

Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or

adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone to allow a vessel launch evolution at Todd Pacific Shipyards, the duration of which will be less than one day. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T13-127 to read as follows:

#### § 165.T13-127 Safety Zone; Todd Pacific Shipyards Vessel Launch, West Duwamish Waterway, Seattle, WA.

(a) *Location.* The following area is a safety zone: The waters of the Duwamish River extending 450 yards from the vessel launch site at Todd Pacific Shipyards, located at the entrance to the West Duwamish Waterway, with an area encompassed by the points 47°35'04" N 122°21'30" W, thence to 47°35'04" N 122°21'50" W, thence to 47°35'19" N 122°21'50" W, thence to

47°35'19" N 122°21'30" W, thence to 47°35'04" N 122°21'30" W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel may enter, transit, moor, or anchor within this safety zone, except for vessels authorized by the Captain of the Port or her Designated Representative.

(c) *Enforcement Period.* From 1 a.m. to 10:30 a.m. on January 16, 2010 unless cancelled sooner by the Captain of the Port.

Dated: December 11, 2009.

**S.E. Englebert,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 2010-550 Filed 1-13-10; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2009-0492; FRL-9096-9]

### 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 (SVAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on July 14, 2009 and concerns volatile organic compounds (VOCs) from confined animal facilities, such as dairies, cattle feedlots, and poultry and swine houses. Under the authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and directs California to correct rule deficiencies.

**DATES:** *Effective Date:* This rule is effective on February 16, 2010.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2009-0492 for this action. The index to the docket is available electronically at <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:**  
Andrew Steckel, EPA Region IX, (415) 947-4115, *steckel.andrew@epa.gov*.

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

**Table of Contents**

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

**I. Proposed Action**

On July 14, 2009 (74 FR 33948), EPA proposed a limited approval and limited disapproval of the following rule that the California Air Resources Board (CARB) submitted for incorporation into the SIP.

Local agency	Rule #	Rule title	Adopted	Submitted
SJVAPCD .....	4570	Confined Animal Facilities .....	06/18/09	06/26/09

We proposed a limited approval because we determined that Rule 4570 improves the SIP and is largely consistent with the relevant CAA requirements. At the same time, we proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. These provisions are discussed briefly below.

1. Rule 4570 exempts poultry operations between 400,000 and 650,000 chickens; these operations should be subject to the rule as major sources of VOC emissions.

2. The rule submittal did not provide adequate analysis to demonstrate that the rule’s control measure menus implement reasonably available control technologies (RACT) for poultry and swine facilities. Such an analysis should review the availability and effectiveness of control measures for poultry and swine facilities, and may require rule revisions to ensure that the rule does not allow implementation of relatively ineffective control measures when more effective measures are reasonably available to a class of operations.

Our proposed action and Technical Support Document (TSD) contain more information on the basis for this rulemaking and on our evaluation of the submittal. The TSD provides examples of the types of concerns that should be addressed by the analysis discussed in deficiency #2.

**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 parties listed below.

- 1. Bill Mattos, President, California Poultry Federation (CPF), letter dated August 5, 2009.
- 2. Seyed Sadredin, Executive Director, SJVAPCD, letter dated August 27, 2009.
- 3. Paul Cort, EarthJustice (EJ), letter dated August 31, 2009.
- 4. Brent Newell, Legal Director, Center on Race, Poverty & the Environment (CRPE), letter dated August 31, 2009, on behalf of the

following organizations: Association of Irrigated Residents, Clean Water and Air Matter, Comité West Goshen, Comité Unido de Plainview, Comité Residentes Organizados al Servicio del Ambiente Sano, Committee for a Better Arvin, Fresno Metro Ministries, Natural Resources Defense Council, La Nueva Esperanza de Alpaugh, El Quinto Sol de America, South Shafter Project Committee, Shafter Chapter League of United Latin American Citizens, United for a Change in Tooleville, and La Voz de Tonyville.

*A. California Poultry Federation (CPF) Comments*

*CPF Comment #1:* EPA proposed to postpone deciding whether Rule 4570 implements RACT for dairies and cattle feedlots pending completion of the National Air Emissions Monitoring Study (NAEMS) research. EPA should similarly postpone a RACT decision for the poultry industry, which is also funding and actively participating in the NAEMS.

*Response to CPF #1:* The TSD for our proposed action explains that RACT is not clearly defined for confined animal facilities (CAFs) because there is limited information and regulation of CAF VOC emissions. Reflecting this uncertainty, SJVAPCD’s RACT demonstration presented various reasons for why Rule 4570 implements RACT. Our TSD explains why some of these claims are not relevant and none definitively demonstrates RACT. We then made decisions based on our judgment of how the numerous factors, taken together, compare to RACT policy and precedent.

For dairies and cattle feedlots, we proposed to defer temporarily a RACT decision because the NAEMS and related research should help clarify RACT in the near future. We recognize that ongoing research should also help clarify RACT for poultry, which is participating in the NAEMS, too. However, our TSD explains that there are significantly more shortcomings with SJVAPCD’s RACT demonstration for poultry than for dairy and cattle

feedlots. For example, certain major poultry sources are not covered by the rule. Also, poultry sources have less variability, have lower control costs, and have other differences as identified on pages eight and nine of our TSD. While it is unclear at this time how the NAEMS will impact our understanding of RACT for dairies and cattle feedlots, it is unlikely that the NAEMS will lead to a finding that SJVAPCD’s existing rule and RACT analysis for poultry is sufficient. Also, please see our response to EJ comment #7.

*CPF Comment #2:* EPA claimed that poultry operations may be less variable than other CAFs because poultry are generally housed in buildings. As a result, a few mitigation measures could generally be applied to the entire class of poultry operations. CPF, however, comments that poultry operations vary significantly, including among type of housing, poultry and manure management. Instead of menus, Rule 4570 could require one set of measures for all facilities, or could list different sets for each type of facility. Neither option would resolve equity issues of what constitutes RACT for different types of operations, since controls which are technically and economically available for one type of operation may not be feasible for others.

*Response to CPF #2:* We agree that variability in housing design, manure management and other factors can affect cost effectiveness of some VOC controls available to poultry facilities. We do not believe, however, that either SJVAPCD, or this comment has demonstrated that industry variability supports the specific Rule 4570 menus. For example, our TSD notes that table 6B of Rule 4570 provides four options to perform maintenance every 14 days—remove caked waste, clean under cages, adjust drinkers and repair pipe leaks. It is not obvious why industry variability in housing, poultry, manure management or other factors preclude SJVAPCD from evaluating the cost-effectiveness of these measures and determining whether they

are appropriate to require generally for major types of poultry operations.

*CPF Comment #3:* EPA's TSD raises the issue of controlling VOCs with biofilters. CPF commented that biofilters are not cost-effective for existing poultry houses because they would require, among other things, large biofilters with significant installation, operation and maintenance costs; as well as, increased ducting, fans, and associated power needs. Other traditional end-of-stack control measures are similarly infeasible because of the high exhaust flow rates and low VOC concentrations.

*Response to CPF #3:* Our general objection remains regarding Rule 4570's menus for poultry control measures. As described in paragraph II.C.2 of our proposed action, the rule submittal did not provide adequate analysis to demonstrate that the control measure menus implement RACT for poultry facilities. Such analysis should review the availability and effectiveness of all control measures (work practices, add-on controls, etc.) Such analysis may necessitate rule revisions to ensure that the rule does not allow implementation of relatively ineffective control measures when more effective measures are reasonably available to a class of operations. While this comment provides relevant information on one component of the menus (add-on controls), SJVAPCD should analyze the menus thoroughly and present that analysis via their normal public review process.

*CPF Comment #4:* The primary source of VOC emissions from poultry is the microbial decomposition of organic matter in manure, which increases with moisture. As a result, CPF supports Rule 4570's emphasis on controlling moisture and microbial decomposition, rather than trying to remove dilute concentrations of VOC from large volumes of air.

*Response to CPF #4:* Our proposed action neither precludes focus on moisture and microbial decomposition, nor does it require add-on controls. Rather, it would largely direct SJVAPCD to better analyze the availability and effectiveness of controls and make appropriate rule revisions. Additional analysis could show, for example, that one set of measures for controlling moisture is far more cost-effective than another set and should be required of all facilities. Also, please see our response to CPF comment #3.

#### *B. San Joaquin Valley Air Pollution Control District Comments*

*SJVAPCD Comment #1:* EPA claimed that Rule 4570 does not address all 10 tpy VOC poultry sources as required.

SJVAPCD comments that Rule 4570's threshold is 650,000 chickens. CARB used 0.025 pounds VOC per head per year (lb VOC/hd/yr) as an emission factor for both broilers and layers, which translates Rule 4570's applicability to 8 tons per year (tpy), which is safely below 10 tpy.

*Response to SJVAPCD #1:* Table 6 of SJVAPCD's April 16, 2009 RACT Demonstration and Table 10 of the rule's Staff Report assume 0.05 lb VOC/hd/year for layers, which translates Rule 4570's applicability to 16.25 tpy, significantly above the 10 tpy threshold. The comment does not state why or even if SJVAPCD believes this emission factor is no longer appropriate to use.

*SJVAPCD Comment #2:* Rule 4570's menu-approach should be approved as RACT because the least effective menu options have been incorporated in facility permits as best available control technology (BACT).

*Response to SJVAPCD #2:* Section C.3.g of EPA's TSD explains that SJVAPCD's BACT determinations help support the argument that Rule 4570 implements RACT, but are not sufficient in and of themselves to demonstrate RACT generically for three reasons. This comment relates to the second of these three reasons, item "b" as presented in the TSD. The comment does not, however, address the remaining two points we presented: (1) BACT determinations consider site-specific factors which may indicate that specific controls are feasible in one situation, but not in another; therefore, controls that are BACT for one source may not be BACT or even RACT for others; and, (2) EPA's lack of comment regarding BACT in individual permits should not be construed as EPA concurrence that the rule or the permits implement BACT; we may, for example, simply have been unable to review the permits because of competing resource demands.

*SJVAPCD Comment #3:* Rule 4570's menu approach should be approved because, while not compromising control of VOC emissions, it allows CAF operators to adjust to market driven changes and innovation in operations to further reduce emissions.

*Response to SJVAPCD #3:* EPA agrees that a menu approach can incorporate elements to address market and innovation needs; however, a menu-based rule intended to fulfill Federal RACT requirements must be supported by adequate analysis demonstrating that the menus implement RACT. Consistent with this position, EPA proposed to postpone a decision on whether Rule 4570 demonstrates RACT for dairies, beef feedlots and other cattle facilities.

We also concluded that SJVAPCD had not demonstrated that Rule 4570's menus fulfill RACT for poultry and swine operations, and therefore proposed to disapprove the rule.

*SJVAPCD Comment #4:* Due to variability in poultry operations, SJVAPCD cannot specify only one set of emission control requirements. Operations vary by capacity, poultry breeds and species, nutrient needs dictated by market plans, diets that vary by commodity costs, housing ventilation systems, housing coolant systems, housing construction and litter management practices.

*Response to SJVAPCD #4:* We appreciate that variability in operations may require different controls or control options for different types of operations. However, SJVAPCD has not demonstrated that variability in operations supports the specific Rule 4570 menu options. Also, please see our response to CPF comment #2.

*SJVAPCD Comment #5:* Over time, there could be additional innovations in how poultry or swine are raised or the market demand for poultry or swine could change. Rule 4570's menu format allows facility modifications to take advantage of new opportunities and technological advances which could result in additional reductions.

*Response to SJVAPCD #5:* Please see our response to SJVAPCD comment #3.

*SJVAPCD Comment #6:* SJVAPCD conducted a top-down BACT analysis of poultry housing for a permit application and evaluated four traditional VOC control technologies: thermal oxidizer, catalytic oxidizer, carbon adsorption and biofilter. These controls were not found achieved in practice, so SJVAPCD analyzed their cost-effectiveness and found they failed SJVAPCD's \$5,000 per ton VOC threshold. A similar conclusion can be made for swine. Since traditional add-on control is not cost-effective for BACT, it is also not cost-effective for RACT.

*Response to SJVAPCD #6:* Please see our response to CPF comment #3.

*SJVAPCD Comment #7:* SJVAPCD and CARB research adequately justifies approving Rule 4570 as RACT for California dairies. SJVAPCD developed a draft BACT document for dairy emissions and is at the forefront of implementing BACT for new dairies.

*Response to SJVAPCD #7:* We appreciate that SJVAPCD and CARB have supported extensive CAF research before and after developing Rule 4570. We believe results from the NAEMS and other SJVAPCD, CARB and EPA research scheduled to conclude soon should help clarify RACT for California dairies. We also note that this comment

does not provide the referenced draft BACT document for dairy emissions, nor does it provide further information to address the generic issues discussed in Section C.3.g of our TSD and above in our response to SJVAPCD comment #2.

### C. EarthJustice (EJ) Comments

*EJ Comment #1:* EJ supports EPA's proposed limited approval/disapproval of Rule 4570 and agrees with the following conclusions from our proposal: (1) Rule 4570 fails to require controls for all major poultry operations; (2) SJVAPCD failed to demonstrate that Rule 4570 implements RACT for poultry and swine operations; and, (3) SJVAPCD must also review the menus for dairy and cattle feedlots.

*Response to EJ #1:* We note that our proposed action would recommend, not compel, item #3 regarding SJVAPCD review of the dairy and cattle feedlot menus.

*EJ Comment #2:* SJVAPCD has not supported its reliance on the State's large confined animal facility (LCAF) definition in setting Rule 4570 applicability thresholds. CAA section 172(c)(1) requires all reasonably available control measures (RACM) as expeditiously as practicable, so SJVAPCD must analyze and require all reasonable controls, including those for small sources. Instead, Rule 4570 uses applicability thresholds based on the State's LCAF definition without demonstrating that controlling smaller sources is unreasonable. The LCAF definition is even more inappropriate because SJVAPCD now estimates higher VOC emissions than assumed by the State (e.g., 11.9 instead of 5.5 lb VOC/hd/yr for cattle).

*Response to EJ #2:* We agree that CAA section 182(b)(2) requires RACT for all major sources and CAA section 172(c)(1) requires the implementation of all RACM as needed for expeditious attainment. A discussion of whether additional controls would advance the attainment date of the ozone standard belongs in the context of SJVAPCD's ozone plan attainment demonstration. Today's action on Rule 4570 considers whether the rule as submitted is adequately enforceable, implements RACT and improves the SIP. The emission factor assumptions from SJVAPCD's RACT demonstration suggest that Rule 4570's applicability thresholds capture all major sources except for the poultry threshold identified as deficient in our proposed action.

*EJ Comment #3:* SJVAPCD must, but did not, show that all Rule 4570 menus

represent the lowest emission levels achievable as required by RACT.

*Response to EJ #3:* We believe this comment is addressed by our proposed action to defer a RACT decision for dairies and cattle feedlots and to require adequate analysis to demonstrate that Rule 4570 implements RACT for poultry and swine. We agree that SJVAPCD must review the availability and effectiveness of controls to address the RACT deficiency we identified concerning poultry and swine sources.

*EJ Comment #4:* SJVAPCD uses a "percent of profits" test to determine whether controls are economically feasible. For example, SJVAPCD claims that Rule 4570 will cost large dairies 9.6% of profits, so more stringent and expensive controls are not reasonably available. EJ comments that some industries can afford controls costing 10% of profits or more without impacting economic viability. EJ believes SJVAPCD should analyze possible CAF controls in a broader context, such as total compliance cost, economic impact on each sector of the industry, output demand elasticity, etc.

*Response to EJ #4:* Paragraph II.C.2. of our proposed action states that SJVAPCD has not adequately demonstrated that Rule 4570 implements RACT, and directs SJVAPCD to analyze the availability and effectiveness of possible controls for poultry and swine sources. The comment does not dispute this or other portions of our proposal, but provides more detail on how EJ believes the deficiency should be corrected. As a result, no changes to our proposal are needed. Regarding the substance of the comment, we believe "percent of profits" can provide useful information, but we also acknowledge that additional economic information could be helpful and appreciate that resource constraints limit the amount of analysis that SJVAPCD can perform. Also, we note that SJVAPCD has provided cost-effectiveness information in Appendix C of their Staff Report. We look forward to working with EJ, SJVAPCD and the affected industry to obtain a meaningful RACT analysis without overwhelming available SJVAPCD resources.

*EJ Comment #5:* EPA must appropriately revise 40 CFR 52.220(b)(12) to remove any possible claim that agricultural sources are exempt from permitting.

*Response to EJ #5:* Section 5.0 of Rule 4570 specifically requires a permit application for each CAF, and Section 5.4 requires implementation of all VOC emission mitigation measures, as contained in the application, on and after 365 days of submittal of the

application. Therefore, to the extent that any such permitting exemption exists, it does not affect implementation of Rule 4570.

*EJ Comment #6:* Sections 5.12 and 5.13 of Rule 4570 allow facilities to ignore all specific requirements of sections 5.6 through 5.10 by preparing an alternative emission mitigation plan (AEMP) demonstrating 30% facility-wide reductions. EJ believes these plans are unenforceable because Rule 4570 provides no detail on how 30% is calculated or the plans approved. EJ also comments that SJVAPCD has not demonstrated that 30% represents RACT, particularly since SJVAPCD projects that the menus reduce emissions 36–72%.

*Response to EJ #6:* Because there is limited information available on CAF control efficiencies, we proposed to recommend, rather than compel, rule revisions at this time (see recommendation #6 on page 10 of our TSD). Similar directors' discretion provisions have been approved in other rules (e.g., SJVAPCD Rule 4550 regarding agricultural operations) where agencies have limited experience in quantifying emission impacts. Implementation of Rule 4570 and other CAF requirements and ongoing research should improve our understanding so that details for AEMPs in section 5.13 can be reasonably required in the near future. We also proposed to recommend rather than compel revising section 5.13's 30% emission reduction target consistent with the 36–72% menu-based emission projections (see recommendation #7 on page 10 of our TSD). We do not believe we have clear authority to compel changes to section 5.12 at this time, as it does not appear to apply to any major sources.

*EJ Comment #7:* EPA's proposal to postpone a decision on whether Rule 4570 implements RACT for dairies and beef feedlots is arbitrary and illegal under CAA section 110(k)(3). EPA claims the delay is appropriate pending results of an ongoing study, but EPA is required to act now based on the best available information. Regardless of the study results, Rule 4570's dairy and cattle feedlot provisions suffer from the same RACT defects as the poultry and swine provisions that EPA is disapproving.

*Response to EJ #7:* As we discussed in our response to CPF comment #1, we acknowledged deficiencies in the RACT demonstration for dairies and cattle feedlots, but proposed to defer temporarily a RACT decision because the NAEMS and related research should help clarify RACT in the near future. While we recognized that ongoing

research should also help clarify RACT for poultry and swine, our TSD explained that there are significantly more shortcomings with SJVAPCD's RACT demonstration for poultry and swine operations. As a result, while it is unclear how the NAEMS results will impact our understanding of RACT for dairies and cattle feedlots, it seems very unlikely that the NAEMS will lead to a finding that SJVAPCD's existing rule and RACT analysis for poultry and swine is sufficient. Also, please see our response to CPF comment #1.

*EJ Comment #8:* If EPA finalizes no action on dairy and cattle feedlot measures, EPA should appropriately discount the emission reduction benefits that are claimed for Rule 4570 in various attainment plans.

*Response to EJ #8:* If finalized as proposed, EPA's action would incorporate all provisions of Rule 4570 into the Federally enforceable SIP. EPA's action to disapprove and postpone various RACT demonstrations does not interfere with Federal or local rule implementation. Issues regarding the emission reductions attributed to Rule 4570 do not affect the basis for our action on the rule and should be addressed in context of our action on SJVAPCD's one-hour ozone plan.

#### *D. Center on Race, Poverty and the Environment (CRPE) Comments*

*CRPE Comment #1:* EPA should disapprove the RACT determination for dairies and cattle feedlots. There is no hard deadline for EPA to promulgate emission estimating methodologies referenced in the proposed action, so EPA may further delay a RACT determination beyond November 2011. In any case, available information already shows that dairies and cattle feedlots are significant VOC sources that require RACT.

*Response to CRPE #1:* We agree that some cattle and dairy operations are significant VOC sources that require RACT. We believe, however, that delaying a RACT determination for dairies and cattle feedlots is justified for reasons we discussed in Section D.3 of our TSD. All data collection efforts for the NAEMS are scheduled to conclude by May 2010 and we plan to promulgate emission estimating tools by November 2011. Nonetheless, we could require additional demonstration of RACT regarding dairies and cattle feedlots based on preliminary NAEMS data, unexpected delays, or other factors before or after November 2011 pursuant to CAA section 179(a)(1) and elsewhere. During this period of NAEMS data collection and analysis, we emphasize that the rule's requirements will

continue to be implemented and enforced, and, as a result, continue to reduce VOC emissions from dairies and cattle feedlots. Also, please see our response to EJ comment #7.

*CRPE Comment #2:* Rule 4570's menu-based strategy violates CAA RACT provisions which require the lowest emission limitation that sources can meet considering technological and economic feasibility. Rule 4570 does not require all RACT, but merely a handful of measures from among several dozen. SJVAPCD concedes that operations can and will select the least-costly options, which are not necessarily the most effective, as RACT requires, at reducing emissions.

*Response to CRPE #2:* Menu-based rules can fulfill the RACT requirement if the menus effectively require the lowest emission limitations that sources can meet considering technological and economic feasibility. However, the deficiency identified in paragraph II.C.2 of our proposal reflects our agreement with the comment that SJVAPCD has not demonstrated that Rule 4570 meets RACT for poultry and swine menus. We are deferring our decision as to whether Rule 4570 meets RACT for dairy and beef cattle operations. Also, please see our response to EJ comment #3.

*CRPE Comment #3:* SJVAPCD improperly inflates the control effectiveness of Rule 4570 by claiming a 10% emission reduction for feeding cows by NRC guidelines both in the baseline emission estimates and then again in emission reductions associated with Rule 4570.

*Response to CRPE #3:* Today's action on Rule 4570 rests primarily on whether the rule as submitted is adequately enforceable, implements RACT and improves the SIP. Issues regarding the amount of associated emission reductions do not affect the basis for our action on Rule 4570 and are addressed within our action on SJVAPCD's one-hour ozone plan.

*CRPE Comment #4:* Rule 4570 merely codifies existing voluntary practices and does not generate real and quantifiable emission reductions. This violates CAA requirements for SIP rules to reduce emissions. EPA approval of this rule would be arbitrary and capricious because the emission reduction estimates for the vast majority of controls have no factual support.

*Response to CRPE #4:* Please see our response to CRPE comment #3.

*CRPE Comment #5:* EPA should disapprove the RACT demonstration for dairies and cattle feedlots and not allow SJVAPCD's 2004 SIP to take credit for VOC reductions from Rule 4570.

*Response to CRPE #5:* Please see our responses to previous CRPE comments.

*Additional CRPE Comments:* CRPE's August 31, 2009 letter provided comments on EPA's proposed actions on Rule 4570 (Docket No. EPA-R09-OAR-2009-0492) and on the SJVAPCD One-Hour Ozone Plan (Docket No. EPA-R09-OAR-2008-0693). CRPE comments that were not addressed above are primarily relevant to our proposed action on the SJVAPCD One-Hour Ozone Plan. We direct interested readers to those comments and our responses in our final action on the ozone plan.

### **III. EPA Action**

No comments were submitted that change our assessment of the rule 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 rule. This action incorporates the submitted rule 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 rule. 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. Note that the submitted rule has been adopted by the SJVAPCD, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

### **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 16, 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 15, 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 paragraph (c)(368) to read as follows:

#### **§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(368) New and amended regulations were submitted on June 26, 2009 by the Governor's designee.

(i) Incorporation by Reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(1) Rule 4570, "Confined Animal Facilities," adopted on June 18, 2009.

\* \* \* \* \*

[FR Doc. 2010-489 Filed 1-13-10; 8:45 am]

**BILLING CODE 6560-50-P**