

**DATES:** Comments on this proposed action must be received in writing by April 29, 2005.

**ADDRESSES:** Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the Addresses section of the direct final rule which is located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Heather Hamilton at (913) 551-7039, or by e-mail at [hamilton.heather@epa.gov](mailto:hamilton.heather@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: March 21, 2005.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA-311-0481; FRL-7892-8]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District's portion of the California State Implementation Plan (SIP). These revisions concern particulate matter emissions from agricultural operations. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments must arrive by April 29, 2005.

**ADDRESSES:** Send comments to Andrew 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 revisions, 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:

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 Avenue, Fresno, CA 93726-0244.

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:** Andrew Steckel, EPA Region IX, (415)947-4115, [steckel.andrew@epa.gov](mailto:steckel.andrew@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?

Rule 4550, Conservation Management Practices, and the List of Conservation Management Practices (CMP List), were adopted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) on May 20, 2004. Rule 4550 and the CMP List were readopted without change on August 19, 2004, and submitted by the California Air Resources Board (CARB) to EPA on September 23, 2005. On October 18, 2004, this 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 4550 or the CMP List in the SIP. Rule 4550 and the CMP List were readopted without change on August 19, 2004, to ensure a full and complete public notice process.

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

Small particulate matter (PM-10) harms human health and the environment. CAA section 110(a) requires States to submit regulations that control PM-10 emissions. The San Joaquin Valley area (SJV) is a serious PM-10 nonattainment area. 40 CFR 81.305. As such, under CAA section 189(b)(1)(B), the nonattainment plan for the area must, among other things, provide for the expeditious implementation of best available control measures (BACM).

Because the SJV failed to attain the 24-hour and annual National Ambient Air Quality Standard (NAAQS) for PM-10 by the December 31, 2001, statutory deadline, pursuant to CAA section 189(d), California was required to submit a plan that provides for expeditious attainment and, from the date of the plan submission until attainment, for an annual reduction in PM-10 or PM-10 precursor emissions within the area of not less than 5% of the amount of such emissions as reported in the most recent inventory

prepared for the area. 67 FR 48039 (July 23, 2002).

One of the control strategies in the SJVUAPCD's 2003 PM-10 Plan<sup>1</sup> is the Conservation Management Practices (CMP) Program. SJVUAPCD adopted Rule 4550, Conservation Management Practices, the CMP List, and Rule 3190, Conservation Management Practices Plan Fee,<sup>2</sup> to implement the CMP Program. Rule 4550 contains requirements to control fugitive dust emissions from agricultural operations. It establishes the CMP Program that requires agricultural operation sites to select and implement CMPs, and submit these to the SJVUAPCD Air Pollution Control Officer (APCO) for approval. For each agricultural parcel of an agricultural operation site, the owner/operator is to select one CMP from the CMP List for each applicable category. Rule 4550 contains exemptions for several types of sources, including sites with total acreage less than 100 acres, parcels used for forestry, and animal feeding operations that meet specific size-based limits. 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), and must not relax existing requirements (see sections 110(l) and 193). Pursuant to section 189(b) of the CAA and EPA guidance, serious PM-10 areas must submit SIPs that provide for the expeditious implementation of BACM for significant sources of PM-10 emissions. The activities regulated by SJVUAPCD Rule 4550 are significant sources of PM-10 emissions according to the emission inventory estimates for the SJV. SJVUAPCD 2003 PM-10 Plan. Therefore, SJVUAPCD Rule 4550 must meet the CAA's BACM requirements. Guidance and policy documents that we used to help evaluate enforceability and

BACM requirements are described in the TSD.

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

We believe Rule 4550 and the CMP List are consistent with the relevant policy and guidance regarding enforceability, BACM, and SIP criteria. EPA has issued a General Preamble and Addendum to the General Preamble describing our preliminary views on how the Agency intends to review SIPs submitted to meet the CAA's requirements for PM-10 plans. See "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," (General Preamble) 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992) and "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," (Addendum) 59 FR 41998 (August 16, 1994). The General Preamble defines a significant source category as one which contributes significantly to nonattainment of the PM-10 NAAQS. 57 FR at 13540. The Addendum provides that BACM is considered to be a higher level of control than RACM and is defined as being, among other things, the maximum degree of emissions reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic and environmental impacts. Addendum at 42010-42014.<sup>3</sup>

SJVUAPCD's staff report associated with Rule 4550 (dated August 19, 2004) provides detailed analyses of various CMPs and an assessments of costs, feasibility, and impacts associated with

them. SJVUAPCD also considered farm census data, economic impacts, and per farm emissions in selecting the 100-acre threshold for cropland, and the size-based exemptions for animal feeding operations that are contained in Rule 4550. As discussed in the Addendum, energy and environmental impacts of control measures and the cost of control should be considered in determining BACM. Economic feasibility considers the cost of reducing emissions and costs incurred by similar sources. Addendum at 42012 and 42013. The SJVUAPCD's analyses have also determined that application of BACM at these small operations would produce an insignificant regulatory benefit. As a result, the exemption of these smaller operations is considered reasonable and consistent with general procedures for making BACM determinations. The TSD discusses the evaluation of these exemptions in more detail.

The CMP List is attached as an Appendix to the Rule 4550 staff report, and is also included in a CMP Handbook that is available to affected sources. The CMP List was submitted for inclusion into the SIP. The CMP List contains over 100 practices that are grouped into 18 CMP categories. The CMP List for the SJV is more comprehensive than any similar lists existing in other serious nonattainment areas. When no feasible CMP can be used from the CMP List for a certain category, Rule 4550 allows an owner/operator to select a substitute CMP from another category. An owner/operator may also use a CMP not on the CMP List if approval from the APCO is obtained. To obtain approval, the owner/operator must demonstrate that the new CMP achieves PM-10 emission reductions that are at least equivalent to other appropriate CMPs on the CMP List. The APCO is required to perform an independent analysis to evaluate the PM-10 emission reductions. CMPs that are not shown to achieve equivalent reductions will be disapproved. SJVUAPCD will maintain a list of any new CMPs that are approved. It is expected that the CMP List will be periodically updated into the SIP.

A requirement that an individual source select one control method from a list, but allowing the source to select which is most appropriate for its situation, is a common and accepted practice for the control of dust. See, e.g., 66 FR 50252, 50269 (October 2, 2001).<sup>4</sup> Allowing sources the discretion to

<sup>1</sup> On August 19, 2003, CARB submitted the "2003 PM10 Plan, San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller." On December 30, 2003, CARB submitted the Amendment to the 2003 PM-10 Plan. CARB and the SJVUAPCD developed and adopted these SIP revisions in order to address the CAA requirements in § 189(b)-(d). EPA approved the 2003 PM-10 Plan and Amendment (collectively, 2003 PM-10 Plan) on May 26, 2004. 69 FR 30006.

<sup>2</sup> SJVUAPCD Rule 3190 was not submitted for inclusion into the SIP. Rule 3190 establishes fees and fee schedules to recover the costs related to the review, approval, and enforcement of CMP applications and plans in accordance with Rule 4550. These fee provisions are not SIP-related economic incentives and are not designed to replace or relax an emission limit in the SIP. Therefore, it is unnecessary to include this rule in the SIP.

<sup>3</sup> CAA section 189(a)(1)(C) requires implementation of reasonably available control measures (RACM) for moderate PM-10 nonattainment areas. A serious area PM-10 plan must also provide for the implementation of RACM to the extent that the RACM requirement has not been satisfied in the area's moderate area plan. There is no federally approved moderate area PM-10 plan for the SJV. However, we do not normally conduct a separate evaluation to determine if a serious area plan's measures meet the RACM as well as BACM requirements as interpreted by us in the General Preamble at 13540. This is because in our serious area guidance (Addendum at 42010), we interpret the BACM requirement as generally subsuming the RACM requirement (i.e., if we determine that the measures are indeed the "best available," we have necessarily concluded that they are "reasonably available"). Consequently, our proposed approval of Rule 4550 and the CMP List relating to the implementation of BACM also constitutes a proposed finding that the rule and list provide for the implementation of RACM and references to BACM in the discussion below are intended to include RACM.

<sup>4</sup> The U.S. Court of Appeals for the Ninth Circuit recently upheld EPA's approval of such a regulatory scheme in *Vigil v. Leavitt*, 366 F.3d 1025 (9th Cir. 2004).

choose from a range of specified options is particularly important for the agricultural sector because of the variable nature of farming. Moreover, the economic circumstances of farmers vary considerably. As a result, it is imperative that flexibility be built into any PM-10 control measure for the agricultural source category. *Id.* 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*

Because EPA believes Rule 4550 and the CMP List fulfill all relevant requirements, we are proposing to fully approve them under CAA section 110(k)(3) as meeting the requirements of section 189(a)(1)(C) and (b)(1)(B) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate Rule 4550 and the CMP List into the federally enforceable SIP.

### **III. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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. Law 104-4).

This proposed 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 proposes to approve 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 proposed 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 proposed 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.*).

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

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: March 15, 2005.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

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