



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0570; FRL-9951-67-Region 9]

Approval of California Air Plan Revisions, San Joaquin Valley Unified Air Pollution

Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_x), and particulate matter (PM) from wood burning devices. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on **[Insert date 30 days after the date of publication in the Federal Register]**.

ADDRESSES: The EPA has established docket number EPA-R09-OAR-2015-0570 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 94105-3901. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be

available in either location (e.g., confidential business information (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: Rynda Kay, EPA Region IX, (415) 947-4118, kay.rynda@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Proposed Action

On September 30, 2015 in 80 FR 58637, the EPA proposed to approve the following rule into the California SIP.

Local Agency	Rule #	Rule Title	Amended	Submitted
SJVUAPCD	4901	Wood Burning Fireplaces and Wood Burning Heaters	09/18/14	11/06/14

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, which ended on October 30, 2015, we received comments from Adenike Adeyeye, Earthjustice.¹ Summaries of the comments are provided below, along with our responses to those comments.

Comment #1: Earthjustice commented that, “[t]he previous iteration of Rule 4901, amended in 2008, banned the use of [all] wood burning devices when the forecasted PM_{2.5} concentration exceeded 30 [micrograms per cubic meter (μg/m³)]”, while the submitted rule allows use of registered devices² until forecasted PM_{2.5} concentrations reach 65 μg/m³. Earthjustice argued that this revision, which allows registered devices to burn and emit PM equal to or less than 2.5 microns in diameter (PM_{2.5}) while the San Joaquin Valley Air Basin is violating the 2006 24-hour PM_{2.5} standard, constitutes a relaxation of restrictions on burning for registered wood burning devices that violates CAA section 110(l). Earthjustice noted that SJVUAPCD justified this relaxation by predicting drastic emission reductions from replacement of existing wood burning devices, but asserted that SJVUAPCD's claim that the relaxation is irrelevant because the associated emissions are low is incorrect.

¹ Letter and email from Adenike Adeyeye, Earthjustice, dated and received October 30, 2015.

² Submitted Rule 4901, Paragraph 5.7.1 sets eligibility requirements for District registration of wood burning heaters that may be used during a Level One Episodic Wood Burning Curtailment. The heaters must be either exempt from EPA certification requirements or EPA-certified as specified under the New Source Performance Standard (NSPS) for New Residential Wood Heaters (40 CFR part 60, subpart AAA) in effect at the time of purchase or installation.

Response #1: We disagree with the commenter's claim that the rule revisions are a relaxation that violates CAA section 110(l). As an initial matter, section 110(l) does not prohibit all relaxations of individual SIP-approved rule provisions. Rather, section 110(l) prohibits the EPA from approving a SIP revision that "would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in [CAA section 171]), or any other applicable requirement of [the CAA]." The EPA's conclusion that Rule 4901 will not interfere with attainment is not based on low emissions associated with the revision of the SIP to allow registered devices to be used when forecasted concentrations are between 30 and 65 $\mu\text{g}/\text{m}^3$, as the commenter asserts. The commenter focuses only on this provision of Rule 4901 and ignores the associated requirement that unregistered devices can no longer be used when forecasted concentrations are above 20 $\mu\text{g}/\text{m}^3$. Contrary to the commenter's suggestion, the EPA is not required under section 110(l) to evaluate each individual revision to Rule 4901 separately from all other revisions to Rule 4901. Accordingly, the EPA's analysis of Rule 4901 considers both provisions in conjunction.

As discussed in the EPA's Technical Support Document supporting our proposed approval of Rule 4901 ("Rule 4901 TSD"),³ SJVUAPCD estimates that reducing the $\text{PM}_{2.5}$ forecast level at which unregistered devices are banned from 30 to 20 $\mu\text{g}/\text{m}^3$ decreases average wood burning season emissions by 3.33 tons per day (tpd) $\text{PM}_{2.5}$, while allowing registered devices to burn when forecasted concentrations are between 30-65 $\mu\text{g}/\text{m}^3$ increases emissions by 0.065 tpd $\text{PM}_{2.5}$. Combining these changes yields an overall estimated emission reduction of 3.27

³ See Technical Support Document for the EPA's Proposed Rulemaking for the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District Rule 4901, Wood Burning Fireplaces and Wood Burning Heaters, August 2015, ("Rule 4901 TSD") page 8.

tpd PM_{2.5} when compared to the SIP-approved rule.⁴ Therefore, projected increases in emissions from registered devices are more than offset by the emission reductions achieved by the enhanced curtailment criteria for unregistered stoves. Contrary to the commenter's assertion, this evaluation does not rely on expected additional change-outs to cleaner burning devices, which would lead to additional emission reductions beyond 3.27 tpd PM_{2.5}. Thus, the revisions to Rule 4901 are expected to result in significant emission reductions overall compared to the current SIP-approved version of the rule, which will help to expedite attainment of the PM_{2.5} NAAQS in the San Joaquin Valley (SJV). Accordingly, we find that the revisions to Rule 4901 are consistent with the development of an overall plan for attaining the NAAQS in the SJV.

With regard to other applicable requirements of the CAA, for the reasons explained in our proposal, TSD and in response to comments below, we also find that Rule 4901 implements reasonably available control measures (RACM) and best available control measures (BACM) for PM_{2.5} emissions from wood burning devices in the SJV. Therefore, we conclude that the revisions to Rule 4901 will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.

Comment #2: Earthjustice commented that the Bay Area Air Quality Management District (BAAQMD), South Coast Air Quality Management District (SCAQMD), and

⁴ As noted in the Rule 4901 TSD, the SIP-approved version of Rule 4901 contains a contingency provision which would have come into effect if the EPA had found that the SJV had failed to attain the 1997 PM_{2.5} National Ambient Air Quality Standards (NAAQS or "standards") by the applicable deadline. That provision would have reduced the mandatory curtailment PM_{2.5} forecast threshold from 30 to 20 µg/m³ for all wood burning devices. However, we have not made a finding that the SJV failed to attain the 1997 PM_{2.5} NAAQS by the applicable deadline, so the contingency provision has not been triggered. Moreover, we have withdrawn our approval of and disapproved the State's 2013 Contingency Measure Submittal, which relied, among other things on the contingency provision in Rule 4901. 81 FR 29498 (May 12, 2016). Accordingly, we believe the appropriate point of comparison for purposes of 110(l) is the SIP-approved rule without the contingency measure (i.e., a mandatory curtailment PM_{2.5} forecast threshold of 30 µg/m³ for all wood burning devices).

Sacramento Metropolitan Air Quality Management District (SMAQMD) include more stringent curtailment requirements as they apply to registered devices. In particular, Earthjustice noted that SCAQMD and BAAQMD ban the use of all wood burning devices when the forecasted PM_{2.5} concentration exceeds 30 µg/m³ and 35 µg/m³, respectively. SMAQMD limits burning using a tiered system, banning the use of registered devices when the forecasted PM_{2.5} concentration exceeds 35 µg/m³. As a result, Earthjustice argued that “[t]he changes to rule 4901 do not meet the requirements for reasonably available control measures (RACM) or BACM for registered wood burning devices.”

Response #2: The commenter appears to assume that we must evaluate RACM and BACM for registered (clean burning) devices separately from RACM and BACM for unregistered devices. We do not agree with this premise. Nothing in the CAA or EPA’s implementing regulations requires us to consider the stringency of requirements for registered devices separately from the stringency of requirements for unregistered devices. Furthermore, the purpose of the two-tiered curtailment system is to encourage replacement of unregistered devices with registered devices, so it is reasonable to consider the requirements applicable to registered and unregistered devices together.⁵ As explained above, SJVUAPCD estimates that the emissions from registered clean burning devices when concentrations are above 30 µg/m³ will be overwhelmingly compensated for by decreased emissions from unregistered devices when concentrations are between 20-30 µg/m³, making the Rule 4901 curtailment program at

⁵ For example, on page 45 of Final Staff Report for Amendments to the District’s Residential Wood Burning Program, SJVUAPCD, dated September 18, 2014, SJVUAPCD explains that 29% of survey respondents indicated that they would replace their current wood burning fireplace or wood burning heater with a cleaner device if allowed to burn more often.

least as stringent as or more stringent than these and other analogous curtailment programs.⁶ The commenter has not provided information that contradicts the District's assessment in this regard.

Comment #3: Earthjustice asserted that the controls on the installation of wood burning devices in new developments are less stringent than those used by SCAQMD and BAAQMD. In particular, the commenter noted that SCAQMD Rule 445 prohibits the installation of any wood burning device in new development, except where there is no existing infrastructure for natural gas within 150 feet of the property line or those 3,000 feet above sea level.⁷ In addition, the commenter stated that "BAAQMD recently became the first air district in the nation to ban the installation of wood burning devices in any new development."

Response #3: Rule 4901, Paragraph 5.3 limits the number of wood burning devices that can be installed in new residential developments. In residential developments with a density greater than two dwellings per acre, no wood burning fireplaces are allowed and a maximum of two certified wood burning heaters per acre are allowed. In developments with a density less than or equal to two dwellings per acre, one wood burning fireplace or certified wood burning heater is allowed per dwelling. As discussed in Rule 4901 TSD at page 12, "SJVUAPCD states that Rule 4901 is more stringent than SCAQMD Rule 445 as it does not exempt any homes at any elevation."⁸ Given the lack of any exemptions in Rule 4901, it is reasonable to conclude that Rule 4901 is at least as stringent as SCAQMD Rule 445." The commenters have not provided new information to contradict this conclusion.

The ban on wood burning devices in new construction in BAAQMD Regulation 6-3 was

⁶ See Rule 4901 TSD, page 11.

⁷ SCAQMD, Rule 445: Wood Burning Devices, Section f(2) (amended 5/3/13).

⁸ See Rule 4901 Staff Report, p.30.

enacted on October 21, 2015, more than a year after SJVUAPCD had amended Rule 4901 on September 18, 2014, and does not become effective until November 1, 2016.⁹ Given that no other State or district had enacted a complete ban at the time that SJVUAPCD was revising Rule 4901 and conducting its BACM analysis and no such ban has yet become effective in any State or district, we do not believe it is reasonable to disapprove Rule 4901 for failing to include such a ban. However, we recommend that SJVUAPCD evaluate the feasibility of such a ban in the SJV and revise Rule 4901 to include such a ban, if it is found to be feasible.

Comment #4: Earthjustice commented that Rule 4901's incentive of fewer no-burn days for registered devices is inappropriate and unnecessarily adds air pollution. Earthjustice argued that SJVUAPCD's well-funded financial incentives program is sufficient to motivate a switch to registered wood burning devices and allowing these devices to burn additional days is an unnecessary additional incentive. Further, Earthjustice suggested, if the District offers an additional "incentive of fewer no burn days, the limit for registered devices should be 30 $\mu\text{g}/\text{m}^3$, not 65 $\mu\text{g}/\text{m}^3$."

Response #4: The survey conducted for SJVUAPCD found that 24 percent (%) of residents with non-EPA certified wood burning heaters and wood burning fireplaces would transition to cleaner burning devices if provided a discount of up to 50% toward the cost of a new wood burning device and 29% of residents stated they would transition to cleaner devices if allowed to burn more often.¹⁰ It seems reasonable to conclude that using both strategies in combination should encourage at least some additional change-outs over just providing incentive

⁹ BAAQMD, Regulation 6: Particulate Matter and Visible Emissions, Rule 3: Wood Burning Devices, Section 6-3-306 (amended 10/21/15).

¹⁰ See Staff Report, Appendix B, p.B-13.

funding. In reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet minimum criteria set by the CAA and any applicable EPA regulations and are reasonable. We conclude that allowing clean burning devices to burn when the $PM_{2.5}$ concentration is forecasted to be between 20-65 $\mu g/m^3$ is reasonable and, as described in Response #1 and #2 above, complies with relevant CAA requirements.

Comment #5: Earthjustice argued that the District should be required to incorporate the EPA's recommendations into Rule 4901. In particular, Earthjustice asserted that the District should: (1) not subsidize the transition to wood burning heaters, which are generally used more frequently than gas fireplaces; (2) require retrofit of existing wood burning fireplaces during major renovations; and (3) require homes where wood burning devices are the sole source of heat to meet current EPA certification requirements. Earthjustice noted that requirements similar to (2) and (3) were recently added to the BAAQMD rule.

Response #5: While we agree that SJVUAPCD should consider eliminating subsidies for transition from fireplaces to wood burning heaters, details regarding the implementation of SJVUAPCD's monetary incentive program have not been submitted into the SIP and are outside of the scope of this rulemaking. Regarding retrofits of wood burning fireplaces during major renovations, at the time of Rule 4901 adoption and proposal, Laguna Beach, California was the only area we were aware of that required fireplace retrofits upon major home renovation. While we recommended SJVUAPCD examine the feasibility of including this provision, its existence in one small southern California city is not a sufficient basis for determining that it is feasible in the much larger and more diverse SJV. As noted by the commenter, on October 21, 2015, BAAQMD adopted a requirement that a gas-fueled, electric, or EPA-certified device be installed

upon remodel of a fireplace or chimney where total costs exceed \$15,000 and a local building permit is required. Given that no other State or district had adopted a similar provision at the time that Rule 4901 was revised, we do not believe it is reasonable to disapprove Rule 4901 for failing to include such a provision. However, we continue to recommend that SJVUAPCD consider the feasibility of implementing such a provision in the SJV, particularly in light of the newly-enacted BAAQMD provision. Similarly, we do not believe it is reasonable to disapprove Rule 4901 for failing to require sole-source households to meet EPA certification requirements, as no other State or district had adopted a similar provision at the time that Rule 4901 was amended.

In the Rule 4901 TSD, Attachment 1¹¹, we compared Rule 4901 to analogous district rules, and found SJVUAPCD implements a collection of measures as stringent as or more stringent than these rules. We agree that SJVUAPCD should consider our recommendations for future rule revisions, but they do not affect our conclusion that Rule 4901, as amended, strengthens the SIP, decreases PM_{2.5} emissions, and currently implements BACM/Best Available Control Technology (BACT) for wood burning devices. Additionally, the rule fulfills the relevant CAA section 110 and Title I Part D requirements. Therefore, we conclude that our recommendations for rule revisions do not provide a basis for rule disapproval.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP.

¹¹ See Rule 4901 TSD, Attachment 1. Major Components of Various Residential Wood Burning Rules.xlsx

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SJVUAPCD rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through www.regulations.gov and in hard copy at U.S. Environmental Protection Agency Region IX (AIR-4), 75 Hawthorne Street, San Francisco, CA, 94105-3901.

V. 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, the 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Public Law 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 the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The 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 **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 15, 2016.

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 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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)(364)(i)(A)(4) and (c)(457)(i)(H) to read as follows:

§52.220 Identification of plan – in part.

*	*	*	*	*
(c)	*	*	*	
(364)	*	*	*	
(i)	*	*	*	
(A)	*	*	*	

(4) Previously approved on October 11, 2009 in paragraph (c)(364)(i)(A)(2) of this section and now deleted with replacement in paragraph (c)(457)(i)(H)(I), Rule 4901, “Wood Burning Fireplaces and Wood Burning Heaters,” amended on October 16, 2008.

*	*	*	*	*
(457)	*	*	*	
(i)	*	*	*	

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

(I) Rule 4901, “Wood Burning Fireplaces and Wood Burning Heaters,” amended on September 18, 2014.

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[FR Doc. 2016-24081 Filed: 10/5/2016 8:45 am; Publication Date: 10/6/2016]