administrative requirements. TTB searched the COLAs Online database and did not find any labels that we believe would be affected, but we are taking public comment on the issue of affected labels to get more information about the potential economic effects of the rulemaking. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Christopher M. Thiemann of the Regulations and Rulings Division drafted this notice of proposed rulemaking.

List of Subjects in 27 CFR Part 5

Advertising, Alcohol and alcoholic beverages, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, and Reporting and recordkeeping requirements.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 5, Code of Federal Regulations, as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205 and 207.

Subpart C—Standards of Identity for Distilled Spirits

■ 2. Section 5.143 is amended by:

■ a. Adding a sentence at the end of paragraph (b); and

■ b. In Table 1 to paragraph (c), adding paragraph (15).

The additions read as follows:

§ 5.143 Whisky.

* * * * *

(b) * * * ''American single malt whisky'' must be distilled entirely at one U.S. distillery, and must be mashed, distilled, and aged in the United States.

(c) * * *

TABLE 1 TO PARAGRAPH (c)—TYPES OF WHISKY AND PRODUCTION, STORAGE, AND PROCESSING STANDARDS

Type	Source	Distillation proof	Storage	Neutral spirits permitted	Allowable coloring, flavoring, blending materials permitted
*	*	*	*	*	*
(15) American single malt whisky.	Fermented mash of 100 percent malted barley.	160° or less ...	Oak barrels not exceeding 700 liters.	No	Yes.

* * * * *

Signed: July 20, 2022.

Mary G. Ryan,

Administrator.

Approved: July 20, 2022.

Thomas C. West, Jr.,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2022–16244 Filed 7–28–22; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR part 52

[EPA–R09–OAR–2022–0420; FRL–9970–01–R9]

Limited Approval and Limited Disapproval of California Air Plan Revisions; 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 a limited approval and limited disapproval of revisions to the San Joaquin Valley Air Pollution Control District (SJVAPCD or ''District'') portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compounds (VOC), oxides of nitrogen (NO_X), particulate matter (PM) (including PM equal to or less than 2.5 microns in diameter ($PM_{2.5}$) and PM equal to or less than 10 microns in diameter (PM_{10})), and their precursors. This action addresses a revised rule governing the issuance of permits for stationary sources, focusing on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or ''Act''). We are taking comments on this proposal and a final action will follow.

DATES: Written comments must be received on or before August 29, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0420 at *www.regulations*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. 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 the disclosure of which 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI and multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities 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, 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. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal including the date it was adopted by the District and submitted to the EPA by the California Air Resources Board (CARB), which is the governor's designee for California SIP submittals. This rule constitutes part of the SJVAPCD's program for preconstruction review and permitting of new or modified stationary sources under its jurisdiction. The rule revisions that are the subject of this action represent an update to the SJVAPCD's preconstruction review and permitting program and are intended to satisfy the requirements under part D of title I of the Act, ''nonattainment new source review (''NNSR'') as well as the general preconstruction review requirements under section 110(a)(2)(C) of the Act, minor new source review (''NSR'').

TABLE 1—SUBMITTED RULE

Rule No.	Rule title	Adopted	Submitted
Rule 2201	New and Modified Stationary Source Review Rule	08/15/19	11/20/19 [1]

On May 7, 2020, the submittal for Rule 2201 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.[2]

B. Are there other versions of this rule?

Rule 2201 was previously approved into the California SIP on September 17, 2014.[3] If the EPA finalizes the action proposed herein, this prior version of the rule will be replaced in the SIP by the submitted rule identified in Table 1.

C. What is the purpose of the submitted rule?

As noted above and described in further detail below, the submitted rule is intended to satisfy the minor NSR and NNSR requirements of section 110(a)(2)(C) and part D of title I of the Act, and related EPA regulations. Minor NSR requirements are generally applicable for SIPs in all areas, while NNSR requirements apply only for areas designated as nonattainment for one or more National Ambient Air Quality Standards (NAAQS). The San Joaquin Valley is currently designated ''Extreme'' nonattainment for the 1997, 2008 and 2015 ozone NAAQS and ''Serious'' nonattainment for the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS. See 40 CFR 81.305. Therefore, the designation of San Joaquin Valley as federal ozone and $PM_{2.5}$ nonattainment areas triggered the requirement for the District to develop and submit an NNSR program to the EPA for approval into the California SIP.

The EPA issued a final rule on December 6, 2018, that found that the District had failed to submit a SIP submittal addressing NNSR requirements for $PM_{2.5}$.[4] This finding of failure to submit triggered sanctions clocks under CAA section 179. The EPA's May 7, 2020 finding of completeness represented the EPA's determination that the District had corrected the deficiencies related to NNSR requirements for the 2006 and 2012 $PM_{2.5}$ NAAQS that formed the basis for the EPA's December 6, 2018 finding of failure to submit, and as a result, the associated sanctions and running of the sanctions clocks were permanently stopped.[5] The EPA's Technical Support Document (TSD) has more information about the purpose of the submitted rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

The EPA has evaluated Rule 2201 for compliance with the applicable requirements of section 110(a)(2)(C) and part D of title I of the CAA and the associated regulations at 40 CFR 51.160–165, consistent with the District's classification as an Extreme ozone nonattainment area and Serious $PM_{2.5}$ nonattainment area. We have also considered whether the rule meets the federal visibility requirements related to state NNSR programs as described in 40 CFR 51.307. Additionally, we have reviewed the rule for consistency with other CAA general requirements for SIP submittals, including requirements at section 110(a)(2) regarding rule enforceability, and requirements at sections 110(l) and 193 for SIP revisions.

Part D and title I of the CAA and the implementing regulations at 40 CFR 51.165 contain the NNSR program requirements for major stationary sources and major modifications for the pollutants for which the area has been designated nonattainment. The applicable provisions of 40 CFR 51.307 establish requirements for state NNSR programs to provide for review of major stationary sources and major modifications that may have an impact on visibility in any mandatory Class I Federal area, consistent with CAA section 169A. 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 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.

[1] The submittal was transmitted to the EPA via a letter from CARB dated November 15, 2019.

[2] See letter dated May 7, 2020, from Elizabeth J. Adams, U.S. EPA Region 9, to Richard Corey, CARB, regarding the November 20, 2019, submittal of District Rule 2201.

[3] 79 FR 55637.

[4] 83 FR 62720.

[5] See 40 CFR 52.31(d)(5).

B. Does the rule meet the evaluation criteria?

With the exceptions noted below, the EPA finds that Rule 2201 generally satisfies the applicable CAA and regulatory requirements for sources subject to NNSR permit program requirements for Extreme ozone nonattainment areas and Serious $PM_{2.5}$ nonattainment areas. Although the rule does not satisfy the related visibility requirements in 40 CFR 51.307, the San Joaquin Valley is subject to a Federal Implementation Plan that addresses these requirements.[6]

Rule 2201 complies with the substantive and procedural requirements of CAA section 110(l). With respect to the procedural requirements, based on our review of the public process documentation included with the submitted rules, we find that the SJVAPCD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to submittal of this SIP revision and has satisfied these procedural requirements under CAA section 110(l). With respect to the substantive requirements of CAA section 110(l), we have determined that our approval of Rule 2201 would not interfere with the area's ability to attain or maintain the NAAQS or with any other applicable requirements of the CAA.

Similarly, we find that Rule 2201 is approvable under section 193 of the Act because it does not modify any control requirement in effect before November 15, 1990.

Rule 2201 is generally consistent with criteria for the EPA's approval of regulations submitted for inclusion in the SIP, including the requirement in CAA section 110(a)(2)(A) that submitted regulations be clear and legally enforceable.

For the reasons stated above and explained further in our technical support document (TSD), we find that the submitted rule generally satisfies the applicable CAA and regulatory requirements for minor NSR and NNSR permit programs under CAA section 110(a)(2)(C) and part D of title I of the Act and other applicable requirements, subject to the exceptions noted below where the EPA has identified deficiencies. Because Rule 2201 is not fully consistent with these requirements, we are proposing a limited approval and limited disapproval of Rule 2201 under CAA sections 110(k)(3) and 301(a). Rule 2201 provisions that do not meet the evaluation criteria are summarized in the following section and described in more detail in the TSD included in the docket for this proposed action.

C. What are the rule deficiencies?

The following provisions of Rule 2201 do not satisfy the requirements of section 110 and/or part D of title I of the Act, and prevent full approval of the Rule 2201:

1. Definitions

Section 3.18 of Rule 2201 incorporates the federal definition of ''major modification'' through the definition of ''Federal Major Modification,'' but omits several other definitions necessary for proper application of this term and related calculation provisions. These missing definitions are listed in the TSD for this proposed rulemaking. The District must either include definitions for these terms, or explicitly state that for the purposes of the Rule 2201 definition of ''Federal Major Modification,'' all terms used in the definition are as defined in 40 CFR 51.165, as it exists on the date of adoption.

Additionally, Rule 2201 contains deficient definitions for the following terms: Major Source; Routine Maintenance, Repair and Replacement; PM_{10} Emissions; Secondary Emissions; and Volatile Organic Compounds. The specific deficiencies associated with these terms, and the necessary revisions necessary to correct the deficiencies, are described in the TSD for this proposed action.

2. Interpollutant Offset Requirements

Section 4.13.3.1 allows the District to approve interprecursor trading (IPT) of ozone precursors to satisfy emission offset requirements, provided certain conditions are satisfied. However, on January 29, 2021, the D.C. Circuit Court of Appeals in *Sierra Club* v. *EPA,* 984 F.3d 1055, issued a decision holding that the CAA does not allow IPT for ozone precursors and vacating the provisions in the EPA's NNSR regulations allowing IPT for ozone precursors. In light of the Court's decision, the provision in section 4.13.3.1 allowing for IPT for ozone precursors is no longer permissible. The District must revise section 4.13.3.1 to ensure it is consistent with the Courts decision and the provisions of 40 CFR 51.165(a)(11) as it pertains to ozone precursors.

3. Offset Exemptions

Sections 4.6.6 and 4.6.7 both allow exemptions from otherwise applicable offset requirements for the relocation of an entire stationary source or emission unit, respectively, if certain conditions are met. Because federal requirements do not allow any exemptions from offset requirements for relocation projects, we find these provisions deficient. The District may allow a source or emission unit to obtain emission reduction credits for the quantity of actual emissions previously emitted at the old location and use them as offsets at the new location. However, the full potential to emit (PTE) of the source or emission unit at the new location must be offset at the appropriate offset ratio. Alternatively, the District may limit the applicability of these exemptions to minor sources that are not subject to the NNSR offsetting requirements.

Section 4.6.8 provides an offset exemption for the installation or modification of required emission control equipment. Paragraph 4.6.8.4 establishes emissions increase limits for a project to qualify for this exemption but does not include a limit for $PM_{2.5}$ emissions and is therefore deficient. The District must update this provision to add a limit on increases in permitted emissions or potential to emit of no more than 10 tpy of $PM_{2.5}$. This will ensure that the exemption only applies to emission control projects that will not trigger a $PM_{2.5}$ major modification.

4. Public Notice Requirements for Minor Source Permits Emitting Ozone Precursors

Section 5.4.5 requires public notice for any project resulting in an increase in permitted emissions of any pollutant exceeding 20,000 pounds per year (10 tpy). As an extreme ozone nonattainment area, the major source threshold for ozone precursors is also 10 tpy, meaning that the rule currently does not require any public notice for minor sources of NO_X and VOC, whose emissions may contribute to ozone nonattainment in the San Joaquin Valley. Therefore, the public notice threshold does not adequately address the minor source and minor modification public notice requirements for VOC and NO_X. The District must demonstrate that its public notice threshold for minor sources of NO_X and VOC is sufficiently stringent to exclude only sources whose emissions are inconsequential to attainment.

5. District Equivalency With Federal Offset Requirements

Section 173 of the CAA and the EPA's implementing NSR regulations at 40 CFR 51.165 require emissions increases associated with new major sources and major modifications to be offset through corresponding decreases in emissions.

[6] 40 CFR 52.281(d).

To be creditable as offsets, these offsetting emissions reductions must be surplus, permanent, quantifiable, and federally enforceable,[7] and meet other federal requirements.

The EPA allows local permitting authorities flexibility in designing and implementing emissions offset programs, so long as these programs achieve an equal or greater amount of creditable emissions reductions as would be required under the offset program described in the federal NSR regulations. Rule 2201 differs from the federal offset requirements in several respects, including especially how it calculates ''surplus'' emission reductions required to offset emissions increases from new major sources and major modifications.

To account for these differences, Rule 2201 includes an offset equivalency tracking system in Section 7, which requires the District to submit an annual report comparing the offsets actually required by the District to those that would have been required under the federal requirements in terms of both the quantity of offsets required (''Test 1'') and the creditable ''time-of-use'' surplus value of the offsets (''Test 2'').[8]

If there is a shortfall under either Test 1 or Test 2, the District may supplement the demonstration by retiring additional creditable emission reductions that have not been used as offsets.[9] If the District cannot produce sufficient additional creditable emission reductions to make up a shortfall under either test, the failure triggers specific remedies under section 7.4. For a shortfall under Test 1, all new major source and major modification authority to construct (ATC) permits issued after the report deadline must apply the federal offset calculation requirements from 40 CFR 51.165 and part D of title I of the CAA, including the requirements to provide the federally required quantity of offsets and to ensure that these offsets are time-of-use surplus adjusted.[10] For a shortfall under Test 2, all new major source and major modification ATC permits issued after the report deadline must ensure that emissions reductions used to satisfy offset requirements are creditable and time-of-use surplus adjusted.[11]

The EPA first approved these provisions in 2004.[12] In the years since, the District has submitted annual equivalency demonstrations as described under the rule, showing equivalency under Test 1 and Test 2.[13] For many pollutants and years, the District has demonstrated equivalency on an annual basis, by collecting more offsets annually than required under the federal program.[14] However, tightened federal requirements resulting from the San Joaquin Valley's 2010 reclassification to Extreme ozone nonattainment has resulted in the District collecting, in some years, fewer annual offsets for VOC and NO_X than federally required. As a result, recent VOC and NO_X equivalency demonstrations have relied on ''carryover'' offsets collected in previous reporting years, as well as additional creditable emission reductions from facility closures that have not been claimed for offset credit by the facility operators (often termed ''orphan shutdowns''), and agricultural engine electrification projects.

The District's 2019–2020 Annual Offset Equivalency Report (''2019—2020 Report'') was the first to demonstrate a shortfall for any pollutant.[15] The 2019–2020 Report showed a failure of Test 1 and Test 2 for VOC, and a Test 2 failure for NO_X, and attributed these failures to the District's provisional removal of the additional creditable emission reductions associated with orphan shutdowns and engine electrification projects.[16] In response to the Report's VOC and NO_X failures, the District began implementing the federal offset requirements for VOC, and the federal requirements for offset surplus value (but not offset quantity) for NO_X, as described in the section 7 remedy provisions.[17]

The District's 2020–2021 Annual Offset Equivalency Report (''2020–2021 Report'') showed offset equivalency for PM_{10}, $PM_{2.5}$, CO, and SO_X.[18] The 2020–2021 Report did not include a Test 1 or Test 2 demonstration for VOC, or a Test 2 demonstration for NO_X, since the 2019–2020 Report found that the District's program was no longer showing equivalency under these tests. The 2020–2021 Report's Test 1 demonstration for NO_X showed that the District required fewer offsets in the reporting year than would have been required under federal offset requirements, but that the District's offset program maintained a sufficient balance of carryover offsets from previous reporting years to make up the difference. Critically, however, while NO_X offsets collected in the most recent reporting year were surplus adjusted to time-of-use pursuant to federal requirements (per the District's response to the prior year's Test 2 failure), the carryover offsets were credited at their full time-of-issuance value (*i.e.,* these offsets were not federally surplus-adjusted). Since the District's previous report had shown a Test 2 shortfall for NO_X offsets, these carryover offsets no longer retained any surplus balance that could be counted toward equivalency. The District subsequently issued a revised report withdrawing the NO_X portion of the 2020–2021 Report, based on the District's concern that the remedy of requiring a federal time-of use surplus adjustment was not adequate to ensure full federal equivalency.[19]

Since the shortfalls from the 2019–2020 and 2020–2021 Reports, several shortcomings in the District's equivalency system have become apparent. As an initial matter, the equivalency failures for VOC and NO_X mean that the District must update the rule to apply federal applicability and

[7] 40 CFR 51.165(a)(3)(ii)(C)(*1*)(*i*).

[8] ''Time-of-use'' surplus signifies that the offsetting emissions reductions are surplus of applicable requirements as of the issuance date of the ATC permit for the project whose emission increases the reductions are used to offset. The federal offset program requires all offsets to be time-of-use surplus. CAA 173(c)(2). In contrast, the quantity of offsets surrendered for construction permits issued by the District, as measured in Test 1, are surplus-adjusted only at the time the emission reduction credit is initially issued (''time-of-issuance'' surplus). Rule 2201 at section 3.2.2. Since emissions reductions may be credited years before they are used to offset a project, more stringent control requirements implemented in the interim period may significantly reduce the time-of-use surplus value relative to the time-of-issuance surplus value. Therefore, the District's allowance of ERCs valued at time-of-issuance is generally less stringent than federal requirements because it may assign higher value to a credit than is federally creditable.

[9] *Id.* at sections 7.2.1.2 and 7.2.2.2.

[10] *Id.* at section 7.4.1.2.

[11] *Id.* at section 7.4.2.1.

[12] 69 FR 27837 (May 17, 2004). The TSD for this proposed action includes more detail on the history of the Section 7 provisions and EPA's approval of the equivalency system.

[13] These reports are generally available at *www.valleyair.org/busind/pto/annual_offset_report/annual_offset_report.htm.*

[14] This has been most common for PM_{10}, CO, and SO_X, when the District has applied lower offsetting thresholds than applicable under the federal major source definitions at 40 CFR 51.165(a)(1)(iv)(A).

[15] SJVAPCD, ''2019–2020 Annual Offset Equivalency Report,'' November 20, 2020.

[16] Id. at 4–5. The District withdrew these credits in response to a CARB report that identified concerns about the assumptions and calculations that the District applied in crediting these reductions, among other issues associated with the District's implementation of its offset program. See CARB, ''Review of the San Joaquin Valley Air Pollution Control District Emission Reduction Credit System,'' June 2020.

[17] Rule 2201, section 7.4.1.2 and 7.4.2.1.

[18] SJVAPCD, ''2020–2021 Annual Offset Equivalency Report,'' November 19, 2021.

[19] SJVAPCD, ''2020–2021 Revised Annual Offset Equivalency Report,'' March 1, 2022 (''2020–2021 Revised Report''). See also letter dated March 21, 2022, from Elizabeth J. Adams, Director, EPA Region IX Air and Radiation Division, to Samir Sheikh, Executive Director, SJVAPCD (conveying EPA concerns about 2020–2021 Report NO_X demonstration, and supporting District decision to withdraw through 2020–2021 Revised Report).

offset requirements for these pollutants.[20] More generally, the 2020–2021 Report showed a significant disconnect between the section 7 tests and remedies for all pollutants. Specifically, once the District has failed Test 2, it has effectively demonstrated that its program is less stringent than the federal requirements because it has not provided an equivalent amount of time-of-use surplus emissions reductions as would have been required under the federal program.[21] However, the remedy for a Test 2 failure provides only that the District must require the offsets collected for future permits to be time-of-use surplus adjusted, and does not contain any explicit requirement for the District to collect the federal quantity of time-of-use surplus offsets for those permits. Therefore, the Test 2 remedy does not ensure full offset equivalency following a Test 2 failure.

Additionally, we identified a deficiency in Rule 2201 in that it does not contain any requirement to prevent the equivalency system from continuing to operate at a deficit once available carryover offsets and additional creditable emission reductions are exhausted. Because the rule only requires the District to demonstrate equivalency on an annual (rather than ongoing) basis, the District may continue to issue permits that require less than the federal quantity of surplus offsets even after the equivalency system has run out of excess offsets and emission reductions that can be used to restore the difference. This could allow the District to incur an increasing deficit for up to 15 months before any remedy is in place, since the rule's remedies become effective only after the submission deadline for the annual offset equivalency report.[22]

As described above, our 2004 approval of Rule 2201 found that an annual aggregate demonstration was generally appropriate and would not cause significant delay in implementing a remedy. However, this finding relies on demonstrations involving an annual shortfall that could be made up using carryover offsets, rather than a shortfall that exceeds the balance of available carryover offsets and additional creditable emission reductions within the equivalency system, as happened in the 2019–2020 Report.[23] On reconsideration, we find that an annual aggregate system may be inappropriate because it does not ensure that sufficient creditable emission reductions are available to offset emissions from new construction prior to an ATC permit being issued.[24] Moreover, we find that the specific provisions of Rule 2201 are inadequate because they do not contain any safeguards to prevent the District from continuing to operate its equivalency system with a negative balance during a reporting period.

Finally, because neither remedy provides a mechanism to require the District to quantify or restore a negative balance in the equivalency system, both remedies fail to ensure full federal offset equivalency in the event of a shortfall. Thus, even where the District adopts all offset requirements of the federal program in response to an equivalency failure, it will retain an historic deficit relative to the federal program, which is not made whole under the rule. Therefore, the EPA finds that the District must revise the rule to address these deficiencies.

The TSD for this proposed action includes suggestions for how the District can correct these deficiencies. We encourage the District to consult with Region 9 during the rule development process to ensure that all deficiencies are properly addressed.

6. Temporary Replacement Emission Units

The submitted version of Rule 2201 includes revisions to section 8.1.3 to provide an ''application shield'' for Temporary Replacement Emission Units (TREUs). An application shield is an administrative mechanism that allows a source to operate prior to submitting an application and obtaining an ATC, if certain conditions are met. While this provision is generally approvable, we have identified two deficiencies. First, the provision specifies that TREUs must be addressed by a best available retrofit control technology (BARCT) rule, but ''BARCT'' is not defined in Rule 2201 or the approved SIP. Second, the provision specifies that a TREU must be equipped with a control device that is ''capable'' of at least 85% emission control but does not specify any required minimum level of control that must actually be achieved. The definition of Routine Replacement Emissions Unit in section 3.35.5 of the existing rule also contains these same two deficiencies. These provisions must be revised to incorporate a definition of ''BARCT'' and to specify a minimum level of emission control to be achieved.

7. Other Deficiencies

The TSD for this proposed action describes several other federal NNSR requirements not addressed in Rule 2201. These include the following: 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). This section of the TSD also notes that the rule contains a cross-reference to a State statutory provision that should be clarified with an applicable date. See our discussion in Section 6.3.6 of the TSD for more information on these deficiencies.

D. EPA Recommendations to Further Improve the Rule

The TSD includes recommendations for the next time the SJVAPCD modifies Rule 2201.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited approval and limited disapproval of Rule 2201. We will accept comments from the public on this proposal until August 29, 2022. If we finalize this action as proposed, this action will incorporate Rule 2201 into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If finalized as proposed, our limited disapproval action would trigger an obligation on the EPA to promulgate a Federal Implementation Plan unless the State corrects the deficiencies, and the EPA approves the related plan revisions, within two years of the final action. Additionally, because the deficiency relates to NNSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the San Joaquin Valley 18 months after the effective date of a

[20] See Rule 2201, section 7.4.1.2.

[21] See CAA 173(a)(1)(A) (requiring state NSR programs to obtain ''sufficient offsetting emissions reductions'' as determined by federal NSR regulations).

[22] See Rule 2201 at section 7.4.1.2 and 7.4.2.1. Fifteen months represents the outermost time for a shortfall to be addressed, running from the start of a reporting year (August 20) to the reporting deadline (November 20 of the following year). We note that the District initiated federal time-of-use surplus adjustments for VOC and NO_X once it could no longer demonstrate Test 2 equivalency for these pollutants, consistent with the Test 2 remedy but prior to the reporting deadline. We recognize this as a voluntary correction consistent with the District's provisional withdrawal of additional creditable reductions of these pollutants, rather than a requirement of the existing rule text.

[23] See 69 FR 27837, 27841.

[24] See CAA sections 173(a) and 173(c)(1) (specifying that emission reductions used to offset a new or modified major source must be federally enforceable before a permit for the source is issued, and must be in effect and enforceable by the time the source commences operation). See also CAA section 173(a)(1)(A) (requiring sufficient emissions reductions to have been ''obtained'' by the time the source commences operation).

final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Neither sanction will be imposed under the CAA if the State submits and we approve, prior to the implementation of the sanctions, a SIP revision that corrects the deficiencies we identify in our final action. The EPA intends to work with the SJVAPCD 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 would 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.[25]

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 discussed in Section I. and listed in Table 1 of this preamble. The EPA has made, and will continue to make, this document available electronically 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).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *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.

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 Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 25, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

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[25] 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.''