

in the imposition of sanctions. We expect that these EPA actions will lead to development in the near term of a thorough RACM/BACM analysis and an overall PM-10 plan which include on-field agriculture activity.

*Comment 6:* Other areas have adopted RACM or BACM measures that apply to farming operations that EPA has approved. For example, South Coast Air Quality Management District Rule 403(h)(1)(B) applies fugitive dust requirements to agricultural sources greater than 10 acres, and Maricopa County Rule 310 requires RACM at cattle feedlots and livestock areas. Regulation VIII, in contrast, fully exempts on-field agricultural activities in violation of CAA § 189(a).

*Response 6:* See Response 5.

*Comment 7:* EPA recently issued a Notice of Deficiency (NOD) that found California's statutory agricultural permit exemption inconsistent with CAA Title V. CAA Title I also provides no such exemption for agricultural sources, and any rulemaking which generally exempts agriculture from § 189(a) RACM requirements is inconsistent with the CAA under the same rationale articulated in the Notice of Deficiency.

*Response 7:* The commenter is correct that Title I and Title V do not exempt major agricultural sources of air pollution from CAA permitting requirements. CAA § 189(a), however, relies on a separate analysis to determine whether agricultural sources should be regulated for RACM purposes. Under § 189(a), a permitting agency need not regulate or can limit regulation of certain activities or source categories from RACM requirements if one of the following two criteria are met: (a) emissions from the activity or source category are not significant; or (b) the level of imposed control fulfills RACM in light of cost-effectiveness, technical feasibility and attainment needs. However, as stated in Response 5, since Regulation VIII never purported to cover on-field agricultural activity, such an analysis is not necessary in the context of Regulation VIII. This analysis will be necessary in a rule that regulates such activity or in an overall PM-10 plan for the area.

*Comment 8:* EPA's finding that "it is more likely than not" that Regulation VIII fulfills the CAA 189(a) requirement is contradicted by the substantial agriculture-related deficiencies summarized in comments 3 through 7 that exempt in total nearly half of all sources.

*Response 8:* See Response 5 regarding on-field agricultural sources. The comment also concerns the exemption for implements of husbandry and the

enforceability of FPMPs regarding agriculturally-owned unpaved roads. See Response 4 regarding FPMP enforceability. Our "more likely than not" RACM finding for Regulation VIII Rule 8081 coverage of agriculturally-owned unpaved roads relies on the expectation that a reasonable percentage of these roads are subject to control at the 75 vehicle trips per day threshold during harvest season. We expect most of this traffic will be haul trucks carrying product to and from farms as opposed to implements of husbandry such as tractors. We agree with the commenter, however, that the actual impact of this exemption has not been thoroughly quantified, which is partly the basis for our action to approve this regulation only conditionally.

*Comment 9:* EPA's 2002 proposed conditional approval of Regulation VIII for RACM is illegal in light of EPA's own finding that SJVUAPCD has not completely fulfilled the requirement described in 57 FR 13498 and 13540 (April 16, 1992) to apply RACM to the significant source categories subject to Regulation VIII.

*Response 9:* As discussed in our 2002 proposed action, we believe that Regulation VIII fulfills the substantive RACM requirements for the activities it covers and it is inappropriate to immediately initiate sanctions throughout the San Joaquin Valley solely because SJVUAPCD failed to complete a detailed RACM justification. SJVUAPCD did provide substantial cost-effectiveness data and other information that suggests that Regulation VIII fulfills RACM for the activities it covers. While a more complete RACM justification is required under the Act, we do not believe, in this case, that it is likely to lead to additional emission reductions. We have proposed, therefore, to temporarily stay the sanctions clock to allow a relatively short time for SJVUAPCD to provide the necessary analysis.

*Comment 10:* SJVUAPCD is long overdue to require RACM and BACM pursuant to CAA § 189(a) and § 189(b), and has failed to adopt RACM and BACM as soon as practicable as required by the CAA. There is no basis for further postponing final action on RACM. EPA's proposed actions allowing SJVUAPCD to justify, revise, and resubmit Regulation VIII, extends the mandatory RACM and BACM deadlines and violates the CAA.

*Response 10:* We concur that RACM and BACM were not applied in the San Joaquin Valley according to Clean Air Act deadlines. We believe, however, that RACM is now applied in the area for the activities covered by Regulation

VIII. We do not view our conditional approval of these rules as RACM as postponing RACM implementation given our "more likely than not" finding that the requirements now meet RACM. See Response 11 regarding BACM.

*Comment 11:* In this proposed limited approval/disapproval, EPA claims that it had not previously started a sanctions clock for § 189(b) deficiencies because SJVUAPCD explicitly adopted the April 25, 1996 Regulation VIII rules for purposes of maintaining RACM, rather than BACM. However, the February 8, 1997 statutory deadline for implementing BACM was long past even at the time of EPA's first disapproval of Regulation VIII, proposed on September 23, 1999 and finalized on March 8, 2000. Thus, EPA's disapproval at that time applied to the requirements of both RACM and BACM, and EPA's proposed action and responses to comments at that time clearly showed that it was evaluating the regulation for both standards.

EPA cannot now propose limited approval/limited disapproval for the SIP revision's failure to demonstrate BACM when, two years ago, EPA took the same final agency action. It is an abuse of discretion to reinterpret the March 8, 2000 final rulemaking in such a fashion so that EPA may inappropriately toll the sanctions clock. EPA has a mandatory duty to impose sanctions under § 179(a) unless all previously identified deficiencies have been corrected. It is clear that SJVUAPCD has not corrected the BACM deficiencies, which EPA concedes in this proposed rulemaking. EPA's proposal to grant limited approval/disapproval is thus inconsistent with the plain language of CAA § 179(a).

*Response 11:* We agree that the BACM implementation deadline had passed before EPA proposed a limited approval/disapproval of Regulation VIII in 1999. This does not determine, however, that our March 8, 2000 final action validly established a BACM sanctions clock. Our March 2000 action addressed rules that were submitted to fulfill RACM, not BACM. As a result and as discussed in our April 2002 proposed action, we do not believe that a sanctions clock could be started for BACM deficiencies under such circumstances. See Response 5 (where we similarly conclude that we cannot disapprove Regulation VIII for its exemption of on-field agricultural sources because the regulation does not purport to cover those sources for RACM purposes). However, the latest version of Regulation VIII submitted on December 6, 2001, does purport to meet BACM requirements. Therefore, by this