(c) Utah Administrative Code (UAC) rule R307–1–4.12, National Emission Standards for Hazardous Air Pollutants (NESHAPs), is removed from Utah's approved State Implementation Plan (SIP). Utah has delegation of authority for NESHAPs in 40 CFR part 61 (49 FR 36368), pursuant to 110(k)(6) of the Act.

(d) Utah Administrative Code (UAC) rule R307–1–6, Eligibility of Pollution Control Expenditures for Sales Tax Exemption, is removed from Utah's approved State Implementation Plan (SIP). This rule language pertains to State Sales Tax Exemptions for Pollution Control Expenditures and is not generally related to attainment of the National Ambient Air Quality Standards (NAAQS) and is therefore not appropriate to be in Utah's SIP.

[FR Doc. 06–1310 Filed 2–13–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0033; FRL–8029–4]

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 approval of revisions to the San Joaquin Valley Unified Air Pollution Control District's portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on March 30, 2005, and concern particulate matter emissions from agricultural operations. 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: *Effective Date:* This rule is effective on March 16, 2006.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2006–0033 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hardcopy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hardcopy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415)947–4115, *steckel.andrew@epa.gov.*

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

I. Proposed Action

On March 30, 2005 (70 FR 16207), EPA proposed to approve San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4550, Conservation Management Practices, and its associated List of Conservation Management Practices (CMP List), into the California SIP. Rule 4550 and the CMP List were adopted by the SJVUAPCD on May 20, 2004, and readopted without change on August 19, 2004. We proposed to approve Rule 4550 and the CMP List because we determined that they complied with the relevant CAA requirements. A more detailed discussion of SJVUAPCD particulate matter attainment planning, the CAA requirements for serious nonattainment areas, and how the CMP program complies with these requirements is provided in our proposed rule and technical support document (TSD).

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties:

1. Vanessa Stewart, Earthjustice; letter dated April 29, 2005.[1]

2. San Joaquin Valley agricultural groups: California Cotton Ginners and Growers Associations, California Citrus Mutual, California Grape and Tree Fruit League, Fresno County Farm Bureau, Nisei Farmers League; letter dated April 29, 2005.

EPA appreciates the time and effort expended by the commenters in reviewing the proposed rule and providing comments. We have summarized the significant comments and provided our responses below.

Comment 1: Earthjustice comments that the San Joaquin Valley (SJV or the Valley) is subject to the requirements of CAA section 188(e), including most stringent measures (MSM). Earthjustice states that nonattainment areas like the Valley ''receiving additional time to attain the NAAQS'' must demonstrate that ''the plan for that area includes the most stringent measures (MSM) that are included in the implementation plan for any State or are achieved in practice in any state, and can feasibly be implemented in the area.'' Addendum at 42010.[2] The Valley, having submitted a PM–10 Plan with an attainment deadline almost a decade later than that authorized by the Act, is subject to the requirements of CAA section 188(e), including the MSM requirement.

Response: In our final rule approving the 2003 SJV PM–10 Plan, we determined that section 188(e), including its MSM requirement, does not apply to the SJV PM–10 nonattainment area. Instead we concluded that, having failed to attain its serious area deadline of December 31, 2001, the area falls within the scope of section 189(d) which does not contain an MSM requirement. 69 FR 30006, 30022 (May 26, 2004). Earthjustice appropriately raised the issue of the applicability of section 188(e) in its comments on EPA's proposed approval of the 2003 Plan. Earthjustice, representing Latino Issues Forum, Medical Advocates for Healthy Air and Sierra Club, subsequently challenged EPA's final approval in the U.S. Court of Appeals for the Ninth Circuit, raising this issue among others.[3] On September 6, 2005, the Ninth Circuit upheld EPA's interpretation of the statute. *Association of Irritated Residents et al.* v. *U.S.E.P.A. et al.*, 2005 U.S. App. LEXIS 19213 (9th Cir. 2005).

Comment 2: Earthjustice comments that the CMP program must provide for MSM. Earthjustice states that the CMP program does not demonstrate that it implements MSM, nor has EPA evaluated it under this standard. MSM evaluations are distinct from best available control measure (BACM) evaluations and may identify control measures that would not have been considered under a BACM evaluation. For example, EPA has concluded that the de minimis level for BACM ''depends on whether requiring the application of BACM for such sources

[1] Paul Cort, Earthjustice, submitted an additional letter dated December 2, 2005, in which he seeks to supplement Ms. Stewart's comment letter. By letter dated December 20, 2005, David Crow, SJVUAPCD, responded to Mr. Cort's letter. The comment period for the proposed rule closed on April 29, 2005. Mr. Cort's letter and Mr. Crow's response are therefore over seven months late and EPA is not considering them in this final action.

[2] ''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,'' 59 FR 41998 (August 16, 1994).

[3] The Association of Irritated Residents also petitioned for review of EPA's final action and the cases were consolidated.

would make the difference between attainment and nonattainment by the serious area deadline'' whereas the de minimis levels for MSM should be determined by ''whether MSM controls on the de minimis sources would result in more expeditious attainment.'' Under a MSM evaluation, the de minimis levels and size-based exemptions need to be reconsidered.

Response: See response to comment #1. Because of our position, affirmed by the Ninth Circuit in *Association of Irritated Residents,* that CAA section 188(e) does not apply to the SJV PM–10 nonattainment area, we do not address the comments below to the extent that they address MSM.

Comment 3: Earthjustice comments that the least effective measures are not BACM or MSM and requiring the selection of only one CMP per category does not provide for maximum possible emissions reductions. Operators are allowed to select the least effective (lowest control efficiency) practice in each category. A practice does not meet MSM or BACM when a demonstrably more effective measure is available and feasible. Many CMPs with unusually low control efficiencies will be the most popular. Operators should be required to implement the most effective measure from each category, or a combination of measures that would be equivalent to the most effective measure, or demonstrate why such control efficiency is not feasible. In the past, EPA has approved fugitive dust control programs, such as SJVUAPCD Rule 8081 applicable to off-field agricultural sources (68 FR 8831; February 26, 2003), that permit flexibility in control options, yet these programs require a minimum control efficiency. If the CMP program required operators to adopt practices with minimum control efficiencies, the program would be more effective.

The CMP program contemplates that growers will select one CMP from five source categories and Concentrated Animal Feeding Operations (CAFOs) from three. Thus even if a category contained more than one available and feasible control measure for any given source, the program would still only require the operator to include one control measure from each category, a limitation which is impermissible.

Response: As we observed in our final approval of the 2003 SJV PM–10 Plan, flexibility is needed in any program controlling agricultural sources. 69 FR 30006, 30015. Agricultural activities and emissions can be dependent on a wide range of factors, such as crop type, herd size, equipment type, soil type, economic circumstances, and facility size. Elements that are often beyond the control of the grower, such as weather and market conditions, can change quickly and affect the ability of growers to absorb the costs of controls. There is also a limited amount of scientific information concerning the cost effectiveness of the available and known control measures for agricultural operations.

As a result of the above conditions, allowing owners/operators of on-field agricultural sources the discretion to choose from a range of specified options is particularly important. Although the measures on the CMP List are generally considered technologically feasible control requirements, it is simply not practical to require the implementation of every CMP or specified group of CMPs. We cannot, for example, assume that all CMPs are available to all sources. It may be that the measure with the highest estimated control efficiency is not feasible for particular sources due to source-specific conditions. Thus, while some CMP options may have lesser control efficiencies than others, the CMP List gives growers and producers a variety of CMPs to choose from in order to tailor PM–10 controls to their individual circumstances without causing an unnecessary and unreasonable economic burden. For these reasons it would not be practical to require each farmer or the District to justify why the CMP with the highest control efficiency is infeasible for any individual operation. Furthermore, given the rudimentary state of knowledge, requiring a specific CMP or a group of CMPs that yield a particular emission level cannot be technically justified.

The format of the CMP rule has become the standard model for fugitive dust rules generally and rules governing agricultural operations specifically. This format has developed over time because of the need to impose effective but reasonable and feasible controls on a large number of similar but distinct sources. See, *e.g.*, EPA's approval of Maricopa County Environmental Services Department (MCESD) Rule 310 as meeting CAA reasonably available control measure (RACM) and BACM requirements (62 FR 41856, August 4, 1997); South Coast Air Quality Management District (SCAQMD) Rule 403 (providing for alternative compliance mechanisms for the control of fugitive dust from earthmoving, disturbed surface areas, unpaved roads etc.); and SCAQMD Rule 1186 (requiring owners/operators of certain unpaved roads the option to pave, chemically stabilize, or install signage, speed bumps or maintain roadways to inhibit speeds greater than 15 mph). EPA approved these SCAQMD rules as meeting the RACM and/or BACM requirements of the CAA on December 9, 1998 (63 FR 67784).

The regulatory approach selected by the SJVUAPCD specifically for the control of PM–10 emissions from agricultural operations is similar to those adopted and implemented by the SCAQMD for the South Coast Air Basin and by the Arizona Department of Environmental Quality for the Phoenix (Maricopa County) PM–10 nonattainment area. See, *e.g.*, discussion of the South Coast and Phoenix approaches at 66 FR 50252, 50268–50271 (October 2, 2001) and 67 FR 48730 (July 25, 2002).

Finally, with regard to both comments, *i.e.*, that the least effective measures will be chosen which are not BACM and that operators must be required to implement more than one CMP, the decision of the Ninth Circuit Court of Appeals in *Vigil* v. *Leavitt*, 366 F.3d 1025 (9th Cir. 2004) is instructive. In upholding EPA's approval of a similar program for the Phoenix serious PM–10 nonatttainment area, the Court observed:

> Petitioners do not challenge any particular practice adopted as BACM. [footnote omitted] Rather, petitioners contend that there is no reason why Arizona could not require farmers to implement more than one control measure in each category. Petitioners point out that because, in one sense, Arizona has already found these measures to be ''feasible,'' more than one measure must be implemented. As a matter of theory, petitioners are, of course, correct. Intuitively, it seems obvious to say that if one measure per category is good, two or more would be better. Petitioners' argument proves too much, however. By petitioners' logic, if two are better than one, three are better than two, and so forth. We have little doubt that if Arizona required all of these measures, it would achieve greater reductions than under its present plan.

Id. at 1034–1035.

The Court further observed that:

> Petitioners' argument would be compelling if the Act required a state to reduce its emissions to the maximum extent possible, regardless of cost. EPA, however, has concluded that ''best available control measures'' means the maximum degree of emissions reduction of PM–10 and PM–10 precursors from a source * * * which is determined on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such source through application of production processes and available methods, systems, and techniques for control of each such pollutant. Addendum, 59 FR at 42010.

Id. at 1035.

The Court then proceeded to review the process by which the list of

agricultural control measures (known as ''best management practices'') for the Phoenix area was selected and Arizona's rationale for requiring the implementation of only one such practice per source category. The process and rationale in the case of the San Joaquin Valley are virtually identical. See ''Technical Support Document for EPA's Proposed Rulemaking for the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District Rule 4550, Conservation Management Practices, and List of Conservation Management Practices,'' EPA, March 8, 2005.

The SJVUAPCD intends to monitor the effectiveness of the CMPs and adjust the program, if needed, in the future. Based on the conclusions reached by SJVUAPCD and the AgTech Committee and our evaluation of comparable programs in other serious PM–10 nonattainment areas regarding technological feasibility and economic effects, we believe that Rule 4550 and the CMP List provide the maximum degree of PM–10 emission reductions achievable from agricultural sources in the SJV and, therefore, meet the CAA's BACM requirement.

Comment 4: Earthjustice comments that the Valley must adopt every available measure without delay. The Valley has failed both to meet its December 31, 2001, attainment deadline and to demonstrate attainment by the Act's latest possible extended deadline of December 31, 2006. Under these circumstances, the Valley must adopt every available measure to control PM–10 without delay. *Delaney* v. *EPA,* 898 F.2d 687, 691 (9th Cir. 1990). Thus, unless the Air District can demonstrate that a given control measure is infeasible, it must require implementation of that measure. The Air District's desire to provide flexibility in regulating agricultural sources of PM–10 cannot trump its obligation to require implementation of all available control measures to control agricultural fugitive dust.

Response: In our final rule approving the 2003 SJV PM–10 Plan, we approved a December 31, 2010, attainment deadline for the SJV PM–10 nonattainment area. In so doing, we explained that after a serious PM–10 nonattainment area such as the SJV fails to meet its attainment deadline (either December 31, 2001 under section 188(c)(2) or an extended deadline under section 188(e)), the provisions of section 189(d) apply. Because section 189(d) requires the submittal of an attainment demonstration but does not contain an attainment deadline, EPA looked to sections 179(d)(3) and 172(a)(2) to determine the outer bounds of that deadline. 69 FR 30006, 30023.

In contrast, *Delaney* concerned a provision of the CAA as amended in 1977 in which Congress had not provided a back-up deadline for an explicitly absolute deadline. Earthjustice appropriately raised the issue of the applicable attainment deadline for the area in its comments on EPA's proposed approval of the 2003 Plan. Earthjustice subsequently challenged EPA's final approval in the U.S. Court of Appeals for the Ninth Circuit, raising, among other things, its belief that *Delaney* compels the SJV to attain the PM–10 standards as soon as possible with all available measures. As stated above, the Ninth Circuit upheld EPA's statutory interpretation in its opinion in *Association of Irritated Residents.*

Comment 5: Earthjustice comments that the 100-acre threshold for agricultural operations and size-based exemptions for animal feeding operations are not justified. These exemptions are not consistent with the definition of ''significant source'' in the CAA or as applied by EPA. A source's significance is based on its contribution to an area's violation of national ambient air quality standards (NAAQS) and not on its size. Similarly, a source category may avoid implementing BACM under the de minimis exception only if the ''State demonstrates conclusively that, because of the small contribution of the source category's emissions to the attainment problem'' the imposition of BACM would not contribute significantly to the achievement of NAAQS. Therefore, the Plan must provide BACM for all agricultural sources.

Furthermore, even if size-based exemptions were permissible, the Plan fails to demonstrate that it is not technically or economically feasible to apply the requirements to sources smaller than 100 acres. If practical considerations are the primary reason for the exemptions, then the Plan should adopt other mechanisms, such as a phased implementation schedule, rather than a flat out size-based exemption.

Response: As mentioned by the commenter, agricultural operations in the aggregate are a significant source [4] of PM–10 and PM–10 precursors in the Valley. Therefore, agricultural operations would be a source category for which BACM is required. However, our applicable guidance for evaluating the economic feasibility of potential BACM provides that ''[s]tates should not restrict their analysis to simple acceptance/rejection decisions based on whether full application of a measure to all sources in a particular category is feasible. Rather, a State should consider implementing a control measure on a more limited basis, *e.g.,* for a percentage of the sources in a category if it is determined that 100 percent implementation of the measure is infeasible.'' Addendum at 42014. This is the approach that SJVUAPCD took when it considered the exemptions for Rule 4550.

SJVUAPCD's staff report associated with Rule 4550 (dated August 19, 2004) provides analyses of various CMPs and 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. As explained in the staff report, agricultural activities in the SJV are significantly more diverse and of a different scale than activities in the South Coast Air Basin or Maricopa County, where analogous rules apply to operations over 10 acres. Rule 4550 (with its 100-acre exemption level) will apply to approximately 91 percent of all irrigated farmland in the SJV. An economic analysis of smaller farms in this region indicates that the farms exempted by Rule 4550 due to the 100-acre threshold earn, on average, $63,000 in sales. It was determined that these farms would have less income and capital available to invest in equipment or systems to meet many of the CMP requirements in Rule 4550, and would therefore be disadvantaged in selection of CMPs. SJVUAPCD also estimated emissions from 100-acre farms to determine the emission impact of an exemption. SJVUAPCD staff analyzed different commodities and determined that PM–10 emissions would be quite low for smaller farms, less than 1 ton per year. Therefore, SJVUAPCD concluded that the 100-acre exemption was appropriate for the SJV.

SJVUAPCD used a similar approach for the size-based exemptions for animal feeding operations. Rule 4550 is expected to apply to 73% of dairy cows, 94% of feedlot cattle, and nearly all poultry operations. It was also determined that any sites qualifying for the size-based cut-offs would have emissions no greater than 1 ton per year.

As discussed in the Addendum, energy and environmental impacts of control measures and the cost of control should be considered in determining

[4] We note that the Clean Air Act does not define the term ''significant source.'' Rather it is a concept that EPA developed in guidance interpreting the Act's RACM/BACM requirements. 57 FR 13498, 13540 (April 16, 1992); Addendum at 42011.

BACM. Economic feasibility considers the cost of reducing emissions and costs incurred by similar sources. Addendum at 42012–42013. The SJVUAPCD's analyses have also determined that application of BACM at the small operations that are subject to Rule 4550's exemptions would produce an insignificant regulatory benefit. As a result, EPA believes that the exemption of these smaller operations is considered reasonable and consistent with general procedures for making BACM determinations.

Comment 6: Earthjustice comments that the CMP program must require MSM and BACM for agricultural windblown dust. The CMP program combines windblown dust with agricultural burning. As written, the CMP program enables operators to avoid implementing controls on windblown dust by merely complying with already existing agricultural burning rules. Windblown dust should be established as a stand-alone category in the CMP program, rather than being included as part of the ''Other'' category.

Response: As mentioned in the staff report for Rule 4550, the SJVUAPCD evaluated control measures in all other serious nonattainment areas for consideration in the SJV and has included similar measures in Regulation VIII and the CMP Program. Additionally, during development of the SJV 2003 PM–10 Plan, the SJVUAPCD used data from various monitoring networks to evaluate episodes for exceedance days at PM–10 monitors in the SJV. The SJVUAPCD's meteorological analysis of wind speed associated with measured PM–10 exceedances found that exceedances largely occurred during periods of low winds and stagnant conditions in the fall and winter. Wind speeds are highest during the spring when PM–10 levels are at their lowest. Only five PM–10 exceedance days spanning a 13-year period were identified as associated with strong winds. As a result, the SJVUAPCD concluded that, unlike other arid western PM–10 serious nonattainment areas, the SJV does not have a regular and repeated windblown dust problem. Therefore it was not necessary to establish windblown dust as a stand-alone category. Nevertheless, the PM–10 Plan does recognize that windblown dust can occur from agricultural disturbed surfaces by including windblown measures in the ''Other'' category in the agricultural CMP program. SJV 2003 PM–10 Plan, pages 2–4 through 2–6.

Comment 7: Earthjustice comments that Rule 4550 fails to set forth criteria by which the Air Pollution Control Officer (APCO) will implement the CMP Program. Rule 4550 grants the APCO undue authority to weaken the Handbook, grant exemptions, approve new CMPs, or alter the control categories in the Handbook without public input or SIP revision. The CMP rule fails to provide any criteria for the APCO to exempt an operation from the CMP requirements. The rule also fails to identify the criteria that the APCO will use to evaluate and approve new CMPs. The Plan should explicitly commit to: (1) Make the CMP plans available for public review to the degree that Title V or any other operating permit is available; (2) contain a mechanism to ensure that citizens will be able to verify that growers subject to the rule are participating and that CMP plans are being implemented; and (3) ensure that adjustments to rule applicability thresholds are subject to public review.

Response: The CMP Handbook is designed as a tool to assist sources in complying with the requirements of Rule 4550 and the CMP List. It provides instructions and descriptions of CMPs to assist growers in completing CMP applications. The CMP Handbook itself does not contain regulatory requirements. If the APCO were to alter the content of the CMP Handbook, it would not alter the requirements of Rule 4550. Any changes to Rule 4550 would need to be adopted through the SJVUAPCD's public rulemaking process before going into effect.[5] Even if the CMP Handbook were eliminated, growers would still be required to comply with the requirements of Rule 4550.

Rule 4550 does not allow the APCO to grant exemptions from the CMP program. Section 6.2 states that if no feasible CMP can be identified from one category, then an owner/operator may select a substitute CMP from another CMP category. Rule 4550 does specify criteria for the APCO when evaluating new or alternative CMP requirements. Section 6.2 states that to obtain approval of a CMP that is not on the CMP List, 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.

EPA's general policy regarding director's discretion is stated in 52 FR 45109 (November 24, 1987). Provisions allowing for a degree of APCO discretion may be considered appropriate if explicit and replicable procedures within the rule tightly define how the discretion will be exercised to assure equivalent emission reductions.[6] 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. The CMP plans and the CMP List are publicly available documents. The District has authority to enforce the requirements of this rule. Citizens may verify compliance by growers without any further rule changes. Any adjustments to rule applicability thresholds will need to be done through a public rule development process, and proposed rule amendments will then be subject to public review and comment.

Comment 8: Earthjustice claims that the emission reductions estimated to be achieved by the Ag CMP program, 33.8 tons per day, are inaccurate and inflated because the estimate double counts emission reductions already being achieved from practices already in common use by growers. According to Earthjustice, the failure to incorporate into the Plan's demonstrations (5% and attainment) an estimate of what percentage of practices have already been adopted has one of two results: Either the current emissions inventory relied upon in the Ag CMP calculations is highly overstated or the emissions reductions estimates are highly overstated. In either case, Earthjustice believes the validity of the 5% and attainment demonstrations in the Plan is undermined. To support its contentions, Earthjustice provides examples of what it considers to be overstatements of emission reduction estimates due to the failure to account for already adopted practices and recent updates to the emissions inventory.

Response: In reviewing this rule as fulfilling the commitments in the approved 2003 SJV PM–10 Plan, we address two issues. First, we must determine whether or not the rule, as adopted, meets the CAA section 189(b)(1)(B) requirement for BACM in terms of the stringency of controls applied to agricultural PM–10 sources. Our proposed action on Rule 4550 and our responses to comments above set

[5] Moreover, once approved by EPA into the SIP, Rule 4550 will be federally enforceable and, under CAA section 110(l), any revision to it cannot be approved by the Agency if it would interfere with any applicable requirement concerning attainment, reasonable further progress or any other applicable requirement of the Act.

[6] ''Guidance Document for Correcting Common VOC and Other Rule Deficiencies (a.k.a. The Little Bluebook)'', U.S. EPA Region IX, originally issued April 1991, revised August 21, 2001.

out our rationale for concluding that the adopted rule does comply with the BACM requirement in its level of stringency.

Second, we may look to the emission reductions projected to be achieved by the adopted rule compared to the 2003 SJV PM–10 Plan's commitment to achieve specific emission reductions from the rule as needed to meet plan requirements, such as the 5% obligation of CAA section 189(d) and the attainment demonstration requirements of CAA sections 189(d) and 179(d)(3). This second level of analysis frequently raises complex issues, such as the accuracy of fugitive dust emission factors associated with particular activities, that are typically addressed in the context of plans and plan amendments. These issues were made available for public comment during EPA's proposed approval of the 2003 SJV PM–10 Plan.

We believe the District's efforts to quantify emission reductions from Rule 4550 fall within established norms. With respect to the baseline emission inventory we approved as part of the 2003 SJV PM–10 Plan, the District developed it using emission factors based on field tests performed in the 1990s with standard available equipment (Rule 4550 staff report, Appendix A–13).[7] While the District used a combination of methods such as sampling, source tests, field measurements, and emission factor calculations, along with best available data, to develop the inventory, the District recognized the need to better characterize emissions as well as the effectiveness of controls (2003 PM–10 Plan, Appendix, H–2). Moreover, it was understood that some agricultural sites may have been employing practices not required by regulation at that time, and that these existing practices may not have been accounted for in the emission inventory. Rule 4550 makes these practices mandatory and federally enforceable, allowing the District to take credit for the emission reductions (Rule 4550 staff report, Appendix, A–6).

Emission reduction estimates are also circumscribed by available data, which in this case was limited (Rule 4550 staff report, Appendix B). Because it is highly impractical to directly measure emissions from every activity and source, emission factors are not currently available for every CMP. Therefore, emission reduction estimates are often dependent on generally available emission factors for particular operations. Here, the District identified major groupings and used available information to quantify the emissions reductions achievable from the CMP Program. Furthermore, because of the flexible nature of the CMP Program, it was not possible in advance of implementation to anticipate which specific practices would be chosen by each individual owner or producer.

Section 8.0 of Rule 4550, however, contains a backstop provision that states that if, by December 31, 2005, the CMP program has not achieved the PM–10 emission reduction commitment for the PM–10 Reasonable Further Progress Plan due in 2006,[8] then the SJVUAPCD shall take actions necessary to meet the reduction target for the CMP program. Those actions may include changing the exemption thresholds, increasing the total number of CMPs required, or other revisions to the program.

The District recently released the ''Conservation Management Practices Program Report for 2005,'' January 19, 2005, addressing Rule 4550's backstop provision. The report concluded that the CMP program as implemented is reducing PM–10 emissions from agricultural sources by at least 35.3 tpd. In reaching this conclusion, the District used new and updated information primarily from the CMP applications submitted by growers, *e.g.*, the actual CMPs selected and the acreage to which they are to be applied.[9]

Comment #9: The San Joaquin Valley agricultural groups support EPA's proposed approval of Rule 4550 into the California SIP. Rule 4550 is the most comprehensive and effective regulation to address agricultural air quality in the nation and, as such, should be approved by EPA and adopted into the SIP. No other program adopted in the country to control fugitive PM_{10} emissions from agriculture requires submittal of the actual CMP Plan for each location. No other adopted program will be able to so extensively quantify the emissions reductions generated by the program as the Valley's.

Response: No response needed.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving Rule 4550 and the CMP List into the California SIP.

IV. 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 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 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

[7] Because of the complexity of compiling emission inventories, it is common to rely on studies a decade or more old such as done here. For example, the current inventory estimates for residential wood burning stoves in most of California are based on 1990 census data of how many homes burn wood for heating, and estimates for non-farm unpaved road dust are based on a 1993 Caltrans study. See *http://www.arb.ca.gov/app/emsinv/*. See also EPA's AP–42 (*http://www.epa.gov/ttn/chief/ap42/ch04/index.html*), which provides emission factors used nationally for generating emission estimates and cites to many studies from the 1980s and 1990s.

[8] SJVUAPCD must demonstrate that adequate emission reductions are achieved to meet progress requirements every three years. 59 FR 42016 (August 16, 1994).

[9] In addition, the District intends to undertake research to further refine emission factors as is routinely done to improve inputs to emission inventories (see Rule 4550 staff report, Appendix, A–6).

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. 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. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 17, 2006. 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.

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

Dated: January 24, 2006.

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)(334)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(334) * * *

(i) * * *

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

(*1*) Rule 4550 and the List of Conservation Management Practices, adopted on May 20, 2004, re-adopted on August 19, 2004.

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[FR Doc. 06–1311 Filed 2–13–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.