

I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law No. 96–511, 44 U.S.C. chapter 35.

#### Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect 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. This proposed rule will not limit the policymaking discretion of the States. Nothing in this proposal would directly preempt any State law or regulation. We are proposing this amendment primarily under the authority granted us by 49 U.S.C. 41712 to prevent unfair methods of competition and unfair and deceptive practices in the sale of air transportation. We believe that the policy set forth in this proposed rule is consistent with the principles, criteria, and requirements of the Federalism Executive Order and the Department's governing statute. Comments on these conclusions are welcomed and should be submitted to the docket.

#### List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and record-keeping requirements, Travel agents.

Accordingly, the Department of Transportation proposes to amend 14 CFR part 255 as follows:

#### PART 255—[AMENDED]

1. The authority citation for part 255 continues to read as follows:

**Authority:** 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

2. Section 255.12 is revised to read as follows:

#### 255.12. Termination.

The rules in this part terminate on January 31, 2004.

Issued in Washington, DC on February 7, 2003, under authority delegated by 49 CFR 1.56a(h)2.

**Read C. Van de Water,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 03–3606 Filed 2–12–03; 8:45 am]

**BILLING CODE 4910–62–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA086–SIP; FRL –7450–8]

#### Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to our authority in section 110(k)(5) of the Clean Air Act (CAA or Act), EPA is proposing to find that the California State Implementation Plan (SIP) is substantially inadequate for all nonattainment air pollution control districts in the State and for all attainment area districts that have an approved Prevention of Significant Deterioration (PSD) program because the State cannot provide “necessary assurances” that it or the districts have authority to carry out the applicable nonattainment New Source Review (NSR) or PSD portions of the SIP. Specifically, sections 110(a)(2)(C) and (I) and 172 of the Act require the applicable implementation plan to contain a program for issuing permits to major stationary sources of air pollution pursuant to parts C and D of title I of the Act. In addition, section 110(a)(2)(E) requires that each SIP provide necessary assurances that the State or districts have adequate authority to carry out the SIP and that no state law prohibits the State or districts from carrying out any portion of the SIP. The California SIP does not meet these requirements because California Health & Safety Code section 42310(e) exempts new and modified major agricultural sources from all permitting, including PSD and NSR permitting otherwise required by parts C and D of title I of the Act. If EPA finalizes this proposed finding of substantial inadequacy, California will be required to amend its state law to eliminate the permitting exemption as it pertains to major agricultural sources of air pollution and submit the necessary assurances by November 23, 2003 to support an affirmative finding by EPA under section 110(a)(2)(E). If the State

fails to submit the necessary assurances of authority or if EPA disapproves any such submittal in response to a final SIP call, sanctions will apply statewide pursuant to section 179 of the Act.

**DATES:** Comments must be sent by March 17, 2003. EPA will respond to comments in its final action on this proposal.

**ADDRESSES:** Send comments to: Gerardo Rios, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can review and copy the existing SIP rules at EPA's Region 9 office from 8:30 am to 5 pm, Monday-Friday. A reasonable fee may be charged for copying.

Copies of the SIP rules are also available for inspection at the following locations: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 “I” Street, Sacramento, CA 95814.

**FOR FURTHER INFORMATION CONTACT:** Please call Gerardo Rios, EPA Region IX, at (415) 972–3974 or send e-mail to [rios.gerardo@epa.gov](mailto:rios.gerardo@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to EPA.

#### Table of Contents

- I. Background
  - A. What action is EPA proposing?
  - B. How does the California Health & Safety Code exemption affect the adequacy of the SIP?
  - C. How can California correct the SIP inadequacy?
  - D. Are individual districts required to revise approved SIP rules?
  - E. What are the consequences if we finalize this proposed finding of substantial inadequacy?
- II. Statutory and Executive Order Reviews
  - A. Executive Order 12866, Regulatory Planning and Review
  - B. Regulatory Flexibility Act
  - C. Unfunded Mandates Reform Act
  - D. Executive Order 13132, Federalism
  - E. Executive Order 13175, Coordination with Indian Tribal Governments
  - F. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
  - G. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use
  - H. National Technology Transfer and Advancement Act

#### I. Background

##### A. What Action Is EPA Proposing?

CAA section 110(k)(5) provides that whenever EPA finds the applicable implementation plan “is substantially inadequate to attain or maintain the relevant national ambient air quality

standard, \* \* \* or to otherwise comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies." EPA today proposes to find that the approved California SIP is substantially inadequate because it cannot provide "necessary assurances" that the State or districts have the authority to issue permits under their PSD and nonattainment NSR SIPs to all major sources because Health & Safety Code section 42310(e) exempts major agricultural stationary sources from these permitting requirements.

*B. How Does the California Health & Safety Code Exemption for Agricultural Sources Affect the Adequacy of the SIP?*

For areas that fail to meet the National Ambient Air Quality Standards (NAAQS), section 110 and title I, part D of the Act require SIPs to contain a program for issuing "permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 173." CAA section 172(c)(5). EPA regulations establish that an approvable SIP program for issuing preconstruction permits "shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment \* \* \* ." 40 CFR 51.165(a)(2). Neither the Act nor EPA regulations allow any exemptions from permitting for new major sources, and our regulations contain only limited exemptions for major modifications. 40 CFR 51.165(a)(1)(v)(C).

For areas that attain the NAAQS, section 110 and title I, part C of the CAA require a PSD preconstruction permitting program for new and modified major stationary sources. *See, e.g.*, CAA section 165. EPA regulations also set forth the requirements for PSD permitting programs. 40 CFR 51.166. Like nonattainment NSR, neither the Act nor the PSD regulations contain exemptions from permitting for new major sources, and our regulations provide only limited ones for major modifications. *See* 40 CFR 51.166(b)(2)(iii).

California Health & Safety Code section 42310(e) exempts from all air permitting "equipment used in agricultural operations in the growing of crops or the raising of fowl or animals." As a result, the State and districts cannot issue permits to these agricultural sources, even if they are major stationary sources under the Act. The CAA NSR and PSD permitting

requirements do not provide for this exemption.

Section 110(a)(2)(E) of the Act requires the State to provide assurances that it has "adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof) \* \* \* ." California Health & Safety Code section 42310(e) effectively prohibits the State and districts from fully implementing the SIP-approved NSR and PSD permitting programs for agricultural sources. Thus, the SIP does not comply with the requirement for the State to have adequate legal authority to fully implement the SIP. Therefore, the SIP for nonattainment areas and approved PSD programs in attainment areas in California is substantially inadequate and must be corrected.

*C. How Can California Correct the SIP Inadequacy?*

To correct the deficiency, EPA recommends that the State legislature amend Health & Safety Code section 42310(e) to remove the exemption as it applies to major agricultural sources. The State is already subject to a sanctions clock based on the Notice of Deficiency (NOD) that EPA issued on May 22, 2002, 67 FR 35990, with respect to the State's title V operating permits program. In that NOD, EPA explained that California Health & Safety Code section 42310(e) improperly exempted major agricultural sources from CAA title V permitting. The NOD stated: "EPA has determined that significant action in this instance means the revision or removal of Health and Safety Code 42310(e) so that local air pollution control districts have the required authority to issue title V permits to stationary agricultural sources that are major sources of air pollution." A similar correction with respect to NSR and PSD permitting is necessary to comply with this proposed action.

The May 2002 NOD notes that the title V regulations instruct EPA to apply sanctions in accordance with section 179(a) of the Act if California has not corrected the deficiency (removal or revision of the permitting exemption in Health and Safety Code section 42310(e)) prior to November 23, 2003 (18 months after the effective date of the NOD). The State legislature is required to take essentially the same action (*i.e.*, remove the agricultural permitting exemption for major stationary sources) to correct the SIP inadequacy discussed in this proposed action.

If EPA finalizes this SIP call and determines the State has failed to submit the necessary assurances addressing the deficiency by the required date, a sanctions clock would start for this SIP deficiency in accordance with section 179 of the Act. EPA proposes that if EPA determines the State fails to submit the necessary assurances to address the SIP call by November 23, 2003, or if EPA subsequently finds the correction does not adequately provide such assurances, sanctions would apply as specified under 40 CFR 52.31.<sup>1</sup>

*D. Are Individual Districts Required To Revise Approved SIP Rules?*

EPA is not calling for specific revisions to district rules at this time. We note that several districts may have exemptions for agricultural sources in their local SIP-approved rules.<sup>2</sup> We believe it is reasonable to wait for the State legislature to correct Health and Safety Code section 42310(e) first so that it is clear whether any such exemptions at the district level represent authority problems under section 110(a)(2)(E).<sup>3</sup> EPA, nonetheless, encourages districts to evaluate their SIP-approved rules to ensure that exemptions do not create potential authority problems. Once the State acts to address Health and Safety Code section 42310(e), EPA will work with the districts to determine if further rulemaking is necessary to address specific local deficiencies that remain after the State law change.

<sup>1</sup> EPA is using its authority in section 110(k)(5) to set a deadline that is less than 18 months. We believe the November 23, 2003, deadline is reasonable because action by this date is otherwise required to address the title V problems noted above.

<sup>2</sup> EPA has conducted a preliminary search for local rules exempting agricultural sources from NSR or PSD permitting requirements. The following districts may have one or more exemptions currently approved into the SIP: Bay Area, Butte, County, El Dorado, Feather River, Medocino, Placer, Sacramento and Yolo-Solano. As noted below, EPA will continue to evaluate the rules for all of the districts to identify more accurately any potentially problematic rule provisions in the SIP.

<sup>3</sup> We note that certain local exemptions are tied to exemptions such as Health and Safety Code section 42310(e) provided under State law. Removal of the exemption at the State level could automatically resolve authority problems at the district level. In addition, if the State legislature were to not only revise the language of Health and Safety Code section 42310(e) but also to clarify that any such local exemptions were also void, no further action by the districts may be necessary. Depending on the action at the State level, EPA may be able to make the required finding under 110(a)(2)(E) that the authority to carry out the permitting programs is not prohibited by any State or local law.

### E. What Are the Consequences if We Finalize This Proposed Finding of Substantial Inadequacy?

If EPA finalizes this SIP call, as proposed, the State would need to submit to EPA a SIP revision providing the necessary assurances that it (or the districts) can fully implement the required NSR and PSD programs within the State. If the State fails to submit the required assurances or if EPA finds the submittal incomplete or disapprovable, sanctions would apply in accordance with CAA sections 179(a) and (b) and EPA regulations at 40 CFR 52.31. There are two types of sanctions: highway funding sanctions (section 179(b)(1)) and offset sanctions (section 179(b)(2)). Pursuant to our regulations at 40 CFR 52.31, offset sanctions will apply 18 months following a finding by EPA under section 179(a); highway funding sanctions would apply six months later.

## II. Statutory and Executive Order Reviews

### A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget (OMB) has historically exempted from Executive Order 12866 regulatory actions governing revisions to SIPs. It has been determined that today's proposed call for revisions to the SIP would not, in any event, be a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Today's proposed SIP call would not establish requirements applicable to small entities. Instead, it would require the State of California and several local air districts to develop, adopt, and submit SIP revisions that would provide the necessary assurances that the applicable NSR and PSD programs do not exempt major agricultural sources.

This rule will not have a significant impact on a substantial number of small entities because the rule does not establish requirements applicable to small entities. Therefore, the Administrator certifies that this action will not have a significant impact on a substantial number of small entities.

### C. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The proposed action will require the State of California and several local air districts to revise laws and regulations governing exemptions for agricultural sources.

This requirement, even if considered a federal mandate,<sup>4</sup> would not result in

<sup>4</sup> It is unclear whether a requirement to submit a SIP revision would constitute a federal mandate. The obligation for a state to revise its SIP that arises out of sections 110(a) and 110(k)(5) of the CAA is not legally enforceable by a court of law, and at

aggregate costs over \$100 million to either the state or local districts. In addition, this proposed rule, if finalized, will not significantly or uniquely impact small governments.

### D. Executive Order 13132, Federalism

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (*Federalism*) and 12875 (*Enhancing the Intergovernmental Partnership*). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, as specified in Executive Order 13132, because it does not impose a new enforceable duty on the State (see *infra* note 1), and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658 (a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

### *E. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175 because it does not apply to any Tribes or otherwise have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

EPA, nonetheless, specifically solicits additional comment on this proposed rule from tribal officials.

### *F. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

### *G. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

### *H. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal

agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

Environmental protection, Air pollution control, Intergovernmental relations, New Source Review, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 31, 2003.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

[FR Doc. 03-3416 Filed 2-12-03; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[CA280-0390A ; FRL-7450-9]**

### **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 approve the San Joaquin Valley Unified Air Pollution Control District's (SJVUAPCD or District) revised permit exemption and new source review (NSR) rules, Rules 2020 and 2201, respectively, for stationary sources. The District has revised Rules 2020 and 2201 and submitted them to EPA as a revision to the California State Implementation Plan (SIP). The revisions address deficiencies identified in our July 19, 2001 limited approval and limited disapproval of the previous version of these rules.

EPA is also publishing in today's **Federal Register** an interim final determination that the District has corrected the deficiencies noted in the limited disapproval. The interim final determination will stay the sanctions clock triggered by the July 19, 2001 limited approval/limited disapproval of the previous versions of Rules 2020 and

2201. If EPA takes final action to approve these rules, the sanctions clock for this action will be stopped.

**DATES:** Comments must be sent by March 17, 2003. EPA will respond to comments in a final action on this proposed approval.

**ADDRESSES:** Send comments to: Ed Pike, Permits Office [AIR-3], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can review and copy the submitted Rules 2020 and 2201, the existing SIP rules, and EPA's Technical Support Document (TSD) at EPA's Region 9 office from 8:30 am to 5 pm, Monday-Friday. A reasonable fee may be charged for copying.

Copies of the submitted Rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified APCD, 1990 E. Gettysburg Avenue, Fresno, CA 93726.

#### **FOR FURTHER INFORMATION CONTACT:**

Please call Ed Pike at (415) 972-3970 or send e-mail to [pike.ed@epa.gov](mailto:pike.ed@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document, "we," "us" and "our" refer to EPA.

#### **Table of Contents**

- I. What is EPA proposing to approve?
- II. Background
  - A. History of SJVUAPCD NSR SIP revisions.
  - B. Deficiencies in SJVUAPCD NSR regulations and required action.
  - C. How has SJVUAPCD corrected these rule deficiencies?
    1. Offset equivalency
      - a. What is the basis for allowing an annual offset equivalency demonstration?
      - b. What is the offset equivalency tracking system in Rule 2201 and how does it satisfy the deficiency noted in the limited disapproval?
      - c. Does the tracking system replace applicable NSR requirements?
      - d. What are the requirements for being an enforceable emission reduction?
      - e. What kinds of emission reductions may be creditable?
      - f. Are pre-1990 emission reductions creditable?
    2. Agricultural exemption
      - a. How has the District corrected this deficiency?
      - b. How is EPA addressing the State exemption?
    3. Lowest Achievable Emission Rate Applicability
  - D. Summary
- III. Statutory and Executive Order Reviews
  - A. Executive Order 12866, Regulatory Planning and Review
  - B. Regulatory Flexibility Act