ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA255–0385; FRL–7448–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing both a conditional approval and a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District's (SJVUAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on April 1, 2002, and concerns fugitive dust and particulate matter less than 10 microns in diameter (PM–10). The conditional approval is with respect to enforceability and reasonably available control measures (RACM), and the limited approval and limited disapproval is with respect to best available control measures (BACM). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulate these emissions and directs California to correct rule deficiencies.

EFFECTIVE DATE: This rule is effective on March 28, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

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

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.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: Karen Irwin, EPA Region IX, (415) 947–4116.

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

I. Proposed Action

On April 1, 2002 (67 FR 15345), EPA proposed a limited approval and limited disapproval of the following SJVUAPCD rules that were adopted on November 15, 2001 and submitted for incorporation into the California SIP on December 6, 2001.

Rule #	Rule title
8011	General Requirements.
8021	Construction, Demolition, Excavation, Extraction and Other Earthmoving Activities.
8031	Bulk Materials.
8041	Carryout and Trackout.
8051	Open Areas.
8061	Paved and Unpaved Roads.
8071	Unpaved Vehicle/Equipment Traffic Areas.
8081	Agricultural Sources.

These rules are part of SJVUAPCD's Regulation VIII. We proposed a limited approval of these rules because we determined that they improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because we found that the submittal does not adequately fulfill the CAA section 189(b) requirement for a BACM demonstration, nor include any upgrades or revisions to the control measures that are required as a result of the BACM demonstration. Specifically, the State has not demonstrated that thresholds of source coverage within the rules (*e.g.*, minimum size of sources subject to rule requirements) fulfill BACM. Such thresholds include: (1) Rule 8061 and 8081 unpaved road trip count thresholds; (2) Rule 8071 and 8081 unpaved vehicle/equipment traffic area trip count thresholds; (3) Rule 8071 and 8081 unpaved vehicle/equipment traffic area size threshold; (4) Rule 8081 unpaved road and unpaved vehicle/equipment traffic area exclusion of implements of husbandry in the trip count; (5) Rule 8051 disturbed open areas threshold; (6) Rule 8041 threshold for when trackout control devices must be employed; (7) Rule 8041 trackout cleanup requirements as they apply to rural areas; (8) Rule 8031 and 8081 bulk materials thresholds; (9) Rule 8021 Dust Control Plan requirement thresholds; and (10) other control measures for paved road PM–10 emissions including preventing/mitigating trackout attributed to agricultural sources, stabilizing unpaved shoulders, frequent street sweeping and use of PM–10 efficient street sweepers.

We also proposed a conditional approval of all the submitted rules listed above except for Rule 8051. We proposed the conditional approval because we believe that the submittal resolves the prior enforceability and RACM deficiencies identified in the March 8, 2000 final action, subject to one condition. The condition is for SJVUAPCD to adequately demonstrate that it has applied RACM to the significant source categories that are subject to Regulation VIII. By letter dated March 5, 2002, SJVUAPCD committed to adopt and submit this demonstration within one year of EPA's publication of this final rule. This demonstration includes the following: (1) A complete list of candidate RACM for the following Regulation VIII significant sources: unpaved roads, unpaved vehicle/equipment traffic areas, paved roads and earthmoving sources, including bulk materials storage/handling; (2) a reasoned justification for any candidate measures that the District did not adopt for these sources, including descriptions of measures for these source categories that the District is implementing outside the context of Regulation VIII; and (3) information that supports the reasonableness of the Regulation VIII coverage.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 60-day public comment period. During this period, we received comments from the following parties.

1. Brent J. Newell, Center on Race, Poverty & Environment, on behalf of the Association of Irritated Residents and El Comite para el Bienestar de Earlimart, letters dated May 30, 2002.
2. Anne C. Harper, Earthjustice, on behalf of the Sierra Club, letter dated May 31, 2002.

The comments and EPA responses are summarized below.

Comment 1: The version of Regulation VIII adopted by SJVUAPCD was inappropriately negotiated between EPA and the regulated industry weeks after the local public comment period expired. It does not fulfill the relevant public process requirements as significant changes were made at the

last minute. These changes include exempting implements of husbandry from vehicle trip counts in Rule 8011, increasing the size of exempted open areas by 300 percent in Rule 8051, and rendering the 20% VE standard useless by allowing the U.S. Department of Agriculture (USDA) to approve Fugitive PM–10 Management Plans (FPMPs) in Rules 8061, 8071 and 8081. Even SJVUAPCD's own staff did not have an opportunity to review the version presented to SJVUAPCD's Governing Board on November 15.

Response 1: 40 CFR part 51 Appendix V and 40 CFR 50.102 describe the public participation procedural requirements for adoption and submittal of SIP revisions. Paragraph (a)(1) of Section 50.102 requires that a State must conduct one or more public hearings prior to adoption and submission to EPA of any SIP revision such as Regulation VIII. Paragraphs 2(e) and (g) of part 51 Appendix V direct states to follow all relevant state requirements for public notice, hearing and adoption. California's Health and Safety Code (HSC) §§ 40725–30 outlines the procedures to be followed by local air districts, such as SJVUAPCD, in adopting, amending, or repealing any rule or regulation, including SIP revisions. EPA believes that these State rules are consistent with Administrative Procedures Act (APA) requirements for public participation, 5 U.S.C.A. 553.

In regard to changes made to a SIP revision after the end of the public comment period, HSC § 40726 allows for such changes without further public notice or comment as long as those changes are not ''so substantial as to significantly effect the meaning of the proposed rule or regulation.'' SJVUAPCD held a public hearing on Regulation VIII on October 31, 2001, received comments on the proposed rules, and responded to those comments. Both SJVUAPCD and CARB have determined that the public participation process followed by SJVUAPCD in adopting and submitting Regulation VIII fulfilled State and federal public participation requirements. EPA routinely relies upon determinations by State and local agencies as to compliance with their own public participation processes. Additionally, the final Regulation VIII (including the three provisions specifically noted in the comment) as adopted and submitted was not ''substantially'' different from the proposed regulation and was a logical outgrowth of the earlier proposed regulation. SJVUAPCD had received comments earlier in the public comment process that logically lead to the final version adopted. The District included in its submittal extensive comments received from many parties, including the regulated community, that related to the later revised Regulation VIII provisions.

The commenters also appear concerned that the District considered comments provided by EPA in adopting the final Regulation VIII. However, state and local agencies are allowed and encouraged to consider EPA comments in adopting final SIP rules or revisions as long as all other public participation requirements are met.

Comment 2: Rule revisions proposed to Rule 8081 on the day of the hearing but not adopted were not subject to the relevant public process requirements. These include a small farm exemption and an exemption for unpaved haul roads on days when no truck trips will occur.

Response 2: Revisions not adopted are not the subject of EPA's proposed action.

Comment 3: The exemption for ''implements of husbandry'' from vehicle trip counts violates CAA § 189(a) RACM requirements because it effectively excludes an unknown but large number of agricultural road segments from Regulation VIII without any analysis of the number of exempted road segments or the efficacy of the measure. EPA's proposed conditional approval is not supported by a factual basis.

Response 3: We agree that the State has not submitted detailed analysis of the impacts of the exemption for implements of husbandry. This does not mean that the exemption necessarily violates CAA § 189(a). Rather, it means that the State needs to perform and submit such analysis in order to determine whether the exemption and the rules fulfill § 189(a). We concur with the comment's implication that this analysis is important and, as a result, have required it as part of our final conditional approval.

Comment 4: The FPMP provisions in Rule 8081 allow exceedence of the general 20% opacity standard and violate § 189(a) because they are not federally enforceable. Responsibility for enforcement of the FPMP requirements is given to the USDA instead of to EPA and SJVUAPCD, in conflict with CAA § 110 enforceability requirements.

Response 4: Paragraph 7.0 of Rule 8081 states that FPMPs must be approved by the USDA *and* must be designed to achieve 50% control efficiency. We believe Rule 8081 is adequately enforceable because it establishes criteria for evaluation of FPMPs (*i.e.*, 50% control). This would allow SJVUAPCD and EPA to invalidate FPMPs that are not meeting 50% control, regardless of USDA's action. Also, as made clear by paragraph 7.4, the terms of the final FPMP approved by USDA are subject to enforcement by SJVUAPCD, EPA and citizens.

Comment 5: The exemption of all on-field sources, including smaller farms less than 320 acres and animal feed handling, which effectively exempts concentrated animal feeding operations, violates § 189(a). Farming operations account for nearly 25% of all PM–10 emissions in the Valley. The exemption does not constitute an appropriate interpretation of a ''more likely than not'' finding that the RACM requirement has been met.

Response 5: As discussed in our April 1, 2002 proposed action (67 FR 15345), EPA only evaluated these rules with respect to those sources that the rules purport to regulate. This is documented in the August 31, 1999 TSD associated with EPA's original proposed action (pg. 10). For example, Rule 8060, dated April 25, 1996, proposed to regulate unpaved roads for RACM purposes, so we evaluated whether the rule is sufficient for unpaved roads, including agricultural unpaved roads. Since Regulation VIII submittals have never purported to cover on-field agricultural activity, however, we have not attempted to evaluate whether Regulation VIII fulfills RACM/BACM for this activity. Therefore, we disagree with the commenters' statement that on-field agricultural source activity has been exempted from RACM through Regulation VIII; rather, it is just not a regulated activity under Regulation VIII.

We agree with the commenters that it is important for the District to evaluate the impact and appropriate controls for on-field agricultural activity. The evaluation of whether and what controls are necessary for on-field agricultural activities to fulfill RACM/BACM should be performed in context of a rule that regulates such activity or of an overall PM–10 plan for the area. In 1991, CARB submitted an overall PM–10 plan for the area which purported to address RACM generally as well as on-field agricultural activity. We have not acted on this plan, and are not doing so now, as we are only acting on Regulation VIII. As a result of EPA's finding that the San Joaquin Valley failed to attain the PM–10 standards by the statutory deadline of December 31, 2001, the State must submit a new plan for the area to EPA by December 31, 2002. 67 FR 48039 (July 23, 2002). EPA also published a finding of nonsubmittal of a PM–10 plan for the San Joaquin Valley on March 18, 2002 (67 FR 11925), which could result

in the imposition of sanctions. We expect that these EPA actions will lead to development in the near term of a thorough RACM/BACM analysis and an overall PM–10 plan which include on-field agriculture activity.

Comment 6: Other areas have adopted RACM or BACM measures that apply to farming operations that EPA has approved. For example, South Coast Air Quality Management District Rule 403(h)(1)(B) applies fugitive dust requirements to agricultural sources greater than 10 acres, and Maricopa County Rule 310 requires RACM at cattle feedlots and livestock areas. Regulation VIII, in contrast, fully exempts on-field agricultural activities in violation of CAA § 189(a).

Response 6: See Response 5.

Comment 7: EPA recently issued a Notice of Deficiency (NOD) that found California's statutory agricultural permit exemption inconsistent with CAA Title V. CAA Title I also provides no such exemption for agricultural sources, and any rulemaking which generally exempts agriculture from § 189(a) RACM requirements is inconsistent with the CAA under the same rationale articulated in the Notice of Deficiency.

Response 7: The commenter is correct that Title I and Title V do not exempt major agricultural sources of air pollution from CAA permitting requirements. CAA § 189(a), however, relies on a separate analysis to determine whether agricultural sources should be regulated for RACM purposes. Under § 189(a), a permitting agency need not regulate or can limit regulation of certain activities or source categories from RACM requirements if one of the following two criteria are met: (a) emissions from the activity or source category are not significant; or (b) the level of imposed control fulfills RACM in light of cost-effectiveness, technical feasibility and attainment needs. However, as stated in Response 5, since Regulation VIII never purported to cover on-field agricultural activity, such an analysis is not necessary in the context of Regulation VIII. This analysis will be necessary in a rule that regulates such activity or in an overall PM–10 plan for the area.

Comment 8: EPA's finding that ''it is more likely than not'' that Regulation VIII fulfills the CAA 189(a) requirement is contradicted by the substantial agriculture-related deficiencies summarized in comments 3 through 7 that exempt in total nearly half of all sources.

Response 8: See Response 5 regarding on-field agricultural sources. The comment also concerns the exemption for implements of husbandry and the enforceability of FPMPs regarding agriculturally-owned unpaved roads. See Response 4 regarding FPMP enforceability. Our ''more likely than not'' RACM finding for Regulation VIII Rule 8081 coverage of agriculturally-owned unpaved roads relies on the expectation that a reasonable percentage of these roads are subject to control at the 75 vehicle trips per day threshold during harvest season. We expect most of this traffic will be haul trucks carrying product to and from farms as opposed to implements of husbandry such as tractors. We agree with the commenter, however, that the actual impact of this exemption has not been thoroughly quantified, which is partly the basis for our action to approve this regulation only conditionally.

Comment 9: EPA's 2002 proposed conditional approval of Regulation VIII for RACM is illegal in light of EPA's own finding that SJVUAPCD has not completely fulfilled the requirement described in 57 FR 13498 and 13540 (April 16, 1992) to apply RACM to the significant source categories subject to Regulation VIII.

Response 9: As discussed in our 2002 proposed action, we believe that Regulation VIII fulfills the substantive RACM requirements for the activities it covers and it is inappropriate to immediately initiate sanctions throughout the San Joaquin Valley solely because SJVUAPCD failed to complete a detailed RACM justification. SJVUAPCD did provide substantial cost-effectiveness data and other information that suggests that Regulation VIII fulfills RACM for the activities it covers. While a more complete RACM justification is required under the Act, we do not believe, in this case, that it is likely to lead to additional emission reductions. We have proposed, therefore, to temporarily stay the sanctions clock to allow a relatively short time for SJVUAPCD to provide the necessary analysis.

Comment 10: SJVUAPCD is long overdue to require RACM and BACM pursuant to CAA § 189(a) and § 189(b), and has failed to adopt RACM and BACM as soon as practicable as required by the CAA. There is no basis for further postponing final action on RACM. EPA's proposed actions allowing SJVUAPCD to justify, revise, and resubmit Regulation VIII, extends the mandatory RACM and BACM deadlines and violates the CAA.

Response 10: We concur that RACM and BACM were not applied in the San Joaquin Valley according to Clean Air Act deadlines. We believe, however, that RACM is now applied in the area for the activities covered by Regulation VIII. We do not view our conditional approval of these rules as RACM as postponing RACM implementation given our ''more likely than not'' finding that the requirements now meet RACM. See Response 11 regarding BACM.

Comment 11: In this proposed limited approval/disapproval, EPA claims that it had not previously started a sanction clock for § 189(b) deficiencies because SJVUAPCD explicitly adopted the April 25, 1996 Regulation VIII rules for purposes of maintaining RACM, rather than BACM. However, the February 8, 1997 statutory deadline for implementing BACM was long past even at the time of EPA's first disapproval of Regulation VIII, proposed on September 23, 1999 and finalized on March 8, 2000. Thus, EPA's disapproval at that time applied to the requirements of both RACM and BACM, and EPA's proposed action and responses to comments at that time clearly showed that it was evaluating the regulation for both standards.

EPA cannot now propose limited approval/limited disapproval for the SIP revision's failure to demonstrate BACM when, two years ago, EPA took the same final agency action. It is an abuse of discretion to reinterpret the March 8, 2000 final rulemaking in such a fashion so that EPA may inappropriately toll the sanctions clock. EPA has a mandatory duty to impose sanctions under § 179(a) unless all previously identified deficiencies have been corrected. It is clear that SJVUAPCD has not corrected the BACM deficiencies, which EPA concedes in this proposed rulemaking. EPA's proposal to grant limited approval/disapproval is thus inconsistent with the plain language of CAA § 179(a).

Response 11: We agree that the BACM implementation deadline had passed before EPA proposed a limited approval/disapproval of Regulation VIII in 1999. This does not determine, however, that our March 8, 2000 final action validly established a BACM sanctions clock. Our March 2000 action addressed rules that were submitted to fulfill RACM, not BACM. As a result and as discussed in our April 2002 proposed action, we do not believe that a sanctions clock could be started for BACM deficiencies under such circumstances. *See* Response 5 (where we similarly conclude that we cannot disapprove Regulation VIII for its exemption of on-field agricultural sources because the regulation does not purport to cover those sources for RACM purposes). However, the latest version of Regulation VIII submitted on December 6, 2001, does purport to meet BACM requirements. Therefore, by this

final rule, we are disapproving the 2001 version of Regulation VIII for failure to adequately demonstrate BACM and have started a valid BACM sanctions clock for SJVUAPCD to correct the deficiencies. In accordance with section 179 of the Clean Air Act, the State has 18 months to correct the deficiencies identified in EPA's action prior to the imposition of sanctions.

Comment 12: EPA's April 1, 2002 interim final determination must be withdrawn because EPA cannot approve any individual rule without first approving an attainment demonstration. The judgement that EPA must make in approving a SIP revision, is ''to measure the existing level of pollution, compare it with national standards, and determine the effect on this comparison of specified emission modifications.'' Without an attainment demonstration, it is impossible to determine whether any revision is ''adequate to the task.'' *Hall* v. *EPA,* 263 F.3d 937 (9th Cir. 2001).

Response 12: EPA regularly takes action on individual rules independent of action on overarching plans. As with the thousands of other rules we have acted on independent of attainment demonstrations, we believe we can effectively evaluate compliance with § 110 and other CAA requirements and approve or disapprove these rules consistent with § 110(k). In fact, the Court of Appeals for the Ninth Circuit specifically endorsed this practice in *Hall.* The Court held that ''[t]he Act explicitly contemplates that * * * attainment demonstrations may be submitted for EPA review at different times than other elements of the States' SIP revisions (for example, revisions to control measures) are submitted for review.'' *Id.* at 937.

The Commenter reasoned that language it quoted from *Hall* requires a rigorous comparison by EPA of emission reductions resulting from a proposed SIP revision to overall reductions necessary for attainment, and such an analysis cannot be done outside the context of an attainment demonstration. However, other language in the Court's *Hall* ruling softened this requirement in circumstances where an attainment demonstration is not yet in place. In the absence of an attainment plan, the Court held that EPA need only show that ''the particular plan revision before it is consistent with the development of an overall plan capable of meeting the Act's attainment requirements.'' *Id.* at 938. In accordance with *Hall,* we have determined that Regulation VIII is consistent with development of an overall plan and we intend to evaluate Regulation VIII in the context of a PM–10 plan when the plan is submitted to us for review.

Comment 13: For reasons given above, EPA must fully disapprove the Regulation VIII submittal, withdraw the interim final determination that SJVUAPCD has corrected the deficiencies, reinstate the associated sanctions clock, and promulgate a FIP.

Response 13: For reasons discussed in the other responses, nothing in the comments has caused us to change our position as described in the proposal.

Following the close of the comment period, we received two additional inquiries from Earthjustice. While EPA is not obligated to summarize or respond to these inquiries, we have done so below.

Comment 14: Did EPA consider fugitive dust control measures adopted in other PM–10 nonattainment areas when evaluating SJVUAPCD's Regulation VIII for RACM and/or BACM? If so, is the review of other rules part of the record for EPA's action on Regulation VIII?

Response 14: EPA considered control measures adopted in Maricopa County, Clark County and other areas as background information during our evaluation of Regulation VIII. Where EPA's approval of control measures for these other areas has been published in the **Federal Register**, they are incorporated by reference into the administrative record for EPA's decision on Regulation VIII.

Comment 15: What is the origin of the ''more likely than not'' criteria used by EPA in its decision to conditionally approve Regulation VIII for RACM purposes.

Response 15: In the preamble to the federal regulations implementing the sanctions provision of CAA Section 179, EPA stated that it can conditionally approve a SIP revision when ''it believes it is more likely than not that the State is complying with the relevant requirements of the Act.'' 59 FR 39832, 39838 (August 4, 1994). EPA clarified that this finding can also serve as a basis for an interim final determination that a State has corrected previously identified deficiencies.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in CAA section 110(k)(4), EPA is finalizing a conditional approval of Rules 8011, 8021, 8031, 8041, 8061, 8071 and 8081 with respect to CAA section 172(c)(1) and 189(a)(1)(C) RACM requirements. We have concluded that the December 6, 2001 submittal corrects the prior enforceability and RACM deficiencies identified in our March 8, 2000 final action, subject to one condition. That condition is for SJVUAPCD to provide a comprehensive and adequate demonstration that these rules fulfill RACM requirements for the source categories covered by Regulation VIII. SJVUAPCD has committed to provide this RACM demonstration within one year after the date of publication of this final action. This conditional approval action terminates the CAA section 189(a) sanction implications of our March 8, 2000 final action. However, the conditional approval will be treated as a disapproval, with section 189(a) sanctions immediately reinstated, if SJVUAPCD fails to fulfill this commitment within the statutory one year period or upon EPA's final disapproval of a submitted RACM demonstration.

In addition, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of submitted Rules 8011, 8021, 8031, 8041, 8051, 8061, 8071 and 8081 with respect to CAA section 189(b)(1)(B) BACM requirements. Specifically, the state has failed to demonstrate that thresholds of source coverage fulfill BACM requirements. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule with respect to BACM requirements. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under CAA section 179 according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the deficiencies within 24 months. Note that the submitted rules have been adopted by SJVUAPCD, and EPA's final limited disapproval does not prevent the local agency from enforcing them.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866

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

B. Executive Order 13045

Executive Order 13045, entitled 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.

C. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will 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, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

This rule 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 under Executive Order 12866.

F. 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 act on 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.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, 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).

G. 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 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 action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on 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.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. 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**. 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).

J. 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 April 28, 2003. 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 22, 2003.

Wayne Nastri,

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)(304) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(304) New and amended regulations for the following APCD were submitted on December 6, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rules 8011, 8021, 8031, 8041, 8051, 8061, 8071, and 8081, adopted on November 15, 2001.

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[FR Doc. 03–4383 Filed 2–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA262–0369a; FRL–7451–4]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from organic liquid storage and VOC and nitrogen dioxide (NO_X) emissions from flare operations at industrial sites such as oil refineries, chemical manufacturers, and oil wells. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on April 28, 2003 without further notice, unless EPA receives adverse comments by March 28, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814;

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940; and,

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111.

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

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