PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.370 is amended by revising paragraph (b)(1) to read as follows:

§ 173.370 Peroxyacids.

* * * * *

(b)(1) The additive is used as an antimicrobial agent on meat carcasses, parts, trim, and organs in accordance with current industry practice where the maximum concentration of peroxyacids is 220 parts per million (ppm) as peroxyacetic acid, and the maximum concentration of hydrogen peroxide is 75 ppm.

* * * * *

Dated: September 18, 2002.

L. Robert Lake,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–25078 Filed 10–1–02; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–084–FON; FRL–7387–9]

Finding of Failure To Submit State Implementation Plan Revisions for Ozone (1-Hour Standard), California—San Joaquin Valley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to find that California failed to submit state implementation plan (SIP) revisions required under the Clean Air Act (CAA or Act) for the severe San Joaquin Valley Ozone Nonattainment Area (the San Joaquin Valley or the Valley). The required revisions are an attainment demonstration, a reasonable further progress demonstration, a reasonably available control technology (RACT) rule for lime kilns, an inventory and contingency measures. California was required to submit these revisions by May 31, 2002.

This action triggers the 18-month clock for mandatory application of sanctions and 2-year clock for a Federal implementation plan (FIP) under the Act. This action is consistent with the CAA mechanism for assuring SIP submissions.

EFFECTIVE DATE: This action was effective as of September 18, 2002.

FOR FURTHER INFORMATION CONTACT: Doris Lo, U. S. Environmental Protection Agency, Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 972–3959; *lo.doris@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The San Joaquin Valley Ozone Nonattainment Area includes the following counties in California's central valley: San Joaquin, part of Kern,[1] Fresno, Kings, Madera, Merced, Stanislaus and Tulare.

When the CAA was amended in 1990, each area of the Country that was designated nonattainment for the 1-hour ozone standard, including the San Joaquin Valley, was classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe'' or ''extreme'' depending on the severity of the area's air quality problem. CAA sections 107(d)(1)(C) and 181(a). Each of these CAA classifications has different requirements, with the most stringent requirements for ''extreme'' areas. Based on its air quality during the 1987–1989 period, the San Joaquin Valley nonattainment area was initially classified as serious with an attainment date of no later than November 15, 1999. *See* 56 FR 56694 (November 6, 1991) and CAA section 181(a)(1).

On June 19, 2000, EPA proposed to find that the San Joaquin Valley had failed to attain the 1-hour ozone national ambient air quality standards (NAAQS) by the serious area attainment date of November 15, 1999. 65 FR 37926. A final finding of failure to attain was published on October 23, 2001 (66 FR 56476) and the Valley was thus reclassified by operation of law as a severe ozone nonattainment area (effective December 10, 2001). Along with the severe classification, the Valley became subject to new planning requirements under section 182(d) of the CAA. Under section 182(d), severe area plans must meet the requirements for serious area plans in addition to those for severe areas. Moreover, the severe area plan revisions for the area must also meet the more general nonattainment provisions of section 172(c). In its final reclassification action, EPA set May 31, 2002 as the due date for submittal of plan revisions addressing these requirements. 66 FR 56481.

On June 18 and August 6, 2002, California submitted plan revisions addressing several of the severe area requirements for the San Joaquin Valley (revised title V operating permit and new source review programs to address the new lower 25 ton per year major source cutoff for volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) and the offset ratio of 1.3:1; rule requiring fees for major sources should the area fail to attain by 2005; and RACT rules for most sources subject to the lower major source applicability threshold). Furthermore, on September 6, 2002, California submitted San Joaquin Valley Air Pollution Control District commitments to adopt new and revised control measures.

II. Final Action

A. Finding of Failure To Submit Required SIP Revisions

While California's submittals address several of the severe area requirements for the San Joaquin Valley and help ensure progress towards clean air, there are still requirements which have not been addressed. Specifically, the State has not submitted a demonstration of attainment of the ozone NAAQS by no later than 2005 (sections 181(a) and 182(c)(2)(A)), a demonstration (known as reasonable further progress or rate of progress) of creditable emission reductions of ozone precursors of at least 3% per year until the attainment year (section 182(c)(2)(B)), a RACT rule for lime kilns addressing the 25 ton per year major source cutoff (section 182(b)(2)(C)), an inventory (section 172(c)(3)) and contingency measures (section 172(c)(9)). Thus, EPA is today making a finding of failure to submit SIP revisions addressing these CAA required elements.

If California does not submit the required plan revisions within 18 months of the effective date of today's rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made a complete submittal 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31.[2] The 18-month clock will

[1] *See* 66 FR 56476 (November 8, 2001)(boundary change for the San Joaquin Valley establishing the eastern portion of Kern County as its own nonattainment area).

[2] In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: The offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate

stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete submittal addressing these severe area ozone requirements for the San Joaquin Valley. In addition, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a) unless EPA takes final action to approve the submittal within 2 years of EPA's finding.

B. Effective Date Under the Administrative Procedures Act

This final action is effective on September 18, 2002. Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), an agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. Today's action concerns SIP revisions that are already overdue and the State has been aware of applicable provisions of the CAA relating to overdue SIPs. In addition, today's action simply starts a ''clock'' that will not result in sanctions for 18 months, and that the State may ''turn off'' through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This final agency action is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

III. 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 13211

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.

C. 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.

D. 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 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.

E. 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.

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

from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, ''Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.''

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 findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

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 today's action 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. The CAA provision discussed in this notice requires states to submit SIPs. This notice merely provides a finding that California has not met that requirement. 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 December 2, 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, Intergovernmental relations, Particular matter, Reporting and recordkeeping requirements.

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

Dated: September 18, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–24912 Filed 10–1–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[FRL–7387–5]

Approval and Promulgation of Implementation Plans; Louisiana; Baton Rouge Nonattainment Area; Ozone; 1–Hour Ozone Attainment Demonstration; Attainment Date Extension, and Withdrawal of Nonattainment Determination and Reclassification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Clean Air Act (Act), EPA is approving the Louisiana 1-hour ozone attainment demonstration State Implementation Plan (SIP) for the Baton Rouge serious ozone nonattainment area. In conjunction with its approval of the attainment demonstration, EPA is: approving Louisiana's transport demonstration and extending the ozone attainment date for the Baton Rouge ozone nonattainment area to November 15, 2005, while retaining the area's current classification as a serious ozone nonattainment area; withdrawing EPA's June 24, 2002, rulemaking determining nonattainment and reclassification of the Baton Rouge ozone nonattainment area; finding that the Baton Rouge ozone nonattainment area meets the reasonably available control measures (RACM) requirements of the Act; approving the State's enforceable commitment to perform a mid-course review and submit a SIP revision to EPA by May 1, 2004; approving the motor vehicle emissions budget (MVEB) and an enforceable commitment to submit revised budgets using MOBILE6; and approving an enforceable transportation control measure (TCM).

This action also approves SIP submittals relating to corrections to the 1990 Base Year Emissions Inventory, the 9% Rate-of-Progress Plan (ROPP), and the 15% ROPP.

DATES: This rule is effective October 2, 2002. The amendment to § 81.319 which published on June 24, 2002 (67 FR 42688) and were revised on August 20, 2002 (67 FR 53882) are withdrawn.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following addresses: U.S. Environmental Protection Agency, Region 6, Air Planning Section, 1445 Ross Avenue, Dallas, Texas 75202–2733; Louisiana