Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1668, fax number (617) 918–0668, e-mail *cooke.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register.**

Dated: January 9, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E8–2883 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0150–200711(b); FRL–8528–7]

Approval and Promulgation of Implementation Plans for Air Quality Planning Purposes; Georgia: Early Progress Plan for the Atlanta 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 31, 2006, the State of Georgia, through the Environmental Protection Division of the Georgia Department of Natural Resources, submitted a voluntary State Implementation Plan (SIP) revision requesting approval of an Early Progress Plan for the sole purpose of establishing motor vehicle emission budgets (MVEBs) for the Atlanta 8-hour ozone nonattainment area. The Atlanta 8-hour ozone nonattainment area is comprised of the following twenty counties: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton counties in their entireties (hereafter referred to as the ''Atlanta 8-Hour Ozone Area''). EPA is proposing to approve Atlanta's Early Progress Plan, including the new regional MVEBs for nitrogen oxides and volatile organic compounds for 2006. This proposed approval of the Early Progress Plan for the Atlanta 8-Hour Ozone Area is based on EPA's determination that Georgia has demonstrated that the SIP revision containing these MVEBs, when considered with the emissions from all sources, shows some progress toward attainment from the base year (i.e., 2002) through an interim target year (i.e., 2006). In the Final Rules Section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before March 21, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0150, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: Benjamin.lynorae@epa.gov.*

3. *Fax:* (404) 562.9019.

4. *Mail:* EPA–R04–OAR–2007–0150, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Lynorae Benjamin, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9040. Ms. Benjamin can also be reached via electronic mail at *Benjamin.lynorae@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: February 6, 2008.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E8–2709 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0122; FRL–8528–6]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to correct our May 2004 final approval of revisions to the San Joaquin Valley Unified Air

Pollution Control District (SJVUAPCD or ''District'') portion of the California State Implementation Plan (SIP). We are also proposing to approve two 2006 revisions to these rules that the California Air Resources Board submitted to EPA in December 2006. Our correction to our May 2004 approval and our proposed approval of the District's 2006 revisions conform the District's rules to a State law generally known as Senate Bill 700 by explicitly limiting the applicability of new source permitting requirements to certain minor sources and limiting the applicability of offset requirements for all minor agricultural sources consistent with criteria identified in state law. We are proposing to correct our May 2004 final approval pursuant to section 110(k)(6) of the Clean Air Act (CAA or ''Act''). We are proposing to approve the District's 2006 revisions of the local rules into the SIP pursuant to section 110(k)(2) of the Act.

DATES: Any comments must arrive by March 21, 2008.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0122, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
- *E-mail: R9airpermits@epa.gov.*
- *Mail or deliver:* Gerardo Rios (Air–3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 972–3534, *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Correction of EPA's May 2004 Final Approval

A. CAA Legal Authority

Section 110(k)(6) of the Clean Air Act, as amended in 1990, provides: ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public.''

We interpret this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to our satisfaction (or we discover) that (1) we clearly erred by failing to consider or by inappropriately considering information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. See 71 FR 75690, at 75693 (December 18, 2006); 57 FR 56762, at 56763 (November 30, 1992).

B. Background on California's and SJVUAPCD's SIPs

The regulatory history of permitting agricultural sources in California is relevant to our evaluation of the error we made in our May 2004 final approval of the District's new source review (NSR) permitting rules. In 1970, the California legislature enacted a law that was codified as California Health & Safety Code (CH&SC) section 24265(e). CH&SC section 24265(e) exempted all agricultural sources from District permitting requirements. Specifically, CH&SC section 24265(e) provided that a District permit shall not be required for equipment used in agricultural operations in the growing of crops or raising of fowls or animals except for certain orchard or citrus grove heaters in Southern California.[1]

On February 21, 1972, pursuant to the Clean Air Amendments of 1970, Governor Ronald Reagan submitted the original California State Implementation Plan (SIP) to EPA. The original SIP included ''Chapter 7—Legal Considerations'' to demonstrate adequate legal authority to implement and enforce SIP requirements. Chapter 7 of the original SIP discusses the respective authorities of the California Air Resources Board and the local air districts. Specifically, the narrative included as Chapter 7 cites CH&SC section 24263 as a basis for the authority of local air districts to operate permit systems but does not specifically cite the permitting exemptions found in CH&SC section 24265. California submitted many provisions of the CH&SC including specific provisions cited in the narrative, such as section 24263, as well as provisions that were not specifically cited, such as section 24265, as appendix II to the original SIP. Later that same year, and with certain exceptions not relevant here, EPA took action to approve the original SIP. See 37 FR 10842 (May 31, 1972).

The California SIP has been revised many times, and on March 16, 1979, the

[1] In this instance, Southern California is defined as including all counties, any part of which lie south of the Sixth Standard Parallel South, Mount Diablo Base and Meridian. Within the SJVUAPCD, only Kern County lies south of the Sixth Standard Parallel South.

Governor's designee, the California Air Resources Board (CARB), submitted a revision to the SIP referred to as ''Chapter 3—Legal Authority, Revision to State of California Implementation Plan for the Attainment and Maintenance of Ambient Air Quality Standards (December 1978).'' By 1979, CH&SC section 24265(e) had been re-codified as CH&SC section 42310(e). Similar to the 1972 original SIP, CARB's 1979 submittal includes a narrative that generally describes, among many other topics, the authority of local air districts to issue permits to stationary sources but that does not specifically cite exemptions to District permitting (then codified under CH&SC section 42310). The 1979 submittal incorporates CH&SC provisions as appendix 3–A to chapter 3, but, unlike the 1972 SIP, California did not physically include the actual CH&SC provisions with the 1979 submittal, but indicated that the code was available separately from the ARB Public Information Office. We described CARB's 1979 submittal of ''Chapter 3—Legal Authority'' as an updating and clarification of the 1972 SIP. See 44 FR 38912 (July 3, 1979). The following year, we finalized our proposed approval of the March 16, 1979 submittal of ''Legal Authority.'' See 45 FR 53136 (August 11, 1980).

In addition, individual California air pollution control districts subsequently submitted (through CARB) local permitting rules for EPA to approve into the SIP. Some district permitting rules, such as those submitted by SJVUAPCD, explicitly exempted agricultural sources from the NSR permitting rules, consistent with and generally citing to CH&SC section 42310(e). Prior to the late 1990's, EPA had approved such exemptions into SIP NSR permitting rules, including the SIP NSR rules for the county APCDs that now comprise the region-wide SJVUAPCD.

CARB submitted a revised version of SJVUAPCD NSR permitting rules, Rules 2020 and 2201, to EPA for SIP approval in 1998. On July 19, 2001, EPA finalized a limited approval and limited disapproval of revised SJVUAPCD Rules 2020 and 2201. See 66 FR 37587 (July 19, 2001). EPA's limited disapproval was based, in part, on Rule 2020's exemption of agricultural sources, which was identical to and referenced CH&SC section 42310(e). Our limited disapproval stated that SJVUAPCD could not exempt major stationary sources or major modifications at existing major sources from NSR requirements.[2]

To correct the deficiency in Rule 2020 leading to EPA's July 2001 limited disapproval, SJVUAPCD adopted and submitted a revision to Rule 2020 which eliminated the agricultural exemption in its entirety from the District rules. SJVUAPCD submitted the revised Rule 2020 to EPA on December 23, 2002.

On February 13, 2003, EPA proposed several actions regarding the exemption of agricultural sources from major source NSR permitting requirements. First, EPA proposed approval of revised Rule 2020 completely deleting the permit exemption for agricultural sources from the District rules. See 68 FR 7330 (February 13, 2003).[3] In that notice, EPA specifically noted 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.'' See 68 FR 7330, at 7335. To address this issue, EPA published a proposal finding that California's statutory exemption of agricultural sources in CH&SC section 42310(e) from major source NSR permitting rules violated the requirements of CAA section 110(a)(2)(E). See 68 FR 7327 (February 13, 2003). This action, titled ''Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision'' (hereinafter ''SIP Call''), determined that California lacked adequate legal authority to carry out its NSR permitting requirements because CH&SC section 42310(e) exempted major agricultural sources. EPA finalized the SIP Call on June 25, 2003, and thereby required California to submit the necessary assurances of authority by November 23, 2003 to support an affirmative finding by EPA under CAA section 110(a)(2)(E). If the State failed to submit the necessary assurances, then EPA indicated that the sanctions clock under CAA section 179 would be triggered.[4] See 68 FR 37746 (June 25, 2003).

Later that summer, the California legislature enacted Senate Bill (SB) 700, which the Governor of California signed on September 22, 2003. SB 700 removed the wholesale exemption from permitting for agricultural sources provided under CH&SC section 42310(e) and subjected major agricultural sources to permitting requirements. SB 700, however, retained exemptions for new source permitting for certain minor agricultural sources, and limited the ability to require minor agricultural sources to obtain federal offsets.[5] California notified EPA of the legislature's action by letter dated November 3, 2003 thereby avoiding the triggering of a sanctions clock. California enclosed a copy of SB 700 with the November 3, 2003 letter.[6]

On May 17, 2004, EPA took final action approving SJVUAPCD's permitting rules, Rule 2020 and 2201, as proposed in February 2003. See 69 FR 27837 (May 17, 2004). These rules, as approved by EPA, did not on their face exempt any agricultural sources from permitting or limit the applicability of offset requirements. EPA's final approval stated that the District had removed its exemption for agricultural sources and that the state had also ''removed a similar blanket exemption, thereby providing the District with authority to require air permits for agricultural sources, including federally required NSR permits.'' See 69 FR 27837, at 27838. EPA's final approval cited SB 700 in a footnote, but did not note the limited scope of authority for permitting and offset requirements under SB 700, which allowed permitting of only certain minor agricultural sources. Whether or not EPA's SIP actions in 1972 or 1979 approved the statutory provision

[2] SJVUAPCD NSR permitting rules do not adopt the distinction between minor sources and major sources as set forth under the CAA. SJVUAPCD Rules 2201 and 2020 generally apply to both federal minor and major stationary sources. Our limited approval specified that the rule deficiency was exempting major agricultural sources and major modifications. See 65 FR 58252, at 58254 (September 28, 2000).

[3] EPA also published an Interim Final Determination that SJVUAPCD had corrected the July 2001 limited approval deficiencies and EPA stayed or deferred the imposition of CAA sanctions on the District. See 68 FR 7321.

[4] On May 22, 2002, EPA issued a Notice of Deficiency for California's Title V program based on the exemption of agricultural sources from Title V permitting. See 67 FR 35990 (May 22, 2002). EPA's decision was upheld. See *California Farm Bureau Fed'n* v. *EPA,* No. 02–73371 (9th Cir. July 15, 2003) (memorandum opinion).

[5] As explained in Section II.C below, sources with emissions below 50 percent of the major source threshold are exempt from permitting unless the District makes certain findings, while sources at or above 50 percent of the major source threshold are subject to permitting unless the District makes certain findings. See CH&SC section 42301.16 (b) and (c). In addition, offsets may not be required unless they meet the criteria for real, permanent, quantifiable, and enforceable emission reductions. See CH&SC section 42301.18(c).

It is worth noting that EPA and California interpret CH&SC section 42301.16(a) to require all sources that emit or have the potential to emit at or above the major source threshold to be subject to new source permitting and offset requirements, as required by the Clean Air Act, without regard to the provisions of sections 42301.16(c) or 42301.18(c). Thus, an agricultural source with actual emissions less than 50 percent of the major source threshold but potential emissions above the major source threshold is subject to new source permitting and offset requirements.

[6] See Letter from Bill Lockyer, Attorney General, California Office of the Attorney General, to Marianne Horinko, Acting Administrator, EPA, dated November 3, 2003.

exempting agricultural sources from permitting (i.e., CH&SC section 24265(e), recodified as CH&SC section 42310(e)) as part of the California SIP, it is clear that as of the promulgation of our May 2004 final rule there is no exemption from permitting for agricultural sources derived from the statutory provision within the SJVUAPCD portion of the SIP.

C. Correction of Erroneous Final Approval

In this instance, we believe that our May 2004 final full approval of Rules 2020 and 2201 was erroneous. For all SIP revisions, States must provide evidence that the State has the necessary legal authority under State law to adopt and implement the plan. See CAA section 110(a)(2)(E); 40 CFR part 51, appendix V, section 2.1(c). Thus, to support the approval CARB was required in December 2002 to provide evidence that SJVUAPCD had the necessary legal authority under State law to implement Rules 2020 and 2201, which purported to require permits and offsets for all agricultural sources. CARB could not have done so because CH&SC section 42310(e), applicable at that time, continued to preclude such authority under State law with respect to all agricultural sources.

Nonetheless, we proposed to fully approve Rules 2020 and 2201 on February 13, 2003, with the expectation that the California legislature would act to remove CH&SC section 42310(e)'s exemption for agricultural sources thereby aligning Rule 2020 with District authority under State law. 68 FR 7330 (Feb. 13, 2003). While the legislature did act shortly thereafter to remove the exemption for major agricultural sources and major modifications at existing major agricultural sources, the legislature also retained the exemption from permitting for certain minor agricultural sources, leaving the words of Rule 2020 broader than the District's authority under State law. The legislature also exempted minor agricultural sources from obtaining offsets pending a determination that emissions reductions from such sources meet certain criteria, leaving Rule 2201, on its face, also at odds with State law.

We now understand that our final approval action on Rules 2020 and 2201 should have ensured that the authority in those rules was consistent with the authority granted by SB 700. In other words, we should have limited our approval of Rule 2020 to exclude applicability to agricultural sources exempt from new source permitting under SB 700 (i.e., minor sources with emissions less than 50 percent of the major source threshold absent findings, or minor sources over 50 percent of that threshold with findings). Our approval of Rule 2201 should have been limited to provisions requiring offsets for major agricultural sources and for minor sources when the listed criteria were satisfied. Given that California submitted a copy of SB 700 in November 2003, we had information indicating that the District did not have the authority to implement Rules 2020 and 2201 to the extent that the language of the rule appeared to allow (i.e., to require permits and offsets from all new or modified agricultural sources, including those exempt under SB 700) prior to the time we took final action. We should have limited our approval of Rules 2020 and 2201 to conform with SB 700, and promulgated language in 40 CFR part 52 codifying that limitation on our approval.

We note that recent enforcement actions have been brought pursuant to the CAA's citizen suit provisions against minor agricultural sources in SJVUAPCD that have emissions less than 50 percent of the major source threshold for failure to apply for and receive a new or modified source permit. SJVUAPCD, however, does not have the authority under State law to issue such permits. The fact that such cases are being brought (and one case has been brought successfully (see *Assoc. of Irritated Residents* v. *C & R. Vanderham Dairies,* 2007 U.S. Dist. 70890 (E.D. Cal., Sept. 24, 2007)) persuasively supports the need to correct our error in approving Rules 2020 and 2201 in 2004.

Therefore, pursuant to CAA section 110(k)(6), we are proposing to correct our error by limiting our approval of Rules 2020 and 2201 to apply only to the extent the District has authority under state law to require permits and offsets. Specifically, with respect to agricultural sources, we are approving Rule 2020 only to the extent it applies to agricultural sources subject to permitting under SB 700. Also and again with respect to agricultural sources, we are approving Rule 2201 only to the extent it requires offsets for new major sources and major modifications until certain criteria set forth in State law are met. To codify this proposed error correction, we are proposing the following language to be added as a new section, 52.245, of 40 CFR part 52, subpart F (''California''):

52.245 New Source Review Rules

(a) Approval of the New Source Review rules for the San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201 as approved May 17, 2004, is limited, as it relates to agricultural sources, to apply the permit requirement only (1) to agricultural sources with actual or potential emissions at or above a major source applicability threshold and (2) to agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold. The District has the authority to permit or exempt from permitting minor agricultural sources upon making the findings prescribed in CH&SC 42301.16 (b) and (c). The offset requirement, as it relates to agricultural sources, does not apply to new minor agricultural sources and minor modifications to such sources if emissions reductions from that source would not meet the criteria for real, permanent, quantifiable, and enforceable emission reductions.

This document simultaneously proposes to approve revised language into Rules 2020 and 2201 that conforms the rules to the authority provided in SB 700. If we take final action to approve the revised rules at the same time as we take final action on our proposed correction, then the draft regulatory language set forth above will not be codified because it will be superceded by the revised language submitted by the District.

II. The State's Submittal of Its 2006 Revisions

A. What revisions did the State submit?

Table 1 lists the rules we are proposing to approve with the dates that they were revised by SJVUAPCD and submitted to EPA by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES PROPOSED FOR FULL APPROVAL

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	2020 paragraph 6.20 only	Exemptions	09/21/06	12/29/06
SJVUAPCD	2201, paragraph 4.6.9 only	New and Modified Stationary Source Review Rule	09/21/06	12/29/06

On June 29, 2007, the submittal of Rule 2020, paragraph 6.20, and Rule 2201, paragraph 4.6.9, was deemed by operation of law to have met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

As discussed above, we approved a version of Rule 2020 into the SIP on May 17, 2004 (69 FR 27837). In today's action, we have determined that the approval was erroneous to the extent it required sources exempted from permitting under SB 700 (i.e. sources less than 50 percent of the major source threshold) to obtain permits. We also approved a version of Rule 2201 into the SIP on May 17, 2004 (69 FR 27837), although we have determined the approval was erroneous to the extent it required offsets barred by SB 700. The versions of Rules 2020 and 2201 that we approved in 2004 did not include provisions equivalent to those now included in paragraph 6.20 of Rule 2020 or paragraph 4.6.9 of Rule 2201.

Prior to our 2004 approval of Rules 2020 and 2201, the SJVUAPCD portion of the California SIP included a broad exemption from permitting for all agricultural sources, citing CH&SC section 42310(e). See section 4.0 of SJVUAPCD rule 2020, as amended on September 17, 1998, submitted on October 27, 1998, and approved on July 19, 2001 at 66 FR 37587.

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

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. Permitting rules were developed as part of the local air district's programs to control these pollutants.

The purpose of the addition of paragraph 6.20 to SIP Rule 2020 is as follows:

• This paragraph conforms District permit requirements to State law by explicitly exempting agricultural sources to the extent such sources are exempt pursuant to CH&SC section 42301.16. Section 42301.16(a) requires local air permitting authorities to require permits for agricultural sources subject to the requirements of title I or title V of the federal Clean Air Act. Section 42301.16(b) similarly requires permits for all agricultural sources unless specified findings are made at a public hearing or except as provided in section 42301.16(c). Section 42301.16(c) requires the District to make specified findings at a public hearing prior to requiring permits for agricultural sources with emissions that are less than one-half of any major source threshold. The net effect of this section is that all agricultural sources with actual emissions or a potential to emit at or above a major source applicability threshold are required to obtain a District permit pursuant to CH&SC section 42301.16(a). Agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold are required to obtain a District permit, unless the District makes the findings specified by subsection (b). No permits are required for agricultural sources with actual emissions of less than 50 percent of the major source applicability thresholds, unless the District makes the findings specified in subsection (c), subject to the limitation in CH&SC section 42301(a).

The purpose of the addition of paragraph 4.6.9 to SIP Rule 2201 is as follows:

• This paragraph exempts new or modified agricultural sources from offset requirements to the extent provided by CH&SC section 42301.18(c), unless the offsets are required by federal CAA requirements (see CH&SC section 42301(a)). Section 42301.18(c) prohibits districts from requiring agricultural sources to obtain offsets if emissions reductions from such sources would not meet the criteria for real, permanent, quantifiable, and enforceable emissions reductions.

III. EPA's Evaluation and Action on the 2006 Revisions

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable and must not interfere with an area's progress towards attainment or any other requirement of the Act. See CAA sections 110(a), 110(l); see also CAA section 193 (antibacksliding requirements for pre-1990 control measures). Specific EPA requirements for SIPs with respect to review of new or modified minor stationary sources are set forth in 40 CFR 51.160 through 51.164. CAA section 110(l) directs EPA to disapprove any SIP revision that would interfere with any applicable requirement concerning attainment or reasonable further progress or any other applicable requirement of the Act. Assuming that CAA section 193 applies to NSR, section 193 does not apply to this action because as of November 15, 1990, all agricultural sources were entirely exempt from permitting and offset requirements. Thus, the proposed revisions, specifying limits on the permit and offset requirements for minor agricultural sources, do not modify a control requirement in effect before passage of the Clean Air Act Amendments of 1990.

B. Do the rules meet the evaluation criteria?

1. Compliance With EPA Enforceability and Minor Source Permitting Requirements

The limited exemptions from permitting and offsets provided in paragraphs 6.20 (Rule 2020) and 4.6.9 (Rule 2201) for minor agricultural sources are consistent with EPA requirements for enforceability. The limited exemptions are also consistent with the requirements promulgated in 40 CFR 51.160—51.164 for stationary sources that do not exceed the major source or major modification thresholds. EPA is proposing to approve paragraphs 6.20 and 4.6.9 into Rules 2020 and 2201, respectively, because SJVUAPCD has discretion in conducting its minor source permitting program to exempt certain small sources and, under federal law, minor sources are not required to obtain offsets. Congress directed the States to exercise the primary responsibility under the CAA to tailor air quality control measures, including minor source permitting programs, to the State's needs. See *Train* v. *NRDC*, 421 U.S. 60, 79 (1975) (States make the primary decisions over how to achieve CAA requirements); *Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976); *Greenbaum* v. *EPA*, 370 F.3d 527 (6th Cir. 2006). Specifically, paragraph 6.20 of Rule 2020 complies with the requirements for minor sources established in 40 CFR 51.160(b)(2). That regulation requires the permitting authority to retain the legal ability to prevent construction or modification of a minor source if ''[i]t will interfere with the attainment or maintenance of a national standard.'' Paragraph 6.20, by incorporating CH&SC section 42301.16(c), continues to allow the District to require permits for agricultural sources with emissions that are less than one-half of any major source threshold upon making specified findings at a public hearing. One such finding is that emissions from the construction or modification of the source will adversely impact air quality. Thus, since the exemptions in paragraphs 6.20 and 4.6.9 do not apply to any major stationary sources or major modifications at existing major stationary sources, and the exemptions comply with federal regulations, we believe these revisions are fully approvable under section 110(k)(2) of the CAA.

2. CAA Section 110(l)

The only remaining issue is whether this SIP revision would interfere with requirements concerning attainment and reasonable further progress (or any other applicable CAA requirement) as set forth in CAA section 110(l). CAA section 110(l) provides: ''Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title) or any other applicable requirement of this chapter.''

The San Joaquin Valley is currently designated nonattainment for $PM_{2.5}$, PM_{10}, and the eight-hour ozone standard. The area is formally designated attainment for the remaining criteria pollutants. The District's attainment plan for $PM_{2.5}$ is due April 8, 2008, it has submitted a plan for attaining the ozone standard, and EPA has published a Finding of Attainment for PM_{10}, 71 FR 63462 (Oct. 30, 2006).

Prior to the time that attainment demonstrations are due for a standard, it is unknown what suite of control measures are needed for a given area to attain the standard. During this period, to demonstrate no interference with any applicable NAAQS or requirement of the Clean Air Act under section 110(l), EPA's view is that it is appropriate to allow states to substitute equivalent emission reductions to compensate for the control measure being removed from the active SIP. This approach has been adopted after notice and comment rulemaking in other SIP revisions. See, e.g., 70 FR 57750 (October 4, 2005); 70 FR 53 (January 3, 2005).

EPA also believes there are other means to demonstrate that a SIP revision would not interfere with attainment or maintenance of the NAAQS, such as modeling to show noninterference with attainment, or a full attainment demonstration.[7] In this case, after considering the District's attainment status and attainment plans for nonattainment pollutants, we believe that the adoption of the proposed revisions in place of the SIP as proposed to be corrected would not result in any change in emissions, any change in air quality, or any change in the area's ability to attain or maintain the NAAQS.

Accordingly, we conclude that this SIP revision, if approved, will not interfere with any applicable requirements for attainment and reasonable further progress or any other applicable requirement of the CAA and is approvable under section 110(l).

C. Public Comment and Final Action

Under section 110(k)(6) of the Clean Air Act, we are proposing to correct our May 2004 final approval of revisions to District NSR permitting Rules 2020 and 2201 because, by virtue of information submitted by California to us in November 2003, we should have limited our approval consistent with the legal authority provided in State law to air districts to permit, and require offsets for, new or modified agricultural sources. To correct our error, we are proposing regulatory language to so limit our May 2004 approval.

Under section 110(k)(2) of the Clean Air Act, we are proposing to approve the District's 2006 revisions to Rules 2020 and 2201 to conform the rules to State law by explicitly exempting certain small or minor agricultural sources from permitting requirements and by exempting all minor agricultural sources from offset requirements until certain criteria are met. We will accept comments from the public on this proposal for the next 30 days. If, after consideration of public comments, we decide to publish a final error correction and final approval of the revised rules in the same document, then we intend that the language of the revised rules will supercede the error correction and we do not intend to codify the proposed regulatory language limiting our May 2004 approval of the previous versions of District Rules 2020 and 2201.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to correct an error and to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to correct an error and approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to correct an error and approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed

[7] We note that no approved or submitted San Joaquin Valley attainment plan for any nonattainment pollutant has relied upon NSR for agricultural sources less than 50 percent of the major source threshold. Further, for attainment planning purposes, growth in emissions from agricultural sources has been established by CARB's area source inventory growth methodologies, and no mitigation of that growth, such as through an offset requirement, has been considered when determining the impact of the growth on the District's ability to achieve attainment with the standards. See the District's Clean Air Act 110(l) Analysis entitled ''San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201, as amended September 21, 2006, District's Clean Air Act 110(l) Analysis'' dated November 20, 2007.

rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 31, 2008.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E8–3113 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 375

[Docket No. FMCSA–2008–0019]

RIN 2126–AB01

Transportation of Household Goods; Consumer Complaint Information Quarterly Report

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: FMCSA proposes to amend the Federal Motor Carrier Safety Regulations to implement reporting requirements for household goods motor carriers operating in interstate commerce under section 4214 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). SAFETEA–LU directs FMCSA to issue regulations requiring that each household goods motor carrier operating in interstate commerce submit a quarterly report summarizing specific information. These reports must include the number of shipments originating with, and delivered by, the carrier; the number and general category of complaints lodged by consumers with the carrier; the number of claims for loss and damage in excess of $500 filed with the carrier; and the number of such claims resolved, declined, and pending during the reporting period.

DATES: Submit comments concerning this NPRM on or before April 21, 2008.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Number in the heading of this document by any of the following methods. Do not submit the same comments by more than one method. However, to allow effective public participation in this rulemaking before the comment period deadline, the Agency encourages use of the Web site that is listed first. It will provide the most efficient and timely method of receiving and processing your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number or Regulatory Identification Number for this regulatory action. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Refer to the Privacy Act heading on *http://www.regulations.gov* for further information. If addressing a specific request for comments in this NPRM, please provide detailed information (including examples) and clearly identify the related section heading or question number for each topic addressed in your comments.

Public Participation: The regulations.gov system is generally available 24 hours each day, 365 days each year. You can find electronic submission and retrieval help and guidelines under the ''help'' section of the Web site. For notification that FMCSA received the comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on line.

Copies or abstracts of all documents referenced in this notice are in the docket for this rulemaking: FMCSA–2008–0019. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothea Grymes, (202) 385–2400. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

Under the Household Goods Mover Oversight Enforcement and Reform Act of 2005 (Title IV Subtitle B of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)), the Secretary of Transportation (Secretary) must issue regulations requiring each motor carrier of household goods operating in interstate commerce to submit a quarterly report. [See section 4214(a)(2) of Pub. L. 109–59.] The quarterly report must summarize: (1) The number of shipments that originate and are delivered for individual shippers during the reporting period by the carrier; (2) the number and general category of complaints lodged by consumers with the carrier; (3) the number of claims for loss and damage exceeding $500 filed with the carrier; and (4) the number of such claims resolved, declined, and pending during the reporting period. The regulatory changes in this proposed rule would implement that reporting requirement. Under 49 CFR 1.73(a), the Secretary has delegated the various authorities described in this section to the FMCSA Administrator.

Background

The Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, December 9, 1999, 113 Stat. 1749) established FMCSA as a separate agency within the U.S. Department of Transportation (DOT). Through that statute, Congress also authorized the Agency to regulate motor carriers transporting household goods in interstate commerce for individual shippers. We codified and published regulations setting forth Federal consumer protection requirements for interstate household goods motor carriers in 49 CFR part 375.

In testimony before the U.S. House Subcommittee on Highways and