

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

**Subpart BB—Montana**

■ 2. Section 52.1370 is amended by adding paragraph (c)(68) to read as follows:

**§ 52.1370 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(68) Revisions to the State Implementation plan which were submitted by the State of Montana on November 1, 2006 and November 20, 2007. The revisions are to the Administrative Rules of Montana; they make minor editorial and grammatical changes, update the citations and references to federal and state laws and regulations, make other minor changes to conform to federal regulations, and update links to sources of information.

(i) Incorporation by reference.

(A) Administrative Rules of Montana (ARM) section 17.8.101, *Definitions*; effective August 11, 2006.

(B) Administrative Rules of Montana (ARM) sections: 17.8.102, *Incorporation by Reference—Publication Dates*; 17.8.103, *Incorporation by Reference and Availability of Referenced Documents*; 17.8.302(1)(d), *Incorporation by Reference*; 17.8.602, *Incorporation by Reference*; 17.8.801, *Definitions*; 17.8.818, *Review of Major Stationary Sources and Major Modifications—Source Applicability and Exemptions*; 17.8.901, *Definitions*; 17.8.1007, *Baseline for Determining*

*Credit for Emissions and Air Quality Offsets*; and, 17.8.1102, *Incorporation by Reference*; all effective October 26, 2007.

[FR Doc. 2010-1386 Filed 1-25-10; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2009-0475; FRL-9104-7]

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

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval and limited disapproval of revisions to the San Joaquin Valley Air Pollution Control District (SJVAPCD or District) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on July 17, 2009 and concerns volatile organic compound (VOC) emissions from steam-enhanced crude oil production well vents, aerospace coating operations, and polyester resin operations. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulate these emission sources and directs California to correct rule deficiencies.

**DATES:** *Effective Date:* This rule is effective on February 25, 2010.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2009-0475 for this action. The index to the docket is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., 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:** Nicole Law, EPA Region IX, (415) 947-4126, [law.nicole@epa.gov](mailto:law.nicole@epa.gov).

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

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**I. Proposed Action**

On July 17, 2009 (74 FR 34704), EPA proposed a limited approval and limited disapproval of the following rules that were submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVAPCD .....	4401	Steam-Enhanced Crude Oil Production Wells .....	12/14/06	05/08/07
SJVAPCD .....	4605	Aerospace Assembly and Component Coating Operations .....	09/20/07	03/07/08
SJVAPCD .....	4684	Polyester Resin Operations .....	09/20/07	03/07/08

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions do not fully satisfy requirements of section 110 and part D of the Act. The deficiencies include the following:

1. Rule 4401 authorizes the District to grant a waiver from SIP requirements, in section 6.2.4.

2. SJVAPCD has not adequately demonstrated that Rule 4605 and Rule 4684 implement RACT.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

**II. Public Comments and EPA Responses**

EPA’s proposed action provided a 30-day public comment period. During this period, we received comments from the following party.

1. Scott Nester, Director of Planning, San Joaquin Valley Air Pollution Control District; letter dated and received August 17, 2009.

After the close of the comment period, we also received comments from the following party.

2. Sayed Sadredin, Executive Director/Air Pollution Control Officer of San Joaquin Valley Air Pollution Control District; letter dated August 27, 2009 and received August 31, 2009.

The comments and our responses are summarized below. Although we are not obligated to address comments

submitted after the close of the comment period, we are addressing below both the District’s August 17 comments and those comments in the District’s August 27 letter that pertain to the rules we are acting on today.

*SJVAPCD Aug. 17 Comment #1:* The District stated that its staff has proposed to amend Rule 4684 to implement requirements in the September 2008 Control Techniques Guideline (CTG) for fiberglass boat manufacturing materials.

*EPA Response:* We appreciate SJVAPCD’s efforts to promptly address RACT requirements for sources covered by the 2008 CTG for Fiberglass Boat Manufacturing Materials (2008 CTG), but we are obligated to act at this time on the submitted version of Rule 4684. In addition, we note that Rule 4684 should be revised to address RACT

requirements not only for sources covered by the 2008 CTG, but also for VOC major sources that are subject to Rule 4684 but not addressed by the 2008 CTG. See 74 FR 34705.

*SJVAPCD Aug. 17 Comment #2:* The District stated that EPA had commented that the VOC limits, emission control system efficiency, and application methods in existing Rule 4684 for non-fiberglass boat manufacturing facilities are less stringent than other air districts' rules and, therefore, constitute RACT deficiencies. The District encouraged EPA to fully approve Rule 4684 because: (1) According to District staff research, no ozone nonattainment areas in other states have specific regulations on polyester resin operations, (2) the VOC limits and emission control requirements of Rule 4684 are consistent with the California Air Resources Board's (CARB's) "Determination of Reasonably Available and Best Available Retrofit Control Technology for Polyester Resin Operations," which should define RACT requirements in the absence of a CTG for this category, and (3) although the limits in Rule 4684 are not identical to those in other California air districts' rules, those rules have been recently amended and their limits are considered beyond RACT.

*EPA Response:* The District's characterization of the Rule 4684 deficiencies identified in our proposed action is not entirely accurate. To clarify, we noted that Rule 4684 appears to apply to major VOC sources that are not covered by the 2008 CTG, and that the District had not demonstrated that the more stringent requirements for these types of sources identified in other California rules are not feasible in the San Joaquin Valley or otherwise adequately demonstrated that Rule 4684 implements RACT for these major sources. 74 FR 34704 at 34705.

As to the District's specific arguments in support of full approval, we do not agree that these provide a basis for full approval. First, whether or not any other states with ozone nonattainment areas have RACT rules for polyester resin operations, SJVAPCD is required to have such rules under CAA § 182(b)(2) because it regulates facilities within this source category that are major sources of VOCs. As noted in the TSD for our proposed action, the RACT rules in three of four nearby districts that SJVAPCD reviewed as part of its 2009 RACT SIP contain more stringent monomer content requirements and more stringent overall capture and control efficiency requirements than

Rule 4684.<sup>1</sup> The District has not demonstrated that these more stringent requirements are not reasonably achievable or that the requirements in Rule 4684 implement RACT for non-CTG major VOC sources in the San Joaquin Valley (*i.e.*, sources other than fiberglass boat manufacturing facilities).

Second, we do not agree with the District's assertion that CARB's "Determination of Reasonably Available and Best Available Retrofit Control Technology for Polyester Resin Operations" (RACT and BARCT Guidance) defines RACT in the absence of a CTG for this source category. States are required to consider the latest information available in making RACT determinations and to provide supporting information with their RACT submissions to EPA.<sup>2</sup> This is because RACT can change over time as new technology becomes available or the cost of technology decreases.

Indeed, CARB's RACT and BARCT Guidance is dated January 8, 1991, and since then several California districts near the SJVAPCD have revised their polyester resin rules to incorporate more stringent limits. The District has not supported its evaluation of Rule 4684 with a demonstration that these more stringent requirements are not economically or technically feasible for major source polyester resin operations in the San Joaquin Valley.

Finally, we note that the more stringent monomer content and overall capture and control efficiency requirements in the South Coast Air Quality Management District (SCAQMD) and the Ventura County Air Pollution Control District (VCAPCD) polyester resin rules that SJVAPCD reviewed have been effective for many years.<sup>3</sup> Specifically, the monomer content limits in section (c)(2)(A) of SCAQMD's polyester resin rule (Rule 1162) became effective in 2003,<sup>4</sup> and the

<sup>1</sup> *Technical Support Document For EPA's Notice of Direct Final Rulemaking On Revisions to the California State Implementation Plan: EPA's Analysis of San Joaquin Valley Unified Air Pollution Control District's Rule 4684, Polyester Resin Operations*, EPA Region IX, May 2009 (Rule 4684 TSD), at pp. 4–9.

<sup>2</sup> See 70 FR 71612 at 71655 (November 29, 2005) (Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2); see also *NRDC v. EPA*, 571 F.3d 1245, 1254 (DC Cir. 2009) (holding that EPA's case-by-case approach to RACT ensures that "RACT determinations will reflect advances in technology").

<sup>3</sup> See pp. 4–349 and 4–350 of SJVAPCD's April 16, 2009 RACT Demonstration for the District's review of SCAQMD Rule 1162 and VCAPCD Rule 74.14.

<sup>4</sup> See SCAQMD Rule 1162, amended July 11, 2003. SCAQMD subsequently made other amendments to Rule 1162 that did not alter the monomer content limits. See SCAQMD Rule 1162

90% overall capture and control efficiency requirement in the rule has been effective for at least 15 years.<sup>5</sup> The monomer content limits in VCAPCD's polyester resin rule (Rule 74.14) and the 90% overall capture and control efficiency requirement have been effective since 2005.<sup>6</sup> As such, we do not believe the District has adequately supported its assertion that the limits in these rules are "beyond RACT."

*SJVAPCD Aug. 17 Comment #3:* The District stated that its staff will review the benefits and costs of "strengthening this rule beyond RACT in the context of an attainment plan control measure."

*EPA Response:* We appreciate the District's efforts to strengthen these rules as part of its broader attainment goals, and we expect these efforts can proceed consistent with the CAA deadlines associated with today's final action on Rule 4684.

*SJVAPCD Aug. 27 Comment #1:* SJVAPCD requested that we reflect on its positive working relationship with EPA and its record of accomplishments, and stated that its enclosed responses would address most of EPA's concerns. The District stated that the San Joaquin Valley needs emission reductions as quickly as feasible and that it was, therefore, hesitant to "divert resources to unnecessary bureaucratic work associated with rulemaking projects that are not demonstrated to have significant potential for additional reductions or enforceability." The District urged that its "efforts not be delayed or hampered, and that [the District] receive a full approval for [its] regulatory efforts."

*EPA Response:* We appreciate the District's efforts to improve air quality in the San Joaquin Valley as expeditiously as possible. Our concerns, however, are based on CAA RACT requirements that the District is required to address in accordance with specified deadlines. These RACT requirements apply independent of the significance of the resulting emission reductions or other air quality improvement efforts. We discuss these requirements further below and in our proposal.

*SJVAPCD Aug. 27 Comment #2:* SJVAPCD acknowledged that EPA had proposed a limited approval/limited disapproval of Rule 4401 because of the provision that states that waiver requests are "deemed approved" by EPA if EPA does not object within 45 days. The District stated, however, that EPA

amended July 9, 2004 and SCAQMD Rule 1162 amended July 8, 2005.

<sup>5</sup> See SCAQMD Rule 1162, amended May 13, 1994.

<sup>6</sup> See VCAPCD Rule 74.14, amended April 12, 2005.

should approve Rule 4401 for two reasons. First, the District stated that precedent for this language can be found in the October 1998 "Title V Review Protocol Agreement" between the District and EPA Region IX, which states that "During this period, the EPA may approve the district's proposal either in writing, or by choosing not to provide written comments." The district stated that this language is identical to the language in Section 6.2.4 of Rule 4401, that Rule 2520 (Federally Mandated Operating Permits) also contains similar language, and that EPA had not objected to the requirements of Section 6.2.4 in Rule 4401 during the rulemaking process. Second, the District stated that "[w]hile the Clean Air Act may prohibit the District from requiring the EPA to take action, it does not preclude the EPA from agreeing to a reasonable timeframe in which to take action, as indicated by the referenced memo." The District further explained that operators need timely notification of whether their waiver requests have been approved, due to the time needed to schedule and perform expensive and time-consuming source tests, and that Rule 4401 should take these needs into account.

*EPA Response:* We disagree with the District's assertion that the October 1998 "Title V Review Protocol Agreement" between the District and EPA (Title V Agreement) provides precedent for the language in Rule 4401. Title V of the CAA specifically authorizes EPA to object to a title V operating permit that is not in compliance with CAA applicable requirements within 45 days after receiving a copy of the proposed permit from the state/local permitting agency. CAA § 505(b)(1); 40 CFR 70.8(c). The District refers to language in the Title V Agreement that describes the process following EPA's 45-day review period through which SJVAPCD will resolve title V objections that EPA has raised.<sup>7</sup> In this context, where the District has timely submitted information adequately addressing EPA's objections, EPA has agreed that the District may in some cases treat our silence as concurrence with the District's revised proposal.<sup>8</sup>

<sup>7</sup> See "Title V Permit Review Protocol Agreement: San Joaquin Valley Unified APCD, United States Environmental Protection Agency, Region IX," October 1998.

<sup>8</sup> If the permitting agency fails to adequately address EPA's objection(s) within 90 days, title V authorizes EPA to issue or deny the title V permit. CAA § 505(b)(3); 40 CFR 70.8(c). The District also references SJVAPCD Rule 2520 (Federally Mandated Operating Permits), which implements title V requirements. These provisions related to the District's title V operating permit program are not relevant to our action today.

The CAA does not establish any such process for state/local waivers to the requirements of a federally-approved SIP. To the contrary, section 110(i) of the Act specifically prohibits EPA and the States from taking any "action modifying any requirement of an applicable implementation plan \* \* \* with respect to any stationary source" except as otherwise authorized by the Act. Section 6.2.4 of Rule 4401 effectively allows the District to grant a waiver to federally-approved SIP requirements if EPA does not object within 45 days of receiving the District's request for concurrence. Without a process that ensures that any such waiver is granted only upon EPA approval in accordance with CAA requirements, this provision is inconsistent with the requirements of the Act and cannot be approved.

We note that the District may address these concerns by providing explicit and replicable procedures within the rule that tightly define how the District's discretion will be exercised to assure equivalent emission reductions.<sup>9</sup>

As to the District's comment that EPA did not object to this provision during its local rulemaking process, we regret not identifying this issue earlier but note that our failure to do so does not remove our obligation to ensure full compliance with the CAA when taking formal action on SIP submittals.

*SJVAPCD Aug. 27 Comment #3:* SJVAPCD acknowledged that EPA had proposed a limited approval/limited disapproval of Rule 4605 because of concerns about certain VOC coating limits, but stated that EPA should approve Rule 4605 for two reasons. First, the District stated that its staff had compared the limits in Rule 4605 to the limits in EPA's 1997 CTG for coating operations at aerospace facilities and in other California district rules, and found that (1) Rule 4605's VOC limit for Sealant (Extrudable/Rollable/Brushable) is consistent with BAAQMD's Rule 8-29, and (2) Rule 4605's limit for Sealant (Fastener) is consistent with SCAQMD's Rule 1124 and Ventura County Air Pollution Control District's Rule 74.13. Second, the District stated that it plans to amend Rule 4605 during the first quarter of 2010 to incorporate the coating types and limits contained in the 1997 CTG, and that it would also consider the additional recommendations provided in EPA's TSD in its next rule revision process.

<sup>9</sup> See Guidance Document for Correcting Common VOC & Other Rule Deficiencies (A.K.A., The Little Bluebook), U.S. EPA Region IX, Revised August 21, 2001, at pg. 17.

*EPA Response:* EPA's 1997 CTG on Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations (1997 CTG) generally defines presumptive RACT for this activity nationwide. In our proposed action (74 FR at 34705), we noted that the District had not adequately addressed recommendations in the 1997 CTG for 19 coating categories. The District now identifies rules in neighboring districts that are consistent with Rule 4605 for two of these coating categories, but it fails to demonstrate that the CTG recommendations for those two categories are not reasonably achievable in the San Joaquin Valley. Moreover, the District fails to address the other 17 coating categories for which the 1997 CTG recommends specific limits. In order to satisfy CAA RACT requirements, the District must either demonstrate that Rule 4605 implements current-day RACT for all of these coating operations or certify, where appropriate, that certain coating operations do not occur in the San Joaquin Valley.

As to the District's statement that it plans to amend Rule 4605 during the first quarter of 2010 to incorporate the CTG recommendations and EPA's additional recommendations, we appreciate these rule improvement efforts but note that we are obligated to act at this time on the submitted version of Rule 4605.

*SJVAPCD Aug. 27 Comment #4:* The District acknowledged that EPA had proposed a limited approval/limited disapproval of Rule 4684 because of concerns about the resin and gel coat monomer content limits and capture and control efficiency requirements. The District stated, however, that EPA should fully approve the rule for two reasons. First, the District asserted that the rules in the other districts cited by EPA should be considered beyond RACT as those rules were recently adopted, and because there is no CTG for non-fiberglass boat manufacturing or general polyester resin fiberglass boat manufacturing. The District stated that "EPA's long-standing historical position is that in the absence of a CTG \* \* \* the standards that have been successfully implemented in other districts or states [are] minimum RACT unless demonstrated that those standards are beyond RACT," and that the District had made such a demonstration (that the other districts' rules are beyond RACT) in its RACT analysis for Rule 4686. The District further stated that some of these rules were developed after SJVAPCD began developing Rule 4686 and, therefore,

“could not be utilized in the Rule 4686 development process.”

Second, the District stated that although EPA is not calling out deficiencies related to the September 2008 fiberglass boat manufacturing CTG, the District is in the process of amending Rule 4684 to incorporate the CTG recommendations and that rule adoption is scheduled for September 17, 2009.

*EPA Response:* First, we disagree with the District’s assertion that it has demonstrated that the more stringent limits in other districts’ rules are beyond RACT. See response to SJVAPCD Aug. 17 Comment #2, above. Second, we also disagree with the District’s statement that some of the more stringent rules in other districts were developed after the District had begun its Rule 4684 development process. The District adopted the version of Rule 4684 that we are acting on today in 2007, and the more stringent polyester resin rules that the District referenced in its 2009 RACT SIP were last modified in 2005 or earlier. See response to SJVAPCD Aug. 17 Comment #2, above. Finally, as to the District’s statement that it is in the process of amending Rule 4684 to incorporate the CTG recommendations, we appreciate the District’s ongoing rule improvement efforts and will evaluate those rule revisions when they are submitted to us for incorporation into the SIP. See response to SJVAPCD Aug. 17 Comment #1.

### III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rules. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months of the effective date of this action. Note that the submitted rules have been adopted by the San Joaquin Valley Air Pollution Control District,

and EPA’s final limited disapproval does not prevent the local agency from enforcing them.

### IV. Statutory and Executive Order Reviews

#### A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled “Regulatory Planning and Review.”

#### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals and limited approvals/limited disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this limited approval/limited disapproval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

#### D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State,

local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the limited approval/limited disapproval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### E. Executive Order 13132, Federalism

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (*Federalism*) and 12875 (*Enhancing the Intergovernmental Partnership*). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that 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.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will 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, because it merely approves 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

#### G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

#### H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA,

EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

#### J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 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. EPA will submit a report containing this rule 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). This rule will be effective on *February 25, 2010*.

#### K. Petitions for Judicial Review

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 *March 29, 2010*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 11, 2009.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

■ 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)(350)(i)(C)(2), (354)(i)(E)(11) and (354)(i)(E)(12) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(350) \* \* \*  
(i) \* \* \*  
(C) \* \* \*

(2) Rule 4401, "Steam-Enhanced Crude Oil Production Wells," adopted on December 14, 2006.

\* \* \* \* \*

(354) \* \* \*  
(i) \* \* \*  
(E) \* \* \*

(11) Rule 4605, "Aerospace Assembly and Component Coating Operations," adopted on September 20, 2007.

(12) 4684, "Polyester Resin Operations," adopted on September 20, 2007.

\* \* \* \* \*

[FR Doc. 2010-1385 Filed 1-25-10; 8:45 am]

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#### DEPARTMENT OF HOMELAND SECURITY

#### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-8113]

#### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and