



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2020-0238; FRL-10015-85-Region 9]

### Air Plan Approval; California; San Joaquin Valley Air Pollution Control District; Stationary Source Permits

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Joaquin Valley Air Pollution Control District (SJVAPCD or “the District”) portion of the California State Implementation Plan (SIP). This revision concerns the District’s New Source Review (NSR) permitting program for new and modified sources of air pollution under section 110(a)(2)(C) of the Clean Air Act (CAA); specifically our proposal to approve Rule 2021: Experimental Research Operations. We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before [**Insert date 30 days after date of publication in the *FEDERAL REGISTER***].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2020-0238 at <https://www.regulations.gov>, or via email to [R9AirPermits@epa.gov](mailto:R9AirPermits@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally

not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, or if you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Laura Yannayon, EPA Region IX, Air-3-1, 75 Hawthorne St., San Francisco, CA 94105, (415) 972-3534, [yannayon.laura@epa.gov](mailto:yannayon.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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**I. The State’s Submittal**

- A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted to the EPA by the California Air Resources Board (CARB or “the State”).

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Adopted on	Submitted on
SJVAPCD	2021	Experimental Research Operations	12/17/92	11/18/93

On May 18, 1994, the submittal of SJVAPCD Rule 2021 was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. *Are there other versions of this rule?*

There is no previous version of Rule 2021 in the SIP. SJVAPCD submitted Rule 2021 on November 18, 1993 as part of the District's revised NSR program. The District has not submitted any revised versions since the most recent submittal. On October 3, 2017, the District provided additional information in support of Rule 2021. The rule provides limited exemptions to the SJVAPCD's current program for preconstruction review and permitting of new or modified stationary sources under its jurisdiction.

C. *What is the purpose of the submitted rule?*

Rule 2021 exempts experimental research operations from Authority to Construct and Permit to Operate requirements as long as the facility meets all other rule requirements. Otherwise the source would be required to comply with Rule 2010 – *Permits Required*. The District defines *Experimental Research Operations* as “any air pollution control device or technology or any industrial process or technology with reduced emissions which is: innovative, not in common use for a particular process, not readily available from a commercial supplier, or funded as original research by a public agency.” The District determined that emissions from Experimental Research Operations exempted from permitting requirements pursuant to Rule 2021 will not adversely affect progress toward attainment or maintenance of any NAAQS.

## **II. The EPA's Evaluation**

A. *How is the EPA evaluating the rule?*

The EPA reviewed Rule 2021 for compliance with the applicable requirements of section 110(a)(2)(C) and associated regulations at 40 CFR 51.160-164. We also reviewed the rule for consistency with other CAA general requirements for SIP submittals, including requirements at section 110(a)(2)(A) regarding rule enforceability, and requirements at sections 110(l) and 193

for SIP revisions.

Section 110(a)(2)(C) of the Act requires each SIP to include a program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the NAAQS. The EPA's regulations at 40 CFR 51.160-51.164 provide specific programmatic requirements to implement this statutory mandate.

Section 110(a)(2)(A) of the Act requires that regulations submitted to the EPA for SIP approval must be clear and legally enforceable. Section 110(l) of the Act prohibits the EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. Section 193 of the Act prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutant(s). With respect to procedures, CAA sections 110(a) and 110(l) require that a state conduct reasonable notice and hearing before adopting a SIP revision.

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

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. Based on our review of the public process documentation included in the November 18, 1993 submittal of Rule 2021, we find that the SJVAPCD has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of these rules to the EPA.

With respect to the substantive requirements found in CAA sections 110(a)(2)(A) and (C), 110(l), 193, and 40 CFR 51.160-51.164, we evaluated Rule 2021 in accordance with the applicable CAA and regulatory requirements that apply to new source review permit programs. The permit exemption provided for experimental research operations is extremely narrow in

scope, such that the emissions not subject to permit requirements are not expected to interfere with attainment or RFP. Therefore we find that Rule 2021 satisfies these requirements.

Our Technical Support Document, which can be found in the docket for this rulemaking, contains a more detailed discussion of our analysis.

### **III. Proposed Action and Public Comment**

As authorized in section 110(k)(3) of the Act, the EPA is proposing to approve the submitted rule because it fulfills all relevant CAA requirements. We have concluded that our approval of the submitted rule would comply with the relevant provisions of CAA sections 110(a)(2), 110(l), and 193, and 40 CFR 51.160-51.164.

If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220a (Identification of plan-in part).

We will accept comments from the public on this proposal until [**Insert date 30 days after date of publication in the FEDERAL REGISTER**].

### **III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the rule listed in Table 1 of this preamble. The EPA has made, and will continue to make, this document available through <https://www.regulations.gov> and in hard copy at the EPA Region IX Office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Public Law 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 the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In

those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

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

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

Dated: February 5, 2021.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

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