Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(52) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(52) Revisions to the West Virginia Regulations 45CSR13—Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation, submitted on September 21, 2000 by the West Virginia Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000, from the West Virginia Department of Environmental Protection transmitting revision to West Virginia Regulation 45CSR13.

(B) West Virginia Regulations 45CSR13—Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits and Procedures for Evaluation, effective June 1, 2000.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(52)(i) of this section.

[FR Doc. 03–4629 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 266–0383; FRL–7454–4]

Revisions to the California State Implementation Plan, Ventura Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Ventura Air Pollution Control District (''District'') portion of the California State Implementation Plan (''SIP''). These revisions were proposed in the **Federal Register** on June 24, 2002, and concern the District's new source review (''NSR'') rules. We are now approving these revisions under the Clean Air Act as amended in 1990 (''CAA'' or ''the Act'').

EFFECTIVE DATE: This rule is effective on March 31, 2003.

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.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, California 93003.

A copy of the rules is also available via the Internet at *http://arbis.arb.ca.gov/drdb/ven/cur.htm*.

FOR FURTHER INFORMATION CONTACT: Nahid Zoueshtiagh, EPA Region IX, (415) 972–3978. E-mail address: *zoueshtiagh.nahid@epa.gov*.

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

List of Contents:

I. Proposed Action

On June 24, 2002, we proposed to approve certain District rules into the California SIP. 67 FR 42516. We are finalizing that action today by approving the following District rules into the SIP:

Rule No.	Rule title
10	Permits Required.
26.1	New Source Review—Definitions.
26.2	New Source Review—Requirements.
26.3	New Source Review—Exemptions.
26.4	New Source Review—Emission Banking.
26.6	New Source Review—Calculations.
26.11	New Source Review—ERC Evaluation At Time of Use.

A. How the Deficiencies Were Corrected

We proposed to approve the District rules because we determined that they complied with the relevant CAA requirements, namely part D of title I and section 110(k) of the CAA. In the proposed action, we found that the District had corrected all of the deficiencies initially identified in our limited approval and limited disapproval published in the **Federal Register** on December 7, 2000. 65 FR 76567. The California Air Resources Board (''CARB'') submitted the District's revised rules addressing our identified deficiencies on May 20, 2002. In our proposed approval, we found that the District had corrected the following deficiencies: (1) Lack of a requirement for relocating sources to obtain an authority to construct (''ATC'') permit, (2) failure to require that emission reduction credits (''ERCs'') used as NSR emission offsets be surplus at the time of use, (3) failure to provide for denial of permits for sources in violation of Prevention of Significant Deterioration (''PSD'') increments, and (4) improper reliance on the California Environmental Quality Act (''CEQA'') analysis for the alternatives analysis required by section 173(a)(5) of the CAA. We received no comments on deficiency numbers 1, 3 and 4 or how the District corrected them. As such, for the complete discussion on these deficiencies and the corrections, please review our proposed approval and the TSD for that proposed action. We discuss the correction for deficiency number 2 in greater detail in this notice.

B. Creation of an Annual Equivalency Demonstration Program

As part of the its revised NSR rules, the District created an annual equivalency demonstration program to correct the deficiency that ERCs used for NSR offset purposes are not required by the District to be surplus at the time of use.[1] The basis for the approval of the

[1] Actually, all emission reductions used for NSR purposes must be surplus at the time of use in order to be creditable, not just ERCs, which are credits for emission reductions that have been banked. We are focusing on ERCs, however, because these are the only emission reductions used for NSR offset purposes with a risk of being non-surplus because the credits were generated and banked at an earlier time. Moreover, since the District's rules primarily rely upon ERCs generated and banked within the District for compliance with offset requirements, it

Continued

annual equivalency demonstration program is contained in CAA section 173(a)(1)(A)'s mandate that new and modified stationary sources seeking to commence operating in a nonattainment area must be required by the state permitting program to obtain sufficient offsetting emission reductions (''offsets'') such that ''the total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources * * * so as to represent reasonable further progress * * *.'' This statutory focus on total regional emissions supports the approval of a District offset program that ensures equivalency with the federal NSR offset requirements on an annual aggregate basis. EPA is also working with other California Districts to help them craft approvable annual equivalency demonstration programs.[2]

The goal of the District's offset equivalency tracking system and annual reports, therefore, is to show that the District's rules are requiring appropriately discounted [3] ERCs that are, in the aggregate, equivalent to the credits that would be required under the federal major source NSR offset requirements. To show equivalency, pursuant to District Rule 26.11, the District intends to rely upon ERCs used in minor source permitting actions [4] to make up for any loss in the creditable amount of ERCs provided by a permit applicant for major source NSR permits due to surplus adjustment.

To ensure appropriate District implementation and EPA oversight of the annual equivalency program, the District and EPA entered into a memorandum of understanding (''MOU'') on February 18, 2003 describing in detail how the District will implement the annual equivalency program. Generally, the MOU sets forth the records to be maintained by the District, the information the District must include in each annual report submitted to EPA, and the necessary surplus analysis to be performed by the District at the time of permitting. The MOU also describes the proper use of the hammer provision, District Rule 26.11.C.6., which requires that the District discontinue the use of the equivalency program once an annual report demonstrates a deficit of creditable ERCs compared to the amount of reductions necessary to offset emissions for new or modified major NSR sources. As of the time the report demonstrates a deficit, the District rules require that sources provide enough surplus-adjusted ERCs to cover any required NSR offsets at the time of permitting. A copy of the MOU is in the Docket and is available to the public from the Region IX contact listed in this notice.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties:

- CARB; [5]
- California Council for Environment and Economic Benefit (''CCEEB'');
- The District; and
- Pillsbury Winthrop on behalf of Western States Petroleum Association (''WSPA'').

The commentors generally supported our action to approve the District rules into the SIP and the creation of the annual equivalency demonstration program. The majority of substantive comments focused on our interpretation of what emission reductions are considered non-surplus under Section 173(c)(2). This interpretation is important since the NSR District rules being approved closely track the language of section 173(c)(2), which explicitly excludes emission reductions that are ''otherwise required by'' the CAA from use as an NSR offset. As section 173(c)(2) does not specifically delineate the type of requirements included within its scope, EPA's interpretation of the application of the provision is very important for proper implementation of the NSR program.

In our proposed approval, we described six categories of emission reductions that we consider non-surplus for NSR offset purposes. Emission reductions falling under any of these categories are therefore not available for use as NSR offsets, whether directly in a permitting action or through their use in an annual equivalency demonstration. In response to comments received on the proposed approval and after further consideration, we are slightly revising item numbers 2 and 5 to be more consistent with the CAA.[6] Since this list of non-surplus reductions is only EPA's interpretation of section 173(c)(2) and District Rule 26.1.28.b. and does not require any change to the District's rules being approved today, the revision of the list does not affect the approvability of the District's rules. Moreover, the finalized list has been incorporated into the MOU between the District and EPA, which further ensures that the annual equivalency demonstration program, including surplus adjustment of ERCs, will be properly implemented.

The following is the revised and final list of what we consider to be non-surplus emission reduction categories:

(1) Any emission reduction required by a stand-alone federal requirement or regulation, including, but not limited to, Acid Rain, New Source Performance Standard, Reasonably Available Control Technology, and Maximum Achievable Control Technology, whether or not the requirements are part of the State Implementation Plan (''SIP'') or a local attainment plan.

(2) Any emission reduction relied upon by a permitting authority for attainment purposes, or contained in an approved attainment plan, including emission reductions relied upon for Reasonable Further Progress calculations. Reference 51.165(a)(3)(ii)(G).

(3) Any emission reduction whose original emission is not included in the District's emission inventory. Reference 51.165(a)(3)(ii)(C)(1).

(4) Any emission reduction based on a source-specific or source category-specific SIP provision used to comply with CAA requirements.

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is appropriate to focus the surplus discussion on ERCs.

[2] For example, on February 13, 2003, EPA proposed to approve San Joaquin Valley Air Pollution Control District's NSR program, which includes an annual equivalency demonstration. 68 FR 7330. On September 18, 2000, EPA also published a proposed limited approval and limited disapproval for a NSR program that would allow an annual equivalency demonstration program for the Bay Area Air Quality Management District. 65 FR 56284. On December 4, 1996, EPA approved South Coast Air Quality Management District NSR rule revisions based in part on the District's commitment to implement a tracking system to show that in the aggregate it will provide for the offsets required by the CAA. 61 FR 64291.

[3] The words ''discount'' and ''adjust'' are used synonymously in this action, and generally refer to a reduction of an ERC by the portion of the original emission reduction that is no longer surplus.

[4] Though the CAA requires that permitting authorities, including local air districts, have minor source permitting programs, it does not require that minor sources obtain offsets. As such, ERCs used to offset new emissions from minor sources may be available for use in the annual equivalency demonstration if the District can demonstrate that the emission reductions underlying the ERCs are surplus to all other requirements of the Act, and are otherwise creditable for federal purposes.

[5] Since CARB only stated its general opinion regarding annual equivalency programs and did not provide any specific comments for this action that required a response, none of CARB's comments have been addressed in this Public Comments and EPA Responses section.

[6] The changes to item number 5 is discussed in the response to comment number 4. The change in item number 2 was the addition of the language ''or contained in an approved attainment plan.'' Though EPA received no comments on this item, we included this language to ensure that *any* and *all* reductions relied upon or required for attainment purposes be considered non-surplus, whether or not the reduction is explicitly set forth in an attainment plan.

(5) Any emission reduction required by a condition of a permit issued to comply with CAA new source review requirements. Any emission reduction required by a permit condition placed on a permit solely: 1) to make the reduction federally enforceable to meet federal creditability criteria for use of the reduction as an offset for new source review purposes, or 2) to assure compliance with a state or local requirement that is not federally enforceable shall not be included in this class. Reference 51.165(a)(3)(ii)(G).

(6) Any emission reduction based on a source-specific emission limitation resulting from an Environmental Protection Agency enforcement case.

The specific comments and EPA responses are summarized below:

Comment 1: CCEEB commented that ''Section 173(c)(2) * * * does not provide that banked emission reductions, which were not required when banked, must be adjusted again to reflect later-adopted emission reduction requirements. Further, EPA has not promulgated any regulation to require such discounting.'' WSPA provided an almost identical comment.

Response 1: We disagree with CCEEB's and WSPA's comments. The requirement for discounting at the time of use derives from the statutory requirement that emission reductions be surplus of CAA requirements. CAA section 173(c)(2). In a 1994 memorandum, EPA set forth its policy that banked ERCs used as NSR offsets must be adjusted at the time of permit issuance to ensure that they are surplus as required by section 173(c)(2). Memo from John S. Seitz, Dir., OAQPS to David Howekamp, Dir., Region IX Air and Toxics Div. (Aug. 26, 1994) (''1994 Seitz Memo''). This is important to ensure that emission reductions are not ''double-counted'' for CAA purposes, something prohibited by the CAA. Double counting can occur where emission reductions are the result of, or would have been achieved by, controls expressly required by the Act or controls used to satisfy requirements of the Act. For example, a source may voluntarily reduce its emission of hazardous air pollutants (''HAPs'') and bank those credits at the time of reduction. Some time after these reductions are achieved, EPA promulgates a Maximum Achievable Control Technology (''MACT'') standard that applies to the source. Though these credits may be permanent, real, quantifiable, and enforceable, the promulgation of the new MACT standard would render the portion of the banked ERC that would have been required by the new MACT standard unavailable for NSR offset purposes because it is no longer in excess of requirements under the Act. This is important since many HAPs are also considered volatile organic compounds (''VOCs''). Without a requirement to discount ERCs at the time of use, sources could be relying upon emission reductions that were otherwise required by the CAA. Moreover, the SIP may take credit for the reductions achieved by this MACT rule, raising the further possibility that the reductions would be double-counted for attainment purposes if not surplus adjusted at the time of use.

More than just preventing possible double counting, however, adjusting at the time of use is important to generally ensure proper implementation of the NSR program. The CAA does not require or provide for ERC banking programs, which means that there are no federal requirements ensuring the quality of banks or banked credits for federal offset purposes. Because of this, a surplus at the time of use analysis and appropriate adjustment provides an important first and only review of the proposed ERC's consistency with NSR CAA offset requirements. Without such a review, EPA could not assure that sources were complying with NSR offset requirements of the CAA since most ERCs were banked without EPA review and many without supporting documentation or information.

Despite the necessity for surplus adjustment at the time of use, EPA has worked with the District to create a system where sources may be able to rely on banked ERCs while at the same time maintaining the integrity and legality of the District's NSR program. Through the use of the annual equivalency demonstration program, EPA is allowing the District to give full credit to ERCs provided by major sources for NSR permitting activities as long as the District can identify other retired or used creditable emission reductions that make up for the difference within the year accounting period.

Comment 2: Item number 3 in the list of categories of non-surplus emission reductions in the proposed approval reads ''any emission reduction whose original emission reduction is not included in the District's emission inventory. See 40 CFR 51.165(a)(3)(ii)(C)(1).'' The District commented that ''[t]he citation [40 CFR § 51.165(a)(3)(ii)(C)(1)] refers * * * only to '(e)missions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels'. There is not a requirement in the Code of Federal Regulations to include an emission reduction resulting from a source employing emission reduction techniques, not otherwise required by the federal CAA, in the District's emission inventory.''

Response 2: 40 CFR 51.165 describes the minimum regulatory requirements for an approvable state NSR permitting program. 40 CFR 51.165(a)(3)(ii)(C)(1), which deals with offsets, states that reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may generally be credited in NSR permitting actions if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In contrast to the meaning given to it in the District's comment, the provision serves the narrow purpose of stating that ERCs generated by shutting down a source or curtailing production or operating hours can only be used if there is an EPA-approved attainment plan and if the item is ''explicitly'' included in the most recent emissions inventory. The provision is essentially a safeguard to make sure that emissions from defunct sources are not replaced with new emissions without appropriate review to ensure that such replacements are consistent with attainment purposes for the area. The provision in no way limits or changes the necessity that all emission reductions used for NSR offsetting purposes be incorporated into the area's emission inventory, either explicitly or implicitly. The use of emission reductions for NSR purposes whose original emissions are not included in the emissions inventory, and therefore not considered in the planning process, would be adding new unaccounted emissions into the area thus potentially jeopardizing attainment goals. As such, EPA has maintained the definition for this category as originally proposed.

Comment 3: CCEEB commented that ''if an air district includes banked ERCs as a line item in its portion of the SIP, the ERCs are accounted for as emissions in the air and are mitigated by measures in the plan. To discount such ERCs at the time of use would result in a ''double mitigation.'' CCEEB requests that EPA clarify in the future related notices that EPA does not require discounting of ERCs at time of use where the use of ERCs has been mitigated by other specific measures for rate of progress or attainment demonstration purposes.''

Response 3: EPA disagrees with CCEEB on its comment. CCEEB's approach would essentially allow any

emission reduction to be used for NSR offset purposes even if it was required by a provision of the CAA as long as it was incorporated into the area's emissions inventory and accounted for in the area's attainment plan. CCEEB justifies this proposition by the fact that the ERC ''has been mitigated by other specific measures for rate of progress or attainment demonstration purposes,'' and therefore should be allowed as an NSR offset. Allowing the use of such an ERC as an NSR offset, however, would be counter to section 173(c)(2)'s prohibition against use of emission reductions that are otherwise required by the CAA. The mere fact that an ERC is recognized in the inventory and accounted for in the attainment plan and rate of progress in no way ''mitigates'' the fact that the reduction was elsewhere required under the CAA.[7]

Comment 4: Item number 5 in the list of categories of non-surplus emission reductions in the proposed approval reads ''any emission reduction required by a condition of a permit issued to comply with NSR CAA requirements.'' CCEEB commented that ''[t]his item is of concern because air permits in California will typically include requirements that are not required under Federal law. Such requirements are not required by the federal Clean Air Act and should be considered surplus to Federal requirements. This item should not be listed in its current form as an emission reduction that is required by the Act.'' WSPA provided an almost identical comment.

Response 4: We agree with CCEEB and WSPA, and modified item number 5 accordingly. Specifically, in the updated interpretation provided in this final action and embodied in the MOU, we recognize that the following requirements contained in a federally enforceable NSR permit should not automatically disqualify the emission reduction from use as an NSR offset: (1) Requirements to make the reduction federally enforceable to meet Federal creditability criteria for use of the reduction as an offset for new source review purposes, or (2) requirements to assure compliance with a state or local requirement that is not federally enforceable. This change addresses the commentors' concerns.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is approving these rules into the California SIP.[8]

IV. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves 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. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

[7] In fact, emission reductions used for NSR offset purposes *must* be included in an area's inventory and attainment plan to be considered for use as an offset in the first place. The 1992 ''General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990'' (''General Preamble'') describes the planning requirements of the Act as amended in 1990. 57 FR 13498 (April 16, 1992). The General Preamble addresses the issue of the use emission reductions for NSR purposes and how areas need to ensure the use of these does not conflict with planning. The two types of planning actions that need to reflect the use of emission reduction credits are rate of progress plans and attainment demonstrations. *See id.* at 13508–509 and 13552–54; *see also* 1994 Seitz Memo. Thus, inclusion of ERCs in required plans is a precondition to satisfying the statutory requirements of section 173(c)(2), but does not by itself fulfill the statutory requirements.

CCEEB and WSPA may be taking their argument one step further, however, by implying that the creation of a growth allowance in an attainment plan would enable a permitting authority to issue permits that allow new emissions despite the source's reliance on non-surplus ERCs. A growth allowance is defined as a ''pollutant-specific allowance for additional growth in any designated nonattainment area by controlling existing source emissions beyond the amount of reduction required to demonstrate [reasonable further progress].'' 57 FR 13554 (April 16, 1992). CCEEB and WSPA cannot rely upon a growth allowance as a justification for use of non-surplus ERCs, however, as the 1990 CAA amendments restricted the use of new growth allowances with the exception of areas that have been targeted by the administrator, in consultation with the Secretary of Housing and Urban Development (''HUD''), for economic growth. *Id.; see also* CAA sections 172(c)(4) and 173(a)(1)(B). Ventura County is not a designated economic growth area.

[8] On February 13, 2003, EPA proposed to find that the California SIP was substantially inadequate due to Health & Safety Code Section 42310(e), which exempts certain agricultural sources from all permitting actions, including NSR permitting actions. 68 FR 7237. This SIP-call, if finalized, will not reactivate the sanctions clock permanently stopped by this final action.

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

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 April 29, 2003. 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, Ozone, Reporting and recordkeeping requirements.

Dated: February 18, 2003.

Wayne Nastri,

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 paragraph (c)(305) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(305) Amended regulations for the following APCD were submitted on May 20, 2002 by the Governor's designee.

(i) Incorporation by reference.

(A) Ventura County Air Pollution Control District.

(1) Rules 10, 26.1, 26.2, 26.3, 26.4, 26.6, and 26.11 adopted on May 14, 2002.

* * * * *

[FR Doc. 03–4628 Filed 2–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ND–001–0007; FRL–7453–4]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA approves revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated June 21, 2001. The revisions affect air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration. EPA will handle separately direct delegation requests for emission standards for hazardous air pollutants for source categories and the State's Acid Rain Program. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective March 31, 2003.

ADDRESSES: Documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2405. Copies of the Incorporation by Reference material at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available at the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota, 58504–5264.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used, we mean EPA.

I. Background

On October 7, 2002 (67 FR 62432), EPA published a notice of proposed rulemaking (NPR) for the State of North Dakota. The NPR proposed approval of revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated June 21, 2001. The revisions affect air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration. As indicated in the NPR, the submittal also included direct delegation requests for emission standards for hazardous air pollutants for source categories and the State's Acid Rain Program, which we will handle separately.

The revisions being addressed in this document involve the following chapters of the North Dakota Administrative Code (N.D.A.C.): 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter Restricted; 33–15–14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (subsection specific to exclusions from Title V permit to operate requirements only); 33–15–15 Prevention of Significant Deterioration; and 33–15–17 Restriction of Fugitive Emissions. For a detailed description of the revisions, please refer to our October 7, 2002 NPR (62 FR 62432).

A brief summary of the revisions is as follows. In the General Provisions chapter, the definition for ''public nuisance'' was removed and changes were made to clarify reporting requirements when stack testing for air contaminant emissions. In the Emissions of Particulate Matter Restricted chapter, the State incorporated reference information from the Federal rules. Also, the State repealed its requirements for existing infectious waste incinerators because these requirements are now addressed in the State's plan for the control of emissions from existing hospital/medical/infectious waste incinerators, which was approved by EPA in a May 13, 1999 **Federal Register** document (64 FR 25831). In the Restriction of Fugitive Emissions chapter, the State deleted a reference to nuisances and replaced it with a requirement that a source cannot cause air pollution as defined in the general provisions chapter (the State believes that its definition of ''air pollution'' covers nuisances). The above changes are consistent with Federal requirements and, therefore, are approvable.

In the Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate chapter, a new subsection entitled ''Source Exclusions from Title V Permit to Operate Requirements'' was added to provide an exemption from the