assessment rate of $0.020 is $0.005 lower than the prior rate. The quantity of assessable almonds for the 2003–04 crop year is estimated at 907,200,000 pounds. Thus, the $0.020 assessment rate should provide $14,061,000 in assessment income and be adequate to meet this year's expenses, when combined with other revenues including financial reserves. The projected financial reserve at the end of 2003–04 is $7,338,087, which is within the parameters of the order.

The major expenditures recommended by the Board for the 2003–04 crop year include $6,375,312 for advertising and market research, $7,587,750 for public relations and other promotion and education programs including a MAP program administered by USDA's FAS, $1,500,000 for salaries and wages, $1,000,000 for nutrition research, $850,332 for production research, $823,948 for quality programs, $254,903 for environmental programs, $200,000 for travel, $122,472 for office rent, $120,750 for a crop estimate, and $90,780 for an acreage survey. Budgeted expenses for these items in 2002–03 were $6,125,312 for advertising and market research, $6,877,750 for public relations and other promotion and education programs including a MAP administered by FAS, $1,760,000 for salaries and wages, $1,000,000 for nutrition research, $622,131 for production research, $472,964 for quality programs, $172,500 for econometric modeling and analysis, $230,550 for travel, $122,850 for office rent, $120,762 for a crop estimate, and $125,000 for compliance audits and analysis.

The Board considered two available alternatives to remedy the excess financial reserve situation as provided for in § 981.81(b) of the order: refund the excess funds to handlers, or reduce the assessment rate. After deliberating the issue, the Board recommended reducing the assessment rate.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the average grower price for the 2003–04 season could range between $1.50 and $1.80 per pound of almonds. Therefore, the estimated assessment revenue for the 2003–04 crop year (disregarding any amounts credited pursuant to §§ 981.41 and 981.441) as a percentage of total grower revenue could range between 1.1 and 1.3 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the California almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the November 6, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2003–04 crop year began on August 1, 2003, and the marketing order requires that the rate of assessment for each crop year apply to all assessable almonds received during such crop year; (2) the action decreases the assessment rate for assessable almonds beginning with the 2003–04 crop year; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 981.343 is revised to read as follows:

§ 981.343 Assessment rate.

On and after August 1, 2003, an assessment rate of $0.020 per pound is established for California almonds. Of the $0.020 assessment rate, $0.010 per assessable pound is available for handler credit-back.

Dated: January 5, 2004.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 04–398 Filed 1–5–04; 4:47 pm]

BILLING CODE 3410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA255–0431; FRL–7607–6]

Disapproval of State Implementation Plan Revisions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing disapproval of a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on September 29, 2003 and concerns visible emissions (VE) from many different sources of air pollution. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action directs California to correct rule deficiencies in SJVUAPCD Rule 4101.

EFFECTIVE DATE: This rule is effective on February 9, 2004.

ADDRESSES: You can inspect copies of the administrative record for this action

at EPA's Region IX office during normal business hours by appointment. You can inspect copies of the submitted SIP revision by appointment at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814; and,

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

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111, or via e-mail at *wamsley.jerry@epa.gov.*

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

I. Proposed Action

On September 29, 2003 (68 FR 55917), EPA proposed to disapprove the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule	Rule title	Adopted	Submitted
SJVUAPCD	4101	Visible Emissions	11/15/01	12/06/01

We proposed to disapprove this rule because a rule provision conflicts with section 110 and part D of the Act.

In the case of Rule 4101, Section 4.4 exempts agricultural sources from the 20% opacity requirement. However, it is inappropriate to exempt broadly the entire agricultural industry from opacity requirements without an analysis of what types of sources are affected and why a 20% opacity requirement is inappropriate for these sources. Consequently, we are unable to determine that Rule 4101 meets either RACM, or BACM requirements described in Section 189 of the CAA.

Our September 29, 2003 proposed action contains more information on the basis for this rulemaking, our evaluation of the submittal, and our prior actions concerning the rule.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments on our proposed action.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, EPA is finalizing a full disapproval of the submitted rule. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiency within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiency within 24 months. Note that the submitted rule has been adopted by the SJVUAPCD, and EPA's final disapproval does not prevent the local agency from enforcing it.

IV. 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 rule disapproval 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 rule will not have a significant impact on a substantial number of small entities because SIP disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements. 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 disapproval action promulgated 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 disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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 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 disapproves 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. 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 final 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.

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.

J. Congressional Review Act

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). This rule will be effective February 9, 2004.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 8, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 18, 2003.

Laura Yoshii,

Acting 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 52.242 is amended by adding paragraph (a)(4)(i) to read as follows:

§ 52.242 Disapproved rules and regulations.

* * * * *

(a) * * *

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

(i) Rule 4101, Visible Emissions, submitted on December 6, 2001 and adopted on November 15, 2001.

* * * * *

[FR Doc. 04–210 Filed 1–7–04; 8:45 am]

BILLING CODE 6560–50–P