

#### IV. Public Comment and Final Action

Under CAA section 301(a)(1) and for the reasons discussed above, EPA is proposing to clarify that the statutory provisions and other legal documents submitted in connection with the legal authority chapter of the original 1972 California SIP were superseded by EPA's approval of a revised legal authority chapter in 1980 (and codified at 40 CFR 52.220(c)(48)). To memorialize EPA's interpretation of the effect of the 1980 final rule on the earlier submitted and approved statutory provisions and other legal documents, EPA is proposing to revise 40 CFR 52.220(b)(12)(i) to read as follows:

“(i) Previously approved on May 31, 1972 and deleted without replacement, effective September 10, 1980, chapter 7 of part I and all of the statutory provisions and other legal documents contained in appendix II to chapter 7 (Legal Considerations).”

EPA is soliciting public comments on the issues discussed in this document and will accept comments for the next 30 days. These comments will be considered before taking final action.

#### V. 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 proposes to clarify the effect of a previous approval by EPA of a state submittal as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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.

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

Environmental protection, Air pollution control, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Accordingly, 40 CFR Part 52 is proposed to be 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.*

2. Section 52.220 is amended by revising paragraph (b)(12)(i) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(b) \* \* \*  
(12) \* \* \*

(i) Previously approved on May 31, 1972 and deleted without replacement, effective September 10, 1980, chapter 7 of part I and all of the statutory provisions and other legal documents contained in appendix II to chapter 7 (Legal Considerations).

\* \* \* \* \*

Dated: January 21, 2010.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2010–1839 Filed 1–28–10; 8:45 am]

**BILLING CODE 6560–50–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R09–OAR–2010–0062; FRL–9107–5]

#### Approval and Promulgation of Implementation Plans, State of California, San Joaquin Valley Unified Air Pollution Control District, New Source Review

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

**ACTION:** Proposed rule.

**SUMMARY:** Under section 110(k)(6) of the Clean Air Act, EPA is proposing to correct our May 2004 final approval of revisions to the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan. EPA is also proposing to take action on three amended District rules, one of which was submitted on March 7, 2008 and the other two of which were submitted on March 17, 2009. Two of the submitted rules reflect revisions to approved District rules that provide for review of new and modified stationary sources (“new source review” or NSR) within the District, and the third reflects revisions to an approved District rule that provides a mechanism by which existing stationary sources may be exempt from the requirement to secure a Federally-mandated operating permit. The NSR rule revisions relate to exemptions from permitting and from offsets for certain agricultural operations, to the establishment of NSR applicability and offset thresholds consistent with a classification of “extreme” nonattainment for the ozone standard, and to the implementation of EPA's NSR Reform Rules. With respect to the revised District NSR rules, EPA is proposing a limited approval and limited disapproval because, although the changes would strengthen the SIP, there are deficiencies in enforceability that prevent full approval. With respect to the operating permit rule, EPA is proposing a full approval. Lastly, EPA is proposing to rescind certain obsolete permitting requirements from the District portion of the California plan.

If EPA were to finalize the limited approval and limited disapproval action, as proposed, then a sanctions clock, and EPA's obligation to

promulgate a Federal implementation plan, would be triggered because certain revisions to the District rules that are the subject of this action are required under anti-backsliding principles established for the transition from the 1-hour to the 8-hour ozone standard.

**DATES:** Any comments must arrive by *March 1, 2010*.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2010–0062, by one of the following methods:

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

- *E-mail:* [R9airpermits@epa.gov](mailto:R9airpermits@epa.gov).
- *Mail or deliver:* Gerardo Rios (Air–3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

**Docket:** The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

**FOR FURTHER INFORMATION CONTACT:** Laura Yannayon, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 972–3534, [yannayon.laura@epa.gov](mailto:yannayon.laura@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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

#### Table of Contents

- I. Regulatory Context
- II. Correction of EPA’s May 2004 Final Approval
  - A. CAA Legal Authority
  - B. Background on District NSR Rules 2020 and 2201 and Related EPA Actions
  - C. Correction of Erroneous Final Approval
- III. The State’s Submittals of Revised District Rules
  - A. What rules did the State submit?
  - B. Are there other versions of these rules?
  - C. What are the purposes for revisions to these rules?
- IV. EPA’s Evaluation and Action on the Rule Revisions
  - A. How is EPA evaluating the rules?
  - B. Do the rules meet the evaluation criteria?
    - 1. Regulatory Context
    - 2. Minor Source NSR Permitting Requirements
    - 3. “Extreme” Ozone Area NSR Requirements
    - 4. EPA’s NSR Reform Rules
    - 5. Other Changes to District Rules 2020 and 2201
    - 6. Enforceability Considerations
    - 7. Federally Enforceable Restriction on Potential To Emit
    - 8. CAA Section 110(l)
    - 9. Conclusion and Proposed Action on Submitted Rules
- V. Deletion of Obsolete Conditions on SIP Approvals
- VI. Proposed Action and Opportunity for Public Comment
- VII. Statutory and Executive Order Reviews

#### I. Regulatory Context

On February 20, 2008 (73 FR 9260), under sections 110(k)(2) and 110(k)(6) of the Clean Air Act (CAA or “Act”), we proposed to correct our May 2004 final approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (“SJVUAPCD” or “District”) portion of the California State Implementation Plan (“SIP”) and to approve revisions to two District rules submitted to EPA by the California Air Resources Board (CARB) on December 29, 2006.<sup>1</sup> The specific provisions

<sup>1</sup> The San Joaquin Valley includes all of San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings and Tulare counties, and the western half of Kern County, in the State of California. The San Joaquin Valley is designated as a nonattainment area for the 1997 8-hour ozone national ambient air quality standard (NAAQS) and the 1997 fine particulate matter (PM<sub>2.5</sub>) NAAQS and is designated as attainment or unclassifiable for the other NAAQS. See 40 CFR 81.303. The area is further classified as “serious” for the 8-hour ozone NAAQS, but the State of California has submitted a request to reclassify the area to “extreme.” See 74 FR 43654 (August 27, 2009) for EPA’s proposed approval of the State’s reclassification request. The San Joaquin Valley was further classified as an “extreme” area for the now-revoked 1-hour ozone NAAQS when EPA designated the area with respect to the 8-hour ozone NAAQS.

proposed for approval included paragraph 6.20 of District Rule 2020 (“Exemptions”) and paragraph 4.6.9 of District Rule 2201 (“New and Modified Stationary Source Review Rule”). These provisions relate to review and permitting of new or modified stationary sources (“NSR”) specifically in connection with agricultural sources. We received substantive comments on our proposed rule, and, since publication of the February 2008 proposed rule, the District has adopted further revisions to Rules 2020 and 2201 that have been submitted to EPA for approval by CARB. The further amended District rules carry forward the revisions submitted on December 29, 2006 but reflect more recent changes by the District as well. In light of the comments on our February 2008 proposed rule, and the more recent submittals of District Rules 2020 and 2201, we have decided not to take any further action on our February 2008 proposed rule, but rather to propose action anew. Published in today’s **Federal Register** is a withdrawal of our February 20, 2008 proposed rule.

#### II. Correction of EPA’s May 2004 Final Approval

##### A. CAA Legal Authority

Section 110(k)(6) of the Clean Air Act, as amended in 1990, provides: “Whenever the Administrator determines that the Administrator’s action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public.”

We interpret this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to our satisfaction (or we discover) that (1) we clearly erred by failing to consider or by inappropriately considering information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. See 71 FR 75690, at 75693 (December 18, 2006); 57 FR 56762, at 56763 (November 30, 1992).

### *B. Background on District NSR Rules 2020 and 2201 and Related EPA Actions*

EPA originally approved District NSR Rules 2020 (“Exemptions”) and 2201 (“New and Modified Stationary Source Review Rule”) into the California SIP on July 19, 2001 (66 FR 37587).<sup>2</sup> EPA’s July 19, 2001 action was, however, a limited approval and limited disapproval reflecting our conclusion that District Rules 2020 and 2201 could not be fully approved as meeting all applicable requirements because, among other reasons, District Rule 2020 exempted all agricultural sources from District permitting requirements. 66 FR at 37590. At that time, District Rule 2020, citing California Health & Safety Code (CH&SC) section 42310(e), included a permitting exclusion for “any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals,” except for certain orchard and citrus grove heaters in the southern portion of the District.<sup>3</sup> Our limited disapproval stated that the District could not exempt major stationary sources or major modifications at existing major sources from NSR requirements and be found to meet applicable CAA requirements.<sup>4</sup>

To correct this deficiency, the District adopted a revision to Rule 2020 which eliminated the agricultural permitting exemption in its entirety, and CARB submitted the revised Rule 2020 to EPA on December 23, 2002 as a revision to the California SIP. In response, on February 13, 2003, EPA proposed several actions regarding the exemption of agricultural sources from major source NSR permitting requirements. First, EPA proposed approval of revised District Rule 2020. See 68 FR 7330 (February 13, 2003).<sup>5</sup> In that notice, EPA

specifically noted that “California Health & Safety Code 42310(e) continues to preclude the District, as well as all other districts in California, from permitting agricultural sources under either title I or title V of the CAA.” See 68 FR 7330, at 7335.

To address this issue, EPA published a proposal finding that California’s statutory exemption of agricultural sources in CH&SC section 42310(e) from major source NSR permitting rules violated the requirements of CAA section 110(a)(2)(E). See 68 FR 7327 (February 13, 2003). This action, titled “Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision” (hereinafter “SIP Call”), determined that California lacked adequate legal authority to carry out its NSR permitting requirements because CH&SC section 42310(e) exempted major agricultural sources. EPA finalized the SIP Call on June 25, 2003, and thereby required California to submit the necessary assurances of authority by November 23, 2003 to support an affirmative finding by EPA under CAA section 110(a)(2)(E). If the State failed to submit the necessary assurances, then EPA indicated that the sanctions clock under CAA section 179 would be triggered.<sup>6</sup> See 68 FR 37746 (June 25, 2003).

Later that summer, the California legislature enacted Senate Bill (SB) 700, which the Governor of California signed on September 22, 2003. SB 700 removed the wholesale exemption from permitting for agricultural sources provided under CH&SC section 42310(e) and subjected major agricultural sources to permitting requirements. SB 700, however, retained exemptions for new source permitting for certain minor agricultural sources, and limited the ability to require minor agricultural sources to obtain Federal offsets.<sup>7</sup>

<sup>6</sup> On May 22, 2002, EPA issued a Notice of Deficiency for California’s Title V program based on the exemption of agricultural sources from Title V permitting. See 67 FR 35990 (May 22, 2002). EPA’s decision was upheld. See *California Farm Bureau Fed’n v. EPA*, No. 02–73371 (9th Cir. July 15, 2003) (memorandum opinion).

<sup>7</sup> As explained in Section II.C below, sources with emissions below 50 percent of the major source threshold are exempt from permitting unless the District makes certain findings, while sources at or above 50 percent of the major source threshold are subject to permitting unless the District makes certain findings. See CH&SC section 42301.16(b) and (c). In addition, offsets may not be required unless they meet the criteria for real, permanent, quantifiable, and enforceable emission reductions. See CH&SC section 42301.18(c).

It is worth noting that EPA and California interpret CH&SC section 42301.16(a) to require all sources that emit or have the potential to emit at or above the major source threshold to be subject to new source permitting and offset requirements, as required by the Clean Air Act, without regard to

California notified EPA of the legislature’s action by letter dated November 3, 2003 thereby avoiding the triggering of a sanctions clock. California enclosed a copy of SB 700 with the November 3, 2003 letter.<sup>8</sup>

On May 17, 2004, EPA took final action approving the District’s permitting rules, Rules 2020 and 2201, as proposed in February 2003. See 69 FR 27837 (May 17, 2004). These rules, as approved by EPA, did not on their face exempt any agricultural sources from permitting or limit the applicability of offset requirements. EPA’s final approval stated that the District had removed its exemption for agricultural sources and that the state had also “removed a similar blanket exemption, thereby providing the District with authority to require air permits for agricultural sources, including Federally required NSR permits.” See 69 FR 27837, at 27838. EPA’s final approval cited SB 700 in a footnote, but did not note the limited scope of authority for permitting and offset requirements under SB 700, which allowed permitting of only certain minor agricultural sources.

### *C. Correction of Erroneous Final Approval*

In this instance, we believe that our May 2004 final full approval of District Rules 2020 and 2201 was erroneous. For all SIP revisions, States must provide evidence that the State has the necessary legal authority under State law to adopt and implement the plan. See CAA section 110(a)(2)(E); 40 CFR part 51, appendix V, section 2.1(c). Thus, to support the approval CARB was required in December 2002 to provide evidence that the District had the necessary legal authority under State law to implement Rules 2020 and 2201, which purported to require permits and offsets for all agricultural sources. CARB could not have done so because CH&SC section 42310(e), applicable at that time, continued to preclude such authority under State law with respect to all agricultural sources.

Nonetheless, we proposed to fully approve Rules 2020 and 2201 on February 13, 2003, with the expectation that the California legislature would act to remove CH&SC section 42310(e)’s exemption for agricultural sources

the provisions of sections 42301.16(c) or 42301.18(c). Thus, an agricultural source with actual emissions less than 50 percent of the major source threshold but potential emissions above the major source threshold is subject to new source permitting and offset requirements.

<sup>8</sup> See Letter from Bill Lockyer, Attorney General, California Office of the Attorney General, to Marianne Horinko, Acting Administrator, EPA, dated November 3, 2003.

<sup>2</sup> Rules 2020 and 2201 were adopted by the District to meet NSR requirements under the Clean Air Act, as amended in 1990, for areas that have not attained the National Ambient Air Quality Standards (NAAQS). District Rules 2020 and 2201 replaced existing NSR rules from the individual county air pollution control districts that were combined into the San Joaquin Valley Unified Air Pollution Control District (“District”) in 1991.

<sup>3</sup> For more information on the status of the state law exclusion from permitting for agricultural sources in the California SIP, please see the related proposed rule published in today’s **Federal Register**.

<sup>4</sup> District NSR permitting rules do not adopt the distinction between minor sources and major sources as set forth under the CAA. District Rules 2020 and 2201 generally apply to both Federal minor and major stationary sources. Our limited approval and limited disapproval specified that the rule deficiency was exempting major agricultural sources and major modifications. See 65 FR 58252, at 58254 (September 28, 2000).

<sup>5</sup> EPA also published an Interim Final Determination that SJVUAPCD had corrected the July 2001 limited approval deficiencies and EPA stayed or deferred the imposition of CAA sanctions on the District. See 68 FR 7321.

thereby aligning Rule 2020 with District authority under State law. 68 FR 7330 (Feb. 13, 2003). While the legislature did act shortly thereafter to remove the exemption for major agricultural sources and major modifications at existing major agricultural sources, the legislature also retained the exemption from permitting for certain minor agricultural sources, leaving the words of Rule 2020 broader than the District's authority under State law. The legislature also exempted minor agricultural sources from obtaining offsets pending a determination that emissions reductions from such sources meet certain criteria, leaving Rule 2201, on its face, also at odds with State law.

As noted above, on May 17, 2004, EPA took final action to approve District Rules 2020 and 2201, as proposed in February 2003. See 69 FR 27837 (May 17, 2004). We now understand that our final approval action on Rules 2020 and 2201 should have ensured that the authority in those rules was consistent with the authority granted by SB 700. At that time, since the District had made no findings to broaden (above 50 percent of the major source threshold) or narrow the permitting exemption (below 50 percent of the major source threshold), as allowed under SB 700 and now codified in CH&SC sections 42301.16(b) and (c), the permitting exemption provided by State law applied to minor agricultural sources with actual emissions less than 50 percent of the major source threshold. Thus, we should have limited our approval of Rule 2020 to exclude applicability to agricultural sources exempt from new source permitting under SB 700 (i.e., minor sources with actual emissions less than 50 percent of the major source threshold). Our approval of Rule 2201 should have been limited to provisions requiring offsets for major agricultural sources, because at the time, the District had not found emissions reductions from agricultural sources to meet the

criteria for real, permanent, quantifiable, and enforceable emissions reductions and thus did not invoke the authority otherwise provided in SB 700 (and codified in CH&SC section 42301.18(c)) to impose an offset requirement on new or modified minor agricultural sources. Given that California submitted a copy of SB 700 in November 2003, we had information indicating that the District did not have the authority to implement Rules 2020 and 2201 to the extent that the language of the rule appeared to allow (i.e., to require permits and offsets from all new or modified agricultural sources, including those exempt under SB 700) prior to the time we took final action. We should have limited our approval of Rules 2020 and 2201 to conform with SB 700, and promulgated language in 40 CFR part 52 codifying that limitation on our approval.

We note that recent enforcement actions have been brought pursuant to the CAA's citizen suit provisions against minor agricultural sources in the District that have emissions less than 50 percent of the major source threshold for failure to apply for and receive a new or modified source permit. The District, however, does not have the authority under State law to issue such permits. The fact that such cases are being brought persuasively supports the need to correct our error in approving Rules 2020 and 2201 in 2004.

Therefore, pursuant to CAA section 110(k)(6), we are proposing to correct our error by limiting our approval of Rules 2020 and 2201 to apply only to the extent the District has authority under state law to require permits and offsets. Specifically, with respect to agricultural sources, we are approving Rule 2020 only to the extent it applies to agricultural sources subject to permitting under SB 700. Also and again with respect to agricultural sources, we are approving Rule 2201 only to the extent it requires offsets for new major sources and major

modifications until certain criteria set forth in state law are met. To codify this proposed error correction, we are proposing the following language to be added as a new section, 52.245, of 40 CFR part 52, subpart F ("California"):

52.245 New Source Review Rules

(a) Approval of the New Source Review rules for the San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201 as approved May 17, 2004, is limited, as it relates to agricultural sources, to apply the permit requirement only (1) to agricultural sources with potential emissions at or above a major source applicability threshold and (2) to agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold. The offset requirement, as it relates to agricultural sources, does not apply to new minor agricultural sources and minor modifications to agricultural sources.

In section IV of this document, we are proposing a limited approval/limited disapproval on subsequent submittals of District Rules 2020 and 2201 that carry forward the agricultural-source-related provisions for which we proposed action in February 2008, but that reflect subsequent additional changes made by the District to the rules. If we finalize this action, as proposed, we intend to codify the above language to clarify the status of affected sources that were constructed or were modified during the period extending from the effective date of our February 2004 final rule (i.e., June 16, 2004) through the effective date of our action on revised District Rules 2020 and 2201 as described in section IV of this document.

**III. The State's Submittals of Revised District Rules**

*A. What rules did the State submit?*

Table 1 lists the rules on which we are proposing action in this document with the dates that they were revised by the District and submitted to EPA by CARB.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD .....	2020	Exemptions .....	12/20/07	03/07/08
SJVUAPCD .....	2201	New and Modified Stationary Source Review Rule .....	12/18/08	03/17/09
SJVUAPCD .....	2530	Federally Enforceable Potential to Emit .....	12/18/08	03/17/09

On April 17, 2008, we found that the submittal of District Rule 2020 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review. On April 20, 2009, we found the submittal of District Rules 2201 and 2530 to be complete.

*B. Are there other versions of these rules?*

As discussed above, we approved a version of Rule 2020 into the SIP on May 17, 2004 (69 FR 27837). On December 29, 2006, CARB submitted an amended version of District Rule 2020.

On December 20, 2007, the District adopted further amendments to Rule 2020, and CARB submitted the further amended rule to us on March 7, 2008. The revision to District Rule 2020 that CARB submitted on December 29, 2006 was carried forward with the version

that was submitted on March 7, 2008 and for which we propose action today.

We also approved a version of Rule 2201 into the SIP on May 17, 2004 (69 FR 27837). Since our May 2004 approval of Rule 2201 into the SIP, the District has amended the rule on four occasions. One of those amendments added paragraph 4.6.9 to the rule. On December 29, 2006, CARB submitted only paragraph 4.6.9 from District Rule 2201 to EPA. On December 18, 2008, the District adopted the latest amendments to Rule 2201. On March 17, 2009, CARB submitted this latest version of District Rule 2201 to us. This latest version of District Rule 2020 that CARB submitted on March 17, 2009 carries forward with it all of the changes, including new paragraph 4.6.9, that the District has made in the rule since our May 2004 approval.

Prior to our 2004 approval of Rules 2020 and 2201, the SJVUAPCD portion of the California SIP included a broad exemption from permitting for all agricultural sources, citing CH&SC section 42310(e). See section 4.0 of District Rule 2020, as amended on September 17, 1998, submitted on October 27, 1998, and approved on July 19, 2001 at 66 FR 37587.

Lastly, we approved a version of Rule 2530 into the SIP on April 26, 1996 (61 FR 18500). Since EPA's 1996 approval of Rule 2530 into the SIP, the District has amended Rule 2530 twice, once on April 25, 2002 and then again on December 18, 2008. On March 17, 2009, CARB submitted this latest version of District Rule 2530 to us, and it includes all amendments to the rule by the District to date.

### *C. What are the purposes for revisions to these rules?*

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. Permitting rules were developed as part of the local air district's programs to control these pollutants.

The purpose of District Rule 2020 ("Exemptions") is to specify emission units that are not required to obtain an Authority to Construct or Permit to Operate. Rule 2020 also specifies the recordkeeping requirements to verify such exemptions and outlines the compliance schedule for emission units that lose the exemption.

Relative to the version of Rule 2020 that is approved into the SIP, the changes would revise and clarify certain exemptions and conform the rule to existing state law by explicitly

exempting certain agricultural sources from permitting requirements. Specifically, the changes in District Rule 2020 would:

- Revise the existing exemption for steam generators, steam superheaters, water boilers, water heaters, steam cleaners, and closed indirect heat transfer systems that have a maximum input heat rating of five million Btu per hour or less and that are fired exclusively on natural gas or liquefied petroleum gas (LPG) (see paragraph 6.1.1 of the submitted rule). The existing exemption is limited to the types of equipment described above but also establishes the following specifications for both natural gas and LPG combusted by the equipment: "provided the fuel contains no more than five percent by weight hydrocarbons \* \* \* and no more than 0.75 grains of total sulfur per 100 standard cubic feet of gas \* \* \*." The revised exemption would establish separate specifications for natural gas and for LPG. The hydrocarbon content limit would remain five percent for natural gas but would drop to two percent for LPG. The sulfur content limit would increase from 0.75 grains, to 1.0 grain for natural gas, and to 15 grains (per 100 standard cubic feet of gas). The revised exemption would require use of the latest versions of the relevant ASTM test methods.

- Clarify and tighten the existing exemption for certain types of transfer equipment, such as loading and unloading racks, and equipment used exclusively for the transfer of refined lubricating oil (see paragraph 6.7 of the submitted rule). Specifically, with respect to crude oil, the existing exemption establishes a limiting specification in terms of specific gravity, and the revised exemption would add a second limiting specification in terms of True Vapor Pressure (TVP) and would establish certain test methods for determining the TVP of crude oil; and

- Conform District permit requirements to State law by explicitly exempting agricultural sources to the extent such sources are exempt pursuant to CH&SC section 42301.16 (see paragraph 6.20 of the submitted rule). Section 42301.16(a) requires local air permitting authorities to require permits for agricultural sources subject to the requirements of title I or title V of the Federal Clean Air Act. Section 42301.16(b) similarly requires permits for all agricultural sources unless specified findings are made at a public hearing or except as provided in section 42301.16(c). Section 42301.16(c) requires the District to make specified findings at a public hearing prior to requiring permits for agricultural

sources with emissions that are less than one-half of any major source threshold. The net effect of this section is that all agricultural sources with actual emissions or a potential to emit at or above a major source applicability threshold are required to obtain a District permit pursuant to CH&SC section 42301.16(a). Agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold are required to obtain a District permit, unless the District makes the findings specified by subsection (b). No permits are required for agricultural sources with actual emissions of less than 50 percent of any major source applicability thresholds, unless the District makes the findings specified in subsection (c), subject to the limitation in CH&SC section 42301(a).

The purpose of District Rule 2201 ("New and Modified Stationary Source Review Rule") is to provide for the review of new and modified stationary sources of air pollution and to provide mechanisms including emission trade-offs by which Authorities to Construct such sources may be granted, without interfering with the attainment or maintenance of ambient air quality standards. District Rule 2201 is also intended to provide for no net increase in emissions above specified thresholds from new and modified stationary sources of all nonattainment pollutants and their precursors.

Key features of District Rule 2201 include:

- Best Available Control Technology (BACT)<sup>9</sup>: Mandates emission controls to minimize emission increases above de minimis values.

- Emission offsets: Requires emissions above specified offset threshold levels to be mitigated with either concurrent reductions or past reductions which have been banked as emission reduction credits (ERCs).

- Public notification: A 30- or 45-day notice period prior to issuance of an Authority to Construct (ATC) to accept comments on projects that result in emissions above specified levels.

- Required elements for Authority to Construct, Permit to Operate and administrative requirements for processing NSR applications.

As submitted on March 17, 2009, District Rule 2201 incorporates three major changes relative to the version of Rule 2201 that is approved into the SIP. First, amended District Rule 2201 would replace the term, "Major Modification,"

<sup>9</sup> While the District uses the term BACT as the level of control required, a review of the definition has shown that it is equivalent to the requirements for Federal LAER.

with two terms, “Federal major modification” and “SB 288 major modification.” (See paragraphs 3.17 and 3.34 of the amended rule.) The former term incorporates EPA’s NSR reform principles, and the latter term retains the pre-NSR reform approach to determining whether a modification is a major modification. Second, amended District Rule 2201 would incorporate the lower “major source” and “Federal major modification” emissions thresholds, and higher offset ratios, for the ozone precursors, VOC and NO<sub>x</sub>, consistent with an “extreme” ozone classification. (See paragraphs 3.17, 3.23, and 3.34 of the amended rule). Lastly, changes to District Rule 2201 would conform the rule to existing state law by exempting new or modified agricultural sources from offset requirements, unless the offsets are required by Federal CAA requirements. (See paragraph 4.6.9 of the amended rule.)

Other changes in amended Rule 2201 would:

- Tighten one of the conditions that qualify a replacement of “any article, machine, equipment, or other contrivance” as a “Routine Replacement;” the existing rule requires that such a replacement, among other conditions, not result in an increase in permitting emissions from the “stationary source,” whereas, the modified definition of the term “routine replacement” requires no such increase from the “replacement unit(s) (see paragraph 3.33.1 of the amended rule);

- Expressly extend the existing emission offset exemption for portable equipment to equipment registered in accordance with the provisions of District Rule 2250 (Permit-Exempt Equipment Registration) (see paragraph 4.6.3 of the amended rule). The existing exemption covers portable equipment registered under District Rule 2280 (Portable Equipment Registration) or under the Statewide Portable Equipment Registration Program. Existing District Rule 2020 provides a permitting exemption for portable emissions units covered by a valid registration under the above registration programs “or other equipment registration program approved by the APCO.” District Rule 2250 is such a program, and thus, portable equipment registered under District Rule 2250 are exempt, not just from the emission offset requirement, but also from the requirement for a permit. However, the District expressly

added a reference to equipment registered under District Rule 2250 in the emission offset exemption portion of Rule 2201 to provide consistency with similar exemptions for portable equipment and to avoid confusion; and

- Provide for a lower offset ratio (from 1.5 to 1.2) in the event EPA approves a demonstration that all existing major sources of VOC and NO<sub>x</sub> in the San Joaquin Valley are equipped with BACT as defined in CAA section 169(3) (see paragraph 4.8.2 of the amended rule). This change amends the SIP to add the lower offset ratio provision contained in CAA section 182(e)(1). The lower offset ratio referred to in paragraph 4.8.2 has no current effect, because the required demonstration has not been submitted to EPA. Moreover, EPA would be reviewing any such demonstration, most likely as a SIP revision, and that review would include a review for compliance with the relevant statutory provision in CAA section 182(e)(1).

Unlike District Rules 2020 and 2201, District Rule 2530 (“Federally Enforceable Potential to Emit”) is not an NSR rule, but is a rule that relies on thresholds based on certain percentages of the major source thresholds established for NSR purposes as a basis to exempt sources from the requirements of Rule 2520 (“Federally Mandated Operating Permits”). Relative to the corresponding rule in the existing SIP, the amended rule would lower the thresholds below which sources of VOC or NO<sub>x</sub> are exempt from the requirements of Rule 2520 (see paragraph 6.1 of the amended rule), would lower the thresholds below which sources are exempt from certain recordkeeping and reporting requirements under Rule 2530 (see paragraph 5.4.1.2 of the amended rule); and would lower certain alternative operational limits (see, e.g., paragraph 6.2.4 of the amended rule).

#### **IV. EPA’s Evaluation and Action on the Rule Revisions**

##### *A. How is EPA evaluating the rules?*

The rules that are the subject of this proposed action amend rules that EPA has previously approved as meeting the statutory and regulatory requirements for SIPs regarding minor NSR, major nonattainment NSR, and enforceability of permit conditions. Therefore, we have focused our review on the changes in the rules relative to the versions of

the rules in the existing SIP to ensure the amended rules continue to meet the applicable requirements, taking into account that, in some instances, such as the “major source” threshold requirement, the applicable requirements have changed since we last acted on these rules.

The relevant statutory provisions for our review of the submitted rules include CAA section 110(a), section 110(l), and section 182(e) and (f). Section 110(a) requires that SIP rules be enforceable, while section 110(l) precludes EPA approval of SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Section 182(e) (together with section 182(f) for NO<sub>x</sub>), requires NSR SIPs in “extreme” nonattainment areas to define “major sources” in terms of 10 tons per year of VOC or NO<sub>x</sub>, to lower the threshold for “major modifications” to zero, and to increase the offset ratio to 1.5 to 1. In addition, we have reviewed the submitted rules for compliance with EPA implementing regulations for NSR, including 40 CFR 51.160 through 40 CFR 51.165.

##### *B. Do the rules meet the evaluation criteria?*

###### **1. Regulatory Context**

Other than rule clarifications and other minor revisions, the changes to the District’s rules that are the subject of this action fall into four broad categories: Changes affecting minor source NSR permitting requirements; changes relating to the area’s extreme classification for the 1-hour ozone standard; changes relating to NSR Reform; and changes affecting the mechanism used by sources to avoid title V requirements.

First, however, to provide the proper context for evaluating the submitted changes in the District’s rules, it is important to consider the designations and plan status for the valley with respect to the relevant national ambient air quality standards. Area designations for California are set forth in 40 CFR 81.305 and shown in table 2, below. As shown in table 2, the San Joaquin Valley Air Basin is designated “nonattainment” for the 1997 8-hour ozone standard. With respect to particulate matter, the valley is designated “attainment” for PM<sub>10</sub> and “nonattainment” for PM<sub>2.5</sub>.

TABLE 2—SAN JOAQUIN VALLEY AREA DESIGNATIONS

Pollutant	Designation	Classification
(Revoked) Ozone—1-hour standard .....	Nonattainment .....	Extreme (at the time of designation for the 1997 8-hour ozone standard).
Ozone—1997 8-hour standard .....	Nonattainment .....	Serious. <sup>a</sup>
Respirable Particulate Matter (PM <sub>10</sub> ) .....	Attainment .....	Not Applicable.
Fine Particulate Matter (PM <sub>2.5</sub> ) .....	Nonattainment .....	Not Applicable.
Carbon Monoxide .....	Attainment (4 urban areas); Unclassifiable/Attainment (rest of valley).	Not Applicable.
Nitrogen Dioxide .....	Unclassifiable/Attainment .....	Not Applicable.
Sulfur Dioxide .....	Unclassifiable/Attainment .....	Not Applicable.

<sup>a</sup> The State of California has requested reclassification of the San Joaquin Valley to “extreme” for the 1997 8-hour ozone standard. See 74 FR 43654 (August 27, 2009).

As to ozone, the valley is classified as a “serious” ozone nonattainment area for the 1997 8-hour ozone standard, but the State of California has requested reclassification of the area to “extreme.” See 74 FR 43654 (August 27, 2009). The designation of an area as “nonattainment” triggers certain SIP planning requirements, and on November 16, 2007, the State of California responded to those requirements by submitting the San Joaquin Valley 2008 Ozone Plan to EPA as a revision to the California SIP. EPA has not yet acted on the plan. Significantly, because, as a general matter, the SIP requirements that applied by virtue of an area’s classification for the now-revoked 1-hour ozone standard continue to apply to an 8-hour ozone nonattainment area, we note that the San Joaquin Valley was designated as an “extreme” nonattainment area for the 1-hour ozone standard at the time of designation for the 8-hour ozone standard. Recently, EPA approved the San Joaquin Valley 2004 Ozone Plan, which had been developed to address the SIP requirements for “extreme” areas for the 1-hour ozone standard.

As to PM<sub>10</sub>, in 2008, EPA approved a redesignation request for the area from “nonattainment” to “attainment” for the PM<sub>10</sub> standard and also approved the San Joaquin Valley 2007 PM<sub>10</sub> Maintenance Plan as a revision to the California SIP. See 73 FR 66759 (November 12, 2008).

As to PM<sub>2.5</sub>, in 2005, EPA designated the valley “nonattainment” for the 1997 PM<sub>2.5</sub> standards. In response, on June 30, 2008, the State of California submitted the San Joaquin Valley 2008 PM<sub>2.5</sub> Plan as a revision to the California SIP. EPA has not yet taken action on the plan. More recently, EPA designated the valley as nonattainment for the more stringent 24-hour PM<sub>2.5</sub> standard promulgated by EPA in 2006. See 74 FR 58688 (November 13, 2009)(Air Quality

Designations for the 2006 PM<sub>2.5</sub> NAAQS).

With respect to carbon monoxide, the valley, outside of four urban areas, is designated as “unclassifiable/attainment.” Bakersfield, Fresno, Modesto, and Stockton, the four urban areas where violations of the carbon monoxide standard had been monitored during the 1970s and 1980s, were redesignated from “nonattainment” to “attainment” in 1998. Lastly, the valley is designated as unclassifiable or attainment for the nitrogen dioxide and sulfur dioxide standards.

## 2. Minor Source NSR Permitting Requirements

### a. General Considerations

The amended rules would affect minor source NSR (“minor NSR”) by revising an existing permitting exemption for certain natural-gas- or LPG-fired combustion and heat transfer systems (see paragraph 6.1 in submitted District Rule 2020), by exempting minor agricultural sources with emissions less than 50 percent of the major source threshold (see paragraph 6.20 in submitted District Rule 2020) from permitting, and by exempting all new or modified minor agricultural sources from the offset requirement (see paragraph 4.6.9 of submitted District Rule 2201).

The requirements in 40 CFR 51.160 (“Legally enforceable procedures”), subsections (a) and (e) provide the basis for evaluating exemptions from NSR permitting. The basic purpose of NSR permitting is set forth in 40 CFR 51.160(a). Section 51.160(a) requires NSR SIPs to set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a stationary source would result in a violation of applicable portions of the control strategy; or would result in interference with attainment or maintenance of a national standard in the State in which the proposed source

or modification is located or in a neighboring state. Section 51.160(e) provides that the procedures must identify types and sizes of stationary sources, which will be subject to review. We view this provision as allowing a State to exempt certain types and sizes of stationary sources so long as the program continues to serve the purposes outlined in 40 CFR 51.160(a). Thus, the revised exemption for certain natural gas or LPG-fired boilers, and the exemption from permitting for non-major agricultural sources whose actual emissions (excluding fugitive dust) are less than 50 percent of the major source thresholds are approvable so long as the minor source permitting program (i.e., including the exemption) continues to provide the necessary information to allow the District to determine whether new or modified stationary sources would result in a violation of applicable portions of the control strategy or would result in interference with attainment or maintenance of a national standard. In other words, exemptions are approvable if it can be shown that it is not necessary to review exempt sources in order to meet the purposes of 40 CFR 51.160(a).

Under 40 CFR 51.160, the District has discretion in conducting its minor source permitting program to exempt certain small sources and, under Federal law, minor sources are not required to obtain offsets. Congress directed the States to exercise the primary responsibility under the CAA to tailor air quality control measures, including minor source permitting programs, to the State’s needs. See *Train v. NRDC*, 421 U.S. 60, 79 (1975) (States make the primary decisions over how to achieve CAA requirements); *Union Electric Co. v. EPA*, 427 U.S. 246 (1976); *Greenbaum v. EPA*, 370 F.3d 527 (6th Cir. 2006).

### b. Analysis

With respect to certain smaller combustion and heat transfer systems (steam generators, water boilers, etc.), amended Rule 2020 revises the existing permitting exemption in paragraph 6.1.1



of the rule by providing separate fuel specifications for natural gas and LPG for those types of equipment eligible for the exemption. The hydrocarbon specification would remain unchanged for natural gas but would be tightened for LPG from five percent to two percent (by weight). With respect to sulfur content, the fuel specification would be relaxed from 0.75 grains (of total sulfur per 100 standard cubic feet of gas) to 1.0 grain (for natural gas) and 15 grains (for LPG). Theoretically, the effect of this change would be that certain combustion and heat transfer systems, that otherwise would be covered by the permit requirement, would avoid NSR, and would not be subject to the applicable controls, such as BACT and offsets, thereby resulting in emissions increases that may or may not be accounted for in regional plans intended to attain or maintain the national standards.

In response to a query from EPA concerning potential emissions impacts in the relaxation of the sulfur content specifications, the District explained how, notwithstanding the permitting exemption, certain prohibitory rules, such as Rule 4308 (Boilers, Steam Generators, and Process Heaters 0.075 to 2 MMBtu/hr) and Rule 4307 (Boilers, Steam Generators, and Process Heaters 2 to 5 MMBtu/hr) would still apply. See the District's November 13, 2009 memorandum, which we have placed in the docket for this rulemaking. Moreover, the District explained how, even if the BACT requirement were triggered by a source that otherwise would be exempt due to the relaxed sulfur content specification, BACT for emissions of sulfur oxides has historically been the use of LPG or natural gas, which is already a precondition for application of the exemption in the first place.<sup>10</sup> We find the District's explanation sufficient to find that the relaxed sulfur content specification in amended Rule 2020, paragraph 6.1, would have no significant impact on emissions in the valley.

In evaluating the limited permitting exemption for agricultural sources for consistency with 40 CFR 51.160(a), EPA is taking into account the specific pollutants emitted from agricultural operations, relevant non-permitting requirements, and regional air quality plans. First, California law defines "agricultural source" as a source of air pollution or group of sources used in the production of crops or the raising of

fowl or animals located on contiguous property under common ownership or control that is a confined animal facility (e.g., barn, corral, coop); is an internal combustion engine used in the production of crops or the raising of fowl or animals (e.g., irrigation pumps, but excluding nonroad vehicles such as tractors); or is a title V source or is a source that is otherwise subject to regulation by a district or the Federal Clean Air Act. See CH&SC section 39011.5. As such, agricultural sources include both combustion sources (such as, internal combustion engines and boilers) and non-combustion sources [e.g., confined animal facilities and on- and off-field vehicular activity (e.g., tilling and harvesting)]. Among the non-combustion agricultural sources, some by their nature generate fugitive emissions such as tilling, harvesting, and vehicle travel over unpaved farm roads.

Agricultural sources, as described above, emit volatile organic compounds (VOC), oxides of nitrogen (NO<sub>x</sub>), particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), and carbon monoxide. As precursors for ozone, PM<sub>10</sub> and PM<sub>2.5</sub>, emissions of NO<sub>x</sub> and VOC from agricultural sources are not a local concern but are logically evaluated from the standpoint of regional air quality planning efforts. Direct PM<sub>10</sub> and PM<sub>2.5</sub> are both of local and regional concern and thus our evaluation must consider both the potential for local exceedances of the standard due to the exemption, and for inconsistency with regional control strategies for these pollutants. Carbon monoxide is typically a pollutant of localized concern, and emissions of carbon monoxide from exempt agricultural sources would not be significant given the rural location of agricultural sites, which are well away from the urban centers and high traffic densities historically associated with high ambient concentrations of carbon monoxide in the valley, and the long record of attainment of the carbon monoxide standard even within the urban centers of the valley. A pollutant-specific evaluation of the exemption for particulate matter and ozone is provided in the following paragraphs.

**Particulate Matter.** With respect to PM<sub>10</sub> and PM<sub>2.5</sub>, paragraph 6.20 of amended Rule 2020 would exempt agricultural operations with emissions up to 50 tons per year (assuming that 100 tons per year is the current applicable major source threshold based on the valley's current area designations for PM<sub>10</sub> and PM<sub>2.5</sub>). This threshold value, however, excludes fugitive dust, and thus, the permitting exemption would extend to agricultural sources

with overall actual emissions of PM<sub>10</sub> and PM<sub>2.5</sub> greater than 50 tons per year. Without application of some types of control measures, we would have no basis to categorically conclude that such sources would under no reasonably foreseeable circumstances cause or contribute to an exceedance of the PM<sub>10</sub> or PM<sub>2.5</sub> standard.

However, because the District has adopted other rules that serve to control the fugitive dust emissions from agricultural sources, including those that would not require a permit due to the exemption in amended District Rule 2020, paragraph 6.20, we believe the exemption can be approved consistent with 40 CFR 51.160(a) and (e). Specifically, District Rule 4550 ("Conservation Management Practices") and the District's Regulation VIII ("Fugitive PM<sub>10</sub> Prohibitions", particularly, Rules 8011 and 8081) act as non-permitting means to reduce fugitive dust emissions at agricultural sources that fall under the exemption and reduce the potential for localized exceedances of the PM<sub>10</sub> and PM<sub>2.5</sub> standards. As explained further below, as a general matter, District Rule 4550 covers on-field agricultural operations and is implemented through an application and District approval process, whereas District Rules 8011 and 8081 cover off-field agricultural operations and are implemented as prohibitory rules.

District Rule 4550 ("Conservation Management Practices") applies to agricultural operation sites located within the San Joaquin Valley Air Basin and is intended to limit fugitive dust emissions from such sites. EPA approved Rule 4550 and associated List of Conservation Management Practices (CMP List) into the California SIP in 2006. See 71 FR 7683 (February 14, 2006). Under the rule, an owner/operator must implement the applicable CMPs selected pursuant to section 6.2 (one CMP from the CMP list for each of the applicable CMP categories for each agricultural parcel of an agricultural operation site). An owner/operator must prepare and submit a CMP Application for each agricultural operation site to the APCO for approval. A CMP Application approved by the APCO constitutes a CMP Plan, and owner/operators must implement the CMPs as contained in the CMP Plan.

Exemptions in District Rule 4550 include agricultural operation sites where the total acreage of all agricultural parcels is less than 100 acres and exempts Animal Feeding Operations (AFOs) involving less than a certain number of animals: Less than 500 mature dairy cows, less than 190

<sup>10</sup> If, in the future, use of natural gas or LPG no longer represents BACT for sulfur emissions, then this exemption may need to be re-evaluated.



cattle, less than 55,000 turkeys, less than 125,000 chickens (other than laying hens), or less than 82,000 laying hens. The District's staff report on Rule 4550 (dated August 19, 2004) concludes that Rule 4550 (with its 100-acre exemption level) will apply to approximately 91 percent of all irrigated farmland in the SJV. The District also estimated emissions from 100-acre farms to determine the emission impact of an exemption. District staff analyzed different commodities and determined that PM<sub>10</sub> emissions would be quite low for smaller farms, less than 1 ton per year. See 71 FR 7683, at 7685 (February 14, 2006). The District also calculated the emissions impact of the size-based exemptions for animal feeding operations. Rule 4550 is expected to apply to 73% of dairy cows, 94% of feedlot cattle, and nearly all poultry operations in the valley. The District also determined that any sites qualifying for the size-based cut-offs would have emissions no greater than 1 ton per year. See 71 FR 7683, at 7685 (February 14, 2006). Such small farms would not be expected to cause or contribute to localized exceedances of the PM<sub>10</sub> or PM<sub>2.5</sub> standard.

The District's Regulation VIII ("Fugitive PM<sub>10</sub> Prohibitions") is intended to reduce ambient concentrations of PM<sub>10</sub> by requiring actions to prevent, reduce or mitigate anthropogenic fugitive dust emissions from specified outdoor fugitive dust sources. Rule 8011 establishes generally applicable definitions, exemptions, requirements, administrative requirements, recordkeeping requirements, and test methods under Regulation VIII. Rule 8081 ("Agricultural Sources") establishes specific requirements for off-field agricultural sources. EPA approved Regulation VIII, including Rules 8011 and 8081, into the California SIP in 2003 (68 FR 8830, February 26, 2003) and approved Regulation VIII amendments into the California SIP in 2006 (71 FR 8461, February 17, 2006).

District Rule 8081 applies to off-field agricultural sources, which includes any agricultural source that meets the definition of: Outdoor handling, storage and transport of bulk material; paved road; unpaved road; or unpaved vehicle/equipment traffic area. Under Rule 8081, an owner/operator must sufficiently implement at least one of the control measures indicated in the rule to limit visible dust emissions (VDE) to 20% opacity or to stabilize the affected surface consistent with the requirements in Rule 8011. Together, implementation of the fugitive dust control measures required under District

Rule 4550 and Rules 8011 and 8081 provide EPA with a reasonable basis to conclude that agricultural operations that escape permitting under paragraph 6.20 of amended District Rule 2020 would not cause or contribute to an exceedance of the PM<sub>10</sub> or PM<sub>2.5</sub> standard.

With respect to the regional planning context, we have reviewed the various approved and submitted San Joaquin Valley attainment or maintenance plans cited above, and note that none of these plans rely upon NSR for agricultural sources less than 50 percent of the major source threshold. Further, for attainment planning purposes, growth in emissions from agricultural sources has been established by CARB's area source inventory growth methodologies, and no mitigation of that growth from an offsets requirement has been considered when determining the impact of the growth on the District's ability to achieve attainment with the standards.<sup>11</sup> In contrast, emissions reductions from the prohibitory rules affecting agricultural sources, discussed above, are taken into account in the plan inventory projections. Because the plans do not rely on emission reductions from permitting of agricultural sources less than 50% of the major source threshold and not rely on offsets for new or modified minor agricultural sources, approval of the amended Rules 2020 and 2201 would be consistent with regional planning efforts to attain and maintain the NAAQS.

**Ozone.** With respect to ozone precursors (VOC AND NO<sub>x</sub>), paragraph 6.20 of amended District Rule 2020 would exempt agricultural operations with "actual" emissions (i.e., including fugitive emissions)<sup>12</sup> of less than 5 tons

<sup>11</sup> Also see the District's Clean Air Act section 110(l) analysis, entitled "San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201, as amended September 21, 2006, District's Clean Air Act 110(l) Analysis," dated November 20, 2007.

<sup>12</sup> The District's view on the whether CH&SC section 42301.16 (and cited in District Rule 2020, section 6.20) covers fugitive VOC emissions is found in the District's Final Staff Report (page B-13, response to comment #19) on proposed amendments to Rule 2201 and Rule 2530 (dated December 18, 2008): "The District appreciates the opportunity to reiterate that, for the purposes of implementing CH&SC sections 40724.6(c) and 42301.16(c), all emissions, except for fugitive dust, must be included in calculations to determine district permitting requirements based on one-half of the major source thresholds. The statutory language of these sections is consistent, which read separately or in the interrelated nature in which they were intended to be read, and [sic] District's implementation adheres to this statutory language." Thus, fugitive VOC emissions are included in the determination of whether actual emissions from a minor agricultural operation are greater than 50% of the applicable major source threshold which, for VOC, is 10 tons per year, or, in other words, greater than 5 tons per year.

per year based on an applicable major source threshold of 10 tons per year. As such, the scope of the exemption therefore is limited to small-scale agricultural operations and is acceptable so long as the ozone plans for the valley do not count on permitting of such sources. As noted above, the regional plans do not rely on emission reductions from permitting of agricultural sources less than 50% of the major source threshold nor do the plans rely on offsets for new or modified minor agricultural sources.<sup>13</sup>

### 3. "Extreme" Ozone Area NSR Requirements

The most recent version of the District's NSR rules that EPA has approved into the SIP was adopted by the District on December 19, 2002. Since that time, with respect to major sources and major modifications, there have been two significant regulatory changes affecting the NSR rules in San Joaquin Valley: (1) EPA's approval of the State of California's request to reclassify the San Joaquin Valley to "extreme" for the 1-hour ozone standard, and (2) EPA's promulgation of NSR Reform Rules.

EPA approved the State of California's request to reclassify the San Joaquin Valley to "extreme" for the 1-hour ozone standard in 2004. See 69 FR 20550 (April 16, 2004). In doing so, EPA established a deadline of May 16, 2005 for submittal of revised District NSR rules that reflect the requirements for "extreme" ozone nonattainment areas. For such areas, the relevant NSR requirements include a major source threshold of 10 tons per year of VOC or NO<sub>x</sub> [see CAA section 182(e) and 182(f) and 51.165(a)(1)(iv)], the offset ratio is 1.5 to 1 [see CAA section 182(e)(1) and 40 CFR 51.165(a)(9)], and any change at a major stationary source which results in any increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source

<sup>13</sup> Like fugitive dust and District Rules 4550, 8011, and 8081, emissions of NO<sub>x</sub> from certain types of equipment found at agricultural sources, such as boilers and internal combustion engines, are covered by District prohibitory rules regardless of whether a given agricultural source is subject to permitting. Two such rules include District Rules 4308 and 4702. SIP-approved District Rule 4308 ("Boilers, Steam Generators, and Process Heaters") limit NO<sub>x</sub> emissions from boilers between 75,000 Btu/hour and 2 million Btu/hour. See 72 FR 29886 (May 30, 2007). SIP-approved District Rule 4702 ("Internal Combustion Engines—Phase 2") limits NO<sub>x</sub>, VOC, and carbon monoxide from internal combustion engines with rated brake horsepower greater than 50 horsepower. See 73 FR 1819 (January 10, 2008). Such prohibitory rules further reduce the chance that agricultural sources that would be exempt from permitting under District Rule 2020, paragraph 4.6.9, might interfere with attainment or maintenance of the national standards.

is considered a major modification [see CAA section 182(e)(2) and 40 CFR 51.165(a)(1)(x)(E)]. These NSR SIP requirements will also apply once we approve the State of California's request to reclassify San Joaquin Valley to "extreme" for the 8-hour ozone standard.

As submitted on March 17, 2009, the VOC and NO<sub>x</sub> provisions in District Rule 2201 have been amended to include the 10 ton per year threshold (see section 3.23 of amended Rule 2201), the 1.5 to 1 offset ratio (see section 4.8.1 of amended Rule 2201), and the "any increase" threshold for major modifications (see 3.17.1.4 of amended Rule 2201). As such, District Rule 2201 has adequately been amended to reflect "extreme" ozone area requirements under the CAA and 40 CFR 51.165.

#### 4. EPA's NSR Reform Rules

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52, regarding the CAA's PSD and Nonattainment NSR programs relating to major sources and major modifications. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002 final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the "2002 NSR Reform Rules." The purpose of this action is to propose to approve the SIP submittal from the State of California that includes rule changes made as a result of EPA's 2002 NSR Reform Rules.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with Plantwide Applicability Limitations (PALs) to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provided a new applicability provision for emissions units that are designated clean units; and (5) excluded pollution control projects (PCPs) from the definition of "physical change or change in the method of operation." On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules, which added a definition for "replacement unit" and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform

Rules, see, 67 FR 80186 (December 31, 2002), and <http://www.epa.gov/nsr>.

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the United States Court of Appeals for the District of Columbia (DC Circuit Court) issued a decision on the challenges to the 2002 NSR Reform Rules. *New York v. United States*, 413 F.3d 3 (DC Cir. 2005). In summary, the DC Circuit Court vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping and the term "reasonable possibility" found in 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from Federal law all provisions pertaining to clean units and the PCP exemption that were vacated by the DC Circuit Court.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping, on December 21, 2007, EPA took final action to establish that a "reasonable possibility" applies where source emissions equal or exceed 50 percent of the CAA NSR significant levels for any pollutant (72 FR 72607). The "reasonable possibility" provision identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records.

The 2002 NSR Reform Rules require that states adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. State agencies may meet the requirements of 40 CFR part 51 and the 2002 NSR Reform Rules with different but equivalent regulations.

As submitted on March 17, 2009, District Rule 2201 has been amended to provide for the minimum program elements of the 2002 NSR Reform Rules that remain in the wake of subsequent litigation and EPA rulemaking. The amended rule provides for the minimum program elements by replacing a single definition for "Major Modification" with two definitions, one for "Federal Major Modification" and the other for "SB 288 Major Modification." The former term captures the NSR Reform program elements (and the "any increase" emissions threshold

required in "extreme" ozone areas), while the latter retains the pre-Reform approach to determining major modification status. Section 3.17.1 incorporates the new method for determining baseline actual emissions and the actual-to-projected-actual methodology for determining whether a major modification has occurred. Section 3.17.2 incorporates provisions allowing major stationary sources to comply with PALs. Amended District Rule 2201 avoids any issue concerning potential SIP relaxations due to these changes, because, consistent with State law (SB 288), the District retained the pre-reform requirements. The net effect of these changes are that the District will now perform two separate major modification determinations, one to determine if the project will result in a SB 288 Major Modification and the other to determine if it will result in a Federal Major Modification. Under the revised rule, a modification of an existing stationary source would be required at a minimum to meet the NSR SIP requirements that had applied prior to adoption by the District of the 2002 NSR Reforms into Rule 2201, and may have to meet additional NSR requirements if the modification is determined to be a Federal Major Modification.

#### 5. Other Changes to District Rules 2020 and 2201

As described in section III.C of this document, the District has made a number of changes to their NSR Rules (*i.e.*, Rules 2020 and 2201) not directly related to fuel specifications, agricultural sources, "extreme" area requirements, or NSR Reform. These changes include clarification and tightening of an existing exemption for certain types of transfer equipment and equipment used exclusively for the transfer of refined lubricating oil (see paragraph 6.7 of amended Rule 2020); tightening of one of the conditions that qualify a replacement of equipment as "routine replacement" (see paragraph 3.33.1 of amended Rule 2201); clarification of the scope of an existing emission offset exemption for portable equipment (see paragraph 4.6.3 of amended Rule 2201); and provision for a lower offset ratio if and when EPA makes the necessary findings under CAA section 182(e)(1) (see paragraph 4.8.2 of amended Rule 2210). We find these changes to either be neutral or strengthening relative to the existing SIP and consistent with all applicable requirements.

## 6. Enforceability Considerations

For the reasons given above, we find the amendments to District Rules 2020 and 2201 to be acceptable under applicable NSR regulations; however, SIP rules must also be enforceable [see CAA section 110(a)], and we find two specific deficiencies related to enforceability of Rules 2020 and 2201 that prevent our full approval. These deficiencies arise from the ambiguity introduced by the references in both paragraph 6.20 (of Rule 2020) and paragraph 4.6.9 (of Rule 2201) to State law under circumstances where the State law has not been submitted to EPA for approval into the SIP. Specifically, paragraph 6.20 (of Rule 2020) provides a permitting exemption for: “Agricultural sources, but only to the extent provided by California Health and Safety Code, Section 42301.16.” In turn, CH&SC section 42301.16 requires districts to extend permitting requirements to all agricultural sources that are “major” under the CAA and to all “minor” agricultural sources with actual emissions one-half of the applicable major source emissions thresholds (or greater) for any air contaminant, but excluding fugitive dust. However, subsection (b) of CH&SC section 42301.16 provides a means through which a district can extend the exemption from “one-half of any applicable emissions threshold” to the “major source” threshold if certain findings are made in a public hearing.

Because CH&SC section 42301.16 is not included in the California SIP, nor has California submitted the section to EPA for approval, the SIP would be ambiguous as to the extent of the agricultural source permitting exemption if EPA were to approve submitted District Rule 2020 into the SIP. Effective enforcement of the permitting requirements would rely on judicial notice of the statutory provision cited in the rule, and such judicial notice may or may not be forthcoming. There is no need to rely on judicial notice when the District can eliminate the ambiguity by clearly stating the exemption for agricultural sources in District Rule 2020 or by submitting CH&SC section 42301.16 to EPA for approval into the SIP. Moreover, even if we could assume that judicial notice of the statutory provision would be taken, CH&SC section 42301.16 by its terms allows for a relaxation of the one-half of major source permitting threshold for agricultural sources, and such relaxations should be reviewed by EPA under section 110 for approval as a SIP revision. Therefore, we are proposing a

limited approval and limited disapproval of submitted Rule 2020.

Paragraph 4.6.9 of submitted Rule 2201 contains a similarly-ambiguous reference to State law in listing emission offset exemptions: “Agricultural sources, to the extent provided by California Health and Safety Code, section 42301.18(c), except that nothing in this section shall circumvent the requirements of section 42301(a).” CH&SC section 42301.18(c) states: “A district may not require an agricultural source to obtain emissions offsets for criteria pollutants for that source if emissions reductions from that source would not meet the criteria for real, permanent, quantifiable, and enforceable emission reductions.” Our understanding is that the District has no plans to require emissions offsets for new or modified agricultural sources unless such new or modified source is a “Major Source” or a “Federal Major Modification” as defined in another section of Rule 2201. Once again, there is no need for ambiguity in the applicability of the emissions offset exemption, and therefore, EPA is proposing a limited approval and limited disapproval of submitted Rule 2201.

## 7. Federally Enforceable Restriction on Potential To Emit

District Rule 2530 establishes limits to restrict the PTE of a stationary source so that the source may be exempt from the District’s rule implementing Title V operating permit requirements. The emission limits in section 6.1 of District Rule 2530 are intended to represent 50% of the applicable major source threshold.<sup>14</sup> With the change in the valley’s ozone classification to “extreme” for the 1-hour ozone standard, and the corresponding lowering of the applicable major source threshold from 25 tons per year to 10 tons per year, it follows that the District has amended Rule 2530 to change the corresponding emission limit in section 6.1 to 5 tons per year of VOC or NO<sub>x</sub>, to maintain the emission limit at 50% of the applicable major source threshold. Other emissions thresholds in District Rule 2530, such as

<sup>14</sup> The approach in District Rule 2530 of establishing emission limits and alternative operational limits that are intended to represent percentages of the applicable major source threshold (50% for emission limits and 80% for alternative operational limits), as a mechanism to allow sources to avoid title V permitting requirements, is consistent with EPA guidance on this subject as set forth in a memorandum dated January 25, 1995 from John S. Seitz, Director, Office of Air Quality Planning and Standards, titled, “Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act).”

those for exemptions from recordkeeping and reporting (20% of applicable major source threshold) and from reporting (25% of applicable major source threshold) have also been reduced accordingly.

Certain alternative operational limits in section 6.2 of the rule, which were intended to allow sources using these types of limits to go up to 80% of the major source threshold (in actual emissions), were changed accordingly but certain other limits in section 6.2 were left unchanged or were changed by a lesser proportion. The District explained how the values that were not revised downwards in proportion to the drop in the major source threshold met the underlying purpose of the provision allowing alternative operational limits, *i.e.*, allowing certain types of sources to go up to 80% of the major source threshold (in actual emissions). For instance, the alternative operational limit of 7,000,000 gallons per year of gasoline dispensed at gasoline dispensing facilities with phase I and II vapor recovery systems, as set forth in paragraph 6.2.1 of Rule 2530, was left unchanged because it still is well below the 80% (of 10 tons per year) threshold for underground storage tanks (16.9 million gallons per year) and for above ground storage tanks (12.2 million gallons per year). See District memorandum on Rule 2530 (dated December 18, 2009), which we have placed in the docket.

Therefore, we find the changes to District Rule 2530 to be acceptable, and we propose to approve amended District Rule 2530, as submitted on March 17, 2009, as a revision to the California SIP.

## 8. CAA Section 110(l)

The only remaining issue is whether this SIP revision would interfere with requirements concerning attainment and reasonable further progress (or any other applicable CAA requirement) as set forth in CAA section 110(l). CAA section 110(l) provides: “Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title) or any other applicable requirement of this chapter.” 42 U.S.C. 7410(l).

For the purposes of CAA section 110(l), we take into account the overall effect of the revisions included in this action. Given the wide application of the lower major source thresholds to all

types of new or modified stationary sources of VOC and NO<sub>x</sub> and the limited extent of the exemptions from permitting and offsets for certain types of agricultural sources, we find that the overall effect of the revisions would strengthen the SIP, notwithstanding deficiencies identified above in enforceability. Moreover, we do not anticipate localized exceedances of the PM<sub>10</sub> or PM<sub>2.5</sub> standards, due to the permitting exemption for certain agricultural sources, given the application of non-permitting requirements in the SIP. Lastly, we note that the revisions are consistent with the assumptions of the various air quality plans developed for the valley.

Accordingly, we conclude that the revisions to Rules 2020, 2201, and 2530, if approved, would not interfere with any applicable requirements for attainment and reasonable further progress or any other applicable requirement of the CAA and are approvable under section 110(l).

#### 9. Conclusion and Proposed Action on Submitted Rules

For the reasons given above, under CAA section 110(k)(2) and 301(a), we are proposing a limited approval and limited disapproval of amended Rules 2020 and 2201 because, although they would strengthen the SIP and meet all but one of the applicable requirements for SIPs in general and NSR SIPs in

particular, they contain certain deficiencies related to enforceability that prevent our full approval. The deficiency in Rule 2020 can be remedied by the District by revision of Rule 2020 by replacing the statutory reference to CH&SC section 42301.16 in paragraph 6.20 with a clear description of the sources covered by the exemption. The deficiency in Rule 2201 can be remedied by either submittal of the statutory provisions cited in paragraph 4.6.9 or by replacement of the references with a clear description of the applicability of the offset requirement to agricultural sources. For amended Rule 2530, we are proposing a full approval because we find that it has been appropriately modified to reflect the decrease in the major source threshold for VOC and NO<sub>x</sub> consistent with the area's "extreme" classification for the 1-hour ozone standard.

#### V. Deletion of Obsolete Conditions on SIP Approvals

In the 1980s, EPA placed conditions, including conditions related to NSR, on approvals of certain California nonattainment plans. As to certain San Joaquin Valley plans, EPA approved the plans on the condition that the State of California submit revised NSR rules for the individual county-based Air Pollution Control Districts (APCDs), then having jurisdiction in San Joaquin Valley, as revisions to the California

SIP. These NSR-related conditions are identified in table 3, below, by applicable county, EPA action, and CFR citation.

On September 23, 1999, in an action proposing approval of previous versions of District Rules 2020 and 2201 (later superseded by a proposed rule published on September 28, 2000), we proposed to remove these conditions. See 64 FR 51493, at 51494 (September 23, 1999). Specifically, we proposed to delete the conditions set forth in 40 CFR 52.232(a)(5)(i)(A), (a)(6)(i)(A), (a)(10)(i)(A), and (a)(11)(i)(A).

In our September 1999 proposed rule, we noted that the conditions required the prior county-based APCDs (now combined to form the San Joaquin Valley Unified Air Pollution Control District)<sup>15</sup> to submit regulations consistent with EPA regulations that were current at the time the conditions were established in 1981, 1982, and 1985. We also noted that the conditions are moot today because the District has submitted revised NSR rules (i.e., Rules 2020 and 2201) that comply with EPA's current regulations and the Clean Air Act, as amended in 1990. However, we did not include the removal of these obsolete NSR-related conditions in the subsequent final rule on May 17, 2004 (69 FR 27837) fully approving the District's NSR rules, i.e., District Rules 2020 and 2201.

TABLE 3—OBSOLETE CONDITIONS PROPOSED FOR DELETION

County	Conditional approval Federal Register citation	Regulatory citation
Kern County <sup>a</sup> .....	46 FR 42450 (August 21, 1981) .....	40 CFR 52.232(a)(5)(i)(A).
San Joaquin County .....	47 FR 19694 (May 7, 1982), amended at 50 FR 7591 (February 25, 1985).	40 CFR 52.232(a)(6)(i)(A).
Kings, Madera, Merced, Stanislaus, and Tulare Counties.	47 FR 19694 (May 7, 1982) .....	40 CFR 52.232(a)(10)(i)(A).
Fresno County .....	47 FR 28617 (July 1, 1982) .....	40 CFR 52.232(a)(11)(i)(A).

<sup>a</sup> In today's document, we are proposing to remove the Kern County condition for carbon monoxide and ozone only.

In today's document, we are addressing the same provisions in 40 CFR 52.232 as our 1999 proposed rule, but we are not proposing exactly the same action as before. Today, we recognize that the condition in 40 CFR 52.232(a)(5)(i)(A) is obsolete as to carbon monoxide and ozone in light of the approval of District NSR rules in 2004 (69 FR 27837, May 17, 2004), the change in the boundary for the 1-hour ozone nonattainment boundary for San Joaquin Valley (66 FR 56476, November 8, 2001), and the redesignation of the East Kern County 1-hour ozone

nonattainment area to attainment (69 FR 21731, April 22, 2004). However, as to particulate matter, we find the condition to be unfulfilled because the Kern County APCD retains jurisdiction over a small portion of the San Joaquin Valley planning area, the portion of the San Joaquin Valley planning area over which Kern County APCD retains jurisdiction remains nonattainment for PM<sub>10</sub> (see 73 FR 66759, November 12, 2008), and because we have yet to approve a revision to Kern County APCD NSR rules that meet the condition in 40 CFR 52.232(a)(5)(i)(A). Therefore,

we propose to amend 40 CFR 52.232(a)(5)(i) to remove the references to carbon monoxide and ozone only. We will retain the condition as to particulate matter until we approve the Kern County APCD's nonattainment NSR rules for the East Kern County PM<sub>10</sub> nonattainment area or until we approve a redesignation request for the East Kern PM<sub>10</sub> area to "attainment."

We are also proposing to remove the conditions set forth in 40 CFR 52.232(a)(6)(i)(A), (a)(10)(i)(A), and (a)(11)(i)(A) as obsolete in light of the approval of District NSR rules in 2004

<sup>15</sup> Kern County APCD, one of the original county-based APCDs covering San Joaquin Valley, was not

entirely consolidated into the current unified District, but its jurisdiction is no longer county-

wide, and is limited to the eastern portion of the county.

(69 FR 27837, May 17, 2004).<sup>16</sup> Unlike Kern County, the counties subject to the conditions in 40 CFR 52.232(a)(6), (10), and (11) (i.e., San Joaquin, Kings, Madera, Merced, Stanislaus, Tulare, and Fresno) all lie entirely within District jurisdiction. If we finalize this aspect of this action as proposed, we will be removing and reserving 40 CFR 52.232(a)(6), (a)(10), and (a)(11) because the conditions proposed for removal are the last conditions on approval that remain.

## VI. Proposed Action and Opportunity for Public Comment

For the reasons set forth above, we are proposing to correct a previous approval of San Joaquin Valley District NSR rules, Rule 2020 ("Exemptions") and Rule 2210 ("New and Modified Stationary Source Review Rule"), to approve amended District Rule 2530 ("Federally Enforceable Potential to Emit"), and to take a limited approval and limited disapproval action for amended District NSR Rules 2020 and 2201.

More specifically, we are proposing to correct our May 2004 final approval of revisions to the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan under section 110(k)(6) of the Clean Air Act. We do so because, by virtue of information submitted by California to us in November 2003, we should have limited our approval consistent with the legal authority provided in State law to air districts to permit, and require offsets for, new or modified agricultural sources. To correct our error, we are proposing language to be added as a new section, 52.245, of 40 CFR part 52.

Under CAA sections 110(k)(2) and 301(a), we are proposing a limited approval and limited disapproval of amended District Rules 2020 and 2201, as submitted on March 7, 2008 and March 17, 2009, respectively. The amended District Rules 2020 and 2201 would establish an exemption from permitting, and from offsets, for certain minor agricultural operations, would establish applicability thresholds (for major sources and major modifications) and offset thresholds consistent with a classification of "extreme" for the ozone standard, and would implement NSR Reform. We are proposing a limited approval and limited disapproval, because, although the amended rules

meet most of the applicable requirements and strengthen the SIP, they contain unacceptably ambiguous references to statutory provisions.

With respect to amended District Rule 2530, as submitted on March 17, 2009, we are proposing full approval because we find that it has been appropriately modified to reflect the decrease in the major source threshold for VOC and NO<sub>x</sub> consistent with an "extreme" classification.

Lastly, EPA is proposing to rescind conditions placed on 1980s era approvals by EPA on various nonattainment plans submitted by California for the San Joaquin Valley that have become obsolete by EPA approval of subsequent revisions to the District's NSR rules. Therefore, we propose to amend 40 CFR 52.232(a)(5)(i) to remove the references to carbon monoxide and ozone and to remove and reserve 40 CFR 52.232(a)(6), (a)(10), and (a)(11).

If EPA were to finalize the limited approval and limited disapproval action, as proposed, then a sanctions clock, and EPA's obligation to promulgate a Federal implementation plan, would be triggered because the revisions to the District rules for which a limited approval and limited disapproval is proposed are required under anti-backsliding principles established for the transition from the 1-hour to the 8-hour ozone standard.

We will accept comments from the public on this proposal for the next 30 days.

## VII. Statutory and Executive Order Reviews

### A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

### B. Paperwork Reduction Act

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

### C. Regulatory Flexibility Act

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

small not-for-profit enterprises, and small governmental jurisdictions.

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

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

### D. Unfunded Mandates Reform Act

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

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

### E. Executive Order 13132, Federalism

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132

<sup>16</sup> The condition established in 40 CFR 52.232(a)(11) also relates to Ventura County, but removal of the condition is proper as to Ventura County in light of EPA's subsequent approval of the Ventura County nonattainment NSR rules at 68 FR 9561 (February 28, 2003).

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

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

#### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

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

Thus, Executive Order 13175 does not apply to this rule.

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

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

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

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

#### *I. National Technology Transfer and Advancement Act*

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

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

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

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Accordingly, 40 CFR part 52 is proposed to be 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.*

2. Section 52.245 is added to read as follows:

#### **§ 52.245 New source review rules.**

(a) Approval of the New Source Review rules for the San Joaquin Valley

Unified Air Pollution Control District Rules 2020 and 2201 as approved May 17, 2004, is limited, as it relates to agricultural sources, to apply the permit requirement only:

(1) To agricultural sources with potential emissions at or above a major source applicability threshold; and  
(2) To agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold.

(b) The offset requirement, as it relates to agricultural sources, does not apply to new minor agricultural sources and minor modifications to agricultural sources.

Dated: January 21, 2010.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2010–1838 Filed 1–28–10; 8:45 am]

**BILLING CODE 6560–50–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA–R08–OAR–2009–0198; FRL–9102–8]**

### **Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Montana on January 16, 2009 and May 4, 2009. The revisions are to the Administrative Rules of Montana. Revisions include minor editorial and grammatical changes, updates to the citations and references to Federal and State laws and regulations, and a clarification of agricultural activities exempt from control of emissions of airborne particulate matter. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Written comments must be received on or before March 1, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2009–0198, by one of the following methods:

- <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-mail: [dolan.kathy@epa.gov](mailto:dolan.kathy@epa.gov).
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Director, Air Program, Environmental Protection Agency