

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 284-0429; FRL-7620-9]

#### Partial Removal of Direct Final Rule Provisions Concerning the California State Implementation Plan, Bay Area Air Quality Management District

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

**ACTION:** Partial removal of direct final rule provisions.

**SUMMARY:** On October 30, 2003 (68 FR 61753), EPA published a direct final approval of a revision to the California State Implementation Plan (SIP). This revision concerned the following Bay Area Air Quality Management District (BAAQMD) rules: Rule 8-14—Surface Preparation and Coating of Large Appliances and Metal Furniture; BAAQMD Rule 8-19—Surface Preparation and Coating of Miscellaneous Metal Parts and Products; BAAQMD Rule 8-31—Surface Preparation and Coating of Plastic Parts and Products; and, BAAQMD Rule 8-43—Surface Preparation and Coating of Marine Vessels. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The direct final rule stated that if adverse comments were received by December 1, 2003, EPA would publish a timely withdrawal in the **Federal Register**. EPA received timely adverse comments. Consequently, with this revision, we are removing the direct final approval of BAAQMD Rules 8-14 and 8-19. EPA will either address the comments in a subsequent final action based on the parallel proposal also published on October 30, 2003 (68 FR 61782), or repropose an alternative action. As stated in the parallel proposal, EPA will not institute a second comment period on the subsequent final action. The other rules approved in the October 30, 2003, direct final action, BAAQMD Rules 8-31 and 8-43, are not affected by this partial removal and are incorporated into the SIP as of the effective date of the October 30, 2003, direct final action.

**EFFECTIVE DATE:** February 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, EPA Region IX, at (415) 947-4111, or via e-mail at [wamsley.jerry@epa.gov](mailto:wamsley.jerry@epa.gov).

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

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and

recordkeeping requirements, Volatile organic compounds.

Dated: January 27, 2004.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

■ Accordingly, 40 CFR 52.220, as amended in the **Federal Register** on October 30, 2003 (68 FR 61753), effective on December 29, 2003, is further amended.

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

#### PART 52—[AMENDED]

##### Subpart F—California

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.220 is amended by revising paragraph (c)(315)(i)(A)(2) to read as follows:

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(c) * * *
(315) * * *
(i) * * *
(A) * * *
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(2) Rule 8-31 adopted on September 7, 1983 and amended on October 16, 2002; and Rule 8-43 adopted on November 23, 1988 and amended on October 16, 2002.

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[FR Doc. 04-3076 Filed 2-13-04; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 295-0434a; FRL-7614-9]

#### Revisions to the California State Implementation Plan, 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 a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns oxides of nitrogen (NO<sub>x</sub>) emissions from residential water heaters. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on April 19, 2004 without further notice, unless EPA

receives adverse comments by March 18, 2004. 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:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted SIP revision, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment 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.

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

A copy of the rule 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 rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, EPA Region IX, (415) 947-4117, [fong.yvonne@epa.gov](mailto:fong.yvonne@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

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#### I. The State's Submittal

##### A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
SJVUAPCD .....	4902	Residential Water Heaters .....	06/17/93	11/04/03

On December 23, 2003, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, Appendix V, which must be met before formal EPA review.

*B. Are There Other Versions of This Rule?*

There are no previous versions of Rule 4902 in the SIP.

*C. What Is the Purpose of the Submitted Rule?*

NO<sub>x</sub> helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO<sub>x</sub> emissions. Rule 4902 limits emissions of oxides of nitrogen, specifically nitrogen oxide (NO<sub>2</sub>), from residential gas-fired water heaters and applies to all water heaters with a rated heat input less than or equal to 75,000 Btu/hr manufactured after December 17, 1993. The TSD has more information about this rule.

## II. EPA's Evaluation and Action

*A. How Is EPA Evaluating the Rule?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in ozone nonattainment areas (see sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). Residential water heaters are not major sources, so Rule 4902 does not need to fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability requirements consistently include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement), 57 FR 55620, November 25, 1992.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the *Bluebook*).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the *Little Bluebook*).

*B. Does the Rule Meet the Evaluation Criteria?*

We believe this rule is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

*C. EPA Recommendations To Further Improve the Rule*

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rule.

*D. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by March 18, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 19, 2004. This will incorporate this rule into the federally enforceable SIP.

## III. Statutory and Executive Order Reviews

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. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, 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.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also 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 also 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 action merely approves 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. This rule also 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.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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. section 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 action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 19, 2004. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 8, 2004.

**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)(321) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(321) New and amended regulations for the following APCDs were submitted on November 4, 2003, by the Governor's designee.

(i) Incorporation by reference.

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

(1) Rule 4902, adopted on June 17, 1993.

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[FR Doc. 04-3220 Filed 2-13-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[SC-112L-2004-1-FRL-7623-8]

#### Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of South Carolina

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

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to section 112(l) of the Clean Air Act (CAA), South Carolina Department of Health and Environmental Control (SC DHEC) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. The Environmental Protection Agency had reviewed this request and had found that it satisfies all of the requirements necessary to qualify for approval. Thus, the EPA is hereby granting SC DHEC the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA has approved the State's alternative requirements.

**DATES:** This direct final rule is effective April 19, 2004, without further notice, unless EPA receives adverse comment by March 18, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written Comments must be submitted to Lee Page, Air Toxics Assessment and Implementation Section; Air Toxics and Monitoring Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

Comments may also be submitted electronically, or through hand delivery/courier by following the detailed instructions described in (part (I)(B)(1)(i) through (iii)) of the

#### SUPPLEMENTARY INFORMATION.

**FOR FURTHER INFORMATION CONTACT:** Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9131. Mr. Page can also be reached via electronic mail at [page.lee@epa.gov](mailto:page.lee@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file for this action under SC-112L-2004-1 that is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding Federal holidays.

2. Copies of the State submittal and supporting documents are also available for public inspection during normal business hours, by appointment at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, South Carolina 29201.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published