

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[CA 071-0309; FRL-7134-2]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is finalizing a limited approval and limited 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 December 15, 2000 and concerns PM-10 emissions from

residential wood combustion. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule that regulates this emission source and directs California to correct rule deficiencies.

EFFECTIVE DATE: This rule is effective on March 11, 2002.

ADDRESSES: You can inspect a copy of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect a copy of the submitted rule revision at the following locations:

Environmental Protection Agency,
Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

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

I. Proposed Action

On December 15, 2000 (65 FR 78434), EPA proposed a limited approval and limited disapproval of the rule in table 1 that was submitted for incorporation into the California SIP.

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4901	Residential Wood Burning	07/15/93	12/10/93

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the CAA. Our proposed action contains more information on the rule and our evaluation.

II. Public Comment and EPA Response

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.

We received additional information from SJVUAPCD on November 29, 2001 which further elucidated the January 11th comment. This information was a memorandum titled, "Contributions from residential woodburning to PM-10 and PM-2.5 in San Joaquin Valley cities and potential emissions reduction strategies," from Dr. John Watson to Evan Shipp dated November 28, 2001.

The comment on Rule 4901 and our response is summarized below.

Comment: SJVUAPCD notes that the BACM control measures suggested by EPA for Rule 4901, Residential Wood Burning, would be very controversial. SJVUAPCD needs a strong and clear

relationship between residential wood burning and air quality to justify additional control measures. There is currently a California Regional Particulate Matter Air Quality Study (CRPAQS) from which preliminary data indicates there is such a relationship. But SJVUAPCD requests a postponement of the final notice for at least 10 months to allow time to evaluate a final report on the CRPAQS.

The subsequent information from Dr. Watson, a principal researcher on CRPAQS, explained that data from CRPAQS clearly supports additional controls on residential wood combustion.

Response: We have postponed final action on Rule 4901 for the requested time period.

As discussed in our December 15, 2000 proposal, the reference, *Technical Information Document for Residential Wood Combustion Best Available Control Measures*, EPA-450/2-92-002 (September 1992), provides national policy on determining BACM for residential wood combustion. This document provides a list of potential BACM measures that should be implemented unless SJVUAPCD demonstrates that they are not achievable given local conditions. Since this list of measures is over nine years old, SJVUAPCD should implement all those that are achievable as well as any other measures achievable in San

Joaquin that have been developed in other serious PM-10 nonattainment areas. While we have not performed the thorough evaluation that SJVUAPCD must, and while the items below are not intended to identify the minimum measures necessary to fulfill BACM, three items from the national policy that seem likely achievable include the following:

- While the submitted rule describes a program for notifying the public of high PM-10 episodes and voluntary curtailment of solid-fuel-burning devices, it does not require any mandatory curtailment. EPA believes, at a minimum, that mandatory episodic curtailment can be implemented. The District should consider whether limiting the curtailment to open fireplaces and non-certified devices, the largest emitters of PM-10 and smoke, is appropriate or whether a more broad-based curtailment is necessary. A limited mandatory curtailment program could be incorporated as part of the voluntary curtailment program and could give the District authority to enforce on open fireplaces and non-certified devices in the event of public complaint.

- The District should consider revising the rule to require wood stoves and fireplaces to have EPA-certified phase II standards upon property sale or transfer.

- The District should consider revising the rule and collaborating with cities and counties on ordinances to limit the number of wood stoves and fireplaces per acre in new construction and require EPA-certified phase II standards on those being installed.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rule. This action incorporates the SJVUAPCD Rule 4901 into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. As a result, sanctions will be imposed unless EPA approves a subsequent SIP revision that corrects the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the CAA as described in 59 FR 39832 (August 4, 1994). In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve a subsequent SIP revision that corrects the rule deficiencies within 24 months. Note that the submitted rule has been adopted by the local agency, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13211

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.

C. Executive Order 13045

Executive Order 13045, entitled "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.

D. Executive Order 13132

Executive Order 13132, entitled "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 acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 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." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. 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 final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply act on requirements that the State is already imposing. 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.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, 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 CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA 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).

G. Unfunded Mandates

Under section 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 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 approval 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 acts on 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.

H. 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.

EPA believes that VCS are inapplicable to today’s action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

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 rule is not a “major” rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

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 8, 2002. 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: January 13, 2002.

Wayne Nastri,
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 paragraph (c)(235) to read as follows:

§ 52.220 Identification of plan.

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(235) New and amended regulations for the following APCD were submitted on December 10, 1993, by the Governor’s designee.

(i) Incorporation by reference.

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

(1) Rule 4901, adopted on July 15, 1993.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 242–0316; FRL–7134–1]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on June 5, 2001 and concerns the control of emissions from sulfur compounds. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule that regulates sulfur emission sources and directs California to correct the rule deficiency.

EFFECTIVE DATE: This rule is effective on March 11, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA’s Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency,
Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.
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.
Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243–2801.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4125.