show that no affected firewall shutoff or crossfeed valve is installed, then the inspection requirement of paragraph (h) of this AD and the replacement requirement of paragraph (i) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(h) Inspection

Within 5 days after September 3, 2003 (the effective date of AD 2003–17–03 (68 FR 50693, August 22, 2003)), inspect the three firewall shutoff and crossfeed valves to determine whether they incorporate a serial number as referenced in the Effectivity table of PIAGGIO Aero Industries S.p.A. SB No. ASB80–0191, dated February 27, 2003.

(i) Replacement/Modification

If any of the firewall shutoff or crossfeed valves that are referenced in the Effectivity table of PIAGGIO Aero Industries S.p.A. SB No. ASB80–0191, dated February 27, 2003, are found, before further flight, replace or modify each affected valve following PIAGGIO Aero Industries S.p.A. Service Bulletin (SB) No. ASB80–0191, dated February 27, 2003; and Electromech Technologies SB 484–3 AB, dated February 18, 2003.

(j) Spares

As of 5 days after September 3, 2003 (the effective date of AD 2003–17–03 (68 FR 50693, August 22, 2003)), do not install, on any airplane, a firewall shutoff or crossfeed valve that is referenced in the Effectivity table of PIAGGIO Aero Industries S.p.A. SB No. ASB80–0191, dated February 27, 2003, unless it has been modified per paragraph (i) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on September 3, 2003 (68 FR 50693, August 22, 2003):

(i) PIAGGIO Aero Industries S.p.A. Service Bulletin (SB) No. ASB80–0191, dated February 27, 2003; and

(ii) Electromech Technologies SB 484–3 AB, dated February 18, 2003.

(4) For service information identified in this AD, contact Piaggio Aero Industries S.p.A–Airworthiness Office, Via Luigi Cibrario, 4–16154 Genova-Italy; phone: +39 010 6481353; fax: +39 010 6481881; email: *airworthiness@piaggioaero.it*; Internet: *http://www.piaggioaero.com/#/en/aftersales/service-support*.

(5) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Kansas City, Missouri, on October 31, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–27051 Filed 11–13–12; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–1078; FRL–9751–3]

Revision to the South Coast Portion of the California State Implementation Plan, CPV Sentinel Energy Project AB 1318 Tracking System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a source-specific State Implementation Plan (SIP) revision for the South Coast Air Quality Management District (''SCAQMD'' or ''District'') portion of the California SIP. This source-specific SIP revision is known as the CPV Sentinel Energy Project AB 1318 Tracking System (''AB 1318 Tracking System''). The SIP revision consists of enabling language and the AB 1318 Tracking System to revise the District's SIP approved new source review (NSR) program. The SIP revision allows the District to transfer offsetting emission reductions for particulate matter less than 10 microns in diameter (PM_{10}) and one of its precursors, sulfur oxides (SO_X), to the CPV Sentinel Energy Project (''Sentinel''), which will be a natural gas fired power plant.

DATES: This final rule is effective on November 14, 2012.

ADDRESSES: The index to the docket for this final action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While generally all categories of documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., voluminous documents, copyrighted material), 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: Laura Yannayon, EPA Region IX, (415) 972–3524, *yannayon.laura@epa.gov*.

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

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I. Background

A. The Facility and Prior Actions

The Sentinel Energy Project is designed to be a nominally rated 850 megawatt, natural gas-fired electrical generating facility covering approximately 37 acres within Riverside County, adjacent to Desert Hot Springs in the Palm Springs, California area. EPA's **Federal Register** notices for the January 13, 2011 proposal (76 FR 2294), April 20, 2011 final action (76 FR 22038), and August 23, 2012 supplemental proposal for this action (77 FR 50973) contain a detailed description of the project and the Clean Air Act's (CAA) requirements for offsets during new source review permitting.

In response to our January 13, 2011 proposed rule, we received four comments. We responded to those comments on April 20, 2011 (76 FR 22038). One commenter, jointly California Communities Against Toxics and Communities for a Better Environment (jointly ''CCAT'') filed a Petition for judicial review in the United States Court of Appeals for the Ninth Circuit (''9th Circuit'') shortly thereafter and an Opening Brief on July 26, 2011. On September 14, 2011, EPA requested the 9th Circuit to remand the

final rule to us to correct minor errors and revise our reasoning on one issue. Motion for a Voluntary Remand of the Record, to Vacate the Briefing Schedule, and to Stay the Proceedings During Remand, Case No. 11–71127 (Sept. 14, 2011). CCAT opposed EPA's motion for voluntary remand. The 9th Circuit Appellate Commissioner denied EPA's motion for voluntary remand on November 7, 2011, and ordered briefing. After briefing and oral argument, the 9th Circuit remanded the final rule (without vacatur) to EPA on July 26, 2012. *California Communities Against Toxics* v. *EPA,* 688 F.3d 989 (9th Cir. 2012). EPA published a supplemental proposal on August 23, 2012, (77 FR 50973) and took comment on the supplemental proposal through September 24, 2012. Copies of the comments on the supplemental proposal have been added to the docket and are accessible at *www.regulations.gov*. Comment letters from the South Coast Air Quality Management District (''SCAQMD'' or ''District'') and CPV Sentinel LLC (''Sentinel'') support EPA's approval of the AB 1318 Tracking System as a source-specific SIP revision. A comment letter from CCAT opposes our proposal and supplemental proposal to approve of the source-specific SIP revision.

B. Description of Final Rule

We are finalizing our proposal and supplemental proposal to approve the AB 1318 Tracking System into the SIP as a source-specific SIP revision. Even with the slight revision to Attachment A discussed below, the District transferred more offsets into the AB 1318 Tracking System than the amount that is needed to allow Sentinel to operate. We are finalizing our approval because the offsets listed in the Revised Attachment A meet the federal offset integrity criteria, including proper quantification and surplus adjustment. We are finalizing the reasoning in our supplemental proposal for finding that the offsets meet the requirement in 40 CFR part 51, appendix S and 40 CFR 51.165(a)(3)(ii)(C)*(1)(ii)* for offsets resulting from facilities or sources shutting down to have occurred after the base-year for SIP planning purposes. We are interpreting this provision to refer to the 2003 AQMP for PM_{10} for the South Coast and the Coachella Valley Air Basins.

In response to CCAT's comments on September 24, 2012, EPA is making a slight revision to Attachment A to the Technical Support Document for our supplemental proposal. Attachment A contains tables showing our evaluation of a subset of all of the facilities from which the District transferred offsets into its AB 1318 Tracking System. In this final rule, we are attaching a slightly revised version of Attachment A to our Response to Comments document. The only change in the Revised Attachment A is that we have applied a more conservative assumption of zero emissions for the data missing for the facilities listed in Attachment A, Section II.B. The facilities listed in Section II.B were missing Year 2 data. Our supplemental proposal assumed that the Year 2 data would be the same as the reported Year 1 data for these offsets. Based on comments we received from CCAT, we changed the assumption for this group of facilities. In our Revised Attachment A, we are assuming that Year 2 data for these facilities is zero. This change means that we are using the most conservative approach (zero emissions) to quantify the offsets. This revision lowers the quantity of offsets listed in Attachment A by 306 pounds for PM_{10} and 2 pounds for SO_X. Even with this adjustment the quantity of offsets listed in Revised Attachment A exceeds the quantity that Sentinel needs for operation. Because the District is committed to retiring all of the remaining offsets in the AB 1318 Tracking System, including those not listed in Attachment A, the net effect will be a greater reduction in emissions than is required by the CAA.

For additional background information, please see the January 13, 2011 notice of proposed rule for this action (76 FR 2294), the notice of final rule (which was remanded without vacatur on July 26, 2012) (76 FR 22038 Apr. 20, 2011) and the August 23, 2012 supplemental proposal (77 FR 50974).

II. Evaluation of Source-Specific SIP Revision

A. What action is EPA is finalizing?

EPA is finalizing our approval of a SIP revision for the South Coast portion of the California SIP. The SIP revision is codified in 40 CFR 52.220(c)(384) and incorporates by reference the CPV Sentinel Energy Project AB 1318 Tracking System, as adopted by the District.

The SIP revision provides a federally approved and enforceable mechanism for the District to transfer PM_{10} and SO_X offsets from the District's internal bank to the AB 1318 Tracking System for use by the Sentinel Energy Project.

B. Public Comment and Final Action

Our detailed response to all significant comments is contained in the Response to Comments (''RTC'') document in the docket for this action. The RTC can be accessed through *www.regulations.gov* and a very brief summary of our responses to certain comments is provided below. Please refer to our RTC document for our complete response to all comments.

Comment Letter from South Coast Air Quality Management District

Comment: The District supported EPA's proposal and supplemental proposal to approve the AB 1318 Tracking System based on the quantification and surplus adjustment of the offsets listed in Attachment A to the Technical Support Document for the supplemental proposal. The District commented that its 2003 PM_{10} Air Quality Management Plan (AQMP) was the appropriate plan and attainment demonstration to establish the base-year for SIP planning as set forth in 40 CFR 51.165(a)(3)(ii)(C)*(1)(ii).* The District also commented that growth was added to the 2007 AQMP for $PM_{2.5}$.

Response: EPA agrees with the District's comments, as discussed in the RTC document provided in the docket for this rule.

Comment Letter from Sentinel Energy LLP

Comment: Sentinel also supported EPA's proposal and supplemental proposal to approve the SIP revision on generally the same basis as the District.

Response: EPA agrees with Sentinel's comments, as discussed in the RTC document provided in the docket for this rule.

Comment: On October 26, 2012, Sentinel submitted a late comment letter in which it requested EPA to use the good cause exception set forth in section 553(d)(3) of the Administrative Procedures Act, 5 U.S.C. 553(d)(3) to make this final rule effective immediately upon publication in the **Federal Register**. Sentinel stated that the purpose of the usual 30-day delay for rule effectiveness is to allow the regulated entity an opportunity to make any changes necessary to be in compliance with the rule. Sentinel stated that it has been aware of what would be required of it as a result of this rule for 18 months. Sentinel anticipates beginning its commission period in November 2012. Sentinel added that if the power plant is on-line next summer, it will help the region avoid any potential electricity shortfalls.

Response: EPA has discretion to accept late comments and will accept the comment submitted by Sentinel. EPA agrees with Sentinel that it has demonstrated good cause for EPA to issue this final rule with an immediate effective date. Sentinel has been constructing the power plant for the

past 12 to 18 months in anticipation of beginning its commissioning period in November 2012. Sentinel and the District provided information regarding the potential effects of delaying commissioning and operations beyond this date in the briefs submitted in the 9th Circuit ligation pertaining to this rulemaking. Sentinel has indicated that it will not be harmed by the immediate effective date. Therefore the final rule will become effective upon publication.

Comment Letter From California Communities Against Toxics (CCAT) and Communities for a Better Environment (CBE) (collectively CCAT)

Comment: CCAT contends that it was arbitrary and capricious for EPA to publish a supplemental proposal to approve the source-specific SIP revision after the 9th Circuit remanded the rulemaking to EPA without vacatur.

Response: CCAT is incorrect. EPA has discretion under Section 553 of the Administrative Procedures Act to supplement its existing proposed approval of the source-specific SIP revision. We provided notice of the supplemental proposal and a 30-day period for comments. The 9th Circuit's Opinion in *California Communities Against Toxics* v. *EPA,* 688 F.3d at 989 did not indicate that EPA could not supplement its prior proposal.

Comment: CCAT states: ''The Planning Year for the Failed 2003 AQMP Cannot be the Base Year for Valid Offsets: In the Absence of an Approved Attainment Demonstration for $PM_{10,}$ Only Replacement Capacity Can offset New Emissions.''

Response: EPA disagrees. CCAT asserts that the 2003 AQMP is ''no longer valid'' because the South Coast and Coachella Air Basins failed to be re-designated to attainment for PM_{10} in 2006. Based on this presumption, CCAT argues that the SCAQMD is prohibited from relying on offsets resulting from sources that shut down, unless the new source of emissions is replacement capacity for the facility or source that is shutting down. CCAT's presumption is incorrect. Failure to attain a National Ambient Air Quality Standard (''NAAQS'') by the attainment date does not invalidate the plan and attainment demonstration—in this case the 2003 PM_{10} AQMP. The control measures and strategies remain in effect and enforceable along with the emissions inventories and attainment demonstration. Therefore, there is no prohibition on using offsets from facilities or sources that have shut down after the 1997 base-year from the 2003 PM_{10} AQMP to allow new source emissions growth in the South Coast and Coachella Air Basins.

Comment: CCAT states: ''The 2007 AQMP Applies to PM_{10} as well as $PM_{2.5}$ Attainment.''

Response: EPA disagrees with CCAT. The District adopted the 2007 AQMP to demonstrate attainment with the $PM_{2.5}$ NAAQS. EPA approved the 2007 AQMP to demonstrate attainment with the $PM_{2.5}$ NAAQS. The minor references to PM_{10} in the 2007 AQMP for $PM_{2.5}$ are included for a variety of reasons, including to comply with California state law and to ensure continued emissions control at one particular PM_{10} air quality monitor. Minor references to PM_{10} for limited purposes do not mean that the 2007 AQMP establishes a new base-year for $PM_{10.}$ EPA does not consider the incidental inclusion of PM_{10} control measures or updated emissions inventory for a future maintenance plan to be the same as adopting a new AQMP for PM_{10}. EPA's approval of the 2007 AQMP does not mention PM_{10}.

Comment: CCAT states: ''The 2007 AQMP Was Final At All Relevant Times.''

Response: Our supplemental proposal notes that the EPA had not approved the 2007 AQMP at the time the SCAQMD approved transferring the offsets into the AB 1318 Tracking System. EPA has not found any authority establishing the correct date for an approved air quality plan to apply. EPA reasonably determined that the date of transfer of the offsets (i.e. when the offsets become enforceable) is an appropriate date to establish what AQMP applies.

Comment: CCAT states ''EPA Cannot Rely on the Failed, Superseded 2003 AQMP for a Base Year.''

Response: CCAT appears to have raised the same argument in an earlier portion of its comment letter. EPA considers this section to provide additional argumentation of the same point presented in the earlier paragraphs. EPA disagrees with CCAT's additional discussion. CCAT has mischaracterized the Court's holding in *NRDC* v. *EPA,* 571 F.3d 1245, 1267 (D.C. Cir. 2009). The Court held that the base-year should be established by an ''approved'' AQMP and it did not use the term ''valid.'' As discussed elsewhere, the CAA does not define air quality plans as ''valid'' and EPA does not consider the term to be dispositive or persuasive regarding the appropriate AQMP to establish the base-year. CCAT also comments at length on the appropriate method for adding new source growth in the absence of an approved attainment demonstration. EPA considers this portion of CCAT's discussion to be irrelevant because the 2003 PM_{10} AQMP is the approved attainment demonstration for PM_{10} for the South Coast and Coachella Air Basins.

Comment: CCAT states: ''The Offsets Transferred into the 1318 Tracking System are Not Quantifiable.''

Response: EPA disagrees with CCAT and is finalizing our proposal and supplemental proposal to approve the AB 1318 Tracking System because the District transferred more properly quantified and surplus adjusted PM_{10} and SO_X offsets than Sentinel needs to offset its PM_{10} and SO_X emissions. CCAT contends that EPA is required to use two years of emissions data to quantify offsets. CCAT also asserts that two years of emissions data cannot be satisfied with a conservative (i.e. fewer offsets) assumption being used for missing data. Nothing in the CAA or EPA's regulations requires EPA to use two years of emissions data to quantify offsets or prohibits the use of a conservative approach for filling in missing data. EPA is reasonably interpreting our regulations to allow the District to exercise discretion to use a conservative approach to quantify offsets where emissions data is missing. Here, we have concluded that the District's quantification of offsets using a conservative approach—specifically, by substituting zero emissions when data is missing—is reasonable and consistent with the CAA and applicable regulations.

EPA is revising our final approval slightly from our supplemental proposal to ensure that the most conservative estimation of data is made regardless of whether the facility is missing Year 1 or Year 2 data. This means that EPA is reducing the amount of offsets we are determining are properly quantified in Attachment A, Section II.B. to reduce it by 306 pounds of PM_{10} and 2 pounds of SO_X. Therefore, whether a facility is missing Year 1 or Year 2 data, EPA is assuming the emissions for the missing data are zero.

Comment: CCAT states: ''The Offsets Are Not Surplus.''

Response: EPA disagrees. The offsets listed in Attachment A to the TSD for the supplemental proposal are properly surplus adjusted to comply with the CAA.

Comment: CCAT states: ''Rule 1315, Which EPA Did Not Apply, Dictates How the Surplus Adjustment after Deposit Occurs.''

Response: EPA disagrees. The District removed the offsets in the AB 1318 Tracking System from its internal accounts and evaluated each facility to determine if the offsets required surplus

adjustment. Rule 1315 requires the District to make an annual aggregate adjustment to offsets in its Rule 1315 internal accounts. All of the offsets in Attachment A, as revised, to the TSD for EPA's supplemental proposal are properly quantified and surplus adjusted.

Comment: CCAT states: ''If Rule 1315 Were Not Applicable, EPA's Analysis Is Entirely Incomplete.''

Response: EPA disagrees. Rule 1315 does not apply to this source-specific SIP revision for the offset package for a single power plant. All of the offsets in Revised Attachment A are properly surplus adjusted.

III. EPA Action

This source-specific SIP revision complies with all relevant CAA requirements and is consistent with EPA's regulations and guidance. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this source-specific SIP revision into the California SIP. The changes in this final rule from EPA's proposal and supplemental proposal are described above in Section I.B. EPA's interpretation of the CAA and our regulations is provided more fully in our RTC.

Our initial approval of this SIP revision and its related incorporation by reference into the Code of Federal Regulations was previously codified at 40 CFR 52.220(c)(384). Because the SIP submittal has not changed since the initial approval and related codification, and because the previous final rule was not withdrawn, we are not revising the codification of our approval at 40 CFR 52.220(c)(384) in this final action.

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.

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. The Sentinel Energy Project, to which this rulemaking applies, requested in a comment letter to EPA that the rule be made effective upon **Federal Register** publication.

We find good cause exists here to make this rule effective upon publication because implementing a 30-day delayed effective date would interfere with CPV Sentinel's ability to begin commissioning in November 2012 as scheduled. Such interference would delay Sentinel from becoming fully operational by the summer of 2013, which is when the California Energy Commission is expecting the plant to come on line. This delay could result in significant impacts to electrical reliability and air quality.

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. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563

This action will approve the source-specific SIP revision known as the CPV Sentinel Energy Project AB 1318 Tracking System into the California SIP. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

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 under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve 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.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA 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 this final 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. This Federal action proposes to approve 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 CAA. 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.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 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, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and 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). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

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 January 14, 2013. 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: November 1, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–27564 Filed 11–13–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0985; FRL–9368–7]

Flonicamid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of flonicamid in or on Berry, low growing, subgroup 13–07G; Rapeseed subgroup 20A, and cucumber. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 14, 2012. Objections and requests for hearings must be received on or before January 14, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0985, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs