ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA286–0404A; FRL–7518–1]

Approval and Promulgation of State Implementation Plans; California—San Joaquin Valley Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a state implementation plan (SIP) revision submitted by the State of California regarding the San Joaquin Valley ozone nonattainment area (San Joaquin Valley). The submittal revises commitments for adoption of control measures for attaining the 1-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the SIP revision under provisions of the Clean Air Act (CAA or the Act) regarding EPA action on SIP submittals. EPA is also proposing to find that the adoption and implementation of the measures that are the subject of this SIP revision correct a previous finding regarding non-implementation of the SIP. If finalized, this finding would terminate the sanctions and FIP clocks associated with the previous finding.

DATES: Written comments on this proposal must be received by July 24, 2003.

ADDRESSES: Comments should be addressed to the EPA contact listed below. The rulemaking docket for this notice may be inspected by appointment at: EPA Region 9, Air Division Planning Office, 75 Hawthorne Street, San Francisco, CA.

Copies of the SIP materials are also available for inspection at the following locations: California Air Resources Board, 1001 I Street, Sacramento, CA. San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg, Fresno, CA.

FOR FURTHER INFORMATION CONTACT: Doris Lo at (415) 972–3959, *lo.doris@epa.gov*, or EPA Region 9 (AIR–2), 75 Hawthorne Street, San Francisco, California 94105–3901.

SUPPLEMENTARY INFORMATION:

I. Background

When the CAA was amended in 1990, each area of the Country that was designated nonattainment for the 1-hour ozone standard was classified by the severity of the area's air quality problem. See CAA sections 107(d)(1)(C) and 181(a). The San Joaquin Valley [1] was initially classified as ''serious'' with an attainment date of no later than November 15, 1999. *See* 56 FR 56694 (November 6, 1991) and CAA section 181(a)(1).

On November 15, 1994, the California Air Resources Board (CARB) submitted an ozone SIP for the San Joaquin Valley (1994 SIP). On January 8, 1997 (62 FR 1149), EPA published a final approval of the 1994 SIP which included, among other things, a list of commitments to adopt and implement 19 local control measures for volatile organic compounds (VOC) and oxides of nitrogen (NO_X), a rate of progress (ROP) demonstration and an attainment demonstration.

On November 8, 2001 (66 FR 56476), EPA found that the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) had failed to implement six of the 19 control measure commitments in the 1994 SIP. On the effective date of this finding (December 10, 2001), an 18 month 2:1 offset sanction clock and a 2-year highway sanction and FIP clock were started pursuant to CAA sections 110(c) and 179. In order to terminate these clocks, EPA stated that the SJVUAPCD must adopt and implement the six control measures by November 15, 2002.

II. 2001 SIP Amendment

On June 11, 2002, CARB submitted the San Joaquin Valley 2001 Amendment to the 1994 ozone SIP (2001 Amendment). This submittal became complete by operation of law pursuant to CAA section 110(k)(1)(B) on December 11, 2002. The purpose of the 2001 Amendment was primarily to address EPA's non-implementation finding and to reflect more accurate information gathered during the rule development process. Table 1 summarizes the relevant commitments in the 1994 SIP and the commitments in the 2001 Amendment.

TABLE 1

Rule	1994 SIP			2001 Amendment		
	Adopt	Implement	TPD	Adopt	Implement	TPD
4601, Architectural Coatings	1Q/96	1Q/98	1.51 (VOC)	10/31/01	11/30/01	1.3 (VOC)
4662, Organic Solvent Degreasing	1Q/96	1Q/98	2.44 (VOC)	4/2001	5/2001	11.28 (VOC)
4692, Commercial Charbroiling	2Q/96	2Q/98	0.39 (VOC)	3/31/02	4/30/02	0.39 (VOC)
4623, Organic Liquid Storage	2Q/91	2Q/96	13.2 (VOC)	12/20/01	1/20/02	0.2 (VOC)
4411, Oil Production Well Cellars	2Q/96	2Q/98	0.56 (VOC)	none	none	none
4663, Organic Solvent Waste*	2Q/96	2Q/96	0.19 (VOC)	12/20/0	1/20/02	*0.73 (VOC)
4412, Oil Workover Rigs	2Q/96	2Q/98	0.87 (NO_X)	none	none	none
4703, Stationary Gas Turbine Engines	.....	.....	.....	4/19/02	5/19/02	1.8 (NO_X)

*This estimated reduction also includes reductions from related modifications to Rules 4602, 4603, 4604, 4605, 4606, 4607, 4653, 4661, 4662, 4663 and 4684.

The District deleted the commitment for rule 4411 after evaluating an analogous but more stringent existing California requirement (*see* title 14, California Code of Regulations, section 1774). Similarly, the District deleted the commitment for rule 4412 because it was preempted by CARB's adoption of the Statewide Portable Equipment Registration Program (*see* 13 CCR 2450–2466). The 1.8 ton/day emission reduction in rule 4703 is a new commitment in the 2001 Amendment and, as such, does not replace a prior commitment.

Some of the control measures that are the subject of commitments in the 2001 Amendment achieve more emission reductions than their analogues in the 1994 SIP, while others achieve fewer. The cumulative emission reductions achieved by the six measures in the 2001 Amendment (13.9 ton/day VOC

[1] The San Joaquin Valley ozone nonattainment area includes the following counties in California's central valley: San Joaquin, part of Kern (*see* 66 FR 56476), Fresno, Kings, Madera, Merced, Stanislaus and Tulare.

and 1.8 ton/day NO_X) exceed the cumulative reductions committed to in the 1994 SIP (8.1 ton/day VOC and 0.9 ton/day NO_X) for the replacement measures.

The SJVUAPCD has adopted rules 4601, 4662, 4692, 4623, 4663 and 4703. These rules, with minor exceptions,[2] were all implemented by or before November 2002.

III. Evaluation of the 2001 Amendment

Section 110(l) of the CAA prohibits EPA from approving SIP revisions that would ''interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.'' EPA believes that the 2001 Amendment, in conjunction with 14 CCR 1774 and 13 CCR 2450–2466, does not interfere with the statutory attainment date for the San Joaquin Valley area, no later than November 15, 2005, because it results in cumulative emission reductions of 5.8 tons/day VOC and 0.9 ton/day NO_X beyond those to be achieved by the measures committed to in the 1994 SIP. Furthermore, since the commitments in the 2001 Amendment have been generally implemented, there will be no adverse impact on reasonable further progress requirements for the area.[3]

IV. The Non-Implementation Finding

As discussed above, EPA issued its November 8, 2001, non-implementation finding (66 FR 56476) because SJVUAPCD had failed to adopt and implement six control measures committed to in the 1994 SIP. The non-implementation finding stated that ''* * * the SJVUAPCD is obliged by its existing SIP to meet the specific requirements of its commitments. However, CARB and the District have the opportunity to amend the SIP by showing that reasonable further progress and other requirements of the CAA can be met with a revised schedule of controls and associated emission reductions.'' Based on the above evaluation, EPA believes that these requirements have been met and that the adoption and implementation of rules 4601, 4662, 4692, 4623, 4663 and 4703 in the 2001 Amendment and 14 CCR 1774 and 13 CCR 2450–2466 are tantamount to the adoption and implementation of the analogous rules in the 1994 SIP.

While our November 8, 2001, non-implementation finding specified that adoption and implementation of the six measures in the 1994 SIP would terminate sanctions, the measures in the 2001 Amendment should also be submitted to EPA for SIP approval. With the exception of rules 4411 and 4412, all measures in Table 1 have been submitted and found complete. While we concur with the SJVUAPCD that it is not necessary to duplicate 17 CCR 1774 and 13 CCR 2450–2466 requirements by adopting rules 4411 and 4412, we believe these state requirements should be submitted for incorporation into the federally enforceable SIP. Based on discussions with CARB, we believe these requirements will be submitted to EPA in the next few months.

V. Proposed Action

We are proposing to fully approve the 2001 Amendment under CAA section 110(k)(3) because EPA believes that approval is consistent with section 110(l) of the CAA. We are also proposing to find that the deficiencies that resulted in our November 8, 2001, non-implementation finding have been corrected by the adoption and implementation of rules 4601, 4662, 4692, 4623, 4663 and 4703 in the 2001 Amendment and 14 CCR 1774 and 13 CCR 2450–2466.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

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.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because the SIP approval and associated finding under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing and terminate sanctions clocks. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law and proposes to find that portions of the state implementation plan have been implemented and, as such, imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

[2] *See* footnote 3.

[3] All of the requirements found in the 2001 Amendment rules have been implemented with the following exceptions: An aerospace exemption under rule 4662 expires in 2006; a requirement for retrofitting tanks under rule 4623 does not have to be implemented until 11/15/03; technology-forcing requirements for cleaning solvents under rule 4663 do not have to be implemented until 11/15/03; and a technology forcing requirement for photochemical resins under rule 4663 does not have to be implemented until 6/30/05. EPA believes that the emissions reductions associated with these future implementation dates are small and do not impact attainment and reasonable further progress.

E. Executive Order 13132, Federalism

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

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard and terminates sanction clocks, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 13, 2003.

Jack P. Broadbent,

Acting Regional Administrator, Region 9.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA124–4079b; FRL–7517–2]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Commonwealth of Pennsylvania; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the municipal solid waste landfill (MSW) section 111(d) plan (the plan) submitted by the Pennsylvania Department of Environmental Protection (PADEP) for the purpose of controlling landfill gas emissions (*i.e.*, nonmethane organic compounds) from existing landfills, excluding those in the geographical areas of Allegheny County and the City of Philadelphia. The plan was submitted to fulfill requirements of the Clean Air Act (the Act). In the final rules section of this **Federal Register**, EPA is approving the Commonwealth of Pennsylvania's plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipate no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives 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 rule.