

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*B. Submission to Congress and the Comptroller General*

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for Hershey Chocolate USA and Pennsylvania Power Company, New Castle Plant.

*C. 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 August 26, 2002. 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 approving the Commonwealth's source-specific RACT requirements to control VOC and NO<sub>x</sub> from Hershey Chocolate USA and Pennsylvania Power Company, New Castle Plant, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 3, 2002.  
**Thomas C. Voltaggio,**  
*Acting Regional Administrator, Region III.*  
 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 NN—Pennsylvania**

2. Section 52.2020 is amended by adding paragraph (c)(194) to read as follows:

**§ 52.2020 Identification of plan.**

\* \* \* \* \*  
 (c) \* \* \*  
 (194) Revisions pertaining to VOC and NO<sub>x</sub> RACT determinations for a major source submitted by the Pennsylvania Department of Environmental Protection on December 21, 2001.

- (i) Incorporation by reference.
  - (A) A letter submitted on December 21, 2001 by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and NO<sub>x</sub> RACT determinations.
  - (B) Operating permit (OP) :
    - (1) Hershey Chocolate USA, Dauphin County, 22–02004A, effective January 24, 2000.
    - (2) Pennsylvania Power Company, Lawrence County, New Castle Plant, OP 37–0023, effective April 8, 1999.
  - (ii) Additional Material—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the source listed in paragraph (c)(194)(i)(B) of this section.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA247–0352; FRL–7227–2]

**Revisions to the California State Implementation Plan, South Coast Air Quality Management District**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval and limited disapproval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on February 25, 2002 and concerns volatile organic compound (VOC) emissions from food product manufacturing and processing operations. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule regulating these emission sources and directs California to correct rule deficiencies.

**EFFECTIVE DATE:** This rule is effective on July 26, 2002.

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

- Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901;
- Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460;
- California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and,
- South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

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

**I. Proposed Action**

On February 25, 2002 (67 FR 8493), EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD .....	1131	Food Product Manufacturing and Processing Operations .....	09/15/00	05/08/01

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. Rule 1131's subsection (c)(1)(C) allows for an alternative compliance plan subject to review by the Executive Officer without specifying the criteria and emission estimation protocols for determining compliance. This deficiency is inconsistent with the CAA Section 110(a) requirement that rules be federally enforceable.

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

## II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments concerning our proposed action on Rule 1131.

## 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 SCAQMD, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

## IV. Administrative Requirements

### A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

### B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

### C. Executive Order 13132

Executive Order 13132, entitled 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 acts on 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.

### D. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 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." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

### E. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed. Reg. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

### F. 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 final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and

subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, 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).

G. *Unfunded Mandates*

Under section 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 private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on 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.

H. *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.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. *Submission to Congress and the Comptroller General*

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 rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. *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 August 26, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping

requirements, Volatile organic compounds.

Dated: May 22, 2002.

Keith Takata,

Associate Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(284)(i)(B)(5) to read as follows:

§ 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(284) \* \* \*

(i) \* \* \*

(B) \* \* \*

(5) Rule 1131 adopted on September 15, 2000.

\* \* \* \* \*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket ID-15-6995a; FRL-7232-1]

Approval and Promulgation of Sandpoint, Idaho, Air Quality Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the Governor's designee for the Sandpoint nonattainment area in the State of Idaho.

Sandpoint was classified as nonattainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10) pursuant to the Clean Air Act Amendments of 1990. As a result, Idaho was required to submit a plan for bringing the area into attainment. This action approves the plan for Sandpoint submitted on August 16, 1996.

DATES: This direct final rule will be effective August 26, 2002, unless EPA receives adverse comment by July 26,