

(i) *Expiration date.* The applicability of paragraphs (d)(1) and (6) expires on January 13, 2015.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 6, 2011.

**Emily S. McMahon,**

*Acting Assistant Secretary of the Treasury (Tax Policy).*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2011-0789; FRL-9615-5]

### 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 approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on September 14, 2011 and concern volatile organic compound (VOC) emissions from confined animal facilities (CAFs) and biosolids, animal manure, and poultry litter operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** *Effective Date:* This rule is effective on February 16, 2012.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2011-0789 for this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. To inspect the

hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

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

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#### I. Proposed Action

On September 14, 2011 (76 FR 56706), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD .....	4570	Confined Animal Facilities .....	10/21/10	4/05/11
SJVUAPCD .....	4565	Biosolids, Animal Manure, and Poultry Litter Operations .....	3/15/07	8/24/07

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation, including recommendations for future rule improvements.

## II. Public Comments and EPA Responses

EPA’s proposed action provided a 30-day public comment period. During this period, we did not receive comments on Rule 4565, and received comments on Rule 4570 from one party: Brent Newell, Center on Race, Poverty & the Environment (CRPE); letter dated and received October 14, 2011. The comments and our responses are summarized below.

**Comment #1:** CRPE argues that Rule 4570’s menu approach does not comply with RACT because the rule allows operators to choose among options that are not mutually exclusive and thus fails to require all economically and technologically feasible reductions.

**Response to Comment #1:** A menu approach can be consistent with RACT and may be a reasonable regulatory approach for agricultural sources where there is variability among operations. The Ninth Circuit Court of Appeals has

twice upheld EPA’s approval of menu-based rules regulating emissions of particulate matter from agricultural sources.<sup>1</sup> Although Rule 4570 regulates VOCs, not particulate matter, these cases are instructive on the question of whether a menu approach can comply with RACT.

In upholding EPA’s approval of Arizona’s AgBMP Rule as meeting the standard for Best Available Control Measures (BACM), as required by CAA section 189(b)(1)(B), the Ninth Circuit stated:

Petitioners do not challenge any particular practice adopted as BACM. [footnote omitted] Rather, petitioners contend that there is no reason why Arizona could not require farmers to implement more than one control measure in each category. Petitioners point out that because, in one sense, Arizona has already found these measures to be “feasible,” more than one measure must be implemented. As a matter of theory, petitioners are, of course, correct. Intuitively, it seems obvious to say that if one measure per category is good, two or more would be better. Petitioners’ argument proves too much, however. By petitioners’ logic, if two are better than one, three are better than two,

and so forth. We have little doubt that if Arizona required all of these measures, it would achieve greater reductions than under its present plan.

Petitioners’ argument would be compelling if the Act required a state to reduce its emissions to the maximum extent possible, regardless of cost. EPA, however, has concluded that “best available control measures” means the maximum degree of emissions reduction of PM-10 and PM-10 precursors from a source \* \* \* which is determined on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such source through application of production processes and available methods, systems, and techniques for control of each such pollutant. Addendum, 59 Fed.Reg. at 42,010. Petitioners do not challenge this longstanding interpretation of the Act, and we cannot say that the interpretation is impermissible. See *Alaska Dep’t of Env’tl. Conservation*, 540 U.S. 461, 124 S.Ct. at 1001; cf. 42 U.S.C. § 7479(3) (similarly defining the term “best available control technology” for purposes of the Prevention of Significant Deterioration program).<sup>2</sup>

Regarding SJVUAPCD Rule 4550, the court ruled that a menu-based approach can meet the requirements of CAA 179(d)(2), which requires “additional measures as the Administrator may reasonably prescribe, including all

<sup>1</sup> See *Vigil v. Leavitt*, 381 F.3d 826 (9th Cir. 2004) (upholding EPA’s approval of the Arizona Ag BMP rule, Arizona Administrative Code (A.A.C.) R18-2-610 and R18-2-611); *Latino Issues Forum v. EPA*, 558 F.3d 936 (9th Cir. 2009) (upholding EPA’s approval of SJVUAPCD Rule 4550).

<sup>2</sup> *Vigil*, 381 F.3d at 836.

measures that can be feasibly implemented in the area \* \* \*. As the court noted:

Petitioners argue that, under § 7509(d)(2), the District was required to implement all feasible measures to control PM-10 emissions without delay, because the San Joaquin Valley had failed to meet its attainment deadlines. Petitioners contend that allowing agricultural operators to choose one control option (among many) from each of a few categories fails to meet the “all feasible measures” standard \* \* \*

The EPA offers an alternative reading of § 7509(d)(2). The EPA argues that the section provides that submitted revisions must contain additional measures, but that the only additional measures required are those the Administrator reasonably may choose to prescribe. The measures that the Administrator may reasonably prescribe, the EPA asserts, include all measures that can be feasibly implemented in the area in light of technological achievability, costs, and economic, health, and environmental effects \* \* \*

Because § 7509(d)(2) is ambiguous and the EPA’s statutory interpretation is reasonable, we hold that the EPA acted lawfully by not requiring implementation of “all feasible measures” into Rule 4550.

Similar to the Ninth Circuit’s decisions regarding CAA sections 189(b)(1)(B) and 179(d)(2), a menu-based approach can be consistent with CAA section 182(b)(2)’s RACT requirements. EPA has long interpreted RACT to encompass considerations of cost and feasibility.<sup>3</sup> A menu approach that allows regulated entities to select among various control measures may be compatible with RACT and warranted in response to significant variability within the regulated source category. While CAFs may have less variability than crop-land activities subject to the rules discussed above, SJVUAPCD’s Staff Report for Rule 4570 described the District’s findings of variability in this industry.<sup>4</sup>

Also, SJVUAPCD’s revisions to Rule 4570 included changes that now make many mitigation measures mandatory, rather than optional as under the previous version of Rule 4570, in effect narrowing the range of options in the

menus.<sup>5</sup> In general, we believe Rule 4570 requires mandatory measures wherever possible, and the amount of flexibility provided by the menu approach is appropriate to the degree of variability among CAF operations.

*Comment #2:* CRPE claims that the District underestimated emissions from Total Mixed Rations (TMR) to support its claim that requiring an enclosed barn with a biofilter is not a cost-effective measure. CRPE claims that the Staff Report’s calculations of exposed surface area at dairies are based on reports from dairy industry representatives. CRPE asserts that this data should be collected based on measurements taken by District or EPA staff, not regulated entities. CRPE claims that there are no data in the record demonstrating the methodology of estimating, or confirming the accuracy of, the total area of TMR exposure in feedlanes. It states that Howard<sup>6</sup> estimates the exposed TMR area for a 1,200 cow dairy to be 1,650 square meters, whereas the District’s staff report emission estimates are based on a feed area of 225 square meters for a dairy greater than 1,000 cows. CRPE claims that the District underestimated emissions for TMR by assuming 0.658 square meters of feed area per cow, whereas Howard estimates emissions at 1.375 square meters per cow. CRPE argues that EPA should disapprove the RACT demonstration because the District’s cost-effectiveness calculation overstates per-ton reduction costs.

*Response #2:* The District and EPA do not have the resources to directly take field measurements of all parameters relevant to all regulatory matters, and must often consider information compiled by industry and other organizations. Although Howard estimates TMR emissions based upon 1.375 square meters of exposed surface per cow, the District’s assumption of 0.658 square meters of exposed TMR per cow is corroborated by observations in

several research studies.<sup>7</sup> Measurements taken by Dr. Charles Schmidt in 2004, 2005, and 2008 include a range of 0.472–0.608 square meters of exposed TMR per total cows, and a range of 0.641–0.893 square meters of exposed TMR per milk cows. Studies by Dr. Charles Krauter also assume an exposed surface area that is less than 1.375 square meters per cow.<sup>8</sup> Given this range, it is reasonable for the District to assume 0.658 square meters of exposed TMR per cow. Moreover, the District has clarified that its reference to 225 square meters of exposed surface area in Table 10 in Appendix B of the Staff Report for Rule 4570 refers to the estimated exposed surface area of the face of the silage pile, not to TMR.<sup>9</sup> Howard assumes only 90 square meters for the open face of the silage pile,<sup>10</sup> so in this case, SJVUAPCD was actually considerably more conservative.

*Comment #3:* CRPE asserts that SJVUAPCD’s estimated emission reductions from Rule 4570 are unsubstantiated and should not be claimed until solid science establishes their validity. CRPE objects to emission reduction estimates based on an assumed control efficiency of 10%. CRPE also asserts that EPA approval of Rule 4570 is arbitrary and capricious because reductions from default assumptions lack supporting evidence.

*Response to Comment #3:* EPA’s proposed approval of Rule 4570 does not depend on the amount or accuracy of the emission reductions expected from the rule’s implementation. As explained in our proposal, the basis for our action is whether the rule meets the statutory and regulatory requirements for RACT. Nonetheless, EPA believes that the District used the best information available at the time it adopted Rule 4570 and applied that information reasonably to estimate emission reductions. The District explained, for example, its conservative approach in estimating emission reductions for many of the mitigation measures at 10%.<sup>11</sup>

CRPE made a similar comment regarding EPA’s proposed action on the

<sup>3</sup> See, 74 FR 53761 (Sept. 17, 1979) (“EPA has defined RACT as: The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.”); see also, Memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management to Regional Administrators, Regions I–X, on “Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas,” section 1.a (December 9, 1975), reprinted in (1976) 7 Environmental Reporter, Current Developments (BNA) 1210.

<sup>4</sup> SJVUAPCD Final Staff Report for Revised Proposed Amendments to Rule 4570 (Confined Animal Facilities), Oct. 21, 2010, (“SJVUAPCD Staff Report for Rule 4570, Oct. 21, 2010”), at 15.

<sup>5</sup> For instance, the Phase I Dairy Feed menu, Table 3.1.A., which duplicates requirements in the previous version of the rule, allows CAF owners and operators to select 4 measures from 8 options; under the revised requirements, the Phase II Dairy feed menu, Table 4.1.A., mandates 4 specific measures and then requires owners and operators to select one additional measure from 4 options. Similarly, the Phase I Dairy Corral menu, Table 3.1.E., allows CAF owners and operators to select 6 measures from 13 options, whereas the Phase II menu, Table 4.1.E., mandates 6 specific measures and then requires owners and operators to select one additional measure from 4 options.

<sup>6</sup> Howard, et. al., Reactive Organic Gas Emissions From Livestock Feed Contribute Significantly To Ozone Production In Central California, Environmental Science & Technology, 2010; 44 (7) at 2313).

<sup>7</sup> See November 10, 2011 email communication from Ramon Norman, SJVUAPCD, to Sona Chilingaryan and Nancy Levin, EPA.

<sup>8</sup> Krauter, Dairy Operations: An Evaluation and Comparison of Baseline and Potential Mitigation Practices for Emissions Reductions in the San Joaquin Valley, Final Report, May 1, 2009, California Air Resources Board Contract No. 04–343 Project administered as CSU Fresno Foundation Project #37411.

<sup>9</sup> See November 23, 2011 email communication from Sheraz Gill, SJVUAPCD, to Sona Chilingaryan and Nancy Levin, EPA.

<sup>10</sup> Howard, pg 2313.

<sup>11</sup> SJVUAPCD Staff Report for Rule 4570, Oct. 21, 2010, App. B, at B–11.

2009 version of Rule 4570, and specifically in regards to reductions attributed to Menu option A.1, feeding animals according to National Research Council (NRC) Guidelines.<sup>12</sup> In response, we noted that the District's emission reduction estimate was based on several research studies showing that changes in animals' diets reduce VOC emissions and that the 10% reduction was at the low end of the range of effectiveness seen in this research.<sup>13</sup> We also noted that CRPE raised this issue in State court litigation on Rule 4570, and the court ruled in favor of the District.<sup>14</sup> The District's emission reductions analysis for the 2010 version of the Rule relies on the same research as the 2009 version of the rule. While the District has made reasonable assumptions using the currently available science, we expect the District to continue revising emission estimates and control strategies as more research becomes available. In fact, we note that this rule revision is, in large part, a response to new research showing silage to be a greater source of VOCs than previously thought when requirements for previous versions of the rule were written.

*Comment #4:* CRPE claims that many of the emission control measures listed in Rule 4570's menus are standard operating procedure for dairies and that, in many cases, dairies will be able to comply with Rule 4570 without making any changes. CRPE gives two examples. In its first example, CRPE argues that reductions will often be counted for a dairy that complies with measure 4.1(A)(1) by feeding its cows according to NRC guidelines even though it is not possible to determine if the dairy was already following the guidelines. CRPE also claims there is no evidence that feeding cows according to NRC guidelines reduces VOCs. In its second example, CRPE states that measure 4.1(A)(2) requires TMR to be within three feet of a feedlane fence and argues that there is no evidence that standard industry practice allows feed to go beyond three feet or that dairy operators do not already "push up" the feed to ensure that the cows can actually reach it. CRPE further argues that dairies already have an incentive to not allow expensive feed to lie beyond the reach of the cows. CRPE also claims that the measure assumes that cows are not continually consuming the feed, thereby exposing previously covered feed

containing VOC to air flow and evaporation. CRPE further notes that the baseline emissions inventory measures emissions from feed in the feedlane at 3½ feet, and that District staff contend that this six inch reduction would reduce the surface area and the flux rate of the feed significantly; however, CRPE argues that the District's method does not yield a decrease in flux rate, only exposed surface area.

*Response to Comment #4:* As explained in response to Comment #3, EPA's proposed approval of Rule 4570 does not depend on the amount of emission reductions. Nonetheless, SJVUAPCD believes and we concur that Rule 4570 will significantly reduce emissions. Simply because a menu option is commonly used does not mean that every facility uses it or uses it consistently.

CRPE raised a similar argument in response to our action on the 2009 version of Rule 4570.<sup>15</sup> We also received a similar comment from another commenter in response to our 2005 proposal to approve SJVAPCD Rule 4550, Conservation Management Practices (CMP) for agricultural sources of PM-10. The commenter claimed that the emission reductions estimated to be achieved by Rule 4550 were inaccurate and inflated because the estimate double-counted emission reductions already being achieved from practices already in common use by growers. In response, we explained, "it was understood that some agricultural sites may have been employing practices not required by regulation at that time, and that these existing practices may not have been accounted for in the emission inventory. Rule 4550 makes these practices mandatory and federally enforceable, allowing the District to take credit for the emission reductions \* \* \*"<sup>16</sup>

Regarding the first example, as we note above in our response to comment #3, the District's emission reduction estimate for feeding based on NRC guidelines was based on several research studies showing that changes in animals' diets reduce VOC emissions and that the 10% reduction was at the low end of the range of effectiveness seen in this research.

Regarding the second example, during past site visits, SJVUAPCD staff has observed feed lying more than three feet away from cows at dairies.<sup>17</sup> EPA staff

has also seen feed lying more than three feet away from the feedlane fence during site visits. Although there is financial incentive for dairies to contain expensive feed close to the cows, dairies respond to this incentive in varied degrees. It is reasonable to assume that including this measure in Rule 4570 will increase implementation of this activity. As for CRPE's statement that cows continuously expose the feed containing VOCs to air flow and evaporation, we note that recent research indicates that TMR will emit VOCs only in the first few hours after exposure to oxygen.<sup>18</sup> The District's staff report only claims that reductions in the surface area of the feed will reduce emissions, not that reductions in the surface area of the feed will reduce the flux rate.<sup>19</sup> Based on the research available to date, it is reasonable to conclude that reductions in the surface area of the feed exposed to air flow will reduce emissions.

*Comment #5:* CRPE comments that approval of Rule 4570 is arbitrary and capricious because Rule 4570 is unenforceable. CRPE comments that EPA has not presented facts or analysis to support its conclusion that Rule 4570 is enforceable.

*Response #5:* As stated in its TSD, EPA found that Rule 4570 was sufficiently clear and contained adequate monitoring, recordkeeping and other provisions to determine compliance with the rule.<sup>20</sup> We provide further elaboration on that finding here.

Consistent with CAA section 110(a) and relevant guidance, we reviewed Rule 4570 as we review other SIP submitted rules, to ensure that the rule language makes clear who must do what by when. EPA notes that it did evaluate the enforceability of Rule 4570 according to the criteria in the policy documents identified in our proposal, in particular, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 24, 1988 (the Bluebook), "Guidance Document for Correcting Common VOC and Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook), and "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency." EPA found that Rule 4570 sets forth clear standards as well as adequate recordkeeping and monitoring and therefore meets the

<sup>12</sup> August 31, 2009 Letter from Brent Newell, Center on Race, Poverty and the Environment, to Frances Wicher and Andrew Steckel, EPA.

<sup>13</sup> 75 FR 10435, March 8, 2010.

<sup>14</sup> *Association of Irrigated Residents v. SJVAPCD* (2008) 168 Cal. App. 4th 535, 553–554.

<sup>15</sup> August 31, 2009 Letter from Brent Newell, Center on Race, Poverty and the Environment, to Frances Wicher and Andrew Steckel, EPA.

<sup>16</sup> 71 FR 7683, February 14, 2006.

<sup>17</sup> See December 5, 2011 email communication from Sheraz Gill, SJVUAPCD, to Sona Chilingaryan and Nancy Levin, EPA.

<sup>18</sup> F. Montes *et al.*, Temperature and Air Velocity Effects on Ethanol Emission from Corn Silage with the Characteristics of an Exposed Silo Face, *Atmospheric Environment* 44 (2010) 1987–1995.

<sup>19</sup> SJVUAPCD Staff Report for Rule 4570, Oct. 21, 2010, App. B, at 11.

<sup>20</sup> EPA Region 9 Technical Support Document ("TSD") for Rule 4570, Aug. 2011 at 3.

general criteria for enforceability imposed by the CAA and relevant guidance and regulations.

National policy and precedent for implementing CAA section 110(a)'s enforceability requirement emphasizes that SIP requirements must be clear. See, for example, "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," summary of enforceability criteria ("Your review should ensure that the rules in question are clearly worded and explicit in their applicability to the regulated sources,")<sup>21</sup> and conclusion ("SIP revisions should be written clearly, with explicit language to implement their intent.")<sup>22</sup>

EPA notes that the commenter did not identify any particular requirement that it believes to be lacking in clarity or specificity. In fact, Rule 4570 contains specific standards throughout its provisions. For example, the rule's applicability provision, Section 2.0, is unambiguously presented as, "The provisions of this rule shall apply to any Confined Animal Facility." The rule's compliance time frame is also clearly set out in Section 8.0. Rule 4570's provisions imposing more particular requirements are also clearly set forth. For example, the Phase II Dairy silage menu, Table 4.1 B., requires owners and operators to select among mitigation measures that contain specific standards for the thickness of the tarps that cover the silage piles; the density of the silage piles themselves; and for managing the exposure of the silage piles. Similarly, the Phase II Dairy free stall barn menu, Table 4.1 D., requires owners and operators to select among mitigation measures that specify the width of paving for feedlanes, the frequency for clearing the feedlanes, and the type of allowable bedding materials. These are but a few examples of the specific standards set forth throughout Rule 4570.

Moreover, the record associated with the development of Rule 4570 shows efforts made by EPA and the District to ensure clarity in Rule 4570. For example, in a comment letter provided by EPA to the District regarding EPA's review of a draft version of Rule 4570, EPA recommended to the District that it revise three Phase II menus for dairies by adding definitions for at least six terms and including a specific frequency for vacuuming manure from freestall barns.<sup>23</sup> In addition, EPA's TSD

contains detailed references to various standards embedded in the rule, further evidence that we carefully considered the clarity and specificity of Rule 4570's standards and requirements. For example, EPA's TSD notes that the 2009 version of Rule 4570 has one menu generally for poultry facilities, while the current rule has two menus more specifically tailored to layer facilities (Table 4.5) and broiler, duck or turkey facilities (Table 4.6).<sup>24</sup> EPA's TSD also describes the removal of an option from dairy and feedlot menus regarding the installation of floats in water troughs because the District determined that the measure was already standard industry practice.<sup>25</sup>

In addition to the rule's clarity and specificity, EPA considered the rule's other enforcement-related provisions. For example, sections 5.1.3 and 8.1 require each CAF owner/operator to submit, by April 21, 2011, an application for a construction or operating permit that includes a facility emission mitigation plan identifying the mitigation measures selected for the facility. Section 5.1.6 requires the District to act on complete applications within 6 months of receipt and to list the approved mitigation measures as permit conditions. Section 5.1.2 also specifies that initial permits to construct and operate for large CAFs will be subject to a 30-day public comment period.

In addition, sections 7.0–7.9 contain various recordkeeping requirements, including: Section 7.2.1, which requires owners and operators to maintain copies of all facility permits; section 7.2.2, which requires owners and operators to maintain quarterly records of the number of animals of each species and production group; and, section 7.2.3, which contains a broad requirement for owners and operators to "maintain records sufficient to demonstrate compliance with all applicable mitigation measures." In addition, sections 7.3–7.8 contain specific recordkeeping requirements for various mitigation measures<sup>26</sup> and section 7.9 requires CAF owners and operators to maintain records for a minimum of 5 years. In addition, sections 7.10 and 7.11 impose source testing requirements and relevant test methods.

*Comment #6:* CRPE alleges that Rule 4570's recordkeeping provisions are

inadequate to assure sufficient public access to documents that demonstrate compliance with applicable mitigation measures. Specifically, the commenter states that the rule's requirement that owners and operators provide records to the APCO and EPA upon request is not sufficient because it does not "mandate that records \* \* \* be made available to the public." The commenter claims that, as a result, the public could be denied access to records by entities "claiming that they are proprietary, confidential business information, or otherwise not disclosable under the various exemptions in open records laws." CRPE expresses the concern that Rule 4570's lack of a "guarantee" of public access to all records demonstrating compliance means that the District and/or EPA could withhold documents from the public on the ground that Rule 4570 "trumps" inconsistent state law or conflicts with FOIA.

*Response #6:* The Freedom of Information Act ("FOIA"), 5 U.S.C. 552, requires the federal government, including agencies such as EPA, to provide records to the public upon request.<sup>27</sup> In addition, EPA has its own regulations that apply to its implementation of FOIA.<sup>28</sup> As noted by the commenter, FOIA does include various exemptions, including an exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential. Id. at § 552(b)(7). The FOIA regulations specify the procedures by which regulated entities may claim information to be confidential or trade secret and the process for the review of such claims.<sup>29</sup> EPA's regulations also specify that "emissions data" does not qualify as confidential information.<sup>30</sup> These statutory and regulatory provisions and exemptions would apply to records in EPA's possession regardless of whether Rule 4570 explicitly required records to be made available to the public. The fact that local Rule 4570 does not expressly provide the public with access to CAF records cannot "trump" federal law in FOIA. Moreover, it would be inconsistent with these established statutory and regulatory provisions to withhold our approval of Rule 4570 for the reason suggested by the commenter. Few if any State requirements approved by EPA mandate that records be made available to the public as requested by

<sup>21</sup> Memorandum from Potter, Adams & Blake, EPA, September 23, 1987, p. 3.

<sup>22</sup> Id. at 4.

<sup>23</sup> Letter from Andrew Steckel, Chief, Rules Office EPA Region 9 to George Heinen, SJVUAPCD, July 20, 2010.

<sup>24</sup> EPA Region 9 TSD for Rule 4570, Aug. 2011 at 6.

<sup>25</sup> Id. at 4.

<sup>26</sup> For example, section 7.3, "Records for Feed and Silage Mitigation Measures," and section 7.5, "Records for Freestall/Corral/Animal Housing" set forth detailed recordkeeping requirements for those specific work practice requirements.

<sup>27</sup> California has an analogous statute, the Public Records Act, Cal. Govt. Code §§ 6250–6276.48.

<sup>28</sup> 40 CFR part 2, and regulations specific to the CAA at 40 CFR 2.301 *et seq.*

<sup>29</sup> 40 CFR part 2, Subpart B (40 CFR 2.201–2.215).

<sup>30</sup> 40 CFR 2.301(e).

the commenter. Rule 4570, by requiring records be made available to regulatory agencies, is consistent with the vast majority of the thousands of SIP requirements approved by EPA over the last 40 years, and we are aware of nothing in the CAA that conflicts with this practice.

*Comment #7:* CRPE alleges two specific deficiencies in Rule 4570's monitoring provisions: (1) Even though Rule 4570 has a general provision for maintaining records sufficient to demonstrate compliance, there is no specific monitoring associated with the requirement to push TMR within three feet of a feedlane fence; and (2) monitoring of lagoons is left to the discretion of the APCO and EPA.

*Response #7:* Although there is not a specific provision requiring recordkeeping for pushing TMR within three feet of a feedlane fence, as the commenter notes, section 7.2.3 of Rule 4570 requires that CAF owners and operators "maintain records sufficient to demonstrate compliance with all applicable mitigation measures." In addition, the District has developed an example Dairy Compliance Checklist that provides compliance guidance.<sup>31</sup> The Checklist asks dairies to have a check mark for every day that feed is pushed within three feet of the feedlane fence within two hours of placing the feed in the feedlane.

With respect to the commenter's concern regarding discretion in the monitoring of lagoons (section 6.1), EPA notes that the "discretion" is reasonably limited in scope. Rule 4570 section 6.1 specifies that lagoons must be monitored "at least once every calendar quarter, with at least 30 days between monitoring tests." Although section 6.1 does not specify the parameters that must be monitored, this issue is addressed by other provisions within the rule. For example, sections 5.1.3 and 5.1.5 require implementation of emission mitigation plans, which must be included as permit conditions in the CAF's operating and construction permits. For owners and operators implementing lagoons as a mitigation measure, section 6.1 contemplates that these plans and permits will identify the parameters approved by the District and EPA. Furthermore, owners and operators using lagoons as mitigation measures must also comply with source testing requirements set forth in sections 7.10.2—7.10.6.

*Comment #8:* CRPE alleges that Rule 4570 is deficient because it does not require operators to affirm the truth of records under penalty of perjury, nor

does it require operators to report violations to the District or EPA.

*Response #8:* The commenter has not provided and EPA is not aware of any federal rule, regulation or policy that would impose such requirements as a condition of SIP approval. As explained above, EPA evaluated the enforceability of Rule 4570 according to the authorities and guidelines identified in our proposal and found that Rule 4570 meets the general criteria for enforceability imposed by the CAA and relevant guidance and regulations. EPA also notes that CAA section 113(c)(2) provides that any person who knowingly makes a "false material statement" or "omits material information from \* \* \* any \* \* \* application, record, report, plan or other document" required by the Act may be subject to criminal fines or by imprisonment or both. This provision will apply to records required by Rule 4570 upon the effective date of our approval of the rule into the California SIP.

### III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP. This action permanently terminates all CAA sanction and FIP implications of our January 14, 2010 (75 FR 2079) limited disapproval of Rule 4570.

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 March 19, 2012. Filing a petition for reconsideration by the Administrator of this final rule does

<sup>31</sup> See SJVUAPCD Dairy Compliance Checklist.

not affect the finality of this action 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 13, 2011.

**Jared Blumenfeld,**

*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)(351)(i)(C)(7) and (388)(i)(B)(5) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(351) \* \* \*

(i) \* \* \*

(C) \* \* \*

(7) Rule 4565, “Biosolids, Animal Manure, and Poultry Litter Operations”, adopted on March 15, 2007.

\* \* \* \* \*

(388) \* \* \*

(i) \* \* \*

(B) \* \* \*

(5) Rule 4570, “Confined Animal Facilities”, amended on October 21, 2010.

\* \* \* \* \*

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