

publication of the rule in the **Federal Register**.

L. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the EPA action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

This action making a finding of failure to submit related to the section 110(a)(2)(D)(i) requirements related to the 8-hour ozone and the PM_{2.5} NAAQS is "nationally applicable" within the meaning of section 307(b)(1).

For the same reasons, the Administrator also is determining that the requirements related to the finding of failure to submit related to section 110(a)(2)(D)(i) is of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has "scope or effect beyond a single judicial circuit." H.R. Rep. No. 95-294 at 323, 324, *reprinted in* 1977 U.S.C.C.A.N. 1402-03. Here, the scope and effect of this rulemaking extends to numerous judicial circuits since the findings of failure to submit apply to all areas of the country. In these circumstances, section 307(b)(1) and its legislative history call for the Administrator to find the rule to be of "nationwide scope or effect" and for venue to be in the D.C. Circuit.

Thus, any petitions for review of this action related to a findings of failure to submit related to the requirements of section 110(a)(2)(D)(i) of the CAA must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 52

Air pollution control.

Dated: March 10, 2005.

Stephen L. Johnson,

Acting EPA Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R09-OAR-2005-CA-01; FRL-7900-3]

Revision to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District and 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) portions of the California State Implementation Plan (SIP). The revisions concern the emission of particulate matter (PM-10) from open outdoor burning and from incinerator burning. 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 June 24, 2005 without further notice, unless EPA receives adverse comments by May 25, 2005. 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: Submit comments, identified by docket number R09-OAR-2005-CA-01, by one of the following methods:

1. Agency Web site: <http://docket.epa.gov/rmepub/>. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.
2. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.
3. E-mail: steckel.andrew@epa.gov.
4. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal, or e-mail. The agency Web site and eRulemaking portal are "anonymous access" systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at <http://docket.epa.gov/rmepub> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). 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: Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 947-4118, petersen.alfred@epa.gov.

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 and dates that MBUAPCD and SJVUAPCD revised the local rules and when they were submitted to EPA by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Revised or Amended	Submitted
MBUAPCD	408	Incinerator Burning	09/15/04 Revised	01/13/05
MBUAPCD	438	Open Outdoor Fires	09/15/04 Revised	01/13/05
SJVUAPCD	4103	Open Burning	09/16/04 Amended	01/13/05

On February 16, 2005, the submittal of January 13, 2005 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 a version of MBUAPCD Rule 408 into the SIP on January 31, 2003 (68 FR 4929) and Rule 438 on January 12, 2004 (69 FR 1682). We approved a version of SJVUAPCD Rule 4103 into the SIP on February 27, 2002 (67 FR 8894).

C. What Are the Purposes of the Submitted Rule Revisions?

PM-10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM-10 emissions.

The purposes of the submitted rule or rule revisions are described below:

- MBUAPCD Rule 408 deletes the exemption of paragraph 1.3.1 allowing incinerator burning of yard trimmings and brush in an area not served weekly by a solid waste disposal service.
- MBUAPCD Rule 438 deletes the exemption of paragraph 1.3.1.4 for burning household rubbish at one- and two-family homes in an area not served weekly by a solid waste disposal service; deletes the exemption of paragraph 1.3.1.5 for burning household rubbish at one- and two-family homes in San Benito County; and deletes the exemption of paragraph 1.3.1.6.1 for burning cardboard and non-glossy paper in a non-incorporated area.
- SJVUAPCD Rule 4103 changes paragraph 4.2.2 into paragraph 5.9, Diseased Materials, which adds the restrictions that the applicant obtain a conditional, non-transferable permit describing the material to be burned; that the applicant not have a burning violation in the last three years; and that the county agricultural commissioner determine there is no feasible alternative to burning to prevent disease or pests to cause a quantifiable reduction on the yield of crops, animals, or fowl.

The TSD has more information about these rules.

II. EPA’s Evaluation and Action

A. How Is EPA Evaluating the Rule and Rule Revisions?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Best Available Control Measures (BACM) including, Best Available Control Technology (BACT), for significant source categories or major sources in serious PM-10 nonattainment areas (see section 189(b)), must require Reasonably Available Control Measures (RACM) including, Reasonably Available Control Technology (RACT), for significant source categories or major sources in moderate PM-10 nonattainment areas (see section 189(a)), and must not relax existing requirements (see sections 110(l) and 193). MBUAPCD is a PM-10 maintenance attainment area and need not fulfill the requirements of BACM/ BACT or RACM/RACT. SJVUAPCD is a serious PM-10 nonattainment area and must fulfil the requirements of BACM/ BACT. See 40 CFR part 81.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *PM-10 Guideline Document*, EPA-452/R-93-008.

B. Do the Rule Revisions Meet the Evaluation Criteria?

We believe that MBUAPCD Rules 408 and 438 and SJVUAPCD Rule 4103 are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and the requirements of BACM/BACT. 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 SIP revisions 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 SIP revision. If we receive adverse comments by May 25, 2005, 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 June 24, 2005. This will incorporate MBUAPCD Rules 408 and 438 and SJVUAPCD Rule 4103 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. Statutory and Executive Order Reviews

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. section 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. section 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 June 24, 2005. 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: March 29, 2005.

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)(335) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(335) New and amended regulations for the following APCDs were submitted on January 13, 2005, by the Governor's designee.

(i) Incorporation by reference.

(A) Monterey Bay Unified Air Pollution Control District.

(1) Rule 408, adopted on September 1, 1974 and revised on September 15, 2004.

(2) Rule 438, adopted on April 16, 2003 and revised on September 15, 2004.

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

(1) Rule 4103, adopted on June 18, 1992 and amended on September 16, 2004.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[R5-MIECOS-01; SW-FRL-7902-9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is granting a petition to exclude (or "delist") wastewater treatment plant sludge from conversion coating on aluminum generated by the Ford Motor Company Dearborn Truck Assembly Plant (DTP) in Dearborn, Michigan from the list of hazardous wastes.

Today's action conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a lined subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste. The exclusion was proposed on March 7, 2002 as part of an expedited process to evaluate this waste under a pilot project developed with the Michigan Department of Environmental Quality (MDEQ). The rule also imposes testing conditions for waste generated in the future to ensure that this waste continues to qualify for delisting.

DATES: This rule is effective on April 25, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. R5-MIECOS-01. All documents in the docket are listed in the index. Publicly available docket materials are available in hard copy at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604. This Docket Facility is open from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from the regulatory docket at \$0.15 per page. Contact Judy Kleiman for appointments at the address above, by email at kleiman.judy@epa.gov or by calling (312) 886-1482.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Judy Kleiman, Waste, Pesticides, and Toxics Division, (Mail Code: DW-8J), U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604; telephone number: (312) 886-1482; fax number: (312) 353-4788; e-mail address: kleiman.judy@epa.gov.