

## EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
Revision to Maintenance Plans for Jacksonville and Southeast Florida Areas	12/10/1999	8/2/2001	66 FR 40137	
Revision to Maintenance Plan for the Tampa, Florida Area .....	7/9/2000	8/15/2002	67 FR 53314	

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[WV055-6025a; FRL-7449-4]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the West Virginia State Implementation Plan (SIP). The revisions change portions of West Virginia's minor new source review and existing stationary source operating permit program. Specifically, today's action converts the partial approval and partial disapproval of West Virginia's minor new source review permit program, published on January 13, 2000 to a full approval. EPA's full approval of the revision to the West Virginia SIP is based on the findings that the deficiencies that formed the basis for the partial approval/disapproval of West Virginia's minor new source review permit program have been corrected in this SIP revision. The rule, as submitted, is in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on April 29, 2003 without further notice, unless EPA receives adverse written comment by March 31, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the *Federal Register* and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street,

Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW, Room B108, Washington, DC 20460; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304-2943.

**FOR FURTHER INFORMATION CONTACT:** Michael I. Ioff, P.E., (215) 814-2166, or by e-mail at [ioff.mike@epa.gov](mailto:ioff.mike@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On January 13, 2000 (65 FR 2042), EPA published a final rule notice (FRN) regarding West Virginia's minor new source review and existing stationary source operating permit program. The FRN approved in part, and disapproved in part, changes to West Virginia's minor new source review permit program as a revision to the West Virginia SIP. With the exception of the two separate provisions included in West Virginia's submission, the FRN approved West Virginia's minor new source review and existing stationary source operating permit program under section 110 of the Act as meeting the criteria set forth in a June 28, 1989 *Federal Register* document (54 FR 27274) for state permit programs that can limit a source's potential to emit criteria pollutants. The FRN also approved West Virginia's minor new source review and existing stationary source operating permit program under section 112(l) of the Act as meeting the statutory criteria for state permit programs that can limit a source's potential to emit hazardous air pollutants (HAPs).

Concurrently, the FRN disapproved two separate provisions included in West Virginia's minor new source review and existing stationary source operating permit program. Specifically, the FRN disapproved an exemption from minor new source review for

sources that have been issued permits under the State's Federally approved major source operating permit program (developed pursuant to Title V of the Clean Air Act) as such exemption did not comport with the federal requirements of 40 CFR 51.160 regarding the scope of the program. In addition, the FRN disapproved provisions governing the issuance of temporary construction or modification permits with only a 15-day public comment period as such provisions did not satisfy the Federal requirements for a 30-day comment period required by 40 CFR 51.161(b).

#### **Summary of SIP Revision**

To address the deficiencies of West Virginia Regulation CSR13 described in the January 13, 2000 rulemaking action, the State of West Virginia submitted on September 21, 2000, a formal revision to its SIP. The submitted SIP, which consists of changes to West Virginia Regulation CSR13, applies statewide and corrects the deficiencies that formed the basis for the partial disapproval of West Virginia's minor new source review and existing stationary source operating permit program. In order to correct the deficiencies, the exemption from minor new source review for sources that have been issued permits under the State's Federally-approved major source operating permit program was removed. In addition, the provision governing the issuance of temporary construction or modification permits with a 15-day public comment period was revised to provide for a 30-day public comment period in order to be consistent with the federal requirements for public participation found at 40 CFR 51.161(b).

As part of its September 21, 2000 SIP revision, West Virginia also submitted a number of additional revisions intended to, among other things, streamline the permitting process. Those revisions include changes to the construction and modification thresholds; creation of a "de-minimis" source list; changes in the definitions of volatile organic compounds (VOCs) and HAPs; and, clarification of the definition of when "construction" commences. Also, West Virginia Regulation CSR13 was revised to incorporate an administrative process

for making relatively minor permit revisions. The revised Regulation CSR13 contains modified public notice procedures, such as: eliminating the two-step notice from the previous regulation; establishing a 30-day notice for certain actions and a 45-day notice for the remainder; and, additional notice methods which may be required by the State. The revised regulation also provides further clarification regarding HAPs and toxic air pollutants and revised procedures for temporary permits. EPA has reviewed these revisions to West Virginia Regulation CSR13 and find that they are at least as stringent as the corresponding requirements of the Clean Air Act.

## II. Final Action

EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment from either the public or the regulated community. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 29, 2003 without further notice unless EPA receives adverse comment by March 31, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## III. Statutory and Executive Order Reviews

### A. General Requirements

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.*).

### B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, to approve the West Virginia minor new source review and existing stationary source operating permit program, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 31, 2003.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

### PART 52—[AMENDED]

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

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

**Subpart 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.

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**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](mailto:zoueshtiagh.nahid@epa.gov).

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

**List of Contents:**

- I. Proposed Action
  - A. How the Deficiencies Were Corrected
  - B. Creation of an Annual Equivalency Program
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

**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.

Rule No.	Rule title
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.<sup>1</sup> The basis for the approval of the

<sup>1</sup> 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