

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2019-0693; FRL-10003-95-Region 9]

**Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or “the District”) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO<sub>x</sub>), and particulate matter (PM) from wood burning devices. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or “the Act”). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by February 10, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2019-0693 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Rynda Kay, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4118 or by email at [kay.rynda@epa.gov](mailto:kay.rynda@epa.gov).

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

**Table of Contents**

- I. The State’s Submittal
  - A. What rule did the State submit?
  - B. Are there other versions of this rule?
  - C. What is the purpose of the submitted rule revision?
- II. The EPA’s Evaluation and Action
  - A. How is the EPA evaluating the rule?
  - B. Does the rule meet the evaluation criteria?
  - C. The EPA’s Recommendations To Further Improve the Rule
  - D. Public Comment and Proposed Action
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

**I. The State’s Submittal**

*A. What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD ....	4901	Wood Burning Fireplaces and Wood Burning Heaters .....	06/20/2019	07/22/2019

On November 21, 2019, the EPA determined that the submittal for SJVUAPCD Rule 4901 met 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?*

We approved an earlier version of Rule 4901 into the SIP on October 6, 2016 (81 FR 69393). The SJVUAPCD adopted revisions to the SIP-approved version on June 20, 2019, and CARB submitted them to us on July 22, 2019.

*C. What is the purpose of the submitted rule revision?*

Emissions of VOCs and NO<sub>x</sub> contribute to the production of ground-level ozone, smog and PM, which harm human health and the environment. Emissions of PM, including PM equal to or less than 2.5 microns in diameter (PM<sub>2.5</sub>) and PM equal to or less than 10 microns in diameter (PM<sub>10</sub>), contribute to effects that are harmful to human health and the environment, including

premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control VOC, NO<sub>x</sub>, and PM emissions.

Rule 4901 is designed to limit emissions of these pollutants generated by the use of wood burning fireplaces, wood burning heaters, and outdoor wood burning devices. The rule establishes requirements for the sale/transfer, operation, and installation of wood burning devices and on the advertising of wood for sale within the San Joaquin Valley Air Basin (San Joaquin Valley).

The SIP-approved rule includes a two-tiered, episodic wood burning curtailment requirement. During a level one episodic wood burning curtailment, which is triggered when the PM<sub>2.5</sub> concentration is forecasted to be between 20–65 micrograms per cubic meter (µg/m<sup>3</sup>), operation of wood

burning fireplaces and unregistered wood burning heaters is prohibited, but properly operated wood burning heaters that meet certification requirements and have a current registration with the District may be used. Specific certification and registration requirements are outlined in the rule. During a level two episodic wood burning curtailment, which is triggered when the PM<sub>2.5</sub> concentration is forecasted to be above 65 µg/m<sup>3</sup> or the PM<sub>10</sub> concentration is forecasted to be above 135 µg/m<sup>3</sup>, operation of any wood burning device is prohibited. The SIP-approved rule was modified to lower the wood burning curtailment thresholds in the “hot spot” counties of Madera, Fresno, and Kern.<sup>1</sup> The level one PM<sub>2.5</sub> threshold for these counties was lowered from 20 µg/m<sup>3</sup> to 12 µg/m<sup>3</sup>, and the level two PM<sub>2.5</sub> threshold was

<sup>1</sup> “The hot spots are either new areas of gas utility or areas deemed to have persistently poor air quality.” SJVUAPCD 2018 Plan for the 1997, 2006, and 2012 PM<sub>2.5</sub> Standards (“2018 PM<sub>2.5</sub> Plan”), Appendix J, 60.

lowered from 65  $\mu\text{g}/\text{m}^3$  to 35  $\mu\text{g}/\text{m}^3$ . The curtailment thresholds for other counties in the San Joaquin Valley were not modified.

A contingency measure was added requiring that on and after sixty days following the effective date of EPA final rulemaking that the San Joaquin Valley Air Basin has failed to attain the 1997, 2006, or 2012  $\text{PM}_{2.5}$  national ambient air quality standards (NAAQS) by the applicable attainment date, the  $\text{PM}_{2.5}$  curtailment levels for any county that has failed to attain the applicable standard will be lowered to the curtailment levels in place for hot spot counties.

Furthermore, the revised rule adds additional restrictions on the installation of wood burning devices, new requirements for fireplace and chimney remodel projects, additional requirements for residential real estate sales, non-seasoned wood to the list of prohibited fuel types, a new visible emissions limit for fireplaces and non-registered devices, and other editorial revisions to improve rule clarity.

The EPA's technical support document (TSD) has more information about this rule.

## II. The EPA's Evaluation and Action

### A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

The San Joaquin Valley is currently designated and classified as an Extreme 1-hour ozone nonattainment area and an Extreme 8-hour ozone nonattainment area under the 1997, 2008, and 2015 8-hour ozone NAAQS.<sup>2</sup> CAA section 172(c)(1) requires ozone nonattainment areas to implement all reasonably available control measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable. While our stringency discussion below focuses on PM emissions, we are not aware of reasonably available controls for these sources for ozone precursors that are not also reasonably available controls for PM. In addition, because residential

wood burning takes place in the winter months when ozone concentrations are lower and the probability of exceeding the ozone NAAQS is low, we do not believe it is necessary to assess RACM/RACT for ozone and its precursors independently from our assessment for  $\text{PM}_{2.5}$ .

San Joaquin Valley is designated and classified as a Serious nonattainment area for the 1997 annual and 24-hour  $\text{PM}_{2.5}$  standards and the 2006 24-hour  $\text{PM}_{2.5}$  standards (40 CFR 81.305). CAA section 189(b)(1)(B) requires Serious  $\text{PM}_{2.5}$  nonattainment areas to implement best available control measures (BACM), including best available control technology (BACT),<sup>3</sup> within 4 years after reclassification of the area to Serious. Therefore, SJVUAPCD must implement BACM, including BACT, for  $\text{PM}_{2.5}$  and  $\text{PM}_{2.5}$  precursors.<sup>4</sup> Under the  $\text{PM}_{2.5}$  SIP Requirements Rule, BACM is defined as:

any technologically and economically feasible control measure that can be implemented in whole or in part within 4 years after the date of reclassification of a Moderate  $\text{PM}_{2.5}$  nonattainment area to Serious and that generally can achieve greater permanent and enforceable emissions reductions in direct  $\text{PM}_{2.5}$  emissions and/or emissions of  $\text{PM}_{2.5}$  plan precursors from sources in the area than can be achieved through the implementation of RACM on the same source(s).<sup>5</sup>

In addition, SJVUAPCD must implement "additional feasible measures" for  $\text{PM}_{2.5}$  and  $\text{PM}_{2.5}$  precursors, which is defined as:

any control measure that otherwise meets the definition of "best available control measure" (BACM) but can only be implemented in whole or in part beginning 4 years after the date of reclassification of an area as Serious and no later than the statutory attainment date for the area.<sup>6</sup>

Furthermore, SJVUAPCD has requested an extension of the attainment deadline for the 2006  $\text{PM}_{2.5}$  standards from 2019 to 2024 pursuant to CAA section 188(e).<sup>7</sup> One of the criteria that must be met for the EPA to grant such an extension is a demonstration that "the plan for that area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the

area."<sup>8</sup> Accordingly, in order to receive an extension of the attainment deadline for the 2006  $\text{PM}_{2.5}$  standards, SJVUAPCD must implement most stringent measures (MSM) for  $\text{PM}_{2.5}$  and  $\text{PM}_{2.5}$  precursors.

San Joaquin Valley is designated and classified as a Moderate nonattainment area for the 2012 annual  $\text{PM}_{2.5}$  standards. Therefore, under CAA sections 172(c)(1) and 189(a)(1)(C), SJVUAPCD must implement RACM, including RACT, for  $\text{PM}_{2.5}$  and  $\text{PM}_{2.5}$  precursors. Since BACM/BACT represents a more stringent and potentially more costly level of control than RACM/RACT,<sup>9</sup> we are not evaluating Rule 4901 for RACM/RACT separately from our evaluation from BACM/BACT. The EPA will address the overall RACM/RACT requirement for the SJVUAPCD 2012  $\text{PM}_{2.5}$  Moderate Nonattainment Area at a later date when we act on an attainment plan addressing the 2012  $\text{PM}_{2.5}$  NAAQS.

San Joaquin Valley is currently designated attainment for  $\text{PM}_{10}$ .<sup>10</sup> Accordingly, SJVUAPCD is not required to implement BACM/BACT or RACM/RACT for  $\text{PM}_{10}$  and  $\text{PM}_{10}$  precursors. Therefore, we are not currently evaluating Rule 4901 for compliance with BACM/BACT or RACM/RACT requirements for  $\text{PM}_{10}$ .

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "Strategies for Reducing Residential Wood Smoke", EPA-456/B-13-001, March 2013.

We note that in this action we are not evaluating the contingency measure in section 5.7.4 of revised Rule 4901 for compliance with all requirements of the CAA and the EPA's implementing regulations that apply to such measures. We are proposing to approve this measure into the SIP because it strengthens the rule by providing a possibility of additional curtailment days, and thus potentially additional emissions reductions. We will evaluate whether this provision, in conjunction with other submitted provisions, meets the statutory and regulatory

<sup>3</sup> CAA section 189(b)(1)(B) refers only to BACM, but EPA interprets this term to include BACT (see, e.g., 80 FR 15340, 15404 (March 23, 2015)).

<sup>4</sup>  $\text{PM}_{2.5}$  precursors are  $\text{NO}_x$ , VOC, sulfur dioxide and ammonia. We are not aware of any additional feasible controls for these pollutants that are not also feasible controls for direct  $\text{PM}_{2.5}$  emissions, so we are not separately evaluating these pollutants in this action.

<sup>5</sup> 40 CFR 51.1000. See also 40 CFR 51.1010(a).

<sup>6</sup> Id.

<sup>7</sup> 2018  $\text{PM}_{2.5}$  Plan, 6-2.

<sup>8</sup> CAA section 188(e). See also 40 CFR 51.1010(b).

<sup>9</sup> 81 FR 58010, 58081 (August 24, 2016).

<sup>10</sup> 40 CFR 81.305.

<sup>2</sup> 40 CFR 81.305.

requirements for contingency measures in future actions.

*B. Does the rule meet the evaluation criteria?*

This rule is consistent with CAA requirements and relevant guidance regarding enforceability, SIP revisions, and RACM/RACT, BACM/BACT, and MSM for PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors. The rule requirements and applicability are clear, and the monitoring, recordkeeping, reporting and other provisions sufficiently ensure that affected sources and regulators can evaluate and determine compliance with Rule 4901 consistently. We propose to determine that our approval of the submittal would comply with CAA section 110(l), because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for reasonable further progress and attainment are met and the submitted SIP revision is at least as stringent as the rule previously approved into the SIP. CAA section 193 does not apply to this action because the submitted SIP revision does not weaken any SIP control requirement in effect before November 15, 1990.

In 2015, we conducted a detailed evaluation of the stringency of the 2014 version of Rule 4901, as compared with other wood burning rules and relevant guidance. Based on this evaluation, we proposed to determine that it implemented BACM/BACT for PM<sub>2.5</sub> for wood burning devices and to fully approve it. After reviewing and responding to comments on that proposal, we finalized a determination that the 2014 version of Rule 4901 implemented RACM/RACT and BACM/BACT for PM<sub>2.5</sub> for this source category and approved it into the SIP.<sup>11</sup> In the 2018 PM<sub>2.5</sub> Plan, the District conducted another review of the 2014 version of Rule 4901 compared with wood burning rules in several other jurisdictions and concluded that Rule 4901 was more stringent than each of the other rules “when evaluated holistically.”

The 2019 amendments to Rule 4901 further strengthen the rule in several respects, as described in Section I.C above. Accordingly, we propose to find that the 2019 version of Rule 4901 implements RACM/RACT and BACM/BACT for PM<sub>2.5</sub> for this source category. We also propose to find that it implements MSM for PM<sub>2.5</sub> for this source category because, as a whole, it is as or more stringent than analogous local, state and federal rules and

guidance. The TSD has more information on our evaluation.

*C. The EPA’s Recommendations to Further Improve the Rule*

The TSD includes recommendations for the next time SJVUAPCD modifies the rule.

*D. Public Comment and Proposed Action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until February 10, 2020. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

**III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SJVUAPCD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

**IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions

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

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 16, 2019.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*  
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<sup>11</sup> 81 FR 69393 (October 6, 2016).