

last minute. These changes include exempting implements of husbandry from vehicle trip counts in Rule 8011, increasing the size of exempted open areas by 300 percent in Rule 8051, and rendering the 20% VE standard useless by allowing the U.S. Department of Agriculture (USDA) to approve Fugitive PM-10 Management Plans (FPMPs) in Rules 8061, 8071 and 8081. Even SJVUAPCD's own staff did not have an opportunity to review the version presented to SJVUAPCD's Governing Board on November 15.

*Response 1:* 40 CFR part 51 Appendix V and 40 CFR 50.102 describe the public participation procedural requirements for adoption and submittal of SIP revisions. Paragraph (a)(1) of Section 50.102 requires that a State must conduct one or more public hearings prior to adoption and submission to EPA of any SIP revision such as Regulation VIII. Paragraphs 2(e) and (g) of part 51 Appendix V direct states to follow all relevant state requirements for public notice, hearing and adoption. California's Health and Safety Code (HSC) §§ 40725–30 outlines the procedures to be followed by local air districts, such as SJVUAPCD, in adopting, amending, or repealing any rule or regulation, including SIP revisions. EPA believes that these State rules are consistent with Administrative Procedures Act (APA) requirements for public participation, 5 U.S.C.A. 553.

In regard to changes made to a SIP revision after the end of the public comment period, HSC § 40726 allows for such changes without further public notice or comment as long as those changes are not "so substantial as to significantly effect the meaning of the proposed rule or regulation." SJVUAPCD held a public hearing on Regulation VIII on October 31, 2001, received comments on the proposed rules, and responded to those comments. Both SJVUAPCD and CARB have determined that the public participation process followed by SJVUAPCD in adopting and submitting Regulation VIII fulfilled State and federal public participation requirements. EPA routinely relies upon determinations by State and local agencies as to compliance with their own public participation processes. Additionally, the final Regulation VIII (including the three provisions specifically noted in the comment) as adopted and submitted was not "substantially" different from the proposed regulation and was a logical outgrowth of the earlier proposed regulation. SJVUAPCD had received comments earlier in the public comment process that logically lead to the final

version adopted. The District included in its submittal extensive comments received from many parties, including the regulated community, that related to the later revised Regulation VIII provisions.

The commenters also appear concerned that the District considered comments provided by EPA in adopting the final Regulation VIII. However, state and local agencies are allowed and encouraged to consider EPA comments in adopting final SIP rules or revisions as long as all other public participation requirements are met.

*Comment 2:* Rule revisions proposed to Rule 8081 on the day of the hearing but not adopted were not subject to the relevant public process requirements. These include a small farm exemption and an exemption for unpaved haul roads on days when no truck trips will occur.

*Response 2:* Revisions not adopted are not the subject of EPA's proposed action.

*Comment 3:* The exemption for "implements of husbandry" from vehicle trip counts violates CAA § 189(a) RACM requirements because it effectively excludes an unknown but large number of agricultural road segments from Regulation VIII without any analysis of the number of exempted road segments or the efficacy of the measure. EPA's proposed conditional approval is not supported by a factual basis.

*Response 3:* We agree that the State has not submitted detailed analysis of the impacts of the exemption for implements of husbandry. This does not mean that the exemption necessarily violates CAA § 189(a). Rather, it means that the State needs to perform and submit such analysis in order to determine whether the exemption and the rules fulfill § 189(a). We concur with the comment's implication that this analysis is important and, as a result, have required it as part of our final conditional approval.

*Comment 4:* The FPMP provisions in Rule 8081 allow exceedence of the general 20% opacity standard and violate § 189(a) because they are not federally enforceable. Responsibility for enforcement of the FPMP requirements is given to the USDA instead of to EPA and SJVUAPCD, in conflict with CAA § 110 enforceability requirements.

*Response 4:* Paragraph 7.0 of Rule 8081 states that FPMPs must be approved by the USDA and must be designed to achieve 50% control efficiency. We believe Rule 8081 is adequately enforceable because it establishes criteria for evaluation of FPMPs (*i.e.*, 50% control). This would

allow SJVUAPCD and EPA to invalidate FPMPs that are not meeting 50% control, regardless of USDA's action. Also, as made clear by paragraph 7.4, the terms of the final FPMP approved by USDA are subject to enforcement by SJVUAPCD, EPA and citizens.

*Comment 5:* The exemption of all on-field sources, including smaller farms less than 320 acres and animal feed handling, which effectively exempts concentrated animal feeding operations, violates § 189(a). Farming operations account for nearly 25% of all PM-10 emissions in the Valley. The exemption does not constitute an appropriate interpretation of a "more likely than not" finding that the RACM requirement has been met.

*Response 5:* As discussed in our April 1, 2002 proposed action (67 FR 15345), EPA only evaluated these rules with respect to those sources that the rules purport to regulate. This is documented in the August 31, 1999 TSD associated with EPA's original proposed action (pg. 10). For example, Rule 8060, dated April 25, 1996, proposed to regulate unpaved roads for RACM purposes, so we evaluated whether the rule is sufficient for unpaved roads, including agricultural unpaved roads. Since Regulation VIII submittals have never purported to cover on-field agricultural activity, however, we have not attempted to evaluate whether Regulation VIII fulfills RACM/BACM for this activity. Therefore, we disagree with the commenters' statement that on-field agricultural source activity has been exempted from RACM through Regulation VIII; rather, it is just not a regulated activity under Regulation VIII.

We agree with the commenters that it is important for the District to evaluate the impact and appropriate controls for on-field agricultural activity. The evaluation of whether and what controls are necessary for on-field agricultural activities to fulfill RACM/BACM should be performed in context of a rule that regulates such activity or of an overall PM-10 plan for the area. In 1991, CARB submitted an overall PM-10 plan for the area which purported to address RACM generally as well as on-field agricultural activity. We have not acted on this plan, and are not doing so now, as we are only acting on Regulation VIII. As a result of EPA's finding that the San Joaquin Valley failed to attain the PM-10 standards by the statutory deadline of December 31, 2001, the State must submit a new plan for the area to EPA by December 31, 2002. 67 FR 48039 (July 23, 2002). EPA also published a finding of nonsubmittal of a PM-10 plan for the San Joaquin Valley on March 18, 2002 (67 FR 11925), which could result