

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 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 April 28, 2003. 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 22, 2003.

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)(304) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(304) New and amended regulations for the following APCD were submitted on December 6, 2001, by the Governor's designee.

(i) Incorporation by reference.

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

(1) Rules 8011, 8021, 8031, 8041, 8051, 8061, 8071, and 8081, adopted on November 15, 2001.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA262-0369a; FRL-7451-4]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District, 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 revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from organic liquid storage and VOC and nitrogen dioxide (NO_x) emissions from flare operations at industrial sites such as oil refineries, chemical manufacturers, and oil wells. We are approving local rules that regulate these emission sources under

the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on April 28, 2003 without further notice, unless EPA receives adverse comments by March 28, 2003. If we receive such comment, 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 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940; and,

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbltx.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: Jerald S. Wamsley, EPA Region IX, (415) 947-4111.

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 dates that they were

adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
MBUAPCD	417	Storage of Organic Liquids	12/19/01	3/15/02
SJVUAPCD	4311	Flares	6/20/02	8/06/02

On May 7, 2002 and August 30, 2002 respectively, EPA found that the submittals for MBUAPCD Rule 417 and SJVUAPCD Rule 4311 met the completeness criteria in 40 CFR part 51, appendix V. These criteria must be met before formal EPA review may begin.

B. Are There Other Versions of These Rules?

We approved a version of MBUAPCD Rule 417 into the SIP on February 15, 1995 (60 FR 8565); there have been no intervening submittals of the rule. SJVUAPCD Rule 4311 is a new rule and there are no previous versions of it in the SIP.

C. What Is the Purpose of the Submitted Rule or Rule Revisions?

MBUAPCD Rule 417 is designed to reduce VOC emissions at industrial sites engaged in storing any organic liquids with a vapor pressure greater than 0.5 pounds per square inch atmospheric. VOCs are emitted from containment vessels such as tanks and transfer lines due to the high vapor pressure of the processed crude oil and organic liquids. MBUAPCD Rule 417 was amended to require that the true vapor pressure of petroleum products with a API gravity of less than 20 degrees be determined by the "Test Method for Vapor Pressure of Reactive Organic Compounds in Heavy Crude Oil Using Gas Chromatography" as developed by Lawrence Berkeley National Laboratory.

SJVUAPCD Rule 4311 is a new rule designed to decrease VOC and NO_x emissions from industries such as refineries, unrecoverable gases from oil wells, vented gases from blast furnaces, unused gases from coke ovens, and gaseous wastes from chemical industries by requiring that flares be operated in a prescribed manner. Rule 4311 includes the following general provisions:

- Purpose and applicability;
- Definitions of terms used within the rule;
- Exemptions from the rule;
- Requirements mandating particular flare operation protocols, equipment, and operations including VOC and

NO_x limits for ground-level enclosed flares;

- Record keeping to demonstrate compliance with the rule; and,
- Test methods for determining compliance with the rule.

The EPA's subject TSD has more information about these rules.

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 Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The MBUAPCD regulates an area attaining the federal ozone standard and must have RACT rules needed to maintain this status. The SJVUAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 4311 must fulfill RACT.

Guidance and policy documents that we used to help evaluate consistently specific enforceability and RACT requirements include the following:

- Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987;
- "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook);
- "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook);
- "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks," EPA-450/2-78-047, USEPA, December 1978; and
- "Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks," EPA-450/2-77-036, USEPA, December 1977.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The subject TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

There are no additional rule revisions recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it 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 28, 2003, 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 28, 2003. 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 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 Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC

emissions. Table 2 lists some of the national milestones leading to the

submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
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.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

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 13211, “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 (Pub. L. 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 Clean Air Act. 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 Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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 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 April 28, 2003. 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, Ozone, Reporting and recordkeeping requirements, Nitrogen dioxide, Volatile organic compounds.

Dated: December 6, 2002.

Alexis Strauss,

Acting 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)(297)(i)(D)(2) and (c)(303)(i)(C)(1) to read as follows:

§ 52.220 Identification of plan.

- * * * * *
- (c) * * *
- (297) * * *
- (i) * * *
- (D) * * *

(2) Rule 417 adopted on September 1, 1974, and amended on December 19, 2001.

* * * * *

(c) * * *

(303) * * *

(i) * * *

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

(1) Rule 4311 adopted on June 20, 2002.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA273-0381c; FRL-7452-5]

Interim Final Determination To Stay and/or Defer Sanctions, Imperial County 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 Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern ICAPCD Rule 420, Livestock Feed Yards.

DATES: This interim final determination is effective on February 26, 2003. However, comments will be accepted until March 28, 2003.

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:

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; and,

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

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 Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947-4111.

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

I. Background

On July 11, 2001 (66 FR 36170), we published a limited approval and limited disapproval of ICAPCD Rule 420 as adopted locally on September 14, 1999 and submitted by the State on May 26, 2000. We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after August 10, 2001 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 13, 2002, ICAPCD adopted revisions to Rule 420 that were intended to correct the deficiencies identified in our disapproval action. On October 16, 2002, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our July 11, 2001 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our July 11, 2001 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 revised ICAPCD Rule 420, we intend to take subsequent final 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 approval.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA

section 179 sanctions associated with ICAPCD Rule 420 based on our concurrent proposal to approve the State's SIP revision 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