ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0420; FRL-9970-02-R9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on a permitting rule submitted as a revision to the San Joaquin Valley Air Pollution Control District (SJVAPCD or "District") portion of the California state implementation plan (SIP). We are finalizing a limited approval and limited disapproval of the rule. 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) and part D of title I of the Clean Air Act (CAA or "Act").

DATES: This rule is effective on [**Insert date 30 days after date of publication in the *Federal Register***].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2022-0420. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov*, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. 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 FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, Air-3-2, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3534 or by email at *yannayon.laura@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to the EPA.

Table of Contents

I. Proposed Action

On July 29, 2022, the EPA proposed a limited approval and limited disapproval of the following SJVAPCD rule into the California SIP.[1]

TABLE 1 – SUBMITTED RULE

Rule #	Rule Title	Amended Date	Submitted Date
2201	New and Modified Stationary Source Review Rule	08/15/19	11/20/19

In our July 29, 2022 action, we proposed a limited approval of Rule 2201 because we determined that it generally satisfies the applicable CAA and regulatory requirements for sources subject to nonattainment NSR permit program requirements for Extreme ozone nonattainment areas and Serious $PM_{2.5}$ nonattainment areas.[2] However, we also determined that Rule 2201 does not fully satisfy all these requirements, and identified the following deficiencies in the rule:

[1] 87 FR 45730.
[2] The District submitted the revised Rule 2201 to address requirements applicable following the EPA's reclassifications of the San Joaquin Valley to Serious nonattainment for the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS. The submittal also generally satisfies applicable requirements for the 2015 ozone NAAQS.

1. Missing definitions related to the definition of the term "major modification," and deficiencies in the definitions for the terms: Major Source; Routine Maintenance, Repair and Replacement; PM_{10} Emissions; Secondary Emissions; and Volatile Organic Compounds.
2. Provisions allowing the use of interprecursor trading (IPT) of ozone precursors to satisfy emission offset requirements, which are no longer permissible due to a 2021 D.C. Circuit Court of Appeals decision.
3. Exemptions from otherwise applicable offset requirements for the relocation of emission units or stationary sources, if certain conditions are met, and for the installation or modification of required control equipment.
4. The lack of public notice requirements for minor source permits addressing emissions of ozone precursors.
5. Failure of the federal offset equivalency tracking system to ensure equivalency with federal offset requirements.
6. Missing provisions for Temporary Replacement Units and Routine Replacement Emission Units.
7. Other minor deficiencies, including issues relating to stack height requirements at 40 CFR 51.164; enforceable procedures as provided at 40 CFR 51.165(a)(5)(i) and (ii); and permit issuance restrictions based on inadequate SIP implementation at CAA section 173(a)(4).

These deficiencies are the basis for the EPA's final limited approval and limited disapproval of Rule 2201. Our proposed action and the associated technical support document (TSD) contain more information on the basis for this rulemaking and on our evaluation of the submittal, including a detailed discussion of each deficiency.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received two comment letters, both of which are included in the docket for this action. The first is from an individual; it appears to be generally supportive of the action and does not raise any discernable issues that are adverse to our action as proposed. The second comment letter was submitted by the Central Valley Air Quality Coalition, Medical Advocates for Healthy Air, and Little Manila Rising. Issues raised in this comment are summarized with responses below.

Comment 1: The commenters express support for the EPA's proposed disapproval of the District's offset equivalency system, and for strengthening Rule 2201's automatic remedies for equivalency failure that would require the District to quantify and restore negative balances in the offset equivalency system. The commenters include information regarding the severity of ozone and $PM_{2.5}$ pollution in the San Joaquin Valley, the sources and conditions contributing to this pollution, and the health effects associated with exposure to these pollutants. The commenters also describe their previous work to raise concerns associated with the District's ERC system and offset equivalency demonstration tracking system.

Response: The EPA appreciates the commenters' interest and involvement in issues surrounding the District's use of ERCs and offsets in its equivalency demonstration tracking system, and their support for this action. As explained elsewhere in this notice, we are finalizing our proposed limited approval and limited disapproval of Rule 2201 for the reasons articulated in our proposed rule.

Comment 2: Notwithstanding their general support for the EPA's proposed action, including disapproval of the equivalency system, the commenters disagree with a statement in the EPA's proposed action that the Rule 2201 remedies do not provide a mechanism to require the District to quantify or restore a negative balance in the equivalency system, and therefore fail to ensure full federal offset equivalency in the event of a shortfall. The commenters state that the EPA has neglected to recognize the automatic remedies for a failure to submit annual reports

meeting the Rule 2201 requirements, which they say can correct historical equivalency system failures.

Citing Rule 2201 and statements from the preamble to the EPA's 2004 approval of the rule, the commenters argue that sections 7.4.1.3 and 7.4.2.3 of the rule provide an enforceable mechanism to require the District to quantify and correct negative balances in the equivalency system. These provisions apply when the District fails to submit a report meeting the annual demonstration requirements of sections 7.2.1 or 7.2.2 (respectively), and require the District to apply specified federal offset requirements until it submits a report that meets the applicable requirements. According to the commenters, "[u]pon submission of corrected reports, automatic remedies for the period the system failed equivalency—the negative balance—would apply and those permits in that period would have to meet federal standards, thus correcting the negative balance."

The commenters request that the EPA clarify that this remedial scheme applies and not foreclose potential action to enforce the existing SIP-approved rule to remedy asserted violations of Rule 2201.

Response: While we agree that Rule 2201 provides automatic enforceable remedies if the District fails to submit a required annual report containing the required information, we cannot provide the clarification requested by the commenters because we do not agree that these remedies are adequate to correct historical offset equivalency system failures as described by the commenter. As stated in our proposed action and cited by the commenters, even when the Rule 2201 remedies are fully implemented in response to an equivalency failure, the equivalency system will retain a historic deficit relative to the federal program, which is not made whole under the rule.[3] As the commenters note, the rule also applies federal offset requirement remedies when the District fails to submit a compliant annual equivalency report. In that case, the District would be required to adopt federal offset requirements as prescribed by section

[3] 87 FR 45730, 45734/2 (July 29, 2022).

7.4.1.3 or 7.4.2.3 (as applicable), which would remain in place until the District submits a report complying with the applicable requirements in section 7.2.1 or 7.2.2. Critically, however, the rule contains no requirement for the District to submit a corrected report or to restore any negative balance in the equivalency system. Should the District subsequently submit corrected reports showing an equivalency shortfall, the applicable federal offset requirements would remain in place, but the rule would not require the District to restore the negative balance.

As we explained in our proposed action, the Rule 2201 remedies are inadequate to ensure equivalency once available carryover offsets and additional creditable emission reductions are exhausted.[4] Our 2004 approval of the rule acknowledged that a deficit could remain even after all available emission reductions were exhausted, in which case the District would be required to implement federal offsetting requirements:

> Should the District allow too many non-surplus emission reductions to be used as offsets, the remedy is outlined in section 7.4. The District will retire additional creditable reductions that have not been used as offsets and have been banked or generated as a result of enforceable permitting actions. *If a deficit remains*, the District must implement the requirements specified in the federal rules.[5] (Emphasis added.)

These federal offsetting requirements do not apply retroactively. Rule 2201 clearly establishes that the remedy shall be implemented prospectively through subsequent permitting actions, specifying that "all ATCs issued after the report deadline for that year shall comply" with the federal offsetting requirements.[6] Similar language appears in the rule's other federal offset remedy provisions.[7] Once the District has exhausted all creditable offsets and additional creditable emissions reductions under section 7.4.1.1 and implemented the federal offset remedies for new permitting actions under section 7.4.1.2, the rule provides no further corrective mechanisms to restore a prior shortfall. Specifically, there is no requirement for the District to

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[4] Id. at 45734/1.
[5] 69 FR 27837, 27839 (May 17, 2004).
[6] Rule 2201, section 7.4.1.2.
[7] See id. at section 7.4.1.3; 7.4.2.1; 7.4.2.3 (implementing remedies through conditions of subsequent ATCs).

collect any additional offsets from a source that was previously issued a permit under the rule.[8] Accordingly, as noted in our proposed action, the equivalency system may retain a historical deficit relative to the federal program even after all applicable remedies are fully implemented.

In reviewing the Rule 2201 text, we fail to see any provisions that would provide a mechanism to require the District to quantify and correct any negative balance in the equivalency system, as claimed by the commentors. In particular, we see nothing in the rule that would require the District to submit a corrected report once the remedies from sections 7.4.1.3 and 7.4.2.3 of the rule are imposed, as the commenters appear to suggest. As noted above, these remedies apply "until" the District submits a report that complies with the applicable requirements. But if the District does not submit any such correction, the federal offset remedy remains in place, and the District is not otherwise compelled to take any further action.

Comment 3: The commenters recount concerns associated with the creditability of emissions reductions from agricultural engine electrification ("Ag-ICE") projects and orphan shutdowns, and argue that the District's provisional withdrawal of these reductions from the equivalency system means that all reports that relied on these reductions to show equivalency (beginning with the 2007–2008 report) violate sections 7.2.1 and 7.2.2 of the rule. Therefore, according to the commenters, the automatic remedies in sections 7.4.1.3 and 7.4.2.3 should apply until the District submits corrected annual reports for these periods. If the District corrects these reports and quantifies the equivalency system deficit, the commenters state, the corrected reports will indicate when the District first had negative balances in its equivalency system, and the automatic remedies for equivalency failure would take effect upon the due date for the first corrected annual report to show system failure, meaning that all permits issued from that date forward would need to meet the appropriate federal offset requirements.

[8] See 69 FR at 27839 (specifying that "a source that complies with the applicable District SIP-approved NSR rule would be in compliance with the provisions of the Clean Air Act that the District SIP rule implements," and that the District would not be required "to withdraw a permit issued in reliance on an emission reduction credit that is of lesser surplus value at the time of use under federal criteria").

Response: As explained in our response to the prior comment, we disagree that the Rule 2201 remedies would require the District to submit corrected reports or to retroactively apply federal offset requirements to permitting actions completed in prior reporting years. Further, while we acknowledge the commenters' concerns about the creditability of emissions reductions from Ag-ICE projects and orphan shutdowns, a determination of whether prior annual equivalency reports complied with the applicable requirements of the SIP-approved version of Rule 2201 is outside the scope of this rulemaking action.

Comment 4: The commenters state that the EPA should revisit the technical basis for our proposed approval of the District's nonattainment area NSR precursor demonstration for ammonia. The commenters assert that the EPA has failed to consider two significant issues related to the 2025 NO_X inventory used to assess the contribution of major sources of ammonia on ambient air quality. In particular, the commenters say that the 50% reduction in NO_X emissions between 2013 and 2025 cited in the TSD may be overstated because the EPA has not yet approved several of the strategies to achieve over 33 tons per day (tpd) of reductions in CARB's "aggregate commitment" in the 2018 San Joaquin Valley $PM_{2.5}$ Plan. In addition, the commenters say that the NO_X emissions inventory used in the modeling fails to fully account for NO_X emissions from soil. The commenters cite Almarez et al. (2018) and Sha et al. (2021), which they say show that including NO_X emissions from soil could increase total NO_X in the emissions inventory by 50%.

The commenters request that the EPA require the District to perform a precursor demonstration without the 2025 NO_X inventory which relies on reductions from the aggregate commitments, suggesting that it would be more appropriate to use the current year inventory adjusted to conservatively account for soil NO_X data.

Response: The EPA does not agree that the technical basis for the NSR precursor demonstration is improper for the reasons suggested by the commenter. The projected 50%

emissions reduction between 2013 and 2025, cited in the TSD[9] and precursor demonstration,[10] comes from the 2018 San Joaquin Valley $PM_{2.5}$ Plan.[11] Table B-2 of the Plan's Appendix B shows the baseline emissions inventory for NO_X, which projects emissions reductions expected due to existing control measures. This baseline inventory does not include additional reductions from new control measures or aggregate commitments in the Plan. During the 2013 to 2025 period, baseline annual average NO_X emissions are projected to decrease from 317.2 tons per day (tpd) to 143.7 tpd, a decrease of 54.7%. Similarly, for the same time period, baseline winter season emissions are projected to decrease from 300.5 tpd to 134.5 tpd, a decrease of 55.2%. Over 90% of the decrease is due to NO_X emissions reductions from the existing motor vehicle control program.[12] Thus, NO_X emissions are projected to decrease by over 50%, independent of any NO_X reductions required for District's attainment plan for the 2012 annual $PM_{2.5}$ NAAQS.

The precursor demonstration's 2025 modeling includes reductions from the aggregate commitments, and therefore shows lower NO_X emissions than the 2025 baseline. With these lower NO_X emissions, modeling of $PM_{2.5}$ formation would tend to be more NO_X-limited and less ammonia-limited than the higher baseline inventories, and therefore less responsive to the addition of hypothetical new ammonia point sources. With or without the aggregate commitment reductions, the model response to adding hypothetical new ammonia sources is small enough to sustain the conclusion that these sources would not contribute significantly to $PM_{2.5}$ levels exceeding the NAAQS. As we noted in our evaluation of the precursor demonstration:

> For the 24-hour average, the maximum modeled contribution is 0.394 μg/m^3, well below the recommended contribution threshold of 1.5 μg/m3. For the annual average, the maximum impact of 0.038 μg/m^3 is also well below the threshold of 0.2 μg/m^3. The District notes that the contributions are 26% and 20%, respectively, of the 24-hour and

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[9] TSD Attachment 2, "Evaluation of NNSR Precursor Demonstration for NH_3 for the San Joaquin Valley Unified Air Pollution Control District," Memorandum from Scott Bohning, EPA Region 9, to Docket EPA-R09-OAR-2022-0420, San Joaquin Valley NSR Rule 2201, p. 9.

[10] SJVAPCD, "Final Draft Staff Report: Rules 2201, 2301, and 2520" July 15, 2019, Appendix E, "Demonstration of Contribution of Hypothetical Increased Ammonia Emissions to PM2.5 Concentrations in the San Joaquin Valley," p. 59.

[11] SJVAPCD, "2018 Plan for the 1997, 2006, and 2012 PM2.5 Standards," November 15, 2018, Appendix B, Table B-2 ("2018 San Joaquin Valley $PM_{2.5}$ Plan").

[12] Id. Baseline motor vehicle program NO_X emissions decrease from 270.5 tpd to 108.6, a reduction of 161.9, which is 93.3% of the total NO_X decrease of 317.2 - 143.7 = 173.5 tpd.

annual thresholds, despite the very conservative assumptions used for the hypothetical sources and the source modifications.[13]

Thus, without the aggregate commitment NO_X reductions, the atmosphere would have to be nearly four times as sensitive to ammonia increases for the model responses to exceed the contribution thresholds. The EPA does not believe that is credible. As an approximate check, the EPA estimated the effect of including the aggregate commitments; that is, the effect of increasing the model emissions input by 33.88 tpd of NO_X.[14] The aggregate commitments represent a reduction of 23.6% from 2025 baseline emissions of 143.7 tpd. For comparison, baseline annual NO_X emissions decreased by 26.8% between 2020 and 2024 (203.3 tpd down to 148.9 tpd).[15] The comprehensive ammonia precursor demonstration in the 2018 San Joaquin Valley $PM_{2.5}$ Plan[16] estimates the effect of a 30% reduction in ammonia emissions for both 2020 and 2024 baseline emissions, using the same underlying 2013 base case as the NSR precursor demonstration. In going from the 2024 to the 2020 results, the response increased by 100%, a factor of two, for the Bakersfield-Planz site (0.12 up to 0.24 $\mu g/m^3$), which is the most responsive site, and by an average of 62% over all sites. This shows that a NO_X emissions increase comparable to that from the aggregate commitments increased the sensitivity to ammonia by at most a factor of two. That is far less than the factor of four increase that would be needed for hypothetical new ammonia sources to exceed the contribution threshold. Therefore, the NSR precursor demonstration results support the conclusion that new major sources and major modifications would not contribute significantly to $PM_{2.5}$ levels exceeding the NAAQS even when NO_X reductions from the aggregate commitments are included.

With respect to the amount of NO_X emitted by soil in the San Joaquin Valley, there is conflicting research. The commenters cite conclusions of Almaraz et al. (2018) and Sha et al.

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[13] TSD Attachment 2, p.12.
[14] These aggregate commitments are described and summed in the EPA's proposed action on the 2018 San Joaquin Valley $PM_{2.5}$ Plan at 86 FR 74310, 74331 (December 29, 2021).
[15] 2018 San Joaquin Valley $PM_{2.5}$ Plan at Appendix B, Table B-2.
[16] Id. at Appendix G. The EPA approved this precursor demonstration with its accompanying modeling for the 2006 24-hour $PM_{2.5}$ NAAQS, 85 FR 44192, July 22, 2020.

(2021) that soil NO_X emissions are underestimated in the CARB emissions inventory system,[17] and that they comprise 30–40% of total NO_X emissions in California. While higher levels of soil NO_X (or NO_X more generally) would tend to increase the modeled sensitivity of ambient $PM_{2.5}$ to ammonia, we maintain that there is not a sufficient basis to conclude that higher soil NO_X emissions should be used in the air quality modeling for the San Joaquin Valley.[18] In contrast to the studies cited by the commenters, Guo et al. (2020)[19] does not find such a discrepancy in emissions estimates, concluding that soil NO_X is about 1% of anthropogenic NO_X emissions. Almaraz et al. estimates the fraction of nitrogen applied as fertilizer and released as NO_X to the atmosphere to be 15%, while seven other studies reviewed by Guo et al. estimate it to be 2% or less. Almaraz et al., Sha et al., and Guo et al. all report high agreement between their modeled and observed soil NO_X emissions. Almaraz et al. acknowledges the limited number of surface measurements that were available for purposes of comparing the model results and the difficulty in comparing the model results to the observations and notes the need for more field measurements. Guo et al. states that obtaining an emission factor correlating NO_X emissions to fertilizer application from the data available in various studies (including Almaraz et al.) would be "difficult or impossible" due to the sparsity of data collected in terms of sampling length, sampling frequency, and the episodic nature of nitrogen gas emissions from soil.

In light of the uncertainties and disagreements among studies, at this time the EPA does not believe that available research provides sufficient certainty about the magnitude and proportion of soil NO_X emissions attributable to agricultural fertilizer application to require substantial revisions in either the NO_X emissions inventory or the $PM_{2.5}$ modeling at this time.

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[17] Almarez et al. discuss a comparison to NO_X in the California Emissions Projection Analysis Model (CEPAM), the basis for CARB planning and modeling.

[18] See EPA Region IX, "Response to Comments Document for the EPA's Final Action on the San Joaquin Valley Serious Area Plan for the 2006 $PM_{2.5}$ NAAQS," June 2020, pp. 148 and 158. This document accompanies the EPA's final rule published at 85 FR 44192 (July 22, 2022).

[19] Guo et al. (2020), "Assessment of Nitrogen Oxide Emissions and San Joaquin Valley $PM_{2.5}$ Impacts From Soils in California," Journal of Geophysical Research: Atmospheres, 125(24), doi:10.1029/2020JD033304; available at *https://doi.org/ 10.1029/2020JD033304*.

In summary, the EPA disagrees with the commenters that the District's ammonia precursor demonstration is insufficient. The EPA believes that the modeling in the precursor demonstration adequately shows that new and modified major sources of ammonia would not contribute significantly to $PM_{2.5}$ levels above the NAAQS. The EPA therefore affirms our approval of the District's nonattainment area NSR precursor demonstration for ammonia, and our approval of Rule 2201 without including ammonia as a $PM_{2.5}$ precursor.[20]

III. EPA Action

No comments were submitted that change our assessment of Rule 2201 as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing a limited approval and limited disapproval of Rule 2201. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient.

This approval is limited because the EPA is simultaneously finalizing a limited disapproval of the rule under section 110(k)(3). Our limited disapproval action triggers an obligation for the EPA to promulgate a federal implementation plan (FIP) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months of this final action. Additionally, because the deficiency relates to nonattainment NSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) will be imposed in the San Joaquin Valley nonattainment area 18 months after the effective date of this action, and the highway funding sanction in CAA section 179(b)(1) will be imposed in the area six months after

[20] For the 2012 $PM_{2.5}$ NAAQS, the EPA recently proposed to disapprove the comprehensive precursor demonstration for ammonia in the 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards. 87 FR 60494 (October 5, 2022). That demonstration modeled ammonia emissions reductions of 30%–70% of the total inventory and compared the response at monitor locations, as recommended in EPA's "$PM_{2.5}$ Precursor Demonstration Guidance," EPA-454/R-19-004, US EPA OAQPS, May 2019, available at *https://www.epa.gov/pm-pollution/pm25-precursor-demonstration-guidance*. The proposed disapproval focused on some responses above the recommended contribution threshold, and the reliance on reduction of no more than 30%. in the plan's precursor demonstration. In contrast, for the nonattainment area new source review precursor demonstration considered here the same guidance recommends modeling ammonia emissions increases, from a variety of hypothetical new sources. The two precursor demonstrations have different requirements and follow different procedures for assessing ammonia's contribution to $PM_{2.5}$. This is appropriate for the different regulatory requirements and source types covered by the two types of demonstrations, and the EPA's conclusion on the two may also be different.

the offset sanction is imposed, unless the EPA approves subsequent SIP revisions that correct the rule deficiencies prior to the implementation of the sanctions. The EPA intends to work with the District to correct the deficiencies in a timely manner.

Note that Rule 2201 has been adopted by the SJVAPCD, and the EPA's final limited disapproval does not prevent the local agency from enforcing it. The limited disapproval would also not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP.[21]

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of SJVAPCD Rule 2201, "New and Modified Stationary Source Review Rule," amended on August 15, 2019, which implements the District's NSR permitting program for new and modified sources of air pollution under section 110(a)(2)(C) and part D of title I of the CAA. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the "**FOR FURTHER INFORMATION CONTACT**" section of this preamble for more information).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders*.

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

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[21] Memorandum dated July 9, 1992, from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. EPA, to EPA Regional Air Directors, Regions I–X, Subject: "Processing of State Implementation Plan (SIP) Submittals."

B. *Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. *Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. *Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. *Executive Order 13132: Federalism*

This action does not have federalism implications. It 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.

F. *Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because 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, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. *Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. *National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. *Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." The EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks,

including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

Under the CAA, 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 review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this action is finalizing a limited approval and limited disapproval of Rule 2201 as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

K. *Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. *Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: June 28, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

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

Subpart F – California

2. Section 52.220 is amended by adding paragraphs (c)(400)(i)(A)(*2*) and (c)(598) to read as follows:

§52.220 Identification of plan-in part.

* * * * *

(c) * * *

(400) * * *

(i) * * *

(A) * * *

(*2*) Previously approved on September 17, 2014, in paragraph (c)(400)(i)(A)(*1*) of this section and now deleted with replacement in (c)(598)(i)(A)(*1*), Rule 2201, "New and Modified Stationary Source Review Rule," amended on April 21, 2011.

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(598) The following regulations were submitted on November 20, 2019, by the Governor's designee as an attachment to a letter dated November 15, 2019.

(i) *Incorporation by reference.* (A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 2201, "New and Modified Stationary Source Review Rule," amended on August 15, 2019.

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

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