Schedules of the United States (19 U.S.C. 1202). All prior administrative rulings issued by Customs concerning the classification of western-style shirts with decorative overlaid yokes which are not in accordance with the principles stated in *Ferriswheel*, are, pursuant to § 177.9(d)(1), Customs Regulations (19 CFR 177.9(d)(1)), hereby revoked. The classification of such garments will, (120 days from the date of publication of this notice), be determined on the characteristics of each garment.

As a result of this action, Customs anticipates that most western-style shirts with overlaid yokes will be classified as ornamented because the utility of the overlaid yokes is usually incidental to the decorative appearance they present. However, due to styling and construction differences, Customs recognizes that some overlaid yokes may, in fact, be primarily functional and, therefore, would not constitute ornamentation.

In the *Ferriswheel* case, the U.S. Court of Customs and Patent Appeals stated that a functional feature does not cease to be functional because it is not used by most wearers. Customs believes that an overly broad interpretation and application of that principle is neither reasonable nor intended by the court. Where a feature, once functional, has virtually ceased to have any utility on a garment except in a few isolated instances, that feature is subject to the same standards as traditional features—whether it is primarily decorative or primarily functional. In making this determination, Customs will consider such a feature to be primarily functional on a garment if (1) the feature has a functional capability which is appropriate to the garment, and (2) there is credible evidence the feature is actually used and that such use is more than a fugitive use.

It has been Customs practice to classify certain types of garments with epaulets (raincoats, certain bush/safari jackets, and certain military-style garments) as not ornamented, even though in the view of Customs, the epaulets were primarily decorative. This practice was based on the idea that epaulets were traditional features on those garments. Because that premise is no longer valid, those garments must now be classified in accordance with the same standards as other garments.

Customs does not believe that the decision in the *Ferriswheel* case should affect the existing practice of classification of raincoats with functional epaulets. After reviewing the submissions received in response to the notice of August 14, 1980, Customs now believes that all prior rulings stating that any functional use of epaulets on raincoats constituted a "fugitive use", were in error. The submissions make it clear that the epaulets are actually used by a significant number of wearers of those raincoats. Therefore, raincoats with epaulets will continue to be classified as not ornamented barring other features on the garments which would cause a contrary classification.

Few of the comments received dealt with, or even mentioned, the classification of military-style and bush/safari garments with epaulets. In view of the invalidation of the "traditional feature" doctrine, the same principles of classification that apply to other garments will apply to military-style and bush/safari garments entered, or withdrawn from warehouse, for consumption after December 21, 1981. From that date, the classification of those and all other garments with epaulets will be determined on a case-by-case basis based on the individual characteristics of each garment. Those characteristics will include, but not be limited to, the construction of the fabric comprising the garment (knit or woven), the weight of that fabric, and the styling and intended purpose of the garment. For example, knit garments or ones made from loosely woven fabrics would not normally have primarily functional epaulets. Further, garments designed for formal or dress wear or for sleeping would usually not have epaulets which are primarily functional. All prior administrative rulings by Customs classifying military-style and bush/safari garments with epaulets as either ornamented or not ornamented, which are not in accordance with the principles stated in *Ferriswheel*, are, pursuant to § 177.9(d)(1), Customs Regulations (19 CFR 177.9(d)(1)), hereby revoked.

The U.S. Court of Customs and Patent Appeals in the *Ferriswheel* case did not decide the question of whether garments with simulated features should be classified as ornamented. Therefore, Customs, at this time, will not change its existing practice of classifying garments with simulated features which are located where the real features would normally be found and are no more decorative than the real features normally are, as not ornamented.

The *Ferriswheel* case has prompted Customs to review other aspects of the ornamentation question, one of which involves the classification of shirts with hanger loops located on the center of the back areas. It does not appear that such loops, if made from the same fabric as the garments on which they are located, are primarily decorative. Rather, it appears that loops of this nature are actually used to hang the garment. Accordingly, pursuant to § 177.9(d)(1), Customs Regulations (19 CFR 177.9(d)(1)), all prior rulings classifying shirts as ornamented due solely to the presence of hanger loops in the center of the back areas, are revoked. Customs will classify shirts with such loops as not ornamented, provided that no other features of the garment would cause a contrary classification.

Authority

This notice is being published in accordance with section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d), and § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Drafting Information

The principal authority of this notice was Robert J. Pisani, Regulations and Information Division, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: August 17, 1981.

William T. Archey,

Acting Commissioner of Customs.

[FR Doc. 81-24508 Filed 8-20-81; 8:45 am]

BILLING CODE 0974-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 444

[Docket No. 81N-0082]

Neomycin Sulfate Antiperspirants and Deodorants; Termination of Postponement of Effective Date of Final Rule Revoking Certification Provisions

Correction

FR Doc. 81-23902 was published on page 41814 in the issue of Tuesday, August 18, 1981. The document terminated the postponement of an effective date, the effect of which was the revocation of certain regulations. It was published in the Proposed Rules section of the Federal Register. It should have appeared in the Rules section.

Also, in the second column on page 41814, change the heading now reading "§ 444.426 [Removed]" to read "§ 444.42b [Removed]".

BILLING CODE 1505-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Roxarsone Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to codify a previously approved new animal drug application (NADA) sponsored by Salsbury Laboratories which provides for use of roxarsone tablets in the drinking water of swine and in a drench as an aid in the treatment of swine dysentery. The regulations are also amended to indicate those conditions of use which were found effective as a result of a National Academy of Sciences/National Research Council (NAS/NRC) evaluation of the product.

EFFECTIVE DATE: August 21, 1981.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-147), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: Salsbury Laboratories, Charles City, IA 50616, is sponsor of an NADA (8-274) which originally became effective December 5, 1981, providing for use of roxarson tablets in the drinking water and in a drench for swine. The NADA is one of several for drug products containing 3-nitro-4-hydroxy-phenylarsonic acid (roxarsone) that were the subject of a NAS/NRC evaluation published in the **Federal Register** of September 10, 1970 (35 FR 14273). The NAS/NRC evaluation concluded, and the agency concurred, that the drug is effective for swine for improved feed efficiency and treatment of swine dysentery, probably effective for faster weight gains, and not effective for necrotic enteritis.

The NAS/NRC evaluation required a caution statement on the labeling stating that excessive consumption may cause leg weakness and nerve damage, and treated animals must consume enough medicated water to provide a therapeutic dose under the prevailing conditions. Also, the NAS/NRC evaluation stated that the desired oral dose per unit of animal body weight per day should be on the label.

The NAS/NRC evaluation considered only the drug's effectiveness and safety for the treated animal and did not consider the safety of food derived from the treated animal.

Salsbury Laboratories responded to the NAS/NRC evaluation by submitting a supplemental NADA providing revised labeling, updated manufacturing and controls, and other information.

The supplement is approved. The regulations are amended to reflect the approval and to indicate that approval of identical products for the same conditions of use need not include certain types of effectiveness data required by 21 CFR 514.1(b)(8)(ii) of 514.111(a)(5). In lieu of those data, approval of such products may require submission of bioequivalency or similar data as suggested in the guideline for submitting NADA's for NAS/NRC reviewed generic drugs. The guideline is available from the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (address above), from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(2)(ii)), may be seen in the Dockets Management Branch (address above).

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.2088 by adding new paragraph (b) to read as follows:

§ 520.2088 Roxarsone tablets.

* * * * *

(b)(1) *Specifications.* Each tablet contains 400 milligrams of roxarsone (3-nitro-4-hydroxyphenylarsonic acid).

(2) *Sponsor.* See No. 017210 in § 510.600(c) of this chapter.

(3) *Related tolerances.* See § 556.60 of this chapter.

(4) *NAS/NRC status.* These conditions are NAS/NRC reviewed and found effective. NADA's for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(5) *Conditions of use*—(i) *Swine*—(*a*) *Amount.* 1 tablet (400 milligrams) per gallon of drinking water for no more than 6 days, or 1 tablet (400 milligrams) per 2 fluid ounces of warm water per 50 pounds of body weight as a drench once daily for 1 to 2 days.

(*b*) *Indications for use.* As an aid in the treatment of swine dysentery (hemorrhagic enteritis or bloody scours).

(*c*) *Limitations.* Treatment may be repeated after 5 days off medication. If no improvement is observed, consult a veterinarian. Treated animals must consume enough medicated water to provide a therapeutic dose. Withdraw 5 days before slaughter. Use as sole source of organic arsenic.

(ii) [Reserved]

Effective date. This regulation is effective August 21, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: August 7, 1981.

David P. Ducharme,

Acting Associate Director for Scientific Evaluation, Bureau of Veterinary Medicine.

[FR Doc. 81-24191 Filed 8-20-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 680

[Docket No. 79N-0097]

Allergenic Products; Antigen E Potency Test; Additional Standards for Miscellaneous Products

Correction

In FR Doc. 81-22365, at page 39129, in the issue of Friday, July 31, 1981, on page 39133, in the first column under the heading "**Labeling**", the first paragraph, designated as item "25.", line 5, correct "of" to read "or" and in the second paragraph under "25.", line 4, correct "or" to read "on" and "of" to read "or".

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Grazing and Livestock Use on the National Forest System; Amendments To Improve Clarity and Correct Codification

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Forest Service issues final rule incorporating amendments to 36 CFR Part 222, Range Management. These amendments improve clarity and correct codification. The amendments do not represent policy addition or major changes in policies which have applied to the administration of grazing permits on the National Forest System beyond that prescribed by law.

EFFECTIVE DATE: September 21, 1981.

ADDRESS: Chief R. Max Peterson (2200), Forest Service, Department of Agriculture, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Robert M. Williamson, Assistant Director, Range Management, Staff, USDA, Forest Service, P.O. Box 2417, Room 610 RPE, Washington, D.C. 20013, Telephone: (703) 235-8139.

SUPPLEMENTARY INFORMATION: This amendment makes minor changes in the regulations for clarity and to correct codification. These regulations were substantially changed on November 28, 1977, to implement provisions of the Federal Land Policy and Management Act of 1976, Pub. L. 94-579, **Federal Register**, Vol. 42, No. 208, Friday, October 28, 1977, pages 56430-56737. This act was amended by the Public Rangelands Improvement Act of 1978 with minor changes made in the regulations **Federal Register**, Vol. 44 No. 208, Thursday, October 25, 1979, pages 61345-61346. Minor changes in this amendment are to: (1) Clarify what National Forest System lands will be managed for livestock grazing; (2) provide for suspension of permit and charging of unauthorized use rate when fees are not timely paid; (3) clarify who paid term permits will be issued to; (4) correct definition of Animal Month; and (5) make codification corrections. It has been determined that publication of these amendments, in accordance with the Administration Procedures Act, 5 U.S.C. 533, is unnecessary. The amendments do not represent policy additions, or major changes in policy which have applied to the administration of grazing permits on the National Forest System beyond that prescribed by law.

The rule is not a major rule within the meaning of Executive Order 12291 because the rule will have a negligible effect on the economy, will not result in increased costs for consumers, individual industries, Federal, State, or local government agencies and will have no adverse effects on competition, employment, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Assistant Secretary for Natural Resources and Environment has determined that this action will not have a significant economic impact on a substantial number of small entities because it imposes no direct or indirect costs on small entities except for the possibility that the unauthorized grazing use rate will be charged when livestock are grazed under an unvalidated permit, it requires no paperwork or recordkeeping, it does not affect the competitive position of small entities in relation to large entities, it does not affect the cash flow or liquidity of small entities, it does not affect the ability of a small entity to stay in the market, and it does not require that small entities obtain professional assistance to meet regulatory requirements.

The minor changes being made by the amendment are explained as follows:

1. § 222.2 is changed to provide that forage producing National Forest System lands will be managed for livestock grazing consistent with land management plans.
2. § 222.3 clarifies conditions under which paid term permits will be issued.
3. § 222.4 is expanded to clarify that a permit can be suspended when fees are not paid within time limits.
4. § 222.29 makes codification correction.
5. § 222.50(c) clarifies definition of Animal Month for purpose of grazing fee charges.
6. § 222.50(h) provides that the unauthorized use rate can be charged when livestock are grazed under an unvalidated permit.

Therefore 36 CFR is amended as follows:

PART 222—RANGE MANAGEMENT

Subpart A: Grazing and Livestock Use on the National Forest System

1. The Authority for Subpart A reads as follows:

Authority: 92 Stat. 1803, as amended (43 U.S.C. 1901), 85 Stat. 649, as amended (16 U.S.C. 1331-1340) sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551) sec. 32, 50 Stat. 522, as amended (7 U.S.C. 1011).

2. Section 222.2(c) is revised as follows:

§ 222.2 Management of the range environment.

* * * * *

(c) Forage producing National Forest System lands will be managed for livestock grazing and the allotment management plans will be prepared consistent with land management plans.

3. Section 222.3(c)(1)(i) is revised as follows:

§ 222.3 Issuance or grazing and livestock use permits.

* * * * *

(c) * * *

(1) * * *

(i) Except as provided for by the Chief, Forest Service, paid term permits will be issued to persons who own livestock to be grazed and such base property as may be required, provided the land is determined to be available for grazing purposes by the Chief, Forest Service, and the capacity exists to graze specified numbers of animals.

* * * * *

4. Section 222.4 is amended by revising paragraphs (a) (3) through (7) and by adding paragraph (a)(8) to read as follows:

§ 222.4 Changes in grazing permits.

(a) * * *

(3) Cancel or suspend the permit if the permittee fails to pay grazing fees within established time limit.

(4) Cancel or suspend the permit if the permittee does not comply with provisions and requirements in the grazing permit or the regulations of the Secretary of Agriculture on which the permit is based.

(5) Cancel or suspend the permit if the permittee knowingly and willfully makes a false statement or representation in the grazing application or amendments thereto.

(6) Cancel or suspend the permit if the permit holder is convicted for failing to comply with Federal laws or regulations or State laws relating to protection of air, water, soil and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit.

(7) Modify the terms and conditions of a permit to conform to current situations brought about by changes in law, regulation, executive order, development or revision of an allotment management plan, or other management needs.

(8) Modify the seasons of use, numbers, kind, and class of livestock allowed or the allotment to be used under the permit, because of resource condition, or permittee request. One year's notice will be given of such modification, except in cases of emergency.

* * * * *

Subpart B—Management of Wild Free-Roaming Horses and Burros

5. The Authority citation for Subpart B reads as follows:

Authority: 85 Stat. 649, as amended (16 U.S.C. 1331–1340); sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 32, 50 Stat. 522; as amended (7 U.S.C. 1011); 92 Stat. 1803 (43 U.S.C. 1901 note).

6. Section 222.29(e) is revised as follows:

§ 222.29 Relocation and disposal of animals.

* * * * *

(e) The applicants must make written application for title and/or adoption and must be of legal age in the State in which they reside. Humane conditions, treatment and care must have been provided for no less than one year preceding the filing of the application for title. Unless waived in writing, the application for title shall include a written statement by a licensed veterinarian attesting that the animal is in good condition.

Subpart C—Grazing Fees

The authority citation for Subpart C reads as follows:

Authority: Sec. 1, 30 Stat. 35 as amended (16 U.S.C. 551; sec. 501, 65 Stat. 290, 31 U.S.C. 483a; 92 Stat. 1803, 43 U.S.C. 1901, note).

8. Section 222.50 (c) and (h) are revised.

§ 222.50 General procedures.

* * * * *

(c) A grazing fee shall be charged for each animal month of grazing or livestock use. An animal month, except for sheep or goats, is a month's use and occupancy of range by one animal. A full animal month's fee is charged for a month of grazing by adult animals; if the grazing animal is weaned or 6 months of age or older at the time of entering National Forest System lands; or will become 12 months of age during the permitted period of use. For fee purposes 5 sheep or goats, weaned or adult, are equivalent to one cow, bull, steer, heifer, horse, or mule.

* * * * *

(h) Unauthorized grazing use rate will be determined by establishing a base value without giving consideration for those contributions normally made by the permittee under terms of the grazing permit. The base will be adjusted annually by the same indexes used to adjust the regular fee. This rate will also apply to excess number of livestock grazing by permittees; to livestock grazed outside the permitted grazing season; or to livestock grazed under an unvalidated permit.

* * * * *

John B. Crowell, Jr.,

Assistant Secretary for Natural Resources & Environment.

August 3, 1981.

[FR Doc. 81-24393 Filed 8-20-81; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 1861-6]

Approval and Promulgation of Implementation Plans; San Joaquin Valley Air Basin, Calif., Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Rulemaking.

SUMMARY: On September 15, 1980 (45 FR 60931), the Environmental Protection Agency (EPA) published a notice of proposed rulemaking concerning the San Joaquin Valley Air Basin nonattainment area plan (NAP). The September 15, 1980 notice addressed the Kern County nonattainment area for ozone, carbon monoxide (CO), and sulfur dioxide (SO_2) and the San Joaquin Valley Air Basin nonattainment area for particulate matter (PM). The September 15, 1980 notice proposed to conditionally approve the NAP for both of these areas because it contained only minor deficiencies with respect to Part D of the Clean Air Act, "Plan Requirements for Nonattainment Areas." The State has initiated the process to submit the material to correct these minor deficiencies. Therefore, EPA is conditionally approving the San Joaquin Valley Air Basin NAP for the Kern County nonattainment area and portions of the NAP for the San Joaquin Valley Air Basin nonattainment area for PM. This action removes the prohibition on construction of major new or modified sources in Kern County.

This notice also provides a brief summary of the proposed rulemaking notice, describes recent revisions which supplement the NAP, discusses public comments received, specifies deadlines by which the State is required to submit the materials to correct the minor deficiencies, and describes EPA's final actions on the NAP.

DATE: This action is effective August 21, 1981.

ADDRESS: A copy of today's revision to the California State Implementation Plan (SIP) is located at: The Office of the Federal Register, 1100 "L" Street NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, Attn: Douglas Grano, (415) 556-2938.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act, as amended in 1977, requires states to revise their SIPs for all areas that have not attained the National Ambient Air Quality Standards (NAAQS). On October 11, 1979, the Executive Officer of the California Air Resources Board (ARB), the Governor's official designee, submitted revisions to the California SIP for the San Joaquin Valley Air Basin consisting of a control strategy and regulations for ozone, CO, SO_2, and PM. These revisions, which comprise the San Joaquin Valley Air Basin NAP, are intended to provide for the attainment of the ozone, CO, SO_2, and the PM NAAQS in the San Joaquin Valley Air Basin.

On September 5, 1980 (45 FR 58897), EPA published a proposed rulemaking notice for Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare Counties, which are part of the San Joaquin Valley Air Basin. That notice proposed, among other things, to conditionally approve the NSR rules for each of these seven counties.

On September 15, 1980 (45 FR 60931), EPA published a notice of proposed rulemaking for the Kern County nonattainment area for ozone, CO, and SO_2 and the San Joaquin Valley Air Basin nonattainment area for PM. That notice should be used as a reference in reviewing today's notice. The September 15, 1980 notice provided a description of the NAP for these two areas, summarized the applicable Clean Air Act requirements into 14 criteria, compared that portion of the NAP for these two areas to those criteria, and proposed to approve and conditionally approve portions of the NAP for these two areas. EPA's proposed actions in the September 15, 1980 notice are described below.

EPA proposed to approve the following portions of the NAP for the Kern County nonattainment area for ozone, CO, and SO_2 and the San Joaquin Valley Air Basin nonattainment area for PM because they were found to be consistent with Part D of the Clean Air Act.

Kern County Nonattainment Area

Ozone: Emissions growth, annual reporting, public and government involvement, and public hearing requirements.

Carbon Monoxide: Emissions inventory, modeling, reasonable further progress (RFP), annual reporting, public and government involvement, and public hearing requirements.

Sulfur Dioxide: Emissions inventory, legally adopted measures, resources, annual reporting, public and government involvement, and public hearing requirements.

San Joaquin Valley Air Basin Nonattainment Area

Particulate Matter: Emission reduction estimates, emissions growth, public and government involvement, and public hearing.

EPA also proposed to conditionally approve the following portions of the NAP for the Kern County nonattainment area for ozone, CO and SO_2 and the San Joaquin Valley Air Basin nonattainment area for PM because they were found to contain minor deficiencies with respect to Part D. These portions of the NAP were proposed to be approved with the condition that each deficiency be corrected by a specified deadline.

Kern County Nonattainment Area

Ozone: Emission inventory, modeling, emission reduction estimates, attainment, RFP, legally adopted measures, resources, and permit program.

Carbon Monoxide: Emission reduction estimates, attainment, legally adopted measures, resources, and permit program.

Sulfur Dioxide: Modeling, emission reduction estimates, attainment, RFP, emissions growth, and permit program.

San Joaquin Valley Air Basin Nonattainment Area

Particulate Matter: Emission inventory, modeling, attainment, RFP, legally adopted measures, annual reporting, permit program, and resources.

As noted in the September 15, 1980 notice, approval or conditional approval of all portions of the NAP is sufficient to lift the current prohibition on construction of major new or modified sources. Therefore, EPA proposed to conditionally approve the Kern County portion of the San Joaquin Valley Air Basin NAP and remove the construction ban in the September 15, 1980 notice.

Public Comments

During the public comment period, EPA received several comments. The comments are specific to Kern County's NSR rules and to certain proposed conditions of approval. In addition, EPA has received national comments which may apply generally to this action. Each of the points raised by the commenters and EPA's responses follow.

I. Comments Specific to NSR

The California Air Resources Board (ARB) submitted comments on EPA's assessment of the New Source Review (NSR) rules addressed in several rulemaking notices on Nonattainment Plans (NAP's). ARB asked EPA to consider the comments when taking final rulemaking action on those NAP's, including this one. In its comments ARB referred in some cases to EPA's new NSR regulations issued on August 7, 1980. Local rules are required to meet these new requirements by May 7, 1981. This makes the comments somewhat confusing, because EPA's evaluation of the NSR rules was done based on the existing criteria from 1979, rather than the ones which are taking effect for new rules. In responding, EPA has noted where its new criteria differ from those the local rules were evaluated against *and* has pointed out other new requirements relevant to the issues addressed here.

Comment: ARB commented that EPA has looked too closely at specific provisions of rules and should have looked at the rules' overall stringency, instead. It claims that considered in whole the rules are at least as stringent as EPA requires.

Response: EPA does consider that more stringent criteria than EPA calls for in one area can compensate to some extent for weaker provisions in other areas. And there are some aspects of these local rules which are excellent in regulating stationary sources. However, EPA has only limited discretion under the Clean Air Act and its own regulations. Part D of the Clean Air Act sets forth a preconstruction review procedure for nonattainment areas that is relatively detailed and mandatory in significant aspects. As a result, the governing Part D NSR rules clearly limit the approvability of State NSR programs that offer overall program equivalency and equal or greater capture of emissions, but which differ from 40 CFR Part 51 on individual components of the rule. Notably, the nonattainment provisions require that SIPs contain individual definitions that are as stringent as those in the federal regulations, 40 CFR 51.18(j)(1). Once these definitions are included, important issues such as applicability are fixed. The preamble emphasizes this approach, requiring that State plans be identical to or individually more stringent than the corresponding 40 CFR 51.18 regulations (45 FR 52726). While the Act limits State flexibility in terms of permit applicability, some flexibility exists as to who must offset and to what extent. That is, States can opt to exempt certain sources from the offset requirements provided the plan can accommodate the new emissions within its demonstration of RFP and attainment. The limits of EPA's discretion are reflected in the responses to other comments.

Comment: In its Evaluation Report, EPA pointed to the definition of "stationary source" as a deficiency. EPA requires that the rules restrict use of emission reductions from within a plant to avoid NSR requirements. Where a major unit is modified and will increase emissions significantly, reductions from other units may not be used to avoid exceeding the significance levels which trigger NSR. As ARB acknowledges, these rules do not satisfy EPA's criteria. However, ARB argues that other provisions in the rules compensate for this less stringent provision. ARB points out that the rules regulate some new sources which fall below EPA's new minimum criteria and some modifications to existing sources which are below EPA's minimum cut-off.

Response: EPA does not accept ARB's argument. EPA's regulations state that "Deviations from the following wording will be approved only if the state specifically demonstrates that the submitted definition is more stringent or at least as stringent" (40 CFR 51.18 (j)(1); August 7, 1980). ARB has not shown that its definition is as stringent or more stringent. ARB has instead discussed cut-offs for applicability and not directly addressed the concern that the definition used in the local rules would allow many modifications to avoid NSR requirements entirely. It should be noted that on March 12, 1981, EPA proposed to make the definition of "stationary source" less stringent.

Comment: In its Evaluation, EPA indicated that a series of exemptions from LAER was not allowable and that exempting the same types of sources from offsets was allowable only in some cases. ARB commented as follows (Comments 2 through 6 only apply to exemptions from offsets):

1. Exemptions from LAER were not intended and should be revised accordingly.

2. The innovative control technology exemption is intended to encourage

development of new technology which will enhance air pollution control. The Clean Air Act provides similar exemptions in other cases. For specific sources which have been permitted under this provision strict limits have been imposed to protect air quality.

3. The exemption of particulate sources from offsets when built in areas with low population and little industrial development is a reasonable way to alleviate the effects of NSR requirements which would otherwise be brought into effect by windblown dust occurrences anywhere in the air basin.

4. The exemption of sources from offset requirements when they install air pollution control equipment is reasonable, since installation of it is required by other regulations.

5. "ARB strongly supports the exemption from offset requirements for the specified sources . . ." ARB states that the Nonattainment Plan contains an allowance for future growth of sources not providing offsets and that the allowance will cover the excess emissions from the offset exemptions. The exemptions referred to were not justified individually as were those mentioned under 2, 3 and 4 above.

Response: 1. As stated in the September 15 notice, EPA found certain deficiencies in the Kern County NSR rules and invited comment on EPA's proposal that these were minor deficiencies and should be conditionally approved. EPA has reevaluated the NSR rules with respect to Part D and EPA policy. EPA agrees with the ARB that the exemptions from LAER provided in Rule 210.1 (3)(E) should be removed. Further, EPA has determined that these exemptions are not authorized by the Clean Air Act and that an NSR permit program cannot be approved or conditionally approved under Part D with these exemptions (similar determinations are found at 45 FR 74481 and 80280, November 10 and December 4, 1980). Therefore, EPA is disapproving those portions of Rule 210.1 (3)(E) which allow new sources to be exempt from LAER.

2. The intended effects of the innovative control technology exemption are laudable, but the limits placed on sources using it are not sufficient to protect air quality. The permit conditions required in the cases described by the ARB are discretionary and are not required by the rule and are therefore not enforceable under the Clean Air Act. If the rules referred to in this notice were modified to explicitly include safeguards similar to those referred to in ARB's comment with regard to specific cases, then this provision would be approvable.

3. EPA agrees that the exemption from offsets is reasonable for certain particulate sources, since LAER and statewide compliance requirements will have to be met and NAAQS's will be protected. EPA could approve it if a demonstration is made that it will not interfere with reasonable further progress toward attainment of the NAAQS.

4. EPA does not understand how application of control equipment could lead to an emissions increase large enough to trigger offset requirements. An exemption clause appears unnecessary based on the justification and explanation given.

5. EPA agrees that the other exemptions from offset requirements could be approved with some changes. Where the NAP provides for a growth increment for those sources that would be exempted from offset requirements, and if the NSR rule prevented use of the exemptions for any pollutant when the growth increment had been exhausted, EPA could approve the exemptions.

Comment: EPA cited as a deficiency in the rules the exemption of modifications and reconstructions which will cause net emission increases of less than 200 lbs/day. ARB argues that these thresholds are at least as effective in protecting air quality as those EPA requires and should be approved. The main justification ARB uses is that the thresholds EPA requires are generally not much more stringent and that the lower thresholds for new sources in the local rules catch more sources and modifications than EPA's would overall.

Response: The local rules do not fully satisfy either EPA's old or new criteria. But EPA's August 7, 1980, regulations did relax the significance levels for modifications substantially from those previously proposed. So the rules do now have thresholds more stringent than EPA's new regulations in some cases and generally equivalent in others. However since the local rules use a threshold of 200 pounds per day for particulates they are clearly not consistent with EPA's significance level of 25 tons per year (approx. 140 pounds per day).

ARB has also failed to recognize that EPA has made the basis for calculating emission changes more stringent and that these rules do not satisfy the new EPA requirement. EPA will now require that any increases above *actual* existing emissions be considered in using the thresholds, while these rules consider only increases above legally permitted levels. So that even where the numeric criteria are the same the different basis of calculation means they are not necessarily as stringent.

In addition, ARB has not addressed the failure to regulate reconstructions in accord with EPA criteria. These criteria stipulate that when sources are reconstructed (i.e., where the cost of new construction is 50% or more of the cost of an entirely new emission unit) LAER is to be applied to the entire rebuilt source and the applicant is to be required to demonstrate compliance of all statewide sources and provide offsets in all cases. The failure of these rules to do so remains a deficiency. Note that on March 12, 1981, EPA proposed to eliminate this requirement.

Comment: EPA cited Section 4.E. as a deficiency in the Kern County rules. That section allows existing oil production sources to ignore any increases in emissions they made between 1976 and September, 1979, in determining whether they have to obtain NSR permits and how much offsetting emission reductions are required if they do have to get permits. ARB states that there are other, non-NSR, rules which are as effective as EPA's regulations in requiring emission reductions to attain NAAQS's for ozone, particulates and sulfur dioxide. ARB gives as an example an NO_x control rule.

Response: ARB has not shown that the other local rules require *LAER* and *statewide compliance* for all the same sources that would be covered using EPA's criteria for counting emission increases. This remains a deficiency to be corrected unless ARB does demonstrate that other rules will require the sources to which its provision would apply to meet requirements equivalent to NSR.

ARB has argued that there are other rules in effect which require emission reductions equivalent to what EPA stipulates. But it has not provided evidence of those rules for the pollutants which EPA considers nonattainment: CO, SO_2, O_3 and TSP. EPA would only allow a provision such as this for emissions reductions if ARB demonstrates that the other rules will generate emission reductions consistent with EPA's criteria and sufficient to represent RFP. Such reductions must be enforceable by EPA.

Comment: In the Evaluation Report EPA cited as a deficiency a provision of the Kern County rules which would exempt sources from LAER and offset requirements if violations of NAAQS were of the annual standard and the annual standard for a pollutant had been met in any one of the preceding three years. ARB indicated that this was an oversight and that it would seek to remedy the situation.

Response: EPA appreciates ARB's commitment to help remedy this problem and thereby satisfy this condition of NAP approval.

Comment: In the Evaluation Report EPA stated that the provisions of these rules which would exempt CO sources from LAER and offsets unless they would directly cause violations of NAAQS's do not satisfy EPA approval criteria. ARB objected. It stated that mobile sources are the main cause of CO violations and that other control requirements make it unlikely that stationary sources would contribute to worsening existing violations of the standards. Therefore, ARB said that it does not see a need for requiring CO offsets. ARB did not indicate any opinion on the exemption from LAER.

Response: EPA is not able to accept this provision where it would exempt sources from LAER. But, this type of approach could be acceptable for offsets, since LAER and Statewide compliance are still required. However, the State would have to show that sufficient reductions would be generated to represent RFP. The rules would also have to: 1) restrict the exemptions to cases when the applicant could demonstrate no NAAQS violations for a significant period of time in the area; 2) require sources to show that they would not cause or *contribute* to violations of NAAQS; and 3) specify how the permitting agency will determine whether a source is expected to cause or contribute to a violation of a NAAQS. EPA approved models would be required for any modeling.

ARB submitted one very complicated comment to EPA arguing that the basic offset requirements in these rules satisfy EPA's criteria. This comment has been split into two different comments, as seen below.

Comment: EPA's Evaluation Report noted as a deficiency the offset requirements in the rules. They allow the same 1.2:1 ratio of emission offsets to increases to be used over very large areas. This fails to satisfy EPA's criteria for ensuring that offsets will improve air quality in the areas affected by the new or modified source and contribute to attaining the NAAQS's. EPA indicated that it requires offsets to be from as close to the source increasing its emission as possible. Its criteria stipulate that for offsets of CO, TSP and SO_x emission sources, modeling should be done to determine an offset ratio sufficient to ensure a net air quality benefit, unless the source providing offsets is in the immediate vicinity of the new source or modification. ARB objected to EPA's evaluation and stated that it believes these rules are "as stringent as EPA criteria." Specifically, in defending its broad claim of equivalency, ARB argued with a number of the statements in EPA's Evaluation Report on the rules and with EPA's interpretation of the EPA criteria. ARB stated:

1. These rules do not routinely allow offsets at a fixed ratio over very large areas, as EPA stated, partly because if more than 15 miles away from the source of increased emissions they must be "upwind".

2. That EPA only requires an offset ratio greater than 1:1, which would be less than the 1.2:1 in these rules. Therefore these rules are more stringent than EPA's criteria.

3. That these rules are consistent with EPA's stipulation that offsets for CO, SO_2 and TSP are to be based on modeling to determine a ratio sufficient to provide a net air quality benefit, unless the offsets are within "the immediate vicinity" of the source increasing emissions. Specifically, ARB argues that "in the immediate vicinity" can reasonably be interpreted to mean "upwind in the same or adjoining counties or within 15 miles".

Response: EPA disagrees with ARB. It does not find ARB's arguments sufficient to justify approving the offset portion of these rules for stable pollutants. ARB has not shown that the rules satisfy EPA's criteria nor that they will improve air quality.

In response to ARB's specific points:

1. The distances which can be reached within "adjoining counties" in the San Joaquin Valley range up to 150 miles or more and can cover 15,000 or more square miles. In addition, the definition of "upwind" on which ARB relies is extremely vague and perhaps meaningless and can be disregarded on a discretionary basis by the District. EPA therefore believes that the area within which the 1.2:1 ratio can be used is very large, contrary to ARB's claim.

2. EPA's criteria stipulate that for CO, TSP and SO_x a net air quality benefit be shown by modeling. This specifies a method to determine an offset ratio that will improve air quality, with no upper limit. In some cases it is likely that this would be less than the 1.2:1 used in these rules but in other cases it would be much greater. ARB has erred in believing that EPA only requires an offset ratio greater than 1:1 and these rules have not been shown to satisfy EPA's criteria.

3. EPA does not accept ARB's argument that the very large areas in "adjoining counties" (see #1) can be considered to be in the "immediate vicinity" of a source increasing its emissions. Nor does within 15 miles mean "in the immediate vicinity" (an area of about 700 square miles.)

Though these rules fail to satisfy EPA's specific offset criteria in several major respects, there are ways that ARB could justify to EPA approval of such offset provisions. For any given pollutant, ARB could demonstrate that the offsets which the rules would require will improve air quality throughout the area where they apply, given the permit applications likely to be received, and that they would be consistent with RFP. If this can be demonstrated to EPA's satisfaction, then the rules could be approved for any pollutant for which such a demonstration is made.

Comment: In previous comment and response EPA discussed the failure of these rules to satisfy EPA's offset criteria for stable pollutants. Some of the specific issues raised by ARB in that comment and one other issue raised by ARB relate to offsets for sources of HC, which leads to ozone formation. The local rules apply the same requirements to HC emissions as to emissions of stable, non-reactive pollutants. Offsets of 1.2 times the amount of increased emissions are required if they are within 15 miles or within the same or adjoining counties as that of the source which is increasing its emissions. EPA criteria stipulate that for HC (and NO_x) sources the ratio of offsets should increase as the distance separating the two sources does so. ARB argued with EPA's criteria as stated in the Evaluation Report and claimed that the offset portion of these rules should be approved. Specific issues raised by ARB were:

1. The claim (as in the previous Comment) that these rules do not allow offsets at a fixed ratio over very large areas.

2. The argument that EPA only requires that the offset ratio be greater than 1:1 and that the local rules are more stringent in that they require offsets at 1.2:1.

3. The claim that for HC sources EPA's criteria allow offsets to be anywhere in the broad vicinity of the source and that these rules are consistent with the criteria.

Response: EPA does not agree with any of ARB's three specific claims regarding offsets for HC sources. The rules clearly do not meet EPA's specific criteria. However, just as explained at the end of the previous *Response*, ARB does have the option to try to demonstrate to EPA that the rules will require offsets sufficient to reduce ozone concentrations throughout the nonattainment area and provide for reasonable progress toward attainment of NAAQS's. In response to ARB's specific arguments:

1. As explained under #1 in the previous Response, EPA does consider that the area in which offsets at a 1.2:1 ratio are allowed is very large (up to 150 or more miles away and over areas of as much as 15,000 square miles or more).

2. EPA's criteria call for an offset ratio not just greater than 1:1, as ARB claims, but a ratio that increases as the distance between the two sources increases. A ratio of 1.2:1 is not adequate at a distance of 150 miles.

3. ARB used an incomplete quote from EPA's criteria stated in the Federal Register to argue that EPA allows offsets for HC sources from anywhere within the same AQCR. The rest of the relevant section states that though offsets for ozone *may* be obtained from the broad vicinity of the proposed source, they should be as close to the new source as possible and if at greater distances, "the reviewing authority should increase the ratio of offsets and require a showing that nearby offsets were investigated and . . . not available" (40 CFR 51.18(j)(3)(ii)(f) and Appendix S, Section IV. D, as amended to September 11, 1980). These rules are not consistent with that stipulation.

Comment: ARB objects to EPA's statement that it will not approve provisions of the rules which allow reductions of one pollutant to be offset against increases of another pollutant. ARB has argued that the rules only allow such credit where both the pollutants are precursors of the same criteria pollutant and that EPA should allow that. ARB argues further than since these local rules require offsets of precursors in cases where EPA does not and are therefore more stringent in that respect it is "reasonable that . . . interprecursor offsets should be allowed."

Response: The local rules allow interprecursor offsets for two different cases: precursors to ozone and precursors to particulates. EPA has reexamined the rules and found that contrary to previous impressions they do not allow precursors to TSP to be offset against direct TSP emissions. The provisions allowing different precursors to TSP to be offset against each other are therefore approved.

The situation with ozone is somewhat different. The local rules allow HC emissions to be offset with NO_x emission reductions, which EPA normally does not allow. However, EPA believes that the overall effect of the rule will be to offset HC emissions as much as EPA requires while additionally getting NO_x reductions. This is because the rule requires offsets for both pollutants, not just HC as in EPA's regulations. Therefore this concept is approvable.

For the actual rules to be approved, however, they would have to define a specific method for determining ratios of offsets to increases which will provide for reasonable progress toward attainment of the ozone NAAQS.

Comment: In the Evaluation Report EPA indicated that the provision of the rules which exempts CO, TSP, SO_x (and NO_x) sources from offset requirements if they will not cause or contribute to NAAQS violations is not approvable in areas where NAAQS's for those pollutants are violated. ARB objected, stating that it believes such a provision is reasonable, since these rules require offsets if there are violations of NAAQS's anywhere in the same air basin, not just the county where the rules apply.

Response: EPA agrees that this type of approach could be acceptable, since the rules still require application of LAER and statewide compliance requirements. However, the State would have to show that sufficient reductions would be generated to represent RFP and to make other changes. The rules would have to specify that this exemption could be used only if the applicant can demonstrate that there have been no violations of the relevant NAAQS for a significant period of time. In addition, an explanation of how it will be judged whether sources are expected to cause or contribute to violations of NAAQS's would be required. EPA approved models must be used for any modeling.

Comment: EPA's Evaluation Report noted as a deficiency a provision of the rules that allows sources to claim credit for emission reductions which the rules would not normally allow and which EPA does not allow. ARB responded by stating that it does not believe the provision provides a loophole because a net air quality benefit must be demonstrated for this waiver to be used and by arguing that this provides valuable flexibility.

Response: EPA believes that this provision does create a significant loophole in the offset requirements, though discussions with ARB prior to the proposed rulemaking indicated that it was by oversight rather than intention. The requirement to demonstrate a net air quality benefit is not an adequate safeguard because the rule would allow reductions which are *already* required by local permits or local, state or federal laws and regulations to be used in making the demonstration. This would allow a source which is violating air quality requirements to get credit for reducing emissions which are illegal to begin with. It appears that this provision would also allow offset credit for shutdowns of sources in the distant past and perhaps for reductions which would not occur until after the applying source has already increased its emissions. ARB has not shown that the flexibility allowed by this section of the rules is sufficient justification for such a large loophole and it therefore remains a condition of NAP approval that this provision be eliminated.

II. Comments Specific to EPA's Proposed Conditions of Approval

1. Ozone, CO, SO_2, and PM:

Comment: The ARB commented that the September 15, 1980 notice requires considerable corrective work on the 1979 NAP but allows insufficient time for this work to be completed. The ARB further commented that EPA's proposed conditions of approval require that a re-analysis of the control strategy be done in a piecemeal fashion and in an unreasonable time frame.

Response: EPA is revising the dates for the proposed conditions of approval to these recommended by the ARB and Kern County APCD for each condition of approval. However, EPA is extending certain dates so that there will be fewer deadlines.

Comment: The ARB commented that the condition of approval requesting information identifying (1) the personnel and financial resources needed to implement the control measures and (2) the commitments which identify the resources necessary to implement the NAP should be deleted. The ARB requested that this condition of approval be deleted because it is not legally possible for California agencies to make multi-year budget commitments. The ARB further commented that EPA's concerns regarding this issue can be addressed in the Annual Reports.

Response: EPA agrees that it is not legally possible for California to provide multi-year budget commitments. Therefore, the commitments which identify resources necessary to implement the NAP for the Kern County nonattainment area and the San Joaquin Valley Nonattainment Area in the future must be submitted by the State to EPA when the local budgets are adopted. The condition of approval is changed to require that the NAP include a commitment to provide this information annually.

2. Ozone and CO:

Comment: The ARB commented that EPA has often placed unreasonable priority on its Control Techniques

Guideline (CTG) categories while ignoring other state adopted reasonably available control measures (RACM). The ARB further commented that EPA did not propose any action on Rule 411.1, "Control of Volatile Organic Emissions from Steam Drive Wells" and Rule 425, "Control of NO_x Emissions From Steam Drive Wells," which are extremely important RACMs for the Kern County nonattainment area.

Response: As discussed in EPA's General Preamble (44 FR 20372, April 4, 1979) and in the September 15, 1980 notice (45 FR 60931), the 1979 NAP must, at a minimum, include rules which reflect Reasonably Available Control Technology (RACT) for the CTG source categories. However, the State must also adopt other measures as needed to provide for attainment. EPA will incorporate these measures into the SIP when submitted by the State. Rules 411.1 and 425 were not included in the September 15, 1980 notice because the ARB submitted these rules six months after the submittal of the NAP and EPA was unable to complete and fully coordinate the review for publication on September 15, 1980. These rules, submitted on April 2 and 15, 1980, and revised on December 15, 1980 will be addressed in the **Federal Register** in the near future.

Comment: The ARB and the Kern County Air Pollution Control District (APCD) commented that they agreed with EPA's finding that the design value is 0.20 ppm for the Kern County nonattainment area. The ARB also commented that they did a reanalysis using the 0.20 ppm value and found that due to a change in the ozone aloft transport value, the estimated emission reduction needed to demonstrate attainment changed from 60.7 percent in the NAP to 58 percent. The ARB further commented that the condition of approval should be deleted because the estimated emission reduction contained in the NAP is more stringent.

Response: EPA agrees with the ARB and this condition of approval is being deleted in today's notice.

Comment: The ARB recommended that EPA's proposed condition of approval concerning the development of control measures to replace I/M for CO should be changed to require a work program for the development of control measures needed to demonstrate attainment of the CO NAAQS. The ARB further commented that the control strategies for attaining the ozone, SO_2, and PM NAAQS are based upon the control of emissions from oil industry operations which are the dominant source of emissions in Kern County. The ARB also commented that, at this time, I/M should not be considered a reasonably available control measure for these three pollutants because it may not significantly affect future air quality if adopted. The Kern County APCD commented that the attainment demonstration for ozone did not inlcude emission reductions from I/M and therefore substitute control measures should not be required.

Response: Since the CO plan demonstrates that attainment is possible by 1982 with reasonably available control measures, including I/M, sufficient legally adopted control measures must be submitted in the plan to implement the control strategy and to attain the national standards. Thus, for CO, legal authority to implement I/M or other measures to replace I/M must be provided and EPA cannot approve the submittal of a work program to develop, at a later date, the needed control measures. EPA agrees with the ARB that substitute control measures need not be developed for ozone. Therefore, this condition of approval no longer applies to ozone. EPA also agrees with the ARB that I/M is not a reasonably available control measure for PM and SO_2.

Comment: The ARB and the Kern County APCD recommended that EPA delete the condition of approval concerning Rule 410.3, "Organic Solvent Degreasing Operations," because it is currently applicable to only those sources not covered by Rule 410, "VOC Emissions From Degreasing Operations Which Use Organic Solvents Exempted From Rule 410," which is more stringent than Rule 410.3.

Response: EPA disagrees with the ARB and the Kern County APCD because neither has provided the necessary documentation to support their position. Further, EPA believes that Rule 410.3 is not RACT with this exemption. Therefore, this condition of approval is not deleted.

Comment: The ARB commented that the condition of approval concerning Rule 410.4, "Surface Coating of Manufactured Metal Parts and Products" should be deleted because there is only one source covered by this Rule and it is in compliance. The Kern County APCD commented that the rule is enforceable because noncomplying sources would have to apply to the Hearing Board of the Air Pollution Control District to have a compliance schedule adopted on a case-by-case basis. The Kern County APCD further commented that procedures for petitioning for a compliance schedule can be found in Regulation V of the APCD's regulations.

Response: EPA agrees with the ARB in that compliance schedules should not be required for this rule. Therefore, this condition of approval is being deleted in today's notice.

Comment: EPA proposed to conditionally approve the NAP based upon the submittal of commitments and schedules for implementing I/M and two transportation control measures that were found to be reasonably available. These two measures include transit improvements and bikeways plan. The Kern County APCD commented that commitments should only be submitted for transit improvement because I/M is subject to action by the State Legislature and there are no emission reduction credits claimed for bikeways plan.

Response: EPA agrees with the Kern County APCD.

3. *Sulfur Dioxide:*

It should be noted that the ARB submitted to EPA on February 19, 1981, a revision to the Kern County CO_2 plan control strategy. That revision is not addressed in today's final rulemaking notice, but will be considered in a future notice of proposed rulemaking.

Comment: WOGA commented that emission reductions required by current EPA and Kern County permits are sufficient to assure attainment of the CO_2 NAAQS without reference to Rule 424 and therefore Rule 424 should not be included in the NAP for CO_2.

Response: The NAP's demonstration of attainment is being conditionally approved due to certain deficiencies which are being corrected by the ARB and the Kern County APCD. Thus, it is not yet possible to rely on this demonstration to determine whether Rule 424 provides for maintenance only or also attainment of the SO_2 NAAQS. Further, at this time Rule 424 is not included in the NAP for SO_2. However, the Rule is being approved and incorporated into the SIP for the PM control strategy in today's notice. Therefore, since Rule 424 is part of the California SIP, the emission reduction from Rule 424 can be used to demonstrate attainment for SO_2.

Comment: WOGA disagreed with EPA's finding that the NAP does not demonstrate attainment of the SO_2 NAAQS in the Kern County nonattainment area by December 31, 1982 because it does not consider modeled violations. WOGA commented that EPA should not rely on theoretical modeling studies when actual monitored data show that the ambient SO_2 levels are decreasing in Kern County.

WOGA also pointed out that the report prepared for EPA by SRI International, "Modeling of Stationary Air Pollution Sources in the Central and

Western Kern County Oil Fields" (January 1979), predicts no violations of the Federal short term or annual average NAAQS for existing or future sources in the Midway-Sunset area. They further commented that this report does predict a slight exceedance (81 $\mu g/m^3$ vs an annual average standard of 80 $\mu g/m^3$) in one small area in the center of the Kern River Oil Field and that this area is not accessible to the public and therefore this should not be considered a predicted violation. Also, WOGA commented that the SRI report did not take into account the Getty shutdown of 62 steam generators on December 27, 1978 in accordance with permit conditions which also require permanent SO_2 offsets which will significantly reduce the model SO_2 concentrations.

Response: EPA believes that modeling studies are useful for SO_2 for determining whether an area is attaining the NAAQS because monitored data usually is not available for places of expected maximum concentration. Modeling is needed to determine the effectiveness of a control strategy and is essential in demonstrations of attainment. The NAP did not contain sufficient monitoring data for SO_2 to show that decreases in ambient concentrations were due to other than meteorological variations occurring from day-to-day and year-to-year. The monitoring data provided by WOGA appears sufficient for the Oildale area to support a successful demonstration of attainment, however, the ambient data for western Kern County appears to be insufficient in the same regard. The assertion by WOGA that the small area in the center of the Kern Oil Field, where violations are predicted by SRI International, is not accessible to the public, has not been adequately supported. No such assertion has been made for the Midway-Sunset predicted violation area.

Although the SRI International study did not predict violations in the Midway-Sunset area, WOGA and EPA are aware that another modeling study, by SAI, did predict both annual and short term violations in the area. Further, the SRI International study did not take into account the December 1978 Getty steam generator shutdown, as indicated by WOGA, because the study was completed prior to the December 1978 violations and Getty shutdown. Therefore, EPA concluded that the NAP inadequately demonstrated that the violations identified in the various modeling studies have been or will be eliminated. This is just one of several deficiencies cited in EPA's proposed rulemaking notice, which together result in EPA's determination that the attainment demonstration is deficient.

4. Particulate Matter:

Comment: The ARB commented that the condition of approval concerning the PM emission inventory should be deleted because they committed to work with the San Joaquin Valley Air Basin APCDs to develop an appropriate inventory.

Response: EPA disagrees. An adequate inventory must be provided as part of the 1979 SIP. EPA is, however, revising the condition of approval deadline so that it is consistent with the ARB's schedule for submittal of a SIP revision by December 31, 1981 that will demonstrate attainment of the PM NAAQS.

Comment: The ARB recommended that the condition of approval concerning the submittal of a schedule and work program to study nontraditional control measures be deleted because they committed to study and adopt all measures found to be reasonably available and effective in reducing emissions from sources of precursors of secondary particulates and because schedules for studying these measures were submitted to EPA. The ARB further commented that the condition of approval for RFP and legally adopted measures should be deleted for the same reasons.

Response: Certainly, EPA agrees that the ARB should study additional measures for control of precursor emissions from both traditonal as well as nontraditional sources. The ARB should adopt such measures as improved technology becomes reasonably available. At present, EPA only requires that the State plan contain legally adopted, reasonable measures for traditional sources, to the extent necessary for attainment of all national standards. The implementation of legally adopted measures for nontraditional sources can be extended until December 31, 1982, but such measures must be submitted in the near future for EPA approval.

EPA has determined that a commitment and schedule leading to the adoption and submittal of all measures found to be reasonably available and effective in reducing emissions from sources of precursors of secondary particulates only partially satisfies the conditions of approval which the ARB recommended be deleted. The TSP conditions of approval, recommended for deletion by the ARB (i.e., attainment provision, reasonable further progress, and legally adopted measures), all regard sufficient additional reasonable emission reduction measures. The precursor control commitment is not sufficient since the ARB failed to provide a detailed inventory of nontraditional source emissions. Without a complete inventory of emission sources, the amount of emission reduction needed to affect a predetermined air quality improvement cannot be determined accurately. Thus, precursor emission control has not been shown to have sufficient potential for the attainment of the national TSP standards. EPA is therefore requiring that all nontraditional sources be included in the commitment so that a sufficient emission base is available from which reductions (determined to be most reasonable) can be implemented for attainment of the national TSP standards. EPA requires that all RACT and RACM's necessary for attainment be implemented. Therefore, the three conditions of approval recommended for deletion by the ARB are being retained.

Comment: The ARB commented that they intended to provide annual reports to EPA each year. The ARB further commented that they published joint guidance with EPA for the California APCDs which indicated what should be provided in the annual reports.

Response: EPA feels that this is adequate and is therefore deleting the condition of approval concerning annual reporting.

III. National Comments

One commenter submitted extensive comments and requested that they be considered part of the record for each state plan. Another commenter, a national environmental group, discussed EPA action on permit fee systems and the composition of state boards. Although some of the issues raised are not relevant to provisions in the San Joaquin Valley Air Basin NAP, the November 10, 1980 **Federal Register** (45 FR 74480) should be referenced for a discussion of these comments and EPA's responses.

EPA Actions

It is important for reviewers of this notice to understand the overall nature of NAPs and EPA's review and approval role. Central to such an understanding is recognition that action may be taken on a portion of a NAP for a specific pollutant or rule. Therefore, a portion of a NAP may be adequate for one pollutant but inadequate for others. Further, a rule may be adequate under Section 110, but inadequate under Part D of the Act. It is EPA's policy to take final action on all portions of a NAP for each pollutant.

Therefore, a final rulemaking notice contains a series of actions for each pollutant and for each portion of the NAP rather than a single action. One of the following three actions may be taken for each portion of a NAP:

1. Disapproval where the State does not agree to correct minor deficiencies or where deficiencies are of such magnitude as to significantly interfere with the basic objective; or

2. Approval where the portion of the NAP under consideration meets all requirements; or

3. Approval with conditions where deficiencies exist, but where the effect of the deficiency is not judged to be major and where the State has agreed to take those steps necessary to correct the deficiency. In this case, it is EPA's intent that the State proceed expeditiously to correct the noted deficiency by certain dates.

EPA's final actions on the NAP for the Kern County nonattainment area for ozone, CO, and SO_2 and the San Joaquin Valley Air Basin nonattainment area for PM are described below and are based on the proposed rulemaking notice and public comments received by EPA.

Kern County APCD Rules

EPA is taking action under Section 110 of the Clean Air Act to approve all of the rules listed in the September 15, 1980 notice, with the exception of Rule 412.1, "Transfer of Gasoline into Vehicle Fuel Tanks." No action is being taken on Rule 412.1 at this time, because it was superceded by a latter submittal by the State. EPA will propose action on the revised Rule 412.1 in a separate **Federal Register** action.

EPA is taking action under Part D of the Act to approve Rules 410.4, 412, 414.2, and 414.3 since they fully satisfy the requirement for RACT.

As stated in the PUBLIC COMMENTS section, EPA has determined that the LAER exemptions provided for in subparagraph (3)(E) of Rule 210.1, "Standard for Authority To Construct" cannot be approved or conditionally approved under Part D. Therefore, EPA disapproves those portions of subparagraph (3)(E) which allow new sources to be exempt from LAER.

Similar to the September 15 proposal notice, today's notice takes action on the Kern County NSR rules (permit program portions of the NAP), but does not take action on the NSR rules for the other seven counties in the San Joaquin Valley. Those rules will be addressed in a future notice.

Approved Portions of the San Joaquin Valley Air Basin NAP

As proposed in the September 15, 1980 notice and as discussed in the PUBLIC COMMENTS section of this notice, EPA has determined that the following portions of the NAP are consistent with Part D of the Clean Air Act. Therefore, EPA is taking final action to approve these portions.

Kern County Nonattainment Area

Ozone: Modeling, emissions growth, annual reporting, public and government involvement, and public hearing requirements.

Carbon Monoxide: Emissions inventory, modeling, reasonable further progress (RFP), emissions growth, annual reporting, public and government involvement, and public hearing requirements.

Sulfur Dioxide: Emission inventory, legally adopted measures, resources, annual reporting, public and government involvement, and public hearing requirements.

San Joaquin Valley Air Basin Nonattainment Area

Particulate Matter: Emission reduction estimates, emissions growth, annual reporting, public and local government involvement, and public hearing.

Conditionally Approved Portions of the San Joaquin Valley Air Basin NAP

The State and the Kern County APCD have assured EPA that they will submit the material to correct the minor deficiencies noted in the September 15, 1980 notice. EPA therefore takes final action to conditionally approve the following portions of the NAP:

Kern County Nonattainment Area

Ozone: Emissions inventory, emission reduction estimates, attainment, RFP, legally adopted measures, resources, and permit program.

Carbon Monoxide: Emission reduction estimates, attainment, legally adopted measures, resources, and permit program.

Sulfur Dioxide: Modeling, emission reduction estimates, attainment, RFP, emissions growth, and permit program.

San Joaquin Valley Air Basin Nonattainment Area

Particulate Matter: Emission inventory, modeling, attainment, RFP, legally adopted measures, and resources.

To satisfy the conditions of approval, the State must submit the following material by the following dates:

Kern County Nonattainment Area

Ozone, Carbon Monoxide, Particulate Matter, and Sulfur Dioxide.

1. By (90 days from the date of this notice), the NSR rules must be revised and submitted as a SIP revision. The rules must satisfy Section 173 and 40 CFR 51.18, "Review of new sources and modifications." In revising the Kern County APCD's NSR rules, the State/APCD must address all the requirements in EPA's amended regulations for NSR (45 FR 31307, May 13, 1980 and 45 FR 52676, August 7, 1980) which the APCD rules do not currently satisfy, including those deficiencies cited in EPA's Evaluation Report which still apply despite new EPA NSR requirements (contained in Document File NAP-CA-9 at the EPA Library in Washington, D.C. and the Region IX Office). As EPA noted on August 7, 1980 in promulgating the revised NSR requirement [See 45 FR 52687], if the revised NSR rules have not been submitted and approved by November 7, 1981, a construction moratorium will take effect in those areas of the San Joaquin Valley Air Basin for which the revised rules have not been approved.

2. By October 1, 1981, a commitment to submit annual implementing agency fiscal and personnel commitments to implement the NAP for the Kern County nonattainment area.

Ozone: 1. By October 1, 1981, emission estimates and adequate documentation of base year and projected emissions from tertiary oil production operations for VOC emission sources.

2. By October 1, 1981, a revised emission reduction estimate for each year for control tactic SS1, "Steam Drive Controls" which is based upon the refined emission inventory estimates.

3. By October 1, 1981, a revised control strategy demonstrating attainment of the ozone NAAQS by December 31, 1982.

4. By October 1, 1981, a revised demonstration of RFP.

5. By October 1, 1981, the State must provide an adequate demonstration that the following regulations represent RACT, amend the regulations so that they are consistent with the CTGs, or demonstrate that the regulations will result in VOC emission reductions which are within five percent of the reductions which would be achieved through the implementation of the CTG recommendations:

Rule 414 "Effluent Oil Water Separators"

Rule 410.5 "Cutback Asphalt Paving Materials"

Rule 411 "Storage of Petroleum Distillates or Light Crude Oil"
Rule 410.3 "Volatile Organic Compound Emissions from Degreasing Operations Which Use Organic Solvents Exempted from Rule 410"

6. By October 1, 1981, written evidence of local adoption of legally enforceable commitments, implementation schedules, and monitoring procedures for transit improvement consistent with reasonable further progress for the transportation control measures.

Carbon Monoxide: 1. By October 1, 1981, further documentation of the emission reduction estimate for each year for emissions from petroleum refineries.

2. By October 1, 1981, a revised control strategy demonstrating attainment of the CO NAAQS by December 31, 1982.

3. By October 1, 1981, written evidence of local adoption of legally enforceable commitments, implementation schedules, and monitoring procedures for transit improvement consistent with reasonable further progress for the transportation control measures.

4. By October 1, 1981, legally adopted control measures that replace I/M.

Sulfur Dioxide: 1. By October 1, 1981, the results of an air quality analysis giving the quantification of the total emission reductions needed to attain the SO_2 NAAQS.

2. By October 1, 1981, revised emission reduction estimates for each year for Rule 424, "Control of Sulfur Compounds from Oil Field Steam Generators" which take into account the cogeneration exemption.

3. By October 1, 1981, a revised control strategy demonstrating attainment of the SO_2 NAAQS for Kern County.

4. By October 1, 1981, a revised demonstration of RFP.

5. By October 1, 1981, evidence that the emissions growth increment is consistent with the revised demonstration of attainment, or a revised growth increment.

San Joaquin Valley Air Basin Nonattainment Area

Particulate Matter: 1. By December 31, 1981, a refined emission inventory which includes estimates of emissions from traditional and nontraditional (secondary aerosols and windblown dust) sources for the San Joaquin Valley Air Basin.

2. By December 31, 1981, documentation for the PM design value used to determine the allowable PM emission level, and a modeling analysis using the new emissions inventory data which shows the emission reductions necessary to provide for attainment of the PM NAAQS by December 31, 1982.

3. By October 1, 1981, a commitment and schedule to study and adopt non-traditional PM control measures, and a commitment to implement those control measures necessary to provide for attainment.

4. By October 1, 1981, a commitment to submit annual implementing agency fiscal and personnel commitments to implement the NAP for the San Joaquin Valley Air Basin.

Final Action on the NAP

EPA is taking final action under Part D of the Clean Air Act to conditionally approve the San Joaquin Valley NAP for the Kern County nonattainment area. As a result, the prohibition on construction of major new or modified sources in Kern County is no longer in effect.

EPA is also taking final action under Part D to conditionally approve all portions of the San Joaquin Valley Air Basin NAP for PM, except the permit program portion. EPA will take final action on the NSR rules for the other counties in the San Joaquin Valley Air Basin in a separate **Federal Register** notice.

EPA has a responsibility to take final action as soon as possible in those areas for which the State of California has submitted approvable or conditionally approvable NAPs in accordance with the requirements of Part D in order to lift the construction prohibition. Since the State has submitted a conditionally approvable NAP for the Kern County nonattainment area for ozone, CO, and SO_2, EPA finds that good cause exists for making this action immediately effective.

Under Section 307(b)(1) of the Clean Air Act, judicial review of today's action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Conditional Approval Procedure

A discussion of conditional approval and its practical effect appears in two supplements to the General Preamble [44 FR 38583 (July 2, 1979) and 44 FR 67192 (November 23, 1979)]. Conditional approval requires the State to submit additional material by the deadlines specified in today's notice. There will be no extensions granted to the conditional approval deadlines being promulgated today. EPA will follow the procedures described below when determining if the State has satisfied the conditions.

1. If the State submits the required additional documentation according to schedule, EPA will publish a notice in the **Federal Register** announcing receipt of the material. The notice of receipt will also announce that the conditional approval is continued pending EPA's final action on the submittal.

2. EPA will evaluate the State's submittal to determine if the conditions are fully met. After EPA's review is completed, a **Federal Register** notice will be published proposing or taking final action to either (1) find the conditions have been met and approve the NAP or (2) find the conditions have not been met, withdraw the conditional approval, and disapprove the NAP. If the NAP is disapproved, the Section 110(a)(2)(I) restrictions on construction would be reimposed.

3. If the State fails to submit the required materials to meet a condition, EPA will publish a **Federal Register** notice shortly after the expiration of the deadline.

The notice will announce that the conditional approval is withdrawn, the NAP is disapproved and the Section 110(a)(2)(I) restrictions on construction are in effect.

Certain deadlines for satisfying conditions have been changed from those proposed and are being promulgated today without further notice and comment. EPA finds that for good cause additional notice and comment on these deadlines are unnecessary (See 5 U.S.C. Section 553(b)(B), Administrative Procedure Act). The State is the party responsible for meeting the deadlines and the State has agreed to the deadlines. In addition, the public has had an opportunity to comment generally on the concept of conditional approval and on what deadlines should apply for these conditions (44 FR 38583, July 2, 1979 and 45 FR 21297, April 1, 1980).

40 CFR Part 52 Rescissions

EPA is taking final action as proposed to rescind certain Federally promulgated regulations from 40 CFR Part 52. No supplemental revisions or public comments were received regarding EPA's proposed rescissions.

NSR Requirements

It should be noted that EPA has published two final rulemaking notices on the September 5, 1979 proposed amendments to EPA's NSR regulations and the Emission Offset interpretative

Ruling. These notices, published on May 13, 1980 (45 FR 31307) and August 7, 1980 (45 FR 52676), amend EPA's Interpretative Ruling and set out new EPA requirements for NSR under Section 173.

The State is required to comply with the August 7, 1980 requirements by (90 days from the date of this notice). In revising the Kern County APCD's NSR rules, the State/APCD must address all the requirements in EPA's amended regulations for NSR (May 13, 1980, 45 FR 31307, and August 7, 1980, 45 FR 52676) which the APCD rules do not currently satisfy, including those deficiencies cited in EPA's *Evaluation Report Addendum* which still apply despite EPA's new NSR requirements. As EPA noted on August 7, 1980 in promulgating the revised NSR requirement [See 45 FR 52687], if the revised NSR rules have not been submitted and approved by November 7, 1981, a construction moratorium will take effect in those areas of the San Joaquin Valley Air Basin for which the revised rules have not been approved.

VOC RACT Requirements

The April 4, 1979 General Preamble (44 FR 20376) describes the requirements for agencies to submit VOC RACT regulations for certain sources located in ozone nonattainment areas. The first set of RACT regulations were required for sources covered by the Group I CTG documents published before January 1978. Regulations for sources covered by the Group I documents were to have been submitted by January 1, 1979. A second set of RACT regulations are required for sources covered by the Group II CTG documents, published between January 1978 and January 1979. Regulations for sources covered by the Group II documents were to have been submitted January 1, 1981 (45 FR 78121, November 5, 1980). Regulations must be submitted in order for the Part D requirements of the ozone portions of the San Joaquin Valley Air Basin NAP to continue to be fully approvable. Further, these requirements have been set forth in 40 CFR 52.223. Action on the Group II RACT regulations will be in a separate **Federal Register** notice.

Attainment Dates

The 1979 edition of 40 CFR Part 52 lists, in the Subpart for California, the applicable deadlines for attaining the NAAQS [attainment dates] required by Section 110(a)(2)(A) of the Clean Air Act. For each nonattainment area where a NAP provides for attainment by the deadlines required by Section 172(a) of the Act, the new deadlines are substituted on California's attainment date chart in 40 CFR Part 52. The earlier attainment dates will be referenced in a footnote to the chart. Sources subject to plan requirements and deadlines established under Section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as the new Section 172 requirements. Congress established new attainment dates under Section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements, and to permit previously uncontrolled sources to comply with the newly applicable emission limitations. These new deadlines were not included to give sources that failed to comply with pre-1977 plan requirements by the earlier deadlines more time to comply with those requirements. As noted by Congressman Paul Rogers in discussing the 1977 Amendments:

> Section 110(a)(2) of the Act made clear that each source had to meet its emission limits "as expeditiously as practicable," but not later than three years after approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear Congressional intent to construe Part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the National Ambient Air Quality Standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D (123 Cong. Rec. H 11958, daily ed. November 1, 1977).

To implement Congress' intention that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond the attainment dates established prior to the 1977 Amendments. EPA cannot approve such compliance date extensions, even though a NAP with a later attainment date has been approved. However, a compliance date extension beyond a pre-existing attainment date may be granted if it will not contribute to a violation of an ambient standard or a PSD increment [44 FR 20373–74, (April 4, 1979)].

In addition, sources subject to pre-existing plan requirements may be relieved of complying with such requirements if a NAP imposes new, more stringent control requirements that are incompatible with controls required to meet the pre-existing regulations. Decisions on the incompatibility of requirements will be made on a case-by-case basis.

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The miscellaneous SIP approvals announced today are not major because they only approve state actions. The disapprovals are also not major because they preserve the status quo. Certain sources will remain subject to NSR requirements rather than become exempt.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Note.—Incorporation by reference of the SIP for the State of California was approved by the Director of the Federal Register on July 1, 1980.

(Secs. 110, 129, 171–178, and 301(a) of the Clean Air Act, as amended [42 U.S.C. § 7410, 7429, 4501–7508, and 7601(a)])

Dated: August 7, 1981.

Anne M. Gorsuch,

Administrator.

Subpart F of Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. In § 52.220(c), subparagraphs (47)(iii)(B), (51)(i)(B), (52)(i)(B), (71), (75), and (76) are added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(47) * * *

(iii) * * *

(B) Rule 412.

* * * * *

(51) * * *

(i) * * *

(B) Rules 410.1 and 424.

* * * * *

(52) * * *

(i) * * *

(B) Rules 410.4, 410.5, and 414.2.

* * * * *

(71) The *San Joaquin Valley Air Basin Control Strategy* (Chapter 16 of the Comprehensive Revisions to the State of California Implementation Plan for the Attainment and Maintenance of Ambient Air Quality Standards) submitted on October 11, 1979, by the Governor's designee. Those portions of the *San Joaquin Valley Air Basin Control Strategy* identified by Tables 16–1a, 1b and 1c (Summary of Plan Compliance with Clean Air Act Requirements) and which pertain to Kern County or Total Suspended

Particulates, comprise the submittal plan. The remaining portions are for information purposes only.

* * * * *

(75) Revised regulations for the Kern County APCD, submitted on January 8, 1980, by the Governor's designee.

(i) Rules 210.2, 410.3, 411, 414, 414.1, and 414.3.

(76) Revised regulations for the following APCD's, submitted on April 15, 1980, by the Governor's designee.

(i) Kern County APCD.

(A) Amended Rule 210.1

* * * * *

2. Section 52.222 is amended by adding paragraph (b)(4) as follows:

§ 52.222 Extensions.

* * * * *

(b) * * *

(4) Kern County nonattainment area for ozone, CO, SO_2, and PM.

* * * * *

3. Section 52.223 is amended by adding paragraph (b)(5) as follows:

§ 52.223 Approval status.

* * * * *

(b) * * *

(5) San Joaquin Valley Air Basin.

(i) Kern County nonattainment area for ozone, CO, SO_2, and PM.

* * * * *

4. Section 52.232 is amended by adding paragraphs (a) (5) and (6) as follows:

§ 52.232 Part D conditional approval.

(a) * * *

(5) The Kern County APCD.

(i) For ozone, CO, PM and SO_2:

(A) By November 19, 1981, the NSR rules must be revised and submitted as an SIP revision. The rules must satisfy Section 173 of the Clean Air Act and 40 CFR 51.18, "Review of new sources and modification." In revising Kern County's NSR rules, the State/APCD must address all the requirements in EPA's amended regulations for NSR (45 FR 31307, May 13, 1980 and 45 FR 52676, August 7, 1980) which the APCD rules do not currently satisfy including those deficiencies cited in EPA's Evaluation Report Addendum which still apply despite EPA's new NSR requirements (contained in Document File NAP-CA-07 at the EPA Library in Washington, D.C. and the Regional Office).

(ii) For ozone, CO, PM, and SO_2:

(A) By October 1, 1981, a commitment to submit annual implementing agency fiscal and personnel commitments to implement the NAP for the Kern County nonattainment area.

(iii) For ozone:

(A) By October 1, 1981, emission estimates and adequate documentation of base year and projected emissions from tertiary oil production operations for VOC emission sources.

(B) By October 1, 1981, a revised emission reduction estimate for each year for control tactic SSI, "Steam Drive Controls" which is based upon the refined emission inventory estimates.

(C) By October 1, 1981, a revised control strategy demonstrating attainment of the ozone NAAQS by December 31, 1982.

(D) By October 1, 1981, a revised demonstration of RFP.

(E) By October 1, 1981, the State must provide an adequate demonstration that the following regulations represent RACT, amend the regulations so that they are consistent with the CTGs, or demonstrate that the regulations will result in VOC emission reductions which are within five percent of the reductions which would be achieved through the implementation of the CTG recommendations:

Rule 414 "Effluent Oil Water Separators"

Rule 410.5 "Cutback Asphalt Paving Materials"

Rule 411 "Storage of Petroleum Distillates or Light Crude Oil"

Rule 410.3 "Volatile Organic Compound Emissions From Degreasing Operations Which Use Organic Solvents Exempted From Rule 410"

(F) By October 1, 1981, written evidence of local adoption of legally enforceable commitments, implementation schedules, and monitoring procedures for transit improvement consistent with reasonable further progress for the transportation control measures.

(iv) For CO:

(A) By October 1, 1981, further documentation of the emission reduction estimates for each year for emissions from petroleum refineries.

(B) By October 1, 1981, a revised control strategy demonstrating attainment of the CO NAAQS by December 31, 1982.

(C) By October 1, 1981, written evidence of local adoption of legally enforceable commitments, implementation schedules, and monitoring procedures for transit improvement consistent with reasonable further progress for the transportation control measures.

(D) By October 1, 1981, legally adopted control measures that replace I/M.

(v) For SO_2:

(A) By October 1, 1981, the results of an air quality analysis giving the quantification of the total emission reductions needed to attain the SO_2 NAAQS.

(B) By October 1, 1981, revised emission reduction estimates for each year for Rule 424, "Control of Sulfur Compounds from Oil Field Steam Generators" which take into account the cogeneration exemption.

(C) By October 1, 1981, a revised control strategy demonstrating attainment of the SO_2 NAAQS for Kern County.

(D) By October 1, 1981, a revised demonstration of RFP.

(E) By October 1, 1981, evidence that the emissions growth increment is consistent with the revised demonstration of attainment, or a revised growth increment.

(6) The San Joaquin Valley Air Basin Nonattainment Area.

(i) By December 31, 1981, a refined emission inventory which include estimates of emissions from traditional and nontraditional (secondary aerosols and windblown dust) sources for the San Joaquin Valley Air Basin.

(ii) By December 31, 1981, documentation for the PM design value used to determine the allowable PM emission level, and a modeling analysis using the new emissions inventory data which shows the emission reductions necessary to provide for attainment of the PM NAAQS by December 31, 1982.

(iii) By October 1, 1981, a commitment and schedule to study and adopt non-traditional PM control measures, and a commitment to implement those control measures necessary to provide for attainment.

(iv) By October 1, 1981, a commitment to submit annual implementing agency fiscal and personnel commitments to implement the NAP for the San Joaquin Valley Air Basin.

* * * * *

5. Section 52.233 is revised by adding paragraph (a)(4) as follows and removing and reserving paragraphs (d)(7) and (g)(1)(vii):

§ 52.233 Review of new sources and modifications.

(a) * * *

(4) Kern County APCD.

(i) Those portions of paragraph (3)(E) of Rule 210.1, submitted on April 15, 1980, which allow new sources and modifications to be exempt from LAER.

* * * * *

6. In § 52.238, the entries for the San Joaquin Valley Intrastate are revised as follows:

§ 52.238 Attainment dates for national standards.

* * * * *

(d) * * *

(4) [Reserved]

* * * * *

Air Quality Control Region and Nonattainment Area	Pollutants						
	TSP		SO_x		NO_x	CO	O_x
	Primary	Secondary	Primary	Secondary			
*	*	*	*	*	*	*	
San Joaquin Valley Intrastate—except Kern County	July 1975	July 1975	(e)	(e)	(e)	May 31, 1977	May 31, 1977.
Kern County nonattainment area	(h)	(c)	(h)	(h)	(d)	(h)	(h).
*	*	*	*	*	*	*	

* * * * *

7. Section 52.253 is amended by adding paragraph (b)(3) to read as follows:

§ 52.253 Metal surface coating thinner and reducer.

* * * * *

(b) * * *

(3) In the following portions of the San Joaquin Valley Intrastate Region, this section is rescinded for certain sources subject to the conditions specified:

(i) This section is rescinded for metal parts and products coaters which are subject to and in full compliance with Kern County Rule 410.4, submitted on October 15, 1979.

* * * * *

8. In § 52.254 paragraphs (a)(1) and (a)(1)(ii) are revised as follows:

§ 52.254 Organic solvent usage.

(a) * * *

(1) In the following portions of the San Joaquin Valley Region, only the hourly emission limitations contained in paragraphs (b), (c), and (d) of this section are in effect; the following paragraphs, needed for interpretation are also in effect: paragraphs (e) through (l) and (o) through (q) of this section. In addition, this section is entirely rescinded for specific operations for some of the counties noted below:

* * * * *

(ii) Kern County APCD. This section is rescinded entirely for metal parts and product coaters which are subject to and in full compliance with Rule 410.4.

* * * * *

9. Section 52.255 is amended by removing and reserving paragraph (b)(1)(ii) and by adding paragraph (b)(3)(ii) to read as follows:

§ 52.255 Gasoline transfer vapor control.

* * * * *

(b) * * *

(1) * * *

(ii) [Reserved]

* * * * *

(3) * * *

(ii) Kern County APCD.

* * * * *

§§ 52.226 and 52.231 [Reserved]

10. Sections 52.226(a) and 52.231(a) are removed and reserved.

[FR Doc. 81-23357 Filed 8-20-81; 8:45 am]

BILLING CODE 6560-38-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

Editorial Amendment of the Commission's Technical Regulations in the Citizens Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; editorial amendment.

SUMMARY: This document corrects an editorial omission in Part 95, Subpart E, Technical Regulations for the Personal Radio Services.

DATE: Effective August 24, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Stephanie M. Spernak, Private Radio Bureau, Washington, D.C. 20554, 202-632-4964.

Adopted: August 6, 1981.

Released: August 10, 1981.

1. The Commission is correcting an editorial error in Rule § 95.617 of its Technical Regulations, Part 95, Subpart E, governing emission limitations for Citizens Band (CB), Radio Control (R/C), and General Mobile (GMRS) Radio Service transmitters.

2. Technical Regulation § 95.617(c)(3) is amended to include an express reference to R/C transmitters. The inadvertent omission of a reference to R/C transmitters in Rule § 95.617(c)(3) occurred during the revision of rules in Part 95 into Subparts A, C, D and E, as part of the proceedings in Docket 20120 (42 FR 8326; February 9, 1977). The harmonic emission limitation set forth in Rule § 95.617(c)(3) formerly was contained in Rule § 95.49(d)(3), which applied to all transmitters authorized for operation in the personal radio services under Part 95.

3. The authority for this amendment is contained in Section 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's Rules. Because the amendment is editorial in nature, the prior notice and effective date provisions of 5 U.S.C. 553 do not apply.

(Secs. 4, 5, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307.)

Federal Communications Commission.

Richard D. Lichtwardt,

Executive Director.

1. Part 95, Subpart E of Title 47 of the Code of Federal Regulations is amended as follows:

Section 95.617 is amended by revising subparagraph (c)(3) to read as follows:

§ 95.617 Emission limitations.

* * * * *

(c) * * *

(3) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: at least 43 + 10 $\log_{10}$ (mean power in watts) decibels, for CB transmitters type accepted before September 10, 1976 and all Radio Control (R/C) and General Mobile Radio Service transmitters.

* * * * *

[FR Doc. 81-24510 Filed 8-20-81; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-163]

Federal Railroad Administrator; Delegation of Authority

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment clarifies the delegation of authority to the Federal Railroad Administrator (Administrator) to exercise the powers of the Secretary with respect to supplemental