

- C. Unfunded Mandates Reform Act
- D. Executive Order 13132, Federalism
- E. Executive Order 13175, Coordination with Indian Tribal Governments
- F. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
- G. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use
- H. National Technology Transfer and Advancement Act

I. What Is EPA Proposing To Approve?

EPA today proposes to approve revisions to the California SIP by incorporating the submitted revised versions of District Rules 2020 and 2201 into the SIP. If EPA finalizes this proposed action after considering public comment, the submitted versions of Rules 2020 and 2201 will replace the existing versions of those rules currently in the SIP for the San Joaquin Valley Unified Air Pollution Control District, which includes the following counties: Fresno, Kern,¹ Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

The submitted versions of Rules 2020 and 2201 were adopted by the District on December 19, 2002, and submitted to EPA by the California Air Resources Board (CARB) on December 23, 2002. EPA found the submittal to be complete on December 30, 2002. EPA's Technical Support Document (TSD) accompanying this proposed action describes the portions of Rules 2020 and 2201 that were revised.

II. Background

A. History of SJVUAPCD NSR SIP Revisions

District Rule 2201 specifies the requirements for the review of new and modified stationary sources and outlines the requirements to be included in authorities to construct (ATCs) and permits to operate (PTOs). Rule 2020 specifies the emission units that are not required to obtain ATCs or PTOs. Together, these rules define the applicability and requirements of the District's NSR program.

On July 19, 2001, EPA finalized a limited approval and limited disapproval of previous versions of Rules 2020 and 2201.² 66 FR 37587. EPA's final action in July 2001 was a limited disapproval because three provisions in the previous versions of the rules did not comply with the CAA

and were not approvable. Because of these three deficiencies, the rules failed to satisfy the requirements of sections 172(c)(5) and 173 of the CAA. EPA finalized a limited disapproval of the previous version of Rules 2020 and 2201 under section 110(k)(3) and part D of CAA title I. EPA's final limited disapproval in July 2001, triggered the sanctions (the "sanctions clock") in section 179 of the CAA.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k)(3) for an area designated nonattainment because of the submission's failure to meet one or more of the elements required by the Act, the Administrator is required to apply one of the sanctions set forth in section 179(b) if the deficiency has not been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: limitations on projects and grants for which the Department of Transportation may approve federal highway funding ("highway sanction") and increasing the NSR offset requirements ("offset sanction"). By regulation, EPA established that we will apply the offset sanction 18 months after rule disapproval and the highway sanction 6 months after the offset sanction. 40 CFR 52.31. The CAA also provides that final disapproval under section 110(k)(3) triggers the federal implementation plan (FIP) requirement. CAA Section 110(c). The 18 month period referred to in section 179(a) and 40 CFR 52.31, began on August 20, 2001, which was the effective date of EPA's final limited disapproval, and will expire on February 20, 2003.

With the limited disapproval, the July 19, 2001 action simultaneously finalized a limited approval of Rules 2020 and 2201. EPA finalized the limited approval under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to prescribe regulations necessary to further air quality by strengthening the SIP. Because Rules 2020 and 2201 strengthened the District's NSR program despite the three cited rule deficiencies, EPA's limited approval incorporated Rules 2020 and 2201 into the SIP subject to the section 179 mandatory sanctions triggered by EPA's limited disapproval.

B. Deficiencies in SJVUAPCD NSR Regulations and Required Action

EPA's limited disapproval cited three deficiencies in the previous versions of Rules 2020 and 2201. First, EPA determined that the previous version of Rule 2201 was not approvable because its offset tracking equivalency system failed to contain a mandatory remedy.

We also found the previous version of Rule 2201 deficient because it did not require all sources making modifications that result in a significant increase in emissions to meet the Lowest Achievable Emission Rate (LAER). Finally, we concluded the previous version of Rule 2020 was not approvable because section 4.5 of the rule exempted agricultural sources from permitting. For a more detailed discussion of these three rule deficiencies please see our final limited approval and limited disapproval, 66 FR 37587 (July 19, 2001), and the accompanying Technical Support Document dated August 30, 1999 ("1999 TSD").

EPA's July 2001 limited disapproval informed the District that the following actions were required to correct the rule deficiencies:

1. The District must revise Rule 2201 to provide a mandatory, enforceable and automatic remedy to cure any annual shortfall and, in the future, prevent shortfalls in the District's New Source Review Offset Equivalency Tracking System.

2. The District must remove the agricultural exemption from District Rule 2020.

3. The District must revise Rule 2201 to ensure that all sources meet LAER³ if they are allowed to make a significant increase in their actual emissions rate.

See 66 FR at 37590.

C. How Has SJVUAPCD Corrected These Rule Deficiencies?

1. Offset Equivalency

- a. What is the basis for allowing an annual offset equivalency demonstration?

Section 173(a)(1)(A) provides that new and modified stationary sources seeking to commence operating in a nonattainment area must be required by the state permitting program to obtain sufficient offsetting emission reductions ("offsets") such that, "the total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources * * * so as to represent reasonable further progress * * *." In our July 19, 2001 final action, we explained that this statutory focus on total regional emissions supported the approval of a District offset program that

¹ For more information on the District and its jurisdiction see 64 FR 51493 (Sept. 23, 1999).

² The previous version of Rule 2020 acted upon in the July 19, 2001 final action was the version adopted by the District on September 17, 1998. The previous version of 2201 was the version adopted by the District on August 20, 1998.

³ Many California Districts use the term "Best Available Control Technology" (BACT) with a definition equivalent to LAER. Please see the TSD for additional information on the District's definition of BACT.