ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA269–0438a; FRL–7621–1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve certain revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from boilers, steam generators, and process heaters; stationary internal combustion engines; and stationary gas turbines. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by March 15, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

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

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 E. Gettysburg Avenue, Fresno, CA 93726.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same versions of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, EPA Region IX, (415) 947–4121, *canaday.tom@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 addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
SJVUAPCD	4351	Boilers, Steam Generators, and Process Heaters—Phase 1.	08/21/03	09/29/03
SJVUAPCD	4305	Boilers, Steam Generators, and Process Heaters—Phase 2.	08/21/03	09/29/03
SJVUAPCD	4306	Boilers, Steam Generators, and Process Heaters—Phase 3.	09/18/03	09/29/03
SJVUAPCD	4701	Internal Combustion Engines—Phase 1	08/21/03	10/09/03
SJVUAPCD	4702	Internal Combustion Engines—Phase 2	08/21/03	10/09/03
SJVUAPCD	4703	Stationary Gas Turbines	04/25/02	06/18/02

On November 10, 2003, submitted Rules 4351, 4305, 4306, 4701, and 4702 were found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review. Submitted Rule 4703 was found to meet the completeness criteria on July 23, 2002.

B. Are There Other Versions of These Rules?

SJVUAPCD adopted an earlier version of Rule 4351 on October 19, 1995, and CARB submitted it to us on March 26, 1996. SJVUAPCD adopted an earlier version of Rule 4305 on December 19, 1996, and CARB submitted it to us on March 3, 1997. SJVUAPCD adopted an earlier version of Rule 4701 on December 19, 1996, and CARB submitted it to us on March 10, 1998. SJVUAPCD adopted an earlier version of Rule 4703 on October 16, 1997, and CARB submitted it to us on March 10, 1998. We proposed a limited approval and limited disapproval of these previous versions of Rules 4351, 4305, 4701, and 4703 on September 14, 1998 (63 FR 49053) and finalized our limited approval and limited disapproval of these rules into the SIP on February 28, 2002 (67 FR 9209).

Between the time of our proposed rule in 1998 and our final rule in 2002, SJVUAPCD adopted an amended version of Rule 4701 on November 12, 1998, which CARB submitted on February 16, 1999. Subsequent to our final rule in 2002, SJVUAPCD adopted amended versions of Rule 4701 and Rule 4305 on December 19, 2002, and CARB submitted these to us on January 21, 2003. We have not taken action on these interim submittals of amended Rule 4701 and Rule 4305 and consider the current submitted versions of Rule 4701 and Rule 4305, identified in Table 1, to supercede the versions submitted to us previously. While we can act on only the most recently submitted versions of submitted rules, we have reviewed materials provided with previous submittals. There are no previously submitted versions of Rules 4306 and 4702.

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

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Specifically, NO_X is a precursor pollutant of the following ''criteria'' pollutants for which national ambient air quality standards (NAAQS) have been established: nitrogen dioxide,

ozone, and particulate matter (PM–10 and PM–2.5). Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions.

Rules 4351, 4305, and 4306 limit NO_X and carbon monoxide (CO) emissions from all gaseous fuel or liquid fuel fired boilers, steam generators, and process heaters with a rated heat input greater than five million Btu per hour. Rules 4701 and 4702 limit NO_X, CO, and volatile organic compound (VOC) emissions from stationary internal combustion engines with a rated brake horsepower greater than 50 horsepower. Rule 4701 applies to both spark-ignited and compression-ignited stationary internal combustion engines while Rule 4702 applies only to spark-ignited stationary internal combustion engines. Rule 4703 limits NO_X emissions from all stationary gas turbine systems which are subject to district permitting requirements and with ratings equal to or greater than 0.3 megawatt (MW) and/or a maximum heat input rating of more that three million Btu per hour. Stationary gas turbines in the San Joaquin Valley Area are used mostly as cogeneration units to supply steam and electricity for oil production and industrial processes.

The general purpose of the submitted rules is to reduce emissions of NO_X and other pollutants from three specific source categories (boilers, steam generators, and process heaters; stationary internal combustion engines; and stationary gas turbines) in San Joaquin Valley. More specifically, the particular versions of these submitted rules were adopted by SJVUAPCD and submitted by CARB to EPA to address deficiencies identified by EPA in prior versions of the rules and to address the additional planning requirements imposed under the Act on PM–10 nonattainment areas, such as San Joaquin Valley, that are classified as ''serious,'' as discussed further in the following section.

II. Background

On September 14, 1998, EPA published a notice of proposed rulemaking for a limited approval and limited disapproval action (''1998 Proposed Rule'') on SJVUAPCD Rules 4351, 4305, 4701 and 4703 that were submitted as revisions to the California SIP because, although we determined that these rules improved the SIP and were largely consistent with the relevant CAA requirements, we also determined that some provisions in these rules conflicted with section 110 and part D (of title I) of the Act. See 63 FR 49053. EPA extended the 30-day comment period for the 1998 Proposed Rule for an additional 30 days. See 63 FR 56881 (October 23, 1998). Upon consideration of comments received on the 1998 Proposed Rule, we determined that certain proposed deficiencies were not a basis for a limited disapproval but otherwise finalized the action as proposed. We published notice of our final rule in the **Federal Register** on February 28, 2002 (''2002 Final Rule''). See 67 FR 9209. The provisions deemed deficient can be placed in two basic categories, the Westside exemption and all other deficiencies.

Westside exemption: The rules contained an exemption from regulation, or federal enforceability of the regulation, for facilities west of Interstate Highway 5 in Fresno, Kern, or Kings County (referred to herein as the ''Westside exemption''). The rationale for our limited disapproval with respect to the Westside exemption is set forth in the 1998 Proposed Rule: (1) Reasonably Available Control Measures (RACM) are required of major stationary sources of PM–10 precursors (including NO_X) under section 189(e) of the Act unless EPA determines that such sources do not contribute significantly to PM–10 levels, (2) EPA has concluded that the PM–10 attainment strategy for San Joaquin Valley will rely heavily on the control of precursors to PM–10, including NO_X, (3) the Westside exemption constitutes failure to implement RACM at these facilities as required under section 189(a)(1)(C) of the Act, and (4) section 110(l) of the Act forbids EPA from approving SIP revisions which would interfere with any applicable requirement of the Act, including section 189(a)(1)(C). See 63 FR 49053, at 49055 (September 14, 1998).

In response to a comment on our 1998 Proposed Rule, we cited a document, SJVUAPCD's PM–10 Attainment Demonstration Plan Progress Report 1997–1999 (''PM–10 Progress Report''), as further support for our conclusion about NO_X as a significant precursor to PM–10 in San Joaquin Valley. We acknowledge that the PM–10 Progress Report was received by us subsequent to the close of the comment period and that the public had no opportunity to challenge its contents or our use of the report prior to our final action. However, our reference to the PM–10 Progress Report was in response to a comment and was intended merely to supplement, rather than replace, the original basis for our conclusion that NO_X is a significant precursor for PM–10. In our 1998 Proposed Rule, we supported this conclusion by reference to a previous **Federal Register** notice (*i.e.*, 58 FR 3337), and in that previous notice, we summarized the findings of SJVUAPCD's 1991 Moderate PM–10 Plan as follows:

> The EPA is reclassifying the San Joaquin nonattainment area due to the fact that the PM–10 SIP for San Joaquin Valley submitted to EPA by the State of California on December 24, 1991, suggests that the area cannot practicably attain the PM–10 NAAQS by December 31, 1994. Moreover, the area has not projected attainment before the December 31, 2001 serious area attainment date. Violations of the PM–10 NAAQS in the San Joaquin Valley are dominated by two source categories: (1) Primary PM–10 sources, including reentrained road dust, construction activities, and farming operations; and (2) secondarily-formed PM–10, including ammonium nitrate and ammonium sulfate. On days when primary PM–10 emissions dominate, fugitive dust emissions account for nearly 80 percent of the PM–10 mass. On days when secondary PM–10 dominates, nitrates and sulfates account for 63 percent of the PM–10 mass. The attainment strategy for the San Joaquin Valley will rely heavily on the control of widespread fugitive dust sources and the control of precursors of PM–10, including nitrogen dioxide, sulfur dioxide and volatile organic compounds.

See 58 FR 3334, at 3337 (January 8, 1993).

Another comment was submitted on the 1998 Proposed Rule stating that the SJVUAPCD had shown, through modeling, that the reduction of NO_X emissions from Westside sources would not contribute to the attainment of the ozone NAAQS and that the Westside exemption was therefore consistent with CAA requirements for ozone. We responded to this comment by noting that, during the interval following our 1998 Proposed Rule, San Joaquin Valley had in fact failed to attain the ozone NAAQS by the applicable attainment date and that this failure to attain, in and of itself, proved the inadequacy of the previous ozone modeling that supported the Westside exemption. This response was not necessary, and we further note that the failure to attain the ozone NAAQS occurred subsequent to the close of the comment period and that the public had no opportunity prior to our final action to challenge our statement regarding its relevance in connection with the underlying ozone modeling results supporting the Westside exemption. As stated in our 1998 Proposed Rule, we did not intend to make any determination in that rulemaking regarding the Westside exemption's consistency with section 182(f), which provides the statutory criteria for approving area-wide or subarea-specific exemptions for controls of NO_X sources in connection with the ozone NAAQS attainment strategy. Instead, we intended to base our

determination of the deficiency of the Westside exemption solely on PM–10 planning requirements. We hereby re-affirm that our basis in the 1998 Proposed Rule and the 2002 Final Rule for finding the Westside exemption to be a deficiency derived from PM–10 planning requirements, not ozone planning requirements. In any event, the past issue of whether the Westside exemption was inconsistent with both ozone and PM–10 planning requirements or simply PM–10 (and not ozone) planning requirements has become moot in light of the need for additional NO_X emissions reductions throughout San Joaquin Valley for both PM–10 and ozone planning purposes.

All Other Deficiencies: The rules contained numerous other deficient provisions that varied from rule to rule but which generally covered such issues as source applicability and exemptions; stringency of emissions standards; excess emissions during start-up, shutdown, and malfunction conditions; and monitoring and record keeping.

In our 2002 Final Rule, we concluded that certain types of deficiencies, such as the emission limits and applicability thresholds, were inconsistent with the requirement to implement Reasonably Available Control Technology (RACT) for control of NO_X emissions (as a precursor to ozone) at existing sources, as required under CAA section 182(b)(2) and 182(f) for moderate and above ozone nonattainment areas, and were inconsistent with the requirement to implement RACM/RACT under the statutory provisions for PM–10 nonattainment plans cited above in connection with the Westside exemption. We concluded that other types of deficiencies, such as those related to monitoring and reporting, were inconsistent with the enforceability requirement for SIP rules under section 110(a)(2)(A) of the Act. These deficiencies are described in detail in the 1998 Proposed Rule (63 FR 49053, September 14, 1998), the TSDs prepared in connection with that proposal, and the 2002 Final Rule (67 FR 9209, February 28, 2002).

In 1998, when we proposed action on the previous versions of these rules, San Joaquin Valley was classified as a ''serious'' (*i.e.*, one classification higher than ''moderate'') nonattainment area for the ozone NAAQS and as a ''serious'' nonattainment area for the PM–10 NAAQS. By the time we took final action in 2002, the nonattainment classification for the valley with respect to the ozone NAAQS had been bumped-up to ''severe.'' See 50 CFR 81.305.

San Joaquin Valley continues to be classified as a ''serious'' PM–10 nonattainment area, and while our previous rulemaking process, which culminated in the 2002 Final Rule, evaluated the rules with respect to the ozone RACT requirement and the PM–10 RACM/RACT requirement, San Joaquin Valley, as a serious PM–10 nonattainment area, is also subject to the requirement under sections 189(b)(1)(B) and 189(e) of the Act to implement Best Available Control Measures (BACM), which includes Best Available Control Technology (BACT), for the control of PM–10 precursor emissions, including NO_X.

The TSDs have more information about these rules.

III. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

We are evaluating the six submitted rules to determine whether they correct the deficiencies in the previous versions of the rules as set forth in our 2002 Final Rule, and thereby implement RACT under CAA sections 182(b)(2) and 182(f) and RACM/RACT under CAA sections 189(a)(1)(C) and 189(e), and whether they provide for implementation of BACM/BACT under CAA sections 189(b)(1)(B) and 189(e) for the relevant source categories. General regulatory and non-regulatory references that we used to help evaluate enforceability, RACT/RACM, and BACM/BACT requirements consistently include the following:

1. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, U.S. EPA, 57 FR 13489, April 16, 1992.

2. State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, U.S. EPA, 57 FR 55620, November 25, 1992.

3. State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, U.S. EPA, 59 FR 41998, August 16, 1994.

4. Issues Relating to VOC Regulation, Cutpoints, Deficiencies, and Deviations (the Blue Book), U.S. EPA, May 25, 1988.

5. ''Guidance Document for Correcting VOC Rule Deficiencies'', U.S. EPA Region 9, August 21, 2001 (the little bluebook).

6. ''State Implementation Plans: Policy Regarding Excess Emissions during Malfunctions, Startup, and Shutdown,'' EPA policy memorandum from Steven A. Herman to Regional Administrators, September 20, 1999, and re-issuance of this memo dated December 5, 2001 (''Excess Emissions Policy'').

7. Improving Air Quality with Economic Incentive Programs, U.S. EPA Office of Air and Radiation, EPA–452/R–01–001, January 2001 (''EIP Guidance'').

8. Cost Effective Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT), U.S. EPA Office of Air Quality Planning and Standards, March 16, 1994.

9. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, State of California Air Resources Board, July 18, 1991 (''CARB 1991 RACT/BARCT Determination'').

10. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for the Control of Oxides of Nitrogen From Stationary Gas Turbines, State of California Air Resources Board, May 18, 1992 (''CARB 1992 RACT/BARCT Determination'').

11. CAPCOA/ARB Proposed Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Internal Combustion Engines, Draft, State of California Air Resources Board, December, 1997 (''CARB Draft 1997 RACT/BARCT Determination'').

12. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Spark-Ignited Internal Combustion Engines, State of California Air Resources Board, November, 2001 (''CARB 2001 RACT/BARCT Determination'').

B. Do These Rules Meet the Evaluation Criteria?

Correction of Previously-Identified Deficiencies. The deficiencies identified in the previous versions of the rules are described in full in our previous rulemaking documents, including the 1998 Proposed Rule (63 FR 49053, September 14, 1998), the related TSDs (dated July 31, 1998), and the 2002 Final Rule (67 FR 9209, February 28, 2002). In the following paragraphs, we discuss how the new or amended rules correct the deficiencies by providing a discussion of each of 18 specific deficiencies set forth in our 2002 Final Rule (67 FR 9209, at 9210). The TSDs provide more detail on our evaluation.

1. SJVUAPCD removed the Westside exemption from Rules 4305, 4701, and 4703. The Westside exemption was not removed from Rule 4351 but all boilers, steam generators, and process heaters covered by that rule are now covered by Rule 4305 in which the exemption has been removed. Also, the exemption was not included in new Rules 4306 and 4702.

2. SJVUAPCD added provisions in Rule 4305 to address start-up and shutdown conditions, and the added provisions are consistent with EPA's Excess Emissions Policy. New Rule 4306 also includes satisfactory provisions to address start-up and shutdown conditions.

3. By adopting new Rules 4306 and 4702, SJVUAPCD has limited or eliminated several types of exemptions contained in Rules 4305 and 4701 that we found to be deficiencies. We note, however, that the exemption from RACT-level of control for low-use (*i.e.*, under 1,000 hours annually) internal combustion engines under amended Rule 4701 now applies to low-use engines at major NO_X sources on the Westside. For low-use spark-ignited engines, this exemption is superceded by new Rule 4702, but low-use compression-ignited (*i.e.* diesel) engines at major NO_X sources on the Westside would continue to be exempt from RACT-level of control. As discussed further in our TSD on submitted Rules 4701 and 4702, we conclude that this issue does not prevent our full approval of amended Rule 4701 given that the reduction in NO_X by application of RACT to low-use engines at major NO_X sources on the Westside would amount only to 0.1 ton per day. We have, however, included this issue as one for the District to address in the next revision to the rule.

4. SJVUAPCD has revised Rules 4305 and 4701 to specify appropriate averaging times for emissions concentration limits. New Rules 4306 and 4702 also specify appropriate averaging times.

5. SJVUAPCD has revised Rules 4351 and 4305 to include interim parametric monitoring in instances of deferred source testing. These requirements have also been extended to new Rule 4306.

6. SJVUAPCD has revised the representative testing requirements in Rules 4351 and 4305 to make them consistent with EPA policy and has extended these requirements to new Rule 4306. SJVUAPCD has deleted the option of representative testing from Rule 4701 and has not included the option of representative testing in new Rule 4702.

7. SJVUAPCD has deleted the alternative emission control plan (AECP) provisions from Rules 4305 and 4701 but has added AECP provisions to new Rules 4306 and 4702. The AECP provisions in new Rules 4306 and 4702 include a 10% environmental benefit relative to the underlying emissions limits that would otherwise apply to each individual unit.

8. SJVUAPCD has revised Rule 4351 to be consistent with Rules 4305 and 4306 and to require physical modification of an exempted unit to assure its operation at or below the rule application capacity threshold when the unit's nameplate capacity exceeds this threshold.

9. In our 2002 Final Rule, we withdrew our previous deficiency finding related to the failure in Rule 4351 to require source tests to be performed on units using each fuel which is allowed to be burned in that unit. See 67 FR 9209, at 9211 (February 28, 2002).

10. In our 2002 Final Rule, we withdrew our previous deficiency finding related to the lack in Rule 4351 of source test requirements for certain units. See 67 FR 9209, at 9211 (February 28, 2002).

11. SJVUAPCD has revised Rule 4701 to specify what information is required to be recorded and maintained as part of record keeping requirements. New Rule 4702 also has adequate record keeping requirements.

12. SJVUAPCD has revised Rule 4701 to provide for increased frequency of required compliance testing, and has included similar provisions in new Rule 4702.

13. SJVUAPCD has revised Rule 4701 to identify more precisely what operating records and support documentation are to be maintained by owners claiming exemption to the requirements of the rule, and has included similar provisions in new Rule 4702.

14. In our 2002 Final Rule, we withdrew our previous deficiency finding related to the RACT compliance deadline of May 31, 2001 for certain internal combustion engines under Rule 4701. See 67 FR 9209, at 9212 (February 28, 2002).

15. SJVUAPCD has removed the AECP provisions in Rules 4305 and 4701 but has included such provisions in new Rules 4306 and 4702. In each of the new rules, the AECP uses a 7-day averaging to determine compliance, which is more protective than the 14-day averaging period that had been included in Rules 4305 and 4701, and which is consistent with our policies, including the EIP Guidance, given the stringency of the underlying emissions limits that otherwise apply, the practical considerations involved in equipment repair, and the incorporation of the 10% environmental benefit into the AECP formulation of the new rules.

16. SJVUAPCD has removed the AECP provisions from Rule 4701 and has eliminated the deficiency related to excessive director's discretion in specifying what method is to be used to determine the applicable conversion factor from fuel use to engine emissions in the AECP provisions of new Rule 4702 by requiring approval of equivalent methods by EPA, CARB, and the Air Pollution Control Officer (APCO).

17. SJVUAPCD has removed the AECP provisions from Rule 4701 and has not included the calculation factor that we found to be a deficiency in Rule 4701 related to electric motors in the AECP provisions of new Rule 4702.

18. SJVUAPCD has revised Rule 4703 to refer to the appropriate continuous emission monitoring system requirements and reporting requirements in 40 CFR part 60.

Based on our review of the six new or amended rules, we conclude that SJVUAPCD has adequately corrected all of the deficiencies we identified through our 2002 Final Rule. Nonetheless, we have identified several areas or items for improvement in the rules themselves or in the documentation for the rules. These areas or items for rule improvement relate to such issues as the low-use exemption from RACT for diesel engines located at major NO_X sources on the Westside, the unnecessary uncertainty caused by the ''and/or'' formulation in the applicability subsection of amended Rule 4703, and the need to be more specific with respect to the contents of Emission Control Plans under new Rule 4306. These items or areas for improvement do not affect our ability to approve the submitted rules but constitute recommendations that we believe SJVUAPCD should address the next time the District revises these rules. See the TSDs for more information on our suggested rule improvements.

BACM/BACT Evaluation. As noted above, San Joaquin Valley is classified as a ''serious'' PM–10 nonattainment area, and such areas are subject to the BACM/BACT requirement under CAA sections 189(b)(1)(B) and 189(e). EPA provided its interpretation of the BACM/BACT requirement in 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). As set forth therein, the general process for

identifying BACM/BACT in any given serious PM–10 nonattainment area involves developing an inventory of sources of PM–10 and PM–10 precursors, evaluating the impact of the various source categories (to distinguish significant source categories for which BACM/BACT is required from *de minimis* categories for which BACM/BACT is not required), evaluating alternative control techniques and costs of control, and then selecting BACM for area sources and BACT for point sources.

SJVUAPCD has provided for the first two steps listed above through development and adoption of the *San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 microns and Smaller* (''2003 PM–10 Plan''). The 2003 PM–10 Plan was adopted locally on June 19, 2003, and submitted by CARB to EPA by letter dated August 19, 2003. SJVUAPCD amended portions of the 2003 PM–10 Plan and adopted the amendments on December 18, 2003. CARB submitted the plan amendments to EPA by letter dated December 30, 2003. The 2003 PM–10 Plan, as revised and supplemented by the plan amendments adopted in December 2003, is referred to herein as the ''Amended 2003 PM–10 Plan''.

The Amended 2003 PM–10 Plan identifies significant source categories for which BACM or BACT must be demonstrated. Among the categories identified as significant in the plan are natural gas boilers and natural gas oilfield steam generators, stationary internal combustion engines, and stationary gas turbines. (Together, these source categories are estimated to have emitted 67.3 tons per day of NO_X in 1999. See Table 4–8 of the Amended 2003 PM–10 Plan.) Thus, the submitted rules, which apply to these significant source categories, must provide for BACT-level of control.

SJVUAPCD has provided documentation for the other steps in the process for determining BACM/BACT for individual source categories in the staff reports submitted with the new or amended rules. Additional documentation is provided in the CARB 1991 RACT/BARCT Determination for boilers, steam generators, and process heaters, the 1992 CARB RACT/BARCT Determination for stationary gas turbines, the 1997 Draft CARB RACT/BARCT Determination for stationary internal combustion engines, and the 2001 CARB RACT/BARCT Determination for spark-ignited stationary internal combustion engines.

With the exception of stationary internal combustion engines used for agricultural purposes (discussed below) and ''small'' boilers, steam generators, and process heaters (also discussed below), the new or amended rules provide a level of control that is at least as, if not more, stringent than State-level Best Available Retrofit Control Technology (BARCT), which is equivalent to that level of control required to meet the Federal BACT requirement. Two de minimis exceptions to this finding include low-use compression-ignited (diesel) engines at major NO_X sources on the Westside and high-use diesel engines at public water districts. SJVUAPCD has indicated its intention to address issues related to non-agricultural diesel engines as part of the larger rulemaking discussed below in connection with agricultural internal combustion engines. See letter dated January 26, 2003, from Scott Nestor, SJVUAPCD Planning Manager to Andrew Steckel, U.S. EPA—Region IX. The TSD on Rules 4701 and 4702 provides more information on these de minimis exceptions.

Both amended Rule 4701 and new Rule 4702 exempt internal combustion engines used in agriculture. These engines are typically used for irrigation purposes. Most such engines are compression-ignited (*i.e.*, diesel) but roughly 10% are spark-ignited. The Amended 2003 PM–10 Plan identifies agricultural irrigation internal combustion engines as a significant source category, and thus, SJVUAPCD must provide for BACT-level of control for this currently uncontrolled component of the source category of stationary internal combustion engines. SJVUAPCD has met this requirement through adoption of a control measure in the Amended 2003 PM–10 Plan that commits the District to implement BACT for agricultural internal combustion engines by removing the general agricultural exemption from Rule 4702 and by establishing BACT-level NO_X emission limits in Rule 4702 for compression-ignited and spark-ignited agricultural internal combustion engines. We expect to approve this control measure into the SIP in a separate rulemaking action on the Amended 2003 PM–10 Plan.

Rules 4351, 4305, and 4306 apply to boilers, steam generators, and process heaters with heat input ratings greater than five million Btu per hour. However, the Amended PM–10 Plan concludes that small boilers, steam generators, and process heaters (*i.e.*, with heat input ratings between two and five million Btu per hour) are also a significant source of PM–10 precursor emissions, and thus, SJVUAPCD must provide BACT-level of control for them as well. SJVUAPCD has met this requirement by adopting a control measure that commits the District to implement BACT for control of NO_X from these sources. We expect to approve this control measure into the SIP in a separate rulemaking action on the Amended 2003 PM–10 Plan.

Conclusion. Therefore, we propose to find that the provisions of new or amended SJVUAPCD Rules 4351, 4305, 4306, 4701, 4702, and 4703 adequately correct the previously-identified deficiencies and are consistent with the relevant requirements under section 110(a) and part D of the Clean Air Act, as amended in 1990. Specifically, we propose to find that the new or amended rules implement RACT as required for moderate and above ozone nonattainment areas under CAA sections 182(b)(2) and 182(f), RACT/RACM as required for moderate and above PM–10 nonattainment areas under CAA sections 189(a)(1)(C) and 189(e), and BACM/BACT as required for serious PM–10 nonattainment areas under CAA sections 189(b)(1)(B) and 189(e) for NO_X emissions from the following existing sources or source categories: boilers, steam generators, and process heaters (with heat input ratings greater than five million Btu per hour), non-agricultural stationary internal combustion engines, and stationary gas turbines. Also, we propose to find that the new or amended rules meet the enforceability requirements of Section 110(a).

As noted above, SJVUAPCD has provided for BACM/BACT level of control of NO_X from the overall source categories by adoption of control measures related to small boilers, steam generators, and process heaters as well as agricultural stationary internal combustion engines. We expect to approve these control measures in a separate rulemaking on the Amended 2003 PM–10 Plan.

Also, because the submitted rules are consistent with the assumptions and commitments for these source categories in the Amended 2003 PM–10 Plan and the *Amended 2002 and 2005 Rate of Progress Plan for San Joaquin Valley Ozone*, as submitted by CARB to EPA on April 10, 2003, we conclude that our approval of them as a SIP revision is allowed under section 110(l) of the Act. The TSDs have more information on our evaluation of all of the rules addressed in today's action.

C. Public Comment and Final Action

Because EPA believes the submitted SJVUAPCD Rules 4351, 4305, 4306, 4701, 4702, and 4703 fulfill all relevant requirements, we are proposing to fully

approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

If we finalize this action as proposed, then SJVUAPCD Rules 4351, 4305, and 4306, submitted by CARB on September 29, 2003; SJVUAPCD Rules 4701 and 4702, submitted by CARB on October 9, 2003; and SJVUAPCD Rule 4703, submitted by CARB on June 18, 2002, will supercede SJVUAPCD Rules 4351, 4305, 4701 and 4703, approved by EPA on February 28, 2002 into the SJVUAPCD portion of the California SIP. This final action would terminate all sanction and Federal Implementation Plan (FIP) implications of our February 28, 2002 final action with respect to these rules.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 proposes to approve 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 proposed 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 3, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

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