

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 071-0298; FRL-7123-8]

Revision to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing a full approval of a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California SIP concerning PM-10 emissions from industrial processes. We are proposing action on a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA

or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by January 30, 2002.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., 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.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR-4), Air Division, U.S. Environmental

Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744-1135.

SUPPLEMENTARY INFORMATION:

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

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule proposed for full approval with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule # | Rule title | Adopted | Submitted |
|----------------|--------|--|----------|-----------|
| SJVUAPCD | 4201 | Particulate Matter Concentration | 12/17/92 | 11/18/93 |

On December 27, 1993, we determined that the submittal of Rule 4201 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved the following versions of submitted SJVUAPCD Rule 4201 into the portions of the California SIP applicable to each of the eight counties that were unified and now comprise the SJVUAPCD:

- Fresno County Rule 404, Particulate Matter Concentration, approved on August 22, 1977 (42 FR 42219).

- Kern County Rule 404, Particulate Matter Concentration—Valley Basin, approved on August 22, 1977 (42 FR 42219).

- Kings County Rule 404, Particulate Matter, approved on August 4, 1978 (43 FR 34468).

- Madera County Rule 403, Particulate Matter Emissions from the Incineration of Combustible Refuse, approved on April 16, 1991 (56 FR 15286).

- Merced County Rule 404, Particulate Matter Concentration, June 14, 1978 (43 FR 25689).

- San Joaquin County Rule 404, Particulate Matter Concentration, approved on August 22, 1977 (42 FR 42219).

- Stanislaus County Rule 404, Particulate Matter Concentration, approved on August 22, 1977 (42 FR 42219).

- Tulare County Rule 404, Particulate Matter, approved on August 22, 1977 (42 FR 42219).

C. What Are The Changes In The Submitted Rule?

Submitted SJVUAPCD Rule 4201 changes are as follows:

- The rules of eight former individual county air districts that unified into SJVUAPCD are combined. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA Evaluating the Rule?

We evaluated the rule for consistency with the CAA as amended in 1990 and with 40 CFR part 51. The following guidance documents were used for reference:

- PM-10 Guideline Document, EPA-452/R093-008).

- Memorandum, Review of State Regulation Recodifications, OAQPS (February 12, 1990).

Sections 172(c)(1) and 189(a) of the CAA require moderate PM-10 nonattainment areas to implement reasonably available control measures (RACM), including reasonably available control technology (RACT) for existing stationary sources of PM-10. Section 189(b) requires that serious PM-10 nonattainment areas, in addition to meeting the RACM/RACT requirements, implement best available control measures (BACM), including best available control technology (BACT) for existing stationary sources of PM-10. SJVUAPCD is a serious PM-10 nonattainment areas and is required to implement BACM/BACT.

However, we have not reviewed the substance of the rules relative to BACM/BACT requirements at this time. The rules were approved into the SIP in previous rulemakings. We are now merely approving the combining of the individual rules into a single equivalent rule submitted by the State. Our administrative approval at this time does not imply any position with respect to the approvability of the substance of the rules. To the extent that we have issued any SIP calls to the State with respect to the adequacy of any of the rules subject to this action, we will continue to require the State to correct any such rule deficiencies despite our present approval.

B. Does the Rule Meet the Evaluation Criteria?

The rule is largely consistent with relevant policy and guidance. The adoption of SJVUAPCD Rule 4201 improves the SIP by simplifying the eight SIP rules into one rule in the unified District.

C. Previous Proposed Action and Public Comment

We previously proposed a limited approval and limited disapproval for Rule 4201 on December 15, 2000 (65 FR 78434). The deficiencies were as follows:

- The rule does not meet the requirements of BACM/BACT. Other

serious PM-10 nonattainment areas have lower particulate matter emission limits.

- The rule does not have periodic monitoring requirements.
- The rule does not require recordkeeping for at least two years.

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

Mark Boese, SJVUAPCD; letter dated January 11, 2001 and received January 16, 2001.

The comment and our response are summarized below.

Comment 1: SJVUAPCD notes the following points concerning the proposed limited approval and limited disapproval of Rule 4201, Particulate Matter Concentration, for not meeting the requirements of BACM/BACT and not having monitoring and recordkeeping requirements:

- It is a holdover from an earlier regulatory era that regulated Total Suspended Particulates (TSP) instead of PM-10.
- It is somewhat valuable for assuring that existing equipment maintains TSP emission controls.
- It is a generic rule not intended to fulfill BACM/BACT requirements for regulating PM-10. Specific, focused BACM/BACT determinations are or will be made elsewhere.
- Overall, Rule 4201 is of similar stringency to South Coast Air Quality Management District (SCAQMD) Rule 404.
- No PM-10 reductions have been attributed to the rule in the current PM-10 Plan submittal.
- Rule 4202, which covers sources similar to Rule 4201, does not have monitoring and recordkeeping requirements and was approved by EPA as meeting the requirements of RACM/RACT.

• SJVUAPCD encourages EPA to either approve Rule 4201 as a BACM/BACT rule or approve Rule 4201 as a RACM/RACT rule as was done for Rule 4202.

Response: We have evaluated these points and determined the following:

• Rules 4201 and 4202 are old TSP rules from a past regulatory era, when similar rules did not have monitoring and recordkeeping requirements. We recommend such requirements for a future revision of these rules.

• SJVUAPCD is a serious PM-10 nonattainment area and therefore must meet the requirements of BACM/BACT for source categories that are not insignificant or have major sources. We believe the source category for Rules 4201 and 4202 is not insignificant. Therefore, Rules 4201 and 4202 must meet the requirements of BACM/BACT. However, we will do an administrative approval of the eight individual county SIP rules without evaluating the substance of the rules at this time. Since our proposed action represents an administrative approval only, we may in the future require substantive changes to those SJVUAPCD rules, such as Rules 4201 and 4202, that regulate PM-10 emissions from existing stationary sources to address concerns related to BACM/BACT or to the attainment demonstration. Also, over the long-term, SJVUAPCD Rule 4201 may need to be revised to address deficiencies in enforceability prior to our approval of any redesignation to attainment.

D. Present Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, EPA is proposing a full approval of SJVUAPCD Rule 4201 to improve the SIP. We will accept comments from the public on the proposed full approval for the next 30 days.

III. Background Information

Why Was This Rule Submitted?

PM-10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM-10 emissions. Table 2 lists some of the national milestones leading to the submittal of local agency PM-10 rules.

TABLE 2.—PM-10 NONATTAINMENT MILESTONES

| Date | Event |
|-------------------|---|
| March 3, 1978 | EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305. |
| July 1, 1987 | EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM-10). 52 FR 24672. |
| November 15, 1990 | Clean Air Act Amendments of 1990 were enacted, Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. |
| November 15, 1990 | PM-10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). States are required by section 110(a) to submit rules regulating PM-10 emissions in order to achieve the attainment dates specified in section 188(c). |

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action is also not subject to Executive Order 32111, "*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*" (66 FR 28355, May 22, 2001). This proposed 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 proposes to approve 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 (Public Law 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 proposes to approve 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 proposed 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 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.*).

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: November 23, 2001.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 01-32104 Filed 12-28-01; 8:45 am]

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