application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 12, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Reporting and recordkeeping requirements.

Dated: December 28, 2011.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

40 CFR part 52 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 C—Alaska

■ 2. Section 52.73 is amended by adding paragraph (a)(1)(ii) to read as follows:

§ 52.73 Approval of plan.

(a) * * *

(1) * * *

(ii) EPA approves as a revision to the Alaska State Implementation Plan, the Anchorage Carbon Monoxide Maintenance Plan (Volume II Sections II, III.A and III.B of the State Air Quality Control Plan adopted August 20, 2010, effective October 29, 2010, and Volume III of the Appendices adopted August 20, 2010, effective October 29, 2010) submitted by the Alaska Department of Environmental Conservation on September 29, 2010

* * * * *

[FR Doc. 2012–341 Filed 1–9–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0723; FRL–9616–5]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans; California; San Joaquin Valley; Reasonably Available Control Technology for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving in part and disapproving in part a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or SJV) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on September 9, 2011 and concerns SJVUAPCD's ''Reasonably Available Control Technology (RACT) Demonstration for Ozone SIP'' (RACT SIP) for the 8-hour ozone National Ambient Air Quality Standard. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action directs California to correct RACT rule deficiencies in the SJV.

DATES: *Effective Date:* This rule is effective on February 9, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0723 for this action. Generally, documents in the docket for this action are available electronically at *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 at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), 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: Stanley Tong, EPA Region IX, (415) 947–4122, *tong.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Proposed Action

On September 9, 2011 (76 FR 55842), EPA proposed to partially approve and partially disapprove the following document that was submitted for incorporation into the California SIP.

Local agency	Document	Adopted	Submitted
SJVUAPCD	Reasonably Available Control Technology (RACT) Demonstration for Ozone State Implementation Plan (SIP).	04/16/2009	06/18/2009

In our proposed action we divided SJVUAPCD's rules into the following categories and evaluated each rule for compliance with RACT requirements.

Group 1: Rules that EPA recently approved or proposed to approve as implementing RACT.

Group 2: Rules previously approved for which we are not aware of more stringent controls that are reasonably available.

Group 3: Rules that EPA has disapproved or proposed to disapprove, in full or in part, because SJVUAPCD's has failed to demonstrate they fully satisfy current RACT requirements.

Group 4: Rules for which EPA has not yet made a RACT determination.

We proposed to approve those elements of SJVUAPCD's RACT SIP demonstration that pertain to the SIP rules identified in groups 1 and 2, which EPA has fully approved or proposed to approve as satisfying the RACT requirements of CAA sections 182(b)(2) and (f).

Simultaneously, we proposed to disapprove those elements of the RACT SIP demonstration that pertain to the SJVUAPCD rules identified in group 3, which EPA has either disapproved or proposed to disapprove in whole or in part, for failure to satisfy RACT requirements, and those elements of the RACT SIP demonstration that pertain to the rules in group 4, for which EPA has not yet made a RACT determination.

Our technical support document for our proposed action stated that a revised RACT SIP demonstration would not be necessary if each SIP submittal for the rules in groups 3 and 4 contains the necessary supporting analyses to demonstrate the rule meets RACT.

Specifically, we proposed to partially disapprove SJVUAPCD's RACT SIP demonstration because seven rules did not fully satisfy current RACT requirements. We have since approved three of the rules and are awaiting SIP submittals for the remaining four rules. The seven rules were:

1. Rule 4352—Solid Fuel Fired Boilers, Steam Generators, and Process Heaters—final limited approval/disapproval October 1, 2010 (*75 FR 60623*). SJVUAPCD is scheduled to adopt amendments to Rule 4352 on December 15, 2011.

2. Rule 4401—Steam Enhanced Crude Oil Production Wells—final limited approval/disapproval January 26, 2010, (*75 FR 3996*). SJVUAPCD submitted amendments to EPA on July 28, 2011 and EPA approved them into the SIP on November 16, 2011, (*76 FR 70886*).

3. Rule 4402—Crude Oil Production Sumps—final limited approval/disapproval July 7, 2011 (*76 FR 39777*). SJVUAPCD is scheduled to adopt amendments to Rule 4402 on December 15, 2011.

4. Rule 4605—Aerospace Assembly and Component Coating Operations—final limited approval/disapproval January 26, 2010, (*75 FR 3996*). SJVUAPCD submitted amendments to EPA on July 28, 2011 and EPA approved them into the SIP on November 16, 2011, (*76 FR 70886*).

5. Rule 4625—Wastewater Separators—final limited approval/disapproval July 7, 2011 (*76 FR 39777*). SJVUAPCD is scheduled to adopt amendments to Rule 4625 on December 15, 2011.

6. Rule 4682—Polystyrene, Polyethylene, and Polypropylene Products Manufacturing—proposed disapproval July 15, 2011, (*76 FR 41745*). SJVUAPCD is scheduled to adopt amendments to Rule 4682 on December 15, 2011.

7. Rule 4684—Polyester Resin Operations—final limited approval/disapproval January 26, 2010, (*75 FR 3996*). SJVUAPCD submitted amendments to EPA on August 26, 2011 and EPA approved them on November 18, 2011 (awaiting publication).

We also proposed to partially disapprove the RACT SIP because we had not yet made RACT determinations for the following three rules identified under group 4:

1. Rule 4566—Organic Material Composting Operations—adopted August 18, 2011 and submitted to EPA on November 18, 2011.

2. Rule 4694—Wine Fermentation and Storage Tanks—amendments adopted August 18, 2011 and submitted to EPA on November 18, 2011.

3. Fumigant Volatile Organic Compound Regulations—California Department of Pesticide Regulation—submitted August 2, 2011. EPA is currently reviewing the submittal.

Our proposed rule contains more information on the basis for this rulemaking and on our evaluation of the RACT SIP demonstration.

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.

Paul Cort, Earthjustice; letter dated October 11, 2011 and received October 11, 2011.

We have summarized the comments and provided responses below.

Comment #1:

Earthjustice asserts that EPA's analysis of SJVUAPCD's RACT SIP demonstration fails to satisfy Clean Air Act requirements and largely excuses the District's ''continued refusal to adopt the controls necessary to meet the ozone standards in the Valley.'' Referencing sections 172(c)(1), 182(b)(2) and 182(f) of the CAA as the provisions governing this action, Earthjustice asserts that the requirement in section 172(c)(1) is not limited to ''major sources'' and that ''[o]nly section 182 mentions the need to provide for RACT for all major stationary sources.'' Earthjustice quotes from EPA's 1992 General Preamble (57 FR 13498, 13541 (April 16, 1992)), in which EPA states that it ''recommends that a State's control technology analyses for existing stationary sources go beyond major stationary sources in the area and that States require control technology for other sources in the area that are reasonable in light of the area's attainment needs and the feasibility of such controls,'' and asserts that this language represents EPA's interpretation of the ''interplay'' of CAA sections 172(c)(1), 182(b)(2), and 182(f). Finally, Earthjustice argues that EPA's review of SJVUAPCD's RACT demonstration does not recognize ''the extreme attainment needs for the Valley'' and that ''[i]t is not possible to make the RACT demonstration for the Valley without explaining what is needed to attain the ozone standards in the Valley and using this attainment need to justify the thresholds used to accept or eliminate available control options.''

Response #1:

We disagree with Earthjustice's characterization of the CAA requirements that apply to our evaluation of the RACT SIP for SJV. As explained in our proposed rule and our August 29, 2011 Technical Support Document for our proposed action on the RACT SIP (''2011 RACT SIP TSD''), California submitted the SJV RACT SIP to meet the RACT requirements of subpart 2, part D of title I of the CAA (sections 182(b) and 182(f)), and EPA therefore evaluated the submittal in accordance with those requirements. *See* 76 FR 55842 at 55844 (September 9, 2011) and 2011 RACT SIP TSD at 2–9 and 34–35.

Prior to the 1990 Amendments to the CAA, all nonattainment areas were subject to the nonattainment planning provisions of section 172. Under section 172, the RACT requirement and the attainment demonstration are addressed in the same subsection. Specifically, section 172(c)(1) of the Act requires that the SIP for each nonattainment area ''shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for the attainment of the national primary ambient air quality standards.'' As part of the 1990 Amendments, Congress created specific nonattainment area planning requirements for ozone. In section 182(b)(2) of the Act, Congress

required States with areas classified as moderate and above to submit a RACT SIP within two years.[1] Separately, in sections 182(b)(1)(A) and (c)(2)(A), Congress required States to submit attainment demonstrations within three years for moderate areas and within four years for serious and above areas. Where these more specific planning obligations apply, we interpret them to supplant the similar, but less specific, obligations in section 172. Furthermore, because Congress expressly separated the RACT requirement from the attainment demonstration obligation, EPA has treated the RACT requirement as a technology-based requirement that is separate from the attainment demonstration obligation.[2] The RACT requirement in CAA section 182 is a control mandate that applies independent of the emission reductions needed for attainment. *See, e.g.,* EPA's Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard, 68 FR 32802 at 32837 (June 2, 2003) (explaining that ''[u]nder subpart 2, RACT requirements for ozone nonattainment areas apply independent of the emissions reductions needed to attain the standard''). However, as we have explained, Congress did not supplant the more general requirement for areas to demonstrate they have adopted ''reasonably available control measures'' (RACM) consistent with section 172(c)(1) and we have required States to address RACM as a component of the area's attainment demonstration. 57 FR 13498 at 13560 (April 16, 1992) (1992 General Preamble); *see also* 40 CFR 51.912(d) (requiring States to submit with the attainment demonstration (where required) for an ozone nonattainment area ''a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements'').

Thus, at this time, we are reviewing only the RACT demonstration submitted by the State to determine whether it meets the technology-based requirements of section 182(b)(2). Earthjustice quotes from a portion of EPA's 1992 General Preamble that discusses CAA RACT requirements, but that discussion addresses the subpart 1 RACT/RACM requirement in CAA section 172(c)(1), not the more specific RACT control mandate in CAA section 182(b)(2). *See* 57 FR 13498 at 13541 (April 16, 1992) (referencing CAA section 172(c)(1) in support of statement that RACT applies to ''existing sources''). To the extent the commenters have concerns about whether there are additional ''reasonably available'' controls that are necessary to attain the 1997 8-hour ozone standard, the State is required to address that issue in the context of the RACM analysis submitted with its attainment demonstration for that standard. In a separate action, EPA has proposed to approve the SIP submitted by California to provide for attainment of the 1997 8-hour ozone NAAQS in the SJV area (SJV 2007 Ozone Plan). *See* 76 FR 57846 at 57850–57853 (September 16, 2011). As part of that action, EPA will determine whether the SJV 2007 Ozone Plan satisfies the CAA section 172(c)(1) requirement to implement all RACT/RACM necessary for expeditious attainment of the 1997 8-hour ozone NAAQS in the SJV.

We note that our approach to evaluating the RACT SIP under CAA section 182 as a discreet SIP element is consistent with EPA's actions on RACT SIPs for the 1997 8-hour ozone NAAQS in other nonattainment areas. *See, e.g.,*73 FR 76947 (December 18, 2008) (final rule approving CAA section 182 RACT SIP for Los Angeles-South Coast, California); 73 FR 78192 (December 22, 2008) (final rule approving CAA section 182 RACT SIP for Virginia); 74 FR 18148 (April 21, 2009) (final rule approving CAA section 182 RACT SIP for Ventura County, California); and 74 FR 22837 (May 15, 2009) (final rule fully approving RACM analysis but conditionally approving CAA section 182 RACT SIP for New Jersey).

We further note that contrary to the implication of the comment, section 182 does not limit RACT to ''major sources.'' Rather, States are required to adopt RACT rules for all sources covered by a control technique guideline (CTG) and many CTGs apply to sources smaller than major sources. In addition to addressing all sources covered by a CTG, States are also required to adopt RACT rules for ''major stationary sources.'' [3]

Comment #2:

Earthjustice asserts that EPA or the District must explain why options for controlling sources beyond major sources have not been considered. Earthjustice references portions of EPA's 2011 RACT SIP TSD that discuss six specific SJVUAPCD regulations (Rules 4106, 4601, 4652, 4692, 4902, and 4905) and states that EPA cannot ''avoid RACT review'' for these rules that regulate non-major sources.

Response #2:

As provided above, the State submitted the RACT SIP to meet the requirements in section 182(b)(2) and (f), which requires VOC RACT for all sources subject to a CTG and all major VOC sources and requires NO_X RACT for all major sources of NO_X. The portions of EPA's 2011 RACT SIP TSD referenced by Earthjustice discuss six specific SJVUAPCD regulations that were not submitted to meet the CAA section 182 RACT requirement: Rule 4106 (Prescribed Burning and Hazard Reduction Burning); Rule 4601 (Architectural Coatings); Rule 4652 (Coatings and Ink Manufacturing); Rule 4692 (Commercial Charbroiling); Rule 4902 (Residential Water Heaters); and Rule 4905 (Natural Gas-Fired, Fan-Type Residential Central Furnaces). As explained in the 2011 RACT SIP TSD, these rules are not subject to the CAA section 182 RACT control mandate because they do not apply to any CTG source category or any major stationary source of VOC or NO_X. *See* 2011 RACT SIP TSD at 12–13. Therefore, evaluation of these rules is not a necessary element of our action on the RACT SIP.

In a separate action on the SJV 2007 Ozone Plan, EPA is currently evaluating whether the State and District have adopted all RACM (including RACT) necessary for expeditious attainment of the 1997 8-hour ozone standard in the Valley, as required by CAA section 172(c)(1). 76 FR 57846 at 57850–57853 (September 16, 2011). The evaluation of potentially reasonable control options for sources not subject to the RACT control mandate in CAA section 182

[1] For the 1997 8-hour ozone standard, EPA's regulations required States to submit the RACT SIP within 27 months after designation as nonattainment for the 1997 8-hour ozone standard. 40 CFR 51.912(a)(2).

[2] For example, see 40 CFR 51.918 and Memorandum dated May 10, 1995, from John S. Seitz, Director, EPA, Office of Air Quality Planning and Standards, to Air Division Directors, EPA, Regions I–X, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (explaining that certain SIP requirements related to attainment of the NAAQS may be suspended if an ozone nonattainment area subject to those requirements is in fact attaining the ozone standard but stating that this interpretation of the Act does not extend to ''requirements of subpart 2 that are not linked by the language of the Act with the attainment demonstration and RFP requirements,'' such as VOC RACT).

[3] Section 182(b)(2) of the CAA mandates that each State with an ozone nonattainment area classified as moderate or above under subpart 2 submit a SIP revision providing for the implementation of RACT with respect to three specific types of sources: (1) Each category of VOC sources in the area covered by a Control Techniques Guideline (CTG) document issued between November 15, 1990 and the date of attainment; (2) all VOC sources in the area covered by any CTG issued before November 15, 1990; and (3) all other ''major stationary sources'' of VOC located in the area. Section 182(f) provides that the requirements for major stationary sources of VOC under subpart 2 shall also apply to major stationary sources of NO_X.

belongs in the context of this broader evaluation of the 8-hour ozone attainment demonstration for the SJV area. EPA is not ''avoiding'' review for these other source categories but, rather, appropriately evaluating these additional control options as part of our separate action on the RACM and attainment demonstration under section 172(c)(1) and section 182(c)(2).

Comment #3:

Earthjustice asserts that ''EPA cannot acknowledge feasible control options that have been left out of District rules and excuse this failure without explaining why these options are not necessary for attainment.'' In particular, Earthjustice references portions of EPA's 2011 RACT SIP TSD discussing four specific SJVUAPCD regulations (Rules 4320, 4354, 4606, and 4624) and asserts that EPA has provided ''no numbers or any suggestion that it has actually evaluated the potential emission reductions achievable'' by these rules. Earthjustice also asserts that ''[c]onclusory claims that tighter controls would not provide significant emission reductions need to be supported.'' Finally, Earthjustice questions what is ''significant'' in ''an area that currently has no actual strategy for meeting the ozone standards,'' what the cumulative effect of these potential rule improvements would be, and whether emission reductions might be significant if the rules applied to non-major sources.

Response #3:

With respect to Earthjustice's assertion that EPA must consider the SJV area's attainment needs and the cumulative effect of potential rule improvements as part of our action on the RACT SIP, we disagree for the reasons provided in Response #1 above. As to Earthjustice's statement about the need to support ''[c]onclusory claims that tighter controls would not provide significant emission reductions,'' we agree generally that a RACT evaluation should include adequate support for rejection of any control option based on the cost of and amount of incremental emission reductions it would achieve.[4] We disagree, however, that either EPA's or the District's RACT analyses are ''conclusory.'' As explained in the 2011 RACT SIP TSD, our evaluation of the RACT SIP was based on multiple sources of information about potentially available control options, including: (1) The District's SIP submittals for specific rules, including public comments and the District's responses to those comments; (2) the District's RACT analysis in the April 16, 2009 RACT SIP; and (3) EPA's previous rulemaking action on each rule, including public comments and EPA's responses to those comments. Our 2011 RACT SIP TSD references each of the documents we relied upon and adequately supports our conclusions with respect to each of the District rules we evaluated as part of the RACT SIP.

In support of its challenge to EPA's evaluation of the RACT SIP, Earthjustice refers generally to statements in EPA's 2011 RACT SIP TSD identifying issues that EPA considered with respect to four specific SJVUAPCD rules (Rules 4320, 4354, 4606, and 4624). For the most part, these portions of the 2011 RACT SIP TSD summarize issues that EPA considered as part of its recent actions on these rules. *See* 2011 RACT SIP TSD at 14, 17, and 19 (referencing previous EPA rulemaking actions on Rules 4320, 4606, and 4624). However, some portions of the 2011 RACT SIP TSD referenced by Earthjustice describe additional information that EPA considered as part of its evaluation of the RACT SIP. *See* 2011 RACT SIP TSD at 15 (referencing, with respect to Rule 4354, previous EPA rulemaking action and SJVUAPCD's statements in RACT SIP demonstration). We note as a threshold matter that Earthjustice's generalized assertions fail to identify any specific deficiency in any of these rules or to provide any new information that EPA did not evaluate in our previous rulemaking actions. A commenter bears the burden of bringing to an agency's attention at least some particulars of an alleged defect in a rulemaking. *See International Fabricare Inst.* v. *EPA,* 972 F. 2d 384, 391 (DC Cir. 1992). Nonetheless, in response to these comments, we have conducted further evaluation of Rules 4320, 4354, 4606, and 4624 and discuss these evaluations below. For the reasons provided in our 2011 RACT SIP TSD, as further discussed in the previous rulemaking actions referenced therein and as further explained below, we disagree with Earthjustice's assertion that EPA has failed to explain the bases for our approvals with respect to these particular source categories.

Comment 3a (Rule 4320—Advanced Emission Reduction Options for Boilers, Steam Generators, and Process Heaters Greater than 5.0 MMBtu/hr):

Earthjustice asserts that EPA's 2011 RACT SIP TSD indicates more stringent control options for this rule are available but fails to explain why these options should not be required for all sources as RACT.

Response 3a:

We did not propose to approve Rule 4320 as satisfying RACT under CAA section 182. In the Technical Support Document for EPA's proposed action on this rule (75 FR 68294, November 5, 2010), EPA stated that section 5.3.3 of Rule 4320, which requires operators of units for which annual fees are paid to ''certify that the units meet federal RACT control measures at the time the annual fee is provided,'' is not sufficient to ensure implementation of RACT by covered sources. *See* Technical Support Document, ''San Joaquin Valley Unified Air Pollution Control District's Rule 4320, Advanced Emission Reduction Options for Boilers, Steam Generators and Process Heaters Greater than 5.0 MMbtu/hr,'' August 19, 2010 (Rule 4320 TSD).[5] EPA also noted, however, that EPA had approved Rule 4306 as satisfying RACT for this source category. *See* Rule 4320 TSD at 6 (referencing 75 FR 1715, January 13, 2010) (final rule approving Rule 4306). EPA further explained that ''[b]ecause sources have a separate obligation to comply with Rule 4306 (which does not allow payment of fees in lieu of compliance), the necessary regulatory framework is in place to ensure that RACT will be implemented for this source category'' and that ''[i]f, in the future, the District intends to rely on Rule 4320 to implement RACT, the District would need to modify Rule 4320 to delete the provision which allows sources to pay fees in lieu of compliance or otherwise ensure RACT implementation.'' Rule 4320 TSD at 6. Accordingly, we noted in our 2011 RACT SIP TSD that ''EPA approved Rule 4320 only as SIP-strengthening (not as meeting RACT) but determined that the source category covered by this rule is subject to RACT requirements under SIP-approved Rule 4306.'' 2011 RACT SIP TSD at 14.

Moreover, we disagree with the comment that EPA's 2011 RACT SIP TSD indicated more stringent control options were available under Rule 4320. EPA's 2011 RACT SIP TSD simply noted that EPA had not approved Rule 4320 as satisfying RACT requirements because of the option it provided to pay fees in lieu of compliance with control requirements. *See* 2011 RACT SIP TSD

[4] EPA explained in the preamble to the Phase 2 Ozone Rule that where the incremental emission reductions that would result from application of a particular control option are small, the costs necessary to achieve that small additional increment of reduction may not be ''reasonable.'' *See* 70 FR 71612, 71654 (November 29, 2005). In contrast, a RACT analysis for uncontrolled sources would more likely result in a conclusion that RACT level controls are economically and technically feasible. *Id.*

[5] *See also* Final rule, 76 FR 16696 (March 25, 2011) (approving Rule 4320 as SIP-strengthening but noting that the rule is not consistent with EPA guidance on economic incentive programs).

at 14. We note that the SJVUAPCD's supporting documentation for Rule 4320 did include evaluation of alternative NOx RACT requirements that the State rejected as not economically feasible (*see* SJVUAPCD, Final Draft Staff Report, Proposed Amendments to Rule 4306, Proposed Amendments to Rule 4307, and Proposed New Rule 4320 (October 16, 2008) at 11, 17, and Appendix C), and the commenter submits no substantive claims to rebut the State's conclusion. We are not, however, making any determination in this action as to the stringency of the NOx requirements in Rule 4320 given our previous conclusion that Rule 4306 adequately implements NOx RACT for this source category.

Comment 3b (Rule 4354—Glass Melting Furnaces):

Earthjustice asserts that EPA's 2011 RACT SIP TSD indicates more stringent glass melting furnace limits have been adopted in the Bay Area but fails to explain why the Bay Area's limits are not reasonable for SJV other than the fact that the Bay Area has not implemented them.

Response 3b:

EPA approved Rule 4354 (as amended September 16, 2010) on August 29, 2011 as satisfying RACT under CAA section 182. *See* 76 FR 53640. As explained in the Technical Support Document for our proposed action on this rule (76 FR 30744, June 24, 2011), our approval was based on our evaluation of several sources of information, including EPA's 1994 Alternative Control Techniques (ACT) Document for Glass Manufacturing, EPA's RACT/BACT/LAER Clearinghouse (RBLC),[6] emission limits in 40 CFR part 60 (Standards of Performance for New Stationary Sources) and part 63 (National Emission Standards for Hazardous Air Pollutants), and several analogous State/local rules. *See* Technical Support Document, ''San Joaquin Valley Unified Air Pollution Control District's Rule 4354, Glass Melting Furnaces,'' June 2011 (Rule 4354 TSD at 3). In response to Earthjustice's comment about the Bay Area Air Quality Management District's (BAAQMD's) NO_X limit for glass melting operations, however, we have further evaluated BAAQMD Regulation 9, Rule 12 (Nitrogen Oxides from Glass Melting Furnaces) and compared it to Rule 4354.

BAAQMD Regulation 9, Rule 12 contains a single NO_X limit of 5.5 lbs of NO_X per short ton of glass pulled from ''any glass melting furnace.'' *See* BAAQMD Rule 9–12–301 (as adopted January 19, 1994). The January 7, 1994 staff report for Regulation 9, Rule 12 indicates that the BAAQMD developed the NO_X limit in this rule to apply specifically to three container glass facilities in the Bay Area and does not indicate this NO_X limit was feasible for flat glass melting operations. *See* BAAQMD, ''Staff Report, Proposed Regulation 9, Rule 12, Nitrogen Oxides from Glass Melting Furnaces,'' January 7, 1994, at 1 (stating that ''[t]he proposed rule would affect three Bay Area container glass plants operating a total of five furnaces * * *''). To date, EPA is not aware of any flat glass melting facility that has operated in the Bay Area and thus been subject to the NO_X emission limit in BAAQMD Regulation 9, Rule 12 (5.5 lbs of NO_X per short ton of glass pulled). *See* email dated October 27, 2011, from Julian Elliot (BAAQMD) to Stanley Tong (EPA Region 9), RE: Glass plants in BAAQMD. We also note that container glass furnaces generally emit NO_X at lower levels compared to flat glass furnaces. *See* EPA's Compilation of Air Pollutant Emission Factors, AP–42 Fifth Edition, Volume I, Chapter 11, at Table 11.15–1 (identifying NO_X emission factors of 3.3 to 9.1 lbs of NO_X per ton of glass for container glass furnaces and emission factors of 5.6 to 10.4 lbs of NO_X/ton of glass for flat glass furnaces). Thus, we do not have information indicating that any flat glass melting furnaces are located in the Bay Area and are subject to and meeting the NO_X limit in BAAQMD Regulation 9, Rule 12.

At the time the SJVUAPCD adopted its 2009 RACT SIP demonstration (on April 16, 2009), this NO_X limit in BAAQMD Rule 9–12–301 was more stringent than the NO_X limits in SJVUAPCD Rule 4354 (as adopted August 17, 2006) for flat glass melting operations, which ranged from 7.0 to 9.2 lbs of NO_X per ton of flat glass, depending on the averaging period. On September 16, 2010, however, the SJVUAPCD adopted successive tiers of more stringent NO_X limits for flat glass melting operations, including a NO_X limit equivalent to the limit in BAAQMD's Regulation 9, Rule 12. Specifically, the revised Rule 4354 established new ''Tier 3'' NO_X emission limits, which reduced the earlier rule's Tier 2 limits of 9.2 lbs of NO_X per ton of flat glass (24-hour average) and 7.0 lbs of NO_X per ton (30-day average) to 5.5 and 5.0 lbs of NO_X per ton of flat glass, respectively, effective January 1, 2011. *See* Rule 4354 (as amended September 16, 2010), section 7.2.1.1. These amendments to Rule 4354 also provide flat glass melting facilities with an ''enhanced'' compliance option which grants them a temporary reprieve from the Tier 3 limits (*i.e.,* allowing them to continue complying with the Tier 2 limits) if the facilities comply with the more stringent ''Tier 4'' NO_X limits either by January 1, 2014 (four years earlier than the required compliance date of January 1, 2018) or by the next furnace rebuild schedule, whichever is earlier. *See* Rule 4354, section 7.2.2.3.[7] Thus, SJVUAPCD's Rule 4354, as revised September 16, 2010, now contains the same NO_X emission limit for flat glass melting facilities (effective January 1, 2011) as applied to the three container glass melting facilities in the Bay Area.[8] EPA approved these revisions to Rule 4354 into the California SIP on August 29, 2011. *See* 76 FR 53640. We believe the limited option for delayed compliance under section 7.2.2.3 of Rule 4354 is reasonable, given current uncertainty about the feasibility of a 5.5 lb/ton NO_X limit for flat glass melting furnaces, and given the requirement to meet even lower NO_X limits under the ''Tier 4 early enhanced option'' by the next furnace rebuild and no later than January 1, 2014 (see fn. 8 and accompanying text, above).

Comment 3c (Rule 4606—Wood Products and Flat Wood Paneling Products Coating Operations):

Earthjustice asserts that EPA's 2011 RACT SIP TSD indicates Rule 4606 ''includes less stringent requirements'' but fails to explain why strengthening the rule would not be reasonable.

Response 3c:

EPA approved Rule 4606 (as amended October 16, 2008) on October 15, 2009 as satisfying RACT under CAA section 182. *See* 74 FR 52894. In the Technical Support Document for our proposed action on this rule (74 FR 33399, July 13, 2009), we noted that Rule 4606 exempts refinishing, replacement and custom replica furniture operations from VOC control requirements, while the CTG for this source category (''Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations, EPA–453/R–

[6] EPA's RACT/BACT/LAER Clearinghouse is available at: *http://cfpub.epa.gov/RBLC/.*

[7] The ''Tier 4'' NO_X limits in the rule are 3.4 lbs/ton of glass (block 24-hour average) and 2.9 lbs/ton of glass (rolling 30-day average). *See* Rule 4354 (as amended September 16, 2010), section 5.1, Table 1.

[8] In the 2011 RACT SIP TSD, we stated that the District had compared its rule with BAAQMD Regulation 9 Rule 12 and ''indicate[d] that although [Bay Area's] NO_X limits are more stringent than Rule 4354 for flat glass, [Bay Area] staff verified there are no flat glass furnaces operating within the Bay Area.'' 2011 RACT SIP TSD at 16. In response to these comments, we are revising our evaluation of Rule 4354 to take into account the September 16, 2010 revisions to the rule, which strengthened its NO_X emission limits.

96–007'' April 1996 (1996 Wood Furniture CTG)) does not contain such an exemption. *See* Technical Support Document, ''San Joaquin Valley Unified Air Pollution Control District, Rule 4606, Wood Products and Flat Wood Paneling Product Coating Operations,'' June 2009 (Rule 4606 TSD), at 3–4. We also noted that a few requirements for wood coatings are more stringent in other areas. *See* Rule 4606 TSD at 4. In response to Earthjustice's comment, we have further evaluated the VOC limits in Rule 4606 and compared them to CTG recommendations and limits in other California air district regulations.

First, with respect to the exemption in Rule 4606 for refinishing, replacement and custom replica furniture operations, this is not a RACT deficiency because the only operations of this type in the SJV have combined potential VOC emissions well below the 1996 Wood Furniture CTG's applicability threshold. The 1996 Wood Furniture CTG provides recommendations for control of VOC emissions from wood furniture coating and cleaning operations located at a manufacturing site. *See* 1996 Wood Furniture CTG at 1–2, 7–3 and Appendix B at B–1 and B–2. The guidance applies to affected sources in extreme ozone nonattainment areas that potentially emit at least 10 tons per year (tpy) of VOC. *Id.* at 7–4. Rule 4606 exempts refinishing, replacement, and custom replica furniture operations from VOC control requirements, but only two such facilities operate in the SJV area and their combined VOC emissions are well below 10 tons per year. *See* Rule 4606 TSD at 4.[9] Because VOC emissions from these facilities are well below the major source and CTG applicability threshold of 10 tpy, section 182 RACT does not apply to these two facilities. We agree, however, that additional VOC reductions could be achieved from wood refinishing, replacement and custom replica furniture operations in the SJV and recommended that SJVUAPCD consider adopting limits for these operations in the next revision of Rule 4606. *See* Rule 4606 TSD at 4.

Second, as to the statement in the Rule 4606 TSD that some requirements in other areas are more stringent than Rule 4606, we have reviewed several other California air district rules and do not have sufficient information to conclude that more stringent controls for this source category are reasonably available for implementation in the SJV. *Id.* According to SJVUAPCD's final staff report for Rule 4606, Ventura County APCD (VCAPCD) has a VOC limit for sanding sealers of 240 grams/liter (*see* VCAPCD Rule 74.30 as amended June 27, 2006, section B.1), which is lower than the limit of 275 grams/liter in SJVUAPCD's Rule 4606 (*see* SJVUAPCD Rule 4606 section, 5.1), and San Diego APCD (SDAPCD) has two rules containing a VOC limit for surface preparation and paint stripping operations of 200 grams/liter (*see* SDAPCD Rules 67.11 and 67.11.1, as adopted September 25, 2002, sections (d)(5) and (d)(3), respectively), which is lower than the limit of 350 grams/liter in SJVUAPCD's Rule 4606 (*see* SJVUAPCD Rule 4606, section 5.1). *See* SJVUAPCD, Final Staff Report, ''Proposed Amendments to: Rule 4603 (Surface Coating of Metal Parts and Products), Rule 4606 (Wood Products Coating Operations), October 16, 2008, Appendix A at A–2 and A–3. On further investigation, it is not clear that the VOC limits for these wood coating categories in the Ventura and San Diego rules are actually achievable by the application of reasonably available controls. The VOC limits in SJVUAPCD Rule 4606 are equivalent to analogous requirements in several other California regulations that we have evaluated (*see, e.g.,* SCAQMD Rule 1136 (as amended June 14, 1996), BAAQMD Regulation 8, Rule 32 (as amended August 5, 2009), and Sacramento Metropolitan AQMD (SMAQMD) Rule 463 (as amended September 25, 2008)), and Earthjustice has provided no information to support a conclusion that the SJVUAPCD has failed to adequately evaluate additional controls for wood coating operations that are reasonably available.

Specifically, according to staff at the VCAPCD, the 240 grams/liter limit for wood sealers in VCAPCD Rule 74.30 was based on a prior version of SCAQMD Rule 1136 from the mid-1990s. *See* email dated October 31, 2011, from Stan Cowen (VCAPCD) to Stanley Tong (EPA Region 9), RE: Wood Coating Rule 74.30. In 1996, however, SCAQMD amended Rule 1136 to increase the sealer limit from 240 grams/liter up to 275 grams/liter and extended the compliance date from 1996 to 2005. *See* SCAQMD Rule 1136 (as amended June 14, 1996), at section (c)(1)(A)(i). EPA approved these revisions to SCAQMD Rule 1136 into the California SIP on August 18, 1998 (63 FR 44132). The VOC limit in SJVUAPCD's Rule 4606 for wood sealers (275 g/l) is equivalent to the limits in SCAQMD Rule 1136 (as amended June 14, 1996), and several other California ozone nonattainment areas have also adopted VOC limits of 275 grams/liter or higher for these types of wood coatings. *See, e.g.,* BAAQMD Regulation 8, Rule 32 (as amended August 5, 2009) at section 8–32–302 and Sacramento SMAQMD Rule 463 (as amended September 25, 2008) at section 302. Although VCAPCD's Rule 74.30 continues to require a VOC limit of 240 grams/liter for wood sealers, this is the only regulation we know of that contains a limit this low, and we do not have information indicating that wood sealers can generally meet a 240 grams/liter limit by the application of reasonably available controls.[10] Given at least one district has adopted a limit of 240 grams/liter and at least one large manufacturer sells wood sealers that apparently can meet a 240 grams/liter limit, we encourage the SJVUAPCD to reevaluate Rule 4606 at the next opportunity to ensure that it requires all controls for wood sealers that are reasonably available for implementation in the SJV. At this time, however, we believe the limits in Rule 4606 for wood sealers meet RACT under CAA section 182 for the 1997 8-hour ozone standard.

Similarly, the VOC limit in SJVUAPCD's Rule 4606 for paint strippers (350 g/l) is equivalent to or more stringent than the limits for this category of wood coatings in most other California nonattainment areas. *See, e.g.,* SCAQMD Rule 1136 (as amended June 14, 1996), at section (c)(1)(B); SMAQMD Rule 463 (as amended September 25, 2008), at section 304; VCAPCD Rule 74–30 (as amended June 27, 2006), at section B.3. The only California district rules we know of that contain lower limits for paint strippers are SDAPCD's Rule 67.11 (''Wood Products Coating Operations'') and Rule 67.11.1 (''Large Coating Operations for Wood Products''), both of which prohibit the use of VOC containing

[9] The combined VOC emissions from these two facilities amount to approximately 1 ton per year. *See* SJV RACT SIP at 4–210.

[10] EPA contacted two manufacturers that sell wood sealers in California and learned that only one of them, Sherwin Williams, makes a water-based sealer that meets a 240 grams/liter limit. *See* email dated November 3, 2011, from Matt Collins (The Sherwin-Williams Company) to Stanley Tong (EPA Region 9), RE: Sher-Wood Q&A, and email dated November 3, 2011 from Robert Wendoll (Dunn-Edwards Corporation) to Stanley Tong (EPA Region 9), RE: Does Dunn-Edwards make sanding sealers—240 g/l? Information from Sherwin-Williams indicates that the performance of this wood sealer may depend upon the use of its complete ''wood finishing system.'' *See* Sherwin Williams, Chemical Coatings, ''CC–F46: SHER–WOOD® KEM AQUA® Lacquer Sanding Sealer'' (stating that ''[d]ue to the wide variety of substrates, surface preparation methods, application methods, and environments, the customer should test the complete [wood finishing] system for adhesion and compatibility prior to full scale application''), available at *http://www.paintdocs.com/webmsds/webPDF.jsp?SITEID=STORECAT&prodno=035777432143&doctype=PDS&lang=E).*

materials for surface preparation or stripping unless at least one of the following conditions is met: (1) The material contains 200 grams/liter or less of VOC per liter of material, (2) the material has an initial boiling point of 190 °C (374 °F or greater), or (3) the total VOC vapor pressure of the material is 20 mm Hg or less at 20 °C (68 °F). *See* SDAPCD Rule 67.11 at section (d)(5) and Rule 67.11.1 at section (d)(3).[11] Thus, although both of these rules contain a VOC limit of 200 grams/liter for paint strippers, this limit is only one of three different compliance options and it is not clear that facilities in the San Diego area have actually achieved the 200 grams/liter VOC limit. We do not have information indicating that paint strippers can generally meet a 200 grams/liter limit by the application of reasonably available controls and Earthjustice has not provided any information to support such a conclusion.

Based on this evaluation, we conclude that SJVUAPCD Rule 4606 satisfies RACT under CAA section 182 for the 1997 8-hour ozone standard. As discussed above, however, we recommend that the SJVUAPCD consider revisiting the wood sealer limit and adding VOC limits for refinishing, replacement, and custom replica furniture operations the next time Rule 4606 is amended.

Comment 3d (Rule 4624—Transfer of Organic Liquid):

Earthjustice states that EPA's 2011 RACT SIP TSD indicates more stringent limits exist for organic liquid loading activities but fails to explain why these limits are not reasonable for Rule 4624.

Response 3d:

Our 2011 RACT SIP TSD stated that the emission limit in Rule 4624 (0.08 lbs of VOC per 1,000 gallons of liquid transferred) is consistent with the VOC limits in other districts' regulations, which range from 0.05 to 0.84 lbs of VOC per 1,000 gallons of gasoline. *See* 2011 RACT SIP TSD at 19; *see also* SJVUAPCD Rule 4624 (as amended December 20, 2007) at section 5.0; SCAQMD Rule 1142 (as adopted July 19, 1991) at section (c)(1)(B); and VCAPCD Rule 70 (as amended April 1, 2009) at section C.1. We also stated that the South Coast AQMD provides the option of either meeting a limit of 0.05 lb VOC per 1,000 gallons [12] or reducing VOC emissions by 95 percent weight from uncontrolled conditions. *See* 2011 RACT SIP TSD at 19. In response to the comment, we are clarifying that this statement was in reference to SCAQMD Rule 1142, ''Marine Tank Vessel Operations,'' which applies to all ''loading, lightering, ballasting, and housekeeping events where a marine tank vessel is filled with an organic liquid,'' or ''where a liquid is placed into a marine tank vessel's cargo tanks which had previously held organic liquid.'' *See* SCAQMD Rule 1142 (as adopted July 19, 1991), section (a). SCAQMD Rule 1142 prohibits loading, lightering, ballasting, or housekeeping events in South Coast Waters unless the owner or operator of the marine tank vessel either limits VOC emissions to 5.7 grams per cubic meter (2 lbs per 1,000 barrels, which is approximately equivalent to 0.05 lbs/1000 gallons) of liquid loaded into a marine tank vessel or reduces VOC emissions by at least 95 percent by weight from uncontrolled conditions. *Id.* at section (c). This VOC limit applies only to liquid loading or unloading operations on a marine tank vessel, which the rule defines as ''any tugboat, tanker, freighter, passenger ship, barge, boat, ship, or watercraft, which is specifically constructed or converted to carry liquid cargo in tanks.'' *Id.* at section (b). The rule does not apply to liquid loading or unloading operations at facilities onshore. The SCAQMD has a separate rule that limits VOC emissions from organic liquid loading or unloading operations at facilities onshore (Rule 462 Organic Liquid Loading), which contains the same VOC limit as SJVUAPCD Rule 4624, 0.08 lb or less per 1,000 gallons of liquid transferred. *See* SCAQMD Rule 462 (as amended May 14, 1999), section (d); *see also* Antelope Valley AQMD Rule 462 Organic Liquid Loading (as amended June 9, 1995), section (d)(1)(D) and Kern County APCD Rule 413 Organic Liquid Loading (as amended March 7, 1996), section (IV.A).

We also contacted SJVUAPCD staff to determine whether marine loading operations occur within the SJV and found that liquid transfers of ammonia, urea-ammonium nitrate, ammonia based fertilizers, molasses, and palm oil have occurred at or near the port of Stockton. Since there is no CTG for marine loading operations and we have no information indicating that emissions from the transfer of these liquids reach 10 tons per year of VOC or NO_x,[13] we believe it is reasonable to conclude that section 182 RACT does not apply to these operations. The SCAQMD marine loading rule is designed to control emissions of gasoline, aviation fuels, crude oils and other liquids containing volatile organic compounds. As explained above, SJVUAPCD's Rule 4624, which regulates VOC emissions from the transfer of organic liquids at onshore facilities, is equivalent to analogous rules in other California districts, and Earthjustice does not identify any additional control option for this source category that the District has failed to adequately evaluate.

Comment #4:

Earthjustice asserts that SJVUAPCD applies ''invalid economic tests for determining what rules are and are not reasonable'' and rejects controls ''not based solely on the cost-effectiveness of controls but based on an overly simplistic ratio of costs to profits for the industry,'' referred to as the '''10 percent of profits' test, to determine whether controls are economically feasible.'' Earthjustice asserts that this 10-percent-of-profits test ''has no connection to whether an industry is actually capable of bearing the costs of control, let alone whether the control should be considered cost-effective on a dollars per ton of emission reduction basis.'' Referencing their own comments on the Open Burning Rule and Confined Animal Facilities Rule as examples, Earthjustice asserts that the District ''discards technologically feasible control measures based on its illegal test of economic feasibility.'' Earthjustice also references EPA policy in support of its statement that EPA presumes it is reasonable for similar sources to bear similar costs of emission reductions and that capital costs, annualized costs, and cost effectiveness should be determined for all technologically feasible emission reduction options (quoting 57 FR 18070, 18074, April 28, 1992). Earthjustice further argues that EPA ''reiterates the proper test for economic feasibility * * * but then fails to explain how the District has complied with this interpretation of the statute.'' Finally, Earthjustice states that ''[u]ntil this failure has been corrected, EPA cannot reasonably conclude that the District's rules satisfy RACT because EPA cannot reasonably claim that all technologically and economically feasible controls have been adopted by the District.''

Response #4:

We agree generally that an economic feasibility analysis based on the use of the SJVUAPCD's ''10 percent of profits''

[11] EPA approved SDAPCD Rule 67.11.1 into the California SIP on June 5, 2003. *See* 68 FR 33635. Rule 67.11 is not SIP-approved.

[12] SCAQMD Rule 1142 (Marine Tank Vessel Operations) VOC limit is 2 lbs per 1,000 barrels, which is equivalent to approximately 0.05 lb per 1,000 gallons (assuming 1 barrel = 42 gallons).

[13] Ammonia and ammonium nitrate are not VOCs (40 CFR 51.100(s)), molasses is highly viscous and Palm Oil is a semi-solid at room temperature. Several Materials Safety Data Sheets for Palm Oil list its vapor pressure as: ''not applicable'', ''N/A'' and ''none listed.'' *See, e.g., http://www.sciencelab.com/msds.php?msdsId=9926383.*

test is not a sufficient basis for rejecting a control option from consideration as RACT under CAA section 182. As explained in the 2011 RACT SIP TSD, EPA's long-standing guidance on RACT [14] states that the cost of using a control measure is considered reasonable if those same costs are borne by other comparable facilities. *See* 2011 RACT SIP TSD at 11 (citing 59 FR 41998 at 42009 (August 16, 1994) and 57 FR 18070 at 18074 (April 28, 1992)). Earthjustice correctly notes that economic feasibility is largely determined by evidence that other sources in a source category have in fact applied the control technology in question and may also be based on cost effectiveness (*i.e.,* calculation of the cost per amount of emission reduction in $/ton). *Id.* We therefore do not endorse the District's use of a ''10 percent of the industry's profit'' test for evaluating the economic feasibility of an available control option for purposes of a RACT analysis.

We disagree, however, with Earthjustice's assertions that the District has ''discard[ed] technologically feasible control measures based on its illegal test of economic feasibility'' and that EPA has failed to explain how the District's analyses are consistent with EPA's interpretation of the CAA's RACT requirement.

In numerous guidance documents EPA has stated that several different factors, including cost effectiveness, may be considered in evaluating the economic feasibility of an available control option. *See, e.g.,* 57 FR at 18074 (''[t]he capital costs, annualized costs, *and* cost effectiveness of an emission reduction technology should be considered in determining its economic feasibility'') (emphasis added); 57 FR 55620 at 55625 (November 25, 1992) (''NO_X Supplement to General Preamble'') (''comparability'' of a NO_X RACT control level ''shall be determined on the basis of several factors including, for example, cost, cost-effectiveness, and emission reductions''); 59 FR 41998 at 42013 (August 16, 1994) (''PM–10 Addendum to General Preamble'') (''capital costs, annualized costs, and cost effectiveness of an emission reduction technology should be considered in determining its economic feasibility''). EPA has also consistently stated that States may justify rejection of certain control measures as not ''reasonably available'' based on the technical and economic circumstances of the particular sources being regulated. *See* 2011 RACT SIP TSD at 11, 12 (referencing, *inter alia,* 44 FR 53761 (September 17, 1979)).

As we explained in the 2011 RACT SIP TSD and further in the individual TSDs associated with EPA's previous actions on the District's rules, the District generally considered multiple sources of information about the costs of available control options, including information from manufacturers, vendors, stakeholders, and other air districts (*see* Rule 4308—Final Draft Staff Report, Revised Proposed Rule 4308 (Boilers, Steam Generators, and Process Heaters—0.075 MMBtu/hr to 2.0 MMBtu/hr), October 20, 2005 Appendix C at C–3); technical reports, CTGs, US Economic Census and Internal Revenue Service data (*see* Rule 4607—Final Draft Staff Report, Revised Proposed Amendments to Rule 4607 (Graphic Arts and Paper, Film, Foil and Fabric Coatings), December 18, 2008, Appendix C at C–3, and Appendix D at D–8); and annualized costs of control options, California State oil and gas production reports, and Dun and Bradstreet profits (*see* Rule 4703—Final Staff Report Amendments to Rule 4703 (Stationary Gas Turbines), September 20, 2007, Appendix C at C–4 and Appendix D at D–8). Given EPA's long-standing position that States may justify rejection of certain control measures as not ''reasonably available'' based on the technical and economic circumstances of the particular sources being regulated, it is appropriate for the District to consider multiple sources of information about the costs of potential control options to determine if they are economically feasible with respect to sources located within the SJV.

EPA has reviewed the District's technical and economic analyses as well as supplemental information for each of the RACT rules that we have categorized under groups 1 and 2.[15] Based on these evaluations, we conclude that additional or more stringent controls are not reasonably available for implementation in the SJV area. *See* TSD at 13–32. For example, with respect to those crop categories subject to Rule 4103 (Open Burning) for which the District concluded that alternatives to burning were not economically feasible (*e.g.,* citrus orchard material), EPA considered several indicators of technical and economic feasibility, such as other State/local open burning prohibitions and information indicating current uncertainty about the feasibility of sending citrus orchard removal material to biomass facilities. *See* Final Rule, ''Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD),'' signed September 30, 2011, at Response #2 (pre-publication notice); *see also* Technical Support Document, SJVUAPCD Rule 4103, Open Burning, June 2011, at fn. 14. These evaluations adequately support our conclusion that additional burn prohibitions under Rule 4103 are not reasonably available for implementation in the SJV at this time. Similarly, for those ''Class Two mitigation measures'' that the SJVUAPCD did not adopt in its October 2010 revisions to Rule 4570 (Confined Animal Facilities), the District evaluated the cost effectiveness of the rejected VOC control systems (*e.g.,* venting emissions from livestock barns to biofilters, replacing naturally ventilated poultry housing with mechanically ventilated housing) by calculating the annual capital costs, annual operating costs, and emissions reductions associated with each control option. *See* Technical Support Document, SJVUAPCD Rule 4570, Confined Animal Facilities, August 2011, at 7–8 and Final Rule, signed December 13, 2011 (pre-publication notice); *see also* Final Draft Staff Report, Amended Revised Proposed Amendments to Rule 4570 (Confined Animal Facilities), October 21, 2010, Appendices C and E. These evaluations also adequately support our conclusion that additional VOC controls under Rule 4570 are not reasonably available for implementation in the SJV at this time.

Thus, without endorsing the use of a ''10 percent of profits'' test for economic feasibility, we find that analyses supporting the District's RACT demonstration for the rules in groups 1 and 2 adequately considered other appropriate factors, such as costs of control borne by comparable sources in other nonattainment areas and cost-effectiveness (*i.e.,* the cost per amount of emission reduction in $/ton).

Comment #5:

Earthjustice argues that in preparing a RACT SIP analysis, ''the District must not only use the correct metric (*i.e.,* cost-effectiveness rather than affordability) but must also justify the cutoff applied,'' and that neither EPA nor the District purport to do this. Earthjustice also asserts that ''what is

[14] EPA has defined RACT as ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' *See* 44 FR 53762 (September 17, 1979).

[15] We note that Earthjustice's comments refer to just two specific rules as examples in which the District applied the 10 percent of profits test—Rule 4103, ''Agricultural Burning,'' and Rule 4570 ''Confined Animal Feeding Operations.'' We note further that Earthjustice did not comment on this issue on EPA's most recent proposal to approve revisions to Rule 4570. *See,* 76 FR 56706 (September 14, 2011).

considered too costly for one area may not be for another because the attainment needs of the areas are different,'' and that ''what should be considered economically feasible in the Valley may represent a more aggressive control option than what would be required elsewhere.''

Response #5:

First, we disagree with Earthjustice's assertion that neither EPA nor the District have used the correct metrics for economic feasibility. *See* Response #4 above. Second, as to Earthjustice's argument about the threshold (''cutoff'') applied to the analysis supporting the RACT SIP, it is not clear what specific ''cutoff'' the commenter intended to refer to. To the extent Earthjustice intended to argue that the District should establish and justify a consistent cost-effectiveness threshold for determining the economic feasibility of potential RACT measures, we disagree. Neither EPA nor the District has established such a generalized cost-effectiveness threshold for RACT purposes. Consistent with EPA policy, as discussed in Response #4, the District considers multiple factors in determining the economic feasibility of specific control options, such as cost effectiveness, the ratio of control costs to industry profits, control requirements in other nonattainment areas, and employment impacts. Thus, depending on the specific circumstances of the source category at issue and the control costs borne by comparable sources elsewhere, the District's selected cost-effectiveness ''cutoff'' can vary (*e.g.,* industries dominated by large highly profitable operators may be subject to more expensive control requirements than less profitable sources). As discussed above, we believe the District's economic feasibility analyses with respect to the source categories identified in group 1 and group 2 of our 2011 RACT SIP TSD were adequate.

Finally, as to the assertion that an economic feasibility analysis for sources in the SJV area may need to be more aggressive than elsewhere in light of the attainment needs, such analysis would need to be made for purposes of the RACM analysis under CAA section 172(c)(1), which is a component of the attainment demonstration. *See* Response #1 above.

III. Final Action and CAA Consequences

A. Final Action

Since our September 9, 2011 proposal, we have approved the following SJVUAPCD rules as satisfying RACT under CAA section 182.

Rule	Title	Amended	Approved
4103	Open Burning	4/15/10	Signed 9/30/11.
4311	Flares	6/18/09	11/3/11, 76 FR 68106.
4401	Steam Enhanced Crude Oil Production Wells	6/16/11	11/16/11, 76 FR 70886.
4565	Biosolids, Animal Manure, and Poultry Litter Operations	3/15/07	Signed 12/13/11.
4570	Confined Animal Facilities	10/21/10	Signed 12/13/11.
4603	Surface Coating of Metal Parts and Products, Plastic Parts and Products, and Pleasure Craft.	9/17/09	11/1/11, 76 FR 67369.
4605	Aerospace Assembly and Component Coating Operations	6/16/11	11/16/11, 76 FR 70886.
4684	Polyester Resin Operations	8/18/11	Signed 11/18/11.

For the reasons provided in our September 9, 2011 proposed rule and further explained above in response to comments, EPA is partially approving under CAA section 110(k)(3) SJVUAPCD's RACT demonstration adopted on April 16, 2009, based on our conclusion that it satisfies the requirements of CAA sections 182(b)(2) and (f) for the 1997 8-hour ozone NAAQS except as provided below.

Simultaneously under CAA section 110(k)(3), EPA is partially disapproving the RACT SIP based on our conclusion that the SJVUAPCD has not demonstrated that the following rules satisfy RACT under CAA sections 182(b)(2) and (f) for the 1997 8-hour ozone standard.

1. Rule 4352—Solid Fuel Fired Boilers, Steam Generators, and Process Heaters.
2. Rule 4402—Crude Oil Production Sumps.
3. Rule 4625—Wastewater Separators.
4. Rule 4682—Polystyrene, Polyethylene, and Polypropylene Products Manufacturing.

Additionally, EPA is partially disapproving the RACT SIP with respect to the following rules, which we have not yet approved as satisfying RACT under CAA sections 182(b)(2) and (f) for the 1997 8-hour ozone standard.

1. Rule 4566—Organic Material Composting Operations.
2. Rule 4694—Wine Fermentation and Storage Tanks.
3. Fumigant Volatile Organic Compound Regulations—California Department of Pesticide Regulation.

B. CAA Consequences of Final Partial Disapproval

EPA is committed to working with the District and CARB to resolve the identified RACT deficiencies. We note that SJVUAPCD will not be required to submit a revised CAA section 182 RACT SIP demonstration for the 1997 8-hour ozone NAAQS if each of the rule revisions required by this action is accompanied by adequate supporting analyses demonstrating that the rule satisfies current RACT requirements and EPA fully approves it into the SIP.

However, because we are finalizing a partial disapproval of the RACT SIP, the offset sanction in CAA section 179(b)(2) will apply in the SJV ozone nonattainment area 18 months after the effective date of today's final disapproval. The highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Neither sanction will be imposed under the CAA if California submits and we approve prior to the implementation of sanctions, SIP revisions that correct the RACT deficiencies in the individual rules identified in our proposed action. In addition to the sanctions, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan (FIP) addressing the deficient RACT elements in the individual rules two years after March 12, 2012, the effective date of this rule, if we have not approved a SIP revision correcting the deficiencies within two years. EPA previously found that the State had failed to submit a plan revision for SJV addressing the CAA section 182 RACT requirements for the 1-hour ozone standard, starting a FIP clock that expired on January 21, 2011. *See* 74 FR 3442 (January 21, 2009).

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 partial approvals/partial 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 partial approval/partial 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 partial approval/partial 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. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely approves certain State regulations for inclusion into the SIP under the CAA section 110 and subchapter I, part D and disapproves others, and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

K. 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 March 12, 2012.

L. 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 12, 2012. 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, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 15, 2011.

Jared Blumenfeld,

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)(407) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(407) A plan was submitted on June 18, 2009 by the Governor's designee.

(i) [Reserved]

(ii) Additional Material.

(A) San Joaquin Valley Air Pollution Control District.

(*1*) Reasonably Available Control Technology (RACT) Demonstration for Ozone State Implementation Plan (SIP), adopted April 16, 2009.

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[FR Doc. 2012–139 Filed 1–9–12; 8:45 am]

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