 6.0 of Rule 2201, which specify requirements for title V operating permits. The title V requirements in Rule 2201 were addressed in EPA's April 24, 1996 rulemaking on the District's title V operating permits program (see 60 FR 55517 and 61 FR 18083), and the District has not submitted substantive changes to these sections of Rule 2201 since that approval.

The District is composed of Fresno County, a portion of Kern County¹, Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, and Tulare County. The eight former County air pollution management agencies merged to form the unified Valley-wide District in 1992. The District is designated as a serious nonattainment area for ozone and particulate matter less than ten microns in diameter (PM₁₀). The District is designated attainment for the nitrogen dioxide (NO₂), sulfur dioxide (SO₂), and carbon monoxide (CO) NAAQS, although nitrogen oxides (NO_x) and sulfur oxide (SO_x) are regulated as precursors to other nonattainment pollutants. For the detailed area designations that apply to the District, please refer to 40 CFR 81.305. The CAA air quality planning requirements for nonattainment NSR are set out in part D of Title I of the Act, with implementing regulations at 40 CFR 51.160 through 51.165.

The District submitted Rule 2020, Permit Exemptions, and Rule 2201, New Source Review, to replace existing rules in the following SIPs: Fresno County, Kern County, Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, and Tulare

¹This District includes the portion of Kern County described in District rule 1020 § 3.44 (adopted November 13, 1996).

County. As explained below, EPA has evaluated Rule 2020 and 2201 and has determined that they are consistent with the CAA. EPA regulations and EPA policy. Therefore, EPA is proposing to approve Rule 2020 and Rule 2201 under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), and part D of Title I of the Act. Please see the Technical Support Document for a complete list of the SIP NSR and Exemption rules that would be replaced.

This proposed approval will also supercede an obsolete requirement (see 40 CFR 52.232(a)(5), (6), (10), and (11)) to submit regulations meeting the EPA NSR requirements that existed at the time that these sub-sections were established in the 1980s. EPA is proposing to delete these requirements.

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act. EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion. EPA has also proposed regulations to implement the changes under the 1990 Amendments in the NSR provisions in part D of Title I of the Act. (See 61 FR 38249 (July 23, 1996)). Upon final promulgation of those regulations, EPA will review those NSR SIP submittals on which it has already taken final action to determine whether additional SIP revisions are necessary.

II. Summary of New Source Review Issues

A. Lowest Achievable Emission Rate

District rule 2201 (section 4) requires that sources meet the Lowest Achievable Emission Rate (LAER) as defined at 40 CFR 51.165(a)(1)(xiii) for: (1) Any new emission unit with the potential to emit two pounds or more per day; and (2) any existing unit with an increase in permitted emissions of two pounds or more per day. EPA has determined that the two lb/day requirement for LAER is as stringent as the source-wide applicability triggers in title I part D of the CAA. The CAA triggers range from 15 to 70 tons per year for non-attainment pollutants depending on the pollutant and whether the increase occurs at an existing major source.