

(1) If the Department determines that a candidate does not present a risk to aviation or national security as a result of the preliminary risk assessment, the candidate or the Provider will be notified electronically that the Provider may supply the candidate with the appropriate materials and instructions to complete the fingerprinting process described in § 105.13(c) and (d) of this part.

(2) If the Department determines that the candidate presents a risk to aviation or national security, when appropriate, it will notify the Provider electronically that training is prohibited.

(3) For each complete training request submitted by a Provider, the Department will promptly conduct an appropriate risk assessment. Every effort will be made to respond to a training request in the briefest time possible. In routine cases, the Department anticipates granting approval to train within a fraction of the 45-day notification period after receiving a complete, properly submitted request, including fingerprints. In the unlikely event that no notification or authorization by the Department has occurred within 45 days after the proper submission under these regulations of all the required information, the Provider may proceed with the training, upon establishing the candidate's identity in accordance with paragraph (c) of this section.

(c) Providers must ascertain the identity of each candidate. For candidates who are not citizens or nationals of the United States designated by the Under Secretary of Transportation for Security, a Provider must inspect the candidate's passport and visa to verify the candidate's identity before providing training. Candidates who are citizens or nationals of the United States must present the documentation described in § 105.11(a) of this part. If the candidate's identity cannot be verified, then the Provider cannot proceed with training.

(d) If, at any time after training has begun, the Department determines that a candidate subject to this section being trained by a Provider presents a risk to aviation or national security, the Department shall notify the Provider to cease training. A Provider so notified shall immediately cease providing any training to the person, regardless of whether or in what manner such training commenced or had been authorized. The Provider who submitted the candidate's identifying information will be responsible for ensuring that the training is promptly halted, regardless of whether another Provider is currently training the candidate.

(e) With regard to any determination as to an alien candidate's eligibility for training, when appropriate, the Department will inform the Secretary of State and the Secretary of Homeland Security as to the identity of the alien and the determination made.

Dated: February 6, 2003.

**John Ashcroft,**  
Attorney General.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA280-0390B; FRL-7451-1]

#### Interim Final Determination That State Has Corrected Rule Deficiencies and Stay and/or Deferral of Sanctions, San Joaquin Valley Unified Air Pollution Control District

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

**ACTION:** Interim final rule.

**SUMMARY:** EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern SJVUAPCD Rules 2020 and 2201.

**DATES:** This interim final determination is effective on February 13, 2003. However, comments will be accepted until March 17, 2003.

**ADDRESSES:** Mail comments to Ed Pike, Permits Office (AIR-3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rules that are the basis for today's action at our Region IX office during normal business hours: Permits Office (AIR-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You may also see copies of the submitted rules at the following locations:

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 1001 "I" Street,  
Sacramento, CA 95814.  
San Joaquin Valley Unified APCD, 1990  
E. Gettysburg, Fresno, CA 93726.

A copy of the rules may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rules that were submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Ed Pike, EPA Region IX, (415) 972-3970 or send email to [pike.ed@epa.gov](mailto:pike.ed@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

### I. Background

On July 19, 2001, we published a limited approval and limited disapproval of SJVUAPCD Rules 2020 and 2201 as adopted locally on September 17, and August 20, 1998, respectively, and submitted by the State on October 27, and September 29, 1998, respectively. 66 FR 37587 (July 19, 2001). We based our limited disapproval action on certain deficiencies in the submittal. This limited disapproval action started a sanctions clock for imposition of offset sanctions 18 months after August 19, 2001 (the effective date of our limited disapproval) and highway sanctions six months after the offset sanction is imposed, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On December 19, 2002, the SJVUAPCD adopted revisions to Rules 2020 and 2201 that were intended to correct the deficiencies identified in our limited disapproval action. On December 23, 2002, the State submitted these revisions to EPA.

In the Proposed Rules section of today's **Federal Register**, we have proposed approval of revised Rules 2020 and 2201 because we believe the revisions correct the deficiencies specified in our July 19, 2001, limited disapproval action.<sup>1</sup> Based on our proposed approval of the District's revisions to Rules 2020 and 2201, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our July 19, 2001, limited disapproval.

<sup>1</sup> The Proposed Rules section of today's **Federal Register** also contains our proposal to find that the approved California SIP is substantially inadequate because it cannot provide "necessary assurances" that no State law prohibits the State or districts from carrying out the Prevention of Significant Deterioration (PSD) or nonattainment New Source Review (NSR) portions of the SIP because California Health & Safety Code section 42310(e) exempts agricultural sources from permitting requirements. This additional action will require the State to provide the necessary assurances of authority required to implement the NSR program in the District as it applies to major agricultural sources.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination, or our proposed approval of revised Rules 2020 and 2201, we may take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then the sanctions and sanction clocks that were triggered by our July 19, 2001 limited disapproval will be permanently terminated on the effective date of a final rule approval of SJVUAPCD Rules 2020 and 2201.

## II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with SJVUAPCD Rules 2020 and 2201 based on our proposal to approve the State's SIP revisions as correcting the specified deficiencies that prompted the finding to initiate sanctions.

Because EPA has preliminarily determined that the SJVUAPCD has corrected the specified deficiencies prompting EPA's limited disapproval action, and has also proposed to find that a State-wide agricultural exemption must be corrected, we have determined that it is appropriate to relieve the SJVUAPCD from sanctions as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the SJVUAPCD's and State's submittal and, through our proposed approval of the District's corrections, is indicating that it is more likely than not that the SJVUAPCD has corrected the deficiencies specified in the limited disapproval. Therefore, it is not in the public interest to impose sanctions solely on the District when the SJVUAPCD has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability

of the SJVUAPCD's revisions of Rules 2020 and 2201. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

## III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

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

The administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 13, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 14, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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* CAA section 307(b)(2).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Reporting and recordkeeping requirements.

Dated: January 31, 2003.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

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