

where the appropriate care or services could be provided.

(7) Payment will not be made for return travel for a beneficiary receiving an irregular discharge.

(8) On a case-by-case basis, payment for travel may be paid for any distance if it is financially favorable to the government (for example, travel could be allowed to a more distant nursing home when admission to that nursing home is a prerequisite to qualify for community assistance that would more than offset the additional travel payment).

(c) Payment for travel of an attendant under this section will be calculated on the same basis as for the beneficiary.

(d) For shared travel in a privately-owned vehicle, payments are limited to the amount for one beneficiary (for example, if a beneficiary and an attendant travel in the same automobile or if two beneficiaries travel in the same automobile, the amount for mileage will be limited to the amount for one beneficiary).

(e) Beneficiary travel will not be paid under the following circumstances:

(1) The payment of the travel allowance would be counterproductive to the therapy being provided and such determination is recorded in the patient's medical records, and

(2) The chief of the service or a designee reviewed and approved the determination by signature in the patient's medical record.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### **§ 70.31 Deductibles.**

(a) VA shall deduct an amount established by the Secretary (currently \$3 or the total amount of travel if it is less than \$3) for each one-way trip from the amount otherwise payable under this part for such one-way trip, except that:

(1) VA shall not deduct any amounts in a calendar month after the completion of six one-way trips for which deductions were made in such calendar month, and

(2) Whenever the Secretary adjusts the mileage rates as a result of the investigation described in § 70.30(a)(1)(iv), the Secretary shall, effective on the date such mileage rate change should occur, adjust proportionally the deductible amount in effect at the time of the adjustment.

(b) The provisions under this section for making deductions shall not apply to:

(1) Travel that includes travel by a special mode of transportation,

(2) Travel to a VA facility for a scheduled compensation and pension examination, and

(3) Travel by a non-veteran.

(c) VA may waive the deductible under this section when it would cause severe financial hardship. For purposes of this section, a beneficiary shall be considered to suffer severe financial hardship if the beneficiary:

(1) Has an income for the year immediately preceding the application for beneficiary travel that does not exceed 90 percent of the maximum annual rate of pension that would be payable to such beneficiary under 38 U.S.C. 1521 (as adjusted under 38 U.S.C. 5312) if the person were eligible for pension; or

(2) Is able to demonstrate that due to circumstances such as loss of employment, or incurrence of a disability, his or her income in the year of travel will not exceed 90 percent of the maximum annual rate of pension that would be payable to such beneficiary under 38 U.S.C. 1521 (as adjusted under 38 U.S.C. 5312) if the beneficiary were eligible for pension.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### **§ 70.32 Reimbursement or prior payment.**

(a) Payment will be made on a reimbursement basis after the travel has occurred, except that:

(1) Upon completion of examination, treatment, or care, payment may be made before the return travel has occurred, and

(2) In the case of travel by a person to or from a VA facility by special mode of transportation, VA may provide payment for beneficiary travel to the provider of the transportation before determining eligibility of such person for such payment if VA determines that the travel is for emergency treatment and the beneficiary or other person made a claim that the beneficiary is eligible for payment for the travel.

(b) Payment under this part will be made to the beneficiary, except that VA may make a beneficiary travel payment under this part to a person or organization other than the beneficiary upon satisfactory evidence that the person or organization actually provided or paid for the travel.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### **§ 70.40 Administrative procedures.**

Upon denial of an initial claim for beneficiary travel, VA will provide the claimant written notice of the decision and advise the claimant of reconsideration and appeal rights. A claimant who disagrees with the initial

decision denying the claim for beneficiary travel, in whole or in part, may obtain reconsideration under § 17.133 of this chapter and may file an appeal to the Board of Veterans' Appeals under parts 19 and 20 of this chapter. An appeal may be made directly to the Board of Veterans' Appeals without requesting reconsideration.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### **§ 70.41 Recovery of payments.**

Payments for beneficiary travel made to persons ineligible for such payment are subject to recapture under applicable law, including the provisions of §§ 1.900 through 1.953 of this chapter.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### **§ 70.42 False statements.**

A person who makes a false statement for the purpose of obtaining payments for beneficiary travel may be prosecuted under applicable laws, including 18 U.S.C. 1001.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

#### **§ 70.50 Reduced fare requests.**

Printed reduced-fare requests for use by eligible beneficiaries and their attendants when traveling at their own expense to or from any VA facility or VA authorized facility for authorized VA health care are available from any VA medical facility. Beneficiaries may use these request forms to ask transportation providers, such as bus companies, for a reduced fare. Whether to grant a reduced fare is determined by the transportation provider.

(Authority: 38 U.S.C. 101, 111, 501, 1701, 1714, 1720, 1728, 1782, 1783, E.O. 11302)

[FR Doc. E7-14069 Filed 7-20-07; 8:45 am]

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2006-0042-200715; FRL-8443-4]**

### **Approval and Promulgation of Implementation Plans Tennessee; Approval of Revisions to the Tennessee SIP and the Nashville/Davidson County Portion of the Tennessee SIP; Prevention of Significant Deterioration and Nonattainment New Source Review**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Tennessee on February 23, 2006, and May 31, 2006. The proposed revisions modify Tennessee's and Nashville/Davidson County's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) regulations in the SIP to address changes to the federal NSR regulations, which were promulgated by EPA on December 31, 2002 (67 FR 80186) and reconsidered with minor changes on November 7, 2003 (68 FR 63021) (collectively, these two final actions are called the "2002 NSR Reform Rules"). EPA's 2002 NSR Reform Rules, proposed for inclusion in the Tennessee SIP and the Nashville/Davidson County portion of the Tennessee SIP, contain provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plant-wide applicability limits, and recordkeeping and reporting requirements.

**DATES:** Comments must be received on or before August 22, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2006-0042, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *E-mail:* [adams.yolanda@epa.gov](mailto:adams.yolanda@epa.gov).
3. *Fax:* 404-562-9019.
4. *Mail:* "EPA-R04-OAR-2006-0042," Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.
5. *Hand Delivery or Courier:* Ms. Yolanda Adams, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R04-OAR-2006-0042. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Tennessee State Implementation Plan, contact Mr. James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management

Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8965. Mr. Hou can also be reached via electronic mail at [hou.james@epa.gov](mailto:hou.james@epa.gov). For information regarding New Source Review, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. The telephone number is (404) 562-9214. Ms. Adams can also be reached via electronic mail at [adams.yolanda@epa.gov](mailto:adams.yolanda@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, references to "EPA," "we," "us," or "our," are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

- I. What action is EPA proposing today?
- II. Why is EPA proposing this action?
- III. What is EPA's Analysis of Tennessee's and Nashville/Davidson County's NSR Rule Revisions?
- IV. What action is EPA taking today?
- V. Statutory and Executive Order Reviews

**I. What action is EPA proposing today?**

On February 23, 2006, and May 31, 2006, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted revisions to the Tennessee SIP, and the Nashville/Davidson County portion of the Tennessee SIP. Nashville/Davidson County is separately authorized to implement and enforce the NSR program in that region of Tennessee. The February 23, 2006, SIP submittal consists of revisions to the Tennessee Air Pollution Control Regulations. Specifically, the proposed SIP revisions include changes to TDEC Rule .01 of chapter 1200-3-9 entitled, "Construction Permits." The May 31, 2006, submittal consists of revisions to the Nashville Pollution Control Division's (NPCD's) Regulation 3 entitled, "New Source Review." TDEC submitted these revisions in response to EPA's December 31, 2002, revisions to the Federal NSR program.

In a letter to EPA dated April 16, 2007, Tennessee requested to amend the February 23, 2006, SIP submittal in light of the decision issued by the U.S. Circuit Court of Appeals for the District of Columbia Circuit (DC Circuit Court) on June 24, 2005. The June 24, 2005, decision is discussed in further detail below. Tennessee requested that the portion of the Tennessee SIP revision related to the EPA rules that were vacated by the DC Circuit Court (specifically the clean unit and pollution control project provisions) not be approved into the SIP. The affected portions of the February 23, 2006, submittal are as follows: sections

(b)2.(i)(VIII), (b)4.(iii)(III), (b)4.(vi)(IV), (b)35., (b)39., (c)4.(v), (c)6., (p), (q), and (r) of Rule 1200-3-9-.01(4); sections (b)1.(v)(III)VIII, (b)1.(vi)(III)III, (b)1.(vi)(V)V, (b)1.(xxxvii), (b)1.(xli), (b)2.(v)(IX), (b)2.(v)(X), (b)2.(xvi), (b)2.(xix), (b)7., (b)8., and (b)9. of Rule 1200-3-9-.01(5); and all references to clean units and pollution control projects at sections (a)11. and (c)4.(vi) of Rule 1200-3-9-.01(4); and sections (b)2.(xvii) and (b)5. of Rule 1200-3-9-.01(5). EPA is now proposing to approve the SIP revisions submitted by TDEC on February 23, 2006, May 31, 2006, and April 16, 2007, which will revise the Tennessee SIP and the Nashville/Davidson County portion of the Tennessee SIP.

## II. Why is EPA proposing this action?

On December 31, 2002, EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the Clean Air Act's (CAA or Act) PSD and NNSR programs (67 FR 80186). On November 7, 2003, EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes (68 FR 63021). In that November 7, 2003, final action, EPA added the definition of "replacement unit," and clarified an issue regarding plantwide applicability limitations (PALs). The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the "2002 NSR Reform Rules." The purpose of this action is to propose to approve the SIP submittals from the State of Tennessee, which include the provisions of EPA's 2002 NSR Reform Rules.

The 2002 NSR Reform Rules are part of EPA's implementation of Parts C and D of title I of the CAA, 42 U.S.C. 7470-7515. Part C of title I of the CAA, 42 U.S.C. 7470-7492, is the PSD program, which applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—"attainment" areas—as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS—"unclassifiable" areas. Part D of title I of the CAA, 42 U.S.C. 7501-7515, is the NNSR program, which applies in areas that are not in attainment of the NAAQS—"nonattainment" areas. Collectively, the PSD and NNSR programs are referred to as the "New Source Review" or NSR programs. EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S.

The CAA's NSR programs are preconstruction review and permitting programs applicable to new and

modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the CAA, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval, a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plant-wide applicability limits to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of "physical change or change in the method of operation." On November 7, 2003, EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules (68 FR 63021), which added a definition for "replacement unit" and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002), and <http://www.epa.gov/nsr>.

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the

D.C. Circuit Court issued a decision on the challenges to the 2002 NSR Reform Rules. *New York v. United States*, 413 F.3d 3 (DC Cir. 2005). In summary, the DC Circuit Court vacated portions of the rules pertaining to clean units and pollution control projects, remanded a portion of the rules regarding recordkeeping, e.g. 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On March 8, 2007, EPA issued a proposed rule in response to the Court's remand regarding the recordkeeping provisions. The proposed rule describes two alternative options to clarify what constitutes "reasonable possibility" and when the "reasonable possibility" recordkeeping requirements apply (72 FR 10445). The "reasonable possibility" standard identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records. Further, on June 13, 2007, EPA took final action to revise the 2002 NSR Reform Rules to exclude the portions that were vacated by the DC Circuit Court (72 FR 32526). Today's action on the Tennessee SIP is consistent with the decision of the DC Circuit Court because Tennessee's submittals do not include any portions of the 2002 NSR Reform Rules that were vacated as part of the June 2005 decision.

The 2002 NSR Reform Rules require that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. (Consistent with changes to 40 CFR 51.166(a)(6)(i), state agencies are now required to adopt and submit SIP revisions within 3 years after new amendments are published in the **Federal Register**.) State agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations. However, if a state decides not to implement any of the new applicability provisions, that state is required to demonstrate that its existing program is at least as stringent as the federal program.

On February 23, 2006, May 31, 2006, and April 16, 2007, the State of Tennessee submitted SIP revisions for the purpose of revising the State's and Nashville/Davidson County's NSR permitting provisions. These changes were made primarily to adopt EPA's 2002 NSR Reform Rules. As discussed in further detail below, EPA believes the revisions contained in the Tennessee

submittals are approvable for inclusion into the Tennessee SIP and the Nashville/Davidson County portion of the Tennessee SIP.

### III. What is EPA's Analysis of Tennessee's and Nashville/Davidson County's NSR Rule Revisions?

Tennessee and Nashville/Davidson County currently have SIP-approved NSR programs for new and modified stationary sources. EPA is proposing to approve revisions to Tennessee's and Nashville/Davidson County's existing NSR regulations in the SIP. The Tennessee proposed revisions became state-effective on February 14, 2006, and were submitted to EPA on February 23, 2006. The Nashville/Davidson County proposed revisions were approved by the Air Pollution Control Board of the State of Tennessee on May 10, 2006, and were submitted to EPA on May 31, 2006. Copies of the revised rules, as well as the State's Technical Support Documents, can be obtained from the Docket, as discussed in the "Docket" section above. A discussion of the specific changes to TDEC's and NPCD's rules that are proposed for inclusion in the SIP are summarized below.

TDEC's Rule 1200-3-9-.01(4) contains the preconstruction review program that provides for the PSD of ambient air quality as required under Part C of title I of the CAA. NPCD's Regulation 3 contains Nashville/Davidson County's PSD program. The PSD program applies to major stationary sources or modifications constructed in areas that are designated as attainment or unclassifiable with respect to the NAAQS. TDEC's PSD program was originally approved into the SIP by EPA on April 24, 1980, and has been revised several times. NPCD's PSD program was originally approved into the Nashville/Davidson County portion of the Tennessee SIP on June 24, 1982, and has been revised several times as well.

TDEC's permitting requirements for major sources in or impacting upon nonattainment areas are set forth at Rule 1200-3-9-.01(5). NPCD's NNSR requirements are set forth at Regulation 3. The Tennessee NNSR program was originally approved into the Tennessee SIP on June 7, 1979, with subsequent amendments. The Nashville NNSR program was originally approved into the Nashville/Davidson County portion of the Tennessee SIP on June 24, 1982, with subsequent amendments. The NNSR requirements apply to the construction and modification of any major stationary source of air pollution in a nonattainment area, as required by Part D of title I of the CAA. To receive approval to construct, a source that is

subject to these requirements must show that it will not cause a net increase in pollution, will not create a delay in meeting the NAAQS, and that the source will install and use control technology that achieves the lowest achievable emissions rate.

The current revisions to TDEC's Rule 1200-3-9-.01, and NPCD's Regulation 3, which EPA is proposing to approve into the Tennessee SIP and the Nashville/Davidson County portion of the Tennessee SIP, were provided to update the existing provisions to be consistent with the current Federal PSD and NNSR rules, including the 2002 NSR Reform Rules. These revisions address baseline actual emissions, actual-to-projected-actual applicability tests, and PALs. State agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations. TDEC and NPCD have made one change to the Federal regulations. The definition of "baseline actual emissions," found in parts 1200-3-9-.01(4)(b)45 and 1200-3-9-.01(5)(b)1.(xlvii) of the TDEC rule, and Section 3-1(e) of NPCD Regulation 3, was changed to remove the provision allowing different consecutive 24-month periods for different pollutants. Therefore, under TDEC's and NPCD's rules, a single 24-month period must be used for all regulated NSR pollutants when calculating baseline actual emissions. This provision was changed from the Federal requirements on the recommendation of the industry and environmental advocacy representatives in the Tennessee stakeholder group that worked with the State to develop the revisions to the Tennessee NSR program.

As part of our review of the Tennessee SIP submittals, we performed a line-by-line review of the proposed revisions, including the provision which differs from the Federal rules, and have determined that they are consistent with the program requirements for the preparation, adoption and submittal of implementation plans for NSR set forth at 40 CFR 51.165 and 51.166. TDEC's Rule 1200-3-9-.01 and NPCD's Regulation 3 do not incorporate the portions of the Federal rules that were vacated by the DC Circuit Court, including the clean unit provisions, the pollution control projects exclusion, and the equipment replacement provision which was promulgated shortly after the 2002 NSR Reform Rules. As noted earlier, EPA responded to the DC Circuit Court's remand of the recordkeeping provisions of EPA's 2002 NSR Reform Rules by proposing two alternative options to clarify when the

recordkeeping requirements apply. TDEC's and NPCD's rules contain recordkeeping requirements that are substantially the same as the remanded Federal rule. While final action by EPA with regard to the remand may require EPA to take further action on the Tennessee SIP, at this time the rules contained in the proposed SIP revisions are the same as existing Federal law and are therefore approvable.

### IV. What action is EPA taking today?

For the reasons discussed above, EPA is proposing to approve the changes made to Tennessee's Rule 1200-3-9-.01 (Construction Permits) as submitted by TDEC on February 23, 2006, and amended on April 16, 2007, as revisions to the Tennessee SIP. In addition, EPA is proposing to approve changes made to NPCD Regulation 3 (New Source Review) as submitted by TDEC on May 31, 2006, as revisions to the Nashville/Davidson County portion of the Tennessee SIP.

### V. 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 the proposed approvals in 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

(59 FR 22951, 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 CAA. 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 approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve choices, provided that they meet the criteria of the CAA. 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 CAA. 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, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 12, 2007.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

[FR Doc. E7-14171 Filed 7-20-07; 8:45 am]

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