

In summary, EPA finds that the California State Plan meets the requirements applicable to such plans in 40 CFR part 60, subparts B and Cb.

*B. Does the Plan Meet the Evaluation Criteria?*

We believe the Plan is consistent with the relevant policy and guidance regarding approval of CAA section 111(d)/129 State plans. The TSD describes in detail the discrepancies between the Plan and the EG regarding waivers, floating compliance dates, and testing requirements. EPA has determined that these discrepancies in the submitted Plan have limited impact because of the following reasons:

1. *Waivers:* The underlying federal conditions in the EG and Federal Plan will continue to apply in the case of waivers. EPA cannot delegate to districts the ability to approve waivers of load and temperature limits that are not in accordance with the purposes specified in 60.53b(b) and (c). Waivers of operator training course requirements must be approved by EPA, and as of this date, EPA Region 9 has not received any such requests.

2. *Floating compliance dates:* The final dates of compliance for the Stanislaus facility, as contained in the Federal Plan, have already passed and thus the facility should already be in compliance. Approval of the State Plan will not extend the compliance dates contained in the Federal Plan. The facility is subject to the Federal Plan until the State Plan approval becomes effective.

3. *Testing requirements:* The Stanislaus permit does contain the appropriate requirements for source testing, but it does not cite to the EG for these provisions. The permit contains language that is potentially confusing regarding federal enforceability of certain conditions. After a State incorporates a requirement in the State Plan and the State Plan is approved by EPA, the State requirement becomes federally enforceable.

*C. EPA Recommendations To Further Improve the Plan*

The TSD describes additional revisions that do not affect EPA's current action but are recommended for the next time the local agencies modify the facility permits.

*D. Proposed Action*

Based on the rationale discussed above and in further detail in the TSD, EPA is proposing approval of the State of California section 111(d)/129 plan for the control of emissions from existing large MWC units. Until the State Plan

receives final approval, the sources covered by this plan will remain subject to the Federal Plan. The compliance schedules contained in the Federal Plan (40 CFR part 62, subpart FFF) will continue to apply to the Stanislaus Resource Recovery Facility. As provided by 40 CFR 60.28(c), any revisions to the California State Plan will not be considered part of the applicable plan until submitted by CARB in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B. We will accept comments from the public on this proposal for the next 30 days. Unless we receive significant new information during the comment period, we intend to publish a final approval action that will make the State Plan requirements federally enforceable.

**IV. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State plan implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State plan submission, to use VCS in place of a State plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

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

Dated: February 19, 2003.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*  
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