

because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. 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 Clean Air Act. 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 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.*).

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).

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 22, 2004. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 31, 2003.

**Robert E. Roberts,**

*Regional Administrator, Region 8.*

■ 40 CFR part 52 is amended to read 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 BB—Montana

■ 2. Section 52.1370 is amended by adding paragraph (c)(60) to read as follows:

#### § 52.1370 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(60) On June 26, 1997, the Governor of Montana submitted the Thompson Falls Air Pollution Control Plan and on June 13, 2000, the Governor submitted revisions to the June 26, 1997, submittal. On February 28, 1999, the Governor of Montana withdrew all chapters of the Thompson Falls Air Pollution Control Plan submitted on June 26, 1997, except chapters 45.2, 45.10.10, and 45.10.12. EPA is approving sections 45.2, 45.10.10 and 45.10.12 of the Thompson Falls Air Pollution Control Plan.

(i) Incorporation by reference.

(A) Board Order issued June 20, 1997, by the Montana Board of Environmental Review, as reprinted in section 45.2.2 of the Thompson Falls Air Pollution Control Plan. The Board Order adopts and incorporates the May 1997 Maintenance Agreement Between the City of Thompson Falls, Montana Department of Transportation, and Montana Department of Environmental Quality which contains the control plan for the attainment and maintenance of the PM-10 National Ambient Air Quality Standards in the Thompson Falls area.

(B) May 1997 Maintenance Agreement between the City of Thompson Falls, Montana Department of Transportation, and Montana Department of Environmental Quality, as reprinted in section 45.2.1 of the Thompson Falls Air Pollution Control Plan.

(ii) Additional Material.

(A) Sections 45.2, 45.10.10 and 45.10.12 of the Thompson Falls Air Pollution Control Plan.

■ 3. Section 52.1391 is amended by redesignating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

#### § 52.1391 Emission inventories.

\* \* \* \* \*

(b) As part of the Thompson Falls Air Pollution Control Plan (approved at § 52.1370(c)(60)), the Governor of Montana submitted a PM-10 emission inventory for the Thompson Falls area as a SIP revision. The PM-10 emission inventory covers the time period of July 1, 1990 through June 30, 1991.

[FR Doc. 04-1233 Filed 1-21-04; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[CA264-0430; FRL-7607-5]

#### Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District, Yolo-Solano Air Quality Management 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 Unified Air Pollution Control District (SJVUAPCD) and Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on April 25, 2003, and concerns volatile organic compound (VOC) emissions from industries storing, loading, and transferring organic liquids as part of their operations. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves these local rules that regulates these emission sources and directs California to correct rule deficiencies.

**EFFECTIVE DATE:** This rule is effective on February 23, 2004.

**ADDRESSES:** You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. You can inspect copies of the submitted SIP revisions by appointment at the following locations:

Environmental Protection Agency,  
Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901;  
Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 1001 "I" Street,  
Sacramento, CA 95814;  
San Joaquin Valley Unified Air  
Pollution Control District, 1990 East  
Gettysburg Street, Fresno, CA 93726;  
and,  
Yolo-Solano Air Quality Management  
District, 1947 Galileo Court, Suite  
103, Davis, CA 95616.

A copy of the rule may also be  
available via the Internet at [http://  
www.arb.ca.gov/drdb/drdbtxt.htm](http://www.arb.ca.gov/drdb/drdbtxt.htm).  
Please be advised that this is not an EPA  
Web site and may not contain the same  
version of the rule that was submitted  
to EPA.

**FOR FURTHER INFORMATION CONTACT:**  
Jerald S. Wamsley, EPA Region IX, at  
either (415) 947-4111, or  
[Wamsley.Jerry@epa.gov](mailto:Wamsley.Jerry@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us"  
and "our" refer to EPA.

#### I. Proposed Action

On April 25, 2003 (68 FR 20356), EPA  
proposed a limited approval and limited  
disapproval of the following rules that  
were submitted for incorporation into  
the California SIP.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD .....	4623	Storage of Organic Liquids .....	12/20/01	03/15/02
YSAQMD .....	2.21	Organic Liquid Loading .....	06/12/02	08/06/02

We proposed a limited approval  
because we determined that these rules  
improve the SIP and are largely  
consistent with the relevant CAA  
requirements. Simultaneously, we  
proposed a limited disapproval because  
some provisions within each rule  
conflict with section 110 and part D of  
the Act. These provisions are reviewed  
below.

Within SJVUAPCD Rule 4623, the  
provisions discussed below conflict  
with section 110 of the Act and raise  
enforceability issues preventing EPA's  
full approval of the SIP revision.

- Section 5.6.1 is unclear on two  
points. First, it references requirements  
in section 6.4.6; these requirements are  
unclear in how they apply to section  
5.6.1. For example, no VOC control  
requirement is clearly specified.  
Second, a typographical error exists in  
how section 5.6.1 references either  
section 6.4.6 or section 6.4.7.

- Section 7.1 has a missing  
compliance date and conflicting dates in  
its last sentence.

Within YSAQMD Rule 2.21, the  
provisions discussed below conflict  
with section 110 of the Act and raise  
rule enforceability issues preventing  
EPA's full approval of the SIP revision.  
In part, Rule 2.21's deficiencies relate to  
an EPA policy described within a  
memorandum dated September 20,  
1999, entitled "State Implementation  
Plans: Policy Regarding Excess  
Emissions During Malfunctions, Start-  
up, and Shutdown" (the Excess  
Emissions Policy).

Taken together section 111 and  
section 501 are inconsistent with the  
EPA policy on exemptions for excess  
emissions during malfunctions, start-up  
and shutdown. Furthermore, the Air  
Pollution Control Officer (APCO)  
discretion within section 111 for  
approving maintenance plans is a case  
of unbounded "director's discretion" as

there are no criteria delimiting the  
APCO's authority for approving  
maintenance plans. These provisions  
violate EPA requirements concerning  
enforceability and rule relaxations.

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

#### II. Public Comments and EPA Responses

EPA's proposed action provided a 30-  
day public comment period. During this  
period, we received no comments on  
our proposed action.

#### 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 finalizing simultaneously a limited  
disapproval of each rule. As a result,  
sanctions will be imposed unless EPA  
approves subsequent SIP revisions that  
correct each rule's 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. Note SJVUAPCD Rule 4623  
and YSAQMD Rule 2.21 have been  
adopted by these local air districts, and  
EPA's final limited disapproval does not  
prevent the local agency from enforcing  
it. Also, please note that the sanctions  
process for each of these rules is

separate and distinct from the other;  
none of the language above should be  
construed otherwise.

#### 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 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.*)

##### 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 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 the  
Federal SIP approval 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 approval 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*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

#### *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 February 23, 2004.

#### *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 22, 2004. 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 18, 2003.

**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)(297)(i)(E)(2) and (c)(303)(i)(B)(2) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(297) \* \* \*  
(i) \* \* \*  
(E) \* \* \*

(2) Rule 4623, adopted on April 11, 1991 and amended on December 20, 2001.

\* \* \* \* \*

(303) \* \* \*  
(i) \* \* \*  
(B) \* \* \*

(2) Rule 2.21, adopted on March 23, 1994 and amended on June 12, 2002.

\* \* \* \* \*

[FR Doc. 04–1232 Filed 1–21–04; 8:45 am]

BILLING CODE 6560–50–P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[TN–238, 255–200406; FRL–7612–2]

#### Approval and Promulgation of Implementation Plans: Tennessee: Nitrogen Oxides Budget and Allowance Trading Program

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Tennessee on July 29, 2003. The revision corrects a deficiency identified by EPA in its August 14, 2002, conditional approval of Tennessee's Phase I NO<sub>x</sub> SIP call submittal (67 FR 52913). With this deficiency corrected, EPA is fully approving Tennessee's NO<sub>x</sub> Reduction and Trading Program because it meets the requirements of Phase I of the NO<sub>x</sub> SIP Call that will significantly reduce ozone transport in the eastern United States.

EPA proposed to approve Tennessee's NO<sub>x</sub> Reduction and Trading Program, with one exception, in the August 14, 2002 (67 FR 52913), action. The exception was Tennessee's rule that allowed for the allocation, to NO<sub>x</sub> budget units, of additional allowances that have been generated through NO<sub>x</sub> emission reductions from industrial, mobile, and area source sectors.

However, Tennessee's rule provided for approval of the allocation of additional allowances solely by the permitting authority, without approval by EPA. Tennessee corrected this deficiency in the revision submitted on July 29, 2003, by requiring EPA approval of any additional allocations generated through NO<sub>x</sub> emissions reductions from industrial, mobile, and area sources. Therefore, EPA is approving Tennessee's NO<sub>x</sub> Reduction and Trading Program.

**EFFECTIVE DATE:** This final rule is effective January 22, 2004.

**ADDRESSES:** Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,  
Region 4, Air Planning Branch, 61  
Forsyth Street, SW., Atlanta, Georgia  
30303–8960.  
Tennessee Department of Environment  
and Conservation, L&C Annex, 401  
Church Street, Nashville, Tennessee  
37243.

#### FOR FURTHER INFORMATION CONTACT:

Anne Marie Hoffman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9074. Ms. Hoffman can also be reached via electronic mail at [hoffman.annemarie@epa.gov](mailto:hoffman.annemarie@epa.gov).

**SUPPLEMENTARY INFORMATION:** On November 7, 2000, the Tennessee

Department of Environment and Conservation (TDEC) submitted a draft NO<sub>x</sub> emission control rule to the EPA for pre-adoption review, requesting parallel processing of the development of the rule at the State level and included a schedule for development and adoption of the rule by the State. On January 11, 2001, TDEC submitted adopted revisions to its SIP to meet the requirements of the Phase I NO<sub>x</sub> SIP Call. Tennessee submitted State-effective rule revisions on October 4, 2001. The revisions complied with the requirements of the Phase I NO<sub>x</sub> SIP Call with one exception regarding deficiencies in section 96.40 State trading program budget. Tennessee corrected this deficiency in the revision submitted on July 29, 2003. Included in this document are new rules 1200–3–27–.04 *Standards for Cement Kilns* and 1200–3–27–.06 *NO<sub>x</sub> Budget Trading Program for State Implementation Plans* (40 CFR 96). The information in this final rule is organized as follows:

#### I. EPA's Action

- A. What action is EPA approving today?
- B. Why is EPA approving this action?
- C. What are the NO<sub>x</sub> SIP Call general requirements?
- D. What is EPA's NO<sub>x</sub> budget and allowance trading program?
- E. What guidance did EPA use to evaluate Tennessee's submittal?
- F. What is the result of EPA's evaluation of Tennessee's program?

#### II. Tennessee's Control of NO<sub>x</sub> Emissions

- A. When did Tennessee submit the SIP revision to EPA in response to the NO<sub>x</sub> SIP Call?
- B. What is the Tennessee NO<sub>x</sub> Budget Trading Program?
- C. What is the Compliance Supplement Pool?
- D. What is the New Source Set-Aside program?

#### III. Final Action

#### IV. Statutory and Executive Order Reviews

#### I. EPA's Action

##### A. What Action Is EPA Approving Today?

EPA is approving revisions to Tennessee's SIP concerning the adoption of its NO<sub>x</sub> Reduction and Trading Program, submitted for parallel processing on November 7, 2000, with additional material submitted on January 11, 2001, and State-effective rules submitted on October 4, 2001, and July 29, 2003.

##### B. Why Is EPA Approving This Action?

EPA is approving this action because Tennessee's NO<sub>x</sub> Reduction and Trading Program regulations meet the requirements of Phase I of the NO<sub>x</sub> SIP Call. EPA proposed to approve Tennessee's NO<sub>x</sub> Reduction and