

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule only stays an imposed sanction and defers the imposition of another, 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). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). 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 (64 FR 43255, August 10, 1999), because it merely stays a sanction and defers another one, 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 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not contain technical standards, 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) 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). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 27, 2002. 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 31, 2002.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 250-0317a; FRL-7145-8]

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

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the emission of particulate matter (PM-10) from open burning, prescribed burning, and hazard reduction burning. We are

approving local rules that regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on April 29, 2002 without further notice, unless EPA receives adverse comments by March 29, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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

You can inspect copies 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 copies of the submitted rule revisions and TSD 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), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

#### 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 date that they were 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 .....	4103	Open Burning .....	06/21/01	10/30/01
SJVUAPCD .....	4106	Prescribed Burning and Hazard Reduction Burning .....	06/21/01	10/30/01

On January 18, 2002, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

#### *B. Are There Other Versions of These Rules?*

We approved into the SIP on July 26, 2000 (65 FR 45912) a version of Rule 4103, adopted on December 16, 1993. Rule 4106 is a new rule.

#### *C. What Is the Purpose of the Submitted Rule Revisions?*

The purpose of the submitted revised Rules 4103 and 4106 are to remedy the deficiencies cited in the limited approval of Rule 4103 on July 26, 2000 (65 FR 45912).

## 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 CAA) and must not relax existing requirements (see sections 110(l) and 193). Section 189(b) of the CAA requires serious nonattainment areas with significant PM-10 sources to adopt best available control measures (BACM), including best available control technology (BACT). SJVUAPCD is a serious PM-10 nonattainment area and must meet the requirements of BACM/BACT. BACM/BACT is not required for source categories that are not significant (*de minimus*) and there are no major sources. See *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998 (August 16, 1994).

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR Part 51.
- *General Preamble Appendix C3—Prescribed Burning Control Measures* (57 FR 18072, April 28, 1992).
- *Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures* (EPA-450/2-92-003).
- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 57 FR 13498, 13540 (April 16, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the*

*Clean Air Act Amendments of 1990*, 59 FR 41998 (August 16, 1994).

#### *B. Do the Rules Meet the Evaluation Criteria?*

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling BACM/BACT. All of the deficiencies identified in our previous limited approval and limited disapproval action on Rule 4103 have been adequately addressed as follows:

- (Burning to prevent an imminent fire hazard that cannot be abated by other means should be done on a permissive-burn day.) The exemption from all provisions of Rule 4103 for an imminent fire hazard that cannot be abated by other means is still included in the rule and could allow burning on a no-burn day. 4103.4.1.2. There is no exemption for hazard reduction burning, which is allowed only on a permissive-burn day. 4106.5.1.4. We concur with the District's argument that burning allowed in the case of an imminent fire hazard could remedy a dangerous fire hazard instead of waiting for a permissive-burn day and is an appropriate measure. Hazard reduction burning is a less imminent form of hazard, and it is appropriate to require such burning on a permissive-burn day. The exemption for an imminent fire hazard fulfills the requirements of BACM.

- (Burning training should be done on permissive-burn days or should be limited to a short time or small amount of fuel.) The District has argued that it is very difficult to schedule personnel in advance from different locations in a large District of eight counties for training that coincides with a permissive-burn day, which often does not occur for many consecutive days. We concur that the exemption from the rule for fire-fighting training, which could allow burning on no-burn days, is reasonable. However, the exemption was restricted to require written authorization from the Air Pollution Control Officer (APCO) for all necessary fire-fighting training activities and to require that a burn plan be submitted and receive prior approval from the APCO for any fire-fighting training activities not located at a stationary fire-training facility. 4103.4.2.1 and 4103.6.2.1. This restricted exemption for

burning training fulfills the requirements of BACM.

- (The addition of the exemption to burn on no-burn days for disease and pest prevention, where there is no reasonable alternative, is a SIP relaxation.) The District argued that Rules 4103 and 4106 are more stringent overall than the SIP rule given a limited approval/limited disapproval, therefore this minor and unpredictable relaxation does not violate section 110(l) of the CAA. We concur with the District's argument that this exemption, which could allow burning on no-burn days, is a necessary and appropriate measure for timely control of unplanned natural infestations where there is no reasonable alternative. This exemption is restricted to require that such burning only be done after written authorization from the APCO. 4103.4.2. This restricted exemption for disease and pest prevention fulfills the requirements of BACM.

- (Empty pesticide sacks should be burned on permissive-burn days unless the source category is *de minimus*.) The exemption to burn on no-burn days was expanded to include toxic substances other than pesticides but to not include fertilizer sacks. 4103.4.3.1. The District showed that this source category is almost *de minimus*, since it accounts for only 1.4% of the total PM-10 emissions. They argue that it is less hazardous to burn empty pesticide and hazardous material sacks in the field where emptied than to transport and store them while waiting to burn on a permissive-burn day. Furthermore, such burning is still restricted by permit requirements and subject to the tonnage allocation by the APCO to prevent an exceedance of the National Ambient Air Quality Standards (NAAQS) even on a no-burn day. This restricted exemption for empty pesticide and toxic material sacks fulfills the requirements of BACM.

- (Tumbleweeds should be burned with a permit on a permissive-burn day.) This is implemented. 4103.5.8.
- (Range improvement burning (a type of prescribed burning) from January 1 to May 31 should occur on a permissive-burn day.) This is implemented. 4106.4.9.5.
- (Agricultural burning (a type of prescribed burning) for growing crops or raising fowl or animals above 3,000 feet elevation should occur on a permissive-

burn day.) This is implemented. 4106.4.9.5.

- (Agricultural burning above 6,000 feet elevation should occur on permissive-burn days.) This is implemented. 4106.4.9.5.

- (Excessive Director's discretion in granting permission for agricultural burning on no-burn days in the event of imminent and substantial economic loss should be restricted by allowing only the acreage to be burned as limited by meteorological conditions and meeting the NAAQS.) Director's discretion for the exemption to burn in the case of imminent and substantial economic loss, which could occur on no-burn days, is restricted by limiting burning acreage to 200 acres per county per day, by requiring a forecast by the District that the NAAQS will be not be violated in downwind metropolitan areas, and by requiring that burning not be prohibited by a fire agency for safety reasons. 4103.4.3.3. This restricted exemption for imminent and substantial economic loss fulfills the requirements of enforceability and BACM.

- (BACM may require an overall approach of approving burns based on an evaluation of the airshed's capacity to disperse emissions on permissive-burn days so that cumulative emissions from all burns and PM-10 sources will not cause a violation of the NAAQS.) The District is required to allocate burning based on predicted meteorological conditions and whether the total tonnage to be emitted would allow the volume of smoke and other contaminants to impact smoke sensitive areas or create or contribute to an exceedance of the NAAQS. 4103.5.2 and 4106.4.2. This measure for an overall approach to allocation of burning fulfills the requirements of BACM.

- (BACM may require burner training.) Burner training in a course approved by the APCO is required for prescribed burns over 10 acres. 4106.4.9.1. This measure for burner training fulfills the requirements of BACM.

- (BACM may require the use of the best emission reduction efforts for prescribed burning and describing them in a smoke management plan.) The use of various best management practices is required. 4106.4.9. Extensive requirements for smoke management plans are described. 4106.5.2. These measures for best emission reduction efforts fulfill the requirements of BACM.

- (BACM may include second level smoke evaluation, which analyzes whether existing fires should be extinguished.) A land manager must coordinate daily with the District or CARB for multi-day burns to affirm that the burn project remains within the conditions specified in the smoke management plan. 4106.4.9.2. Surveillance and contingency plans are required for burns over 100 acres for actions to be taken if smoke impacts occur in smoke-sensitive areas. 4106.5.2.3. A related issue is whether to allow a naturally-ignited fire to continue in order to achieve a resource benefit. Requirements regulating this issue are provided. 4106.5.3. This measure fulfills the requirements of BACM.

An exemption was added that could allow burning paper raisin trays on no-burn days. 4103.4.3.2. The District showed that this source category is *de minimus*, since it accounts for only 0.32% of the PM-10 emissions during the two-month burning periods in each of years 1997–1999. This exemption for paper raisin trays is not required to fulfill the requirements of BACM. Rules 4103 and 4106 are more stringent overall, therefore section 110(l) of the CAA is not violated.

An exemption was added that could allow burning of confiscated contraband on no-burn days. The District argues that this PM-10 source is *de minimus*. Furthermore, the relevant law enforcement agency must submit a burn plan 15 days in advance to the APCO for approval. 4103.6.2.2. Also import of contraband from outside the District for burning is prohibited. 4103.5.7.1. This

exemption for confiscated contraband is not required to fulfill the requirements of BACM. Rules 4103 and 4106 are more stringent overall, therefore section 110(l) of the CAA is not violated.

The TSD has more information on our evaluation.

### C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval 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 March 29, 2002, 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 April 29, 2002. 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 direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### 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 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 32111, "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 (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 approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 CAA. 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 CAA. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 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 31, 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)(288) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(288) New and amended regulations for the following APCDs were submitted on October 30, 2001, by the Governor's designee.

(i) Incorporation by reference.

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

(1) Rules 4103 and 4106, adopted on June 21, 2001.

\* \* \* \* \*

[FR Doc. 02-4526 Filed 2-26-02; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[MD121-3082a; FRL-7144-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland Nitrogen Oxide Averaging Plan for Constellation Power Source Generation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Maryland State Implementation Plan (SIP). This SIP revision consists of a Consent Order to Constellation Power Source Generation, Inc. for an inter-facility averaging plan for emissions of nitrogen oxides (NO<sub>x</sub>) at facilities located in Maryland and owned by Constellation Power. The SIP revision allows Constellation Power to use system-wide emissions averaging to comply with the applicable NO<sub>x</sub> reasonably available control technology (RACT) limits for 10 boiler units located at five electric generating facilities owned by Constellation Power. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on April 29, 2002 without further notice, unless EPA receives adverse written comment by March 29, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, Chief, Air