

Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: July 22, 2005.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: July 22, 2005.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–316–0484a; FRL–7949–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District and Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation

Plan (SIP). These revisions concern visible emissions of a variety of pollutants and sources. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 11, 2005 without further notice, unless EPA receives adverse comments by September 12, 2005. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to steckel.andrew@epa.gov, or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;

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

San Joaquin Valley Unified Air Pollution Control District, 1990 East

Gettysburg Street, Fresno, CA 93726; and,

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

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

FOR FURTHER INFORMATION CONTACT:

Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, at either (415) 947–4111, or wamsley.jerry@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4101	Visible Emissions	02/17/05	04/26/05
MBUAPCD	400	Visible Emissions	10/15/03	01/15/04

On June 3, 2005 and March 1, 2004 respectively, EPA found that the submittals for SJVUAPCD Rule 4101 and MBUAPCD Rule 400 met the completeness criteria in 40 CFR part 51, appendix V. These criteria must be met before formal EPA review may begin.

B. Are There Other Versions of These Rules?

EPA has received three prior versions of Rule 4101. SJVUAPCD adopted the first version on December 17, 1992 and CARB submitted the rule to EPA on September 28, 1994. SJVUAPCD adopted the second version on June 21, 2001 and CARB submitted the rule to

EPA on October 30, 2001. However, EPA has not acted on these two versions of Rule 4101. CARB submitted a third version of Rule 4101 to EPA on December 6, 2001, adopted on November 15, 2001. We proposed to approve this version of Rule 4101 on June 10, 2002 (*see* 67 FR 39659). However, after receiving adverse comments on our proposed approval, we proposed a disapproval on September 29, 2003 (*see* 68 FR 55917). On January 8, 2004, EPA disapproved Rule 4101 (*see* 69 FR 1271). Consequently, none of the prior adoptions of Rule 4101 were incorporated within the SIP. Because

prior versions of Rule 4101 have been incorporated within the latest submittal of the rule, they are reviewed as part of this action in our Technical Support Document (TSD).

C. What is the Purpose of the Submitted Rules?

SJVUAPCD Rule 4101 and MBUAPCD Rule 400 limit the emissions of visible air contaminants of any type; usually, but not always, particulate matter from combustion sources and industrial sites. Specifically, the rules prohibit emissions beyond a defined opacity standard. Administratively, SJVUAPCD Rule 4101 replaces the individual 1970s

vintage county-level visible emissions rules now in the SIP; please see the TSD for more information on this subject.

II. EPA's Evaluation and Action

A. How is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must meet Reasonably Available Control Measure (RACM) requirements for nonattainment areas (see section 189), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD regulates a serious PM nonattainment area (see 40 CFR part 81); so, Rule 4101 must fulfill Best Available Control Measure (BACM) requirements. The MBUAPCD regulates an area attaining the Federal particulate matter standard and must have PM rules sufficient to maintain this status.

Guidance and policy documents that we used to help evaluate consistently enforceability, RACM, and BACM requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

4. "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," at 57 FR 13540-13541, April 16, 1992.

5. "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," at 59 FR 42008-42015, August 16, 1994.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACM, and SIP relaxations.

Regarding SJVUAPCD Rule 4101, prior district constituent county Rules 401, 402, and 403 are now consolidated within a single rule format. The cumulative effect of the changes to these rules through the creation and amendment of Rule 4101 does not weaken the pre-existing county-level rules' emission limits. The 20% opacity limit is retained, limited specific exemptions are added, and broad exemptions are removed. SJVUAPCD remedied the deficiencies that provoked

our January 8, 2004 disapproval by removing the problem exemptions with their February 17, 2005 amendments to Rule 4101. We believe that SJVUAPCD Rule is consistent with BACM requirements. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

We have no recommendations.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 12, 2005, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 11, 2005. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rulemaking action and if that provision may be severed from the remainder of the rulemaking action, EPA may adopt as final those provisions of the rulemaking action that are not the subject of an adverse comment. This action will incorporate SJVUAPCD Rule 4101 into the federally enforceable SIP and end all sanctions and Federal Implementation Plan obligations associated with our January 8, 2004 disapproval action.

III. 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 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 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 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 October 11, 2005. 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.

Dated: July 25, 2005.

Laura K. 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 52.220 is amended by adding paragraphs (c)(328)(i)(C) and (c)(336) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(328) * * *
(i) * * *

(C) Monterey Bay Unified Air Pollution Control District.

(1) Rule 400, adopted on July 1, 1969, and amended on October 15, 2003.

* * * * *

(336) New and amended regulations for the following APCDs were submitted on April 26, 2005, by the Governor's designee.

(i) Incorporation by reference.

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

(1) Rule 4101, adopted on May 21, 1992, and amended on February 17, 2005.

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[FR Doc. 05-15831 Filed 8-10-05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA-316-0484c; FRL-7949-2]

Interim Final Determination To Stay and/or Defer Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern SJVUAPCD Rule 4101—Visible Emissions.

DATES: This interim final determination is effective on August 11, 2005. However, comments will be accepted until September 12, 2005.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to steckel.andrew@epa.gov, or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted rule revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted rule revisions by appointment at the following locations:

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; 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/drdbtxt.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT:

Jerald S. Wamsley, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, at either (415) 947-4111, or wamsley.jerry@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

On January 8, 2004 (see 69 FR 1271), we published a disapproval of SJVUAPCD Rule 4101 as adopted locally on November 15, 2001 and submitted by the State on December 6, 2001. We based our disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after February 9, 2004 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On February 17, 2005, SJVUAPCD adopted revisions to Rule 4101 that were intended to correct the deficiencies identified in our disapproval action. On April 26, 2005, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our January 8, 2004 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our January 8, 2004 disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised SJVUAPCD Rule 4101, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA