Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulation That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–009 is added to read as follows:

§ 165.T09–009 Security Zone; Cleveland Harbor, Cleveland, Ohio.

(a) *Location.* The following area is a security zone: All waters of Cleveland Harbor south of a line drawn from the northeast corner of Voinovich Park (41°30′40.5″ N, 081°41′47.5″ W) to the northwest corner of Burke Lakefront Airport (41°30′48.5″ N, 081°41′37″ W) (NAD 83).

(b) *Effective time and date.* This regulation is effective from noon (local) until 3 p.m. (local), on May 21, 2004.

(c) *Regulations.* Entry into, transit through, or anchoring within the security zone is prohibited unless authorized by the Captain of the Port Cleveland or the Coast Guard Patrol Commander.

Dated: April 20, 2004.

L.W. Thomas,

Commander, U.S. Coast Guard, Captain of the Port Cleveland.

[FR Doc. 04–11148 Filed 5–14–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 280–0444; FRL–7657–3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) portion of the California State Implementation Plan (SIP). In the **Federal Register** on February 13, 2003, EPA proposed approval of revised SJVUAPCD Rules 2020 (permit exemptions) and 2201 (New Source Review or NSR for stationary sources). The rule revisions we are approving into the SIP address deficiencies identified in our July 19, 2001 limited approval and limited disapproval of the previous versions of these rules.

EFFECTIVE DATE: June 16, 2004.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. You can inspect copies of the submitted SIP revisions by appointment at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Ed Pike, Permits Office [AIR–3], Air Division, EPA Region IX, (415) 972–3970, *pike.ed@epa.gov.*

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

I. Background

On February 13, 2003 (68 FR 7330), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	2020	Exemptions	12/19/02	12/23/02
SJVUAPCD	2201	New and Modified Stationary Source Review Rule	12/19/02	12/23/02

We proposed to approve these rules because we determined that they addressed the deficiencies noted in our July 19, 2001 limited approval and limited disapproval of the previous versions of these rules (66 FR 37587) and otherwise complied with relevant Clean Air Act (CAA or Act) requirements. Our February 13, 2003, **Federal Register** notice of proposed rulemaking (NPRM) contains more information on the rules and our evaluation.

EPA's limited disapproval cited three deficiencies in the previous versions of Rules 2020 and 2201. First, EPA determined that the previous version of Rule 2201 was not approvable because its offset tracking equivalency system failed to contain a mandatory remedy. We also found the previous version of Rule 2201 deficient because section 4.5 of the rule exempted agricultural sources from permitting. Finally, we concluded the previous version of Rule 2020 was not approvable because it did not require all sources making modifications that result in a significant increase in emissions to meet the Lowest Achievable Emission Rate (LAER). For a more detailed discussion of these three rule deficiencies please see our July 19, 2001 final limited approval and limited disapproval at 66 FR 37587 and the accompanying Technical Support Document dated August 30, 1999 (''1999 TSD'').

EPA's July 2001 limited disapproval informed the District that the following actions were required to correct the rule deficiencies:

1. The District must revise Rule 2201 to provide a mandatory, enforceable and automatic remedy to cure any annual shortfall and, in the future, prevent shortfalls in the District's New Source Review Offset Equivalency Tracking System.

2. The District must remove the agricultural exemption from Rule 2020.

3. The District must revise Rule 2201 to ensure that all sources meet LAER [1] if they are allowed to make a significant increase in their actual emissions rate. See 66 FR 37590. The District has addressed each of these deficiencies.

The District revised Rule 2201 to clarify and expand the requirements for tracking the equivalency of the District's NSR offset requirements to the federal NSR program offset requirements. The revised District rule includes specific and automatic remedies to address any shortfall found by the tracking system or any failure to implement the tracking system. The revisions to section 7.0 of Rule 2201 reasonably satisfy EPA's requirement for mandatory, enforceable and automatic remedies to address any shortfalls and prevent future ones.

To address the deficiency in Rule 2020, the District deleted the previous permit exemption for agricultural sources. We note that the State has also removed a similar blanket exemption, thereby providing the District with authority to require air permits for agricultural sources, including federally required NSR permits.[2]

Finally, the District revised Rule 2201 to require LAER for all modifications considered major under federal regulations. Sections 3.24 and 4.1.3 provide that any major modification, as defined in the federal regulations in 40 CFR 51.165, must meet LAER. We conclude this revision reasonably addresses the noted deficiency.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties.

1. Seyed Sadredin, SJVUAPCD; letter dated March 13, 2003.

2. Caroline Farrell, Center on Race, Poverty & the Environment, on behalf of the Association of Irritated Residents (AIR); letter dated March 17, 2003.

3. David Farabee, Pillsbury Winthrop, LLP, on behalf of the Western States Petroleum Association (WSPA); letter dated March 17, 2003.[3]

4. Ann Harper, Earthjustice; letter dated March 17, 2003.

These comments and our responses are summarized below.

The District and WSPA support approval of the revised rules into the SIP, but argue that EPA should revise or clarify various preamble statements, in particular those regarding the creditability of certain ''pre-1990'' Emission Reductions Credits.[4] Earthjustice and AIR oppose approval of Rule 2201 for the reasons described below.

In addition to these comments, EPA received four other letters related to the proposed action after the close of the comment period:

1. Paul Fanelli, Manufacturers Council of the Central Valley (MCCV); letter dated March 21, 2003. This letter is addressed to the Regional Administrator and does not specifically comment on the proposed approval notice. The letter instead notes that ''The MCCV has been advised that the EPA Region IX staff has formulated policy regarding pre-1990 Emission Reduction Credits (ERC's)'' and raises concerns with such policy formulation.

2. Joe Neves, Kings County Board of Supervisors; letter dated April 2, 2003. The letter echoes concerns raised by the District regarding the treatment of pre-1990 Emission Reduction Credits.

[1] Many California Districts use the term ''Best Available Control Technology'' (BACT) with a definition equivalent to LAER. Please see the 1999 TSD for additional information on the District's definition of BACT.

[2] On September 22, 2003, the Governor signed SB700 into law. The legislation includes an amendment to California Health & Safety Code section 42310 to delete the previous permit exemption for agricultural sources.

[3] We also received an e-mail on March 14, 2003 from Cathy Reheis-Boyd, Acting President of WSPA, asking EPA to consider incorporating language into the final notice that indicates a willingness to work with the District to develop a flexible tracking system that accounts for all differences between the local and federal permitting systems. We do not understand this to be a comment on the decision to approve the District's rule or a suggestion that the tracking system fails to accurately account for the various differences between the local and federal programs. We agree, however, that, should the District choose to revise its tracking system provisions, it will be important for EPA to continue to work with the District to ensure the system accurately accounts for these differences.

[4] These are emissions reductions banked as credits before the 1990 Clean Air Act Amendments. This notice uses the term ''pre-baseline'' emission reduction credits to clarify that the issue is tied not solely to the 1990 date, but the date that an area uses as its emissions inventory baseline date.

3. L.W. Clark, Independent Oil Producers' Agency (IOPA), letter dated April 22, 2003. IOPA argues pre-1990 emission reduction credits should not be discounted in any equivalency demonstration.

4. Harley Pinson, Occidental of Elk Hills (Oxy); letter dated July 1, 2003. Oxy notes in its letter that it previously submitted comments regarding the proposed rule in its capacity as a member of WSPA, but adds that it would like to reiterate some of the concerns raised by WSPA, the District and others.

We have not prepared separate responses to these late comments. Our responses to the timely comments sufficiently address their concerns.

A. General Equivalency Tracking System Issues

Comment 1: WSPA expresses concern that sources in compliance with District Rules 2020 and 2201 may not comply with federal offset requirements because EPA noted that sources should ''ensure that the emission reductions used to satisfy offset requirements meet federal creditability criteria.'' WSPA writes that this statement suggests sources that comply with Rule 2201 may still not meet pertinent federal offset requirements. WSPA urges EPA to clarify that compliance with the District's SIP-approved NSR rule satisfies federal offset requirements and that a separate federal emission reduction creditability analysis is not necessary.

Response: EPA agrees that a source that complies with the applicable District SIP-approved NSR rule would be in compliance with the provisions of the Clean Air Act that the District SIP rule implements. As EPA explained in the NPRM, with the exception of the requirement to determine the surplus value of emission reduction credits at the time of use, the District rule applies the same criteria for determining the creditability of such emission reduction credits as the CAA. *See* 68 FR 7333. As a result, sources must continue to meet CAA creditability requirements as incorporated in sections 4.5 and 3.2.1 of Rule 2201. The equivalency demonstration in Rule 2201 provides some flexibility regarding surplus adjusting but the rule does not otherwise exempt sources from obtaining creditable emission reduction credits to meet offset requirements. Once these other requirements are met, nothing in section 7.1.5 requires the District to withdraw a permit issued in reliance on an emission reduction credit that is of lesser surplus value at the time of use under federal criteria.[5] Rule 2201 allows such credits to be used as long as equivalency is demonstrated annually.[6] Should the District allow too many non-surplus emission reductions to be used as offsets, the remedy is outlined in section 7.4. The District will retire additional creditable reductions that have not been used as offsets and have been banked or generated as a result of enforceable permitting actions. If a deficit remains, the District must implement the requirements specified in the federal rules.

Comment 2: WSPA disagrees with EPA's determination that the offset equivalency tracking system only covers permits for sources with authority to construct (ATC) applications deemed complete on or after August 20, 2001. WSPA argues that because EPA granted limited approval to a prior version of the tracking system in its July 19, 2001 final action, EPA cannot rely on the fact that it subsequently required additional changes to the tracking system to exclude sources covered by ATC applications deemed complete before August 20, 2001. EPA should clarify that even sources that have permit applications deemed complete before August 20, 2001 should be treated as covered by the District's tracking system.

Response: Section 7.3.1 of District Rule 2201 limits the scope of the tracking system to ''new and modified sources for which a complete application for Authority to Construct was submitted after August 20, 2001.'' This date aligns with the effective date of EPA's July 19, 2001 limited approval and limited disapproval of the previous version of Rule 2201. Prior to August 20, 2001, the SIP required offsets but did not include a requirement to track and demonstrate offset equivalency. The rule being approved into the SIP today clearly specifies the period covered by Rule 2201. Whether we use the effective date of the prior approval or the terms of the current rule, we would still limit allowances for non-surplus credits under the equivalency tracking system to sources submitting ATCs after August 20, 2001 unless the District changes the rule to include these sources in the tracking system.

Comment 3: WSPA notes that EPA has concluded that the District may not rely on the application of LAER requirements to newly constructed federal minor sources for purposes of demonstrating equivalency with federal NSR requirements because the District's LAER rules do not require these minor sources to make actual emission reductions. WSPA observes that despite this finding, the District's rules result in emissions from new minor sources that are substantially lower than would be the case under federal NSR requirements. WSPA also observes that in certain cases, the District's NSR program does reduce actual emissions from sources that are not major under federal NSR. WSPA encourages EPA to work with the District to assess further approaches for evaluating the overall effectiveness of the District's NSR rules as compared to federal NSR requirements.

Response: EPA will continue to work with the District to assess where more stringent District requirements result in actual emission reductions that may be used to compensate for any less stringent offset requirements. It is important to reiterate, however, that the exercise is to demonstrate that the District achieves real reductions in the inventory of emissions through requirements more stringent than the Act's. For this reason, construction of a new source, even if it adds fewer new emissions than might occur in other areas, does not reduce real emissions from the air and the baseline inventory. The purpose of the tracking system is not to make creditable certain actions that do not otherwise qualify as offsets, such as avoided possible emission increases. CAA section 173(c)(2) requires that offsets be reductions in ''actual emissions.'' As commenter notes, there may be examples where actual reductions of emissions in the air and in the inventory do occur and we will assess these examples with the District.

Comment 4: WSPA notes that the equivalency tracking program requires the District to demonstrate equivalency with the federal NSR rules in effect on November 14, 2002. See Rule 2201, section 7.1.1. WSPA observes that

[5] The District's rule provides for EPA review of the District's creditability determinations not for purposes of reviewing whether individual permitting decision rely on ERCs that are not surplus at the time-of-use, but to ensure the District's *program* satisfies the offset requirements of the Act. Accordingly, section 7.1.5 of District Rule 2201 provides that EPA may review the District's creditability determination to ensure that the emission reductions are ''real, surplus, quantifiable, enforceable, and permanent.''

[6] We explained our understanding of the District's rule in our testimony before the California Energy Commission regarding the offsets relied upon in the NSR permit for Calpine's San Joaquin Valley Energy Center. We noted that the District rule allowed Calpine to rely on credits considered acceptable under the District rules but that would be non-surplus under the federal rules. We added that the District would need to address any shortfall that resulted in the creditable emission reductions needed to satisfy the Clean Air Act offset requirements. A copy of this testimony has been added to the administrative record for today's action.

newly promulgated federal NSR Reform rules took effect on March 3, 2003 and urges EPA to work promptly with the District to incorporate the new federal NSR rules into the equivalency demonstration requirement.

Response: On December 31, 2002, EPA finalized revisions to the federal NSR rules (''NSR Reform''). 67 FR 80186. Pursuant to the revised rules in 40 CFR 51.165, permitting agencies revising their rules to meet NSR Reform must adopt and submit such revisions to EPA by January 2, 2006. As suggested by the comment, EPA is working with the District to determine how the District will implement NSR Reform, although the rule does not provide for establishing a different deadline for the District.

Comment 5: WSPA encourages EPA to continue to work with the District to develop alternative NSR rules that demonstrate equivalency with federal offset requirements, while accounting for the unique characteristics of the District's permitting system. WSPA also suggests that more flexible approaches to satisfying federal offset requirements may be appropriate in other jurisdictions and encourages EPA to consider alternative approaches in other states and air districts.

Response: EPA acknowledges WSPA's support for alternative approaches to satisfying federal emissions offset requirements and will consider submissions from other jurisdictions on a case-by-case basis.

B. Determination of Surplus Value of Credits

Comment 6: WSPA agrees that creditable emission reductions must be surplus when created and either used immediately to offset emissions or banked for later use. However, WSPA argues that nothing in the Clean Air Act or EPA regulations requires banked emission reduction credits to be surplus at the time of use. WSPA suggests that EPA revisit its position on the treatment of credits banked for later use in order to assure that the District's banking program remains effective.

Response: We disagree with WSPA's assertion that the Clean Air Act does not require emission reduction credits to be surplus at time of use. The surplus requirement derives from CAA section 173(c)(2), which provides, ''Emission reductions otherwise required by this Act shall not be creditable as emissions reductions for purposes of any such offset requirement.'' We believe the provision, by focusing on emission reductions ''for purposes'' of the offset requirement, is clear that the creditability of an emission reduction is to be determined at the time it is used as an offset. *See* also CAA § 173(a)(1)(A) (requiring ''actual'' emission reductions equal to the total tonnage of increase at the time construction is commenced). Even if we found this language ambiguous, however, the most reasonable interpretation is to reconcile creditability, including the surplus value, no earlier than at the time of use when the permitting agency formally determines that an applicant meets Clean Air Act requirements for an authority to construct permit. WSPA's interpretation that emission reduction credits retain their value for all time is inconsistent with the purposes of section 173(c)(2) and related requirements of Part D of Title I of the Act that require continuing air pollution reductions in nonattainment areas.

For example, one of the purposes of this requirement is to ensure that offsets are real reductions in the area's emissions inventory. Without ''surplus adjusting'' at time of use, there is no assurance that emissions reductions have not already been counted in the area's plan as a decrease in the inventory. If a reduction is otherwise required by a subsequently adopted rule, the reduction is typically included in the emissions reduction benefits of the rule incorporated into the SIP. This inconsistency with the requirement for reasonable further progress is one reason why EPA believes the ''surplus-at-time-of-use'' requirement is consistent with the goals of the Act.

WSPA's reading of the surplus requirement of section 173(c)(2) would diminish it to a mere timing provision with no broader air quality protection function. WSPA's interpretation would mean that sources making emission reductions that they know will be required would be able to use these emission reduction credits for all time as long as they are made before officially required. Sources would be motivated to make these ''early'' reductions in order to preserve these emissions for future use. If such a ''loophole'' in section 173(c)(2) did exist, the result would be that the emission reduction benefits of many CAA requirements such as Reasonably Available Control Technology (RACT) for existing sources would be lost because the reductions could be used to allow increases in emissions at the same source or other sources. This is not a reasonable interpretation of section 173(c)(2). A more reasonable interpretation is that Congress established section 173(c)(2) at least in part to preserve the benefits of other CAA requirements and that creditability must instead be determined when a stationary source uses a credit to meet offset requirements.

C. Enforceability of Equivalency Tracking System

Comment 7: AIR contends that EPA should not approve Rules 2020 and 2201 because the District's revised rules remain unenforceable. AIR urges EPA to consider the District's past failure to meet statutory or regulatory reporting deadlines before relying on the District's commitment to submit annual offset equivalency demonstration reports. Accordingly, AIR recommends that EPA reject any remedy hinging on the District's compliance with reporting requirements. Likewise, Earthjustice contends that EPA's reliance on the District's promise of compliance is unjustified and unreasonable in light of the District's history of noncompliance with the CAA.

Response: EPA agrees that the District's NSR program must generate real, enforceable reductions in emissions that meet all EPA creditability requirements. Accordingly, EPA's July 19, 2001 limited approval of Rules 2020 and 2201 directed the District to include in the Rule 2201 offset equivalency tracking system ''a mandatory and enforceable remedy to cure any annual shortfall and prevent future shortfalls.'' 66 FR 37587. EPA believes the District's revised Rule 2201 addresses this concern. Section 7.4.1 of Rule 2201 establishes two remedies that would take effect if the District fails to demonstrate equivalency with federal NSR offset requirements. First, the District will retire any unused emission reduction credits that meet federal creditability criteria to make up for any shortfall in the amount of federal creditable emission reductions required. Rule 2201, section 7.4.1.1. If the shortfall persists after the District retires unused federally creditable emission reduction credits, the District must also apply federal offset requirements to all permits issued after the annual demonstration deadline. Rule 2201, section 7.4.1.2. As we stated in our NPRM, EPA has determined that these remedies satisfy the concerns raised in our July 19, 2001 limited approval of Rule 2201.

While EPA acknowledges AIR's concern regarding the possible failure to meet reporting deadlines, we believe the current rules provide adequate remedies for any possible noncompliance. For example, section 7.4.1.1 of Rule 2201 specifies that if EPA determines that the District's demonstration is erroneous, the mandatory and enforceable remedies discussed in the preceding paragraph will automatically be imposed. In

addition, section 7.4.2.3 specifically addresses the consequences should the District fail to submit the required report to EPA and the public. These provisions include specific, automatic remedies that provide safeguards should the District be unable to meet the equivalency demonstration requirements. These remedies will become federally enforceable upon the effective date of today's action.

Comment 8: Earthjustice argues that the District's offset equivalency tracking system fails to comply with ''some of the most basic elements'' of the Clean Air Act. Specifically, Earthjustice believes the District's annual equivalency demonstration ''does little more than ''track and report'' annual shortfalls in the District's system.'' Earthjustice expresses concern that a year or more may pass before any remedy to cure annual shortfalls takes effect. Earthjustice claims that such a delay is unreasonable and violates the Act.

Response: As noted above, EPA has concluded that the provisions of District Rule 2201, section 7.4.1 provide automatic and mandatory enforceable remedies in the event that an annual shortfall in the District's offset equivalency tracking system occurs. While it is true the remedies set forth in section 7.4.1 take effect only after the District fails to demonstrate equivalency with federal NSR offset requirements, CAA section 173(a)(1)(A) allows for this type of aggregate demonstration (please see response to Comment 9 for further discussion). The reporting schedule is unlikely to cause a significant delay compared to permit-by-permit review of annual aggregate equivalency. Accordingly, EPA has concluded that the District's program reasonably implements section 173(a)(1) and (c) of the Act.

D. Use of Pre-1990 Emission Reduction Credits (ERCs)

Comment 9: AIR argues the District's NSR program improperly relies on pre-1990 emission reduction credits without adequately accounting for these credits. AIR contends that the District may not use pre-1990 emission reduction credits without verifying that the credits are surplus (*i.e.*, in excess of emission reductions expressly required by the Clean Air Act). AIR also notes that there are ''very real concerns'' that the pre-1990 emission reduction credits are not ''actual or quantifiable.''

Response: Section 7.1.3 of Rule 2201 requires the Air Pollution Control Officer to track the surplus value of ''creditable'' emission reductions used as offsets. Section 7.1.5 defines ''creditable'' for purposes of this tracking as emission reductions that are real, surplus, quantifiable, enforceable and permanent. EPA agrees that pre-baseline emission reduction credits create special challenges in meeting these requirements. Thus, EPA agrees with AIR's comment insofar as it suggests the need to carefully scrutinize the creditable value of pre-baseline emission reduction credits in the equivalency tracking system.

However, to the extent AIR challenges EPA's authority to allow individual sources to rely on pre-baseline credits for offsetting purposes, EPA believes AIR's arguments are addressed by our July 19, 2001 limited approval of the District's NSR rules. In that notice, EPA concluded that the District can rely on pre-baseline credits in issuing individual construction permits provided it demonstrates sufficient creditable offsets are available on an aggregate basis. 66 FR 37588–89. EPA believes this conclusion is reasonable in light of the requirements of CAA § 173(a)(1)(A), which provides that offset requirements are satisfied if ''total allowable emissions from existing sources in the region, from new or modified facilities which are not major emitting facilities and from the proposed sources, will be sufficiently less than total emissions from existing sources.'' The language of section 173(a)(1)(A) supports the District's reliance on aggregate emissions to demonstrate equivalency. See also 57 FR 13498, 13508 (Apr. 16, 1992) (noting, ''[f]or purposes of equity, EPA encourages States to allow the use of pre-enactment [*i.e.*, pre-baseline] emission reduction credits for offsetting purposes' and establishing the requirements for States to meet if they wish to allow these credits).[7]

Comment 10: AIR believes the offset equivalency tracking system will have an adverse effect on air quality in the San Joaquin Valley if the system fails to generate enough surplus emission reduction credits to offset pre-1990 credits. According to AIR, EPA is currently unable to predict whether the District Rules 2020 and 2201 will generate sufficient emission reduction credits to demonstrate equivalency with federal NSR rules.

Response: EPA acknowledges AIR's concerns regarding the inclusion of pre-1990 emission reduction credits. However, EPA believes the nonattainment planning process and the equivalency tracking system are the proper mechanisms for addressing these concerns. For example, in the District's 2003 PM–10 Plan recently proposed for approval (69 FR 5412 (Feb. 4, 2004)), the District evaluated the number of pre-baseline ERCs that could be used in the future without jeopardizing attainment or reasonable further progress. See 2003 PM–10 Plan at 3–17 to 3–20 (Amended Dec. 2003). The analysis in the 2003 PM–10 Plan follows that outlined in the August 26, 1994 Seitz Memo. The District uses economic forecast data to project growth in the various industry sectors in the area. Some of this growth will trigger NSR and the offset requirements. This growth would normally not impact the area's inventory because reductions from other sources would be required to compensate for this growth. Using pre-baseline ERCs has the effect of allowing growth in emissions without obtaining actual inventory reductions. The Seitz memo explains that in order to ensure that the use of these pre-baseline ERCs is consistent with the area's attainment plan and reasonable further progress, the District is required to either show that their use is reflected in the growth estimates in an identifiable way or add these ERCs on top of the growth estimates. The District has shown that by capping the number of pre-baseline ERCs that may be used at the projected level of growth, the area can still achieve sufficient emission reductions elsewhere to achieve attainment and reasonable further progress ''net'' of this allowed growth in emissions. This demonstration supports the limited use of pre-baseline ERCs as consistent with attainment of the national ambient air quality standards (NAAQS) for PM–10. EPA agrees that a similar demonstration must be included in the area's ozone plan to account for pre-baseline emission reduction credits and ensure that the plan generates sufficient creditable emission reductions to satisfy reasonable further progress and compliance demonstration requirements for extreme ozone nonattainment areas.[8]

[7] For further discussion on the ability of States to make up for sources' use of non-surplus emission reduction credits, see the August 26 1994 memo from John Seitz, Director, Office of Air Quality Planning and Standards, to David Howekamp, Director, Region IX, Air and Toxics Division (''Seitz Memo''). The memo explains, ''States may provide other reductions to cover all or some portion of the emission reductions required for ensuring ERC's reflect current RACT levels.'' The memo cites the 1994 Economic Incentive Program rule and guidance, which provided, ''[T]he Act does not require that offsets be secured by the new source. Rather, any portion of the necessary offsets may be generated by the local air quality district or by the State.'' 59 FR 16690, 16696 (April 7, 1994).

[8] Given the likely need for stringent controls and significant emissions reductions, it may be more difficult for the area to demonstrate attainment and reasonable further progress if pre-baseline credits are carried forward in the inventory.

We encourage AIR to participate in the public process regarding this plan and to raise any concerns with how pre-baseline emission reduction credits are included.

Comment 11: AIR also notes that there is uncertainty surrounding the District's ability to manage the tracking system if the San Joaquin Valley is redesignated as an extreme ozone nonattainment area. AIR therefore concludes that EPA should not approve Rule 2201 until these uncertainties are resolved.

Response: On April 8, 2004, EPA took final action to reclassify the San Joaquin Valley ozone nonattainment area from a severe to an extreme 1-hour ozone nonattainment area. 69 FR 8126. EPA agrees that redesignation of the ozone nonattainment area will affect the implementation of the offset equivalency tracking system. *See* 68 FR 8127. The District will need to update its NSR program to meet the new federal requirements triggered by redesignation. The offset tracking system and equivalency demonstration was approved for limited purposes and EPA would like to avoid any possible misunderstanding that it was intended to address additional rule deficiencies that would occur if the District failed to update its rules to comply with federal NSR requirements for extreme ozone nonattainment areas.

As AIR acknowledges, it is not certain when or if the area will be unable to demonstrate equivalency in the future. In the meanwhile, we believe it is reasonable to approve the proposed revisions to Rule 2201 because the Rule provides automatic remedies in the event equivalency cannot be demonstrated. Thus, if the District cannot demonstrate equivalency, the District will meet all federal offset requirements on a case-by-case basis.

Comment 12: AIR argues that the District's use of pre-1990 emission reduction credits violates CAA section 193. AIR observes that section 193 prohibits the modification of any pre-1990 implementation plan in effect in a nonattainment area unless the modification ensures equivalent or greater emission reductions. AIR contends that allowing the District to use pre-1990 emission reduction credits without determining whether or not they are surplus would not have been allowed prior to the 1990 Clean Air Act Amendments and would violate section 193.

Response: Section 193 of the Clean Air Act prohibits the modification of any control requirement in effect in a nonattainment area prior to November 15, 1990 ''unless the modification insures equivalent or greater emission reductions of such pollutant.'' AIR does not identify which pre-1990 control requirement is being relaxed in this action. In fact, the revisions being approved today are to District rules approved into the SIP in 2001. It is unclear how section 193 applies to these changes given that they do not revise any pre-1990 control requirements. Moreover, there is no basis for claiming these revisions relax the previously approved SIP measures; to the contrary, these changes strengthen rules 2020 and 2201 by addressing deficiencies noted in the 2001 limited approval/limited disapproval.

Comment 13: Comments from WSPA, along with the District, disagreed with EPA's conclusion that pre-1990 emissions reduction credits are not surplus creditable reductions available to meet federal offset requirements. These commenters argue that the District had properly accounted for pre-1990 credits in previous submittals to EPA. In support of this claim, the commenters cite the District's 1994 Ozone Attainment Demonstration Plan, Revised 1993 Rate of Progress Plan, and Revised Post-1996 Rate of Progress Plan. Several of the comments note that EPA approved these documents without questioning the methodology used to account for pre-1990 emissions reduction credits. WSPA encourages EPA to work with the District to resolve this issue in a manner that maintains the viability of the District's emissions banking program and protects the ability of permittees to obtain offsets for future projects.

Response: EPA has worked with the District in preparing its new 2003 PM–10 Plan to demonstrate more clearly that limited use of pre-baseline ERCs is consistent with attainment of the PM–10 NAAQS and reasonable further progress toward these standards. EPA proposed approval of this plan on February 4, 2004. 69 FR 5412. EPA believes that the plan shows that even assuming a limited amount of growth in emissions is not offset by reductions in the current inventory because pre-baseline ERCs are used, the area will still be able to attain the NAAQS and demonstrate reasonable further progress. The District will need to support a similar demonstration as part of the area's ozone plan.

The plans referenced by commenters did not reasonably support a conclusion that the area can attain the ozone NAAQS while foregoing meaningful offsets from the emissions inventory. EPA approval of an attainment demonstration does not automatically allow the use of pre-baseline ERCs. There is no requirement that an area carry forward pre-baseline ERCs. The decision of whether to allow their continued use is up to the State and local District. Should a State or local District choose to protect these credits for future use, the amount of such ERCs must be correctly included in the plan. A state or local agency could choose to include all pre-baseline ERCs and require compensating reductions elsewhere, or could choose to not allow any pre-baseline ERCs to be carried forward. The plans referenced by commenters included no specific, identifiable quantity of pre-baseline ERCs and did not in any way limit or account for their use. More fundamentally, these demonstration have not proven out. Reliance on such demonstrations while simultaneously redesignating the ozone area from severe to extreme nonattainment would not be reasonable. Until revised demonstrations are provided with respect to ozone attainment, EPA's position remains that the District has not shown that use of these ERCs as offsets can be allowed while preserving the area's ability to attain and make reasonable further progress toward attainment of the ozone NAAQS.

III. EPA Action

No comments were submitted that changed our assessment that the submitted rules address the deficiencies noted in our July 19, 2001 limited disapproval and comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving SJVUAPCD Rules 2020 and 2201 into the California SIP. This action terminates all sanction and FIP obligations associated with our July 19, 2001 action on a previous version of the rule.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 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 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 approves 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 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 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.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 16, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 19, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(311) (i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(311) * * *

(i) * * *

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rules 2020 and 2201 adopted on December 19, 2002.

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[FR Doc. 04–10981 Filed 5–14–04; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[OMD Docket No. 02–339; FCC 04–72]

Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its rules to implement the Debt Collection Improvement Act of 1996 (DCIA). The amendments largely follow the implementing rules promulgated by the Department of Treasury. The Commission also adopts a rule whereby applications or other requests for benefits would be dismissed upon discovery that the entity applying for or seeking the benefit is delinquent in any debt to the Commission, and that entity fails to resolve the delinquency.

DATES: Effective June 16, 2004, except §§ 1.1112, 1.1116, 1.1161 and 1.1164 and 1.1910 which will become effective on October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Regina W. Dorsey, Special Assistant to the Chief Financial Officer, at 1–202–418–1993, or by e-mail at *Regina.Dorsey@fcc.gov*, or Laurence H. Schecker, Office of General Counsel, Administrative Law Division, at 1–202–418–1720, or by e-mail at *Laurence.Schecker@fcc.gov.*

SUPPLEMENTARY INFORMATION: By this document, FCC 04–72, adopted March 25, and released on April 13, 2004, we amend our rules governing the collection of claims owed the United States, 47 CFR part 1 subpart O, to implement the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321, 1358 (1996) (DCIA). The term ''claim'' or ''debt'' has the meaning used in 31 U.S.C. 3701(b), which is any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization or entity other than a Federal Agency. We also adopt a rule providing that we will withhold action on applications and other requests for benefits upon discovery that the entity applying for or seeking benefits is delinquent in its non-tax debts owed to the Commission, and dismiss such applications or requests if the delinquent debt is not resolved.