

Subpart G—Colorado

■ 2. Section 52.352 is revised to read as follows:

§ 52.352 Interstate transport.

Addition to the Colorado State Implementation Plan of the Colorado Interstate Transport SIP regarding the 1997 8-Hour Ozone Standard for the “significant contribution”, the “interfere with maintenance”, and “interference with visibility protection” requirements, submitted by the Governor’s designee on June 18, 2009 and March 31, 2010.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R09–OAR–2010–1078; FRL–9293–6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a source-specific State Implementation Plan (SIP) revision for the South Coast Air Quality Management District (District) portion of the California SIP. This source-specific SIP revision is known as the CPV Sentinel Energy Project AB 1318 Tracking System. The SIP revision consists of enabling language and the AB 1318 Tracking System to revise the District’s SIP approved New Source Review (NSR) program. The SIP revision allows the District to transfer offsetting emission reductions for particulate matter less than 10 microns in diameter (PM₁₀) and one of its precursors, sulfur oxides (SO_x), to the CPV Sentinel Energy Project, which will be a natural gas fired power plant.

DATES: This final rule is effective on May 20, 2011.

Docket: The index to the docket for this action is available electronically at <http://www.regulations.gov> 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: Laura Yannayon, EPA Region IX, (415) 972–3524, yannayon.laura@epa.gov.

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

Table of Contents

- I. Background
- II. Evaluation of Source-Specific SIP Revision
 - A. What action is EPA finalizing?
 - B. Public Comments and Responses to Comments
- III. EPA Action
- IV. Statutory and Executive Order Reviews
 - A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132, Federalism
 - F. Executive Order 13175, Coordination With Indian Tribal Governments
 - G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks
 - H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

I. Background

The proposed Sentinel Energy Project is designed to be a nominally rated 850 megawatt electrical generating facility covering approximately 37 acres within Riverside County, adjacent to Palm Springs, California. EPA’s proposal for this action contained a detailed description of the project and the Clean Air Act’s (CAA) requirements for offsets during New Source Review permitting. 76 FR 2294 (January 13, 2011) With our proposal to approve this SIP revision, EPA attached the complete list of PM₁₀ and SO_x offsetting emission reductions that are being transferred in the AB 1318 Tracking System to our Technical Support Document (TSD). Documentation for each of the offsetting emission reductions listed in the attachment to the TSD was included in the docket for the proposal in hard copy at EPA’s offices as well as other locations. For additional background information please see the January 13, 2011 proposed notice for this action. (76 FR 2294)

II. Evaluation of Source-Specific SIP Revision

A. What is the rule that EPA is finalizing?

EPA is finalizing a SIP revision for the South Coast portion of the California SIP. The SIP revision will be codified in 40 CFR 52.220 by incorporating by reference the Offset Requirements for the Proposed CPV Sentinel Power Plant, including the CPV Sentinel Energy Project AB 1318 Tracking System, as adopted by the District.

The SIP revision provides a federally approved and enforceable mechanism for the District to transfer PM₁₀ and SO_x offsetting emissions reductions from the District’s internal bank to the Sentinel Energy Project and to track those emissions credits through the AB 1318 Tracking System.

B. Public Comment and Final Action

In response to our January 13, 2011 proposed rule, we received four comments, one each from the South Coast Air Quality Management District (District), Michael Carroll of Latham & Watkins LLP, the Natural Resources Defense Council (NRDC), and the Law Offices of Angela Johnson-Mezaros on behalf of California Communities Against Toxics and Communities for a Better Environment (jointly referred to herein as “CCAT”). Copies of each comment letter have been added to the docket and are accessible at [regulations.gov](http://www.regulations.gov). The comment from the District supported EPA’s analysis and proposed source-specific SIP revision and provided an errata sheet correcting minor typos and the amount of SO_x offsets available in the AB1318 Tracking System (reduced the quantity by 92 lbs). The comment from Latham & Watkins was also supportive of our proposed action. The comment from NRDC generally opposed the SIP revision but did not provide any specific grounds for its opposition or raise any specific issues. To the extent that NRDC generally opposes the SIP revision, our response to its general opposition is included below with our response to CCAT’s more specific comments. We have summarized CCAT’s comments (based on the structure of their comment letter) and provide our response to each comment below.

Comment I: CCAT comments that EPA did not allow meaningful public participation on the SIP revision for several reasons and that approval of the SIP revision based on the available information would be arbitrary and capricious.

Comment I.A: CCAT contends the regulatory text of the SIP revision is too

vague and incomplete to be federally enforceable. CCAT contends that the SIP revision consists of preambular or background language and that the list of emissions credits being transferred is not included in the SIP revision.

Response I.A: CCAT is incorrect on both points. EPA's proposed approval quoted the text of the proposed source-specific revision in the section of the proposal entitled "What is in the SIP Revision?" (76 FR at 2295) and also posted the text in the docket at Index No. I–B. Upon finalizing the approval, EPA will codify this revision at 40 CFR 52.220. The SIP revision, therefore, consists of the regulatory text that was quoted in EPA's proposed rule. Before quoting the language in the proposed approval, we identified the language stating: "The text of the proposed source-specific SIP revision is * * * 76 FR at 2295. This is the language that will be incorporated by reference in 40 CFR 52.220. Therefore it is not preambular or background language as stated by CCAT. The SIP revision language was available to the public. This comment contains other conclusory statements such as characterizing the SIP revision as being too vague to be enforceable because it does not provide an enforceable mechanism for generating emissions credits. These additional statements are generally repeated elsewhere in the comment letter with more specificity. We have responded to the more detailed comments rather than the very general and conclusory statements in this section of the comment letter.

The full list of the credits that will be transferred is incorporated by reference into the SIP revision. Incorporation by reference of materials such as the list of the emissions credits being transferred is permissible and there is no requirement for EPA to include the list of credits in the regulatory text that will be published in the Code of Federal Regulations. See Use of Incorporation by Reference as a Mechanism for Shortening Federal Register Notices, from Gerald H. Yamada, Principal Deputy General Counsel to Regulatory Policy Group, dated Jan. 12, 1995. See also 1 CFR part 51.

The comment also contends that the SIP revision is insufficient because it does not contain a "mechanism for generating and validating the credits". The SIP revision does not purport to provide a mechanism for generating credits. This SIP revision provides an enforceable mechanism for the District to transfer previously generated emissions credits and incorporates the list of those emissions credits. The Sentinel Energy Project is a source that

is not authorized to receive emissions credits from the District's internal accounts in the absence of this SIP revision because it is not a source category or type of project listed in Rule 1304 as exempt or in Rule 1309.1 as a priority reserve source. Thus, the general assertions submitted by CCAT that the public did not have adequate notice for a variety of reasons does not provide any basis for EPA to alter its proposed approval of this SIP revision.

Comment I.B: CCAT contends the **Federal Register** Notice and TSD are unclear and provide an inconsistent description of the proposed SIP revision.

Response I.B: EPA disagrees with the comment and notes that CCAT has not provided any specific examples in which the proposal and TSD are vague or inconsistent. CCAT also contends that AB 1318 is of minor relevance to this action. EPA agrees with this comment. EPA did not propose approval of this action based on the State legislation and has discussed that action only as background. EPA proposed to approve this SIP revision because it complies with the requirements of the CAA.

Within this comment, CCAT also asserts that EPA's record for proposing approval of the District's SIP revision provides an inadequate justification. CCAT contends that EPA's record is deficient because it does not acknowledge or explain that the proposed SIP revision purportedly does three separate things: first, codify in Federal law an entirely new method for the SCAQMD to generate emission credits; second, apply that generation method to specific reductions dating back to 1999; and third, transfer the credits out of the SCAMQD's internal bank. See CCAT Letter at 3.

CCAT's first contention is that EPA does not explain or acknowledge that it is codifying into Federal law a new method for the District to generate emissions credits. The problem with CCAT's comment is that EPA is not codifying a new method for the District to generate emissions credits.¹ The emissions credits the District is transferring pursuant to its AB 1318 Tracking System are emission credits

that existed in the District's internal accounts. The AB 1318 Tracking System contains the District's accounting of these specific credits and a mechanism for transferring these emissions credits from the District's internal account to Sentinel. The SIP revision does not establish a new method for the District to generate emission credits. EPA reviewed the submitted documentation demonstrating that a sufficient number of these specific emissions credits being transferred meet the Federal integrity criteria required by section 173 of the CAA.

CCAT's second contention is that the District is now generating credits from emissions reductions that occurred up to two decades ago and also that the District's internal bank accounts have negative balances. While some of the emissions credits that the District is transferring arose from events in 1999, most occurred after 2003, therefore characterizing 1999 as being two decades ago may be technically correct but somewhat misleading. CCAT also states that no evidence of the actual dates of when the reductions occurred is contained in the public record. This is incorrect. The support documentation, which is voluminous and was available for review in hard copy, explicitly contains this information. In any event, we have reviewed the documentation for the emissions reductions, including those associated with events that occurred in 1999 and consider those 1999 emissions credits to meet the requirements of section 173 of the CAA.

CCAT also contends the District has "negative balances" in its internal accounts. For the purposes of this SIP revision, the balance of the District's internal accounts is not relevant, since EPA examined each of the specific emission reduction actions that are the basis for the credits being transferred pursuant to this SIP revision and found a sufficient quantity—compared to the amount needed for the CPV Sentinel Energy Project, to meet the CAA offset requirements.

CCAT, NRDC and associated groups raised the same issue in a Petition to the Administrator in December 2010. In responding to the Petition, the Administrator examined the emission credits in the District's internal accounts following passage of SB 827. SB 827 was a companion bill to AB 1318 which directed the District to transfer emissions credits from their internal accounts to exempt sources covered by Rule 1304 and priority reserve sources covered by Rule 1309.1 beginning in January 2011. A copy of the Administrator's petition response letter

¹ On February 4, 2011, the District adopted Rule 1315—Federal New Source Review Tracking System—which does provide a general rule for the District to credit and debit emissions credits in its internal accounts. The District has submitted Rule 1315 to EPA as a SIP revision. EPA will be acting on the Rule 1315 submittal in a separate Notice of Proposed Rulemaking and will provide a 30 day comment period with that action. Some of CCAT's comments on this proposal may be more properly directed to any action that EPA proposes to take on District Rule 1315.

is attached to and incorporated into this Response to Comments because the same general issues arise with respect to AB 1318 and SB 827. The Administrator's letter details the Agency's determination that the District may use emissions reductions from previously shutdown sources, including minor source orphan shutdowns, to fund its internal accounts. The Administrator's letter also disagrees with assertions that the District's internal accounts have negative balances. Thus, for all of the reasons set forth in the Administrator's letter, EPA disagrees with CCAT that this SIP revision constitutes codifying a new system of generating emissions credits, that the District's internal accounts have negative balances or that the emission credits are invalid because they were created more than two decades ago.

CCAT's third contention is that this SIP revision allows the District to transfer ownership of emission credits out of the District's internal bank. EPA agrees with this contention but CCAT has not raised any specific reason that such a transfer is contrary to the requirements of the CAA and this comment does not provide any basis for EPA to alter its proposal to approve the SIP revision providing a Federal mechanism to enforce the transfer of ownership of these emission credits. The District's decision to transfer valid emission credits is a policy decision.

CCAT states that the project description of the SIP revision is confusing because it does not "admit" that EPA is approving a revision to SIP-approved Rules 1303 and 1309.1. CCAT's assertion that this action constitutes a revision of either Rule 1303 or 1309.1 is incorrect. Instead, as stated in the actual SIP revision, the action is providing an additional federally enforceable mechanism for the District to transfer emission credits from its internal bank to the Sentinel project. But the District has not revised and EPA is not approving a revision to Rules 1303 and 1309.1.

Comment I.C: CCAT asserts that EPA did not include critical documents in the docket for this proposed rulemaking.

Response I.C: CCAT appears to be criticizing the fact that scanned copies of voluminous records documenting the validity of each pound of emissions credits being transferred from the District bank to Sentinel were not provided in electronic form on the regulations.gov Web site. These documents consist of the "Offset Source Calculation/Verification Form" and supporting documentation for each form. The District's submittal consisted of a CD, with 62 separate documents,

comprising more than 1,000 pages. The forms show a facility's name, the type of equipment that had been operated, the emission inventory data for the two years prior to shut down, the date when the facility's permit was inactivated, verification of the shutdown and various emissions calculations using this data. EPA's proposed approval of the SIP revision relied on these documents to demonstrate that a sufficient number of the emissions credits the District transferred met the integrity criteria in Section 173 of the CAA.

Our proposed approval of this SIP revision stated that we had attached a "complete list of PM₁₀ and SO_x offsetting emissions reductions" to our Technical Support Document and that "[d]ocumentation for each of these offsetting emission reductions is included in the docket for this proposal." EPA's proposed approval also stated: "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 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." (76 FR 2294) Therefore, the proposed approval provided notice to the public to contact EPA to inspect the documentation for each offsetting emission reduction listed in the attachment to our Technical Support Document.

EPA is not required to post all of the documents in its docket for a proposed rulemaking to the regulations.gov Web site, otherwise known as the "EDOCKET". The hard copy documents in the Region's office are the official docket for the rulemaking. We post many documents from the official docket to the EDOCKET for the convenience of the public but there is no requirement to post all of the documents. EPA did not post the voluminous Offset Source Calculation/Verification Forms on the EDOCKET although a hard copy was readily available in our offices. A copy of the documents was also available at the District and CARB offices.

CCAT also contends that EPA was required to specifically list the Offset Source Calculation/Verification Forms in the index to the docket. There is no legal requirement for EPA to provide an index to the docket. We frequently provide an index as a courtesy to the public. If we provide an index, we are not required to identify every

background or supporting document provided in a submitted SIP revision.

Because EPA cannot anticipate every question the public may have on our proposed rulemakings, EPA's **Federal Register** notice proposing to approve this SIP revision contained contact information for EPA staff who would be knowledgeable about the proposal and could provide copies of the specific documents in our docket. CCAT did not try to contact any EPA staff to obtain a copy of the Offset Source Calculation/Verification Forms or request EPA to provide further specificity in the docket index. Finally, the same records were provided to CCAT by the District long before our proposed approval was published. (South Coast Public Records Response #61991 and #61991B)

In summary, CCAT has not provided any authority indicating that the Offset Source Calculation/Verification Forms were required to be identified in the index we posted on the EDOCKET or posted electronically in the EDOCKET. These documents were available in hard copy at the District's office, at the offices of the California Air Resources Board as part of the SIP submission and EPA's office in San Francisco.

CCAT suggests that EPA may be treating some of the information in the records as confidential. The suggestion is incorrect. None of the information in the record for this SIP revision approval is confidential and all of the information on which EPA based its proposed approval has been available to the public. EPA does acknowledge that some information, such as the individual evaluation record for each emission reduction, was only available in hard copy. However, if CCAT had requested copies of these records, EPA would have made them available in our office for review, as the **Federal Register** stated, or we could have mailed a CD with the documents, since they were too large to send by e-mail.

Comment II: CCAT asserts that EPA's approval of the SIP revision would be arbitrary and capricious because EPA fails to explain the basis for its decision.

Response II: CCAT in this comment points to a background paragraph in EPA's TSD and argues that EPA's proposal to approve this SIP revision constitutes approving a "new but equivalent" process for generating offsets. EPA disagrees. The "new but equivalent" method referred to in the **Federal Register** notice was not a new process for generating credits, but instead an additional way for a source to comply with the Rule 1303 requirements that offsets be provided pursuant to Rule 1309 or by allocations from the Priority Reserve in accordance

with the provisions of Rule 1309.1. That is the intent of a source-specific SIP revision: to revise the existing SIP to account for an action that only applies to a single source. See, e.g. 76 FR 2263 (January 8, 2011) CCAT also cites a *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009). However, nothing in the decision or in this SIP revision can provide a basis for CCAT to challenge EPA's action in 1996 on Regulation XIII. The time for challenging EPA's action in 1996 has past and our action in this SIP revision does not change or revise Regulation XIII.

Comment III: CCAT asserts that the SIP revision is a violation of CAA section 173(c) and 40 CFR 51.165(a)(3)(ii)(C)(1)(i)-(ii).

Comment III (1): CCAT contends the District's emission credits are not real because the District's internal accounts are "balanced in the aggregate" and there is a "negative balance".

Response III (1): EPA disagrees that the District's internal accounts are balanced in the aggregate. Instead, a more accurate description is that the District demonstrates that their local NSR program provides at least as many offsets "in the aggregate" as would otherwise be required under a strictly Federal NSR program, on a project by project basis. The emissions credits that are the subject of this action represent "real" emissions reductions that occurred from sources in the District. The District provided comprehensive documentation for each emission credit, including documentation of when the source was shutdown, verification that it was actually shutdown, actual emission inventory data for each source for the two years prior to shutdown, and other supporting information. The emission credits transferred to the AB 1318 Tracking System were individually subtracted from the District's internal accounts and are not included in the District's annual "in the aggregate" equivalency demonstration. CCAT also alleges that the District's accounts have a negative balance. This allegation has been thoroughly addressed in EPA Administrator Jackson's letter dated September 23, 2010, which we are incorporating by reference into this response. Administrator Jackson's letter sets forth the background during which EPA requested the District to remove pre-1990 emission credits for which the District did not have adequate documentation from its internal accounts. However, the District could replace those subtractions with previously uncounted emissions reductions from minor source orphan shutdowns. See p. 7-8. Therefore, the District's internal bank is adequately

funded and does not have "negative balances." The support cited by CCAT for the proposition that the District's balances are insufficient is an opinion in CCAT's State court litigation pertaining to the California Environmental Quality Act (CEQA), which is not relevant to EPA's evaluation of this SIP revision. Finally, CCAT contends that there is insufficient documentation to demonstrate the emission reductions occurred. EPA disagrees. The District's documentation provides the name and location of the source that made the reduction, when the source was shutdown, verification that it was actually shutdown, the amount of the reduction, including documentation of actual emission inventory data for each source for the two years prior to shutdown, and other supporting information.

Comment III (2): CCAT contends that the emission reductions are not quantifiable.

Response III (2): EPA disagrees. The District provided documents with the SIP revision showing precisely how many pounds of pollutant had been reduced or eliminated to support each emission credit. These amounts were based on actual emission inventory data or production records for each source. This issue was also raised in conjunction with SB 827 and the Administrator's letter dated September 23, 2011 contains our further response.

Comment III (3): CCAT alleges that the emissions reductions are not surplus.

Response III (3): EPA disagrees. Emission credits would need to be adjusted to ensure they are surplus to any new or modified standards for PM₁₀ and/or SO_x emissions from power plants, aggregate operations, spray booths, etc. The District has not promulgated new rules or standards that would apply to these types of sources, and thus no adjustments to the credits were required.

Comment III (4): CCAT contends that the emission reductions are not enforceable, citing the Ninth Circuit's decision in *El Comite para el Bienestar de Earlimart v. Warmerdam*, 539 F.3d 1062 (9th Cir. 2008).

Response III (4): EPA disagrees. In this action the emission reductions will be enforceable because EPA's SIP revision has incorporated by reference the transfer of a specific amount of emission credits. In *Warmerdam*, EPA had not incorporated by reference certain letters between CARB and EPA into the SIP. Here, the language that EPA is placing into the SIP clearly incorporates by reference all the individual emission reductions being transferred to the

Sentinel Energy Project. While ultimately the Director of the Federal Register Office must determine that incorporation by reference complies with the requirements of 1 CFR 51.7, this type of material is generally within the type accepted for such treatment. See Use of Incorporation by Reference as a Mechanism for Shortening Federal Register Notices, from Gerald H. Yamada, Principal Deputy General Counsel to Regulatory Policy Group, dated Jan. 12, 1995. CCAT can enforce the District's transfer of the emission credits and can also confirm that the permit from which the emission credit was created has been inactivated or review the conditions of a permit revised to create the emission reductions.

Comment III (5): CCAT asserts that some of the emissions reductions are not creditable.

Response III (5): EPA disagrees. Emission reductions are considered creditable if they have not been relied upon to demonstrate attainment, RFP or any other permit action. The District accounts for the use credits from their internal accounts by adding the average annual quantity of ERCs used over the last eight years to the projected inventory for years 2014 and 2020, i.e., the AQMP assumes that these emissions are in the air. By including such emissions in the inventory, the attainment plan has not relied on these emission reductions, thus they remain creditable for other purposes, such as NSR offsets. In addition, these emission reductions are being transferred from the District's internal offset account and are therefore not available for any other permit action.

Comment IV: CCAT contends that EPA cannot approve the District's transfer of the emission credits to the Sentinel Energy Project because the emission reductions have been relied upon in other permitting actions and for demonstrating attainment.

Comment IV.A.1: CCAT asserts that the offsets being transferred do not meet the requirements of Federal law because the District's internal accounts have negative balances.

Response IV.A.1: This portion of CCAT's comment letter is a repetition of prior comments. With respect to the purported negative balance, EPA has responded previously. We repeat that the District does not have a negative balance. As fully set forth in the Administrator's petition response letter dated September 23, 2010, EPA requested the District to remove any pre-1990 emission credits for which the District did not have adequate documentation. The District did so and

then added in credits from minor source orphan shutdowns that it had not previously counted. EPA has determined that funding the District's bank with minor source orphan shutdowns complies with the CAA. The District's balance of credits for each pollutant is positive when credits from minor orphan shutdowns are included.

Comment IV.A.2: CCAT also contends that the emissions credits being transferred that were based on shutdown equipment may not be used if they were shut down before the base year for the SIP planning process.

Response IV.A.2: CCAT contends that the District has relied on the emission reduction credits generated from shutdown sources which occurred before the 2002 baseline in the 2007 AQMP. EPA disagrees. As explained in Response III (5), the District adds in a portion of the pre-baseline banked emission credits into the inventory for each future year. The amount added for each pollutant is determined based on historical usage of offsets in the basin. Since the baseline inventory is adjusted to account for an adequate number of pre-baseline emission reductions due to shutdowns, the District is complying with the requirements of 40 CFR 51.165(a)(3)(ii)(C)(1)(ii) and may use such reductions as current offsets.

Comment IV.A.3: CCAT contends that "crediting these purported emission reductions to the SCAQMD's Offset Accounts Violates CCA [sic] section 110(l)".

Response IV.A.3: Under section 110(l) of the CAA, EPA may not approve any SIP revision that would interfere with attainment, reasonable further progress (RFP) or any other CAA requirement.

In our proposed approval, EPA stated that this revision will not interfere with attainment or RFP because the emission credits in the AB 1318 Tracking System are not relied on for attainment or RFP in the District's most recent attainment demonstrations. We also indicated that this revision did not interfere with any other CAA requirement. In addition, we stated that the District supplied a copy of its air quality analysis for the CPV Sentinel Energy Project which shows that operation of the facility will not interfere with the ability of the District to reach attainment.² CCAT has provided no specific information to refute this discussion regarding CAA 110(l) from our proposal.

Comment IV.A.3.i: CCAT again contends that the emission reductions have been relied upon by the District in past permitting actions and in its 2007

AQMP, therefore not making them available for the Sentinel Energy Project.

Response IV.A.3.i: Please see earlier responses on these same points in responses III(5) and IV.A.2.

Comment IV.A.3.ii: CCAT contends that it is inadequate for EPA to meet its burden for rational decision-making regarding compliance with section 110(l) by not being aware of interference the proposed action would have with other CAA requirements.

Response IV.A.3.ii: EPA disagrees. The TSD (pages 5–6) discusses how the project complies with the CAA requirements that this SIP action is subject to, and this statement is simply affirming that there are no other CAA requirements for which the action is subject.

Comment IV.A.3.iii: CCAT contends that EPA fails to describe the "new but equivalent mechanism * * * for satisfying the offset requirements of CAA § 173", and that the record does not provide any proof, facts or analysis that EPA engaged in a rational consideration of all facts for its decision.

Response IV.A.3.iii: EPA disagrees. The TSD (pages 5–6) provides a discussion of all five of the CAA § 173 offset integrity criteria, and explains the rationale for EPA's conclusion that the proposed offsets meet these criteria. The "new but equivalent mechanism" EPA was referring to in the FR notice was not for generating credits, but instead refers to the ability of the source to provide emission reduction credits for their project which were not provided pursuant to Rule 1309 or allocations from Rule 1309.1.

Comment IV.A.3.iii: CCAT contends that in an analysis undertaken by the California Energy Commission, staff concluded that the Sentinel facility would contribute to existing exceedences in the area, and supplied the text from the CEC analysis.

Response IV.A.3.iii: The submitted CEC modeling does not evaluate the impacts of the project on the District's ability to attain the PM₁₀ standard, which is the required evaluation criteria, but instead models a worst case scenario assuming the highest background concentrations, the highest PM₁₀ emission rate from the plant and the worst meteorological conditions would all occur at the same time and at the same location. CEC staff acknowledges that all of these worst case conditions are "not likely to occur." In addition, the modeling did not take into account the reductions expected from other District control measures or the offsets provided for this project. The air quality analysis prepared by the District is consistent with EPA guidance

for determining the impacts of projects on an area's ability to attain a NAAQS.

Comment IV.A.3.iv: CCAT contends that EPA will be taking action in the future on District Rule 1315.

Response IV.A.3.iv: EPA disagrees. We note that the District has submitted and EPA will be taking action in the future on District Rule 1315. Rule 1315 provides in regulatory language the District methodology for debiting and crediting offsets for sources that qualify under Rules 1304 and 1309.1. Rule 1315 is not the subject of, nor is it related to this rulemaking in anyway. The merits of Rule 1315 will be considered in a separate action which will be subject to public notice and comment.

CCAT has not provided any specific comments showing that the factual statements in our proposed approval were incorrect or insufficient. CCAT merely repeats general and conclusory allegations of violations of section 110(l). That provision is not a general bar to revising a SIP. Accordingly, section 110(l) does not prevent us from taking final action to approve this source-specific SIP revision independent of action on Rule 1315.

Comment V.: CCAT contends that through this source-specific SIP revision EPA has re-opened its 1996 approval of the California SIP's creation of a SCAQMD internal bank, and how the credits in the bank are generated, tracked and validated.

Response V: EPA approved Regulation XIII in 1996. Regulation XIII comprised the District's comprehensive new source review program, including two provisions that allowed the District to provide offsets from its internal bank of emission credits to certain exempt and priority reserve sources which would otherwise be required to obtain offsets for meeting Federal CAA requirements. Our approval of Regulation XIII was not challenged following our rulemaking action in 1996.

CCAT's contention that our approval of this source-specific SIP revision re-opens our 1996 approval of Regulation XIII is without merit. This source-specific SIP revision allows the District to transfer certain emissions credits to one stationary source, the Sentinel Energy Project. The action does not modify or revise any provision of Regulation XIII. CCAT notes that it has litigation in the Court of Appeals regarding its belief that District Rule 1309 applies to the District's internal bank. This source-specific SIP revision is unrelated. In this action, we have found that the specific amount of emission credits the District is

² Air Quality Demonstration: SIP Revision for CPV Sentinel Energy Project.

transferring to Sentinel meet the integrity criteria of Federal law in the amounts calculated to offset Sentinel's emissions increases.

CCAT's comment also contends that this action is establishing "an alternate generation system." We disagree, as noted previously.

Comment V.1.: CCAT lastly alleges that the source-specific SIP revision violates CAA section 172(e).

Response V.1.: CCAT has not explained how this source-specific SIP revision triggers the requirements in section 172(e) that apply to the Administrator following promulgation of a national ambient air quality standard. CCAT states that any emission credits that are not "generated" according to Rule 1309 "must accrue to the benefit of air quality" apparently based on section 172(e). EPA does not agree that section 172(e) establishes such an obligation.

III. EPA Action

This source-specific SIP revision complies with all relevant CAA requirements and is consistent with EPA's guidance for NSR. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this source-specific SIP revision into the California SIP.

IV. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials

in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 4, 2011.

Jared Blumenfeld,
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)(384) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(384) New and amended regulations for the following APCD’s were submitted on September 10, 2010 by the Governor’s designee.

- (i) Incorporation by Reference

(A) South Coast Air Quality Management District

(1) Resolution No. 10–20, dated July 9, 2010.

(2) “Revision to the State Implementation Plan for the South Coast Air Quality Management District, State of California: Sulfur Oxides and Particulate Matter Offset Requirements for the Proposed CPV Sentinel Power Plant to be Located in Desert Hot Springs, California, Including AB 1318 Offset Tracking System”, which is incorporated by reference in Resolution No. 10–20, dated July 9, 2010.

(3) “CPV Sentinel Energy Project AB 1318 Tracking System”, which is incorporated by reference in Resolution No. 10–20, dated July 9, 2010.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 158 and 161

[EPA–HQ–OPP–2008–0110; FRL–8861–7]

RIN 2070–AD30

Data Requirements for Antimicrobial Pesticides; Notification to the Secretaries of Agriculture and Health and Human Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretaries of Agriculture and Health and Human Services.

SUMMARY: This document notifies the public that the Administrator of EPA has forwarded to the Secretary of Agriculture and the Secretary of Health and Human Services a draft final rule under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA is codifying a separate listing of data requirements in the Code of Federal Regulations for the registration of antimicrobial pesticide products. These data requirements reflect current scientific knowledge and current Agency regulatory practices. Besides providing the regulated community with clearer and more transparent information, the updated data requirements further enhance EPA’s ability to make regulatory decisions about the human health and environmental fate and effects of antimicrobial pesticide products.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0110. All documents in the docket are listed in the docket index available in <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.