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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-HQ-OAR-2010-0107; FRL-9244-7]

**Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases**

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is making a finding that seven states have failed to submit revisions to their EPA-approved state implementation plans (SIPs) to satisfy requirements of the Clean Air Act (CAA) to apply Prevention of Significant Deterioration (PSD) requirements to greenhouse gas (GHG)-emitting sources.

By notice dated December 13, 2010, EPA issued a “SIP call” for these seven, and six other, states, requiring each state to revise its SIP as necessary to correct the SIP’s failure to apply PSD to such sources and establishing a SIP submittal deadline for each state. EPA established December 22, 2010, as the deadline for these seven states. By this action, EPA is making a finding that the seven states failed to submit the required SIP revisions by that date. This finding requires EPA to promulgate a Federal implementation plan (FIP) for these seven states applying PSD to GHG-emitting sources, and EPA is taking a separate action to promulgate the FIP immediately. The seven states are Arizona, Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming.

**DATES:** This action is effective on December 29, 2010.

**ADDRESSES:** EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2010-0107. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lisa Sutton, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541-3450; *fax number:* (919) 541-5509; *e-mail address:* [sutton.lisa@epa.gov](mailto:sutton.lisa@epa.gov).

For information related to a specific state, local, or tribal permitting authority, please contact the appropriate EPA regional office:

EPA regional office	Contact for regional office (person, mailing address, telephone number)	Permitting authority
I .....	Dave Conroy, Chief, Air Programs Branch, EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, (617) 918-1661.	Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont.
II .....	Raymond Werner, Chief, Air Programs Branch, EPA Region 2, 290 Broadway, 25th Floor, New York, NY 10007-1866, (212) 637-3706.	New Jersey, New York, Puerto Rico, and Virgin Islands.
III .....	Kathleen Cox, Chief, Permits and Technical Assessment Branch, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-2173.	District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, and West Virginia.
IV .....	Lynorae Benjamin, Chief, Regulatory Development Section, Air, Pesticides and Toxics Management Division, EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303-3104, (404) 562-9033.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
V .....	J. Elmer Bortzer, Chief, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604-3507, (312) 886-1430.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
VI .....	Jeff Robinson, Chief, Air Permits Section, EPA Region 6, Fountain Place 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 665-6435.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
VII .....	Mark Smith, Chief, Air Permitting and Compliance Branch, EPA Region 7, 901 North 5th Street, Kansas City, KS 66101, (913) 551-7876.	Iowa, Kansas, Missouri, and Nebraska.
VIII .....	Carl Daly, Unit Leader, Air Permitting, Monitoring & Modeling Unit, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129, (303) 312-6416.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
IX .....	Gerardo Rios, Chief, Permits Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3974.	Arizona; California; Hawaii and the Pacific Islands; Indian Country within Region 9 and Navajo Nation; and Nevada.
X .....	Nancy Helm, Manager, Federal and Delegated Air Programs Unit, EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101, (206) 553-6908.	Alaska, Idaho, Oregon, and Washington.

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this action apply to me?*

Entities affected by this rule include state and local permitting authorities.<sup>1</sup> By this action, EPA is making a finding of failure to submit the required SIPs for seven states (comprising eight state and local programs) because their EPA-approved SIP PSD programs do not apply to GHG-emitting sources. The seven states are Arizona, Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming. In Arizona, the finding of failure applies to two EPA-approved PSD permit programs—“Pinal County” and “Rest of State (Excludes Maricopa County, Pima County, and Indian Country).”

*B. How is the preamble organized?*

The information presented in this preamble is organized as follows:

**I. General Information**

- A. Does this action apply to me?
- B. How is the preamble organized?

**II. Background**

- A. CAA and Regulatory Context
  1. SIP PSD Requirements
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**III. Final Action: Finding of Failure of Certain States To Submit Corrective SIP Revisions****IV. Statutory and Executive Order Reviews**

- A. Notice and Comment Under the Administrative Procedure Act (APA)
- B. Executive Order 12866—Regulatory Planning and Review
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- F. Executive Order 13132—Federalism
- G. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
- H. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
- I. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- J. National Technology Transfer and Advancement Act
- K. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- L. Congressional Review Act

<sup>1</sup> For convenience, we refer to “states” in this rulemaking to collectively mean states and local permitting authorities.

- V. Judicial Review
- VI. Statutory Authority

**II. Background***A. CAA and Regulatory Context*

EPA described the relevant background information in the proposed and final rulemaking for what we call the GHG PSD SIP call or, simply, the SIP call,<sup>2</sup> as well as in what we call the Tailoring Rule.<sup>3</sup> 75 FR at 31518–21. Knowledge of this background information is presumed and will be only briefly summarized here.

**1. SIP PSD Requirements**

In general, under the CAA PSD program, a stationary source must obtain a permit prior to undertaking construction or modification projects that would result in specified amounts of new or increased emissions of air pollutants that are subject to regulation under other provisions of the CAA. CAA sections 165(a)(1), 169(1). As we described in the SIP call and elsewhere, several CAA provisions, taken together, mandate that SIPs include PSD programs that are applicable to any air pollutant that is subject to regulation under the CAA, including, as discussed later in this preamble, GHGs on and after January 2, 2011. CAA sections 110(a)(2)(C), 110(a)(2)(J), 161.

**2. SIP Inadequacy and Corrective Action**

The CAA provides a mechanism for the correction of SIPs with certain types of inadequacies. CAA section 110(k)(5) authorizes the Administrator to “find[ ] that [a SIP] \* \* \* is substantially inadequate to \* \* \* comply with any requirement of this Act,” and, based on that finding, to “require the State to revise the [SIP] \* \* \* to correct such inadequacies.” This latter action is commonly referred to as a “SIP call.” In addition, this provision provides that EPA must notify the state of the substantial inadequacy and authorizes

<sup>2</sup> “Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Final Rule,” 75 FR at 77698, 77700–04 (December 13, 2010) (final SIP call); “Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Proposed Rule,” 75 FR 53892, 53896–98 (September 2, 2010) (proposed SIP call).

<sup>3</sup> Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule. 75 FR 31514, 31518–21 (June 3, 2010).

EPA to establish a “reasonable deadline[ ] (not to exceed 18 months after the date of such notice)” for the submission of the corrective SIP revision.

If EPA does not receive the corrective SIP revision by the deadline, CAA section 110(c)(1)(A) authorizes EPA to “find[ ] that [the] State has failed to make a required submission.” Once EPA makes that finding, CAA section 110(c)(1) requires EPA to “promulgate a Federal implementation plan at any time within 2 years after the [finding] \* \* \* unless the State corrects the deficiency, and [EPA] approves the plan or plan revision, before [EPA] promulgates such [FIP].”

*B. Recent EPA Regulatory Action Concerning PSD Requirements for GHG-Emitting Sources*

In recent months, EPA has taken several distinct actions related to GHGs under the CAA. Some of these, in conjunction with the operation of the CAA, trigger PSD applicability for GHG-emitting sources on and after January 2, 2011, but focus the scope of PSD on the largest GHG-emitting sources. These actions include what we call the Endangerment Finding,<sup>4</sup> the Light-Duty Vehicle Rule,<sup>5</sup> the Johnson Memo Reconsideration,<sup>6</sup> and the Tailoring Rule.

Closely related to this action, EPA promulgated the PSD GHG SIP call, under authority of CAA section 110(k)(5). In that action, applicable to 13 states, the Administrator issued a finding of substantial inadequacy as well as a SIP call and established a deadline for submission of the corrective SIP revision. The deadline was 12 months after the date of the SIP call, unless the state indicated to EPA that it did not object to an earlier deadline, as early as 3 weeks after the date of the SIP call. Twelve of the states so indicated and therefore received an earlier deadline. 75 FR at 77705.

All 13 states and their deadlines are listed in table II–1, “SIP Call States and SIP Submittal Deadlines”:

<sup>4</sup> “Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.” 74 FR 66496 (December 15, 2009).

<sup>5</sup> “Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.” 75 FR 25324 (May 7, 2010).

<sup>6</sup> “Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.” 75 FR 17004 (April 2, 2010).

TABLE II-1—SIP CALL STATES AND SIP SUBMITTAL DEADLINES

State (or area)	SIP submittal deadline
Arizona: Pinal County .....	12/22/10
Arizona: Rest of State (Excludes Maricopa County, Pima County, and Indian Country) .....	12/22/10
Arkansas .....	12/22/10
California: Sacramento Metropolitan AQMD .....	01/31/11
Connecticut .....	03/01/11
Florida .....	12/22/10
Idaho .....	12/22/10
Kansas .....	12/22/10
Kentucky (Jefferson County): Louisville Metro Air Pollution Control District .....	01/01/11
Kentucky: Rest of State (Excludes Louisville Metro Air Pollution Control District (Jefferson County)) .....	03/31/11
Nebraska .....	03/01/11
Nevada: Clark County .....	07/01/11
Oregon .....	12/22/10
Texas .....	12/01/11
Wyoming .....	12/22/10

The SIP submittal deadlines that the final SIP call rule established for the states reflect, in almost all instances, a recognition by EPA and the states of the need to move expeditiously to assure the availability of a permitting authority. In the SIP call, EPA made clear that the purpose of establishing the shorter period as the deadline—for any state that advised us that it did not object to that shorter period—is to accommodate states that wish to ensure that a FIP is in effect as a backstop to avoid any gap in PSD permitting. 75 FR at 77710.

Seven of the 13 SIP-called states (including 8 of the 15 affected PSD programs) stated that they did not object to a SIP submittal deadline of December 22, 2010 (the earliest possible deadline), 75 FR at 77705,<sup>7</sup> and those states are the subject of this final rule.

Also closely related to this action, EPA proposed a FIP<sup>8</sup> action related to GHGs. We stated in the proposed FIP that if any of the states for which we issued the SIP call did not meet its SIP submittal deadline, we would immediately issue a finding of failure to submit a required SIP revision, under CAA section 110(c)(1)(A), and immediately thereafter promulgate a FIP for the state. We explained that we would take these actions immediately in order to minimize any period of time during which larger-emitting sources

may be under an obligation to obtain PSD permits for their GHGs when they construct or modify, but no permitting authority is authorized to issue those permits. 75 FR at 53889.

### III. Final Action: Finding of Failure of Certain States To Submit Corrective SIP Revisions

By this final rule, EPA is making a finding under CAA section 110(c) that seven states failed to submit a corrective SIP by December 22, 2010, which was their SIP submittal deadline, as established under our SIP call. These seven states are Arizona, Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming. In Arizona, the finding of failure applies to two EPA-approved PSD permit programs—“Pinal County” and “Rest of State (Excludes Maricopa County, Pima County, and Indian Country).” These seven states were included in the SIP call because their EPA-approved SIP PSD programs do not apply to GHG-emitting sources.

As we stated in our proposed FIP rulemaking (*see* 75 FR at 53889), if a state for which we issue the SIP call does not meet its SIP submittal deadline, we would immediately issue a finding of failure to submit a required SIP revision under CAA section 110(c)(1)(A). Once we make that finding, we are required under CAA section 110(c) to promulgate a FIP (unless first the state corrects the deficiency and EPA approves the plan or plan revision). By a separate action today, we are promulgating the FIP immediately.

The making of a finding of failure in this final rule is important because it is the prerequisite for the FIP, and the FIP, in turn, establishes EPA as the permitting authority for GHG-emitting sources. Without our acting as that authority, large GHG-emitting sources in

the affected states may be unable to obtain a PSD permit for their GHG emissions and therefore may face delays in undertaking construction or modification projects. Sources that emit or plan to emit large amounts of GHGs will, starting January 2, 2011, be required to obtain PSD permits before undertaking new construction or modification projects, but neither the states nor, absent the FIP, EPA would be authorized to issue the permits. With the FIP, EPA will have the authority to issue PSD permits by January 2, 2011.

This rule is effective immediately upon publication in the **Federal Register**. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. 553(d), generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, APA section 553(d)(3) provides an exception when the agency finds good cause exists for a rule to take effect in less than 30 days.

We find good cause exists here to make this rule effective upon publication because implementing a 30-day delayed effective date would interfere with the Agency's ability to ensure that, as of January 2, 2011, there is a permitting authority authorized to issue certain major stationary sources in the affected states the required PSD permits for GHG emissions. A 30-day delay in the effective date of this rule will impede implementation of this rule and create regulatory confusion. This rule, establishing that certain states failed to submit corrective SIP revisions by their December 22, 2010, deadline, is necessary so that EPA can promulgate a FIP for those same states on December 23, 2010. This timing will allow the FIP to be published and become effective by the January 2, 2011, date that PSD will first apply to GHG-emitting sources under the CAA. If EPA could not meet

<sup>7</sup> More detailed discussion about these seven states is included in the Supplemental Information Document prepared by EPA in support of the final SIP call. The Supplemental Information Document can be found in the docket for this rulemaking, at Document ID No. EPA-HQ-OAR-2010-0107-0129.

<sup>8</sup> Proposed rule, “Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan.” 75 FR 53883 (September 2, 2010). The notice can be found in the docket for this rulemaking, at Document ID No. EPA-HQ-OAR-2010-0107-0045.

those dates, for whatever reason, then, as of January 2, 2011, certain major stationary sources in the affected states would be required to obtain PSD permits for GHG emissions that no permitting authority would be authorized to issue. Thus, it would be impractical to wait 30 days for this rule to take effect. Moreover, EPA finds that it is necessary to make this rule effective upon publication to avoid any economic harm that the public and the regulated industry might incur if there is no permitting authority able to issue PSD permits for GHG emissions on January 2, 2011.

The purpose of the APA's 30-day effective date provision is to give affected parties time to adjust their behavior before the final rule takes effect. Each of the states to which this rule applies indicated in comment letters to EPA that they do not object to those deadlines. Both the states and the public have been aware that we would take this approach to this rule for some time, that is, that we would establish a SIP submittal deadline as early as December 22, 2010, so that we could make a finding of failure to submit and promulgate a FIP as early as December 23, 2010, in order that the FIP could take effect by the January 2, 2011, date that PSD begins to apply to GHG-emitting sources. We described this approach in the proposed SIP call that was signed and made available to the public on August 12, 2010, even before its September 2, 2010, publication date in the **Federal Register**. Moreover, the public was afforded the opportunity to comment on this approach in the SIP call proposal. See 75 FR 53892, 53896.

In addition, this rule is not a major rule under the Congressional Review Act (CRA). Thus, the 60-day delay in effective date required for major rules under the CRA does not apply.

#### IV. Statutory and Executive Order Reviews

##### A. Notice and Comment Under the Administrative Procedure Act (APA)

This is a final EPA action but is not subject to notice-and-comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(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(b)(3)(B), which excuses the notice-

and-comment obligation "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." While the good cause exception is to be narrowly construed, *Utility Solid Waste Activities Group v. Environmental Protection Agency*, 236 F.3d 749, 754 (DC Cir. 2001), it is also "an important safety valve to be used where delay would do real harm." *U.S. Steel Corp. v. U.S. Environmental Protection Agency*, 595 F.2d 207, 214 (5th Cir. 1979). Notice and comment is impracticable where "an agency finds that due and timely execution of its functions would be impeded by the notice otherwise required." *Utility Solid Waste Activities Group*, 236 F.3d at 754. Notice and comment is contrary to the public interest where "the interest of the public would be defeated by any requirement of advance notice." *Id.* at 755.

Here, notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit elements of SIP submissions 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 complete SIPs. See 58 FR 51270, 51272, n.17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994). In addition, in this case, notice and comment would be impracticable and contrary to the public interest for the same reasons, discussed earlier in this preamble, why a 30-day effective date would be impracticable and contrary to the public interest.

##### B. Executive Order 12866—Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993). This action issues a finding that certain states failed to submit corrective SIPs by the deadline established in EPA's recently promulgated SIP call for the same states. This type of action is exempt from review under EO 12866.

##### C. Paperwork Reduction Act

This action does not impose any new information collection burden. However, OMB has previously approved the information collection requirements

contained in the existing regulations for PSD (*see, e.g.*, 40 CFR 52.21) and title V (*see* 40 CFR parts 70 and 71) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0003 and OMB control number 2060-0336, respectively. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

##### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to the notice-and-comment requirement of the APA, because the Agency has invoked the "good cause" exemption under 5 U.S.C. 553(b). Thus, this rule is not subject to the RFA.

##### E. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any new obligations or enforceable duties on any small governments.

##### F. Executive Order 13132—Federalism

This action does not have federalism implications. It 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. This action merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on this action, as part of the FIP proposal, from state and local officials.

*G. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). In this action, EPA is not addressing any tribal implementation plans. This action is limited to states that do not meet their existing obligation for PSD SIP submittal. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this final rule, EPA specifically solicited additional comment on the proposal for this action from tribal officials and we received one comment from a tribal agency. Additionally, EPA participated in a conference call on July 29, 2010, with the National Tribal Air Association (NTAA).

*H. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets E.O. 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 E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

*I. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This action merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

*J. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards

bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*K. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 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 U.S.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

*L. 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. 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 this action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

**V. Judicial Review**

Under section 307(b)(1) of the Act, judicial review of this final action is

available by filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 28, 2011. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

**VI. Statutory Authority**

The statutory authority for this action is provided by sections 101, 111, 114, 116, and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Carbon monoxide, Environmental protection, Greenhouse gases, Hydrofluorocarbons, Incorporation by reference, Intergovernmental relations, Lead, Methane, Nitrogen dioxide, Nitrous oxide, Ozone, Particulate matter, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride, Sulfur oxides, Volatile organic compounds.

Dated: December 23, 2010.

**Gina McCarthy,**

*Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 2010–32762 Filed 12–28–10; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA–HQ–OPP–2009–0205; FRL–8857–4]

**Imazosulfuron; Pesticide Tolerances**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of imazosulfuron in or on pepper, bell; pepper, non-bell; rice, grain; and tomato. Valent USA Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective December 29, 2010. Objections and requests for hearings must be received on or before February 28, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION**).