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 4684.1 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.2 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.3 Specifically, the monomer content limits in section (c)(2)(A) of SCAQMD’s polyester resin rule (Rule 1162) became effective in 2003,4 and the 90% overall capture and control efficiency requirement in the rule has been effective for at least 15 years.5 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 2005.6 As such, we do not believe the District has adequately supported its assertion that the limits in these rules are “beyond RACT.”

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 provison 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.

2 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).
4 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 amended.
6 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 could resolve Title V objections that EPA has raised. 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.8

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.9 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.

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 rule 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.


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.


Laura Yoshii,
Acting Regional Administrator, Region IX.

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) * * *


* * * * *

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


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[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


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