

nonattainment areas was December 31, 2001. CAA section 188(c)(2). The attainment demonstration, due with the serious area plan on February 8, 1997, was withdrawn by the District on February 26, 2002. On July 23, 2002, EPA issued a finding that the San Joaquin Valley failed to attain the PM-10 NAAQS by the applicable deadline. In accordance with CAA section 189(d), the State was required to submit by December 31, 2002, a new attainment demonstration for San Joaquin Valley, along with measures sufficient to achieve an annual reduction in PM-10 or PM-10 precursor emissions of not less than 5 percent. This new demonstration has not been submitted. The District, because it failed to attain the PM standard by the statutory deadline and has not submitted required progress and attainment plans, has failed to show how the use of pre-1990 emission reductions would be consistent with the need for expeditious attainment of the PM NAAQS.¹⁵

The San Joaquin Valley is currently designated as a severe nonattainment area for the 1-hour ozone NAAQS. 66 FR 56476 (Nov. 8, 2001). EPA approved a serious area plan (the "1994 ozone plan") for the District on January 8, 1997. 62 FR 1150. The plan included a demonstration that the area would attain the ozone NAAQS by 1999. The attainment demonstration in the 1994 ozone plan did not specifically identify and account for the possible use of pre-1990 emission reductions. The area failed to attain the ozone standard in 1999, and as a result EPA reclassified the area to severe on November 8, 2001. 66 FR 56476. The severe area plan was due on May 31, 2002. 66 FR at 56481. The attainment deadline for severe areas is November 15, 2005. CAA section 181(a)(1). The District failed to submit the required plan by the May 2002 deadline and is now subject to the offset sanction beginning March 18, 2004, for

failure to submit the required plan. 67 FR 61784 (Oct. 2, 2002).

The 1994 ozone plan included ROP milestone provisions for 1996 and 1999. The plan, however, did not include pre-1990 credits in the ROP provisions or attainment demonstration. The District has recently prepared and adopted a ROP plan for the 2002 and 2005 milestones.¹⁶ We will review this ROP plan to determine if the District has properly accounted for the use of pre-1990 credits and met applicable ROP requirements, but this alone will not provide the necessary demonstration that the use of these credits is consistent with the need for the area to attain the ozone NAAQS as expeditiously as possible.¹⁷ Unless and until the area submits a new attainment demonstration that shows expeditious attainment can be achieved while still allowing the use of these credits, EPA cannot reasonably conclude that these pre-1990 reductions are surplus creditable reductions.

Based on these findings regarding the creditability of pre-1990 credits, EPA will consider the creditable value of these credits used in the District's tracking system to be zero. EPA, therefore, encourages the District and sources to avoid using these pre-1990 credits and, if problems arise, to work with EPA to explore options for other sources of emission reduction credits.

2. Agricultural Exemption

a. How has the District corrected this deficiency?

On December 19, 2002, the District adopted a version of Rule 2020 that deleted section 4.5, and thereby eliminated any exemption in its NSR rule for permitting a new or modified major stationary source of air pollutants. The District's deletion of the exemption from its NSR rule corrects the rule deficiency set out in our July 2001 limited disapproval. Because the District removed the exemption from its

rule and for the reasons discussed below, EPA is proposing to find that the District has corrected the deficiency and to approve Rule 2020 as revised.

b. How is EPA addressing the State exemption?

EPA is aware, however, 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. While the State is on notice of the need to remove the exemption for major sources for purposes of title V, the State must also remove the exemption for any major sources for purposes of title I. Therefore, concurrent with today's proposed approval of the District's revised version of Rule 2020 (deleting the exemption), EPA is publishing in the **Federal Register** a proposal pursuant to section 110(k)(5) of the CAA to find the California SIP is substantially inadequate for all nonattainment air pollution control districts in the State and for all attainment area districts that have an approved Prevention of Significant Deterioration (PSD) program because the State cannot provide "necessary assurances" that it or the districts have authority to carry out the applicable nonattainment NSR or PSD portions of the SIP.

This concurrent proposal will inform the Executive Officer of the CARB that the California SIP is and will remain inadequate until the California legislature amends Health & Safety Code section 42310(e) to the extent necessary to allow the State of California through the air districts to issue permits under title I, parts C and D, to all major sources, including those involved in agriculture. This action proposes to require the State to correct the inadequacy by November 23, 2003 to avoid a finding under section 179 of the Act which would trigger mandatory sanctions.¹⁸

3. Lowest Achievable Emission Rate Applicability

EPA determined that the previous version of District Rule 2201 did not always require LAER for major modifications because it did not require LAER if a modification resulted in an increase in actual emissions but not an increase in the emission unit's permitted emission rate. Therefore, EPA required the District to modify Rule 2201 to ensure that all major

¹⁵ This conclusion is consistent with our policy regarding the use of shutdown credits as offsets. Memo from John S. Seitz, Dir., OAQPS to Regional Air Dirs (July 21, 1993). Under the policy described in the 1993 memo, we explained that the use of shutdown credits as offsets was limited to ensure that reductions came out of the area's existing emissions and thus assured reasonable further progress. Before 1990, this could only be accomplished if the area had a demonstration of attainment that made this showing. After 1990, because the deadlines for submitting attainment demonstrations had been extended by the Clean Air Act Amendments, we decided that an attainment demonstration should not be required before shutdown credits could be used. We added, however, "This policy cannot be extended to situations where an attainment demonstration is lacking." Thus if any of the required planning submittals is delinquent, deemed incomplete or disapproved, shutdown credits cannot be used to meet offset requirements.

¹⁶ The 2002 ROP Plan was adopted by the District Board on December 19, 2002, and submitted to ARB. A copy of the Plan can be found at the District's website at [http://www.valleyair.org/Air_Quality_Plans/AQ_plans_Ozone.htm#Amendment 2002 and 2005 ROP 103](http://www.valleyair.org/Air_Quality_Plans/AQ_plans_Ozone.htm#Amendment%202020and%202005ROP103).

¹⁷ The 1994 Seitz Memo explains that pre-1990 credits to be used in an area "must be contained in: (1) The current applicable federally-approved RFP and ROP plans as growth, and (2) all federally-required attainment demonstrations as emissions in the air." While an argument could be made that inclusion of these credits in the ROP and not in an attainment demonstration might be sufficient to support their use where the attainment demonstration is not yet due, this argument is not reasonable where, as here, the area has not only failed to meet the plan submission deadlines but has had to be reclassified because of the area's failure to attain by the statutory deadlines.

¹⁸ EPA is proposing this deadline to coincide with the deadline for sanctions under title V to correct the agriculture exemption in that program. See CAA Section 110(k)(5) (providing EPA discretion to establish reasonable deadlines).