



**San Joaquin Valley**  
AIR POLLUTION CONTROL DISTRICT

HEALTHY AIR LIVING™  
The logo for Healthy Air Living, featuring three small icons: a yellow sun, a green leaf, and a blue mountain peak, positioned above the text.

# **FINAL DRAFT STAFF REPORT**

Proposed Amendments to  
Rule 1020 (Definitions)  
Rule 2201 (New and Modified Stationary Source Review Rule)  
Rule 2301 (Emission Reduction Credit Banking)

March 21, 2023

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# SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

## FINAL DRAFT STAFF REPORT

### Proposed Amendments to Rule 1020 (Definitions) Proposed Amendments to Rule 2201 (New and Modified Stationary Source Review Rule) Proposed Amendments to Rule 2301 (Emission Reduction Credit Banking)

March 21, 2023

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## I. SUMMARY

The San Joaquin Valley Air Pollution Control District (District) is proposing to amend District Rule 2201 (New and Modified Stationary Source Review (NSR) Rule) to:

- (1) Remove NO<sub>x</sub>, VOC, and CO from the federal offset equivalency demonstration and replace the current programmatic *once-per-year* demonstration with a programmatic *permit-level, time-of-ATC-issuance* demonstration for PM<sub>10</sub>, PM<sub>2.5</sub>, and SO<sub>x</sub>;
- (2) Adopt full federal offsetting requirements for NO<sub>x</sub> and VOC;
- (3) In consultation with Federal Land Managers, require visibility modeling for projects that are new major sources and federal major modifications to ensure no adverse impact on mandatory Class I Federal areas; and
- (4) Add and revise numerous miscellaneous provisions as detailed in this report to address minor concerns identified in the U.S. Environmental Protection Agency's (EPA's) limited approval and limited disapproval<sup>[1]</sup> of the August 15, 2019 version the District Rule 2201.

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<sup>[1]</sup> 87 FR 45730, *Limited Approval and Limited Disapproval of California Air Plan Revisions; San Joaquin Valley Air Pollution Control District; Stationary Source Permits*

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The District is also proposing to amend District Rule 2301 (Emission Reduction Credit Banking) to:

- (1) Clarify the definitions of shutdown and emission reduction credit (ERC) banking application timeliness;
- (2) Discontinue the banking of new greenhouse gas (GHG) emission reductions; and
- (3) Add administrative requirements for the District's Air Pollution Control Officer (APCO) to claim and use unbanked shutdown emission reductions (USER) from stationary sources as a form of offset as allowed under District Rule 2201.

Lastly, the District is proposing to amend District Rule 1020 (Definitions) to add a definition for PM<sub>2.5</sub> and revise the definitions for PM<sub>10</sub> and volatile organic compounds (VOC).

## II. BACKGROUND

To achieve the District's mission of improving air quality and public health for all Valley residents, the District has developed and implemented numerous air quality plans to reduce emissions from stationary sources through the adoption of nearly 650 of the most stringent rules in the nation and strong voluntary incentive programs that have invested more than \$5 billion of combined funds in clean-air projects. Over the past several decades, these air quality improvement efforts have reduced ozone and PM<sub>2.5</sub>-forming NO<sub>x</sub> emissions from stationary and mobile sources by over 75%, including a greater than 90% reduction from stationary sources under the District's jurisdiction, resulting in significant air quality progress towards meeting the health-based federal ozone and PM<sub>2.5</sub> standards.

In addition to the District rules aimed at directly reducing emissions from stationary sources, the District also has a set of rules establishing a permitting program designed under state law to ensure on a regional basis there is no net increase in emissions of nonattainment pollutants or their precursors for new or modified sources.

Under Rule 2201 (New and Modified Stationary Source Review Rule (NSR)), new facilities and modifications to existing facilities that result in increases in permitted emissions above specified levels are required to provide emission reductions as mitigation, or "offsets", as a part of the requirements to obtain an Authority to Construct permit. Both federal and state law mandate NSR permitting programs that contain offsetting and ERC banking provisions. Offsets are intended by both federal and state law to be one part of a comprehensive NSR permitting program that has been specifically designed by Congress and the state legislature to allow for industrial growth while tightly regulating any emissions increases. Additionally, any emission increases due to growth are accounted for in State Implementation Plans that demonstrate how

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the District's overall air quality control program will require sufficient emissions reductions to attain national ambient air quality standards.

Offsets are required in addition to, and only after, establishing that the new emissions are controlled with the best available control technology (BACT) and will not cause a significant health risk to surrounding communities. The San Joaquin Valley's NSR permitting program, including the accompanying ERC program, ensures that new emissions are controlled with the best technologies, prevents the permitting of any operation that will cause a significant adverse health impact, demonstrates on a project-by-project basis and in each attainment plan that progress toward attainment is not endangered, and has historically been found by the state and federal governments to comply with state and federal laws governing NSR/ERC programs.

Rule 2201 (New and Modified Stationary Source Review Rule (NSR)) and Rule 2301 (Emission Reduction Credit Banking) each require the District to publish public notices prior to issuance of an ATC for certain actions and prior to issuance of any ERC.

## **A. California Air Resources Board Review of District ERC Program**

At their January 2019 meeting, the California Air Resources Board (CARB) directed their staff to review the District's ERC and offset equivalency program in response to a request from environmental advocacy groups. District staff worked cooperatively with CARB staff to review the ERC system, including the annual federal equivalency demonstration, in the context of the District's stationary source permitting program. District staff communicated concerns and expectations to CARB staff, aided in the understanding of the District's ERC system and permitting program, as well as provided all requested information.

Following nearly a year and a half of detailed review, CARB released its final report entitled "Review of San Joaquin Valley Air Pollution Control District Emission Reduction Credit System" on June 5, 2020. The CARB Board approved their staff's recommendations at the CARB's Governing Board hearing held on June 26, 2020 including a commitment to support the District in enhancing the ERC program moving forward.

The District appreciates CARB's general recognition of the stringency of the District's air quality programs and the success in reducing emissions from stationary sources in the Valley. CARB's review pointed to a need for the District to revisit and potentially enhance aspects of the ERC and offset equivalency program moving forward. In response, the District made a series of specific commitments aimed at enhancing transparency, rigor and public engagement surrounding the ERC and federal offset equivalency program.

The District has been diligent in implementing the commitments and has substantially met those commitments in coordination with CARB and EPA. The District has now transitioned into rulemaking efforts to formalize changes that have been implemented and satisfy other elements to ensure federal requirements can continue to be met.

**B. District Offset Equivalency Program**

As allowed by the federal Clean Air Act (CAA), the District's New Source Review (NSR) offset program in District Rule 2201 has historically differed from a direct implementation of the federal NSR offset program requirements. EPA approved the District's approach in 2001 as the District's NSR offset program was overall equal to or more stringent than the federal NSR offset program. As included in the District's EPA-approved NSR Rule, to demonstrate overall, or programmatic offset equivalency with the federal NSR offset requirements, the District is required to prepare and submit an annual offset equivalency report to EPA and CARB that evaluates whether Offset Quantity (Test 1) and Surplus Value (Test 2) equivalency are met.

Under the current Rule 2201, if the system ever fails to demonstrate equivalency with federal requirements, immediate and specified remedies are required to be enacted for each of the above tests, including amending the rule. The remedies require the District to apply federal offset requirements on a permit-level basis instead of the programmatic basis allowed under the equivalency demonstration.

The 2019-20 Annual Offset Equivalency Report was completed and submitted to EPA and CARB which demonstrated that VOC was no longer offset quantity (Test 1) or surplus value (Test 2) equivalent and NOx was no longer surplus value (Test 2) equivalent. Further analysis of the 2020-21 annual shortfall in the quantity of NOx offsets required highlighted the possibility that the Test 2 remedy in the current Rule 2201 is not sufficient to ensure the District will be able to remain equivalent with federal offsetting requirements.

It is imperative that the District operates an offsetting program that ensures that federal offsetting requirements can be met on an ongoing basis. Therefore, consistent with the District's efforts to evaluate the offsetting program and ensure that all state and federal requirements are met, based on staff's recommendation, the District's Board took action to require that all new major sources or federal modifications triggering offsets for NOx be required to provide ERCs for the full federal offset quantity and that those credits be surplus at time of Authority to Construct (ATC) issuance effective February 17, 2022; this made the NOx offsetting requirements for all new major sources and federal major modifications similar to the requirements for VOC emissions.

**C. EPA’s Limited Approval and Limited Disapproval of District Rule 2201 (August 15, 2019)**

The District adopted amendments to District Rule 2201 on February 18, 2016, as a requirement for the District’s reclassification from moderate to serious nonattainment for the 1997 and 2006 National Ambient Air Quality Standards (NAAQS, or standards) for particulate matter with an aerodynamic diameter of less than 2.5 microns (PM<sub>2.5</sub>). In addition to the requirements for the reclassification, at that time the District took the opportunity to amend the rule to address a comment from EPA about the definition of “Routine Replacement”. The amendments in February 2016 replaced the term “Routine Replacement” with “Replacement Emissions Unit” and removed the word “routine” from the definition in Section 3.35 of Rule 2201.

After the District’s adoption of the February 18, 2016 amendments, the CARB reviewed the amendments further and commented that removing the word “routine” from the Routine Replacement definition that was replaced by Replacement Emissions Unit could potentially result in a relaxation of the District’s NSR Rule that would not be allowed by California Health and Safety Code Sections 42500 through 42507 – Protect California Air Act of 2003, Senate Bill 288 (SB 288).

Therefore, in 2019 the District reopened Rule 2201 again and in this amendment reintroduced the word “routine” and changed the name from “Replacement Emission Unit” to “Routine Replacement Emissions Unit” in the amendments to Rule 2201 adopted on August 15, 2019. In addition, the District amended the definitions of Federal Major Modification and Temporary Replacement Emission Unit in Sections 3.18 and 3.41, respectively, in response to comments the District received from EPA, among other amendments.

After the District adopted the amendments to Rule 2201, CARB submitted it to EPA for inclusion in California’s State Implementation Plan (SIP) on November 20, 2019. Over the next few years, EPA evaluated the rule for compliance with the Clean Air Act requirements, the requirements of 40 CFR 51.165 and the general NSR requirements in 40 CFR 51.160-51.164. On July 29, 2022, EPA published in the Federal Register their proposed Limited Approval and Limited Disapproval of District Rule 2201 and the associated technical support document (TSD). EPA determined that the District’s current Rule 2201 mostly meets the requirements for Nonattainment NSR (NNSR) programs applicable to ozone and its precursors in areas classified as Extreme nonattainment and PM<sub>2.5</sub> and its precursors in areas classified as Serious nonattainment. However, EPA also provided comments and made recommendations that the District is addressing through the current rulemaking.

### III. DISTRICT RULE 1020 - DEFINITIONS

#### A. Description of Current Rule

District Rule 1020 was adopted on June 18, 1992, and was last amended on February 21, 2013. The purpose of the rule is to define key terms used in the District's regulations. Although Section 3.0 of Rule 2201 provides numerous definitions specific to their use within NSR, Rule 2201 also relies on Rule 1020 for terms that may have wider applicability beyond NSR.

#### B. Reasons for Amendments

As part of its Limited Approval and Limited Disapproval of District Rule 2201, EPA noted the District's definition of VOC in District Rule 1020 did not reflect the current definition of VOC under 40 CFR 51.100(s). District Rule 1020 was last amended on February 21, 2013, and the federal definition of VOC has been amended several times since then.

The definition of VOC in District Rule 1020, Section 3.53 (in the current rule) includes any compound of carbon except for those compounds that have been shown to have negligible photochemical reactivity, i.e. that do not contribute to the formation ozone. The carbon containing compounds that have been accepted as showing negligible photochemical reactivity are listed in the definition. Any compound in the list is not treated as a VOC, i.e. ozone precursor, for regulatory purposes. In other words, a carbon containing compound is presumed to be a VOC unless it is on the list, and a compound is only added to the list after it has been demonstrated not to be an ozone precursor. EPA is requiring the District to amend its definition of VOC by adding 15 new compounds to the exclusion list to be consistent with 40 CFR 51.100(s).

EPA also commented that the current definition of PM10 in Rule 2201, Section 3.29 is not consistent with 40 CFR 51.165(a)(1)(xxxvii)(D), which requires that gaseous emissions that condense to form particulate matter at ambient temperatures be included in the definitions for both PM2.5 and PM10. While the definition for PM2.5 in Rule 2201, Section 3.28 does explicitly include such condensable gaseous emissions, the definition for PM10 in Rule 2201 does not. Although not mentioned in EPA's comments, Rule 1020, Section 3.36 also defines PM10 without explicitly mentioning condensable gases, although it does define PM10 with reference to state and federal test methods that measure the condensable fraction of particulate matter. EPA is requiring the District to revise its definition for PM10 to explicitly include condensable PM10 to be consistent with 40 CFR 51.165.

#### C. Proposed Amendments to Rule 1020

The District currently has definitions for PM2.5 and PM10 in Rule 2201, and definitions for VOC and PM10 in Rule 1020. Both rules are in the SIP. The District is proposing to move the definition of PM2.5 to Rule 1020 and have all three pollutants defined in Rule 1020.



- *Section 3.36 – PM<sub>2.5</sub> Definition*

The PM<sub>2.5</sub> definition found in Rule 2201 is being relocated to Rule 1020. The definition is proposed to be slightly modified to be consistent with the language used for the definition of PM<sub>10</sub> with no expected change in the practical applicability of the term.

- *Section 3.37 – PM<sub>10</sub> Definition*

As identified by EPA, the District is proposing to amend Section 3.37 to clarify that gaseous emissions which condense to form particulate matter at ambient temperatures shall be considered as PM<sub>10</sub>. This clarification is consistent with the District's practice of regulating PM<sub>10</sub>.

- *Section 3.54 – VOC Definition*

Consistent with the definition of VOC in 40 CFR 51.100(s) the District is proposing to amend Section 3.54 to exclude 15 additional carbon containing compounds from the definition of VOC.

The effect of this change is that the newly excluded compounds are no longer subject to NSR, including its BACT and offset requirements. Moreover, actual emission reductions of any of these newly listed non-VOCs cannot be banked as ERCs or otherwise used as offsets for VOCs. As a practical matter, the District is not aware of any currently banked ERC that were based on emission reductions that included any of the newly listed non-VOCs. This amendment does not lessen the stringency of the District's regulations because as compounds with negligible photochemical reactivity pursuant to 40 CFR 51.100(s), these compounds have no effect on the District's ozone attainment efforts.

#### **IV. DISTRICT RULE 2201 – NEW AND MODIFIED STATIONARY SOURCE REVIEW RULE**

##### **A. Description of Current Rule**

District Rule 2201 was adopted on September 19, 1991, and was last amended on August 15, 2019. The Rule provides a regulatory mechanism for allowing continued economic growth while minimizing the amount of emission increases from stationary sources due to this growth. District Rule 2201 applies to all new stationary sources and all modifications to existing stationary sources that are subject to District permit requirements. For insignificant sources of emissions, there are certain permitting exemptions identified in District Rule 2201 and District Rule 2020 (Exemptions).

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The District's NSR program is designed to meet both the state and federal NSR requirements for nonattainment areas and applies to new and modified stationary sources of NO<sub>x</sub>, VOC, particulate matter with an aerodynamic diameter of less than 10 microns (PM<sub>10</sub>), PM<sub>2.5</sub>, SO<sub>x</sub>, CO, and other pollutants subject to District permitting requirements pursuant to District Rule 2010 (Permits Required).

Key requirements of District Rule 2201 include:

- Best Available Control Technology (BACT): mandates emission controls to minimize emission increases above a de minimis value for each affected pollutant;
- Emission offsets: requires emissions above specified offset threshold levels to be mitigated with either concurrent reductions or past reductions which have been banked as emission reduction credits (ERC);
- Public notification: a 30 or 45 day notice period prior to issuance of an Authority to Construct (ATC) to solicit comments and invite public, EPA and CARB participation on projects that result in emissions above specified levels; and
- Required elements for Authority to Construct, Permit to Operate, and administrative requirements for the processing of NSR applications.

## 1. Background

The principal focus of the current Rule 2201 amendments is offsetting requirements. The offsetting requirements of Rule 2201 have always been different from the offsetting requirements under federal NSR. The federal Clean Air Act allows local NSR programs to differ from federal NSR so long as the local offset program is at least as stringent as the offset requirements that would otherwise apply under federal NSR. Because the differences in offset requirements between Rule 2201 and federal NSR were sufficiently numerous and complex, it was not possible to show from rule language alone that Rule 2201 was and would always be more stringent in offsetting requirements for all pollutants than federal NSR. To make the necessary showing of stringency, EPA and the District jointly developed the principles and procedures for comparing the relative stringency of Rule 2201 and federal NSR, which became the federal offset equivalency demonstration in Rule 2201, Section 7.0. Thus, since 2001, EPA has required the District to perform an annual demonstration to show the offset requirements under Rule 2201 are at least as stringent as would be required under federal NSR. The District makes this demonstration by applying both offsetting systems to every ATC project issued and then comparing the results at the end of a 12-month period, running from August 20 to August 19 of the following year. From 2001 until 2020, the District was able to show equivalency for all pollutants. However, in 2020, the District was unable to show equivalency for NO<sub>x</sub> and VOC, and, as required under the terms of the demonstration, the District adopted federal offsetting requirements for NO<sub>x</sub> and VOC and began the process to amend Rule 2201 to incorporate federal offsetting requirements for NO<sub>x</sub> and VOC into the rule language.

**B. Reasons for Amendments – Federal Offset Equivalency and EPA’s Limited Approval and Limited Disapproval**

Consistent with the District’s efforts to ensure that the offsetting program meets all state and federal requirements and in response to CARB’s review of the District’s ERC program and the comments provided by EPA in their limited approval and limited disapproval of the current Rule 2201, the District is proposing amendments to the District’s offset equivalency requirements in Rule 2201 to ensure that federal offsetting requirements can be met on an ongoing basis.

The District has taken a multi-path approach to satisfying the District and Federal offsetting requirements with one approach for NOx and VOC and a separate path for SOx, PM10, PM2.5 and CO.

NOx and VOC Path

Consistent with the current requirements and equivalency remedies in place, the District is proposing to integrate the federal offsetting program in the proposed Section 4.8 of Rule 2201 and the District is proposing to amend Section 7.0 of Rule 2201 to remove NOx and VOC from the offset equivalency system.

PM10, PM2.5, SOx and CO Path

Since Rule 2201 offsetting requirements have been shown to be more stringent than federal NSR offsetting requirements for PM10, PM2.5, and SOx, the District is proposing to maintain an offset equivalency system for these pollutants. In addition, the District is proposing to remove CO from the equivalency demonstration because EPA has designated the District as attainment for the federal CO standard, following the District’s completion of two 10-year maintenance plans for CO as of 2018. Since the District is an attainment area for CO, CO is no longer subject to federal non-attainment NSR requirements. Therefore, no federal offset equivalency demonstration is required for CO. The District, however, will continue to require offsets for CO under the current terms of Rule 2201.

For PM10, PM2.5, and SOx, the District is proposing two significant changes to the federal offset equivalency demonstration going forward consistent with EPA recommendations. The first is that the District will be going from a two-test demonstration to a one-test demonstration that better reflects overall or programmatic offset equivalency. The second is that the District will be going from a once-a-year demonstration of equivalency for the collection of all projects in the tracking year that triggered federal offset requirements to a demonstration for each individual ATC project that triggers federal offset requirements at time-of-ATC-issuance. Consistent with the current programmatic (with respect to offset requirements) demonstration, the District will continue to collect creditable actual emission reductions of PM10, PM2.5, or SOx into the equivalency tracking system from all eligible sources and transfer them as needed to projects that are new major sources or federal major modifications for PM10,

PM2.5, or SOx to ensure equivalency is maintained. The details of the proposed changes are discussed in the amendments to Section 7.0 below.

In addition, the District is making other miscellaneous amendments to Rule 2201 to ensure consistency with state and federal requirements. The District adopted amendments to Rule 2201 on August 15, 2019, and CARB submitted the rule to EPA for inclusion in California's SIP. EPA evaluated the rule and provided findings that Rule 2201 generally satisfies the applicable CAA and regulatory requirements for sources subject to NNSR permit requirements for Extreme ozone nonattainment area and Serious PM2.5 nonattainment areas. In EPA's evaluation of the rule, areas of concern were identified and provided to the District. The District is proposing various amendments throughout Rules 2201 and 1020 to address EPA's comments.

### **C. Proposed Amendments to District Rule 2201**

- *Section 2.0 – Applicability*

After discussions with EPA, the District is proposing to amend Section 2.0 to clarify that “the District permit requirements” specifically refers to the collection of permitting rules contained in Regulation II – Permits:

*This rule shall apply to all new stationary sources and all modifications to existing stationary sources which are subject to the District permit requirements in Regulation II and after construction emit or may emit one or more affected pollutant. The requirements of this rule in effect on the date the application is determined to be complete by the Air Pollution Control Officer (APCO) shall apply to such application.*

This proposed amendment will not change the District's historical practice in applying this rule to Authority to Construct projects.

- *Section 3.0 – Definitions*

After discussions with EPA, the District is proposing to amend Section 3.0 to codify the District's practice of utilizing Rule 1020 (Definitions) for any definition not explicitly included in Rule 2201. The following new language will introduce the definitions under Section 3.0:

*The following definitions apply for all terms used in this Rule. If a term is not defined herein, then the definitions provided in Rule 1020, Definitions, shall apply.*

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- *Section 3.1 – Actual Emissions Definition*

The District is proposing to amend District Rule 2201, Section 3.1 to clarify the definition when it is used for Federal Offset Quantity (FOQ) calculations. Consistent with 40 CFR 51.165(a)(1)(xii), when actual emissions are used to calculate the FOQ, the emissions shall be from a 24-month period representative of normal source operation; however, pursuant to 40 CFR 51.165(a)(1)(xii)(D), if the emissions unit has not begun operating under normal operations (e.g. less than two years since commencing operation), actual emissions shall equal the pre-project potential to emit.

- *Section 3.2 – Actual Emissions Reduction (AER) Definition*

After discussions with EPA, the District is proposing to amend District Rule 2201, Section 3.2 to reword the language to clarify application of the existing requirements. This proposed amendment does not change the historical requirements or applicability of the AER definition.

- *Section 3.3 – Administrative Change Definition*

After discussions with EPA, the District is proposing to make minor changes to the definition that does not change the historical requirements or applicability of the definition.

- *Section 3.6 – Air Quality Improvement Deduction Definition*

After discussions with EPA, the District is proposing to make minor changes to the definition that does not change the historical requirements or applicability of the definition.

- *Section 3.8 – Baseline Emissions Definition*

After discussions with EPA, the District is proposing to make minor changes to the definition that does not change the historical requirements or applicability of the definition. Additionally, the District is proposing to amend the definition to clarify that the Highly-Utilized Emission Unit is determined on a 24-month period, which is consistent with the proposed changes to the Baseline Period definition in Section 3.9 and the Highly-Utilized Emissions Unit definition in Section 3.25.

- *Section 3.9.1 and 3.9.2 – Baseline Period Definition*

After discussions with EPA, the District is proposing to amend the definition to clarify that the determination is based on 24-month period which is consistent with the time periods used to establish “Actual Emissions” and “Baseline Actual

Emissions” in 40 CFR 51.165. The District’s proposed amendments to the definition do not change the historical requirements or applicability of the definition.

- *Section 3.9.3 – Baseline Period Definition*

Considering that a new emissions unit is defined in 40 CFR 51.165(a)(1)(vii)(A) as an emissions unit that is newly constructed and which has existed for less than 2 years, an emissions unit that has not been in operation for 24 months, as described in Section 3.9.3, is not considered to have established normal operation; therefore, pursuant to 40 CFR 51.165(a)(1)(xii)(D) “Actual Emissions” for such an emissions unit (i.e. an emissions unit in operation less than 24 months) shall equal the potential emissions. As such, for federal emission offset requirements, an emissions unit that has operated less than 24 months shall use the potential emissions of the emissions unit and not a 12-month period as required in Section 3.9.3 for District emission offset requirements. The District’s proposed amendments to this section of the definition do not change the historical requirements or applicability of the definition.

- *Section 3.10 – Best Available Control Technology (BACT) Definition*

After discussions with EPA, the District is proposing to amend the definition amend the definition of BACT to be consistent with the definition of “Lowest Achievable Emission Rate (LAER)” in 40 CFR 51.165(a)(1)(xiii).

*3.10 Best Available Control Technology (BACT): is the most stringent emission limitation or control technique of the following:*

*3.10.1 Achieved in practice for such class or category ~~and class~~ of source;*

*3.10.2 Contained in any State Implementation Plan approved by the Environmental Protection Agency for such class or category ~~and class~~ of source. A specific limitation or control technique shall not apply if the owner of the proposed emissions unit demonstrates to the satisfaction of the APCO that such a limitation or control technique is not presently achievable; or*

*3.10.3 Contained in an applicable federal New Source Performance Standard; or*

*3.10.4 Any other emission limitation or control technique, including process and equipment changes of basic or control equipment, found by the APCO to be cost effective and technologically feasible for such class or category of sources or for a specific source.*

The District’s proposed amendments to the definition do not change the historical requirements or applicability of the definition.

- *Section 3.11 – Best Available Retrofit Control Technology (BARCT) Rule Definition*

As identified by EPA, the District is proposing to add this definition, which will be a new Section 3.11, to clarify the requirements of a unit to qualify as a routine replacement emissions unit or a temporary replacement emissions unit, as they currently exist in the rule. The proposed definition incorporates the definition of BARCT from the California Health and Safety Code (CH&SC) Section 40406 and is consistent with the District's recent analyses to determine if the District's prohibitory rules meet BARCT as required by Assembly Bill 617 (C. Garcia, Chapter 136, Statutes of 2017), Non-vehicular Air Pollution: Criteria Air Pollutants and Toxic Air Contaminants.

The inclusion of this definition also requires the subsequent section numbers of Section 3.0 to be updated.

- *Section 3.15 – Complete Application Definition*

As identified by EPA, the District is proposing to amend Section 3.15 of Rule 2201 to provide additional details on the information that is needed to constitute a complete application, consistent with 40 CFR 51.160(c). The items explicitly being included in the proposed definition of a complete application include the nature and amount of emission to be emitted or reduced and the location, design, construction, and operation of such emissions unit(s). This additional language does not change the District's historic practices and the District's existing general ATC application form and supplemental application forms are expected to continue meet these new requirements.

- *Section 3.19 – Federal Baseline Emissions (FBE) Definition*

The District is proposing to amend District Rule 2201, to include a definition of Federal Baseline Emissions (FBE) (proposed Section 3.19) to be used when calculating the FOQ pursuant to proposed Section 4.8.4. The requirements proposed in Section 4.8.4.3 for determining the FOQ require that, for a modification of an existing unit at a major source, the FOQ shall be the difference between the post-project potential emissions and the federal baseline emissions.

The definition of the federal baseline emissions proposed in Section 3.19 requires the use of historical actual emissions, which are actual emissions occurring during the baseline period, except for any Highly-Utilized Emissions Unit or Fully-Offset Emissions Unit as defined in proposed Sections 3.25 and 3.23, respectively. For any Highly-Utilized Emissions Unit or Fully-Offset Emissions Unit, the unit's pre-project potential to emit may be used as federal baseline emissions for FOQ calculations.

Nearly all sources that operate in compliance with their permitted emission limits

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operate below their permitted levels to maintain a margin of compliance. These proposed provisions would allow any Highly-Utilized Emissions Unit, a unit that has historically operated near its maximum legal emissions limit on a pollutant-by-pollutant basis, to not be penalized for operating with a margin of compliance under their permitted limit when the unit is modified and when calculating the amount of offsets required due to that modification.

Additionally, these proposed provisions would allow any Fully-Offset Emissions Unit, a unit for which surplus-at-time-of-use offsets have been provided for the full potential to emit for an Authority to Construct project finalized within the past 5 years on a pollutant-by-pollutant basis, to not be required to offset the same contemporaneous emissions from a unit more than once.

These proposed changes do not change the existing requirements for calculating the District Offset Quantity (DOQ).

- *Section 3.20 – Federal Offset Quantity (FOQ) Definition*

The District is proposing to amend District Rule 2201 for clarity to include a formal definition of Federal Offset Quantity (FOQ). This proposed definition is the quantity of offsets or surplus-adjusted at time-of-use AERs required to satisfy the federal emission offset requirements that are included in the proposed Section 4.8.

- *Section 3.21 – Federal Major Modification Definition*

The District is proposing to amend Section 3.21 of Rule 2201 to provide clarity in the definition of a Federal Major Modification. In Section 3.21, the District is proposing to simply reference the definition of “major modification” in 40 CFR 51.165 as well as the terms and definitions as they are used in 40 CFR 51.165 and to eliminate the reference to the District’s SB 288 Major Modification, which is defined in Section 3.39.

Proposed language is being included to specify that the procedures for determining a federal major modification are provided in the subsequent subsections in 3.21. Amended sections 3.21.1 through 3.21.4 specify the calculation procedures used to determine if a project will be a federal major modification.

Section 3.21.1 is proposed to specify the procedures for calculating an emissions increase or a net emissions increase, including the provisions to allow “project netting” which allows emission decreases for a project to be considered pursuant to 40 CFR 51.165(a)(2)(ii)(G), for all federally nonattainment pollutants except VOC and NOx. Whereas Section 3.21.2 is proposed to specify the procedures for calculating an emissions increase for VOC and NOx and not a net emissions increase since that is not allowed. Additionally, Section 3.21.2 specifies that the



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“netting” which allows emission decreases to be considered pursuant to 40 CFR 51.165(a)(2)(ii)(G) shall not be allowed for VOC and NO<sub>x</sub> calculations for determining the net emissions increase.

The provisions for determining projected actual emissions and baseline actual emissions for applicability of federal NSR purposes in Sections 3.21.3 and 3.21.4 will remain unchanged.

Section 3.21.5 is proposed to be clarified that the provisions of 40 CFR 51.165(a)(6) and (a)(7) apply to a project with a reasonable possibility according to 40 CFR 51.165 (a)(6)(vi), if the project was determined not be a federal major modification, except for projects at stationary source with a Plant wide Applicability Limit (PAL).

- *Section 3.23 – Fully Offset Emissions Unit Definition*

The District is proposing to amend District Rule 2201, to revise the requirements within the definition of a fully offset emissions unit. The proposed rule language establishes additional requirements for a unit to qualify as a fully offset emissions unit for the purposes of FOQ calculations. This proposed definition requires that for FOQ calculations, a unit must have surplus-at-time-of-use offsets provided for the full potential to emit of the unit, on a pollutant-by-pollutant basis, and the offsets must have been provided within the past 5 years (i.e. the offsets provided were for an ATC project that was finalized within the 5-year period prior to the submission date of a Complete Application) and shall have been surplus at the time of ATC issuance (i.e. surplus at time-of-use). While the requirements for a fully offset emissions unit are proposed to be added to this definition for federal purposes, the requirements used for DOQ purposes remains unchanged.

- *Section 3.25 – Highly-Utilized Emissions Unit Definition*

After discussions with EPA, the District is proposing to amend the definition in District Rule 2201 to clarify that the Highly-Utilized Emission Unit is determined on a 24-month period which is consistent with the units of measurement contained within 40 CFR 51.165.

- *Section 3.27 – Internal Emission Reductions (IER) Definition*

The District is proposing to amend District Rule 2201, to include a definition of Internal Emission Reductions (IER). This proposed definition is required in conjunction with the proposed Sections 3.20 (FOQ definition) and 4.8 (Federal Emission Offset Requirements) to determine the FOQ required for a project and how the FOQ can be satisfied. Pursuant to Title I, Section 182(e)(2) of Part D of the CAA (42 U.S. Code Section 7511a Plan Submissions and Requirements), a

facility that uses IERs to satisfy their federal emission offset requirement enjoy a lower offset ratio of 1.3:1; therefore, the District is proposing this definition to distinguish this specific type of actual emission reduction from other actual emission reductions that are not able to enjoy the lower offset ratio.

- *Sections 3.28.1 and 3.28.3 – Major Source Definition*

To address a discrepancy identified by EPA between the list of facilities in 40 CFR 70.2 (i.e. Title V) and the list of facilities in 40 CFR 51.165(a)(1)(iv)(C) (i.e. NSR), the District is proposing to amend this section to reference the NSR list instead of the Title V list. The current rule language requires fugitive emissions to be included in the major source determination of the facility if the facility is included in the list of source categories identified in 40 CFR 70.2. The proposed amendment will require fugitive emissions to be included in the major source determination of the facility if the facility is included in the list of source categories identified 40 CFR 51.165(a)(1)(iv)(C) instead of 40 CFR 70.2. 40 CFR 70.2 includes municipal incinerators capable of charging more than 250 tons of refuse per day whereas 40 CFR 51.165(a)(1)(iv)(C) includes municipal incinerators capable of charging more than 50 tons of refuse per day. Including the list of source categories from 40 CFR 51.165(a)(1)(iv)(C) makes the District’s proposed definition of a major source consistent with the requirements in 40 CFR 51.165.

Additionally, the District is proposing to improve the clarity of the definition by codifying, in this rule, the exemption of the quantity of emissions from nonroad engines, as defined in Title II, Section 216 of Part A of the CAA (42 U.S. Code Section 7550 Definitions), from the determination of a major source. Emissions from nonroad engines will remain in the definition of a “stationary source”, which will continue to require nonroad engines to be subject to NSR for minor sources.

- *Sections 3.29.1.6 – Modification Definition*

To address EPA’s concern, the District is proposing to improve the clarity of the definition to explicitly and concisely state that a Federal Major Modification constitutes a Modification and would be subject to the requirements of Rule 2201. This proposed change does not change the District’s historical practice of implementing federal NSR.

- *Section 3.30 – New Major Source Definition*

To improve rule clarity, the District is proposing to amend District Rule 2201 to include a definition of New Major Source. Consistent with federal NSR, a New Major Source will be defined as a project with an increase in emissions equal to or exceeding the major source threshold of any criteria pollutant on a pollutant-by-pollutant basis using the calculation methodology proposed in Section 4.8.4.3. In

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making this determination, fugitive emissions shall only be counted for the source categories listed in 40 CFR 51.165(a)(1)(iv)(C), and emissions from nonroad engines shall not be included. This proposed definition is required to clarify various existing references (proposed Sections 4.5.4, 4.9, 4.16, 5.4.1, 5.5.3, 5.5.5, 7.0) and also newly proposed references in the rule (proposed Sections 4.6.10, 4.6.11, 4.8, 4.14.3, 4.16.3, 4.16.4, 5.3.2).

- *Section 3.32 – Potential to Emit Definition*

As identified by EPA, the District is proposing to amend Section 3.32 of Rule 2201 to codify the District's practice and to further clarify within this rule the District's existing practice of not including secondary source emissions in the potential to emit of a particular stationary source.

- *Section 3.28 and 3.29 – PM<sub>2.5</sub> and PM<sub>10</sub> Definition*

These definitions have been relocated to the District's definitions rule, Rule 1020.

- *Section 3.38.1 – Routine Replacement Emissions Unit Definition*

To address EPA's concerns that routine replacements of entire emissions units may constitute a Federal Major Modification, the District is proposing to include Section 3.38.1 to ensure the replacement of a whole emissions unit be evaluated to determine whether it results in a Federal Major Modification.

The existing requirements in the Rule to require a reconstructed stationary source, as defined in Rule 2201, to be treated as a new stationary source and not a modification for District NSR purposes (pursuant to Section 3.29.2) will remain unchanged for District NSR purposes. However, the proposed Section 3.38.1.2 is being added to clarify that for federal NSR purposes a "Replacement Unit", as defined in 40 CFR 51.165(a)(1)(xxi), is a reconstructed unit, as defined in 40 CFR 60.15(b)(1), among other requirements, and is considered an existing emissions unit pursuant to 40 CFR 51.165(a)(1)(vii)(B).

The proposed language clarifies how to treat a reconstructed unit that is a replacement unit pursuant to 40 CFR 51.165 for federal NSR purposes while maintaining and not changing the existing provisions (i.e. BACT and District emission offset exemptions) for District NSR purposes for replacement units and reconstructed sources.

- *Section 3.38.6 – Routine Replacement Emissions Unit Definition*
- *Section 9.1.3.4 – Temporary Replacement Emissions Unit (TREU) Requirements*

As identified by EPA, the District is proposing to amend Sections 3.38.6 and 9.1.3.4

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of Rule 2201 to specify that when the entire emissions unit is replaced as a routine replacement action or for a TREU, the emission unit shall either have been addressed by a BARCT rule or shall use technology with a minimum control efficiency of at least 85%. These proposed revisions clarify the minimum level of control required of the unit's control technique to qualify as a routine replacement action or for a TREU.

- *Sections 3.41 – Secondary Source Emissions*

As identified by EPA, the District is proposing Section 3.41 to include a definition of secondary source emissions, which is consistent with the definition provided in 40 CFR 51.165(a)(1)(viii). This proposal does not change the District's historic practices.

- *Section 4.5 – District Emission Offset Requirements*
- *Section 4.6 – District Emission Offset Exemptions*
- *Section 4.7 – District Emission Offset Quantity Calculations*

Considering the new federal emission offset requirements codified in Rule 2201, exemptions and quantity calculations proposed to be incorporated into the rule, the District is proposing to amend District Rule 2201, to clarify that Sections 4.5, 4.6, and 4.7 are applicable for District emission offset requirements, District offset exemptions, and District offset quantity (DOQ) calculations only.

These proposed changes do not change the existing District Offset Quantity calculations or requirements.

- *Section 4.6.8.4 – District Emission Offset Exemptions*

As identified by EPA, the District is proposing to amend Section 4.6.8.4 to clarify that offsets are not required, for the installation or modification of an emission control technique performed at existing facilities solely for the purpose of compliance with the requirement of an air pollution regulation, as approved by the APCO, contingent upon four different criteria being met. One of the criteria that needs to be met is that the project shall not result in an increase in permitted emission or potential to emit of more than 25 tons per year of NO<sub>x</sub>, or 25 tons per year of VOC, or 15 tons per year of SO<sub>x</sub>, or 15 tons per year of PM<sub>10</sub>, or 50 tons per year of CO. The District is proposing to amend Section 4.6.8.4 to also include a limit of 10 tons per year of PM<sub>2.5</sub> such that a project may only be exempt from District offsets if it is not a federal major modification for PM<sub>2.5</sub>. This proposal does not change the District's historic practices.

- *Section 4.6.9 – District Emission Offset Exemptions*

After discussions with EPA, the District is proposing to make minor changes to the exemption for Agricultural Sources that does not change the District's historical practices.

- *Sections 4.6.10 and 4.6.11 – District Emission Offset Exemptions*

Since the District is proposing to require full federal emission offsetting requirements for new major sources and federal major modifications for NOx and VOC (Section 4.8), these types of projects will no longer be subject to current District methodology for determining District emission offset requirements. Other pollutants, such as PM10, CO, and SOx, and non-major modifications for NOx and VOC will continue to use the current District methodology. The amended rule will thus contain two different paths for the determination of emission offset requirements. To help sort projects into the appropriate path, the District is proposing to amend District Rule 2201 to exempt federal major modifications and new major sources for NOx or VOC from the current District emission offsetting provisions of Sections 4.5 and 4.7 that will no longer apply. Projects that are not new major sources or federal major modifications of NOx or VOC will still be subject to the current NOx and VOC offset requirements contained in Rule 2201.

The District has historically been able to demonstrate that the District's NSR emission offsetting requirements for NOx and VOC for new major sources and federal major modifications have been at least as stringent as the federal NSR requirements. As of February 17, 2022, the District was unable to demonstrate the District's emission offsetting requirements for both NOx and VOC were at least as stringent as the federal emission offsetting requirements. As such, the full federal emission offsetting requirements for such projects are being proposed to be incorporated in Rule 2201.

There is no relaxation in offsetting requirements for any pollutant for any new or modified source since the proposed offsetting requirements for NOx and VOC are more stringent for new major sources and federal major modifications while the District's existing offsetting requirements for all other pollutants and projects are proposed to remain unchanged.

- *Section 4.8 – Federal Emission Offsets*

The District is proposing to amend District Rule 2201 to include Section 4.8 to contain the following:

- 1) Offset requirements for federally nonattainment pollutants,
- 2) Applicable federal offset exemptions,
- 3) Timing, and
- 4) FOQ calculation methodology for new major sources and federal major

modifications.

1) Offset requirements for federally nonattainment pollutants

Section 4.8.1 is being proposed to be included to provide the emission offset requirements for all federally nonattainment pollutants. The purpose of the requirements contained within Section 4.8 of Rule 2201 is to satisfy the federal emission offset requirements for NNSR contained in 40 CFR 51.165. Currently the District is designated as nonattainment for NO<sub>x</sub>, SO<sub>x</sub>, PM<sub>2.5</sub>, and VOC. Additionally, on October 30, 2006, EPA issued a Final Rule determining that the San Joaquin Valley Nonattainment Area had attained the National Ambient Air Quality Standard for PM<sub>10</sub>; however, EPA noted in its Final Rule that “This action does not constitute a redesignation to attainment” under Section 107(d)(3) of the federal Clean Air Act because other federal Clean Air Act requirements for redesignation have not yet been met. Therefore, the federally nonattainment pollutants that this section applies to are NO<sub>x</sub>, SO<sub>x</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, and VOC.

Proposed Section 4.8.1.1 requires offsets for emission increases for all new major sources and federal major modifications that are surplus at time-of-use (i.e. surplus at the time of ATC issuance). The offsets shall be satisfied with actual emission reductions (AERs). While IERs are also AERs, albeit a specific type of AER, it is being proposed to be included in this section not as a different type of reduction to satisfy the requirement but for the purposes of clarity to District staff when applying the requirements of this rule to projects for ATC applications for new and modified emission units.

Section 4.8.1.2 and 4.8.1.3 require the offset quantities to be determined on a pollutant-by-pollutant basis pursuant to Section 4.8.4.

Section 4.8.1.4 provides that offsets required may be satisfied with AERs from one or more sources or in combination with IERs.

Sections 4.8.1.5, 4.8.1.6 and 4.8.1.7 include provisions for the baseline for determining credit for AERs from shutdowns and curtailments to be used as offsets. These provisions satisfy the requirements contained in 40 CFR 51.165(a)(3)(ii)(C).

Section 4.8.1.8 includes the provision that for the pollutants that the District is demonstrating equivalency with the federal offset requirements pursuant to Section 7.0, the offsets required may be satisfied with the Creditable Actual Emission Reductions from the Carryover Balance subject to the requirements contained in Section 7.0. Since the District is not proposing to demonstrate equivalency with the federal offset requirements for NO<sub>x</sub> and VOC, the full federal offset quantity shall be provided by the applicant.

2) Applicable federal offset exemptions

Pursuant to Title I, Section 182(e)(2) of Part D of the CAA (42 U.S. Code Section 7511a Plan Submissions and Requirements), offset requirements shall not be applicable to a modification of an existing source if such modification consists of installation of equipment required to comply with the applicable implementation plan, permit or the referenced chapter of the CAA. Therefore, the District is proposing this exemption in Section 4.8.2 of Rule 2201. Additionally, this exemption applies to offset requirements for all pollutants when the modification is being made for NOx or VOC emissions control.

3) Timing

Section 4.8.3 provides the timing in which AERs and/or ERCs used to satisfy the federal offset requirements must be provided. Additionally, the terms “AERs” and “IERs” contained in Section 4.8.3.2 are not intended to be a reference to exclusively different reductions as an IER is a specific type of AER, but the reference to IERs is simply for the purposes of clarity to District staff when applying the requirement of these rules to ATC projects similar to reference in Section 4.8.1.1.

4) FOQ calculation methodology for new major sources and federal major modifications

Section 4.8.4 provides details in which the federal offset quantity (FOQ) shall be determined including the units of measurement in Section 4.8.4.1.

Section 4.8.4.2 provides the requirement that the quantity of offsets required is calculated as the product of offset ratio pursuant to Section 4.9 and the amount of increased emissions as determined in accordance with Section 4.8.4.3. Additionally it should be noted that considering the provisions proposed in Section 4.9.1 allowing an offset ratio of 1.3 for IERs, netting of the increased emissions calculated pursuant to Section 4.8.4.3 shall not be allowed with the use of IERs; however, IERs shall be applied after the quantity of increased emissions is calculated at a ratio of 1.3 to 1.

Section 4.8.4.3 specifies the amount of increased emissions shall be determined by summing the difference between the post-project potential to emit and the federal baseline emissions, as defined in Section 3.19. The amount of increased emissions determined according to the requirements of this section for every new major source project and federal major modification project is consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(J).

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- *Section 4.9 – Required Offset Ratios*

After discussions with EPA, the District is proposing to make a change in name only to the provisions of this section with no changes in the requirements. Since the provisions of this section are applicable based on federal major modification and new major source status, among others, in addition to distance, a more applicable name for these provisions is Required Offset Ratio and is being proposed as such.

- *Section 4.9.1 – Offset ratio for NOx and VOC New Major Sources and Federal Major Modifications*

The District is proposing to amend District Rule 2201, Section 4.9.1 to allow IERs to be provided at a ratio of 1.3:1 consistent with the provisions of Title I, Section 182(e)(2) of Part D of the CAA (42 U.S. Code Section 7511a Plan Submissions and Requirements).

- *Section 4.14.3.1 – Additional Offset Requirements*

The District's current rule allows interpollutant offsets to be approved on a case-by-case basis by the APCO to satisfy emission offset requirements, provided certain criteria are met. However, on January 29, 2021, the D.C. Circuit Court of Appeals in *Sierra Club v. EPA*, 984 F.3d 1055, issued a decision holding that the CAA does not allow interpollutant offsets for ozone precursors and vacating the provisions in the EPA's NNSR regulations allowing interpollutant offsets for ozone precursors. Since the interpollutant offsets allowed under the current rule are no longer allowed for ozone precursors for new major source and federal major modifications, the District is proposing to amend the requirements in Rule 2201 in the proposed Section 4.14.3.1 to exclude the provision from being used for ozone precursors for new major sources and federal major modifications. Additionally the requirements of the existing Section 4.13.3.1.1 are relocated to Section 4.14.13.1 without any proposed changes to historical requirements or applicability.

- *Section 4.14.12 – Discounted at Time-of-Use Offsets*

The District is proposing to amend District Rule 2201, to require federal offsets be discounted at time-of-use as discussed above in the proposed Rule 2201, Section 4.8; therefore, the references to other sections within this rule have been revised according to the proposed new section numbers and to include the proposed Section 4.8 in the requirement in Section 4.14.12.

- *Section 4.15 – Ambient Air Quality Standards*

As identified by EPA, the District is proposing to amend Section 4.15 to include the requirement that in the analysis performed to ensure that emissions from a new or



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modified source will not cause or make worse the violation of an Ambient Air Quality Standard, credit shall not be given for a stack height that exceeds good engineering practice, as defined in 40 CFR 51.100(ii), or by any other dispersion technique, as defined in 40 CFR 51.100(hh), except as provided in 40 CFR 51.118(b).

- *Section 4.16.1 – Alternative Siting*
- *Section 4.16.2 – Compliance by Other Owned, Operated, or Controlled Source*

After discussions with EPA, the District is proposing to make minor changes to clarify the requirements for Alternative Siting that does not change the District's historical practices.

- *Section 4.16.3 – Impact to Visibility of a Class I Area*

The District's NSR rule is intended to address the CAA general NSR and NNSR program requirements that apply to the District and the regulated sources therein. EPA developed implementing regulations for the CAA requiring visibility protection for Mandatory Class I Federal areas in 40 CFR 51.307(b) and (c) for any new major sources or federal major modifications. The District is proposing to include the requirements for an analysis to be performed for each federal major modification and new major source to determine the impact to visibility of any mandatory Class I area in accordance with the applicable requirements of 40 CFR 51.307. The District is also proposing to require written notification and consultation with the Federal Land Manager (FLM) as required and as needed. The proposed language authorizes the District to require monitoring of visibility in any Federal Class I area after consultation with the FLM. Additionally, the District is proposing language in Section 4.16.3.3 to authorize the District to deny an ATC if the District finds, after consultation with the FLM, that a project would have an adverse impact on visibility of in any Federal Class I area, as defined in 40 CFR 52.21(b)(29).

- *Section 4.16.4 – Compliance with Other Applicable Provisions*

As identified by EPA, the District is proposing to amend Rule 2201 to include Section 4.16.4 to include provisions to address the requirements of 40 CFR 51.165(a)(5)(i). These provisions clarify that the issuance of a permit does not relieve the owner or operator of the responsibility to fully comply with all applicable requirements of the SIP, state, federal or other local requirements.

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- *Section 4.16.5 – New Major Sources or Federal Major Modifications due to Relaxation*

As identified by EPA, the District is proposing to amend District Rule 2201, Section 4.16.5 to include additional provisions for applicability of the rule. As a mechanism to ensure that no source or modification circumvents the federal major modification and major sources requirements of the rule, the proposed language is included to require any source or modification which becomes a federal major modification or major source solely by virtue of a relaxation in any enforceable limitation on potential emissions, that the requirements of the rule apply as if construction had not yet commenced on the source or modification. An example of an enforceable limitation on potential emissions is a restriction on hours of operation. These proposed revisions are included to address the requirements of 40 CFR 51.165(a)(5)(ii) and are consistent with similar requirements in 40 CFR 52.21(r)(4).

- *Section 5.2 – Preliminary Decision*

After discussions with EPA, the District is proposing to make minor changes to clarify that the District's evaluation of an application is to determine compliance with all District rules including Rule 2201. This clarification does not change the District's historical practices.

- *Section 5.3.2 – Prohibitions for Inadequate Implementation of Plan*

As identified by EPA, the District is proposing to amend Rule 2201 to include Section 5.3.2 to include provisions that the District shall not issue permits if the EPA has determined that applicable implementation plan is not being adequately implemented as required in the CAA Section 173(a)(4).

- *Section 5.4.6 – Public Notification and Publication Requirements*

After discussions with EPA, the District is proposing to make minor changes to clarify that the Stationary Source Project Increase in Permitted Emissions (SSIPE) is calculated as the difference between the SSPE2 and the SSPE1. This clarification does not change the District's historical practices.

- *Section 5.4.6 – Public Notification and Publication Requirements for Non-Major Sources*

- *Section 5.5 – Public Notification and Public Actions*

EPA has requested a demonstration that the District's current public notice thresholds for minor sources of NO<sub>x</sub> and VOC are sufficient to only exclude emissions that would not adversely impact the District's attainment status. 40 CFR 51.160(e) allows the District to exclude minor source projects from federal NSR so

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long as such projects are not environmentally significant, consistent with the *de minimis* exemption criteria set forth in *Alabama Power Co. v. Costle*, 636 F.2d 323 at 360-361 (D.C. Cir. 1979). The District staff performed an analysis of the current public noticing thresholds to characterize what those current thresholds represent in terms of the contribution of emissions from permitted sources to the San Joaquin Valleys air quality challenges. The analysis demonstrates that the public notice thresholds for NOx and VOC, addressed in Rule 2201 Section 5.4, are adequate to exclude only sources whose emissions do not adversely impact the District's attainment status, or can be exempt as *de minimis*, which is consistent with the court ruling. Results of the analysis are shown in the following table with an explanation below:

| <b>SJVAPCD Public Notice Threshold Analysis</b> |                                                                                                                        |                      |                                  |
|-------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|----------------------|----------------------------------|
|                                                 |                                                                                                                        | <b>NOx<br/>(tpy)</b> | <b>VOC<sup>1</sup><br/>(tpy)</b> |
|                                                 | Current major source threshold                                                                                         | 10                   | 10                               |
| A                                               | Total actual emissions from all permitted sources <sup>2</sup>                                                         | 4,788                | 8,799                            |
| B                                               | Actual emissions from sources w/PTE at or above public notice threshold (Title V and 1 Large Confined Animal Facility) | 4,189                | 3,952                            |
| C = A - B                                       | Total actual emissions not subject to public notice                                                                    | 599                  | 4,847                            |
| D                                               | 2017 Emission Inventory for all sources of emissions within the San Joaquin Valley Air Basin <sup>3</sup>              | 83,324               | 115,310                          |
| E = A / D                                       | % of emissions from permitted sources                                                                                  | 6%                   | 8%                               |
| <b>F = C / D</b>                                | <b>% of emissions from permitted sources not subject to public notice</b>                                              | <b>1%</b>            | <b>4%</b>                        |
| G = B / A                                       | % of permitted emissions subject to public notice                                                                      | 87%                  | 45%                              |

The permitted sources that historically have not been subject to public noticing account for approximately 1% of the total emissions inventory for NOx, and approximately 4% of the total emissions inventory for VOCs. In addition, the analysis shows the amount of actual emissions from sources subject to public noticing requirements account for approximately 87% of the NOx, and 45% of the VOC of the District's total actual emissions of permitted sources. EPA's approval of the Sacramento Metropolitan AQMD<sup>4</sup> analysis was acceptable in meeting the de

<sup>1</sup> ROG used from Inventory data

<sup>2</sup> Data from CEIDARS - California Emission Inventory Development and Reporting System

<sup>3</sup> Data from CEPAM - California Emission Projection Analysis Model

<sup>4</sup> TSD for SMAQMD Rule 214/217, 1/23/2013, pg. 6-7; Docket #EPA-R09-OAR-2013-0064-002

minimis exemption which indicated that up to 5% of the their total emission inventory is not being subject to public notice. Given the similar percentages found in the SJVAPCD analysis, it is not expected that the number of un-noticed permits would affect the Valley's ability to reach attainment and likewise meet the de minimis threshold consistent with the past court ruling and EPA's approval of a similar analysis.

Additionally, since the analysis only considered the emissions that were part of a permitting action of a major source (i.e. new major sources, federal major modifications, and SB 288 major modifications) and a single large Confined Animal Facility (CAF) project as being publicly noticed, the District expects the percentages of emissions subject to public noticing to be higher, and therefore the percentage of emissions not subject to public noticing to be lower than the numbers found in the analysis above. The analysis did not include emissions that would have been exclusively (i.e. not also part of a permitting action previously mentioned) noticed due to being part of a permitting action exceeding the Districts other public noticing thresholds: (1) a new emission unit with Potential to Emit (PE) greater than 100 pounds during any one day for any one affected pollutant, or (2) modifications that increase the Stationary Source Potential to Emit (SSPE) from a level below the offset threshold to a level exceeding the offset threshold, or (3) new stationary sources with a SSPE exceeding the offset threshold for one or more pollutants, or (4) permitting actions resulting in an increase in permitted emissions exceeding 20,000 pounds per year for any one pollutant. Therefore, the District's analysis demonstrates that the current public noticing thresholds are adequate to exclude only sources whose emission do not adversely impact the District's attainment status.

Furthermore, the District is proposing to provide additional opportunity for public comment by requiring noticing of all projects that cause a facility to exceed 80% of the major source threshold (e.g. 8 tons per year or 16,000 pounds per year for NOx and VOC). This reduction to the threshold would capture permitting actions that establish an enforceable limit to avoid major source status (i.e. synthetic minors), as EPA has recommended.

- *Section 7.0 – Federal Offset Equivalency Demonstration and Tracking System for PM10, PM2.5, and SOx*

The District is proposing to amend its Federal Offset Equivalency Demonstration to:

- 1) Remove NOx, VOC, and CO from the demonstration;
- 2) Replace the existing two-test approach with a single test for demonstrating equivalency;
- 3) Replace the current *once-per-year* demonstration of equivalency with a *permit-level, time-of-ATC-issuance* demonstration of equivalency;
- 4) Amend rule language to improve clarity and enhance transparency; and

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5) Separate the Pre-baseline ERC Tracking System and Usage Caps from District Attainment Plans into its own section (8.0) without changing the content or requirements of the Pre-baseline ERC Tracking System.

1) Remove NO<sub>x</sub>, VOC, and CO from the demonstration

Since the District will be adopting full federal offsetting requirements for NO<sub>x</sub> and VOC in the amended rule, NO<sub>x</sub> and VOC will no longer be part of the federal offset equivalency demonstration. CO will also be removed from the equivalency demonstration because the District is in attainment with the federal standard for CO and has completed the two required 10-year maintenance plans as part of its attainment demonstration. Therefore, federal non-attainment NSR and the offsetting requirements it contains no longer apply to CO. In the amended rule, the District will perform a federal offset equivalency demonstration only for PM<sub>10</sub>, PM<sub>2.5</sub>, and SO<sub>x</sub>.

2) Replace the existing two-test approach with a single test for demonstrating equivalency

Federal offset equivalency is demonstrated if the District collects an equal or greater amount of creditable actual emission reductions (CAER, as defined in the amended Section 7.1.2) from all eligible sources compared to the total amount of offsets required under federal NSR, i.e. the FOQ. In the current rule, the District uses a two-test approach to demonstrate federal offset equivalency: the Offset Quantity Test (or Test 1) and the Surplus Value Test (or Test 2). See Sections I.A and I.B of this report for descriptions of the equivalency tests, recent District actions to ensure ongoing federal offset equivalency, and an EPA finding of “deficiency”<sup>5</sup> concerning the current rule’s remedy when the District is unable to show equivalency for Test 2.

To address EPA concerns over the current two-test demonstration, the District is proposing to amend Rule 2201 to adopt a single test demonstration for federal offset equivalency. The proposed single test will resemble Test 2 in the current rule, i.e. the surplus value test. The surplus value test takes account of both the federal offset quantity (FOQ) required for a project, and the surplus at the time-of-use adjustment for all emission reductions used to offset the FOQ. The combination of both the FOQ and the surplus at the time-of-use adjustment into a single test ensures federal offset equivalency. Using one test for equivalency also reduces complexity and eliminates potential interpretive confusion of having different remedies for different tests as with the current demonstration.

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<sup>5</sup> 87 FR 45733

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3) Replace the current once-per-year demonstration with a permit-level, time-of-ATC-issuance demonstration

EPA has expressed concerns over the current once-per-year demonstration operating at a deficit during the year in which an inability to show equivalency occurs.<sup>6</sup> In the current annual system, the “true-up” occurs once a year after the end of the tracking year. During a tracking year, the District collects creditable actual emission reductions (CAER) in the tracking system from a variety of sources (e.g. ERCs reserved and surrendered as offsets for ATC projects, Air Quality Improvement Deductions from original banking actions, etc.). These collected CAER are added to any existing CAER carried over from previous years in the tracking system. The total of the current year’s collected CAER plus the past CAER carried over from prior years represent the total CAER available to mitigate the current tracking year’s total FOQ from all new major sources and federal major modifications. If, for a given pollutant, the total CAER from the tracking system is greater than or equal to the total FOQ required during the tracking period, federal offset equivalency has been demonstrated. The extra CAER above what is needed to equal the current year’s FOQ can be carried forward for that pollutant for use in future years. If the total CAER from the tracking system is less than the total FOQ required during the tracking period, the tracking system shows a deficit relative to what would have been required under federal NSR. A deficit indicates that Federal offset equivalency is not demonstrated, and the EPA-approved remedies in the rule for establishing federal offset equivalency going forward are enacted.

Thus, in the event of an inability to show equivalency during the tracking period, that deficit in CAER is not determined or discovered until the District conducts its true-up analysis, after which the remedy is enacted according to the rule three months after the tracking year ends. EPA is concerned that this lag between the issuance date of the ATC project that actually causes the deficit and the remedy for a shortfall allows the permitting program to operate at a deficit relative to federal offset equivalency. EPA approved the current annual demonstration in 2004 assuming that there would be sufficient carryover CAER to make up any shortfall in a given year.<sup>7</sup>

The operating principles for the annual equivalency demonstration were originally approved in 1999 by EPA.<sup>8</sup> At the start-date of the equivalency demonstration (August 20, 2001), the carryover balances were zero for all pollutants. To allow for the potential of an anomalous deficit year in the first two years of the demonstration, EPA allowed an extended look-back period if the District did not show equivalency during the first two years of the demonstration. Nevertheless, in light of the District

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<sup>6</sup> 87 FR 45734

<sup>7</sup> 87 FR 45734

<sup>8</sup> Letter from David P. Howekamp, Director Air Division, EPA Region 9 to Mark Boese, Deputy APCO, SJVUAPCD (August 26, 1999)

recently being unable to show equivalency for NO<sub>x</sub> and VOC, EPA has reconsidered the appropriateness of an *annual* offset equivalency demonstration that would allow any period of operation at a deficit. To the extent that such a demonstration may allow an NSR offset program to require less offsets than would otherwise be required under federal NSR at any point in time – even if such a deficit were temporary, then, according to EPA, that program is not meeting the requirements of Clean Air Act sections 173(a) and 173(c)(1), which require that sufficient offsets are “in effect and enforceable” by the time a new or modified source commences operation.

Thus, to address EPA’s concerns over the equivalency system potentially operating at a deficit at any point in time, the District is also proposing to adopt a permit-level demonstration performed at the time-of-ATC-issuance (section 7.4) in place of the current once-per-year demonstration. With the proposed permit-level demonstration, each ATC project that is a new major source or federal major modification (for PM<sub>10</sub>, PM<sub>2.5</sub>, or SO<sub>x</sub>) will have to demonstrate federal offset equivalency before the District can proceed with a preliminary decision to approve the ATC(s) (Section 7.4.1.4). Similar to the present demonstration, the proposed amended demonstration will be programmatic with regard to offset requirements because the District will identify and reserve CAER from the *running balance* (amended Section 7.1.3) in the tracking system to make up any shortfall in the FOQ in cases where the applicant has not proposed sufficient surplus-adjusted CAER to offset the FOQ for the specific project (Section 7.4.2.4.2). In addition, upon issuance of an ATC, the specific CAER proposed to mitigate the FOQ obligation in the project will be transferred out of *running balance* of the tracking system, making the specific CAER or that portion of the specific CAER unavailable to be used to mitigate another FOQ (Section 7.4.3). Moreover, to ensure the equivalency demonstration never operates at a deficit going forward, the District will deny an ATC project unless or until federal offset equivalency can be demonstrated for that project (Section 7.4.2.4.2.2).

4) Amend rule language to improve clarity and enhance transparency

The following sections describe the specific changes to the federal offset equivalency system by each section. Because of the number and extent of changes proposed to Section 7.0, to make the amended rule language easier to read and review in strikethrough-underline, the District will show the current version of Section 7.0 entirely in strikethrough, i.e. as being removed, and the amended Section 7.0 in underline, i.e. as new language. It is important to emphasize that most of the core concepts, definitions, and systems of the equivalency demonstration will not be changing, e.g. surplus-a-time-of-use, what counts as a creditable emission reduction under federal NSR (referred to as a creditable actual emission reduction or CAER in the amended rule), the use of a tracking system to account for the collection and use of CAER, the production of an annual report, etc.

Section 7.0 Federal Offset Equivalency Demonstration and Tracking System for PM10, PM2.5, and SOx

In the proposed amended rule, in the title to Section 7.0, the word “annual” was removed because the District is no longer performing the demonstration annually, i.e. once per year, although the District will still produce annual reports as detailed in Section 7.3. The pollutants PM10, PM2.5, and SOx were added to indicate the Federal Offset Equivalency Demonstration only applies to PM10, PM2.5, and SOx. A statement of the over-arching purpose of the demonstration has been added to improve rule transparency and clarity in accord with general recommendations made by EPA<sup>9</sup> and CARB<sup>10</sup>.

The federal offset equivalency demonstration is outlined into six subsections, which are described in greater detail below:

- 7.1 Definitions
- 7.2 Types of Creditable Actual Emission Reductions Used in the Demonstration
- 7.3 Offset Tracking System
- 7.4 Permit-level Federal Offset Equivalency Demonstration for PM10, PM2.5, and SOx
- 7.5 Annual Reporting Schedule and Content
- 7.6 Five-year Record Retention (unchanged)

Section 7.1 Definitions

Although the majority of definitions in Rule 2201 are contained in Section 3.0, key definitions that are specific to the Federal Offset Equivalency Demonstration have been included within Section 7.1 to improve the clarity and consistency of the rule. No changes to the accepted meanings of the key concepts are being proposed with the amendments. However, a new term, *running balance* (Section 7.1.3), is being introduced at the recommendation of EPA for reasons that will be described below.

The District is including a definition for carryover balance (COB) in the proposed amended rule (Section 7.1.1) to clarify current rule language on a fundamental concept of the demonstration. The COB concept is described in Section 7.2.2.2.4 of the current rule. The COB of the tracking system as a whole represents the end of the reporting period quantity of extra creditable actual emission reduction (CAER) generated by the District’s permitting program above the total FOQ that

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<sup>9</sup> Technical Support Document (TSD), p. 24, Notice of Proposed Rulemaking Revisions to the California State Implementation Plan San Joaquin Valley Air Pollution Control District, EPA Docket # EPA-OAR-R09-2022-0420 (June 29, 2022)

<sup>10</sup> Report, Review of the San Joaquin Valley Air Pollution Control District Emission Reduction Credit System, (June 2020)



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federal NSR would have required since the commencement of the demonstration on August 20, 2001. In other words, it represents the net margin in tons per year by which the District offsetting requirements are more stringent than federal NSR offsetting requirements over the life of the demonstration. It is an approximate value because an exact surplus-adjustment of these credits is only required at the time they are used for an ATC project (Amended Section 7.4). The COB for the tracking system as a whole is the sum of the individual COB for all the CAER in the tracking system. Year-to-year, it accounts for all additions and subtractions that occur during the reporting period plus any adjustments the District makes for ATC projects that have been cancelled, or new CAER added to the tracking system from sources such as AQIDs or other AERs that meet the CAER requirements of Section 7.1.2. As a matter of practice, the District has used the term “carryover” in its annual equivalency reports since 2002. Amended Section 7.1.1 thus formally defines the term.

The District is also including a definition of creditable actual emission reduction (CAER) in the proposed amended rule (Section 7.1.2). Only CAER may be used to satisfy the FOQ in the demonstration. CAER are real, quantifiable, federally enforceable, permanent, and surplus at the time-of-use. CAER are Actual Emission Reductions (AER) as defined in Section 3.2 of the rule, except for when the surplus-adjustment criterion applies. AER are surplus at the time of creation, whereas CAER must be surplus-at-time-of-use. EPA has interpreted *time-of-use* to mean of *time-of-ATC-issuance*.<sup>11</sup> To make this meaning clear, a definition of surplus-at-time-of-use is also included in the proposed amended Section 7.1.4. Also, to ensure any proposed AER for this demonstration are federally surplus of current attainment plan requirements, Section 4.8.1.5 is referenced as an additional criterion (although it is arguably already implied by the definition of *surplus*). Thus, to be CAER, the emissions for a proposed AER must be included in the plan’s the base year emissions inventory or growth estimates for the non-attainment pollutant.

At the recommendation of EPA, and by analogy with financial banking terminology, the District will use the term *running balance* (Section 7.1.3) to represent the day-to-day face value of the available emission reductions for a given pollutant in the tracking system. On the first day of the new tracking period, the *running balance* is equal to the previous tracking period’s COB. Thereafter, during the tracking period, the running balance may change, generally through subtractions, as ATC projects are issued that require transfers of CAER out of the tracking system. Because of how the proposed amended demonstration is structured, neither the *running balance* nor the COB can ever fall below zero because the District will perform an exact surplus adjustment of whatever CAER it transfers from the tracking system to an ATC project to be sure sufficient CAER are eligible as mitigation before it issues

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<sup>11</sup> August 26, 1994 Memorandum, *Response to Request for Guidance on Use of Pre-1990 ERCs and Adjusting for RACT at Time of Use*, John Seitz, Director, EPA Office of Air Quality Planning and Standards (MD-10), to David Howekamp, Director, EPA Region IX, Air and Toxics Division; page 2.

an ATC project (Amended Section 7.4.2.4.2). Once a CAER is transferred from the tracking system to an ATC project to mitigate an FOQ, it is subtracted from the *running balance* (Amended Section 7.4.3).

In addition, for clarity and consistency, the District is eliminating the definition of surplus previously contained with the equivalency section of the rule, and instead is relying on the definition of surplus contained in Section 3.2.2 of Rule 2201.

### Section 7.2 Types of Emission Reductions Used in the Demonstration

Section 7.2 lists the types of emission reductions that District has historically used or could use in the demonstration. These types of emission reductions have been added or could be added to the tracking system and used to satisfy an FOQ obligation to the extent they also meet the definition of CAER. Although any qualifying CAER, subject to EPA review, could in principle be used in the demonstration<sup>12</sup>, this section is intended to identify common types of emission reductions generated through Rule 2201 to their eligibility under this demonstration. The types are: ERCs, AQIDs as defined in Section 3.6 of the current rule), AERs generally, and actual emission reductions generated by applying BACT to non-major sources or to projects that are not federal major modifications.

ERCs (Section 7.2.1) provided by an applicant to offset their DOQ obligation in a project are the most common form of emission reduction used in the demonstration. Although under the terms of the proposed amended demonstration, an applicant also has the obligation to provide ERCs to offset the FOQ in the case where the *running balance* (or COB) of the tracking system has insufficient CAER to transfer to a project to mitigate its FOQ.

The AQID (Section 7.2.2) is a 10 percent portion of the total AER the District deducts from a newly banked ERC. The District retains discretion over the AQID to use for the federal offset equivalency demonstration, other mitigation purposes, or retire.

Although all the types of emission reductions eligible for the equivalency demonstration are a form of CAER, AER is identified in Section 7.2.3 to capture the potential use of other types of eligible emission reductions that may not be classified as, for example ERCs or AQIDs, but otherwise meet the same integrity criteria as ERCs and AQIDs necessary for use in the this demonstration. For example, historically, the District has used emission reductions from *orphan shutdowns* as a permissible form of emission reduction in the demonstration. The District withdrew orphan shutdowns from the demonstration in 2020 over concerns about whether they did in fact meet the criteria for being AER (that were also

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<sup>12</sup> Letter from David P. Howekamp, Director Air Division, EPA Region 9 to Mark Boese, Deputy APCO, SJVUAPCD (August 26, 1999)

CAER). Section 7.2.3 is intended to address those concerns in the future by clearly establishing the integrity criteria for emission reductions to be included in the demonstration. Thus, in place of orphan shutdowns, the District is defining Unbanked Shutdown Emission Reductions (USER) in Rule 2301 in terms of AER, which, as a form of AER, and to the extent they are also CAER, would be an eligible type of emission reduction for use in the equivalency demonstration.

Finally, the District is also including actual emission reductions generated from applying BACT to non-major sources or to a project that does not result in a federal major modification (Section 7.2.4) as a type of emission reduction eligible for the demonstration.

### Section 7.3 Offset Tracking System

Amended Section 7.3.1 merely formalizes the existing authority the APCO has to add or remove CAER to the tracking system, subject to review by EPA.

Amended Section 7.3.2 lists the parameters the District is required to track in the demonstration. The tracked parameters enable the District to organize and perform the accounting necessary to show equivalency. The tracked parameters also enable the tracing of any particular action in the history of the demonstration back to the source documents for inspection, where all the relevant data and calculations may be found that support the quantities recorded in the demonstration.

The parameters indicated in amended Section 7.3 are the same as those in the current tracking system, although in the current system, the COB also represented what the amended demonstration will now refer to as the *running balance*. ATC projects that have no bearing on the equivalency demonstration because they are not NMS, FMM, or have no DOQ, will not be recorded in the tracking system although the District does determine the FOQ and DOQ for every ATC project issued.

#### Section 7.3.2.1 Federal Offset Quantity (FOQ)

The FOQ is tracked in tons per year because it is the quantity against which federal offset equivalency must be determined, i.e. the FOQ is the debit side of the ledger in the accounting demonstration. The ATC issuance date serves both as an indicator when a project was finalized and thus required to be included in the demonstration and a surplus-adjustment date for the CAER used as mitigation for the FOQ. In addition, whether or not an ATC is ultimately implemented or cancelled determines whether the CAER used as mitigation for the FOQ remains out of the running balance of the tracking system permanently (for ATC implementations) or should be returned to the running balance of the tracking system or to the applicant (for ATC cancellations). CAER returned to the tracking

system become eligible to be used as mitigation for the FOQ on future projects provided the reductions remain surplus-at-time-of-use.

Section 7.3.2.2 District Offset Quantity (DOQ)

The DOQ in tons per year is tracked because it represents the face value of the ERCs supplied by the applicant to meet the District offset requirements of Rule 2201, Sections 4.5 and 4.7. The DOQ is not by itself directly compared against the FOQ as a measure of equivalency. The DOQ is tracked because it is the main source of the CAER (Section 7.3.3) in the tracking system. When an ATC project with an associated DOQ is issued, the ERCs provided by the applicant are added to the tracking system to the extent they are CAER. If the ATC project also has a FOQ, the applicant provided CAER may also be used to satisfy the FOQ from the same project. Otherwise, if the ATC project does not have a FOQ, only after the ATC project supplying the ERCs is implemented may the portion of ERCs that are also CAER be used to satisfy the FOQ for another project. If the ATC project that is supplying ERCs is cancelled, those ERCs return to the ATC applicant, and are therefore not eligible for the District to draw from the tracking system as an offset for the FOQ of another project. Hence, the parameters tracked - the ATC project number, its issuance date, and its ultimate implementation and or cancellation, enable the District to make the above determinations.

Section 7.3.2.3 Creditable Actual Emission Reductions (CAER)

The CAERs in tons per year are tracked because CAER represent the supply of emission reductions available to mitigate the FOQ, i.e. CAER are the credit side of the ledger in the accounting demonstration. The type of CAER (for example, ERC, AQID, or AER), and the project number identifying the original banking action or emission reduction project that created the CAER is tracked because this information is required to perform the surplus at time-of-use analysis whenever the CAER is proposed to satisfy a FOQ obligation for an ATC project.

Section 7.3.2.4 Running Balance

The *running balance* is defined in Section 7.1.3 and represents the current estimated face-value amount of extra emission reductions for a given pollutant in the tracking system that are available for use to mitigate a FOQ for an ATC project. The running balance is necessarily an estimate because the surplus adjustment to the offset value of a given ERC, AQID, AER is only definitively determined at the time-of-use. Thus, for this reason, the current *running balance* may be an overstatement of the amount of CAER in the tracking system. However, there are other adjustments that might make the current *running balance* understate the current quantity of CAER eligible in the tracking system. For example, the *running balance* at any point at time does not necessarily yet include the following types of

actions that would increase the quantity of CAER in the tracking system: (1) the reinstatement of CAER as a result of cancellations of ATC projects that used CAER from the tracking system; (2) the implementation of ATC projects that surrendered more CAER than required by the FOQ for that project; (3) the AQID portion of newly banked ERCs, or (4) any AER generated during the tracking year and claimed by the APCO with the intention of transferring the AER to tracking system. Although such additions can be made at any time during the tracking period, they will generally be reviewed and made as part of the annual report.

The *running balance* for the tracking system as a whole for a given pollutant is the sum of the individual *running balances* of all the emission reductions in the tracking system. Under the proposed amended rule, the *running balance* can never be less than zero because the District cannot proceed with a preliminary notice to approve an ATC project without federal offset equivalency being demonstrated at the time of ATC issuance.

Section 7.4 Programmatic Permit-Level Federal Offset Equivalency Demonstration

In amended Section 7.4.1, the District will prepare an equivalency demonstration at the time of ATC issuance as part of the approval for every ATC project that is a new major source or federal major modification. Amended Section 7.4.2 lists the required parts and analyses required in a programmatic permit-level equivalency demonstration. Since all new major sources and federal major modifications trigger notification requirements, the opportunity for public, EPA, and CARB comment and oversight is ensured. Moreover, since each project is a self-contained equivalency demonstration, the oversight function of EPA and CARB will be made more manageable compared to having one annual demonstration that includes all the new major sources and federal major modifications for the tracking period aggregated into one report.

Every application review for a new major source or federal major modification must contain the data and calculations to quantify the following parameters:

- (1) the FOQ (amended Section 7.4.2.1),
- (2) the DOQ (amended Section 7.4.2.2), and
- (3) the amount of CAER provided by the applicant to offset the DOQ (amended Section 7.4.2.3).

The methodology that demonstrates federal offset equivalency is contained in amended Section 7.4.2.4. If the amount of CAER provided by the applicant equals or exceeds the FOQ, then federal offset equivalency is demonstrated, subject to public, EPA, and CARB review during the noticing period. Any CAER in excess of the FOQ will be added to the COB at the time of the annual report review, or, alternatively, if necessary, to the *running balance* if and when the ATC project is

implemented. If the amount of CAER provided by the applicant is less than the FOQ, then the District (APCO) can identify and reserve CAER from the *running balance* in the tracking system to make up the difference. If the difference is made-up by the tracking system, equivalency is demonstrated, subject to public, EPA, and CARB review during the noticing period. If the tracking system does not contain sufficient CAER to make-up the difference, the District cannot proceed with approval of the project. The District shall deny the project unless or until federal offset equivalency is demonstrated.

Finally, upon issuance of the ATC permit, for CAER identified and reserved in the tracking system per Section 7.4.2.4.2, the APCO will transfer the reserved CAER out of the *running balance* to ensure it will not be used as mitigation for another project. If the ATC permit is cancelled or expires, then the APCO may reinstate the specific CAER at the time of annual report review. If necessary, the APCO may return the CAER to the running balance when the ATC is cancelled or expires, i.e. before the annual report or review. This section does not apply to CAER provided by the applicant as part of an ATC project that is cancelled because those CAER return to the applicant rather than the tracking system.

#### Section 7.5 Annual Reporting Schedule

Currently, the equivalency demonstration produces an annual report that contains both a comparative summary of District and federal offsetting requirements during the tracking year and a detailed analysis of federal offset equivalency for the tracking period as a whole. Going forward, with a programmatic permit-level equivalency being proposed, the equivalency analysis will be part of the preliminary decision to approve an ATC project, which can occur anytime during the tracking period. Thus, the actual equivalency demonstration is being moved from the annual report to the application review package that is part of the preliminary decision. For this reason, the annual report, as detailed in amended Section 7.5, will now focus on a summary of the permit-level equivalency demonstrations made during the tracking year as well as any additions and subtractions to the tracking system for each pollutant. Consistent with the enhanced federal offset equivalency report the District adopted beginning with the 2019-2020 demonstration, the District will continue to include the technical analyses supporting any additions or subtractions to the COB of CAER in the tracking system.

The remedies for failure to show federal offset equivalency contained in the current annual demonstration are no longer relevant for the proposed time-of-ATC-issuance demonstration, and, therefore, the District is proposing to remove them from the rule. The remedies in the current equivalency demonstration are designed for an annual demonstration and are contingent on a negative carryover balance for either Test 1 or Test 2 for a specific pollutant. However, in the amended rule, the District is replacing the once-per-year demonstration with a programmatic permit-

level, time-of-ATC-issuance demonstration, and, as proposed, the amended demonstration is designed never to operate at a deficit compared to federal offsetting requirements. The “remedy” for an ATC project that cannot show federal offset equivalency is that the District will deny the project.

5) Separate the Pre-baseline ERC Tracking System and Usage Caps from District Attainment Plans into its own section (8.0)

The *Pre-baseline ERC Cap Tracking System*, which is currently part of Section 7.0, will be separated into its own section (Section 8.0). The existing Section 8.0 will then become Section 9.0. While both Federal Offset Equivalency and the Pre-baseline ERC Cap are federal demonstrations involving ERCs, they are otherwise distinct enough in their pollutants of concern, data tracking, and reporting requirements to warrant separate sections. No changes to the substance or procedures of the *Pre-baseline ERC Cap Tracking System* are being proposed with this rulemaking.

- *Section 10.0 – References to Title 40 of the Code of Federal Regulations and the California Health & Safety Code*

As identified by EPA, the District is proposing to amend Rule 2201 to include Section 10 to clarify that the references to the Title 40 of the Code of Federal Regulations (CFR) and the California Health & Safety Code (CH&SC) are references as of the date of the adoption of the rule. This clarification is necessary as those references could be revised in the future.

## **V. DISTRICT RULE 2301 – EMISSION REDUCTION CREDIT BANKING**

### **A. Description of Current Rule**

District Rule 2301, Emission Reduction Credit Banking, contains the District's administrative requirements for ERC banking. Rule 2301 was adopted on September 19, 1991, and was last amended on August 15, 2019 to incorporate electronic noticing requirements into the rule. The purpose of the rule is to:

- Provide a regulatory mechanism for sources to store ERCs for later use as offsets where allowed by District, state, and federal rules and regulations;
- Provide a regulatory mechanism for sources to transfer ERCs to other sources for use as offsets as allowed by District Rule 2201 (New and Modified Stationary Source Review Rule), or state and federal rules and regulations; and
- Define eligibility standards, quantitative procedures, and administrative practices to ensure that ERCs are real, permanent, quantifiable, surplus, and enforceable.

The current rule applies to all transactions involving the storage, transfer, or use of

ERCs of affected pollutants and greenhouse gases (GHGs). Other provisions contained in the rule include eligibility requirements, ERC Certificate application procedures, registration of ERC Certificates, and administrative requirements.

**B. Reasons for Amendments**

**1. ERC Application Timeliness and Definition of Shutdown (Rule 2301)**

As a result of CARB's review of the District's ERC program, CARB identified a potential issue with Rule 2301 language that defines a timely ERC application and the associated definition of "shutdown" of an emission unit. Although not itself a state or federal requirement, the District requires that a facility seeking to formally bank an emission reduction as an ERC file a timely application. To be timely, an ERC application must be filed no later than 180 days after the occurrence of the emission reduction.

For ERCs generated from sources permanently ceasing operation, the "shutdown" date is used to determine ERC application timeliness. The 180-day clock to file a timely ERC application starts from the shutdown date. The current definition of shutdown is ambiguous and could be misread to create an incentive for facilities to continue to operate (and to emit), merely to extend the 180-day clock for submitting a timely application. Additionally, the definition could be misinterpreted to exclude seasonal sources from being able to bank emission reductions, since their cessation of emissions could effectively occur more than 180 days prior to surrendering their permit to operate. The District's own policy APR 1805 (Policy on the Interpretation of the Definition of Shutdown) also recognized this issue and provided guidance that the District has put into practice since the policy was developed in 1992.

**2. Discontinuing New Banking of GHG ERCs (Rule 2301)**

In addition, the District has evaluated the need for future banking of new greenhouse gas (GHG) emission reductions. A brief history of what lead to the inclusion of GHG ERC banking in Rule 2301 will provide context for the current decision to discontinue the banking of new GHG ERCs. On August 21, 2008, the District's Governing Board adopted the District's Climate Change Action Plan (CCAP), which was developed in response to the state's greenhouse gas regulations that are complex and demanding, and CEQA litigation that had created a high degree of uncertainty for local land use agencies and new project proponents. Among other actions, in conjunction with the CCAP, the Board directed the District to develop a mechanism that allows Valley businesses and other entities to receive credit for voluntary GHG emission reductions that occur in the District. In response to this expected need, the District amended Rule 2301 to incorporate GHG banking in 2012.

Nevertheless, since that time, the District's experience with GHG ERCs is that they have had minimal historical use. Moreover, there are a number of alternative institutions for



banking GHG ERCs (e.g. CARB's Compliance Offset Program within Cap-and-Trade) that have developed since 2012. GHGs are also not the primary focus of the District's mission or jurisdiction. These considerations point to a diminished need for the District to continue to allow GHG emission reductions to be banked as a part of its regular ERC program. It is important to note that while the District is proposing to eliminate the banking of new GHG ERCs, the District intends to maintain existing, previously banked GHG ERCs in the District ERC Bank and continue to administer transactions, if any, as allowed under Rule 2301.

### 3. Unbanked Shutdown Emission Reductions (Rule 2301)

Unbanked Shutdown Emission Reductions (USERS) are emission reductions from shutdown units with offset value that have not been claimed by a permittee. In the past, the District informally referred to these as *orphan shutdowns*. Subject to EPA review, Districts may claim and use at their discretion these emission reductions for special offset purposes in lieu of privately held ERCs.<sup>13</sup> From 2001 - 2019, the District claimed the emission reductions from *orphan shutdowns* for use in its federal offset equivalency demonstration. However, in response to concerns raised in CARB's Report, *Review of the San Joaquin Valley Air Pollution Control District Emission Reduction Credit System (June 2020)* and further investigation by District staff, the District withdrew from its federal offset equivalency demonstration the unused credits claimed from *orphan shutdowns* for all pollutants, and suspended further crediting of *orphan shutdowns*. The proposed amendments to Rule 2301 aim to ensure any credit claimed from orphan shutdowns in the future are explicitly based on the criteria for being *Actual Emission Reductions* (AER), as defined in Rule 2201. AER are real, quantifiable, surplus, permanent, and enforceable emission reductions. ERCs are a form of AER. The amendments will thus establish USERS on the same integrity criteria as ERCs. To distinguish the past practice for crediting orphan shutdowns with the proposed new definition that ensures this class of reductions meets the integrity criteria for being *AER*, the term *USER* is being adopted in place of the term *orphan shutdown*.

### 4. Miscellaneous Amendments to Improve Clarity and Consistency (Rule 2301)

Amendments to current Sections 3.1 (Actual Emission Reductions), 3.12 (Offset), 4.4.2 (Ineligible ERCs), and 6.9 (Re-surplusing of banked ERCs) are being proposed to improve the clarity and consistency of rule language. They will not alter the administrative procedures contained in the rule or practiced by the District.

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<sup>13</sup> See, for example, South Coast AQMD Rule 1315, Federal New Source Review Tracking System, (b)(4) and (5); Bay Area AQMD Regulation 2, Rule 2, New Source Review, 231.3; San Diego County APCD, Rule 26.6 District Banking of Emission Reduction Credits.

**C. Proposed Amendments to Rule 2301**

**1. ERC Application Timeliness and Definition of Shutdown (Rule 2301)**

- *Section 3.14 – Shutdown Definition*

The District is proposing to amend District Rule 2301, Section 3.14 to clarify the definition of *shutdown* consistent with longstanding District Policy, APR 1805, *Policy on the Interpretation of the Definition of Shutdown* (1992). The policy was adopted at the unification of the District to address the concerns over the logic and incentives created by the existing definition.

As currently written, the definition of shutdown lacks consistency with itself and District Rule 2010, Permits Required, and therefore provides unclear guidance. For example, in the existing language, the first part of the definition (current Rule 2301, Section 3.14) appears to place priority for determining the shutdown date on the date of last emissions over the surrender date of the permit.

*3.14 Shutdown: shall mean either the earlier of the permanent cessation of emissions from an emitting unit or the surrender of that unit's operating permit.*

This definition covers both unpermitted and permitted sources. By stating the shutdown date for a permitted source is the *earlier* of last emissions or the surrender date of the permit, Section 3.14 implies a permitted source can operate without a permit, which is inconsistent with District Rule 2010, Permits Required. There is no case where a permitted source could surrender its permit before its last emissions and not be in violation of District Rule 2010. The rule language is unnecessarily complicated if the intention was to always make the date of last emissions the shutdown date.

Another indication that the Section 3.14 of the rule likely was not intended to make the date of last emissions the default shutdown date for permitted sources can be seen by consideration of the second part of the definition of shutdown (Subsections 3.14.1 and 3.14.2). The purpose of these subsections appears to be to indicate an exception to the first part of the definition. But instead, the second part of the definition also places priority on the date of last emissions if the District makes a determination of inoperability.

*If, prior to the surrender of the operating permit, the APCO determines that:*

*3.14.1 the unit has been removed or fallen into an inoperable and unmaintained condition such that startup would require an investment exceeding 50% of the current replacement cost; and*

*3.14.2 the owner cannot demonstrate to the satisfaction of the APCO that the owner intended to operate again, then the APCO may cancel the permit and deem the source shutdown as of the date of last emissions.*

In other words, Sections 3.14.1 and 3.14.2 describe the determination the District needs to make District to override the permit surrender date and instead regard the date of last emissions as the shutdown date. The inclusion of Sections 3.14.1 and 3.14.2 in the definition only make sense if they represent an exception to Section 3.14. However, if the intention in Section 3.14 was to make the date of last emissions the default shutdown date for permitted sources, Sections 3.14.1 and 3.14.2 would be in every case unnecessary. In short, the current definition of shutdown cannot be read to have a single meaning, and therefore does not provide clear guidance.

Another issue with the current rule language is the possible incentives it creates for additional air pollution. If the date of last emissions is to determine the shutdown date in all cases, sources have an incentive to operate equipment merely to extend the eligibility date to file a timely ERC banking application.

To address the issues noted above, the District is proposing to amend the definition (Section 3.14 in the amended version of Rule 2301) using the language in District Policy APR 1805, which does not pose any of the logical and consistency problems described above and ensures the District remains consistent with historical practice.

In the amended language, the District will separate non-permitted from non-permitted sources. For unpermitted sources, the shutdown date will be the date of last emissions. For permitted sources, the default shutdown date will be the date the permit is surrendered by the applicant; however, the District may make a determination that the shutdown date is earlier than the permit surrender date subject to the findings in 3.14.2.1 (inoperable condition) and 3.14.2.2 (intent to operate again). A comparison of the existing language to the amended language shows that the amended language contains the same elements as the existing language, except the logic in the amended language eliminates the ambiguity and contradictions noted in the existing language.

- *Section 5.0 – ERC Certificate Application Procedures*

The District is proposing to amend Section 5.5 to clarify application timeliness and the meaning of the phrase, “when an emission reduction occurs.” First, Rule 2201 has two different ways of stating the 180-day deadline for a timely ERC application to be filed. As part of the section of the rule detailing the eligibility criteria for emission reductions, Section 4.2.3 specifies a timely ERC application as follows:

*4.2.3 An application for ERC has been filed no later than 180 days after the emission reductions occurred.*

However, under the rule Section 5.0, ERC Application Procedures, Section 5.5 states:

*ERC Certificate applications for reductions shall be submitted within 180 days after the emission reduction occurs.*

The difference between “no later than” in Section 4.2.3 and “within” in Section 5.5 could be a source of ambiguity in the rule. The ambiguity should be resolved in favor of Section 4.2.3 because (1) of historical practice and (2) Section 4.2.3 is part of the larger section stipulating eligibility criteria for emission reductions to be banked, and timeliness is an eligibility criterion. Therefore, to eliminate this potential source of confusion, “within” will be replaced with “no later than” to be consistent with Section 4.2.3.

Since the timeliness criterion is stated in terms of 180 days after the emission reduction occurs, Section 5.5 is also being amended to clarify the date of emission reduction. For actual emission reductions generated from the implementation of an ATC, the date of emission reduction will be the date the District completes its verification that the ATC has been fully implemented, as determined by the District, and the associated emission reductions have occurred. For actual emission reductions generated from the permanent cessation of operation of an emissions unit with a Permit to Operate, the date of emission reduction will be the date of shutdown as defined in amended Section 3.14.

The proposed amendments will not alter the District’s approach to assessing ERC application timeliness as historically practiced. All original ERC banking actions will continue to undergo a 30-day EPA, CARB, and public review period before the ERCs are issued.

## **2. Discontinuing New Banking of GHG ERCs (Rule 2301)**

- *Section 1.2 – Greenhouse Gases*

The District is proposing to amend Section 1.2.1 by (1) explicitly stating the District will discontinue the banking of new greenhouse gas reductions as of the amendment date of the rule, and (2) eliminating the language that states that one of the purposes of the rule is to provide an administrative mechanism for the banking for greenhouse gas emissions. The statement that the District will discontinue the banking of new greenhouse gas reductions is necessary to make clear that while the District will continue administer greenhouse gas banking transactions for existing ERCs (Section 1.2.2), no new ERCs will be created from an original banking action.

Since the proposed amended rule will no longer allow banking of greenhouse gas emission reductions, the rule no longer needs to define the eligibility, standards, quantitative procedures and administrative practices for greenhouse gas banking;

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therefore, Section 1.2.3 will be removed.

- *Section 3.3 – Bankable Emission Reductions Definition*

Consistent with the proposal to discontinue the banking of new emission reductions for greenhouse gases, Section 3.3 is being amended to remove greenhouse gases from the definition of *Bankable Emission Reductions*.

- *Sections 4.5 – Greenhouse Gas Emission Reductions*

Consistent with the proposal to discontinue the banking of new emission reductions for greenhouse gases, Section 4.5 and its associated subsections will be removed from the rule since they pertain to the banking of new greenhouse gas emission reductions.

- *Section 5.5.2 – Timeliness for Greenhouse Gas ERC Application*

Consistent with the proposal to discontinue the banking of new emission reductions for greenhouse gases, Section 5.5.2 will be removed from the rule since it pertains to the banking of new greenhouse gas emission reductions.

- *Section 5.6 – Re-issue of an ERC pursuant to a CARB Approved Protocol*

Although Section 5.6 applies to previously issued greenhouse gas ERCs, its application involves re-applying to re-bank an existing ERC according to a CARB approved protocol. Since this amounts to a new banking action, Section 5.6 will be removed.

- *Section 6.15 – Notations on Greenhouse Gas ERCs*

Section 6.15 requires the District to include a note on the ERC certificate indicating how the greenhouse gas emission reductions were quantified. This section makes several references under Section 4.5, which the District is proposing to remove with these amendments. The following amendments are being proposed to retain the content of these references where necessary.

6.15.1 Emission reductions quantified using a CARB approved protocol pursuant to ~~Section 4.5.5~~ shall include a notation of the specific name and approval date of the protocol.

6.15.2 Emission reductions that are surplus of all greenhouse gas emission reduction requirements pursuant to ~~Section 4.5.3.3~~ 6.15.2.1 shall include

the following notation “This emission reduction is surplus and additional to all applicable greenhouse emission reduction regulatory requirements.”

6.15.2.1 Greenhouse gas emission reductions that occur due to an action taken by a facility that is not the result of any greenhouse gas emission reduction requirement are surplus and additional of all greenhouse gas reduction requirements.

6.15.3 Emission reductions that are surplus of any regulatory requirement pursuant to Section 4.5.3.46.15.3.1 shall include the following notation “This emission reduction is surplus and additional to all applicable regulatory requirements.”

6.15.3.1 Greenhouse gas emission reductions that occur due to an action taken by a facility that is not the result of any requirement, including any requirement that is not intended to control greenhouse gases, are surplus and additional of all requirements.

### 3. Unbanked Shutdown Emission Reductions (Rule 2301)

- Section 3.16 – Unbanked Shutdown Emission Reductions (USER)

Amended Section 3.16 will include a definition of Unbanked Shutdown Emission reductions (USERS) that will establish their offset quality on the same basis as ERCs, i.e. USERS will be AER as defined in Rule 2201. Amended Section 3.16.1 specifies when the APCO can claim the AER from the shutdown of a permitted unit as an orphan shutdown. Amended Section 3.16.2 specifies the shutdown date (in lieu of the ERC application date) as the date to be used in the baseline period determination (as defined in Rule 2201). Thus, the baseline period will generally be either the two-years immediately preceding the shutdown date or the most representative two-year period within five years immediately preceding the shutdown date.

Amended Section 3.16.3 specifies that minimum document retention requirement related to orphan reductions. As a matter of practice, the District attempts to maintain permitting records permanently in electronic form. Amended Section 3.16.4 specifies that the APCO may use or transfer for use USERS as an *offset* (which is defined in Section 3.13) subject to the same requirements as an ERC.

### 4. Miscellaneous Amendments to Improve Clarity and Consistency (Rule 2301)

- Section 3.1 – Definition: Actual Emission Reductions

The District amended Section 3.1 to add “(AER)” in the definition of “Actual Emission Reductions” to indicate “AER” is used as an abbreviation for this term. Although the

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current rule does not define AER, the abbreviation “AER” is used in the existing rule language (e.g. Sections 4.1.1.1, 4.1.2.1, and 4.2.2) and proposed amended rule language (e.g. Sections 3.14 and 5.5).

- Section 3.12 – Definition: Offset

The District amended the definition of “offset” in Section 3.13 to include “other AER.”

*3.13 Offset: the use of an ERC or other AER to mitigate emission increases of an affected pollutant from a new or modified source subject to the requirements of Rule 2201 (New and Modified Stationary Source Review Rule).*

The amendment makes the definition of “offset” in Rule 2301 more consistent with the definition of “offsets” in Rule 2201, Section 3.26:

*3.26 Offsets: emission reductions recognized by the APCO in the form of Emission Reduction Credits that are issued in accordance with the provisions of Rule 2301 (Emission Reduction Credit Banking), or other Actual Emissions Reductions that may be used to mitigate an emission increase as part of the same Stationary Source Project in accordance with the provisions of this rule.*

- Section 4.4.2 – Ineligible Emission Reductions

The District amended Section 4.4.2 to clarify the meaning of a type of emission reduction that is not eligible for banking.

*4.4.2 Emission reductions occurring at a fossil fuel-fired power plant from operating at a reduced load as the result of the operation of a cogeneration facility.*

- Section 6.9 – The Effect of Changes in Rule Emission Standards on Deposits to the ERC Bank

The District amended Section 6.9 to clarify the provision affirming the permanency of ERC deposits until used. The existing language states that once issued, an ERC is not affected by subsequent changes in rules that require additional reductions. While the District still affirms the deposit value of an ERC will not be reduced by subsequent rules, for NO<sub>x</sub> and VOC, the use value of an ERC may be discounted to reflect stricter rule standards than at the time of original banking. As discussed throughout this staff report, the District is required to adopt federal NSR surplus-at-time-of-use valuation of actual emission reductions for those projects that are subject to federal NSR. Therefore, although the deposit value will not change, when a NO<sub>x</sub> or VOC ERC is used, its offset value will depend on whether it is being used

to satisfy a District NSR offset requirement, where its deposit value will be retained, or a federal NSR offset requirement, where it will be surplus adjusted for time-of-use. Therefore, to ensure Section 6.9 is consistent and clear with the amendments being made to District Rule 2201, the following amendment is proposed:

*6.9 Except as provided in Section 6.7 of this rule, deposits are permanent until used by the depositor or any party to whom the ERC Certificate has been transferred. After issuance of the ERC Banking Certificate, subsequent changes in regulations to require the type of reduction which is banked shall not reduce or eliminate the deposit. The offset value of an ERC may be surplus-adjusted for time-of-use requirements according to District Rule 2201, New and Modified Stationary Source Review Rule.*

## VI. SENATE BILL 288 – PROTECT CALIFORNIA AIR ACT OF 2003

SB 288, the *Protect California Air Act of 2003*<sup>14</sup>, prohibits California air districts from making amendments to their New Source Review (NSR) rule(s) that would make them less stringent than the versions that existed on December 30, 2002.<sup>15</sup> According to CARB guidance<sup>16</sup>, SB 288 both prohibits the overall (or net) weakening<sup>17</sup> of NSR and also any weakening of specifically identified NSR requirements.<sup>18</sup> CARB implementation guidance to Districts from April 2006<sup>19</sup> states that districts may amend the specifically identified elements in their NSR rules “only if the amendments make the rules more stringent.”<sup>20</sup> That is, the only change in stringency is in the direction of increased stringency.

### Specific Prohibitions, CH&SC 42504(b)

CARB<sup>21</sup> provides guidance on its website identifying the specific requirements of NSR that may not be weakened relative to what they were on December 30, 2002. Districts may not relax the requirements to:

- Obtain permits to construct
- Apply BACT
- Conduct an air quality impact analysis (AQIA)

<sup>14</sup> California Health and Safety Code (CH&SC) Sections 42500 through 42507

<sup>15</sup> SB 288 includes limited exceptions to the general prohibition; however, those exceptions are not applicable here.

<sup>16</sup> Letter from CARB Chief Counsel W. Thomas Jennings to the Principal Deputy District Counsel of South Coast AQMD regarding Applicability of Senate Bill 288 to Changes to Offset Requirements in New Source Review Rules, April 11, 2006.

<sup>17</sup> CH&SC 42504(a) and (c)

<sup>18</sup> CH&SC 42504(b)(1) and (2)

<sup>19</sup> California Air Resources Board Guidance, New Source Review and Senate Bill 288, August 2004.

<sup>20</sup> CH&SC 42504(c)

<sup>21</sup> <https://ww2.arb.ca.gov/our-work/programs/protect-california-air-act-2003-senate-bill-288/senate-bill-288-provisions>



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- Conduct monitoring, recordkeeping, or reporting (MRR) in such a way to make them less representative, enforceable, or publicly accessible
- Regulate any air pollutant covered by the New Source Review rules
- Public participation, including requirements for a public comment period, public notification, or a public hearing prior to issuing a permit to construct

Moreover, changes to the following NSR provisions are also prohibited if they result in exempting a source or reducing its obligations for any of the program elements listed above:

- The applicability determination for new source review.
- The definition of modification, major modification, routine maintenance, or repair or replacement.
- The calculation methodology, thresholds or other procedures of new source review.
- Any definitions or requirements of the new source review regulations.

All of the amendments proposed in the current rule amendment project that touch on any of the permit, BACT, AQIA, MRR, or public noticing requirements in the rule do not lessen the stringency compared to the requirements in place on December 30, 2002. A summary of the amendments to Rule 2201 and the effects on stringency is presented in the following table:

| <b>SB 288 Stringency Analysis of Rule 2201 Amendments</b> |                                          |                     |                             |                                                                   |
|-----------------------------------------------------------|------------------------------------------|---------------------|-----------------------------|-------------------------------------------------------------------|
| Section                                                   | Description                              | NSR Element Amended | NSR Requirement(s) Affected | Proposal's Effect on stringency                                   |
| 3.0                                                       | Definitions                              | Add Definitions     | NSR applicability           | No change to practice                                             |
| 3.1                                                       | Actual Emissions                         | Amend Definition    | Offsets                     | More stringent for NOx and VOC and no change for other pollutants |
| 3.2                                                       | Actual Emission Reduction (AER)          | Amend Definition    | Offsets                     | No change                                                         |
| 3.3                                                       | Administrative Change                    | Amend Definition    | Administrative Change       | No change                                                         |
| 3.5                                                       | Agricultural Source                      | Amend Definition    | Agricultural Source         | No change                                                         |
| 3.8                                                       | Baseline Emissions (BE)                  | Amend Definition    | Baseline Emissions          | No change to practice                                             |
| 3.9.1 and 3.9.2                                           | Baseline Period                          | Amend Definition    | Offsets                     | No change to practice                                             |
| 3.9.3                                                     | Baseline Period                          | Amend Definition    | Offsets                     | No change                                                         |
| 3.10                                                      | Best Available Control Technology (BACT) | Amend Definition    | BACT                        | No change to practice                                             |

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| <b>SB 288 Stringency Analysis of Rule 2201 Amendments</b> |                                                    |                                        |                                                                                                                                                                |                                                                                              |
|-----------------------------------------------------------|----------------------------------------------------|----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| Section                                                   | Description                                        | NSR Element Amended                    | NSR Requirement(s) Affected                                                                                                                                    | Proposal's Effect on stringency                                                              |
| 3.11                                                      | Best Available Retrofit Control Technology (BARCT) | Add Definition                         | Current BACT and offsets exemption for Routine Replacement Emissions Units (that are not federal major modifications) and Temporary Replacement Emission Units | No change                                                                                    |
| 3.15                                                      | Complete Application                               | Amend Definition                       | Complete Application                                                                                                                                           | No change                                                                                    |
| 3.19                                                      | Federal Baseline Emissions                         | Add Definition                         | Federal Offset Calculations                                                                                                                                    | More stringent                                                                               |
| 3.20                                                      | Federal Offset Quantity                            | Add Definition                         | Federal Offsets                                                                                                                                                | More stringent                                                                               |
| 3.21                                                      | Federal Major Modification                         | Amend Definition                       | BACT, Federal Offsets, Public Notice, AAQA                                                                                                                     | No change                                                                                    |
| 3.23                                                      | Fully Offset Emissions Unit                        | Amend Definition                       | Federal Offset                                                                                                                                                 | More stringent                                                                               |
| 3.25                                                      | Highly-Utilized Emissions Unit                     | Amend Definition                       | Offsets                                                                                                                                                        | No change                                                                                    |
| 3.27                                                      | Internal Emission Reductions                       | Add Definition                         | Offset                                                                                                                                                         | No change                                                                                    |
| 3.28                                                      | Major Source                                       | Amend Definition                       | Require counting of fugitives for MSW incinerators > 50 tpd                                                                                                    | More stringent                                                                               |
| 3.28.3                                                    | Major Source                                       | Amend Definition                       | Federal NSR applicability                                                                                                                                      | No change since the exclusion was assumed in practice based on existing exclusion in the CAA |
| Existing Section 3.28                                     | PM2.5                                              | Amend and Move Definition to Rule 1020 | NSR applicability                                                                                                                                              | No change to practice                                                                        |
| Existing Section 3.29                                     | PM10                                               | Amend and Move Definition to Rule 1020 | NSR applicability                                                                                                                                              | No change to practice                                                                        |
| 3.29.1.6                                                  | Modification                                       | Amend Definition to Include a FMM      | NSR applicability                                                                                                                                              | No change to practice                                                                        |
| 3.30                                                      | New Major Source                                   | Add Definition                         | BACT, Federal Offsets, Public Notice, AAQA, Alternative Site Analysis                                                                                          | No change                                                                                    |

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| <b>SB 288 Stringency Analysis of Rule 2201 Amendments</b> |                                                            |                           |                             |                                                                                                                      |
|-----------------------------------------------------------|------------------------------------------------------------|---------------------------|-----------------------------|----------------------------------------------------------------------------------------------------------------------|
| Section                                                   | Description                                                | NSR Element Amended       | NSR Requirement(s) Affected | Proposal's Effect on stringency                                                                                      |
| 3.32                                                      | Potential to Emit                                          | Amend Definition          | Potential to Emit           | No change to practice                                                                                                |
| 3.38.1                                                    | Routine Replacement Emissions Unit                         | Amend Definition          | BACT Exemption              | More stringent                                                                                                       |
| 3.38.6                                                    | Routine Replacement Emissions Unit                         | Amend Definition          | BACT Exemption              | More stringent                                                                                                       |
| 3.41                                                      | Secondary Source Emissions                                 | Add Definition            | Potential to Emit, AAQA     | No change                                                                                                            |
| 4.5 and 4.6                                               | District Emission Offset Requirements and Exemptions       | Amend Definition          | Offsets                     | No change                                                                                                            |
| 4.6.8.4                                                   | District Emission Offset Exemptions                        | Amend Exemption           | Offsets                     | More stringent for PM2.5                                                                                             |
| 4.6.10 and 4.6.11                                         | District Emission Offset Exemptions                        | Amend Exemption           | Offsets                     | More stringent for NOx and VOC as NOx and VOC will now be subject to federal offsetting requirements                 |
| 4.7                                                       | District Emission Offset Quantity Calculations             | Amend Definition          | Offsets                     | No change                                                                                                            |
| 4.8.1                                                     | Offset Requirements for Federally Nonattainment Pollutants | Add Requirements          | Offsets                     | More stringent for NOx and VOC. No change for other pollutants                                                       |
| 4.8.2                                                     | Offset Exemptions for NOx and VOC                          | Add Exemption             | Federal Offsets             | No change since a similar exemption for NOx and VOC exists in the current Rule under Section 4.6.8 and CAA 182(e)(2) |
| 4.8.3                                                     | Timing of Providing Offsets                                | Add Requirements          | Offsets                     | No change                                                                                                            |
| 4.8.4                                                     | Federal Offset Quantity Calculations                       | Add Requirements          | Federal Offsets             | More stringent for NOx and VOC. No change for other pollutants                                                       |
| 4.9.1                                                     | Required Offset Ratio                                      | Change Calculation Method | Federal Offsets             | No change as this provision only applies to the FOQ for NOx and VOC                                                  |
| 4.9.3                                                     | Required Offset Ratio                                      | Calculation Method        | Federal Offsets             | No change to practice                                                                                                |

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| <b>SB 288 Stringency Analysis of Rule 2201 Amendments</b> |                                                              |                                                                           |                             |                                                                                                                                                                                                |
|-----------------------------------------------------------|--------------------------------------------------------------|---------------------------------------------------------------------------|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section                                                   | Description                                                  | NSR Element Amended                                                       | NSR Requirement(s) Affected | Proposal's Effect on stringency                                                                                                                                                                |
| 4.14.3.1                                                  | Offset Requirements                                          | Disallow interpollutant offsets for ozone for NMS and FMM                 | Federal Offsets             | More stringent                                                                                                                                                                                 |
| 4.14.12                                                   | Offset Requirements                                          | Add discount-at-time-of-use of reductions for NMS and FMM for NOx and VOC | Offsets                     | More stringent                                                                                                                                                                                 |
| 4.15.1                                                    | Ambient Air Quality Analysis                                 | Limit credit for stack height                                             | AAQA                        | More stringent                                                                                                                                                                                 |
| 4.16.1 and 4.16.2                                         | Additional Requirements for NMS and FMM                      | Amend Language                                                            | Other NSR procedures        | No change                                                                                                                                                                                      |
| 4.16.3                                                    | Impact to Visibility of a Class I Area                       | Add Requirements                                                          | Other NSR procedures        | More stringent                                                                                                                                                                                 |
| 4.16.4                                                    | Compliance with Other Applicable Provisions                  | Add Requirements                                                          | Other NSR procedures        | More stringent                                                                                                                                                                                 |
| 4.16.5                                                    | Circumvention of Federal NSR applicability                   | Add Requirements                                                          | Federal NSR applicability   | No change                                                                                                                                                                                      |
| 5.2 and 5.6.3                                             | Preliminary Decision and General Conditions for ATCs         | Add Requirements                                                          | Other NSR procedures        | No change in practice                                                                                                                                                                          |
| 5.3                                                       | Implementation Plan                                          | Add Requirements                                                          | Other NSR procedures        | More stringent                                                                                                                                                                                 |
| 5.4.6 and 5.5.3                                           | Public Notification Triggers                                 | Add Requirements                                                          | Public Notice               | More stringent                                                                                                                                                                                 |
| 5.8                                                       | Power Plant Requirements                                     | Amend Language                                                            | Other NSR procedures        | No change in practice                                                                                                                                                                          |
| 7.0                                                       | Federal Offset Equivalency Demonstration and Tracking System | Add Requirements                                                          | Other NSR procedures        | More stringent since a project will be required to provide the full FOQ, by itself or with the use of other creditable actual emission reductions provided by the District, prior to approval. |
| 8.0                                                       | Pre-baseline ERC Tracking System and Usage Caps from         | Add Requirements                                                          | Other NSR procedures        | No change                                                                                                                                                                                      |

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| <b>SB 288 Stringency Analysis of Rule 2201 Amendments</b> |                                      |                     |                             |                                 |
|-----------------------------------------------------------|--------------------------------------|---------------------|-----------------------------|---------------------------------|
| Section                                                   | Description                          | NSR Element Amended | NSR Requirement(s) Affected | Proposal's Effect on stringency |
|                                                           | District Attainment Plans            |                     |                             |                                 |
| 9.1.3.4                                                   | Temporary Replacement Emissions Unit | Add Requirements    | Other NSR procedures        | More stringent                  |
| 10.0                                                      | References                           | Add Requirements    | Other NSR procedures        | No change                       |

As indicated in the table above, none of the amendments proposed in this rulemaking for Rule 2201 would make any change to the definitions, thresholds, calculations, or procedures in a way that would weaken specific NSR requirements prohibited under CH&SC 42504(b).

### Prohibition Against Overall or Net Weakening of NSR, CH&SC 42504(a) and (c)

For the types of NSR amendments not addressed by CH&SC 42504(b) above, they must nevertheless, together with all the other NSR amendments being proposed, not result in an NSR rule that is weaker than the NSR rule in effect on December 30, 2002. The primary substantive amendments to Rule 2201 in this rulemaking concern offsetting requirements, which are not listed among the specific NSR requirements prohibited from weakening in CH&SC 42504 (b)(2).

CARB provides guidance on the interpretation of SB 288 related to offset requirements on its website, which includes an April 11, 2006 letter from CARB Chief Counsel W. Thomas Jennings to the Principal Deputy District Counsel of South Coast AQMD regarding *Applicability of Senate Bill 288 to Changes to Offset Requirements in New Source Review Rules*. In this letter, CARB Chief Counsel concluded offset requirements were not addressed by CH&SC 42504 (b)(2):

*“...we have concluded that section 42504(b)(2)(E) and the remaining five listed categories of requirements in section 42504(b)(2) should appropriately be construed as not including offset requirements.”*

The letter goes on to state that offset requirements are nevertheless part of an NSR program and therefore are addressed by CH&SC 42504(a):

*“... we have also concluded that the only reasonable reading of section 42504(a) is that a District is precluded from amending its NSR rule if the effect of the amendments is to cause its overall NSR requirements – including any offset requirements – to be less stringent than the regulatory requirements as they existed December 30, 2002.”*

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Thus, for those amendments not touching on the requirements listed in CH&SC paragraph 42504(b)(2), CARB, according to the letter, will evaluate their effect on a district's NSR rule(s) programmatically rather than individually for their specific effect on any one NSR element or stationary source. Consistent with this guidance, the District will evaluate the currently proposed amendments to Rule 2201 offset requirements programmatically in the context of the District's Annual Offset Equivalency Demonstration (Rule 2201, Section 7.0).

As a consequence of being unable to show federal offset equivalency for NO<sub>x</sub> and VOC, the District is amending Rule 2201 to adopt full federal offsetting requirements for NO<sub>x</sub> and VOC as required by the current version of Rule 2201, Section 7.4.<sup>22</sup> This means that any ATC project that triggers federal NSR requirements according to federal applicability procedures by either being a new major source or federal major modification for NO<sub>x</sub> or VOC will be required to provide an amount of offsets equal to the Federal Offset Quantity, and any emission reductions used to satisfy the offset obligation will have to be surplus at time-of-use.

The District's Annual Offset Equivalency Demonstration has provided a programmatic, empirical demonstration that the proposed amendments to Rule 2201 to adopt full federal offsetting requirements for new major sources and major modifications of NO<sub>x</sub> and VOC will be more stringent compared to the Rule 2201 offset requirements in place on December 30, 2002. The District's Annual Offset Equivalency Demonstration has made a comprehensive comparison of the two offsetting systems since August 20, 2001. The District's Annual Offset Equivalency Reports reflect the cumulative differences between the two offset systems since August 20, 2001. Under the terms of the District's Annual Offset Equivalency Demonstration, facilities were only required to offset the District Offset Quantity, and the ERCs used as offsets were valued at time of original banking. All ATC projects were also evaluated for their federal offset obligation, except that the District assumed the responsibility of showing that the federal offset obligation could be mitigated drawing on creditable actual emission reductions (CAER) generated from the collection of all emission reductions generated by the permitting program. The District was able to carryover to future demonstrations any extra CAER its program generated beyond what was needed to meet the current year's federal offset obligation provided those emission reductions remained surplus at time-of-use.

Historically, the District had an advantage in offset stringency over federal NSR for all pollutants until 2010, when the District was reclassified to *extreme* non-attainment for the federal ozone NAAQS. The reclassification to *extreme non-attainment* for federal ozone standards lowered the major source threshold from 25 tons per year to 10 tons per year for NO<sub>x</sub> and VOC, and lowered the major modification threshold from 25 tons per year to 0 tons per year (in practice,  $\geq 0.5$  lb/day) for NO<sub>x</sub> and VOC. The lower

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<sup>22</sup> Because the District has not been able to demonstrate federal offset equivalency for NO<sub>x</sub> and VOC, the District is currently operating under the federal offsetting requirements for new major sources and major modifications to existing major sources of NO<sub>x</sub> and VOC as required under Rule 2201, Section 7.0.

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thresholds resulted in many more projects triggering federal NSR applicability and therefore federal offsetting requirements. Moreover, the reclassification to *extreme* also raised the offset ratio required under federal NSR from 1.3:1 to 1.5:1 for NO<sub>x</sub> and VOC. The decrease in the new major source and major modification applicability thresholds resulted in more federal NO<sub>x</sub> and VOC offsets being required for ATC projects that were new major sources or federal major modifications. The lowered federal thresholds and increased offset ratios brought federal NSR offsetting requirements into relative parity with the offset thresholds and ratios for NO<sub>x</sub> and VOC under District Rule 2201.

Two other differences assessed as part of the equivalency demonstration have proven that federal NSR offsetting requirements for NO<sub>x</sub> and VOC going forward are more stringent than current Rule 2201 offset requirements:

- (1) The federal method for calculating emission increases for existing units uses an actual-to-potential basis, whereas District Rule 2201 allows existing *clean emissions units* to determine emission increases on a potential-to-potential basis. The result of this change is that projects involving major sources of NO<sub>x</sub> and VOC will more often be assessed an increase in emissions that will require offsets compared to the current version of Rule 2201.
- (2) The emission reductions provided as offsets for federal offsetting requirements must be surplus at time-of-use. Rule 2201 currently only requires that emission reductions be surplus at the time they were originally banked as ERCs. Since the District has continually adopted progressively more stringent rules for NO<sub>x</sub> and VOC, the available surplus adjusted credit for NO<sub>x</sub> and VOC in its ERC bank as a whole is significantly less under a surplus at time-use valuation than a surplus at time-of-original banking valuation.

The above analysis is borne out in recent Annual Offset Equivalency Reports showing that federal NSR offset requirements are more stringent for NO<sub>x</sub> and VOC. Moreover, the District expects this trend to extend into the near future. The trend does not appear to be an aberration or reversible. These results have been reviewed and discussed extensively with EPA, CARB, and stakeholders in a number of public actions including the District's 2019 – 2020 and 2020 – 2021 Offset Equivalency Reports and District Governing Board actions taken in September 17, 2020, November 20, 2020 and February 17, 2022.

In addition, to maintain Rule 2201 stringency for those ATC projects that are not new major sources or federal major modifications, the District will still require offsets under the current terms of Rule 2201 for NO<sub>x</sub> and VOC.

Finally, although the District will continue to require offsets for CO under the current terms of Rule 2201, the District is proposing to remove CO from the equivalency demonstration. Because EPA has designated the District as attainment for the federal CO standard, and the District has completed two 10-year maintenance plans for CO as

of 2018, CO is no longer subject to federal non-attainment NSR requirements. Therefore, no federal offset equivalency demonstration is required for CO. More importantly for SB 288 purposes, the District has never required federal offsetting requirements for CO. The District presently performs an SB 288 major modification determination in Rule 2201 to assess whether a project would trigger a federal major modification under the pre-reform (2002) version of federal NSR (i.e. referred to in the rule as a *SB 288 major modification*) because the District has substantive requirements (BACT and public notification) for projects that triggered federal NSR applicability in 2002. However, federal offset requirements were never required for an SB 288 major modification at any point in the history of Rule 2201. Therefore, removing CO from the equivalency demonstration will have no effect on the stringency of the CO offsetting requirements in the rule.

Thus, in consideration of the statute language, published CARB guidance, and the District's NSR program in effect on December 30, 2002, the proposed amendments to Rule 2201 will not weaken either the specific NSR requirements identified in CH&SC 42504(b) nor the NSR program as a whole, as required by CH&SC 42504(a) and (c). Therefore, both the specific and overall stringency requirements of CH&SC 42504 are satisfied.

Since District Rule 2301 is not listed by CARB among the rules that are subject to the requirements of SB 288,<sup>23</sup> the amendments to Rule 2301 are not subject to an SB 288 review.

## **VII. RULE DEVELOPMENT PROCESS**

As part of the rule development process, District staff conducted public workshops to present and discuss proposed amendments to Rule 1020, Rule 2201, and Rule 2301. District staff conducted public workshops in April 2022, June 2022, October 2022, and February 2023. Updates were also presented throughout the rulemaking process at multiple public meetings.

At the workshops, District staff presented the objectives of the proposed rulemaking project and provided the draft rule language. District staff solicited information from affected industries, source operators, and consultants on the proposed amendments. The comments received from the public, affected sources, interested parties, CARB, and EPA, during the public workshop process were incorporated into the draft rules as appropriate.

Pursuant to state law, the District is required to perform a socioeconomic impact analysis prior to adoption, amendment, or repeal of a rule that has significant air quality benefits or that will strengthen emission limitations. The proposed amendments have

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<sup>23</sup> <https://ww2.arb.ca.gov/our-work/programs/protect-california-air-act-2003-senate-bill-288/sb-288-district-nsr-rules>



neither effect; therefore, the proposed amendments are not subject to the socioeconomic analysis mandate.

**A. Public Workshops**

The District hosted a public scoping meeting on April 15, 2022 and public workshops on June 29, 2022, October 26, 2022, and February 15, 2023 to present the draft amendments to District Rules 1020, 2201, and 2301 and receive public comments.

**B. Public Hearing**

In accordance with CH&SC Section 40725, the proposed amendments to District Rules 1020, 2201, and 2301 and the final draft staff report will be made public available at least thirty days prior to the Governing Board public hearing to consider adoption of the proposed amendments.

**VIII. ANALYSIS**

**A. Cost Effectiveness and Socioeconomic Analyses**

Pursuant to CH&SC Section 40920.6(a), the District is required to analyze the cost effectiveness of new rules or rule amendments that implement Best Available Retrofit Control Technology (BARCT). The proposed amendments do not add BARCT requirements and therefore are not subject to the cost effectiveness analysis mandate.

Additionally, CH&SC Section 40728.5(a) requires the District to analyze the socioeconomic impacts of any proposed rule amendment that significantly affects air quality or strengthens an emission limitation. The proposed amendments have neither effect; therefore, the proposed amendments are not subject to the socioeconomic analysis mandate.

**B. Environmental Impact Analysis**

The District is proposing to amend existing District Rule 1020 (Definitions), District Rule 2201 (New and Modified Stationary Source Review Rule), and District Rule 2301 (Emission Reduction Credit Banking). The purpose of this rule amendment project is to amend District Rule 2201 to:

- (1) Remove NO<sub>x</sub>, VOC, and CO from the federal offset equivalency demonstration and replace the programmatic once-per-year demonstration with a programmatic permit-level demonstration for PM<sub>10</sub>, PM<sub>2.5</sub>, and SO<sub>x</sub>;
- (2) Adopt full federal offsetting requirements for NO<sub>x</sub> and VOC;

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- (3) In consultation with Federal Land Managers, require visibility modeling for projects that are new major sources and federal major modifications to ensure no adverse impact on mandatory Class I Federal areas; and
- (4) Add and revise numerous miscellaneous provisions as detailed in this report to address minor concerns identified in U.S. EPA's limited approval and limited disapproval<sup>[1]</sup> of the August 15, 2019 version the District Rule 2201.

The District is also proposing to amend District Rule 2301 to:

- (1) Clarify the definitions of shutdown and emission reduction credit (ERC) banking application timeliness;
- (2) Discontinue the banking of new greenhouse gas (GHG) emission reductions; and
- (3) Add administrative requirements for the District's Air Pollution Control Officer (APCO) to claim and use unbanked shutdown emission reductions (USER) from stationary sources as a form of offset as allowed under District Rule 2201.

Based on the District's assessment of the Rule Amendments Project, the District concludes that the Rule Amendments Project will not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and as such is not a "project" as that term is defined under the CEQA Guidelines § 15378. According to Section 15061 (b)(3) of the CEQA Guidelines, a project is exempt from CEQA if, "(t)he activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." As such, substantial evidence supports the District's assessment that assuming the Rule Amendments Project is a "project" under CEQA, they will not have any significant adverse effects on the environment.

Furthermore, the Rule Amendments Project is an action taken by a regulatory agency, the San Joaquin Valley Air Pollution Control District, as authorized by state law to assure the maintenance, restoration, enhancement, or protection of air quality in the San Joaquin Valley where the regulatory process involves procedures for protection of air quality. CEQA Guidelines §15308 (Actions by Regulatory Agencies for Protection of the Environment), provides a categorical exemption for "actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this

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<sup>[1]</sup> 87 FR 45730, *Limited Approval and Limited Disapproval of California Air Plan Revisions; San Joaquin Valley Air Pollution Control District; Stationary Source Permits*

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exemption.” No construction activities or relaxation of standards are included in this Rule Amendments Project.

Therefore, for all the above reasons, the Rule Amendments Project is exempt from CEQA. Pursuant to Section 15062 of the CEQA Guidelines, District staff will file a Notice of Exemption upon Governing Board approval.

## **C. Rule Consistency Analysis**

Pursuant to CH&SC Section 40727.2(g), a rule consistency analysis of the proposed rules is required if the proposed rules strengthen emission limits or impose more stringent monitoring, reporting, or recordkeeping requirements. The proposed rules do not strengthen emission limits or impose more stringent monitoring, reporting, or recordkeeping requirements; therefore, a rule consistency analysis is not required.

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Appendix A: Comments and Responses

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**APPENDIX A - SUMMARY OF SIGNIFICANT COMMENTS AND RESPONSES**

A - 1

*Final Draft Staff Report with Appendix for  
For Proposed Amendments to Rule 1020,  
Rule 2201, and Rule 2301*

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**SUMMARY OF SIGNIFICANT COMMENTS  
DRAFT AMENDMENTS TO RULE 1020 (DEFINITIONS),  
RULE 2201 (NEW AND MODIFIED STATIONARY SOURCE REVIEW RULE)  
RULE 2301 (EMISSION REDUCTION CREDIT BANKING)  
February 15, 2023**

The San Joaquin Valley Unified Air Pollution Control District (District) held a public workshop to present, discuss, and hear comments on the draft amendments to Rule 1020, Rule 2201, and Rule 2301 on February 15, 2023. Summaries of significant comments received since the public workshop are summarized below:

**Comments were received from the following:**

Kern Energy

The Western States Petroleum Association (WSPA)

**COMMENT:** While the District is incorporating language from the federal regulations in to the proposed Rule 2201, the District applies its own interpretation of these terms and, in some instances, exceeds the requirements set forth by EPA in its non-attainment regulations. Two examples are provided below: Fully Offset Emissions Units and Routine Replacement Emissions Units.

Fully Offset Emissions Units (Section 3.23.1.2): To be *fully offset*, and thus allowed to assess an increase as the difference between post-project potential emissions and pre-project potential emissions, offsets shall have been provided within 5-years of the current modification. This is impractical and not required by federal NSR.

Routine Replacement Emissions Unit (Section 3.38): Federal NSR treats a reconstructed source as an existing emission unit; however, the District Rule 2201 treats a reconstructed source as a new unit (Section 3.29.2). Kern Energy recommends removing Section 3.38.5 to resolve the contradiction. (Kern Energy)

**RESPONSE:** The District's proposed language allowing the use of pre-project potential to emit for an emissions unit that meets specific criteria (i.e. fully offset) is similar language approved by EPA for other air districts; therefore, the proposed provisions will remain in the draft rule.

Following recommendations from EPA, the District is proposing to clarify the distinctions between types of replacements (i.e. routine replacement emission units, replacement units, and routine repair, maintenance and replacement of components) and their implications under federal NSR versus projects that do not trigger federal NSR requirements. The proposed language in Rule 2201 that specifies that the replacement of a whole emissions unit that meets the definition in 40 CFR 51.165(a)(1)(xxi) shall be treated as an existing emissions unit is for

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the purposes of determining whether a project is subject to Federal NSR (i.e. a Federal Major Modification). Whereas the existing language in the definition of a Routine Replacement Emissions Unit that specifies that the replacement does not constitute a Reconstructed Source (as defined by Rule 2201) or a Reconstruction (as defined by any applicable New Source Performance Standard) is for the purpose of applicability of the District's NSR requirements.

**COMMENT:** The provisions of 40 CFR 51.165(a)(3)(ii)(C)(2) that have been proposed to be incorporated in to Rule 2201 are not applicable today and are not appropriate to include in the proposed Rule 2201. (Kern Energy)

**RESPONSE:** The provisions of 40 CFR 51.165(a)(3)(ii)(C)(2) are valid requirements and are still applicable and appropriate; therefore, the District's proposed language to incorporate these provisions will remain in the proposed Rule 2201.

**COMMENT:** The federal offset quantity is based on the difference between the post-project potential to emit and the federal baseline emissions per Section 3.19 of Rule 2201. This section should be amended to allow for the use of pre-project potential to emit as the baseline emissions as allowed under 40 CFR 51.165(a)(1)(xxv)(D), regardless of emissions unit type (Highly Utilized, etc.). (Kern Energy)

**RESPONSE:** As noted above, there are no provisions for using the pre-project potential to emit (except for existing units that have not yet begun normal operations) as the baseline emissions, except for the units meeting specific criteria (Highly Utilized and Fully Offset) as approved by EPA for other air districts.

**COMMENT:** The District should review visibility impacts and the need for Federal Land Managers (FLM) notifications only for sources within 100 km of a Class I Area. (WSPA)

**RESPONSE:** The District is required to provide written notice and conduct any necessary review and consultation with the Federal Land Manager (FLM) regarding any new major source or federal major modification under federal non-attainment NSR that may impact visibility in any Mandatory Class I Federal Area. The District and FLM intend to assess visibility impacts according to the framework contained in the FLM's Air Quality Related Values Work Group (FLAG) report from 2010. The FLAG principally focuses on projects triggering federal Prevention of Significant Deterioration (PSD), which are very large sources and modifications compared to non-attainment NSR, which the present amendments to Rule 2201 address. The District is currently working with the FLM to ensure the notification it will be providing the FLM contains the necessary



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and appropriate information for the FLM to judge the significance of the potential impact on visibility in a Mandatory Class I Federal Area.

**COMMENT:** The FLM should be limited to 45 days to review the completeness of the information provided by the District for potential visibility impacts. (WSPA)

**RESPONSE:** The District understands the concern with being able to continue to issue permits in a timely manner and is working with the FLM to put a protocol with timelines in place. The District in concurrence with the FLM will develop a policy outside of the rule which will contain a protocol for submitting project information and receiving a response from the FLM.

**SUMMARY OF SIGNIFICANT COMMENTS  
DRAFT AMENDMENTS TO RULE 1020 (DEFINITIONS),  
RULE 2201 (NEW AND MODIFIED STATIONARY SOURCE REVIEW RULE)  
RULE 2301 (EMISSION REDUCTION CREDIT BANKING)  
October 26, 2022**

The San Joaquin Valley Unified Air Pollution Control District (District) held a public workshop to present, discuss, and hear comments on the draft amendments to Rule 2201 and Rule 2301 on October 26, 2022. Summaries of significant comments received since the public workshop are summarized below:

**Comments were received from the following:**

Vector Environmental (Vector)

The Western States Petroleum Association (WSPA)

**COMMENT:** Proposed Rule 2201 language specifies that surplus emission reductions may only be used if the projected emission inventory used to develop the attainment plan explicitly includes the emissions from such previously shutdown or curtailed emissions units. Vector believes that the ERCs identified as growth in the attainment plans satisfy this requirement, regardless if they were generated from the shutdown or curtailment of an emissions unit or entire stationary source. The District should continue to use this procedure for ensuring that all surplus ERCs included in the District bank continue to be available for offsetting emission increases at new major sources and federal major modifications. (Vector)

**RESPONSE:** The District appreciates the comment and intends to continue to include all ERCs in the District's bank in attainment plans which makes all ERCs in the bank available for use for new major sources and federal major modifications, subject to the pre-baseline ERC usage caps.

**COMMENT:** Rule 2201 should clarify, in the definition of Actual Emissions, the assumption that a modified emission unit "has not yet begun normal operation" is applied after determining whether or not the proposed modification results in a new major source or federal major modification. (WSPA)

**RESPONSE:** The proposed Rule 2201 language is clear that pre-project baseline actual emissions used for determining if a project is a new major source or federal major modification is calculated pursuant to 40 CFR 51.165 (a)(1)(xxxv); whereas, the actual emissions is used for determining the offset liability of a project.

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**COMMENT:** For a Fully Offset Emissions Unit for Federal Offset Quantity calculations, the eligibility of should be extended to SO<sub>x</sub>, CO, PM<sub>10</sub>, and PM<sub>2.5</sub>. (WSPA)

**RESPONSE:** The District appreciates the comment and the proposed Rule 2201 language does not prohibit an emissions unit from being considered a Fully Offset Emissions Unit for Federal Offset Quantity calculations for SO<sub>x</sub>, CO, PM<sub>10</sub>, and PM<sub>2.5</sub>.

**COMMENT:** Is the term “net change in emission” a reference to the same term defined in 40 CFR 51.165(a)(1)(vi)? (WSPA)

**RESPONSE:** The District appreciates the comment and has revised the proposed language in Rule 2201 to eliminate this term to avoid any confusion with the terms used in 40 CFR 51.165.

**COMMENT:** The procedures for determining the quantity of federal offsets required needs to be revised to account for emission reductions previously provided as offsets for an existing emissions unit included in the project. Otherwise, the procedure could result in the same emission unit being offset multiple times (once for the District offset procedure and a second time for the federal offset procedure). (WSPA)

**RESPONSE:** The District appreciates the comment, and for NO<sub>x</sub> and VOC, the District included provisions in Sections 4.6.10 and 4.6.11 to exempt a source from additionally having to provide District offsets and essentially require the same emissions to be offset twice.

**SUMMARY OF SIGNIFICANT COMMENTS  
DRAFT AMENDMENTS TO RULE 1020 (DEFINITIONS),  
RULE 2201 (NEW AND MODIFIED STATIONARY SOURCE REVIEW RULE)  
RULE 2301 (EMISSION REDUCTION CREDIT BANKING)  
June 29, 2022**

The San Joaquin Valley Unified Air Pollution Control District (District) held a public workshop to present, discuss, and hear comments on the draft amendments to Rule 2201 and Rule 2301 on June 29, 2022. Summaries of significant comments received since the public workshop are summarized below:

**Comments were received from the following:**

The Western States Petroleum Association (WSPA)

**COMMENT:** Is it recommended that the NSR Rule continue to allow the use of pre-project potential to emit for calculating the baseline emissions form a project undertaken at a non-major source. (WSPA)

**RESPONSE:** The District appreciates the comment and intends to continue to allow the pre-project potential to emit to be used as baseline emissions for projects at non-major sources.

**COMMENT:** Is it recommended that the provisions of Rule 2201 allow the timing for the expiration of the five-year period for determination of a fully offset unit for federal offset purposes be based on the date of the issuance of the permit to operate (PTO). (WSPA)

**RESPONSE:** The District appreciates the comment and will maintain the expiration of the five-year period for determination of a fully offset unit for federal offset purposes be based on the date the authority to construct (ATC) was issued for a specified unit. This determination is based on the fact that surplus value of any actual emission reduction used in a project for a new major source or federal major modification is determined at the time of ATC issuance; therefore, this is the basis for the five-year period for determining a fully offset unit.

**COMMENT:** WSPA is opposed to any changes to Rule 2301 which would encumber or somehow limit the use of any GHG ERC. (WSPA)

**RESPONSE:** The District appreciates the comment and the District does not propose to limit the transfer or use of any ERC certificate beyond what is already contained in Rule 2301.