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14 BEFORE THE ENVIRONMENTAL APPEALS BOARD  
15 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
16 WASHINGTON, D.C.

17  
18 \_\_\_\_\_ ) PSD Appeal No. 08-08  
In the Matter Of: )  
19 Humboldt Bay Repowering Project ) **INTERVENOR PACIFIC GAS AND**  
20 ) **ELECTRIC COMPANY'S**  
21 ) **OPPOSITION TO PETITION FOR**  
22 ) **REVIEW AND MOTION FOR**  
 ) **SUMMARY DISPOSITION**  
 ) **(DISMISSAL)**

23 Petitioner Rob Simpson ("Petitioner") has filed with the Environmental  
24 Appeals Board ("EAB") a Petition for Review challenging the Prevention of  
25 Significant Deterioration ("PSD") permit for the Humboldt Bay Repowering Project  
26 issued by the North Coast Unified Air Quality Management District ("North Coast  
27 District"). As described below, the North Coast District's PSD permitting program is  
28 included in the EPA-approved California State Implementation Plan ("SIP"), which

1 means that PSD permits issued by the North Coast District are considered state-  
2 issued permits for the purpose of EAB review. Since the EAB has jurisdiction only  
3 over appeals of federally-issued PSD permits, the EAB does not have jurisdiction  
4 over this matter and should dismiss the Petition. Although it is unclear from the  
5 Petition, Petitioner may also have raised appeal issues with respect to the Title V  
6 operating permit for the Humboldt Bay Repowering Project. Any such appeal  
7 should also be dismissed, as the EAB does not have jurisdiction to hear appeals of  
8 state-issued Title V permits.

9 Mr. Simpson’s Petition for Review challenges both the PSD permit  
10 issued to PG&E by the North Coast District for the Humboldt Bay Repowering  
11 Project and certain permitting actions taken by the Bay Area Air Quality  
12 Management District and/or California’s State Energy Resources Conservation and  
13 Development Commission (“California Energy Commission”) with regard to the  
14 Russell City Energy Center. PG&E’s arguments herein are addressed solely  
15 toward those elements of the Petition for Review that pertain to the Humboldt Bay  
16 Repowering Project and that are included in PSD Appeal 08-08.

17 We note that although the EAB has no jurisdiction to hear the instant appeal,  
18 remedies are available under California law for aggrieved parties who participated  
19 in the permitting process before a local air district or the California Energy  
20 Commission.

21 **LEGAL ARGUMENT**

22 **I. STATUTORY AND REGULATORY FRAMEWORK FOR THE NORTH**  
23 **COAST DISTRICT’S PSD PERMITTING PROGRAM**

24 **A. The PSD Permit Program.**

25 The Clean Air Act gives states the primary responsibility for attainment and  
26 maintenance of the national ambient air quality standards (“NAAQS”). Clean Air  
27 Act (“CAA”) §§ 107(a), 110; 42 U.S.C. §§ 7407(a), 7410. Each state is required to  
28 adopt and submit to the U.S. Environmental Protection Agency (“EPA”) for

1 approval a State Implementation Plan that provides for the attainment and  
2 maintenance of the NAAQS within its borders. In California, responsibility for  
3 developing and implementing plans, rules and regulations for stationary sources of  
4 air pollution, as necessary to meet federal SIP requirements, has been assigned by  
5 law to local and regional air quality management and air pollution control districts.  
6 See, e.g., California Health and Safety Code § 39002. For district rules and  
7 regulations to become part of the SIP, they must be approved by the California Air  
8 Resources Board and then submitted to EPA for its approval. Once the SIP is  
9 approved by EPA, it is enforceable under federal law. 42 U.S.C. § 7413.

10 The Clean Air Act includes specific provisions aimed at keeping “clean air”  
11 areas – so-called “attainment” areas, where the air quality is better than the  
12 national ambient air quality standards – clean. These aims are reflected in the  
13 Prevention of Significant Deterioration of Air Quality provisions, which were added  
14 to the Clean Air Act in 1977. EPA’s regulations governing state and local adoption  
15 of PSD permitting programs for SIP purposes, and establishing the federal PSD  
16 permitting program, are codified at 40 C.F.R. §§ 51.166 and 52.21, respectively.  
17 PSD permit requirements apply to new major sources or major modifications of  
18 existing sources of those pollutants for which the area where the source is located  
19 is designated “attainment” or “unclassifiable” for the relevant NAAQS. Sources  
20 subject to PSD permit requirements must (1) install the “best available control  
21 technology” and (2) prepare an air quality impact analysis, in addition to satisfying  
22 other requirements.

23 The PSD program does not prevent sources from increasing emissions.  
24 Instead, PSD is designed to protect public health and welfare and insure that  
25 economic growth will occur in a manner consistent with the preservation of existing  
26 clean air resources and assure that any decision to permit increased air pollution is  
27 made after careful evaluation of all the consequences of such a decision.

28

1           B.     The North Coast District Has a SIP-Approved PSD Permitting  
2                     Program.

3           The Clean Air Act and EPA regulations provide authority for EPA and state  
4 and local air agencies to issue PSD permits under different legal mechanisms:

5           (1) A regional EPA Office may issue PSD permits pursuant to a delegation  
6 from the Administrator (40 C.F.R. § 52.21(a)(2)(iii); 40 C.F.R. § 52.21(u));

7           (2) EPA may delegate EPA’s permitting authority to a state or a local air  
8 quality agency under a contractual “delegation agreement” (40 C.F.R. § 52.21(u));  
9 or

10          (3) a state or local air quality agency may submit a PSD program to EPA for  
11 approval as a SIP amendment, such that once the SIP amendment is approved,  
12 the state or agency has independent authority to issue PSD permits. CAA §§ 110,  
13 161; (42 U.S.C. §§ 7410; 7471).

14          In accordance with the third option, the North Coast District submitted to  
15 EPA a SIP amendment request for its PSD permitting program and subsequently  
16 received approval from EPA to issue PSD permits.<sup>1</sup> See Notice of Proposed  
17 Rulemaking, 48 Fed. Reg. 28290 (1983); Notice of Final Rulemaking, 50 Fed. Reg.  
18 30941, 30943 (1985),<sup>2</sup> attached hereto as Exhibits 1 and 2, respectively. The  
19 North Coast District’s PSD permitting process is therefore an “approved program”  
20 under EPA regulations. See 40 C.F.R. § 124.41 (an “approved” program means a

21 \_\_\_\_\_  
22 <sup>1</sup> EPA approved the PSD rules for North Coast District, but retained PSD  
23 permitting authority in certain limited circumstances: (i) Those cogeneration and  
24 resource recovery projects which are major stationary sources or major  
25 modifications under § 52.21 and which would cause violations of PSD  
26 increments; (ii) Those projects which are major stationary sources o[r] major  
27 modifications under § 52.21 and which would either have stacks taller than 65  
28 meters or would use “dispersion techniques” as defined in § 51.1; (iii) Sources  
for which EPA has issued permits under § 52.21. 40 C.F.R. § 52.270(b)(2).  
None of these reservations of authority apply here. See Declaration of Gary S.  
Rubenstein, submitted herewith.

<sup>2</sup> “In this notice, EPA is taking two actions: 1. EPA is approving the North Coast  
Rules under Section 110 of the Clean Air Act and Part C, Subpart 1 (PSD) and  
(continued...) ”

1 State implementation plan providing for issuance of PSD permits which has been  
2 approved by EPA under the Clean Air Act and 40 CFR part 51.”)

3 C. The Humboldt Bay Repowering Project Requires a PSD Permit.

4 The Humboldt Bay Repowering Project is located in the City of Eureka,  
5 Humboldt County, California. The facility is a load following power plant consisting  
6 of ten natural gas-fired Wartsila 18V50DF 16.3 megawatt reciprocating engine-  
7 generator sets. Because Humboldt County is an attainment area for ozone and  
8 particulate matter (PM<sub>10</sub>) and the Repowering Project emissions will exceed the  
9 significant net increase thresholds of 40 C.F.R. § 52.21(b)(23)(i) for reactive  
10 organic compounds and PM<sub>10</sub>, the project is a major modification to an existing  
11 major source and a PSD permit was needed. PG&E began the permitting process  
12 by submitting an Application for Certification to the California Energy Commission  
13 on September 29, 2006, and by submitting an application dated September 29,  
14 2006 to the North Coast District. The North Coast District granted a PSD permit  
15 as part of the “Title V Federal Operating Permit; NCUAQMD Permit to Operate and  
16 Final Determination of Compliance” for the Humboldt Bay Repowering Project  
17 issued on April 14, 2008. The California Energy Commission approved a state  
18 license for the Project on September 24, 2008.

19 **II. AN APPEAL OF A PSD PERMIT ISSUED UNDER AN “APPROVED**  
20 **STATE PROGRAM,” SUCH AS NORTH COAST DISTRICT’S SIP-**  
21 **APPROVED RULES, IS NOT WITHIN THE JURISDICTION OF THE**  
22 **ENVIRONMENTAL APPEALS BOARD**

23 The jurisdiction of the Environmental Appeals Board is established by  
24 regulation, with appeals from permit decisions governed by 40 C.F.R., pt. 124.<sup>3</sup>  
25 Part 124 establishes the procedures for issuing, denying, modifying, revoking and

26 \_\_\_\_\_  
27 (...continued)  
28 is incorporating them into the California State Implementation Plan (SIP)....”

1 reissuing, or terminating EPA-issued RCRA, UIC, PSD, and NPDES permits. 40  
2 C.F.R. § 124.1(a). It also establishes procedures applicable to certain state-  
3 administered permit programs. As relevant here, section 124.1(e) specifically  
4 states that “Part 124 does not apply to PSD permits issued by an approved State.”  
5 “An *approved State* is one administering an *approved program*.” “*Approved*  
6 *program* means a State implementation plan providing for issuance of PSD permits  
7 which has been approved by EPA under the Clean Air Act and 40 CFR Part 51.”  
8 40 C.F.R. § 124.41. In the preamble to the final Part 124 regulations, EPA  
9 explained:

10 ... [P]rocedures for permit decisionmaking are established for the above four  
11 programs, and for

12 •The Prevention of Significant Deterioration (PSD) program under the Clean  
13 Air Act, where this program is operated by EPA or a delegated State Agency  
14 under 40 CFR 52.21[u]<sup>4</sup>; these procedures do not apply to PSD permits  
15 issued by States to whom administration of the PSD program has been  
16 transferred.

17 45 Fed. Reg. 33290 (May 19, 1980) (emphasis added).

18 Two previous Environmental Appeals Board decisions concur in this  
19 interpretation. In the matter of *In re Carlton*, the EAB confirmed that its jurisdiction  
20 is limited to review of permits issued under a federal PSD program. Illinois, where  
21 the Carlton power plant was located, did “not have a PSD program approved as  
22 part of its SIP and, as such, the PSD program in Illinois is a federal program.” *In re*  
23 *Carlton, Inc. North Shore Power Plant*, PSD Appeal No. 00-09, (E.A.D. 690, 693).

24 \_\_\_\_\_  
25 (...continued)

26 <sup>3</sup> See also Environmental Appeals Board Practice Manual (June 2004), at p.2.

27 <sup>4</sup> The C.F.R. reference is to section 52.21(v), which appears to be a  
28 typographical error since subsection (u) is titled “Delegation of authority” and  
addresses that topic, while subsection (v) is titled “Innovative control

(continued...)

1 “More generally, permit appeals under 40 C.F.R. pt. 124 are limited to the federal  
2 permitting programs listed therein, including appeals of permits issued under the  
3 federal PSD program.” *Id.* at 692-693. *In re Carlton* makes clear that it is improper  
4 for the EAB to assert jurisdiction to review a permit issued pursuant to a properly-  
5 approved state permit program.

6 Another EAB opinion, *In the Matter of Alcoa-Warrick Power Plant*, PSD  
7 Appeal No. 02-14, March 5, 2003, Unpub.Op., is consistent. In the Order Denying  
8 Petition for Review in *Alcoa-Warrick*, the EAB granted the motion for summary  
9 disposition filed by Indiana Department of Environmental Management, Office of  
10 Air Quality (“IDEM”) on the grounds that the Board did not have jurisdiction to  
11 review the permit at issue because it was not a PSD permit. While not identical to  
12 the situation currently before the EAB, footnote 2 of the Order is instructional in this  
13 instance:

14 Indiana has not been approved by EPA to issue PSD Permits because  
15 Indiana’s Clean Air Act State Implementation Plan (“SIP”) does not include  
16 approvable procedures for issuing PSD permits, rather, IDEM acts as EPA’s  
17 delegate in implementing the Federal PSD program. See 40 C.F.R.  
18 §§ 52.21(u) and 52.793; 46 Fed. Reg. 9580, 9583-84 (Jan. 29, 1981)  
19 (delegation of PSD authority to Indiana). PSD permits issued by IDEM are  
20 considered EPA-issued permits for purposes of federal law, and are subject  
21 to review by the Board pursuant to 40 C.F.R. § 124.19. [citations excluded]  
22 ... In contrast, in circumstances in which a state’s PSD program has been  
23 approved as part of its SIP, permits issued under the state program are  
24 considered creatures of state law, not federal law, and are thus reviewable  
25 under the state system of review rather than by this Board. *Id.*, at fn.2.

26  
27 \_\_\_\_\_  
28 (...continued  
technology.”

1 (emphasis added).

2 As noted above, EPA approved and incorporated the North Coast District  
3 PSD program into the California State Implementation Plan. 40 C.F.R.  
4 § 52.270(b)(2). Accordingly, PSD permits issued by the North Coast District are  
5 permits issued “by an approved State.” The North Coast District granted a PSD  
6 permit for the Humboldt Bay Repowering Project pursuant to its SIP-approved  
7 rules. Consequently, the EAB has no jurisdiction to hear challenges and objections  
8 to the North Coast District’s issuance of the Humboldt Bay Repowering Project  
9 PSD permit.

10 **III. THE EAB HAS NO JURISDICTION TO HEAR AN APPEAL OF THE**  
11 **TITLE V ELEMENTS OF THE PERMIT**

12 To the extent that Petitioner may have included in his appeal any challenges  
13 to the Title V aspects of the permit issued by the North Coast District for the  
14 Humboldt Bay Repowering Project, the EAB also lacks jurisdiction to review any  
15 such issues.

16 Title V of the Clean Air Act requires certain stationary sources of air pollution  
17 to obtain permits from state air pollution agencies. See CAA § 503 (42 U.S.C.  
18 § 7661b). EPA has adopted regulations governing issuance of Title V permits by  
19 state and local permitting authorities (40 C.F.R. Part 70) and by EPA (40 C.F.R.  
20 Part 71). With regard to the federal program, 40 C.F.R. Section 71.11(l) provides a  
21 right of appeal to the EAB from a federal Title V operating permit decision, and  
22 section 71.10(i) provides a right of appeal to the EAB from a Title V operating  
23 permit that was issued by a state, tribal, local or other authority pursuant to a  
24 delegation of authority from EPA. However, there is no right of appeal to the EAB  
25 from a permit issued by a state with an EPA-authorized state program pursuant to  
26 40 C.F.R. Part 70. See *In re: Kawaihae Cogeneration Project*, PSD Appeal Nos.  
27 96-9, 96-10, 96-11, 96-14, & 96-16, (7 E.A.D. 107, fn.1, fn.5); *In re Alcoa-Warrick*  
28 *Power Plant*, PSD Appeal No. 02-14, March 5, 2003, Unpub.Op. at 3. Since the



1 North Coast District's Title V permitting process is such an approved program,  
2 Petitioner has no right of appeal to the EAB, and any such appeal must be  
3 dismissed.

4 **IV. ADEQUATE REMEDIES ARE AVAILABLE UNDER STATE LAW**

5 California law establishes remedies that Mr. Simpson could have sought for  
6 redress of alleged permitting errors by the North Coast District or the California  
7 Energy Commission. Specifically, California law authorizes requests for  
8 administrative review of local air district permit decisions as follows:

9 Within 30 days of any decision or action pertaining to the issuance of a  
10 permit by a district, or within 30 days after mailing of the notice of issuance  
11 of the permit to any person who has requested notice, or within 30 days of  
12 the publication and mailing of notice provided for in Section 1 of Chapter  
13 1131 of the Statutes of 1993, any aggrieved person who, in person or  
14 through a representative, appeared, submitted written testimony, or  
15 otherwise participated in the action before the district may request the  
16 hearing board of the district to hold a public hearing to determine whether  
17 the permit was properly issued. Except as provided in Section 1 of Chapter  
18 1131 of the Statutes of 1993, within 30 days of the request, the hearing  
19 board shall hold a public hearing and shall render a decision on whether the  
20 permit was properly issued.

21 California Health & Safety Code § 42302.1. Appeals of the terms and conditions of  
22 California Energy Commission actions are directly appealable to the California  
23 Supreme Court. Cal. Public Resources Code, § 25531(a). Accordingly, adequate  
24 remedies exist under state law for any permitting errors that may have been made.

25 **V. PETITIONER'S RELIANCE ON THE RUSSELL CITY DECISION IS**  
26 **MISPLACED**

27 Mr. Simpson, apparently a resident of Hayward, California, previously  
28 petitioned the EAB to review a PSD permit issued by the Bay Area Air Quality

1 Management District (“BAAQMD”) to Russell City Energy Center for operation of a  
2 natural gas-fired electric power generating facility. *In Re Russell City Energy*  
3 *Center*, PSD Appeal No. 08-01 (EAB, July 29, 2008) 13 E.A.D. \_\_\_. In contrast to  
4 the North Coast District, BAAQMD issues permits under the federal PSD program,  
5 pursuant to a delegation agreement with the EPA. (Order, fn. 1) The EAB  
6 remanded the Russell City permit to BAAQMD, finding the public notice and  
7 participation provisions of 40 C.F.R. § 124.10 had not been met.

8         While the Petition for Review incorrectly claims that the “only notice  
9 regarding Air Quality was a press release from PG&E,” (Petition, p. 4), Petitioner  
10 has not alleged that the North Coast District failed to provide notice by publication,  
11 nor that Petitioner had provided comments on the proposed permit and sought a  
12 public hearing. Furthermore, because of the fundamental difference between the  
13 BAAQMD’s issuance of PSD permits (by delegation from EPA, under federal law)  
14 as compared to North Coast District’s issuance (pursuant to an EPA-approved SIP,  
15 under state law), the EAB has no jurisdiction to examine the permit at issue –  
16 including any allegations concerning the North Coast District’s provision of notice  
17 thereof. Regardless of whether there were any purported deficiencies in the public  
18 notice, hearing, or participation process regarding the Humboldt Bay Repowering  
19 Project, Mr. Simpson has chosen the wrong forum in which to air his grievances.  
20 Accordingly, his reliance on the *Russell City* decision is misplaced.

21 **VI. CONCLUSION.**

22         The North Coast District’s issuance of a PSD permit for the Humboldt Bay  
23 Repowering Project was performed properly under its SIP-approved PSD permit  
24 program. Should Mr. Simpson or any other person wish to challenge the  
25 procedural or substantive propriety of the PSD permit, such a petition cannot  
26 properly come before the Environmental Appeals Board given the limits on the  
27 Board’s authority under 40 C.F.R. Part 124. Accordingly, PG&E respectfully  
28 requests that the Board promptly dismiss PSD Appeal 08-08 in its entirety,

1 including any and all claims made with regard to the Humboldt Bay Repowering  
2 Project. PG&E reserves any and all rights to present further evidence and  
3 argument in the event that the EAB asserts jurisdiction over this PSD appeal.

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Dated: October 16, 2008

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP



By \_\_\_\_\_  
DAVID R. FARABEE  
ATTORNEYS FOR INTERVENOR  
PACIFIC GAS AND ELECTRIC COMPANY

# **EXHIBIT 1**

(4) State law requires the District to permit cogeneration and resource recovery sources even if they would cause increment violations. EPA will resolve this problem.

(5) The Rule would allow the District to use air quality models other than those already approved by EPA without EPA approval.

(6) The Rule does not provide special protection of Class I areas as EPA requires.

Items 1, 5 and 6 have not as yet been resolved.

EPA's Evaluation Report explains in more detail these issues and those that have already been resolved. This Report is available at the locations listed in the ADDRESSES section of this Notice. Many of those issues are very complex and difficult to summarize. The subject areas addressed are the following: Applicability, cogeneration sources, minor source coverage, source definition, impact assessment, netting enforceability, emission calculations, reconstructions, emission baseline, monitoring, "additional impacts," public notice and offset enforceability.

Two of the 12 resolved issues warrant some discussion here:

(1) EPA's regulations stipulate that the local Rules must require applicants to submit sufficient application information to allow a full permit review. Rule 58 does not do so. However, EPA found that Rules 53, 54 and 55, which EPA has already approved, satisfy this requirement.

(2) The Impact Table contained in Section 415 of the Sacramento Rule may indicate ambient concentrations that are lower than those projected by EPA approved air quality modeling techniques. This could cause the Sacramento Rule to be less stringent than the Federal Requirements. However, the District has agreed to satisfy EPA's concerns by prohibiting the use of the Impact Table under any of the following conditions: (1) Complex terrain areas, (2) sources with volume flow of less than 10 m<sup>3</sup>/second, (3) stack gas temperature less than 360° K, or (4) sources with a stack height of more than 100 meters.

#### Proposed Action

EPA proposes to approve under Section 110 and Part C, Subpart 1, and Part D of the Clean Air Act, the SCAPCD rules which were submitted on November 9, 1982, with certain limitations. The problems described in the Evaluation Report will have to be remedied before EPA can approve the Rule. EPA expects that the District will: (1) Adopt the 11 CAPCOA wording changes; (2) adopt the agreed upon

revisions to deal with 12 of the 18 issues; and (3) work with EPA to resolve the remaining 6 issues outlined above. Based on these expectations, EPA proposes to approve the Rule with two exceptions. These address the two problems which the District may not resolve. First, EPA proposes to remedy one of the inadequacies by retaining permitting authority for cogeneration and resource recovery sources which would cause increment violations and which are major under EPA's PSD regulations. EPA is proposing this action because the District has no authority to override the State law, which creates the problem outlined above. Second, if the District has not developed adequate procedures to prevent double-counting of transportation offsets, EPA proposes to exclude that Section from the approval.

If all the problems are corrected, EPA proposes to rescind 40 CFR 52.270 for Sacramento County except for coverage of some cogeneration and resource recovery sources. According to 40 CFR 52.270, EPA has the authority to regulate and permit PSD sources in Sacramento County. This rescission grants the SCAPCD that authority.

EPA proposes also to rescind 40 CFR 52.232(a)(11)(i)(A) if all the problems outlined here are resolved so that the Rule submitted is approvable. Once these problems are resolved, the SCAPCD will have satisfied the previous condition.

I certify that this action will not have a significant economic impact on a substantial number of small entities.

Under Executive Order 12291, today's action is not major. It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any EPA response are available for public inspection at the location listed in the Addresses section of this notice.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Secs. 110, 129, 160 to 169, 171 to 173, and 301(a) of the Clean Air Act as amended; 42 U.S.C. 7410, 7429, 7470 to 7479, 7501 to 7509 and 7601(a))

Dated: March 18, 1983.

Sonia F. Crow,  
Regional Administrator.

[FR Doc. 83-18551 Filed 6-20-83; 8:45 am]  
BILLING CODE 6560-50-M

#### 40 CFR Part 52

[A-9-FRL 2345-2]

#### Approval and Promulgation of Implementation Plans; North Coast Air Basin Air Pollution Control Regulations; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

**SUMMARY:** Part C, Subpart 1, of the Clean Air Act requires each State Implementation Plan (SIP) to include a program for pre-construction review of new and modified major stationary sources in attainment areas. The three jurisdictions in the North Coast Air Basin (NCAB) adopted Prevention of Significant Deterioration (PSD) regulations to satisfy these requirements in late 1981 and early 1982. These regulations were officially submitted as a SIP revision on August 6, 1982. In this notice, EPA is proposing to approve these revised regulations.

The EPA invites public comments on whether these regulations should be approved, disapproved, or conditionally approved, especially with respect to the requirements of Subpart 1 of Part C and Section 110 of the Clean Air Act.

**DATES:** Comments may be submitted on or before July 21, 1983.

**ADDRESSES:** Regional Administrator, Attn: Air Management Division, Air Operations Branch, New Source Section, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the Rules and EPA's associated Evaluation Report are available for public inspection during normal business hours at the EPA Region 9 office at the above address and at the following locations:

California State Air Resources Board,  
Public Information Office, 1102 Q Street, Sacramento, CA 95814;  
North Coast Unified Air Pollution Control District, 5600 S. Broadway, Eureka, CA 95501;  
Mendocino County Air Pollution Control District, Courthouse, Ukiah, CA 95482;  
Northern Sonoma County Air Pollution Control District, 134 A North St., Healdsburg, CA 95448.

**FOR FURTHER INFORMATION CONTACT:** Mark C. Brucker, New Source Section, Air Operations Branch, Air Management Division, Environmental Protection Agency, Region 9, (415) 974-8249.

**SUPPLEMENTARY INFORMATION:****Background**

**PSD**—Subpart 1 of Part C (Sections 160 to 169) of the Clean Air Act contains requirements for PSD in areas which are designated either attainment or unclassified for any of the criteria (Section 109) pollutants. The PSD requirements apply to these attainment pollutants and also regulate the non-criteria pollutants covered under Sections 111 and 112 of the Act. The entire North Coast is designated either attainment or unclassified for all criteria pollutants. The Basin includes the North Coast Unified Air Pollution Control District (NCUAPCD), which covers Humboldt, Del Norte and Trinity Counties and the separate Districts in Mendocino County and Northern Sonoma County.

EPA's detailed regulations for PSD programs are contained in 40 CFR 51.24, "Prevention of Significant Deterioration of Air Quality." Presently, EPA is Administering the PSD program in the NCAB under the federal PSD permitting regulation, 40 CFR 52.21. When PSD regulations for the North Coast are approved, the federal regulation 40 CFR 52.21 will be rescinded as applicable for the NCAB, with the exception noted below and the PSD program will be administered by the local Districts.

To be approved by EPA a PSD program must require: (1) The application of "Best Available Control Technology" (BACT) to new or modified major stationary sources; (2) demonstration by the applicant that the increased emissions in the area affected by the new or modified source will not violate any National Ambient Air Quality Standard (NAAQS) or the applicable air quality increments; and (3) protection of any Class I areas, where less air quality deterioration is allowed.

**Description of Regulations**

The North Coast APCD's adopted revisions to their air quality Regulation I to meet PSD requirements on the following dates: North Coast Unified—December 8, 1981; Mendocino—January 5, 1982; and Northern Sonoma—February 23 and June 15, 1982. Most of the rule sections covered by this notice have previously been submitted to and approved by EPA, but as general permit rules, not PSD rules. The rules EPA is proposing to act on now as PSD rules include revisions, additions and deletions to the rules previously approved as general permit rules. The PSD rules from these counties are identical to each other except for a few additional items in the Northern Sonoma Rules.

The Rules were submitted to EPA by the Governor's designee as SIP revisions on August 6, 1982.

The following specific Rules in Regulation I are addressed by this notice:

Rule 130—Definitions  
Chapter II—Permits  
Rule 200—Permit Requirements  
Rule 210—Environmental Assessment  
Rule 220—New Source Review Standards (Including PSD Evaluations)  
Rule 230—Action on Applications  
Rule 280—Exclusions (Northern Sonoma only)

**Evaluation**

EPA has evaluated the regulations listed above to determine whether they satisfy all of the criteria for a PSD permitting program. EPA believes that, with the exception of the items described below and in the Evaluation Report, the North Coast Rules satisfy EPA's requirements. The Rules will: (1) Require preconstruction review of the sources which would be subject to the federal guidelines; and (2) require BACT and air quality protection in a manner consistent with EPA's PSD requirements (40 CFR 51.24). The Rules also contain adequate guidelines and procedures for the administration and enforcement of the PSD program.

EPA's review of the rule did identify some deviations from EPA requirements and several areas of ambiguity. There are problems with emission calculations, Class I notification, public notice requirements and coverage of cogeneration sources. There are also minor questions and clarifications needed with regard to the source definition, stack heights and division of responsibility between EPA and the Districts.

The problems are as follows:

(1) There are several areas where the emission calculation procedures seem to conflict with EPA requirements or are unclear. They do not clearly require limitations and emission reductions to be federally enforceable and there is uncertainty about how emission baselines are set.

To be approvable, the Districts must clearly require that (a) controls and operational limits considered in calculating potential emissions, and any reductions used in netting must be federally enforceable, and (b) actual emissions must be used for baselines whenever possible.

(2) EPA regulations require notification of either EPA or federal officials responsible for Class I areas when sources may affect these areas. These Rules must require the Districts to provide that notification.

(3) The provisions for public notice are incomplete. EPA requires that more information be made available to the public than these rules provide for and that the rules allow for a public hearing, if requested.

(4) State law, not these local rules, allows cogeneration sources which would violate air quality increments to be permitted.

A detailed discussion and evaluation of the North Coast Rules is contained in EPA's Evaluation Report (available at the locations listed in the ADDRESSES section of this notice).

**Proposed Action**

EPA proposes to approve the North Coast Rules submitted on August 6, 1982, if the problems described in the Evaluation Report are remedied or resolved. The Rules would be approved under both Section 110 and Subpart 1 of Part C (PSD) of the Clean Air Act. The one exception is that EPA proposes to retain permitting authority for cogeneration and resource recovery sources which are major under EPA's regulations and would cause increment violations. EPA proposes this action because the Districts do not have the authority to override the State law and are therefore unable to remedy the problem themselves.

If EPA approves the Rules it will also rescind 40 CFR 52.270 for the North Coast. 40 CFR 52.270 gives EPA authority to regulate and permit PSD sources in the North Coast. The rescission would eliminate EPA's authority while the approval of the North Coast's Rules would give the local Districts that authority. The one exception would be for cogeneration sources, as explained above.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any EPA response are available for public inspection at the locations listed in the Addressees section of this notice. Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 48 FR 8709.)

**List of Subjects in 40 CFR Part 52**

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Secs. 110, 128, 160 to 169, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410, 7429, 7470 to 7479, and 7601(a))

Dated: March 31, 1983.

Soria F. Crown,

Regional Administrator.

[FR Doc. 83-18650 Filed 6-20-83; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 764

[OPTS-62029; TSH-FRL 2345-7]

#### 4,4'-Methylene Bis (2-Chloroaniline); Initiation of Regulatory Investigation

##### Correction

In FR Doc. 83-13813 beginning on page 22954 in the issue of Monday, May 23, 1983, make the following corrections:

1. On page 22955, the first column, the fourth complete paragraph, the fifth line, the word "polyurethan" should read "polyurethane".

2. On page 22956, the middle column, the first paragraph under "Public Record", the seventh line, the room number should read "E-107".

BILLING CODE 1505-01-M

#### DEPARTMENT OF THE INTERIOR

##### Bureau of Land Management

#### 43 CFR Part 3900

#### Oil Shale Management; Reopening of Comment Period

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of reopening of comment period on proposed rulemaking.

**SUMMARY:** The proposed rulemaking providing procedures for the management of Federally-Owned Oil Shale Resources was published in the Federal Register on February 11, 1983 (48 FR 8510), with a 60-day comment period ending on April 11, 1983, which was later extended to May 12, 1983. In response to requests that the comment period be again extended, notice is hereby given that the comment period is reopened for an additional 60-day period.

**DATE:** The comment period is reopened as of June 20, 1983. Comments should be submitted by August 22, 1983. Comments postmarked or received after the second date may not be considered in the decisionmaking process on the final rulemaking.

**ADDRESS:** Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**  
Donald Brabson, (202) 343-3258

or

Robert C. Bruce, (202) 343-8735.

Frank A. DuBois,

Acting Assistant Secretary of the Interior.

June 15, 1983.

[FR Doc. 83-18525 Filed 6-20-83; 8:46 am]

BILLING CODE 4310-84-M

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 61 and 63

[CC Docket No. 79-252]

#### Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefor

**AGENCY:** Federal Communications Commission.

**ACTION:** Third Further Notice of Proposed Rulemaking.

**SUMMARY:** In this Further Notice, the Commission's Common Carrier Bureau, by delegated authority, seeks comments on extending the policies in the Competitive Carrier Rulemaking, CC Docket No. 79-252, to Hawaii, Puerto Rico, the U.S. Virgin Islands, and other offshore domestic points. In that Rulemaking, the Commission has reduced its regulatory oversight of those carriers which do not possess market power, *i.e.*, power to control price in the marketplace. These policies currently apply to such carriers serving points within the 48 contiguous states and those serving Alaska. This action is necessary to bring the rulemaking into conformance with the Record Carrier Competition Act of 1981.

**DATES:** Comments are due by July 21, 1983 and replies by August 5, 1983.

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

**FOR FURTHER INFORMATION CONTACT:**  
Mark C. Wolf, Common Carrier Bureau  
(202) 254-8100.

##### List of Subjects

##### 47 CFR Part 61

Communications common carriers,  
Tariffs.

##### 47 CFR Part 63

Communications common carriers,  
Common carrier facilities, Extension of  
lines.

#### Third Further Notice of Proposed Rulemaking

In the matter of policy and rules concerning rates for competitive carrier services and facilities authorizations therefor, CC Docket No. 79-252.

Adopted June 9, 1983.

Released: June 14, 1983.

By the Common Carrier Bureau:

1. This proceeding involves the Commission's efforts to update its regulatory scheme in view of the significant changes in the telecommunications industry since the enactment of the Communications Act in 1934, particularly the emergence of a more competitive marketplace. It has resulted in a series of decisions in which the Commission has reduced its regulatory oversight of those carriers with do not possess market power. *i.e.*, power to control price in the marketplace. These policies currently apply to such carriers serving points within the 48 contiguous States and those serving Alaska. By this notice, we invite comment on whether these policies should now be extended to carriers providing service to other domestic points.<sup>1</sup>

2. In the *First Report and Order* in this proceeding, 85 FCC 2d 1 (1980) (*First Report*), the Commission classified those carriers lacking market power as non-dominant and streamlined the rules governing tariff filing and facilities authorizations.<sup>2</sup> In its *Second Report and Order*, 91 FCC 2d 59 (1982) (*Second Report*), the Commission asserted discretionary authority to forbear imposing certain Title II requirements on common carriers in instances where the costs of such regulation outweighed the benefits. As a first step in exercising this forbearance authority, the Commission decided to forbear from tariff and facilities regulation as to resellers of basic, domestic, terrestrial, common

<sup>1</sup> In its Order on reconsideration of the Second Report and Order (Reconsideration Order), FCC 83-69, released March 21, 1983, the Commission delegated authority to the Bureau to solicit comments and issue a final order on this matter. Since, in that Order, the Commission determined that all of the policies of Docket No. 79-252 shall immediately apply to carriers serving Alaska, *see* n.6, *infra*, comments as to carriers serving Alaska will not be considered.

<sup>2</sup> Those carriers found to possess market power were classified as dominant and remain subject to the full panoply of tariff and licensing regulation to ensure against the exploitation of their dominance to the detriment of the public. Dominant carriers currently include: the American Telephone and Telegraph Company, the independent telephone companies, domestic satellite carriers and resellers of such services, the miscellaneous common carriers, and the Western Union Telegraph Company. Specialized common carriers and resellers of terrestrial services are currently considered non-dominant.

# **EXHIBIT 2**



**§ 41.16 Audit costs.**

The cost of audits made in accordance with the provisions of these regulations are allowable charges to Federal assistance programs.

(a) The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A-87, "Cost principles for State and local governments."

(b) Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

(Pub. L. 98-502)

**§ 41.17 Sanctions.**

The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with these regulations. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

(a) Withholding a percentage of assistance payments until the audit is completed satisfactorily,

(b) Withholding or disallowing overhead costs, and

(c) Suspending the Federal assistance agreement until the audit is made.

(Pub. L. 98-502)

**§ 41.18 Auditor selection.**

In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence. (Pub. L. 98-502)

**§ 41.19 Small and minority audit firms.**

Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of these regulations. Recipients of Federal

assistance shall take the following steps to further this goal:

(a) Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

(b) Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

(c) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

(d) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

(e) Encourage contracting with consortiums of small audit firms as described in paragraph (a) of this section when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

(f) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

(Pub. L. 98-502)

**§ 41.20 Reporting.**

Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of these regulations. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with these regulations.

(Pub. L. 98-502)

[FR Doc. 85-18121 Filed 7-30-85; 8:45 am]

BILLING CODE 8320-01-M

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[A-9-FRL-2858-3]

**Approval and Promulgation of Implementation Plans; North Coast Air Basin Air Pollution Control Regulations, State of California**

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

**ACTION:** Notice of final rulemaking.

**SUMMARY:** This notice approves PSD rules for the three Districts which make up the North Coast Air Basin in California. The Districts in the North Coast Air Basin (NCAB) adopted Prevention of Significant Deterioration (PSD) regulations in late 1981 and early 1982. The regulations were submitted as a SIP revision on August 6, 1982, and EPA proposed approval on June 21, 1983. The Districts revised their rules in 1983 and 1984 in response to the problems cited in EPA's proposed rulemaking. In this notice, EPA is approving the revised rules because they remedy the concerns defined in the Notice of Proposed Rulemaking.

**EFFECTIVE DATE:** August 30, 1985.

Copies of the rules are available for public inspection during normal business hours at the EPA Region IX office at the address below and at the following locations:

EPA Library, Public Information Reference Unit, 401 "M" Street, SW., Washington, D.C. 20460

Office of Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C.

California State Air Resources Board, Technical Support Division, 1131 "S" Street, Sacramento, CA 95814

Mendocino County Air Pollution Control District, Courthouse, 890 North Bush, Ukiah, CA 95482

Northern Sonoma County Air Pollution Control District, 134 A North Street, Healdsburg, CA 95448

**FOR FURTHER INFORMATION CONTACT:** Mark C. Brucker, Air Management Division, Environmental Protection Agency, Region IX, (415) 974-7657, FTS 454-7657

**SUPPLEMENTARY INFORMATION:** This portion of the notice has five sections: Background, Supplementary Revisions (which discusses new submittals from the District), Public Comments, EPA Actions, and the Regulatory Process.

**Background**

The Clean Air Act stipulates that each State Implementation Plan (SIP) shall include a PSD program. The North Coast Districts revised their rules in 1981 and 1982 to follow EPA's PSD requirements. On June 21, 1983 (48 FR 28290), EPA proposed to approve the NCAB rules. The proposal was based on the assumption that the Districts would modify the rules to clarify certain points and to address the problems EPA identified. The Districts did so in 1983 and 1984.

The entire North Coast is designated either attainment or unclassified for all criteria pollutants. The Basin includes the North Coast Unified Air Quality Management District, which covers Humboldt, Del Norte and Trinity Counties, and the separate Districts in Mendocino County and Northern Sonoma County.

EPA's regulations for PSD programs are contained in 40 CFR 51.24, "Prevention of Significant Deterioration of Air Quality." EPA has been administering the PSD program in the NCAB under the federal PSD permitting regulation, 40 CFR 52.21.

In the Notice of Proposed Rulemaking, EPA identified several problems. Four of those problems were described in the notice and three others were identified. The problems are stated in this section of the notice and the actions taken to remedy them are described in the Supplementary Revisions section.

The minor concerns that were identified in the NPR were the source definition, stack heights, and the division of responsibility between the Districts and EPA.

The problems that were described in detail are as follows:

(1) There were several areas where the emission calculation procedures seemed to conflict with EPA requirements or were unclear. They did not clearly require limitations and emission reductions to be federally enforceable and there was uncertainty about how emission baselines are set.

(2) EPA regulations require notification of either EPA or federal officials responsible for Class I areas when sources may affect these areas. The Rules did not clearly address how Class I notification would be handled.

(3) The provisions for public notice were incomplete. EPA requires that more information be made available to the public than the Rules provided for and the Rules allow for a public hearing, if required.

(4) State law, not the local rules, allows permitting of cogeneration

sources which would violate air quality increments.

One additional issue arose after the 1983 notice. Two court decisions concerning stack heights led EPA to impose new restrictions on approval of PSD rules. In response to EPA's resulting policy the Districts have cooperated by revising their Rules to prohibit credit for stacks which exceed "good engineering practice" heights. EPA and the Districts have also agreed that EPA will retain PSD permitting authority for sources which are major under EPA's regulation and which would either have stacks

higher than 65 meters or which plan to use dispersion techniques. When EPA issues its final stack height regulations the Districts can adopt requirements to satisfy the regulations and EPA would then be able to drop its permitting of those sources.

Copies of EPA's detailed evaluation of the rules are available at EPA's Region IX office listed earlier in this notice.

**Supplementary Revisions**

These rules have been revised several times. The submittals that EPA is approving are as follows:

Submittal date	Rule	Title
<b>Mendocino County</b>		
Dec. 3, 1984.....	130 (b2, m1, p3, s7).....	Definitions.
	Chapter II.....	Permits.
	220 (a)(2), (b).....	New source review.
	(3, 4, 6, 8, 9).....	Standards.
Apr. 19, 1984.....	130.....	Definitions.
	200.....	Permit requirements.
	220 (a)(1, 8, 3), (b).....	New Source review.
	(1, 2, 5, 7), (c).....	
Aug. 6, 1982.....	260.....	Exclusions.
	130(b1, m1, p5, s2).....	Definitions.
	210.....	Environmental assessment.
	230.....	Action on applications.
<b>North Coast Unified</b>		
July 10, 1984.....	130(b2, m1, p3, s7).....	Definitions.
	200(c)(3-6).....	Permit requirements.
	Chapter II.....	Permits.
	220 a,b.....	New source review.
Mar. 14, 1984.....	130.....	Definitions.
	130(b1, m2, n1, p5, s2).....	Definitions.
	200 (a), (b), (c)(1-2), (d).....	Permit requirements.
	220(c).....	New source review.
Aug. 6, 1982.....	260.....	Exclusions.
(Del Norte, Humboldt and Trinity Counties)	210.....	Environmental assessment.
	230.....	Action on applications.
<b>Northern Sonoma County</b>		
June 21, 1985.....	220 (a).....	New source review.
Oct. 19, 1984.....	130 (b2, m1, s7, p3a, p3).....	Definitions.
	Chapter II.....	Permits.
	220(b).....	New source review.
Aug. 6, 1982.....	130.....	Definitions.
	130(b1, n1, p5, s2).....	Definitions.
	200.....	Permit requirements.
	210.....	Environmental assessment.
	220(c).....	New source review.
	230.....	Action on applications.
	260.....	Exclusions.

With respect to the four major problems cited in the 1983 notice and described above, the following actions were taken:

(1) The Districts revised several parts of their rules to clarify emission calculation procedures and to ensure that they fully meet all of EPA's requirements.

(2) The Districts agreed to take responsibility for informing officials responsible for Class I areas of any projects that may effect those areas. They revised their rules accordingly.

(3) The APCD's expanded the public notice section of the rules to include all of the provisions that EPA requested.

(4) Districts agreed to have EPA retain permitting authority for those PSD

sources that would cause increment problems because of state law, since the Districts do not have any power to correct the problems by themselves. The Districts also pointed out that many sources which claim to be cogeneration sources do not in fact meet the definition provided by state law and are not exempted from any of the District's requirements.

**Public Comments**

EPA received two comment letters, one from North Coast Unified AQMD and one from Pacific Gas and Electric (PG&E). The District's letter and subsequent discussions clarified some aspects of cogeneration source permitting and have been reflected in

clarification of EPA's Evaluation Report. The PG&E letter addressed issues which primarily concern EPA's PSD regulations, rather than whether or not EPA should approve these rules.

**EPA Actions**

In this notice, EPA is taking two actions:

1. EPA is approving the North Coast rules under Section 110 of the Clean Air Act and Part C, Subpart 1, (PDS) and is incorporating them into the California State Implementation Plan (SIP).

2. EPA is rescinding 40 CFR 52.270, except for (a) major cogeneration sources and modification which would cause increment violations, (b) sources subject to stack height credit restrictions, (c) sources of Indian lands, and (d) sources for which EPA has issued PSD permits.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

**List of Subjects in 40 CFR Part 52**

Air pollution control agency, Incorporation by reference, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon, monoxide, Hydrocarbons, Intergovernmental relations.

Dated: May 14, 1985.

Lee M. Thomas,  
Administrator.

**PART 52 —[AMENDED]**

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

**Subpart F—California**

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.220 is amended by adding (c)(124)(vi)(B), (c)(vii)(B), (c)(viii)(B), (c)(ix)(B), and (c)(x)(B), (c)(153)(ii)(B), (c)(154)(i)(B), (c)(155)(v)(B), (c)(156)(vi), (c)(158)(i)(B), and (c)(162) as follows:

**§ 52.220 Identification of plan.**

- (c) \* \* \*
- (124) \* \* \*
- (vi) \* \* \*
- (B) New or amended rules 210 and 230.
- (vii) \* \* \*

- (B) New or amended rules 210 and 230.
- (viii) \* \* \*
- (B) New or amended rules 130 (b1, m1, p5, s2), 210, and 230.
- (ix) \* \* \*
- (B) New or amended rules 130, 130 (b1, n1, p5, and 200, s2), 210, 220(c), and 260.
- (x) \* \* \*
- (B) New or amended rules 210 and 230.
- (153) \* \* \*
- (ii) \* \* \*
- (B) New or amended rules, 130, 130 (b1, m2, n1, p5, s2), 200 (a), (b), (c)(1-2), and (d), 220(c), and 260.
- (154) \* \* \*
- (i) \* \* \*
- (B) New or amended rules, 130, 200, 220(a)(1&3), (b)(1, 2, 5, and 7), (c), and 260.
- (155) \* \* \*
- (v) \* \* \*
- (B) New or amended rules 130 (b2, m1, p3, and s7), Chapter II, 200 (c)(3-6) and 220 (a) and (b).
- (156) \* \* \*
- (vi) Northern Sonoma County APCD.
- (A) New or amended rules 130 (b2, m1, p3, p3a, and s7), Chapter II, 220(B).
- (158) \* \* \*
- (i) \* \* \*
- (B) New or amended rules 130 (b2, m1, p3, s7), Chapter II, 220 (a)(2) and (b)(3, 4, 6, 8 and 9).
- (162) Revised regulations for the following APCD were submitted on June 21, 1985 by the Governor's designee.
- (i) Northern Sonoma County APCD.
- (A) Amended rule 220 (a).
- 3. Section 52.270 is amended by adding paragraphs (b)(2) through (b)(4) to read as follows:
- § 52.270 Significant deterioration of air quality.**
- (b) \* \* \*
- (2) The PSD rules for the North Coast Unified Air Quality Management District are approved under Part C, Subpart 1, of the Clean Air Act. However, EPA is retaining authority to apply § 52.21 in certain cases. The provisions of § 52.21 (b) through (w) are therefore incorporated and made a part of the state plan for California for the North Coast Unified Air Quality Management District for:
- (i) Those cogeneration and resource recovery projects which are major

stationary sources or major modifications under § 52.21 and which would cause violations of PSD increments.

(ii) Those projects which are major stationary sources of major modifications under § 52.21 and which would either have stacks taller than 65 meters or would use "dispersion techniques" as defined in § 51.1.

(iii) Sources for which EPA has issued permits under § 52.21, including the following permits and any others for which applications are received by July 31, 1985:

(A) Arcata Lumber Co. (NC 78-01; November 8, 1979).

(B) Northcoast Paving (NC 79-03; July 5, 1979).

(C) PG&E Buhne Pt. (NC 77-05).

(3) The PSD rules for the Mendocino County Air Pollution Control District are approved under Part C, Subpart 1, of the Clean Air Act. However, EPA is retaining authority to apply § 52.21 in certain cases. The provisions of § 52.21 (b) through (w) are therefore incorporated and made a part of the state plan for California for the Mendocino County Air Pollution Control District for:

(i) Those cogeneration and resource recovery projects which are major stationary sources or major modifications under § 52.21 and which would cause violations of PSD increments.

(ii) Those projects which are major stationary sources or major modifications under § 52.21 and which would either have stacks taller than 65 meters or would use "dispersion techniques" as defined in § 51.1.

(iii) Any sources for which EPA has issued permits under § 52.21, including any permits for which applications are received by July 31, 1985.

(4) The PSD rules for the Northern Sonoma County Air Pollution Control District are approved under Part C, Subpart 1, of the Clean Air Act. However, EPA is retaining authority to apply § 52.21 in certain cases. The provisions of § 52.21 (b) through (w) are therefore incorporated and made a part of the state plan for California for the Northern Sonoma County Air Pollution Control District for:

(i) Those cogeneration and resource recovery projects which are major stationary sources or major modifications under § 52.21 and which would cause violations of PSD increments.

(ii) Those projects which are major stationary sources or major modifications under § 52.21 and which would either have stacks taller than 65

meters or would use "dispersion techniques" as defined in § 51.1.

(iii) Any sources for which EPA has issued permits under § 52.21, including any permits for which applications are received by July 31, 1985.

[FR Doc. 85-15922 Filed 7-30-85; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

#### 42 CFR Part 412

#### Medicare Program; Court Ordered Regulations Regarding, Prospective Payment Amounts and Administrative Review Will Not Become Effective

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice that regulations will not take effect; removal of regulations.

**SUMMARY:** Interim rules providing for certain adjustments to Medicare prospective payment rates and modifications to the provider appeal process were published on July 1, 1985 solely in response to an order of the United States District Court for the Northern District of California in *Redbud Hospital District v. Heckler*, No. C-84-4382 MHP dated June 14, 1985. That portion of the district court order requiring the Secretary to promulgate nationwide regulations was recently stayed by United States Supreme Court Justice Rehnquist, pending the determination of the Secretary's appeal of the case to the United States Court of Appeals for Ninth Circuit. *Heckler v. Redbud Hospital District*, No. A-32, (Rehnquist, Circuit Justice, July 24, 1985). This document is to notify the public that the interim final rules have, by operation of that decision, been automatically revoked. They will not become effective on August 1, 1985.

**EFFECTIVE DATE:** July 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** Linda Magno, 301-594-9343.

**SUPPLEMENTARY INFORMATION:** The interim final rules published in the *Federal Register* on July 1, 1985, 50 FR 27208 (*Federal Register* Document Number: 85-15816), would have modified the process for determining the Medicare prospective payment rate for inpatient hospital services to take into account extraordinary and unusual costs incurred after the base year; the special needs of hospital serving disproportionate numbers of Medicare and low-income patients; and the special needs of sole community

hospitals. In addition, they would have modified the requirements for administrative review of the hospital-specific portion of a hospital's PPS rate.

In issuing those regulations, the Department indicated that it was doing so solely in response to the court order in *Redbud Hospital District v. Heckler*, No. C-84-4382 MHP, June 14, 1985. Since the Department did not agree with the court's conclusion that the regulations were required under the Medicare Act, it specified that the regulations would not become effective and would be automatically invalidated if the court's order was stayed, vacated or otherwise rendered ineffective.

On July 24, 1985, United States Supreme Court Justice Rehnquist, as Circuit Justice, stayed the order of the district court insofar as it required the Secretary to promulgate and apply nationwide regulations. *Heckler v. Redbud Hospital District*, No. A-32 (Rehnquist, Circuit Justice, July 24, 1985). As indicated in the July 1, 1985 publication, this stay automatically invalidated the interim rules issued on that date, and had the effect of revoking those regulations before their effective date. This document serves as notice to the public that the interim final rules, published on July 1, 1985, to be included at 42 CFR Part 412, Subpart H are, by their own terms, revoked and will not become effective on August 1, 1985.

#### List of Subjects in 42 CFR Part 412

Cancer hospitals, Christian Science sanatoria, Discharges and transfers, Inpatient hospital services, Medicare, Outlier cases, Prospective payment, Referral centers, Renal transplantation centers, Sole community hospitals.

#### PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for Part 412 reads as follows:

Authority: Secs. 1102, 1871, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1395hh, and 1395ww).

#### Subpart H (§§ 412.200—412.204)— [Removed]

2. For the reasons set out in the preamble, 42 CFR Part 412, Subpart H (§§ 412.200 through 412.204) published July 1, 1985, is hereby removed.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program)

Dated: July 29, 1985.

Carolyn K. Davis,  
Administrator, Health Care Financing  
Administration.

[FR Doc. 85-18243 Filed 7-30-85; 8:45 am]

BILLING CODE 4120-03-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

#### Oversight of the Broadcast Rules in Regard to Temporary and Emergency Operation

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action amends certain sections of Part 73 of the Commission's rules.

This action is taken by the Commission in its continuing effort to eliminate unnecessary requirements placed upon licensees of broadcast radio stations. Specifically, it eliminates the requirement, in certain circumstances, that permittees and licensees of AM radio stations must request a Special Temporary Authorization (STA) before undertaking certain modes of temporary operation. Instead, it institutes a procedure whereby various modes of temporary operation may be commenced automatically upon the permittee's or licensee's notification to the Commission that such operation is being undertaken in accordance with the revised rules. In addition, certain rules have been editorially restructured and cross-referenced to make their use easier for the public.

**EFFECTIVE DATE:** July 31, 1985.

**FOR FURTHER INFORMATION CONTACT:** Gary R. Thayer, Mass Media Bureau, (202) 632-7010.

#### SUPPLEMENTARY INFORMATION:

#### List or Subjects in 47 CFR Part 73

Radio broadcasting.

#### Order

In the Matter of Oversight of the Broadcast Rules in Regard to Temporary and Emergency Operations.

Adopted: July 11, 1985.

Released: July 18, 1985.

By the Chief, Mass Media Bureau.

1. This *Order* is part of our continuing effort to review and update our broadcast rules. In this *Order*, we are focusing on the rules pertaining to Special Temporary Authorizations