

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA269-0438b; FRL-7621-2]

#### 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 San Joaquin Valley Unified Air Pollution Control District Rules 4701, 4702, 4703, 4305, 4306, and 4351.

**DATES:** This interim final determination is effective on February 12, 2004. However, comments will be accepted until March 15, 2004.

**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](mailto: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 documents (TSDs), 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.

San Joaquin Valley Air Pollution Control District, 1990 E. Gettysburg Avenue, 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 website and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Canaday, EPA Region IX, (415) 947-4121, [canaday.tom@epa.gov](mailto:canaday.tom@epa.gov).

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

#### I. Background

On February 28, 2002 (67 FR 9209), we published a limited approval and limited disapproval of SJVUAPCD Rule 4305, Rule 4351, Rule 4701, and Rule 4703. Rules 4305 and 4351 establish emission limits for oxides of nitrogen (NO<sub>x</sub>) and other pollutants on certain boilers, steam generators, and process heaters. Rule 4305 was adopted locally on December 19, 1996, and submitted by the State on March 3, 1997. Rule 4351 was adopted locally on October 19, 1995, and submitted by the State on March 26, 1996. Rule 4701 establishes NO<sub>x</sub> and other pollutant emissions limits on certain stationary internal combustion engines. Rule 4701 was adopted locally on December 19, 1996, and submitted by the State on March 10, 1998. Rule 4703 establishes NO<sub>x</sub> emissions limits on certain stationary gas turbines. Rule 4703 was adopted locally on October 16, 1997, and submitted by the State on March 10, 1998. We based our limited disapproval action on certain deficiencies in these rules. See the proposed rule at 63 FR 49053 (September 14, 1998) and the final rule at 67 FR 9209 (February 28, 2002) for a discussion of these deficiencies. This limited disapproval action started a sanctions clock for imposition of offset sanctions 18 months after April 1, 2002, 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 August 21, 2003, SJVUAPCD adopted revisions to Rule 4351 and Rule 4305 that were intended to correct certain deficiencies identified in our limited disapproval action for these rules. On September 18, 2003, SJVUAPCD adopted new Rule 4306, which also limits emissions of NO<sub>x</sub> and other pollutants on boilers, steam generators, and process heaters. New Rule 4306 was intended in part to correct those deficiencies in the previously-approved version of Rule 4305 that had not been addressed through the revisions to Rule 4305 as adopted by SJVUAPCD on August 21, 2003. On September 29, 2003, the State submitted these SIP revisions to EPA.

On August 21, 2003, SJVUAPCD adopted revisions to Rule 4701, and adopted a new Rule 4702, which also limits NO<sub>x</sub> and other pollutant emissions from stationary internal combustion engines. The revised Rule

4701 and new Rule 4702 were intended in part to correct the deficiencies identified in our limited disapproval action for Rule 4701. On October 9, 2003, the State submitted these SIP revisions to EPA. Finally, on April 25, 2002, SJVUAPCD adopted revisions to Rule 4703 that were intended in part to correct the deficiencies identified in our limited disapproval action for this rule. On June 18, 2002, the State submitted these SIP revisions to EPA.

In the Proposed Rules section of today's **Federal Register**, we have published notice of an action proposing approval of these SIP submittals because we believe they correct the deficiencies identified in our February 28, 2002 limited disapproval action. Based on today's proposed action, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our February 28, 2002 limited 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 approval of new or amended SJVUAPCD Rules 4305, 4306, 4351, 4701, 4702, and 4703, then we intend to take subsequent 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 approving SJVUAPCD Rules 4305, 4305, 4351, 4701, 4702, and 4703.

#### II. EPA Action

We are making an interim final determination to stay and/or defer CAA section 179 sanctions associated with SJVUAPCD Rules 4351, 4305, 4701, and 4703 based on our concurrent action proposing approval of revisions to the State's SIP as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

### III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

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.

This action 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.

The administrator certifies that this action 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.*).

This rule 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 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 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 rule 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.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

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 to Congress and the

Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2).

EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 12, 2004. 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 rule 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 12, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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 regulations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 3, 2004.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

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