

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04-OAR-2005-NC-0001-200503, FRL-7988-2]

Approval and Promulgation of Implementation Plans: NC: Approval of Revisions to the Control of Visible Emissions Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule

SUMMARY: EPA is taking final action to approve the Control of Visible Emissions portion of a State Implementation Plan (SIP) revision submitted to EPA, by the State of North Carolina, on December 14, 2004. EPA is approving changes to the opacity standards for sources required to install, operate and maintain continuous opacity monitoring systems (COMs). These changes do not increase the number of exceptions or the number of minutes per day for exceptions, but allow the aggregation of the daily exceptions. At this time, we are not taking final action on the remaining portions of the SIP revision submitted by the State on December 14, 2004.

DATES: This rule will be effective November 25, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID No. R04-OAR-2005-NC-0001. All documents in the docket are listed in the RME index at <http://docket.epa.gov/rmepub/>, once in the system, select "quick search," then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9029. Ms. Spann can also be reached via electronic mail at spann.jane@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

On December 14, 2004, the North Carolina Department of Environment and Natural Resources (NC DENR) submitted to EPA revisions to the North Carolina SIP. In the December 14, 2004 submittal, the State of North Carolina requested adoption of new rules and amendments to existing rules including NCAC 2D. 0521 Control of Visible Emissions. On May 18, 2005, EPA proposed approval of the NCAC 2D. 0521 Control of Visible Emissions portion of the December 14, 2004, submittal. Additional information regarding the specific proposed SIP revisions is available in the proposed rule (70 FR 28495, May 18, 2005) included in this docket. EPA provided the public with thirty days to submit comments on the proposed SIP revisions and we received six comment letters. The comments and our responses are discussed below in Part III., "Response to Comments." One commenter requested that EPA hold a public hearing to discuss the proposed SIP revision. NC DENR held seven public hearings. Four public hearings were held in Raleigh, North Carolina on June 6, 2000; August 16, 2000; August 20, 2002; and August 12, 2004. Public hearings were also held in Winterville, North Carolina on October 30, 2003; in Enka, North Carolina on November 5, 2003; and in Charlotte, North Carolina on August 2, 2004. The revisions ultimately included in the December 14, 2004, SIP submission were discussed in these hearings, including the revisions to Rule NCAC 2D .0521 Control of Visible Emissions. The Administrative Procedure Act does not require EPA to hold a public hearing for SIP revisions and, as a matter of practice EPA rarely provides for public hearing for SIP revisions. We see no reason to depart from that practice here, particularly in light of the numerous public hearings

held by the State to discuss the changes being made to this rule.

II. Today's Action

Today's action addresses only the NCAC 2D .0521 Control of Visible Emissions portion of the December 14, 2004, submittal. EPA is approving portions of Rule NCAC 2D. 0521 as submitted December 14, 2004, and is not taking action on the remainder of NCAC 2D .0521. EPA does not intend to act on previous versions of NCAC 2D .0521 which are not part of the December 14, 2004 submittal. In light of the public comments received on the May 18, 2005 proposal, EPA needs to consider further the remaining portions of NCAC 2D .0521 in the December 14, 2004, SIP submission and is taking no action on those portions of the SIP revision in this action.

Today's action includes the following:

1. EPA is approving the amendments to Paragraphs (c) and (d) of Rule NCAC 2D .0521. These amendments add references to a new Paragraph (g) that has been added.
2. EPA is approving a portion of Paragraph (g) of Rule NCAC 2D .0521 to allow sources required to install, operate and maintain COMs, to aggregate opacity exceptions on a daily basis rather than being restricted to one opacity exception per hour. Specifically, under the new amendment, sources with COMs are allowed no more than four six-minute opacity exception periods in any one day with no hourly restriction provided that no excess emissions during these periods cause or contribute to a violation of any emission standard or any ambient air quality standard. The new amendment also further restricts the exception periods by requiring that the opacity exceptions for these sources shall not exceed 0.8 percent of the total operating hours in a calendar quarter. Opacity exceptions greater than 0.8 percent of the total operating hours per calendar quarter will be considered a violation of this rule. EPA is not taking action on that portion of Rule NCAC 2D .0521(g) that excludes startups, shutdowns, maintenance periods when fuel is not being combusted, and malfunctions approved as such according to procedures approved under Rule .0535.
3. No action is being taken on Paragraphs (a), (b), (e) and Paragraph (f) of Rule NCAC 2D .0521.

III. Response to Comments

Comment 1: Numerous commenters objected to changes made to the provisions in Rule NCAC 2D .0521 regarding the exclusion of startup, shutdown, maintenance and

malfunction periods. Two commenters objected to how the proposed rule creates "an automatic exemption from excess emissions violations during startup, shutdown, malfunctions and maintenance periods." They went on to say that by creating "an automatic exemption," the proposed rule revision violates the continuous compliance requirements of the Clean Air Act (CAA or the Act) and EPA policy, citing EPA's "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown," issued September 20, 1999 (September 20, 1999 EPA guidance document). The commenters cited examples where EPA struck down "similar automatic exemption" proposals put forward by the States of Colorado and Michigan. They also cited the Sixth Circuit Court of Appeals decision to uphold EPA's aforementioned decision to disapprove the State of Michigan's SIP revision allowing "automatic exemptions." One commenter stated that according to the memorandum accompanying EPA's September 20, 1999 policy "[a]ll Regions should review the SIPs for their states in light of this clarification and take steps to insure that excess emissions provisions in these SIPs are consistent with the attached guidance. (See, Memorandum of Steven A. Herman regarding State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown, 20 September 1999)." As such, the commenter stated that EPA must review the existing SIP in the same light. They stated that EPA must determine whether the existing SIP's automatic exemption for excess emissions during startup complies with the Act and EPA's regulations and policy governing excess emissions.

Response: We believe that the portions of the submitted SIP revision that address emissions during start-up, shutdown, maintenance and malfunction deserve further evaluation in light of the comments received during the comment period. Therefore, we are not taking action on those provisions at this time. We will respond to these comments at the time we take final action on these provisions of the SIP revision.

Comment 2: One commenter stated that Rule 15A NCAC 2D .0535 Excess Emissions and Reporting and Malfunctions "violates the Act and EPA Policy and should be removed from the SIP." The commenter asserted this is true for several reasons.

Response: Rule 15A NCAC 2D .0535 is not before the Agency in this action.

Comment 3: A number of commenters objected to the change in paragraph (f) of Rule .0521 from "may" to "shall". The commenter stated that under the current SIP "the Director is allowed to grant an exception and allow a source to comply with a 40% standard if the owner demonstrates compliance with applicable particulate matter (PM) standards and submits data necessary to show that opacity emissions at 40% will not violate any NAAQS." In the commenter's opinion the revision states "the Director is required to grant the exception and allow sources manufactured after July 1, 1971 to comply with a 40% rather than 20% opacity standard if the owner meets (certain) conditions." In the commenter's opinion, the required "proof" to demonstrate that conditions are met is not adequate to ensure that sources will not exceed particulate emission standards or will not cumulatively cause an exceedance of the NAAQS. The commenter recommended that the source be required to install PM Continuous Emissions Monitoring Systems (CEMS). They stated that a stack test is insufficient proof that a source operating at 40%, rather than 20% opacity will not exceed its PM limits. The commenter also recommends that modeling must be conducted assuming that all sources are operating at 40% opacity.

Response: We believe that this provision of the submitted SIP revision deserves further evaluation in light of the comments received during the comment period. Therefore, we are not taking action on section (f) at this time. We will respond to this comment at the time we take final action on section (f) of the SIP revision.

Comment 4: Some commenters opposed EPA's approval of Paragraph (g) of Rule 15A NCAC 2D .0521 because it would be less protective than the existing opacity limit. One commenter specifically objected to the change from a standard that is measured on a rolling "24 hour period" to one that is measured on the basis of the opacity limit exceptions allowed "in any one day." The commenter argued that a "rolling average" is by its nature more protective, and pointed to a previous EPA statement to that effect in connection with a Colorado SIP revision. A number of commenters objected more generally that EPA should not approve the revision to the standard for sources required to operate COMs which, in effect, eliminates the current hourly limit on opacity exceptions, and would allow a source to aggregate the currently allowed 24

minutes of opacity exception time in a given day. The commenters argued that such a change would be contrary to CAA section 110(l).

Response: EPA agrees that North Carolina's submittal includes revisions that will allow sources using COMS to aggregate currently allowed opacity exceptions. EPA does not, however, believe that approval of the revisions is in conflict with either section 110(l) or section 193 of the Clean Air Act. The current SIP approved opacity regulations in North Carolina allow all affected sources to have exceptions to the opacity standard for up to four periods of six minute duration in a 24 hour period. In addition, the current State regulation also imposes other more specific limits on the percentage of opacity that a source may emit during an exception period, based upon the age of the source (e.g., pursuant to Paragraph (c), a source built before 1971 may have no more than four six minute periods at over 40% opacity in a given day, no more than one six minute period at over 40% opacity in a given hour, and no six minute period that exceeds 90% opacity). By the addition of Paragraph (g), the State will allow sources that are required to install, operate, and maintain COMs to aggregate the currently existing opacity exception periods, but maintains the restriction that there may be no more than four six minute opacity exception periods in any calendar day. In effect, such a change eliminates only the current limit of one six minute period per hour, and potentially allows the source to aggregate the four daily six minute periods together for a 24 minute period on a given day. Paragraph (g) of the North Carolina regulation does not permit additional minutes of opacity limit exception in a day, and does not change the percentage of opacity allowed during those exception periods as otherwise required in Paragraphs (c) and (d). EPA notes, however, that by changing from a rolling 24-hour basis to a calendar day basis, there is the potential for a source to utilize the daily 24 minutes of exception period at the end of one calendar day and the 24 minutes of exception period at the beginning of the next calendar day, for a combined 48 continuous minutes of exception period at the opacity limits otherwise required by Paragraphs (c) and (d). Significantly, Paragraph (g) also imposes a new quarterly cap on the amount of time that a source may exceed the opacity limit, which will significantly reduce the total amount of exception period that would otherwise have been permissible under the

existing regulation. EPA has evaluated whether this revision to 15A NCAC 2D .0521 would pose concerns under both section 110(l) and section 193.

Section 110(l) requires that revisions to SIPs do not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement. EPA notes that the evaluation of compliance with section 110(l) must take into account all relevant impacts of the proposed change, and that those impacts may differ depending upon the circumstances. In this instance, EPA believes that because the State regulation at issue pertains to opacity, the primary CAA requirements of concern should be impacts on compliance with the NAAQS for PM₁₀ and PM_{2.5}, and impacts on regional haze. Opacity standards are, even if only indirectly, standards that restrict the emissions of particulate matter, whether solid or liquid. Thus, EPA has looked first to the relevant PM standards and how compliance with those standards is to be determined, as provided in 40 CFR part 50, appendices K, L, and M. In the case of the 24-hour PM₁₀ NAAQS, that standard is calculated or measured from midnight to midnight on calendar days, and evaluated for the number of calendar days exceeding the standard per calendar year. For the annual PM₁₀ NAAQS, compliance is evaluated based upon the average mean for four calendar quarters, to derive the expected annual arithmetic mean. In the case of the 24 hour PM_{2.5} NAAQS, compliance is determined by measuring the concentration from midnight to midnight on calendar days, and based upon the 98th percentile concentration. For the annual PM_{2.5} NAAQS, the determination is made by averaging the annual average over three years. This is a simplification of the calculations, but illustrates the essential point that for purposes of the NAAQS, the shortest period of time against which compliance is measured is a calendar day. In the case of regional haze, the relevant time periods are also longer. That program relies on a comparison of a number of most and least impaired days over the course of a calendar year. See, 40 CFR 51.308. Therefore, the shortest time period for which an evaluation of possible impacts on regional haze would also be a calendar day.

EPA acknowledges that there is not necessarily a direct correlation between PM mass and opacity. However, the time duration of opacity exceptions and the percentage of opacity during those exceptions can be appropriate measures

for evaluating whether a change in an opacity standard may be contrary to 110(l). In the case of the revision to add Paragraph (g) to 15A NCAC 2D .0521, EPA notes that the State has not increased the number of minutes of opacity exception permitted in a day, and has not altered the permissible opacity percentage during those exception periods. The next relevant question is whether the elimination of the current restriction of no more than one six minute exception period per hour would pose a problem for purposes of section 110(l). From this perspective, the CAA requirements of concern would be the PM₁₀ and PM_{2.5} NAAQS, and regional haze. Because compliance with those requirements entails evaluation of compliance in periods no shorter than a calendar day, EPA concludes that whether the 24 minutes of opacity exception occur together at one time, or spaced out over four six minute periods over the course of a given day, should have no meaningful impact on the compliance with the NAAQS or regional haze requirements. In other words, for example, because ambient PM_{2.5} concentrations would be measured over the course of a calendar day, when the 24 minutes of opacity exception periods occur during the course of the day should not matter for purposes of the 24 hour PM_{2.5} NAAQS.

The next question of concern is whether aggregation of the total daily exception periods back to back on two successive calendar days would pose a problem for purposes of section 110(l). EPA agrees that there are situations in which a 24 hour rolling standard can be more protective, and situations where revising such a standard would potentially be problematic. Here, however, EPA believes that because calculation of compliance with the NAAQS is gauged over no shorter time period than a calendar day, the aggregation of the opacity exception periods from two calendar days should have no significant impacts for purposes of section 110(l). Moreover, given the type of sources likely to be governed by Paragraph (g), *i.e.*, large electric generation units, EPA believes that such sources are unlikely to be operated in such a fashion that they would typically use all of the exception period minutes from two successive days back to back. EPA's understanding of the methods of operation of these sources is that the exception periods are typically more likely to be used in shorter increments throughout a given day, thereby minimizing the possibility of 48 continuous minutes over two successive

days that would previously have been precluded by a 24 hour rolling standard.

Finally, EPA notes that the revised North Carolina opacity standard in Paragraph (g) explicitly provides that sources cannot rely on the opacity exception periods, if excess emissions during such periods would "cause or contribute to a violation of an emission standard in this Subchapter or 40 CFR part 60, 61, or 63, or any ambient air quality standard in Section 15A NCAC 2D .0400 or 40 CFR part 50." EPA interprets this provision as a federally enforceable limitation on opacity exception periods that will help to insure that emissions during such periods do not interfere with other requirements of the CAA.

Section 193 requires that no control requirement in effect before November 15, 1990, in any nonattainment area for any air pollutant may be modified after November 15, 1990 in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant. EPA has evaluated the inclusion of Paragraph (g) in light of this requirement and concluded that the revision is approvable following the same logic. Because the revision has not increased the total number of minutes of opacity exception periods during the course of a day, or altered the percentage of opacity permissible during such periods, EPA does not think that the revision will allow an increase in opacity during the course of a day. EPA agrees that the change from a rolling 24-hour period to a calendar day period for purposes of limiting exception periods could potentially have posed a problem in the context of section 193 if looked at solely from the perspective of a given rolling 24 hour period, but the State's inclusion of a quarterly cap on the number of minutes of exception period serves to negate that concern. EPA believes that the imposition of the quarterly cap on exception periods provides assurances that the revised standard will provide equivalent or greater protection on a quarterly or annual basis.

Comment 5: One commenter stated that no worst-case analysis has been conducted for these proposed amendments. Previous worst-case analysis (based on modeling data collected during a Method-5 stack test of a large boiler at an electrical generation unit) fails to adequately establish that any small group of sources subject to the proposed exemption does not have the potential to cause an exceedance of the NAAQS or PSD increments.

Another commenter stated that North Carolina has not adequately addressed

the requirements of section 110(l) of the Act because the State did not provide modeling data and analysis to justify its proposed SIP revisions. The commenter stated that NC DENR established a relationship between opacity and emission rate of particulate from data collected during a Method-5 stack test of a large boiler at an electrical generation unit (EGU). The commenter argued that because EPA disapproved a similar Colorado SIP revision based on data from one out of twenty-five statewide boilers, EPA should not approve North Carolina's SIP revisions because they are based on data obtained from only one boiler out of, at least, forty-one in the State of North Carolina. The commenter also stated that it appears that the modeling analysis was based on actual emissions from a sample startup/shutdown sequence that was simply repeated in the model throughout the year. The commenter cites EPA's Guidelines on Air Quality Models to argue that North Carolina did not use worst case hourly emissions rates (from the test sequence) in the model for every hour of the year when testing for compliance with 24-hour standards.

Response: EPA believes that allowing aggregation of the daily exceptions allowed will not result in additional opacity. Therefore, EPA has concluded that a worst-case demonstration is not required.

Comment 6: One commenter stated that NCDENR has not adequately addressed the requirements of Section 193. The commenter stated that because the SIP provision governing visible emissions was initially approved by EPA prior to November 15, 1990, North Carolina must demonstrate compliance with this provision prior to EPA approval of its proposed SIP revisions. The commenter believes that these demonstrations must be conducted for all sources within nonattainment areas.

Response: As mentioned previously, these rule changes are not allowing any increase in the number of minutes per day for exceptions from the opacity standard or any increase in the percentage of opacity during such periods. In addition, the imposition of the quarterly cap on minutes of exception to the opacity standard provides assurances that the revised standards will provide equivalent or greater protection on a quarterly or annual basis. Therefore, EPA has concluded that the SIP revision meets the requirements of Section 193 of the Act.

Comment 7: One commenter stated that NCDENR has not adequately addressed the requirements of 40 CFR 51.166(a)(2) (PSD Plan Revisions) in the

revision to the rule. The commenter stated that "if a SIP revision would result in increased air quality deterioration over any baseline concentration, the SIP revision must include a demonstration that it will not cause or contribute to a violation of the applicable increments." The commenter stated that EPA must disapprove the proposed revision if EPA finds that the proposed revisions represent a relaxation from existing requirements that will allow increased emissions into the air.

Response: As explained more fully above, these rule changes are not allowing a relaxation from existing requirements because there is no increase in the minutes of daily opacity exceptions and there is a reduction of such exceptions on a quarterly basis. Thus, EPA has concluded that these revisions do not require the suggested demonstration.

Comment 8: The commenter stated that the SIP revisions do not meet the Clean Air Act requirements that SIP measures be enforceable. The commenter cited EPA's disapproval of Colorado's proposed SIP revisions based on the fact that those revisions did not comply with the Clean Air Act's requirement that such revisions be enforceable. The commenter noted that "EPA held that Colorado's proposed revisions were insufficient because 'the State does not specify whether exceedances will be measured against the 20% opacity limit * * *, the 30% opacity limit * * *, or both. Id.'" The commenter believes that EPA must disapprove NC DENR's revisions because the North Carolina regulations are likewise vague and ambiguous, and do not clearly specify whether the exceedances will be measured against the 90%, 87%, 20% or 40% opacity limits, or some combination thereof.

As an example, the commenter argued that the North Carolina revisions do not clearly define whether or not various activities, such as fire building, process modification and adjustment of control equipment are to be counted in determining the number of exceedances in a given quarter. Similarly, the commenter argued that the SIP revisions do not clearly indicate how sources must conduct required recordkeeping and reporting. Also, the commenter stated that the State has failed to address issues relating to significant planned maintenance outage (PMO) startups.

Response: EPA believes that the NC rule is clear about how the opacity exceptions will be measured. Depending on the source, 40% opacity or 20% opacity are the standards. 15A NCAC 2D

.0521 paragraphs (c) and (d) include exception periods that allow a source to go above the 40% or 20% opacity for a short period of time (four six minute periods in any 24-hour period). At no time can opacity exceed the upper limits of 90% or 87%, depending on the source. EPA notes that because the sources governed by paragraph (g) have COMs, it should be easier to assure compliance with these limits.

The current rule does not provide for specific exemptions for fire building activities, process modification, adjustment of control equipment or planned maintenance outage (PMO) startups and the rule revisions do not change this. Also, neither the current Rule .0521 nor the rule revision addresses reporting and recordkeeping. Therefore, it is not necessary for the rule revision to address these issues as recommended by the commenter. There will be no change to the scope of Rule .0521 and EPA is not taking action on changes in provisions related to startup, shutdown, maintenance and malfunction.

Comment 9: One commenter stated that the new standard could not be a relaxation of the existing standard because continuous measurement of emissions is more stringent than the visual observation method, implying that more frequent monitoring renders a standard more stringent.

Response: The revision to Rule NCAC 2D .0521 is not a relaxation of the standard for the reasons already given in this **Federal Register** document. EPA does not agree with the commenter's assertion that more frequent monitoring automatically renders a standard more stringent.

IV. Final Action

EPA is taking final action on the Control of Visible Emissions portion of a State Implementation Plan (SIP) revision submitted to EPA, by the State of North Carolina on December 14, 2004. EPA is approving the changes to Paragraphs (c) and (d) of Rule NCAC 2D .0521 Control of Visible Emissions that reference new Paragraph (g) of said rule. EPA is also approving Paragraph (g) of Rule NCAC 2D .0521, with the exception of the clause that provides "excluding startups, shutdowns, maintenance periods when fuel is not being combusted, and malfunctions approved as such according to procedures approved under Rule .0535 of this Section." We are not taking action at this time on that portion of Paragraph (g) or on Paragraphs (a), (b), (e), and (f).

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 (Pub. L. 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 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. 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 December 27, 2005. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 17, 2005.

A. Stanley Meiburg,
Acting Regional Administrator, Region 4.

■ 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 II—North Carolina

■ 2. In Section 52.1770(c), table 1 is amended under subchapter 2D by revising the entry for “.0521 Control of Visible Emissions” to read as follows:

§ 52.1770 Identification of plan.

* * * * *
(c) * * *

TABLE 1.—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
.0521	Control of Visible Emissions.	01/01/05	10/25/05 [Insert first page of publication].	Approving changes to Paragraphs (c) and (d) that reference new Paragraph (g). Also, approving Paragraph (g) excluding the following language: “excluding startups, shutdowns, maintenance periods when fuel is not being combusted, and malfunctions approved as such according to procedures approved under Rule .0535 of this Section.”
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[FR Doc. 05-21261 Filed 10-24-05; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R09-OAR-2005-CA-0005; FRL-7986-8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from surface cleaning operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on December 27, 2005 without further notice, unless EPA receives adverse comments by November 25, 2005. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number R09-OAR-2005-CA-0005, by one of the following methods:

1. Agency Web site: <http://docket.epa.gov/rmepub/>. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.

2. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.

3. E-mail: steckel.andrew@epa.gov.

4. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal or e-mail. The agency Web site and eRulemaking portal are “anonymous access” systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at

<http://docket.epa.gov/rmepub> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., 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: Cynthia G. Allen, EPA Region IX, (415) 947-4120, allen.cynthia@epa.gov.

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

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I. The State’s Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD	74.6	Surface Cleaning and Degreasing	11/11/03	04/26/05
VCAPCD	74.6.1	Batch Loaded Vapor Degreasers	11/11/03	04/26/05
VCAPCD	74.12	Surface Coating of Metal Parts and Products	11/11/03	04/26/05
VCAPCD	74.13	Aerospace Assembly and Component Manufacturing Operations	11/11/03	04/26/05
VCAPCD	74.19	Graphic Arts	11/11/03	04/26/05
VCAPCD	74.19.1	Screen Printing Operations	11/11/03	04/26/05
VCAPCD	74.24	Marine Coating Operations	11/11/03	04/26/05
VCAPCD	74.30	Wood Products Coatings	11/11/03	04/26/05

On June 3, 2005, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved versions of these rules into the SIP on the dates listed: Rule 74.6 on December 11, 2000 (adopted on

November 10, 1998 and submitted on February 16, 1999), Rules 74.6.1, 74.6.2, and 74.6.3 on July 21, 2000 (adopted on July 9, 1996 and submitted on October 18, 1996), Rules 74.12, 74.13, 74.24, and 74.30 on April 19, 2001 (adopted on September 10, 1996 and submitted on March 3, 1997), 74.19 on May 23, 2002 (adopted on April 10, 2001 and submitted on October 30, 2001), and 74.19.1 on August 21, 1998 (adopted on

June 11, 1996 and submitted on October 18, 1996.

C. What Is the Purpose of the Submitted Rule Revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions.