

ensured equivalency with the federal requirements on an annual aggregate basis. 66 FR at 37588–89.⁴ Thus, we explained that an offset equivalency tracking system with a requirement for a mandatory and enforceable remedy for any shortfall would comply with the requirements of the Act. *Id.* at 37588.⁵

The goal of the District's offset equivalency tracking system, therefore, is to show that, notwithstanding certain differences between the District and federal NSR programs, the District's rules would require offsets that are, in the aggregate, equivalent to offsets required under the federal program.⁶ In the 1999 TSD for the proposed limited approval/limited disapproval, 65 FR 58252 (Sept. 28, 2000), we identified areas where the District rules may require fewer offsets than the federal NSR regulations and directed the District to track these sources of potential shortfalls. *See* 1999 TSD at 15–17; *see also* 66 FR at 37588 n.3.⁷ In general these differences fall into two categories: (1) Differences in the quantity of offsets required in the first instance and (2) differences in the way the value of emission reductions used to satisfy offset requirements is calculated. Thus, to demonstrate equivalency, the District's rule needs to track and report on both of these categories of differences. Likewise, if the remedy is to cure and prevent future shortfalls, the rule must be tailored to address the root cause of the shortfalls.⁸

⁴ We relied on this statutory interpretation, in part, in approving the RECLAIM Trading Program in the South Coast Air Quality Management District. *See* 61 FR 64291 (Dec. 4, 1996).

⁵ We have also noted the ability of States to implement accounting or tracking systems to demonstrate annual aggregate equivalency with federal requirements for surplus adjusting. *See* Memo from John S. Seitz, Dir., Office of Air Quality Planning and Standards (OAQPS) to David Howekamp, Dir., Region IX Air and Toxics Div. (Aug. 26, 1994) ("1994 Seitz Memo").

⁶ *See* 65 FR 58252, 58253 (Sept. 28, 2000) ("The District committed to demonstrate equivalency by calculating on an annual basis the quantity of offsets that would be required under federal nonattainment NSR regulations (*i.e.* the quantity of offsets that meet all Clean Air Act requirements) and the quantity of offsets required under the District program.").

⁷ For example, the District does not require sources to offset the entire quantity of emissions increases (Rule 2201, section 4.5) and, in certain situations, does not impose the minimum offset ratio required under the CAA (Rule 2201, section 4.8).

⁸ In our final limited approval/limited disapproval, we noted that the District had identified different remedies to address potential shortfalls including "using EPA requirements for calculating offset baselines and quantities" (which could address shortfalls related to differences in the quantity of offsets required in the first instance) and "using credits that are surplus at the time of use" (which could address shortfalls related to differences in the valuation of emission reductions

b. What is the offset equivalency tracking system in Rule 2201 and how does it satisfy the deficiency noted in the limited disapproval?

Section 7.0 of the revised District Rule 2201 (adopted Dec. 19, 2002) provides for a system to track and demonstrate the equivalency of the District's NSR offset requirements to the offset requirements of the federal NSR program. There are three basic components of the tracking system provisions. Section 7.1 outlines the parameters to be tracked by the District on an annual basis. Sections 7.2 and 7.3 describe how equivalency is to be demonstrated each year. Section 7.4 describes the remedies to take effect to cure any annual shortfall and prevent future shortfalls. While the District action required in EPA's final limited approval/limited disapproval was "to provide a mandatory and enforceable remedy to cure any annual shortfall and, in the future prevent shortfalls," as noted above, the provisions for tracking and demonstrating equivalency are critical for ensuring that the remedy is applied automatically and addresses the cause for the shortfall. Thus, each of the components provided in section 7.0 is necessary to ensure the remedy provision satisfies this deficiency.

The District's tracking system requires two demonstrations to be included in the annual report. First, the District is to track and compare on an annual basis the aggregate quantity of offsets required under Rule 2201 and the quantity of offsets that would have been required under the federal NSR provisions. Rule 2201, section 7.2.1. This comparison will show whether the District rule requires as many offsets as the federal rules, regardless of the "creditable" value of the actual emission reduction used to meet the offset requirements. Should there be a shortfall the rule provides for two stages of remedy. The District may first retire unused emission reduction credits that meet federal requirements to make up for the shortfall. Rule 2201, section 7.4.1.1. If sufficient emission reduction credits are not available, the District must apply federal offset requirements to all permits issued after the annual demonstration deadline until the District amends its NSR provisions to require equivalent offsets. Rule 2201, section 7.4.1.2. These remedies reasonably address the source of the demonstrated shortfall and satisfy our requirement for a mandatory, enforceable and automatic remedy.

The second piece of the annual demonstration addresses whether the

used to meet offset requirements). *See* 66 FR at 37590.

District's overall approach is equivalent, including the District's decision not to adjust the creditable value of emission reductions at time of use ("surplus adjusting" or "discounting" at time of use). The District will determine the creditable surplus value of the emission reductions actually used each year by applying federal creditability criteria, and compare this adjusted aggregate number to the number of offsets that would have been required under the federal NSR program. The District shall provide an annual report to demonstrate that, in the aggregate, it is achieving an equivalent number of creditable emission reductions as would be achieved under the federal program. Rule 2201, section 7.2.2. If a shortfall is found in this comparison, and it is not the result of different offset requirements identified in the first piece of the demonstration described above, the cause of the shortfall must be related to differences in the way the District determines the creditable value. As a result, the remedy for such a shortfall is to apply federal creditability criteria, including discounting at time of use. In the event of a shortfall in this portion of the annual demonstration, section 7.4.2 will automatically require all ATCs issued after the annual report deadline to ensure emission reductions used to satisfy offset requirements are creditable and that the surplus value of those reductions is determined at the time of ATC issuance. EPA proposes to conclude that this remedy reasonably meets the EPA requirement for a mandatory, enforceable and automatic remedy to cure any shortfall and prevent future shortfalls.

c. Does the tracking system replace applicable NSR requirements?

The tracking system does not replace the applicable requirements of Rule 2201. It is important to clarify that while the tracking system allows EPA to approve the District NSR provisions of Rule 2201 notwithstanding specific differences between the District's rules and federal NSR requirements, nothing in section 7.0 of the rule relieves sources from the obligation to comply with the other requirements of Rule 2201. For example, sources must continue to obtain offsets in compliance with section 4.5 of Rule 2201. Emission reductions used to meet these offset requirements must continue to be "real, enforceable, quantifiable, surplus, and permanent." Rule 2201, section 3.2.1. Therefore, a source could not rely on the annual aggregate demonstration to cure the use of unenforceable (or otherwise non-creditable) emission reductions to meet the District's offset requirements. Such use would be a violation of the