CONTIGUOUS UNITED STATES

Mail class	Destination entry (at appropriate facility)			
	DDU (days)	SCF (days)	ADC (days)	NDC/ASF (days)
Periodicals	1	1	1–2	2–3
Standard Mail	2	3	.....	5
Package Services	1	2	.....	3

Table 6. Destination entry service standard day ranges for mail to non-contiguous states and territories.

NON-CONTIGUOUS STATES AND TERRITORIES

Mail class	Destination Entry (at appropriate facility)									
	DDU (Days)	SCF (Days)			ADC (Days)			NDC (Days)		
		Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI	Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI	Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI
Periodicals	1	1–3	1	1–3	1–4 (AK) 11 (JNU) 11 (KTN)	1 (HI) 2 (GU)	1–4	10–11	10	8–10
Standard Mail	2	3	3–4	3–4	.....	.....	.....	14	13	12
Package Services	1	2	2–3	2–3	.....	.....	.....	12	11	11

AK = Alaska 3-digit ZIP Codes 995–997; JNU = Juneau AK 3-digit ZIP Code 998; KTN = Ketchikan AK 3-digit ZIP Code 999; HI = Hawaii 3-digit ZIP Codes 967 and 968; GU = Guam 3-digit ZIP Code 969.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–12564 Filed 5–24–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0140; FRL–9669–8]

Revision to the South Coast Air Quality Management District Portion of the California State Implementation Plan, South Coast Rule 1315

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision for the South Coast Air Quality Management District (District) portion of the California SIP. This SIP revision incorporates Rule 1315—Federal New Source Review Tracking System—into the District's SIP approved New Source Review (NSR) program to establish the procedures for demonstrating equivalency with federal offset requirements by specifying how the District will track debits and credits in its Offset Accounts for Federal NSR Equivalency for specific federal nonattainment pollutants and their precursors. EPA is approving this SIP revision because Rule 1315 provides an adequate system to demonstrate on an on-going basis that the rule requires offsets in amounts equivalent to those otherwise required by the Clean Air Act (CAA) and that the emission reductions the District is crediting and debiting in its Offset Accounts meet the CAA's NSR offset requirements for federal major sources and modifications.

DATES: *Effective Date:* This rule is effective on June 25, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0140 for this action. Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. Some docket materials, however, may be publicly available only at the hard copy location (e.g., voluminous records, maps, copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972–3534, *yannayon.laura@epa.gov*.

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

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I. Background

EPA allows and encourages local authorities to tailor SIP programs, including new source review permitting programs, to account for that community's particular needs provided that the SIP is not less stringent than the Act's requirements. See generally CAA Section 116, 42 U.S.C. 7416; *Train* v. *Natural Res. Defense Council,* 421 U.S. 60, 79 (1975); *Union Electric Co.* v. *EPA,* 427 U.S. 246, 250 (1976). The District's SIP-approved nonattainment permitting rules are contained in District Regulation XIII. See 61 FR 64291 (December 4, 1996) (final rule approving SCAQMD's NSR program) and 40 CFR 52.220(c)(240)(i)(*1*).

When EPA approved Regulation XIII in 1996, we noted that Rule 1304 exempted certain major sources from

the requirement to obtain offsets and Rule 1309.1 allowed the District to provide offsets for specific ''priority'' projects. We approved these rules because the District committed to demonstrating on an annual basis that it was providing an amount of offsets that was equivalent to the amount required to offset federal new and modified major sources subject to Rules 1304 and 1309.1.[1] The District adopted Rule 1315's regulatory language codifying how it will account for, or ''track'', the emission reductions that it adds into its Offset Accounts as credits and those which it subtracts as debits to provide offsets for the construction of certain federal major sources or modifications exempted from offset requirements pursuant to Rule 1304 or for which the District provided offsets pursuant to Rule 1309.1. SCAQMD Governing Board Resolution for the Re-adoption of Rule 1315—Federal New Source Review Tracking System, dated Feb. 4, 2011. EPA is now finalizing approval of Rule 1315 as a SIP revision. For a more detailed discussion of the District's NSR program and Rule 1315, please refer to our proposed approval. 77 FR 10430, 10430–31 (Feb. 22, 2012).

II. Evaluation of SIP Revision

A. What action is EPA finalizing?

EPA is finalizing a SIP revision for the South Coast portion of the California SIP. The SIP revision will be codified in 40 CFR 52.220 by incorporating by reference South Coast Rule 1315, as adopted February 4, 2011 and submitted on March 2, 2011.

The SIP revision provides a federally approved and enforceable mechanism for the District to transfer offsetting emissions reductions from the District's Offset Accounts to projects that qualify under District Rules 1304 and 1309.1.

B. Public Comments and EPA Responses

In response to our February 22, 2012 proposed rule, we received six comments, one from the South Coast Air Quality Management District (District), one from a consortium of environmental groups (Coalition for a Safe Environment, Communities for a Better Environment, Desert Citizens Against Pollution and the Natural Resources Defense Council (collectively referred to herein as ''CSE'')), and one each from the County Sanitation Districts of Los Angeles County, California Small Business Alliance, California Council for Environmental and Economic Balance, and the Southern California Gas Company. Copies of each comment letter have been added to the docket and are accessible at *www.regulations.gov.* The comment from the District supported EPA's analysis and proposal to approve Rule 1315 into the SIP. With the exception of CSE, all of the commenters generally supported EPA's analysis and proposed approval. The comment from CSE opposed the SIP revision and raised several specific objections. We have summarized the comments and provided a response to each comment below.

Comment 1: CSE's first comment provides an overview of the reasonable further progress (RFP) and base year requirements of the Clean Air Act (CAA). CSE asserts that the South Coast is prohibited from including pre-base year (i.e. pre-1997) emissions credits for particulate matter of 10 microns or less (PM_{10}) and sulfur oxides (SO_X) in its NSR Account under 40 CFR 51.165(a)(3)(ii)(C)(*1*) because the 2003 Air Quality Management Plan (2003 AQMP) is not ''valid.'' Comment Letter at 3 (stating: ''In the *absence* of a valid attainment demonstration, the shutdown-unit requirement under 40 CFR 51.165(a)(3)(ii)(C)(*2*) applies, not the base-year requirement.'') [Footnote omitted] CSE's basis for concluding the 2003 AQMP is not ''valid'' is that EPA has not re-designated the area to attainment for PM_{10}. Comment Letter at 3, n. 8 (''Whether [the 'fully approved SIP language'] is currently in 40 [CFR] 51.165(a)(3)(ii)(C)(*1*) or not is not relevant where, as here, [sic] attainment demonstration offered for compliance with this provision did not achievement [sic] attainment.'' [Citation omitted]). CSE also includes a discussion of the shutdown credit requirement in 40 CFR 51.165(a)(3)(ii)(C)(*2*).

Response 1: We disagree with these assertions. Although the text of EPA's current regulation in 40 CFR 51.165(a)(3)(ii)(C)(1) does not require a fully approved attainment demonstration in order to allow for the use of pre-base year shutdown credits as NSR offsets, in light of recent caselaw we have evaluated Rule 1315 for consistency with EPA's pre-2005 requirement for an approved attainment demonstration for these purposes. *See NRDC* v. *EPA,* 571 F.3d 1245, 1265 (D.C. Cir. 2009) (remanding, *inter alia,* those portions of EPA's 2005 ozone implementation rule that eliminated the approved attainment demonstration requirement in 40 CFR 51.165(a)(3)(ii)(C)). As the NRDC court explains, until EPA amended its regulations in 1989, emissions reductions from shutting down a source could only be used to offset a replacement for that source's production capacity. Id. at 1264 (citing 54 FR 27286, 27290 (June 28, 1989)). EPA proposed to change this limitation in 1989 in response to concerns expressed by local air pollution authorities that the restriction would infringe on their authority to make growth management decisions and industry commenters who argued that the policy encouraged sources to continue operating to prevent forfeiting emissions credits. 54 FR 27286 (June 28, 1989). EPA also received negative comments from a consortium of environmental groups opposing the proposed change because they were concerned that sources with a limited lifetime could get large ''paper'' credits that would result in worsening air quality. 54 FR at 27291–92.

EPA responded to these comments by revising the restriction on using emissions credits from shutdown sources, stating: ''The essence of the Act's offset provision is that a new source may be allowed in a nonattainment area only where its presence would be consistent with RFP toward attainment of the NAAQS.'' Id. at 27292. EPA explained in the preamble to the 1989 final rule: ''Thus, where a *fully approved* SIP demonstrates RFP and attainment, it is appropriate to grant that State maximum flexibility in its nonattainment plan, under section 173, within the constraint that the demonstration not be invalidated. By definition, any fully approved SIP has independently assured RFP and attainment.'' 54 FR at 27292 (emphasis added).

EPA cited several planning scenarios ''in which EPA considers the SIP to be inadequate and will continue to restrict offset credits for prior shutdowns.'' Id. at 27294. These scenarios included (1) ''nonattainment areas that have received a final notice of disapproval of their current SIP,'' (2) ''nonattainment areas that have received either a section 110(a)(2)(H) notice of deficiency based on failure to attain or maintain the primary NAAQS, or a notice of failure to implement an approved SIP,'' and (3) ''nonattainment areas that received notice from EPA that they have failed to meet conditions in their EPA-approved SIPs, including commitments to adopt particular regulations by a certain date.'' Id. at 27294–95. These are the relevant limited situations in which a *fully approved* SIP may be inadequate or inappropriate for allowing pre-base year shutdown credits to be added. In summary, EPA's pre-2005 regulations

[1] Environmental Protection Agency, Region IX Air & Toxics Division Technical Support Document for EPA's Notice of Final Rulemaking for the California State Implementation Plan South Coast Air Quality Management District New Source Review by Gerardo C. Rios, October 24, 1996 (TSD).

required an area to have a fully approved SIP, which has not been followed by a notice of deficiency, a notice of failure to implement the SIP or a notice that the area failed to meet conditions in the SIP. Id. at 27294–95.

CSE provides no support for its conclusory position that an approved attainment plan is only ''valid'' if EPA has redesignated the area to attainment for the pollutant at issue prior to or upon the attainment date. EPA fully approved the plan submitted by California to provide for attainment of the particulate matter (PM_{10}) NAAQS in the Los Angeles-South Coast Air Basin (2003 AQMP) in 2005. 70 FR 69081 (November 14, 2005). EPA has not notified the South Coast of any deficiency, failure to implement or unsatisfied condition in the 2003 AQMP. Moreover, although EPA has not yet re-designated the South Coast to attainment for PM_{10} (for which SO_X is a precursor), the District has submitted a re-designation request to EPA along with data showing it has not had a violation of the PM_{10} NAAQS since 2008. See Final PM–10 Redesignation Request and Maintenance Plan for the South Coast Air Basin, December 2009. Because EPA has fully approved the 2003 AQMP (which contains control strategies for both PM_{10} and SO_X emissions in the South Coast area), the District may use pre-base year PM_{10} and SO_X shutdown emission credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(*1*).

Accordingly, the requirements in 40 CFR 51.165(a)(3)(ii)(C)(*2*) related to emission reductions that do not meet the requirements in section 51.165(a)(3)(ii)(C)(*1*) do not apply to our action.

Comment 2: CSE states ''In its Proposed Rule and associated TSD, EPA applies the base-year requirement to all pollutants deposited in SCAQMD's Community Bank. For PM_{10} and its precursor SO_X, EPA looks to the 2003 AQMP with a 1997 base year. For ozone precursors VOC and NO_X, EPA looks to the 2007 AQMP with a 2003 base year. In both instances, EPA concludes that 'even if the District Offset Accounts rely on pre-base year emission reductions as offsets, the District's Plans have adequately added pre-base year emissions explicitly into the appropriate projected planning investments [sic].' '' Comment Letter at 4, quoting EPA's TSD at 13.[2] CSE's comment continues, stating: ''As shown below, this conclusion violates 40 CFR 52.165(a)(3)(i)(C) in two ways. First, for the PM_{10} and SO_X credits, EPA should have applied the shutdown-credit requirement, not the base-year requirement, because no attainment demonstration is in place for PM_{10}. Even if it could apply the 2003 AQMP, it commits additional errors. Second, for VOC an [sic] NO_X, EPA erroneously concludes that the 2007 AQMP explicitly includes pre-base year credits that it explicitly excluded.'' Comment Letter at 4.

Response 2: This comment appears to repeat arguments CSE made above in Comment 1 regarding whether the District can rely on the 2003 AQMP and below in Comment 8 regarding whether the District added pre-base year credits in its plan to provide for attainment of the 1997 8-hour ozone NAAQS (2007 AQMP). EPA's responses to this comment are above in response to Comment 1 and below in response to Comment 8.

Comment 3: CSE asserts that the 2003 AQMP is not a valid attainment demonstration because it did not demonstrate attainment with the federal PM_{10} NAAQS by 2006. Based on this, the South Coast may only allow emissions credits from shutdown sources pursuant to 40 CFR 51.165(a)(3)(ii)(C)(*2*). Comment Letter at 4–5.

Response 3: As discussed above, the CAA and 40 CFR 51.165(a)(3)(ii)(C)(*1*) require the South Coast to have a fully approved attainment demonstration for PM_{10} (and SO_X as a precursor) in order to allow the use of pre-baseline shutdown emission reduction credits for PM_{10} and its precursors. The 2003 AQMP was fully approved in 2005. 70 FR 69081 (November 14, 2005). EPA has not issued a notice of deficiency, notice of failure to implement or notice that the District is not meeting conditions in the 2003 AQMP. See 54 FR at 27294–95. The District has requested re-designation and submitted 3 years of data showing there has not been a violation of the federal PM_{10} NAAQS. EPA therefore disagrees with CSE's assertion that the District is limited to allowing emissions reductions for shutdown sources pursuant to 40 CFR 51.165(a)(3)(ii)(C)(*2*) (i.e. shutdowns occurring after the 1997 AQMP base year).

Comment 4: The next several pages of the CSE's comment letter assert that the South Coast did not ''explicitly include[] adequate pre-base-year PM_{10} and SO_X credits in its [2003 AQMP] emissions inventories.'' It discusses ''expected growth from the NSR program and the need for pre-base year credits.'' Comment Letter at 5. In reviewing Table 2–14 in the 2003 AQMP, CSE states: ''Where no pre-base-year credits are needed, the emissions inventories exclude them.'' Id.

Response 4: Although CSE's references are to the 2007 AQMP, it appears from the body of the discussion that CSE intended to refer to the 2003 AQMP and Appendix III of the 2003 AQMP. Comment Letter at 5, n. 14 & 15. Given the context of these comments, we assume that the references to the 2007 AQMP are an inadvertent typographical error and that CSE meant to refer to similar tables in the 2003 AQMP and Appendix III of this plan.

CSE's comment uses the phrase ''expected growth,'' which is not a term used in the 2003 AQMP, and then refers only to portions of the AQMP pertaining to expected *demand*. The District handles *growth* and *demand* separately and they are distinct in the 2003 AQMP.

The District includes pre-base year emissions in the *growth* portion of its 2003 AQMP. See 2003 AQMP Figure 3–6 and Appendix III Table 2–8 (Growth Impact to 2010 Annual Average Emissions in Tons Per Day). Appendix III, Table 2–8 shows a sum of the inventory for all emissions sources for each criteria pollutant with and without growth. The 2003 AQMP forecasts the 2010 (i.e. future year) emissions inventories ''with growth'' through a detailed consultation process with the Southern California Association of Governments (SCAG). SCAG provides extensive data on demographics and all emissions sources in the South Coast. It performs an exhaustive analysis of the growth in the inventory of sources that is likely to occur through the planning periods of 2010. The District's AQMP summarizes this data in the 2003 AQMP Figure 3–6 and provides additional details in Appendix III Table 2–8 and Attachments A–C.

The District's *growth* projections include the pre-base year emissions, consistent with the requirements of 40 CFR 51.165(a)(3)(i)(C)(*1*). For PM_{10}, the District added PM_{10} emissions into its future year 2010 inventory for growth of both point and area sources. For point sources of PM_{10}, the District added 3 tpd (from 11 tpd to 14 tpd); for area sources 23 tpd were added (from 77 tpd to 100 tpd) in its future year 2010 inventory. Appendix III, Table 2–8. This means that the District added a total of 26 tpd of PM_{10} emissions to its future year 2010 inventory for *all* point and area sources. The detailed inventories in the Attachments to Appendix III (2003 AQMP) separate the point and area sources into specific source categories (e.g. refineries, spray booths, charbroilers) so that the emissions with and without growth for each category is

[2] We note that our TSD referred to ''projected planning inventories'' rather than investments.

included in the base year and future year inventories for 2010 and 2020. Appendix III, Attachments A–C.

However, not *all* point and area sources are subject to NSR permit requirements. Therefore, the District provided data [3] to EPA indicating what portion of the baseline and growth projections are attributed to the point and area sources subject to NSR offset requirements. Docket Item III–Z and III–AA. This data shows that the District explicitly included 5.9 tpd of PM_{10} in its future year 2020 inventory for point and area sources subject to the District's NSR program. (Docket Item III–AA showing Total Emissions of 14.5 tpd for 1997 and Docket Item III–Z showing Total Emissions of 20.4 tpd for 2020). The District also provided data showing that it included 3.1 tpd of PM_{10} (the difference between 14.5 tpd for 1997 and 17.6 tpd for 2010) to the future year 2010 growth projection.[4]

In our proposed rule, after describing the 2007 AQMP's treatment of VOC and NO_X for ensuring a sufficient amount of pre-base year credits had been added as growth, we stated that ''[t]he District used a similar approach for the 2003 Plan as it pertains to PM_{10} and SO_X.'' 77 FR at 10433. EPA's proposal explains that the District added a certain amount of emissions as growth for various source categories in Table 2–8 of Appendix III. EPA further explained that ''[f]or Table 2.8, the District provided EPA with the point and area source data used to generate the summary data. EPA used this data to determine the amount of emissions due to growth at facilities subject to NSR offset requirements.'' 77 FR 10433, n.3.

Our TSD provides a detailed discussion of these data as it relates to the 2003 AQMP. We state: ''For PM_{10}, the District added 3.1 tpd as growth. [footnote omitted].'' TSD at 12. EPA is clarifying in this final approval that the TSD should have said the District added 5.9 tpd as growth because Docket Item III–Z is the District's future year 2020 inventory for NSR sources. To clarify, for those point and area sources subject to NSR, the 1997 ''no growth'' inventory was 14.5 tpd. Docket Item III–AA. The District then included ''growth'' of 5.9 tpd for the 2020 inventory in Docket Item III–Z and ''growth'' of 3.1 tpd to the 2010 inventory in Docket Item III–BB, for NSR sources. EPA inadvertently did not post the information for the 2010 inventory with our proposal and is adding it to the Docket as Docket Item III–BB. EPA's TSD inadvertently recited the sum from the 2010 inventory (3.1 tpd growth) rather than 5.9 tpd from the 2020 inventory. This mistake arising from referring to the wrong future year inventory total does not have any substantive consequence because the District's inclusion of either tonnage (3.1 tpd or 5.9 tpd) of pre-base year growth to the future year inventories far exceeds the amount that the District expects will be used.

In summary, CSE confuses *growth (3.1 tpd for future year 2010 NSR sources or 5.9 tpd for future year 2020 NSR sources),* which is where the District adds expected emission increases due to growth into the inventories—with *demand* for credits. CSE looks only at *demand (0.23 tpd)* for pre-base year offsets, which the District provides as a check to ensure its growth estimate is sufficient to account for this demand. This confusion leads CSE to contend that ''[t]he 2003 AQMP includes no pre-base year PM_{10} credits and 0.7 pre-base year SO_x credits.'' Comment Letter at 5–6, referring to Table 2–14 in 2003 Appendix III.

CSE is incorrect. This portion of the 2003 AQMP is evaluating historic PM_{10} demand and in addition, is limited to the historic demand from the District NSR Accounts. See Appendix III Table 2–14 ''2010 Net Demand for ERCs in the AQMD's NSR Accounts''. EPA's TSD more accurately refers to Table 2–15 that includes the District's estimated net demand from the NSR Accounts and the open market transactions, which is 0.23 tpd.

EPA's proposal and TSD stated: ''For PM_{10}, the District added 3.1 tpd as growth.'' TSD at 12. The footnote to this statement provided ''See 2003 Plan Appendix III, pgs. 25–35. For Table 2.8, the District provided EPA with the point and area source data used to generate the summary data. EPA used this data to determine the amount of emission due to growth at facilities subject to NSR offset requirements.'' TSD at 12, n.7. As explained above, EPA's TSD should have stated that the District added 5.9 tpd as growth for 2020 (Docket Item III–Z) and 3.1 tpd as growth for 2010 (Docket Item III–BB). CSE does not acknowledge that the 2003 AQMP added PM_{10} emissions growth in the future year 2010 and 2020 inventories. In fact, the District added emissions for growth in the 2010 (3.1 tpd) and 2020 (5.9 tpd) inventories far in excess of the expected need for offsets on the open market and by the NSR Account combined. Further, CSE's comment that if the District did not estimate that it would need credits from historic supply and demand that the District has ''excluded'' emissions from its inventories is not supported by any facts. The 2003 AQMP includes pre-base year credits in its growth added to its future year inventories.

Comment 5: Beginning on page 7 of its Comment Letter, CSE lists three comments. The first comment actually repeats several paragraphs of CSE's previous comments (e.g. that the only pre-base year emissions added in the 2003 AQMP are from Table 2–14 in Appendix III.) To the extent that CSE is repeating comments, EPA's responses above (and the statements in EPA's TSD) that the District added PM_{10} emissions as growth for point and stationary sources subject to NSR, address these comments. CSE's comment then addresses Table 2–8. Comment Letter at 8. EPA considers this comment to contain three separate points. First, CSE states that Table 2–8 includes growth from all point sources without distinguishing between pre-base year and post-base year credits. Second, CSE states that the growth from point sources in Table 2–8 does not distinguish between open market emissions transactions and the District's NSR Account transactions. Third, with respect to the data provided to EPA by the District (Docket Items III–Z and III–AA) CSE says: ''A review of those documents reveals that it is nothing more than identical information already attached to Appendix III of the 2003 AQMP—but simply repackaged into a single table.'' Comment Letter at 8.

Response 5: CSE's comment in this section confuses the District's and EPA's treatment of the Table 2–8 point and area sources subject to NSR. CSE says that it reviewed the documents prepared by the District and appended to EPA's TSD and found it was repackaging identical information regarding the future year inventories in Appendix III of the 2003 AQMP. CSE's review of the information is inaccurate. The spreadsheets contained in Docket Items III–Z and III–AA extract from the AQMP's base year and future year inventories (2020) those point and area sources subject to NSR. The point and area sources listed in Docket Items III–Z and III–AA are far fewer, particularly for the area sources, than those included in Appendix III, Attachments A–C. Therefore it is incorrect to say that the documents provide identical but repackaged information as that which is included in the 2003 AQMP.

EPA requested the District to extract those point and area sources subject to

[3] The District submitted several spreadsheets containing emissions data related to its base year and future year emission inventories, which we identify herein as lettered ''Docket Items,'' all of which are available in the docket for today's final rule.

[4] This table was inadvertently left out of the docket, and has now been added as Docket Item III–BB.

NSR because those are the only sources in Appendix III, Attachments A–C, for which EPA's regulations require sufficient emissions to be added back to the future year inventory to account for the use of pre-base year emissions reductions from shutdowns. EPA calculated that the District had added 3.1 tpd for the subset of point and area sources subject to NSR for the future year 2010 inventory by comparing the sum in Docket Item III–AA to the sum in Docket Item III–BB and 5.9 tpd when compared to the future year 2020 inventory (Docket Item III–Z). In the docket for our proposed rule, we included the spreadsheet for future year inventory for 2020 (Docket Item III–AA), and in response to comments we are adding Docket Item III–BB for the future year 2010 inventory to the docket for this final rule.

CSE's same comment contends that the District's Table 2–8 does not separate emissions into pre- and post-base year emissions. The spreadsheets the District provided and EPA attached to its TSD show the actual 1997 emission inventory for point and area sources subject to NSR—assuming no growth (Docket Item III–AA), the 2010 projected emission inventory (added to the docket as Docket Item III–BB), and the 2020 projected inventory that was attached to the TSD (Docket Item III–Z). Each of the future year NSR inventories (2010 and 2020) are based on emissions growth expected from the 1997 baseline. This means that the inventory for ''no growth'' is the inventory NSR subject point and area sources of 1997 emissions. Docket Item III–AA. The inventory ''with growth'' is the amount of emissions added into the 1997 inventory for purposes of showing attainment in 2010 and projecting out to 2020. Docket Items III–Z and III–AA. The distinctions between the inventories for the base year and after the base year, therefore, are inherent in the data itself and are summarized for NSR sources in the Docket Items III–Z, III–AA and III–BB. Based on the District's projected demand, 3.1 tpd of PM_{10} emissions added to the future year 2010 inventory and 5.9 tpd added to the future year 2020 inventory, far exceed the amount of pre-base year PM_{10} offsets that the District expected would ever be used. The District projected that it would not need to use any pre-base year PM_{10} emissions and 0.7 tpd of SO_x emissions from its NSR Accounts, and that the entire projected demand including the open market demand would not exceed 0.23 tpd for PM_{10}. We have concluded that the District has satisfied the requirements of 51.165(a)(3)(C)(ii)(*1*) by adding PM_{10} emissions to the 1997 base year emissions inventory and projecting these emissions as ''growth'' for the 2010 and 2020 future year inventories for point and area sources subject to NSR. 77 FR 10433 n.3.

CSE is correct that the 2003 AQMP inventories with no growth and with growth do not distinguish between the open market and the NSR Account transactions. Comment Letter at 7. However, there is no need for such a distinction and CSE has not provided any reason that such a distinction is needed. The only issue is whether the District has added sufficient pre-base year emissions from shutdown sources to allow for expected use of those emissions after the base year. As discussed above, the District has adequately accounted for these pre-base year PM_{10} emission reduction credits in the 2003 AQMP's future year (2010 and 2020) inventories.

CSE's comment concludes: ''This leads EPA to conclude that the District added 3.1 tpd of PM_{10} credits as growth while admitting that that figure includes only 0.23 tpd of pre-base year PM_{10} credits for open-market transactions.'' As noted above, CSE has mischaracterized the District's 2003 AQMP and EPA's position. The 2003 AQMP provides its analysis of ''the potential 2010 emissions from new and modified sources.'' 2003 AQMP at III–2–29. The District further clarifies: ''The net demand simply represents the emission increases in the future years to be offset by reductions previously banked (i.e. prior to the AQMP base year).'' Id. The estimated 2010 *demand,* however, does not equal the amount of pre-base year emission reductions that the District added back into the inventory. The pre-base year PM_{10} emissions are included in the *growth* inventory. The District's evaluation of *demand* is a check to ensure that adequate emissions (3.1 tpd and 5.9 tpd calculated from the NSR subject point and area source growth in 2010 and 2020) are included. EPA's proposed rule and TSD specifically state: ''For PM_{10}, the District added 3.1 tpd as growth.'' [footnote omitted]. TSD at 12.

Comment 6: The section of the Comment Letter that CSE identifies as its second separate comment says that it was improper for EPA to allow the District's NSR Account to carry a larger balance (3.94 tpd) of PM_{10} credits than the total amount of emissions that were added as growth (3.1 tpd). Comment Letter at 8.

Response 6: EPA's proposal and TSD acknowledged that the amount of PM_{10} emissions that the District added to its inventories (3.1 tpd) falls somewhat short of the starting balance in its NSR Account (3.94 tpd) for PM_{10}. TSD at 12–13 (stating: ''While this [3.1 tpd] is not the total amount of the pre-1997 base year emissions reductions available as debits pursuant to Rule 1315 (3.94 tpd) the District has demonstrated that this amount represents the highest amount of pre-1997 credits that are expected to be used as offsets prior to attainment of the ozone [sic] standard.'' We note that the reference to the ozone standard here was a typographical error and that we intended to refer to Appendix III of the 2003 AQMP for PM_{10}. TSD at 13.

As we explained in the TSD, the District's adjustment to the future year PM_{10} inventory in the 2003 AQMP is adequate, even though the total tonnage is somewhat lower than its NSR Account balance, because the District's analysis showed that it anticipated using significantly less than the pre-base year credits being added as growth. EPA's TSD stated: ''This approach is consistent with EPA guidance that States must include pre-base year credits to the 'extent that the State expects that such credits will be used as offsets * * *.'' TSD at 13 quoting 57 FR 13498. We conclude that the District's addition of 3.1 pre-base year PM_{10} credits to cover an expected use of emissions offsets (0.23 from both the NSR Accounts and the open market) in the 2010 emissions inventory and 5.9 tpd for 2020, is acceptable.

CSE's argument on this point appears to be that EPA's regulations require the District to include in its future year inventories all of the emissions offsets that could ever be available for use in the Air Basin (i.e. 3.94 tpd of PM_{10} from the NSR Account). But EPA's NSR regulations, as interpreted in the General Preamble, do not require this. See 57 FR 13498 at 13509 (stating that ''[a]ll pre-enactment banked credits must be included in the nonattainment areas attainment demonstration for ozone *to the extent that the State expects that such credits will be used* for offsets or netting prior to attainment of the ambient standards'') (emphasis added). As CSE's summary sentence itself says: ''the guidance was intended to direct the District to include all pre-base year credits it expected to use in the emissions inventories because otherwise the CAA would not allow their usage.'' Comment Letter at 9.

EPA proposed to approve Rule 1315 upon finding that the District included in its 2003 AQMP 3.1 tpd of PM_{10} emissions for 2010 and 5.9 tpd for 2020, an amount that would amply cover the District's projected historic supply and demand of 0.23 tpd. CSE has failed to

demonstrate that the District has projected any circumstance in which it would use 3.94 tpd of pre-base year PM_{10} emissions by 2010. CSE's Comment Letter fails to provide any reasoning, much less regulatory citation, showing why the District's AQMD should be required to add 3.94 tpd of pre-base year PM_{10} credits when the projected demand is only 0.23 tpd (and that demand is expected to occur on the open market rather than in the District's NSR Accounts.)

Comment 7: The following comment appears to be ancillary to CSE's prior comment. In the portion of its comment letter that purports to discuss CSE's ''third'' comment, CSE contends that Section 173 and 40 CFR 51.165(a)(3)(ii)(C)(1)(ii) requires the District to place a ''cap'' on the amount of pre-base year emissions offsets it may use in applying Rule 1315. CSE states: ''In other words approving pre-base year PM_{10} and SO_X credits for withdrawal that were not included in the emission inventories with no limitations on their use based on an 'expectation' they will not be used is not in accordance with the law.'' [footnote omitted] Comment Letter at 9.

Response 7: This comment seems to repeat the same issue as CSE's Comment 6. The problem is that CSE has misconstrued EPA's regulation at 40 CFR 51.165(a)(3)(ii)(C)(1).

As EPA noted in Response 1 above, in 1989, EPA significantly revised its previous restrictions on use of offset credit for source shutdowns and curtailments (formerly 40 CFR 51.18(j)) to allow the planning agency to have more control over emissions growth in the area and to allow sources to shutdown without forfeiting emissions credit if it could not be used immediately to replace productive capacity. See 54 FR at 27295–95. Congress substantially amended the Clean Air Act in 1990, including the attainment planning process in Part D of Title I of the Act. In 1992, EPA issued guidance entitled ''State Implementation Plans: The General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.'' 57 FR 13498 (April 16, 1992). In that document, EPA stated: ''For purposes of equity, EPA encourages States to allow sources to use pre-enactment banked emissions reductions credits for offsetting purposes. States may do so as long as the restored credits meet all other offset creditability criteria and such credits are considered by States as part of the attainment emissions inventory when developing their post-enactment attainment demonstration * * *. Existing EPA regulations [40 CFR 51.165(a)(3)(ii)(C)(1)] prohibits certain pre-enactment banked emissions reduction credits, i.e., reductions achieved by shutting down existing sources or curtailing production or operating hours, from being used in the absence of an EPA-approved attainment plan.'' 57 FR 13498 at 13508. Nothing in these discussions suggests that the entire amount, or balance, of pre-base year banked credits must be included in the future year inventory of the approved attainment demonstration.

In 1996, EPA further considered this issue as part of our proposed rule to revise the Prevention of Significant Deterioration (PSD) and NSR regulations in 40 CFR part 51, subpart I (61 FR 38250, July 23, 1996). In that proposed rule, EPA stated: ''Passage of the 1990 Amendments has significantly altered the landscape that confronted EPA at the time of the 1989 rulemaking. Congress significantly reworked the attainment planning requirements of part D of title I of the Act such that EPA now believes it is appropriate to delete the restrictions on crediting of emissions reductions from source shutdowns and curtailments that occurred after 1990. In particular, Congress enhanced the importance of the requirement in section 172(c)(3) that States prepare a 'comprehensive, accurate, current inventory of actual emissions from all sources' in a nonattainment area as the fundamental tool for air quality planning.'' 61 FR 38250, 38311.

The proposed rule in 1996 notes that the 1990 Amendments added specific milestones towards achieving attainment and also mandated sanctions that would apply to States that fail to submit an attainment demonstration. 61 FR at 38311–12. EPA proposed two alternatives to allow increased use of shutdown credits. Id. In 2005, EPA's Phase 2 8-hour ozone implementation rule finalized the 1996 proposed alternative that did not require a State to have an approved attainment plan to use prior shutdown credits. 70 FR 71612, 71676 (November 29, 2005). On reconsideration of this rule in 2007, EPA disagreed with a comment that suggested retiring a certain quantity of pre-base year emissions each year, stating: ''The requirements of the NSR program provide growth management tools and are an integral part of the overall air quality attainment program.'' [5] 72 FR 31727, 31741 (June 8, 2007).

NRDC challenged this portion (among others) of EPA's 2005 final rulemaking, arguing in part that EPA's allowance of pre-base year shutdown credits and elimination of the requirement for an approved attainment demonstration were arbitrary and capricious. In 2009, the Court of Appeals for the D.C. Circuit rejected NRDC's challenge to EPA's longstanding policy allowing ''pre-application reductions'' as NSR offsets, as codified in 40 CFR 51.165(a)(3)(ii)(C)(*1*)(*ii*). *NRDC,* 571 F.3d 1245 (DC Cir. 2009). The court held that NRDC's challenge to this longstanding policy was time-barred because EPA's 2005 ozone implementation rule did not reopen the general issue of allowing pre-application offsets addressed in the 1989 rulemaking. However, the D.C. Circuit agreed with NRDC on the narrow issue that EPA's elimination of the requirement to have an approved attainment demonstration was not adequately justified. The court remanded this portion of EPA's 2005 rule to the Agency but did not vacate it.[6] Id.

Thus, we agree with CSE's general point that approval of an attainment demonstration for the relevant NAAQS is a prerequisite to the use of prior shutdown credits in accordance with 40 CFR 51.165(a)(3)(ii)(C)(*1*). We disagree, however, with CSE's assertion that the District is required to either add the entire pre-base year balance of credits to the approved future year attainment inventory or somehow cap the Rule 1315 NSR Account balance at the amount of projected demand, as this assertion is not supported by the text of 40 CFR 51.165(a)(3)(ii)(C) or the *NRDC* decision.

Comment 8: CSE titled this section of their comments ''The 2007 AQMP Explicitly Excludes VOC and NO_X Credits From Projected Emissions Inventories.'' CSE does not contest the ''validity'' of the 2007 AQMP. CSE's comments about the 2007 AQMP's treatment of pre-base year credits largely mirrors the comments about the 2003

[5] EPA notes that for purposes of the California Environmental Quality Act (CEQA), the District capped its account balances. See Chapter 4.1—Environmental Impacts And Mitigation Measures—Air Quality. CSE submitted this Chapter with its Comment Letter but does not provide any comments that address it. Although the CEQA caps are not part of Rule 1315 that will be included in the SIP, the District's commitment to limit usage of the Offset Accounts below these levels unless it performs additional CEQA analysis is significant.

[6] As a result, although the text of current 40 CFR 51.165(a)(3)(ii)(C)(1) does not require a fully approved attainment demonstration in order to allow offset credit for prior shutdowns or curtailments, in light of the NRDC decision we have evaluated Rule 1315 for consistency with EPA's pre-2005 requirement for an approved attainment demonstration for these purposes. The NRDC decision did not affect section 51.165(a)(3)(ii)(C)(1) in any other respect.

AQMP. The Comment Letter begins by characterizing Tables 2–10 and 2–11 in Appendix III of the 2007 AQMP, and then states: ''This is where growth for the Community Bank portion of the NSR program is accounted for, and this is where the pre-base-year credits would need to be included for ozone precursors. The 2007 AQMP includes no pre-base-year credits for VOC and NO_X.'' [Citation omitted] Comment Letter at 11. CSE's comment on the 2007 AQMP also recites three specific objections: (1) That EPA ''conflates total growth from all point sources in Table 2–8—where no distinctions are made between pre-base-year credits and post-base-year credits nor open-market transactions and NSR-Account transactions—for growth based on pre-base year credits from the NSR Account''; (2) EPA approves starting balances in the NSR Account that are larger than the growth; and (3) EPA's approval does not require a cap on the bank that is the same as the amount of growth that is added. Comment Letter at 12–14. Last, CSE states that EPA was required to analyze whether the 1-hour ozone attainment plan included adequate pre-base year credits. EPA responds to this comment at Response 27 below.

CSE is continuing to confuse *growth* and *demand.* Tables 2–10 and 2–11 in Appendix 3 are evaluating historic demand for VOC and NO_X credits. The District adds the pre-base year credits to its 2007 future year inventories in the growth portion of the 2007 AQMP which is graphically shown in Table 2–8 of the AQMP. Then, the District evaluates historic supply and demand as a check to ensure that adequate growth is added back into the future year inventories.

Table 2–8 in the 2007 AQMP Appendix III shows the VOC and NO_X emissions from area and point sources as ''no growth'' and ''with growth''. The growth that is added for the point and area sources in the ''with growth'' portion of Table 2–8 includes the pre-base year credits the District is adding to its future year inventories. For total point sources of VOC, Table 2–8 shows that the District added 12 tpd as growth (35 tpd to 47 tpd) and for area sources of VOC, the District added 36 tpd (195 tpd to 231 tpd). For NO_X, the District added 1 tpd for point sources (36 tpd to 37 tpd) and 2 tpd for area sources (29 tpd to 31 tpd).

EPA requested the District to provide data on the amount of growth that was included for point and area sources subject to NSR. EPA provided that information in Docket Items III–P (showing point and area NSR subject sources with growth) and III–Q (showing point and area NSR subject sources for no growth). These tables show that for NSR subject sources the District added 12 tpd for VOC (35 tpd to 47 tpd) and 2 tpd for NO_X (36 tpd to 38 tpd). EPA's TSD says that the District added 27 tpd for VOC and 2 tpd for NO_X. The TSD notes that the amount of pre-base year credits included in the growth far exceeded the District's projection of possible demand (3.1 tpd for VOC from the NSR Account and the open market) and 0 for NO_X. EPA determined that the credits the District was including in its growth for its future year inventories was ''conservative and an appropriate way to meet the requirements of 40 CFR 51.165.'' TSD at 12.

CSE's comment that EPA ''conflates total growth from all point sources in Table 2–8 * * * for growth based on pre-base-year credits from the NSR Account'' is not clear. CSE appears to consider only point sources as being subject to NSR. However, the District includes both point and area sources in its NSR program. Therefore, the District put together data on the point and area sources that are subject to NSR and prepared the tables in Docket Item III–P and III–Q. CSE apparently did not understand this information because it says that ''it is identical information already attached to Appendix III of the 2007 AQMP—simply repackaged into a single table.'' Comment Letter at 13. This is incorrect. EPA stated in its TSD: ''For Table 2.8 [sic], the District provided EPA with point and area source data used to generate the summary data. EPA used this data to determine the amount of emission due to growth at facilities subject to NSR requirements.'' TSD at 12, n 6. Therefore, EPA correctly determined that the District added sufficient pre-base year credits for point and area sources subject to NSR. The amount added as growth far exceeded the historic demand that the District used as a check.

For the two next points in CSE's comment on the 2007 AQMP, EPA incorporates its response from Responses 6 and 7, as applicable to the 2007 AQMP for VOC and NO_X emissions.

Comment 9: CSE comments that EPA lacks evidence to support the conclusions in the proposed rule concerning retroactive rule operation: ''Internal bank balances lack documentation.'' As an introduction to this section, CSE makes the following statement: ''Approving Rule 1315 would incorporate in federal law two changes to the District's internal banking system: ''One retroactive, in an effort to expunge from the District's legers [sic] the fact that it permitted more emission increases than the CAA's offsetting requirements allow; and one prospective, so that going forward the District would operate a new banking or ''tracking'' scheme. The rule's attempt to change history is rife with flaws, including a pervasive lack of documentation.''

Response 9: These statements are unsupported and lack sufficient specificity for EPA to respond. We assume the lettered subsections that follow this introduction contain specific comments which provide the factual support for these conclusions. Our response to the additional comments found in this subsection are provided below in response to each section (group of comments) provided by CSE.

Comment 10: CSE titled this section of their comments ''Pre-1990 Credits Lack Documentation.'' In this comment, CSE makes several assertions about the emission reductions that occurred prior to 1990 and how they are tracked in Rule 1315. The first is that ''the 1990 'starting balance' established in the Rule includes offsets for which the District claims to have '*some* or all' documentation. (Emphasis added by commenter.) (See Response 10A) ''Second, the EPAs approval of the decision to retire the pre-1990 offsets that remained in the Internal Bank in 2005 does not remove *all* invalid offsets from the system, since the Rule proposes to allow the facilities permitted prior to 2005 in reliance upon those pre-1990 offsets to ''return'' those offsets as ''payback of offset debt'' under Rule 1315(c)(3)(A)(v).'' (See Response 10B) Third, CSE states ''it is unclear why the EPA did[] not include the documentation that establishes the validity of the offsets in the ''Initial District Offset Account Balances'' set out at Table A in the Proposed Rule in the record for this rulemaking'' and that ''* * * EPA's failure to do so not only deprives the public the opportunity to review and comment upon that documentation, the failure is also a violation of the Administrative Procedures Act.'' (See Response 10C) And fourth that ''Proposed Rule 1315 has no mechanism to track how the pre-1990 credits are returned to the bank, either as payback of offset debt or through orphan shutdowns * * *''. (Citations omitted) (See Response 10D).

Response 10: EPA disagrees with each of these assertions for the reasons provided below.

Response 10A: First, CSE states that ''the 1990 'starting balance' established in the Rule includes offsets for which

the District claims to have '*some* or all' documentation,'' (emphasis added by commenter) and continue by stating that ''having 'some' documentation to support the claim that an offset is valid is not sufficient.'' The District provided a full discussion of their evaluation of pre-1990 credits on page 12 of their Staff Report (as well as the prior 2005 and 2006 evaluations), all of which are included in the Docket. The District explains that where ''all'' documentation was not available (e.g., the original permit file that generated the emission reductions) there was still sufficient historical records to verify the specific information listed in the 1994 Seitz memo and determine that the emission reductions meet the federal integrity criteria for offsets. The Staff Report also explains that all pre-1990 credits were evaluated when they were originally transferred into the District's initial Internal Bank. As discussed below, the District's 2003–2005 re-evaluation of all of its banked pre-1990 emissions reductions eliminated (with a starting date of 1990) all credits for which the District no longer possessed sufficient documentation to determine the emission reductions meet the federal integrity criteria for offsets. Therefore, we disagree with CSE and CSE has not pointed to any specific information showing that the District retained a pre-1990 credit without adequate documentation.

As discussed both in the District's Staff Report and EPA's TSD, EPA raised the issue of availability of sufficient records for the pre-1990 credits in the District's Offset Accounts in 2002, in light of the District's adoption of Rule 1309.2—Offset Budget, which would allow more sources access to the Offset Accounts. TSD at 4. EPA pointed to a 1994 EPA memo regarding the use of pre-1990 offsets as guidance. See Memorandum dated August 26, 1994 from John S. Seitz, Director, EPA Office of Air Quality Planning and Standards, to David Howekamp, Director, EPA Region IX Air and Toxics Division, ''Response to Request for Guidance on Use of Pre-1990 ERC's and Adjusting for RACT at Time of Use'' (1994 Seitz Memo). The 1994 Seitz Memo states that pre-1990 credits may be utilized, provided the State ''collect[s] and maintain[s] information on these ERC's, including, at a minimum, the name of the source that generated the ERC's, the source category that applies to this source, the quantity of ERC's generated by this source, the specific action that created the ERC's (e.g., a shutdown of a unit, process change, add-on control), the date that the ERC's were generated and enough other information to determine the creditability of all ERC's.'' 1994 Seitz Memo at 2. At EPA's request, the District reviewed all available records and determined that sufficient records were no longer available for some of pre-1990 credits, or that the effort to provide those records was too burdensome. See Proposed SCAQMD NSR Offset Tracking System, Background, February 23, 2006. Nevertheless, the District undertook a complete and thorough review of its offset records. Id. at 2. The result was the District's elimination of pre-1990 credits for which it did not have adequate documentation. Id. (stating: ''In order to resolve EPA's comments, SCAQMD staff is proposing several modifications to the procedures used in the tracking system. In the revised procedures SCAQMD has proposed elimination of all credits for which SCAQMD no longer retains documentation.'')

From this review, the District calculated new beginning balances for each of the pollutants. The District removed pre-1990 credits with inadequate records from the 1990 starting balance, leading to much lower balances for all pollutants except NO_X. Id. (stating: ''Several elements of the proposed revisions to the SCAQMD's tracking system contribute to these reductions, as discussed below, but the single element of the proposal with the greatest contribution is the reevaluation of pre-1990 credits and proposed elimination of all credits for which SCAQMD no longer retains documentation.'') Accordingly, the District removed this quantity of credits from the 1990 starting balances for the Internal Bank, as shown on page I–1 of Appendix I of the District's staff report. Thus the District's 1990 starting balances only contain credits for which the District possessed sufficient documentation, consistent with the 1994 Seitz Memo. Therefore, we disagree with CSE that there are pre-1990 credits in the District's bank that lack documentation. In approving the District's newly calculated starting balances (i.e those from which pre-1990 credits without documentation were eliminated), EPA is not required to independently review all documentation. As noted in our TSD, EPA is approving a system for tracking credits. EPA acknowledges the system depends on the starting balances. EPA determined that the District's Staff Report and the preceding documents setting forth the District's procedures ensured accurate and conservative starting balances for each pollutant. CSE has not identified any information to show otherwise.

Response 10B: Regarding CSE's second assertion that while Rule 1315 requires ''removal of some of those offsets, [the Rule] does not actually require removal of *all* invalid offsets''; EPA disagrees. As stated on page 14 of the District's Staff Report, all pre-1990 credits for CO and PM_{10} were used by 1997, and the remaining balance of VOC, NO_X and SO_X credits were retired at the end of 2005. CSE claims that this retirement ''does not remove *all* invalid offsets from the system, since the Rule proposes to allow the facilities permitted prior to 2005 in reliance upon those pre-1990 offsets to 'return' those offsets as 'payback of offset debt' under Rule 1315(c)(3)(A)(v).'' [Footnote omitted] Comment Letter at 16. According to CSE, as the pre-1990 internal bank offsets are returned to the internal bank, they are laundered, or 'tracked' as if they were never touched by the improper crediting of those offsets in the first place.'' Comment Letter at 16. These statements are incorrect and appear to be based on a misunderstanding of the fact that once a credit is used to offset new emission increases, the ''credit'' is gone. When credits are debited from the bank to allow the construction and increased emissions from a new or modified source, these new emissions are no longer ''pre-1990'' emissions, as they are being emitted in the present timeframe. When such a source shuts down or has controls applied to reduce emissions, the reductions reduce the *current* emission inventory. In other words, pollution that is being emitted into the air stops being emitted into the air. These current day emission reductions no longer have any relationship to any pre-1990 credits. For example, assume a new piece of equipment was permitted in 2000 entirely with the use of pre-1990 credits and operated until the entire facility shutdown in 2011. If the facility submits an application to claim the emission reductions from the entire facility (where some pieces of equipment obtained credits from the District Offset Account and some did not), the District would evaluate the application under the provisions of Rule 1309—Emission Reduction Credits and Short Term Credits, which is SIP approved. Rule 1309 requires the quantity of emission reductions verified as meeting the federal integrity criteria to undergo an additional adjustment to reflect current day BACT levels,[7] and

[7] The District imposes this more stringent current day BACT adjustment at the time of credit creation

Continued

only then is the quantity of any ''payback of offset debt'' credited to the District Offset Accounts. The remaining balance of emission reductions is issued to the source as an ERC certificate. If the source did not claim any emission reductions from the shutdown of their facility, the District would then evaluate the emission reductions pursuant to Rule 1315, which imposes different requirements than Rule 1309, but also ensures that all credits meet the federal integrity criteria. It is important to note that all crediting of emission reductions in either example are based on real reductions of emissions that were recently emitted into the air but are no longer being emitted. The association with the pre-1990 credits no longer exists. Thus CSE is incorrect to claim that the pre-1990 credits are ''laundered'' in the tracking system, since the tracking system only collects as credits the quantity of actual emission reductions calculated pursuant to Rule 1309 that were originally lent to the source from the District's Offset Accounts. In addition, orphan shutdown credits are collected in accordance with Rule 1315, which requires that permitted emission limits be adjusted by an 80% factor to estimate actual emissions. See Rule 1315(c)(3)(B)(i).

Response 10C: CSE's third comment claims that EPA must review documentation for each of the thousands of individual transactions that contributed to the 1990 starting balance, otherwise our approval of Rule 1315, including our determination that the 1990 starting balance meets the federal integrity criteria for offsets is improper. EPA does not believe it was Congress's intent that we review each individual action carried out by a local air District to ensure compliance with the CAA. As the Court's have recognized, the Clean Air Act establishes a system of cooperative federalism. The federal EPA establishes the National Ambient Air Quality Standards, but the States have primary authority for ensuring that their air quality meets the NAAQS. 42 U.S.C. 7407(a), 7401(a)(3). The CAA requires States to develop SIPs to implement, maintain and enforce the NAAQS and to submit these SIPs to EPA, and EPA must approve a submitted SIP that meets the CAA's requirements. 42 U.S.C. 7410, 7410(k)(3). In this case, the District adopted and submitted a rule that provides detailed methodologies for reviewing and quantifying specific types of emission reductions prior to crediting such reductions to their Offset Accounts. It is the overall program that EPA must review to ensure it contains the necessary provisions to ensure (1) that the District is providing an adequate quantity of emission reductions to make up for all required federal emission reductions not required by the District's NSR program (CAA Section 173), and (2) to ensure the federal offset criteria for offsets debited to be permanent, surplus, quantifiable, and enforceable are met (40 CFR 51.165((a)(3)(ii)(C)(*1*)(*i*)). For the reasons explained in EPA's proposed rule and TSD, we have determined that Rule 1315 satisfies these statutory and regulatory criteria for approval. CSE's broad assertion that EPA should have reviewed the extensive documentation for each pound of emissions credits in the District's Offset Accounts is without merit.

CSE claims that since ''EPA failed to review the documentation that the SCAQMD relied upon to establish its Offset Account balance, then EPA[ ] is in no position to find * * *'' that the credits in the Offset Accounts meet the requirements of the CAA. As discussed on page 10 of the TSD, EPA made a determination as to the whether the credits contained in the District's Offset Accounts meet the federal integrity criteria of being permanent, surplus, quantifiable, and enforceable and therefore meet the requirements of the CAA. It is not necessary for EPA to review documentation for every single credit and debit in the District's Offset Account to make this determination. Instead EPA has reviewed and evaluated the mechanisms contained within Rule 1315 to ensure that at the time of use, all credits used to offset new emission increases meet the federal integrity criteria. Further discussion of how EPA evaluated the rule is provided below in response to specific comments made by CSE.

Response 10D: CSE's fourth assertion is based on the misconception that pre-1990 credits remain classified as pre-1990 credits even after they have been used to construct a new project. As discussed above in EPA's response to CSE's second assertion, this is incorrect. (See Response 10B) Once a credit is used by a source, the credit is retired. Any credits generated later from emissions reductions at that source are new credits from actual reductions that meet the federal criteria. See EPA's response to CSE's second assertion under this comment for a more detailed discussion.

Comment 11: CSE titled this section of their comments ''Annual Balances Lack Documentation''. In this comment, CSE correctly points out that Rule 1315 relies on permitted emission limits, discounted by 20% to account for actual emissions from a shutdown source, rather than relying on actual emissions information for major or minor source orphan shutdowns. They claim that ''This presents three problems inherent to this rulemaking.''

The first problem identified by CSE is that ''the CAA's plain language requires 'actual' emissions be used to meet its offsetting requirement * * *'' They then cite 40 CFR 51.165(a)(1) which reads ''All such plans shall use the specific definitions. 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, in all respects as the corresponding definition below.'' While not stated explicitly, it appears that CSE's intended comment is that the rule must use the term and meaning of ''actual'' as defined in 51.165 and not an alternative determination of ''actual'' emissions.

Response 11: As CSE points out in their comment, the CAA does allow deviations from defined terms if the definition is ''at least as stringent, in all respects as the corresponding definition * * *'' Except for orphan shutdowns, all credits are first evaluated pursuant to the requirements of Rule 1309, which in turns specifies that the Rule 1306 emission calculation methods be used to calculate emission reductions. Rule 1306(c)(1) states that emission decreases are ''The sum of actual emissions, * * * which have occurred each year during the two-year period immediately preceding the date of permit application, or other appropriate period, determined by the Executive Officer or designee to be representative of the source's cyclical operation, and consistent with federal requirements; * * *'' In turn, Rule 1302 defines *Actual emissions* as ''the emissions of a pollutant from an affected source determined by taking into account actual emission rates and actual or representative production rates (i.e., capacity utilization and hours of operation).'' Thus, except for reductions from Orphan Shutdowns, the quantity of emission reductions credited to the District Offset Accounts is based on the same definition of ''Actual Emissions'' as in 40 CFR 51.165.

in lieu of current and future surplus adjustments to the quantity of emission reductions. See 61 FR 64292, Dec. 4, 1996 and Environmental Protection Agency, Region IX Air & Toxics Division Technical Support Document for EPA's Notice of Final Rulemaking for the California State Implementation Plan South Coast Air Quality Management District New Source Review by Gerardo C. Rios, October 24, 1996 (TSD).

The only remaining question is whether the District's use of 80% of permitted emission limits for orphan shutdowns provides a result that is ''at least as stringent as'' the result of using the 40 CFR 51.165 definition of the term *Actual Emissions* when quantifying the amount of emission reductions to be credited to the District Offset Accounts. The TSD and proposal for the proposed approval of Rule 1315 both provide a discussion on this topic and explain why the provisions of Rule 1315 provide an acceptable method (i.e. at least as stringent as the federal requirement) to calculate actual emissions from orphan shutdowns as required by Rule 1315. (See TSD pgs 9–10) CSE's comments do not question the reasoning behind EPA's determination, but simply state in their next comment that actual emission data is available, therefore it should be used. EPA's responds to this assertion in our response to Comment 13, that also makes this point.

Comment 12: CSE also states in this comment that Rule 1315 contains a definition for ''Net Emission Increase'' that differs from the language in the regulation.

Response 12: This definition is not included in the version of Rule 1315 that we are approving, as the District has specifically excluded this definition from the SIP submittal. See Rule 1315(h). Therefore, we do not need to evaluate this definition as part of our action on Rule 1315.

Comment 13: CSE states that ''While some very small sources do not report emissions, major sources and sources that emit over 4 tons per year of certain pollutants all report annually. Yet under Rule 1315(c)(3)(B), *all* orphan shutdowns and reductions are treated as if they were very small sources, with no emissions information. Actual emissions information cannot be ignored in favor of assuming 80% of permitted emissions.''

Response 13: While District Rule 301—Permitting and Associated Fees, requires all sources with a potential to emit greater than 4 tpy to submit an annual emission report, these reports do not always include emission data for individual pieces of equipment. Instead, since the annual report covers the entire facility, many sources, such as combustion sources and coating operations are often grouped together for the report. Annual emissions from these units are based on the equipment group's total material usage multiplied by an appropriate default emission factor. The default emission factors are designed to be conservative and may not be as accurate as the emission factors used for permitting of equipment or the calculation of ERCs. For these reasons, EPA disagrees with CSE that the use of annual emission reports would provide a better (more accurate?) way to calculate actual emission reductions from orphan shutdowns. As stated in the TSD and proposal, we have determined that the method provided in Rule 1315 is at least as stringent as using actual emissions records for determining the actual emission reductions from orphan shutdowns. See TSD at 9, 10.

Comment 14: CSE states that there is no evidence that any of the Orphan Reduction/Orphan Shutdown credits meet the definitions for these terms because the District does not evaluate whether these reductions are ''not otherwise required by rule, regulation, law, approved Air Quality Management Plan Control Measure, or the State Implementation Plan.''

Response 14: This statement is incorrect. As part of the process for collecting orphan shutdowns the District reviews existing rules and laws to ensure the reduction or shutdown (or equivalent such as electrification) is not required as of the date of the reduction. The requirement to perform this check and make any necessary adjustments is inherent in the definition of orphan shutdown, which is defined as follows: ''Any reduction in actual emissions from a permitted source within the District resulting from removal of the source from service and inactivation of the permit without subsequent reinstatement of such permit provided such reduction is not otherwise required by rule, regulation, law, approved Air Quality Management Plan Control Measure, or the State Implementation Plan and does not result in issuance of an ERC.'' Rule 1315(b)(5). To the extent CSE intended to comment on the District's implementation of the rule, such comments are outside of the scope of our action on this rule under CAA 110(k).

Comment 15: This comment states that ''[CSE] knows[ ] that the SCAQMD has made mistakes in determining what can lawfully be credited to its Internal Bank,'' and offers two examples. First they cite the District's action of removing pre-1990 credit balances for which sufficient records were no longer available. Second they claim that the documentation the District provided for the CPV Sentinel Energy Project source-specific SIP revision proves that the District has claimed some offsets for their Internal Bank that were not valid. Last, CSE claims that the rulemaking lacks the record required for EPA to make a finding ''* * * that the emission reductions the District is crediting and debiting in its Offset Accounts meet the requirements of the CAA and can be used to provide the offsets otherwise required for Federal major sources and modification.'' CSE bases this claim primarily on that fact that the same type of documentation provided for the CPV Sentinel Energy Project source-specific SIP revision was not made available for Rule 1315.

Response 15: As EPA stated earlier in Response 10C, there is no requirement for EPA to review and approve every transaction that was or will be undertaken pursuant to Rule 1315. Instead EPA has carefully reviewed each of the provisions of Rule 1315 and determined that it provides an adequate method for tracking and quantifying emission reductions which meet all of the federal integrity criteria for offsets. The TSD provided a full discussion on each aspect of these criteria. (See TSD pgs 7–10)

As stated in the District's Staff Report, the District has implemented an NSR tracking system to demonstrate programmatic equivalence between its NSR program and the offset requirements of the Federal program since EPA's 1996 approval of the Districts NSR program. District staff have prepared and presented to the AQMD Governing Board at public meetings a series of reports that track credits and debits from August 1990 through July 2002. While the rulemaking process for Rule 1315 was in flux (adopted, challenged in court, repealed, re-adopted * * *) the District submitted additional reports in 2007 that also tracked the credits and debits from the District's Offset Accounts. Each of these reports demonstrated that in the aggregate, the District provided an equivalent number of offsets as would have otherwise been required by the federal CAA. Each of these reports is included in the docket for this rulemaking.

Comment 16: CSE titled this section of their comments ''The Rule 1315 Approach to Surplus Adjustment Does Not Capture Reductions as Required by Federal Law'' CSE claims that ''the provisions of Proposed[ ] Rule 1315(c)(4) are inadequate to capture all the reductions needed to ensure banked reductions remain surplus at time of use'' because when offsets are deposited from any source listed in 1315(*c*)(3)(A) there is no provision that requires those emission reductions to be surplus adjusted prior to deposit; and ''once the emissions reductions are deposited, there is no mechanism for ensuring that the proper annual reduction is

calculated and applied.'' Comment Letter at 19.

Response 16: EPA disagrees. Rule 1306 requires all actual emission reductions to be BACT adjusted at the time of creation. South Coast Rule 1306(c). This means that only reductions that exceed the level of control required by BACT are allowed to be credited under the Districts NSR program. As EPA discussed in our 1996 approval of the District's NSR program (61 FR 64292), we approved this requirement in lieu of the requirement to surplus adjust credits at the time of use based on our conclusion that the District's BACT adjustment at time of creation was at least as stringent as a requirement to adjust at the time of use. For the same reasons, we believe that all credits deposited under paragraph (c)(3)(A), except clauses (c)(3)(A)(i), (c)(3)(A)(ii), and (c)(3)(A)(vi) are adequately surplus adjusted both at the time of creation and use. Paragraph (c)(4) entitled ''Surplus at the Time of Use'' only applies to these three clauses because they are the only ones not automatically adjusted to account for a surplus adjustment at the time of use. Instead, paragraph (c)(4) requires credits deposited into the District Offset Accounts, pursuant to clauses (c)(3)(A)(i), (c)(3)(A)(ii), and (c)(3)(A)(vi), to be annually discounted in the aggregate to ensure they remain surplus at the time of use.

Typically credits are adjusted at the time of use by reviewing the source category and type of reduction that created the emission reduction and determining if any new requirements requiring additional reductions have become applicable. This method would be extremely difficult and administratively burdensome if applied to the District's tracking system. Therefore the District proposed an alternative which we believe is equivalent to the case by case application of surplus adjustment at the time of use. Rule 1315 paragraph (c)(4) requires the District to determine the quantity of emission reductions expected from the adoption of new regulations for each non-attainment pollutant. The District then determines what percentage of permitted emissions these reductions represent. The same percentage of emission reductions is then applied to the Offset Account balance for that pollutant. For example, if the District adopts two rules that will achieve 200 tpy of PM_{10} emission reductions, these 200 tpy represents a specific percentage of the total PM_{10} stationary source inventory. This percentage is applied to (multiplied by) the Offset Account balance and the resulting figure is subtracted from the Offset Account Balance, which in effect reduces the total Offset Account balance by a percentage equal to the total amount of emission reductions achieved by new or revised control measures, as a percentage of the total PM_{10} stationary source inventory. This means that the degree of emission reduction achieved by any rules implemented in a year are applied to the entire Offset Account balance, not just to sources that would otherwise be subject to the new rules, which will result in a greater downward adjustment in the total Offset Account balance compared to source category-specific adjustments. We conclude that this surplus adjustment requirement in Rule 1315 is at least as stringent as other, more traditional methods for surplus adjustments at time of use.

Comment 17: CSE's comment states that while Rule 403, a fugitive dust rule, was adopted to control PM_{10} emissions, no surplus reductions appear in the District Offset Account balance sheet for that year. Comment Letter at 19.

Response 17: CSE is correct that no surplus reductions were made for Rule 403. This rule regulates fugitive dust from any active operation—such as earth-moving activities, construction/demolition activities, disturbed surface areas, or heavy- and light-duty vehicular movement and open storage piles. It does not apply to permitted emission units. If a source subject to this rule was to shut down, no emission reductions would be collected for the reduced fugitive emissions subject to Rule 403. Since there are no emission reductions in the District's Offset Accounts that are subject to Rule 403, the Offset Account balance does not need to be surplus adjusted for Rule 403.

Comment 18: CSE's comment continues by stating that this system is not equivalent because the credits in the District's internal bank do not reflect the District's rules as a whole and offers as an example that spray coating operations are more likely to occur at minor, rather than federal major facilities. And finally that ''Spray coating operations became subject to a new PM regulation in 2002, when the District adopted Rule 481. The District made no discount to the internal bank PM_{10} account in 2002–2003.'' Comment Letter at 19.

Response 18: This statement is not correct. Since the balance of both minor and major orphan shutdowns undergo annual surplus adjustments, it does not matter at which type of facility the emission reductions occur. In addition, since Rule 1315 requires the amount of emission reductions achieved from the entire permitted stationary source inventory to be applied to the total Offset Account balances, it does not matter at which source categories the emission reductions from new rules occur, nor does it matter what source categories generated the credits in the District's Offset Accounts. The Offset Account balances are surplus adjusted annually, in the aggregate, so that all credits meet the surplus at time of use requirement prior to being debited from these accounts. The revisions to Rule 481, which were adopted in 2002, were all administrative in nature and did not achieve any PM_{10} emission reductions, therefore no surplus adjustment was made to the District's Offset Accounts for PM_{10} in 2002–03.

Comment 19: Finally CSE offers an example of an instance where the District failed to surplus adjust at time of use some of the emission reductions listed in the AB 1318 Tracking System. Comment Letter at 19. EPA notes that credits transferred from the Rule 1315 Offset Accounts into the AB 1318 Tracking System had already been surplus adjusted to account for the emission reductions of Rule 1157—in the aggregate, as represented by the 0.31 tpd surplus adjustment the District made to their PM_{10} Offset Account balance at the end of 2006. While CSE is correct that Rule 1157 reduced emissions from the 389 affected facilities by 60%, the effect on the entire permitted stationary source emission inventory was only 2.8%.

Response 19: It appears, based on CSEs comments, that CSE did not fully understand the requirements of Rule 1315 (c)(4). Section (c)(4) of the rule requires an ''in the aggregate'' adjustment of the Offset Account balances, which reduces emissions by the same overall percentage achieved by any new rules, whether or not credits in the District's accounts came from source categories affected by the new rules. For the reasons provided in our TSD in Section IV.A.2. and in Response 16 above, we conclude that Rule 1315 contains adequate provisions to ensure all Offset Account balances are surplus adjusted annually to satisfy the surplus adjustment at the time of use requirement.

Comment 20: CSE asserts that ''Proposed Rule 1315 Does not Incorporate the Federal Validity Requirements.'' Specifically, CSE states that ''To meet the requirements of federal law, the Proposed Rule must incorporate the definitions for validity found in federal law * * *'' and that ''While Proposed Rule 1315 (6) is titled ''Federal Offset Criteria,'' it does nothing more than reference other parts of the Proposed Rule and those parts

neither contain nor reference the requirements of federal law. Proposed Rule 1315(6) instead is circular and self-referential.'' Comment Letter at 20.

Response 20: CSE does not provide any citations to support this alleged requirement. While EPA agrees that all emission reductions used to offset the emissions from new and modified sources must meet the federal integrity criteria of being permanent, surplus, quantifiable, and enforceable, it is not necessary for the rule to specifically define these terms. See 40 CFR 51.165(a)(3)(ii)(C)(*1*)(*i*). Instead the rule must include provisions that ensure that the credits being used as offsets meet these criteria. Paragraph (c)(6) of Rule 1315 is not intended to be a requirement that the criteria be met, but instead points to the rule section(s) that ensure each of these criteria are met. Section IV.A. of our TSD discusses EPA's evaluation of how the rule ensures each of these criteria are being met, consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(C)(*1*)(*i*). CSE's comment is conclusory and unsupported.

Comment 21: CSE's comments that the SCAQMD's existing SIP approved NSR program establishes certain requirements on emissions that this Rule attempts to set aside. CSE cites sections of Rule 1315 which allow some of the offsets provided from the open market, pursuant to the requirements of Rule 1303, to be collected as credits for the District's Offset Accounts. They claim that since Rule 1303 requires these offsets to be provided to obtain a permit, they are not surplus to the requirements of the SIP, and may not be credited into the District's Offset Accounts. Comment Letter at 21.

Response 21: The purpose of Rule 1315 is to provide a tracking system to demonstrate that in the aggregate, the District is providing at least as many offsets under their approved NSR program as would otherwise be required by a program that contained no exemptions from federal offset requirements. The requirement in Rule 1303 for minor sources (>4 tpy but less than major source emission thresholds) to provide offsets for emission increases is more stringent than federal requirements which only apply to major sources. South Coast Rule 1303(b)(2). Likewise, the general requirement to provide offsets at a ratio of 1.2:1 is more stringent than the CAA's general requirement in subpart 1 of part D, title I to provide offsets at a ratio of 1:1 for all non-attainment pollutants except ozone precursors (VOC and NO_X), which are subject to more stringent offset ratios under subpart 2 of part D. When the District collects offsets (or portions thereof) that were already determined to be surplus, they are collecting a greater quantity of offsets than required by the federal NSR program. Rule 1315 collects some of the offsets surrendered to the District that are in excess of federal requirements to balance against the offsets not collected by the District, which would have been required under federal requirements. Before any emission reductions can be credited to the District's Offset Accounts, the emission reductions must first meet the federal integrity criteria, which these credits—offsets collected for minor sources and the additional 0.2 offset ratio, have already met. They are ''credits'' i.e., pluses to the tracking system because they are in excess of federal offset requirements.

Comment 22: CSE states that the provisions of Section (c)(3)(A)(v) are problematic for two reasons: (1) ''Once a facility uses an ERC (or ERC equivalent) to meet its NSR offsetting requirement, that ERC no longer exists.''; (2) ''* * * there is no provision in Proposed Rule 1315 that requires a surplus adjustment for those emissions * * *''. Comment Letter at 21. CSE then provides the following example of how they believe this process would work:

> As the Rule is currently proposed, a manufacturing facility operating now could have received a Community Bank or Priority Reserve allocation for emissions in 1994 [check], based upon the shutdown of a boiler that operated between 1987 and 1993. Then, the manufacturing facility shuts down in 2010 and submits a 1306 banking application. This proposed rule would allow the SCAQMD to bank the entire Community Bank or Priority Reserve allocation even though the intervening facility has already used that allocation to meet its 1303 obligation and there have been rules adopted between 1987 and 2010 that would have required emission reductions for boilers.

Response 22: There are several errors in this example. If an existing facility shutdown in 2010 and submits a banking application pursuant to Rule 1306, then the District will first determine how much of the emission reduction meets the federal offset integrity criteria, including the required BACT surplus adjustment. After this determination has been made, the District will then review its records to determine if the source ever obtained any offsets from the District (e.g., Priority Reserve, Community Bank, NSR Balance). If so, then the District will subtract this amount from the total creditable amount of emission reductions calculated pursuant to Rule 1306, and credit only the amount originating from the District accounts back to the Rule 1315 tracking system. To the extent the District provided these credits to the source in the first place, the District is simply returning the same amount of credits to the District NSR Account. These credits are still surplus adjusted.

Comment 23: Based on the example provided in the earlier comment, CSE also claims these emission reductions are not surplus when they are credited back to the District offset accounts because they were already relied upon by the shutdown source. Comment Letter at 22.

Response 23: EPA agrees that such a facility would have relied on these credits at the time their permit was issued, but since that time, the facility has been emitting its own emissions into the air. When the facility shuts down, it is creating new emission reductions when compared to the baseline inventory. These new emission reductions are evaluated pursuant to Rule 1306 to verify that they meet all of the federal integrity criteria, including the requirement that the reduction be surplus.

Comment 24: CSE claims that ''Similarly, for Proposed Rule 1315(3)(A)(vi)[ ] Rule 1306 does not allow ERCs to be generated for the activities described therein.''

Response 24: CSE's comment does not provide an explanation or basis for this claim. The provision contained in section (c)(3)(A)(vi) of Rule 1315 allows, upon EPA concurrence, the amount of the BACT adjustment required by Rule 1306(c) to be credited to the District's Offset Accounts if this amount ''is not otherwise required by rule, regulation, law, approved Air Quality Management Plan Control Measure, or the State Implementation Plan.'' This provision has only been used once since the District created its Internal Bank in 1990.[8] EPA intends to approve such use only in cases where the credits are to be used immediately for a specifically identified project (and therefore the credits would not be subject to an additional at time of use surplus adjustment) and where EPA determines that the construction of the identified project would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act.

Comment 25: CSE states in this comment ''As a broader, more universal matter the SCAB and the Coachella Valley's failure to attain the PM_{10} NAAQS and the 1 hour ozone NAAQS

[8] See Appendix A of Rule 1315 Staff Report, entry entitled ''1990–97 BACT Discount ERCs [(c)(3)(A)(vi)]''.

coupled with the massive black box in the 8 hour ozone plan show that no emission reductions that have occurred or will occur as part of the NSR program are actually surplus. In fact, the Air Basins need all the reductions of the NSR program and *more* for attainment. The currently approved SIP Rules set out a rigorous process for banking emission reductions that was developed at the direction of the Clean Air Act because the Air Basins are nonattainment areas. The EPA cannot now approve a Rule that, in effect, sets aside parts the SIP approved NSR program.'' Comment Letter at 22.

Response 25: It appears that CSE is using the term ''surplus'' in this comment to mean something different from the requirement in 40 CFR 51.165((a)(3)(ii)(C)(*1*)(*i*) that emission reductions be ''surplus'' to any other requirement of the CAA. In the context of evaluating the integrity of an NSR offset, EPA uses the term ''surplus'' to refer to any emission reduction that is not otherwise required by the CAA. See CAA 173(c); *see also* TSD at 7–9. Whether the District has attained any particular NAAQS or needs additional emission reductions as part of its plan for attaining a particular NAAQS is not relevant to the question whether a particular emission reduction is ''surplus'' to other CAA requirements consistent with 40 CFR 51.165(a)(3)(ii)(C)(*1*). Contrary to CSE's contention that Rule 1315, ''sets aside parts the SIP approved NSR program,'' we are approving Rule 1315 based on our conclusion that it strengthens the SIP-approved NSR program by providing a detailed methodology for tracking credits within the District's Offset Accounts.

Comment 26: CSE titled this section of their comments ''Allowing the District to Shift from a 1.5 to 1.0 Offset Ratio to a 1.2 to 1.0 Offset Ratio Violates the Act''. CSE claims that ''EPA has not determined that California BARCT and federal BACT are equivalent'' and that ''federal BACT is a facility by facility approach and BARCT uses classes of categories'' and therefore, they cannot be equivalent. Approval of a 1.2:1, rather than 1.5:1 offset ratio is an illegal shift and is therefore arbitrary and capricious.

Response 26: We disagree as we are not approving any change in the offset ratios established in the District's SIP-approved NSR program. Rule 1303—Requirements, currently requires all sources of VOC and NO_X to provide offsets at a 1.2:1 ratio. EPA approved this ratio as part of our 1996 approval of the Districts NSR program based on our conclusion that the District's program met the criteria for exemption from the requirement in CAA section 182(e)(1) for a 1.5:1 offset ratio in extreme ozone nonattainment areas (61 FR 64291, December 4, 1996). Nothing in our action today affects our prior action with respect to Rule 1303. To the extent CSE intended to challenge our approval of the 1.2:1 ratio in Rule 1303 into the SIP in 1996, such a challenge is late.

As CSE notes, Section 182(e)(1) of the CAA provides an exception to the requirement of a 1.5:1 offset ratio for ozone precursors in extreme non-attainment areas. This Section reads as follows:

> ''* * * shall be at least 1.5 to 1, except that if the State plan requires all existing major sources in the NA areas to use BACT as defined in section 7479(3) for the control of VOC, the ratio shall be at least 1.2:1.''

We note that California state law requires all nonattainment areas to implement Best Available Retrofit Control Technology (BARCT).[9] The District has adopted rules which require BARCT for all source categories that include major sources and many that apply to minor sources as well. These rules have been submitted and approved (or in the process of being approved) into the South Coast portion of the California SIP. Therefore the District does have requirements *in their plan* that require *all existing major sources* to use BARCT as defined in Rule 1302—Definitions. CSE provides the definitions of both terms—Federal BACT and California BARCT in their Comment Letter. A review of both terms shows that the definition of BARCT contains the same key elements of the Federal BACT definition, as noted below by the underlined text of the definition of BARCT:

> *An air emission limitation* that applies to existing sources and is *based on the maximum degree of reduction* achievable, *taking into account environmental, energy, and economic impacts* by each class or category of source.

The application of both BACT and BARCT each result in ''an air emission limitation,'' ''based on the maximum degree of reduction,'' ''taking into account environmental, energy, and economic impact,'' ''for such facility'' (BACT) or ''each class or category of source'' (BARCT).

The definition of BACT referenced in Section 182(e)(1) is from the new source review regulations, which only apply when a facility is new or makes a modification that increases emissions. The language in Section 182(e)(1) therefore specifically states that the requirement—to apply the Best Available Control Technology—also applies to existing major sources. This inherently means that any additional control must be applied on a retrofit basis, which is exactly what the California requirement to apply Best Available *Retrofit* Control Technology does. Since the District requires the implementation of BARCT on all major ozone pre-cursor sources, we continue to find that the provisions of Section 182(e)(1) allow for approval of a NSR program that requires a 1.2:1, rather than 1.5:1 offset ratio of ozone precursors in the South Coast.

Comment 27: CSE titled this section of their comments ''EPA Failed to Show That This SIP Amendment Does Not Interfere With Attainment of the 1-hour Ozone Standard. CSE comments that EPA's proposed approval of Rule 1315 ''fails to make the assessment that this SIP revision will not interfere with attainment of the 1-hour ozone standard,'' citing CAA section 110(l) and *Hall* v. *EPA,* 273 F.3d 1146, 1158 (9th Cir. 2001). The comment states that the absence of such a ''finding'' violates ''bedrock statutory provisions and longstanding NSR case law * * *'' CSE believes that EPA's failure to assess this SIP revision for potential interference with the 1-hour ozone standard is particularly troubling in light of a recent Ninth Circuit decision that the current 1-hour ozone plan is deficient to actually attain the 1-hour ozone standard, citing *Association of Irritated Residents* v. *EPA.* Comment Letter at 24.

Response 27: EPA acknowledges that, for the proposed rule, the Agency did not evaluate whether the SIP revision would interfere with attainment of the 1-hour ozone standard under CAA section 110(l). Given that the 1-hour ozone standard was revoked in 2005 [see 40 CFR 50.9(b)], the potential issue to address under section 110(l) is not whether the SIP revision would interfere with attainment or RFP of the 1-hour ozone NAAQS because the 1-hour ozone standard is no longer one of the NAAQS. Instead the issue to be addressed is whether the SIP revision would interfere with any other applicable requirement of the CAA, which in this case refers to the ''anti-backsliding'' requirements [found in 40 CFR 51.905(a)(1)(i)], which continue to apply in 8-hour ozone nonattainment areas (such as the South Coast) that had been a nonattainment area for the 1-hour ozone standard. Among the anti-backsliding requirements is the requirement to have an approved 1-hour ozone attainment demonstration plan.

[9] Health & Safety Code § 40440(a)(1).

The South Coast Air Basin has a 1-hour ozone attainment plan (referred to as the ''1997/1999 South Coast Ozone SIP'') that EPA approved in 2000 (65 FR 18903, April 10, 2000) and this SIP revision would not interfere with that plan. However, the commenter is correct that a recent Ninth Circuit decision raises the possibility that, in light of deficiencies in the 1997/1999 South Coast Ozone SIP brought to EPA's attention in 2003 (i.e., prior to revocation of the 1-hour ozone standard) and having nothing to do with NSR, EPA may find it necessary to develop and adopt a new 1-hour ozone attainment plan or require the State of California to do so, in response to the remand of that case. See, generally, *Association of Irritated Residents* v. *EPA,* No. 09–71383 and 09–71404, rehearing denied and amended opinion filed Jan. 27, 2012. EPA has not yet decided how the Agency intends to respond to the decision in *Association of Irritated Residents,* and although this SIP revision would not interfere with such a future plan, it would need to be taken into account in developing the emissions inventories and control strategies for such a 1-hour ozone attainment plan in much the same manner as has been done for the now-approved South Coast 8-hour ozone and $PM_{2.5}$ plans.

Comment 28: CSE titled this section of their comments ''It is Arbitrary and Capricious for This SIP Amendment to Allow for Vast Increases in Pollution Credits Given the Reliance on a Large 'Black Box'.'' CSE's final comment is that EPA cannot approve Rule 1315 because the District has emissions reductions in its AQMPs ''black box''. Comment Letter at 24. CSE comments that the 2007 AQMP has 55% of the emission reductions needed to attain the 8-hour ozone NAAQS in the ''black box''. CSE then states: ''Given that there really is not a true framework for attaining the 8-hour ozone standard (e.g. reliance on speculative, undefined measures) on time combined with the recent failure of the region to attain the 1-hour ozone standard, [footnote omitted] it is arbitrary and capricious for EPA to allow 1315 to move forward with the myriad of newly minted offsets that will be allowed to impede the already formidable task of actually closing the ''black box'' gap that currently exists. Even if the rosy assumptions in the TSD are accurate, adding 29 tpd (27 tpd VOC and 2 tpd NO_X) of pre-2002 credits is approximately 10% of the emissions reductions needed to be met through black box reductions. This represents a significant amount of pollution that could be prevented, which would actually help push the region to attain the standard on time.'' Comment Letter at 24–25.

Response 28: We disagree with these assertions. First, with respect to the commenter's contentions that the ''black box'' (which we refer to herein as the ''long-term strategy'') in the 2007 AQMP accounts for 55% of the reductions needed to attain the 1997 8-hour ozone standard and that pre-2002 credits account for approximately 10% of these ''black box'' reductions, these statements are factually incorrect. As we explained in our responses to similar comments on our proposal to approve the 2007 AQMP (referred to in that action as the ''South Coast 2007 Ozone SIP''), the correct amounts of the needed emission reductions attributed to the long-term strategy in the 2007 AQMP are 26% for NO_X (241 of 910 tons per day (tpd) needed to attain) and 9% for VOC (40 of 461 tpd needed to attain). See 77 FR 12674, 12686 (March 1, 2012). Thus, the pre-2002 base year emission reduction credits (2 tpd of NO_X and 27 tpd of VOC) that the District added as growth into its projected inventories for the 2007 AQMP constitute roughly 0.83% of the NO_X reductions and 68% of the VOC reductions attributed to the long-term strategy in the 2007 AQMP.[10]

Second, we disagree with the commenter's suggestion that the South Coast's inclusion of a long-term strategy in the 2007 AQMP precludes our approval of Rule 1315 into the SIP or somehow renders our approval arbitrary and capricious. CAA section 182(e)(5) authorizes EPA to ''approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control technologies * * *'' provided certain conditions have been met. 42 U.S.C. 7511a(e)(5). EPA fully approved the 2007 AQMP based, in part, on our conclusion that California had met the criteria for approval of a long-term strategy under CAA section 182(e)(5) for purposes of attaining the 1997 8-hour ozone standard (77 FR 12674 at 12686–12689) and our conclusion that the SCAQMD had accounted for existing pre-base year ERCs in the reasonable further progress (RFP) and attainment year inventories in the plan, consistent with the applicable requirements of part D, title I of the CAA and EPA's implementing regulations in 40 CFR part 51 (77 FR 12674 at 12682). CSE provides no support for its contention that these elements of the 2007 AQMP preclude or undermine our approval of Rule 1315 into the SIP, nor any information indicating that approval of Rule 1315 would interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act (see CAA 110(l)).

Finally, to the extent the commenter intended to argue that the South Coast area's failure to attain the 1-hour ozone NAAQS by the applicable attainment date precludes our approval of Rule 1315 or somehow renders our approval arbitrary and capricious, we disagree. EPA's recent determination that the South Coast area failed to attain the 1-hour ozone standards by its applicable attainment date of November 15, 2010 (76 FR 82133, December 30, 2011) has no bearing on our action on Rule 1315, and the commenter provides no support for any argument otherwise.

Comment 29: In CSE's last portion of this comment, CSE reproduces Table 4.1–4 from Subchapter 4.1 of the Districts Final Program Environmental Assessment (CEQA analysis) prepared for adoption of Rule 1315. Comment Letter at 25. Using data from this table, CSE states that the amount of potential ozone emissions increases from Rule 1315 (16.99 tpd VOC in 2014 and 34.52 tpd in 2023 and 1.29 tpd in NO_X in 2014 and 2.38 tpd in 2023) is ''important because they represent a *significant* increase in the total projected emissions''. (emphasis added) CSE then provides the total projected emission inventory for years 2014, 2020 and 2023 from the 2007 AQMP, apparently to show that the values in Table 4.1.4 are a large percentage of the total projected emission inventory. CSE then states that EPA must ''demonstrate what measures will replace this backsliding in emission reductions that will lead to attainment of all relevant standards,'' and finally that ''it is arbitrary and capricious for EPA to ignore the significant analysis prepared by the SCAQMD for the California Environmental Quality Act document for Rule 1315 that details the emissions and impacts associated with adopting this Rule.''

Response 29: EPA disagrees with CSE's characterization of the information provided in Subchapter 4.1 of the District's CEQA analysis. See ''Final Program Environmental Assessment for Re-Adoption of

[10] It appears that CSE simply summed the NO_X and VOC emissions estimates to arrive at its 55% and 10% figures, but this approach entirely overlooks the significant differences in the NO_X reductions and VOC reductions attributed to the long-term strategy in the 2007 AQMP, as well as the respective contributions of reductions in each pollutant to attainment of the ozone standards in the South Coast.

Proposed Rule 1315—Federal New Source Review Tracking System, Volume I, Subchapter 4.1, ''Environmental Impacts and Mitigation Measures—Air Quality'' (January 7, 2011) (Rule 1315 CEQA Analysis). The emissions data in Table 4.1–4 of this CEQA analysis, which CSE reproduced in Table 4.1–4 of its comment letter, provide conservative (high) estimates of *total* NO_X and VOC stationary source emissions expected from implementation of Rule 1315. See Rule 1315 CEQA Analysis at 4.1–9. The 2007 AQMP includes all of these projected NO_X and VOC emissions in the future projected inventories ''with growth'' for 2014, 2020 and 2023. See 2007 AQMP, Table 2–8 of Appendix III. To the extent CSE intended to argue that implementation of Rule 1315 will *increase* the projected NO_X and VOC emission inventories in the 2007 AQMP by the amounts specified in Table 4.1–4, this assertion is factually incorrect, as the emissions impacts identified in Table 4.1–4 of the Rule 1315 CEQA Analysis are already accounted for in the 2007 AQMP projected emission inventories. Alternatively, to the extent CSE intended to challenge the District's inclusion of these additional NO_X and VOC emissions in the projected emissions inventories underlying the 2007 AQMP, such a challenge to the 2007 AQMP is outside the scope of our action on Rule 1315.

Comment 30: The South Coast Air Quality Management District submitted a comment letter in which the District stated that the legislative history of the 1990 Amendments to the CAA specifically addressed the ability of a district to promulgate a rule that, in the aggregate produces equivalent or greater emissions reductions. Comment Letter at 1–2. The District also included a discussion of the importance of Rule 1315 to the economic issues in the area and that many of the projects in the area that will use credits from the District's Offset Accounts are environmentally beneficial. Comment Letter at 2–3. The District's comment also referenced the Ninth Circuit's decision in Natural Resources Defense Council v. South Coast Air Quality Management District, 651 F.2d 1066 (9th Cir. 2011) which evaluated the District's treatment of pre-1990 credits in its Offset Accounts and ''concluded that the challenge to the pre-1990 offsets was moot''. [citation omitted] The District stated: ''Therefore, we conclude that EPA need not be concerned with any issues relating to pre-1990 offsets.'' Comment Letter at 5. Finally, the District pointed to some specific language in EPA's TSD that the District considered inaccurate. TSD at p. 11.

The District requested EPA to include in its final approval the following clarification: ''The AQMP growth projections do not distinguish between new or modified sources and increased operations at existing sources. Therefore, the growth projections represent a maximum projected amount of demand for pre-base-year offsets. All growth from new and modified sources must necessarily be offset by pre-base-year emission reductions. This is because post-base-year reductions could at most be used to replace themselves, and would not be available to support growth. Therefore, the AQMP growth projections represent maximum projected use of pre-base-year offsets.'' Comment Letter at 5. The District's comment also attached copies of hundreds of letters from local municipalities, organizations and businesses that supported State legislation that would allow the District to continue to issue credits from its Offset Accounts during preparation of CEQA documents.

Response 30: EPA agrees with the District that Congress intended to allow the District to adopt a rule that in the aggregate that demonstrates an equivalent amount or greater emission reductions than would be required by the 1990 Amendments to the CAA. EPA appreciates the District's statements about the importance of Rule 1315. These considerations may inform the policy choices that the District makes in choosing how to implement the requirements of the CAA. EPA makes note of the Ninth Circuit's decision in *NRDC* v. *SCAQMD.* As discussed in a prior Response, EPA has also determined that the District's treatment of pre-1990 credits in Rule 1315 is approvable. Finally, EPA agrees that the District's language clarifies EPA's intent with respect to approving the District's inclusion of pre-base year credits in its inventories. Accordingly, we agree that ''[t]he AQMP growth projections do not distinguish between new or modified sources and increased operations at existing sources. Therefore, the growth projections represent a maximum projected amount of demand for pre-base-year offsets. All growth from new and modified sources must necessarily be offset by pre-base-year emission reductions. This is because post-base-year reductions could at most be used to replace themselves, and would not be available to support growth. Therefore, the AQMP growth projections represent maximum projected use of pre-base-year offsets.'' EPA agrees that in both the 2003 and 2007 AQMPs, the growth that the District adds represents the maximum projected use of pre-base year credits. EPA also takes note of the hundreds of pages attached to the District's comment letter.

Comment 31: California Council for Environmental and Economic Balance, the County Sanitation Districts of Los Angeles County and the Southern California Gas Company submitted comments on our proposed approval of Rule 1315. These comment letters express support for EPA's proposed approval of Rule 1315. The comment letters also state that Rule 1315 is important for the area to continue to operate essential public services, such as installation of emergency generators at wastewater pumping plants. Finally, these comment letters ask EPA to finalize approval of Rule 1315 with an effective date that is shorter than 30 days based on the good cause exception in section 553(d) of the Administrative Procedures Act.

Response 31: EPA takes note of the support for final approval of Rule 1315. EPA also understands that as a result of State legislation the District may be precluding from issuing permits pursuant to Rule 1315 for a short period of time until the effective date of EPA's final approval of Rule 1315. Although EPA understands that waiting for a 30 day effective date to expire may place a burden on the District and local municipalities, utilities and business, EPA is declining at this time to provide a shorter effective date based on 5 U.S. C. 553(d)(3).

III. EPA's Final Action

Under section 110(k)(3) of the Act, EPA is fully approving Rule 1315, as adopted February 4, 2011 and submitted on March 2, 2011, into the South Coast portion of the California SIP based on our conclusion that this SIP revision satisfies all applicable CAA requirements.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 24, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 26, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(403) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(403) A new rule for the following APCD was submitted on March 2, 2011, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 1315, ''Federal New Source Review Tracking System,'' excluding paragraph (b)(2) and subdivisions (g) and (h), adopted on February 4, 2011.

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[FR Doc. 2012–12500 Filed 5–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1990–0011; FRL–9676–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Ellsworth Air Force Base Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announces the deletion of Operable Unit (OU) 1—the former Fire Protection Training Area (FPTA), along with two other Areas of Concern (AOC): the Gateway Lake Ash Study Area and the Pride Hangar Study Area of the Ellsworth Air Force Base (AFB) from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This partial deletion pertains to the surface soil, unsaturated subsurface soil, surface water and sediments of Operable Unit (OU) 1, the Gateway Lake Ash Study Area, and the Pride Hangar Study Area. The groundwater medium associated with OU–11, Basewide Groundwater will remain on the NPL. The EPA and the State of South Dakota, through the Department of Environment and Natural Resources, have determined that all appropriate response actions under CERCLA, other than five-year reviews have been completed. However, the deletion of these parcels does not preclude future actions under Superfund.

DATES: *Effective Date:* This action is effective May 25, 2012.

ADDRESSES: Mr. John Dalton, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 1595 Wynkoop St., Denver, CO 80202; telephone number 303–312–6601; fax number 303–312–6961; email address: *dalton.john@epamail.epa.gov.*

EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–1990–0011. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is