

United States Environmental Protection Agency, Region IX

Air Division

Technical Support Document

for

EPA's Notice of Proposed Rulemaking

for the

California State Implementation Plan

Sacramento Metropolitan Air Quality Management District

Rule 214 Federal New Source Review

Rule 203 Prevention of Significant Deterioration

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Introduction

Part C of title I of the Clean Air Act (CAA or Act) contains the provisions for the Prevention of Significant Deterioration (PSD) of air quality in areas designated as “attainment” or “unclassifiable” for the national ambient air quality standards (NAAQS). Part D of title I of the Act contains the requirements for areas designated “nonattainment” for any of the NAAQS. Both parts C and D of the Act require pre-construction permit programs for certain new or modified stationary sources of pollutants. The requirements under part C, referred to as “PSD New Source Review” (PSD) apply to certain new or modified sources that would be located within attainment areas, and apply to all regulated pollutants, except those pollutants for which an area has been designated as “nonattainment.” The requirements under part D, referred to as “Nonattainment NSR,” (NSR) apply to certain new or modified sources of nonattainment pollutants in nonattainment areas. Collectively, the pre-construction permit requirements related to PSD and Nonattainment NSR are commonly referred to simply as “NSR.” Both of these programs apply to “major” stationary sources and “major modifications” as those terms are defined in 40 CFR Part 51, Subpart I. In addition to the regulation of major stationary sources, states are also required to adopt a program to provide for the regulation of the construction and modification of minor stationary sources and minor modifications at major sources, to assure that the NAAQS are achieved and/or maintained. These pre-construction requirements are commonly referred to as “minor NSR.” (See 40 CFR 51.160-164)

NSR Program SIP Revision Submittals

Rule 214 – *Federal New Source Review (NSR)* was adopted by the Sacramento Metropolitan Air Quality Management District (SMAQMD or District) on October 28, 2010 and submitted to EPA via the California Air Resources Board (ARB) by a letter dated December 7, 2010. ARB is the governor’s designee for submitting official revisions of the California State Implementation Plan (SIP) to EPA. Submitted Rule 214 will implement the federal nonattainment NSR program requirements.

Rule 203 – *Prevention of Significant Deterioration (PSD)* was adopted by SMAQMD on January 27, 2011 and submitted to EPA via the ARB by a letter dated January 28, 2011. Submitted Rule 203 will implement the federal attainment PSD program requirements.

Background

The current SIP-approved NSR program for SMAQMD is contained in Rules 201 – *General Permit Requirements* and 202– *New Source Review*, which contain both the general and specific program requirements for both attainment and nonattainment pollutants, and major and minor stationary sources. Upon approval into the SIP, Rules 214 – *Federal New Source Review* and 203–*Prevention of Significant Deterioration* will replace current SIP Rule 202 – *New Source Review*, which was approved into the SIP by EPA on June 19, 1985 (50 FR 25417).

In 2002, EPA promulgated changes to the NSR regulations for preparation, adoption, submittal and approval of implementation plans governing the NSR programs mandated by parts C and D of title I of the Act. These changes to the major NSR program, commonly referred to as “NSR Reform,” obligate states to develop and submit to EPA new NSR regulations for nonattainment areas, as well as attainment areas for states that elect to implement the PSD program. In response to NSR Reform, EPA’s reclassification of the Sacramento Metro Air Basin to a severe ozone nonattainment area (See 75 FR 24409, May 5, 2010) and EPA’s Greenhouse Gas SIP call (See 75 FR 77698, December 13, 2010), SMAQMD has submitted Rules 214 and 203 to fulfill these program requirements. This TSD contains EPA’s evaluation of new Rule 214 – *Federal New Source Review* and revised Rule 203 – *Prevention of Significant Deterioration*.

The CAA defines “nonattainment areas” as air quality planning areas that exceed the national primary or secondary NAAQS for the given criteria pollutant (or that contribute to ambient air quality in a nearby area that does not meet the NAAQS). SMAQMD is currently designated as nonattainment for the 8 hour ozone (severe), PM₁₀, and PM_{2.5} NAAQS. Therefore Rule 214 must apply to VOC, NO_x, PM₁₀, PM_{2.5} and SO_x emissions (VOC, NO_x and SO_x are included as precursors to ozone or PM). Rule 203 applies to the attainment pollutants, which include NO₂, SO₂, TSP, CO and lead, as well as other pollutants subject to regulation under the CAA. SMAQMD does not take any credit in its attainment plans for any emission reductions achieved as part of these NSR regulations. Both rules only apply to new major sources or modifications which occur at major sources. Existing District SIP Rule 201 – *General Permit Requirements* contains the administrative program requirements for sources to obtain a permit prior to construction and the general evaluation criteria the District must use to grant such permits.

Rule Summaries

Rule 214 – *Federal New Source Review*

Rule 214 is comprised of four sections: Section 100 – General, Section 200 – Definitions, Section 300 – Standards, and Section 400 – Administrative Requirements. Section 100 includes provisions that outline the purpose and applicability of the rule, as well as specific exemptions from all or portions of the rule. Section 200 contains 44 definitions, and clarifies which other rules may be used to define a term if it is not defined within this section. Section 300 contains the standards that apply to projects undergoing new source review, including Best Available Control Technology (BACT) and emission offset requirements. Section 400 contains administrative requirements, including provisions for determining when an application is complete, which air quality models must be used, public notice requirements, requirements for a final action, specific requirements solely for power plant applications, and other administrative provisions. The scope of new Rule 214 – *Federal New Source Review* is limited in that it only applies to new major sources and all modifications at existing major sources, but not minor sources. The District has also made revisions to Rule 202 so that it now only addresses new source review requirements pursuant to state law, which includes both minor and major sources, but the District is not submitting the revised Rule 202 for SIP approval. Instead revised Rule 202 will be a local rule, enforceable only under state law. New Rule 214 will take the place of current SIP approved Rule 202, as it pertains to the federal NSR program.

The District has made several revisions to the old Rule 202 provisions carried over into new Rule 214. The revisions clarify that Rule 214 only applies to major sources and all modifications made at such sources, also applies to major agricultural sources, and only applies to National Ambient Air Quality Standards but not State Ambient Air Quality Standards. The District removed provisions applicable to CO and Lead because the District is now classified as attainment for both of those pollutants, and removed provisions to require fugitive emissions to be included when determining the potential to emit of any emission unit or stationary source. The District added provisions to eliminate requirements applicable to PM₁₀ emissions upon EPA designation of the air basin as attainment for PM₁₀ and require fugitive emissions to be included when determining the potential to emit of an emission unit or stationary source only if the source belongs to one of the listed source categories.

Rule 203–Prevention of Significant Deterioration

Rule 203–*Prevention of Significant Deterioration* basically incorporates by reference the federal PSD program as codified in Title 40 of the Code of Federal Regulations (CFR) Part 52.21. It is comprised of four sections: Section 100 – General, Section 200 – Definitions, Section 300 – Standards, and Section 400 – Administrative Requirements. Section 100 includes provisions that outline the purpose and applicability of the rule, with some exclusions – it incorporates the provisions of 40 CFR Part 52.21 by reference, and provides some modeling exemptions for greenhouse gas emissions. Section 200 contains eight definitions that are intended to clarify or replace the definitions provided in 40 CFR Part 52.21. Section 300 specifies the requirements that an owner or operator must comply with, such as obtaining a PSD permit and paying permit fees. Section 400 contains the administrative requirements for public notice of permit actions. Rule 203–*Prevention of Significant Deterioration* only applies to new major sources and major modifications at existing major sources. New Rule 203 will take the place of current SIP approved Rule 202, as it pertains to the federal PSD program.

Rule Evaluation

For this Technical Support Document (TSD), we have reviewed both the Rule 214 and Rule 203 SIP submittals to ensure that they meet the requirements of section 110 and parts C and D of title I of the Act and current implementing regulations at 40 CFR 51.160 through 51.166. We also relied on the following materials in our review: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (see 57 FR 13498, April 16, 1992), EPA’s Emission Offset Interpretive Ruling (40 CFR part 51, Appendix S), and EPA’s policy document entitled, “Improving Air Quality with Economic Incentive Programs” that was published in January 2001. EPA has condensed the approval criteria contained in these various materials in this TSD, which describes reasons for our proposed action on the Rule 214 and Rule 203 SIP submittals for SMAQMD.

General Nonattainment NSR Requirements (Rule 214)

The Act requires all States with nonattainment areas to submit a NSR program that contains the following nonattainment NSR provisions. To demonstrate that SMAQMD has met each

provision, EPA identifies the section(s) of Rule 214, or other rules which satisfy the listed requirement. Where necessary, a detailed discussion accompanies deficiencies in the rules that have been identified through this review.

1. Provisions to assure that calculation of emissions offsets, as required by section 173(a)(1)(A), are based on the same emissions baseline used in the demonstration of reasonable further progress.

First we note that the emissions inventories that have been prepared for the two nonattainment plans (Ozone and PM₁₀) and for the demonstration of reasonable further progress (RFP) are both based on *actual* emissions. An attainment plan for PM_{2.5} is not due until December 14, 2012. For new or modified major sources of VOC, NO_x, SO_x and PM₁₀, Rule 214 Section 302 requires offsets to be provided when emission increases exceed specified thresholds. Rule 204 – Emission Reduction Credits (ERCs) is used to provide emission reductions that satisfy the emission offset requirements. Rule 204 requires ERCs to be based on “actual” emission reductions. Thus, the basis for the demonstration of RFP and the calculation of NSR emissions offsets is the same (i.e., actual emissions).

Second, regarding the amount of offsets that are necessary to show noninterference with RFP, EPA presumes that so long as a new source obtains offsets in an amount equal to or greater than the amount specified in the applicable offset ratio (or, where the statute does not specify an offset ratio, in an amount equal or greater than 1:1), the new source will not interfere with RFP. Rule 214 Section 303 provides the ratios for federal offsets purposes, which are equal to or greater than 1:1 for nonattainment pollutants. These offset ratio requirements ensure that the program for permitting of new or modified major sources will not interfere with RFP. These provisions satisfy the statutory requirement.

2. Provisions to assure, pursuant to section 173(c)(1), that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be enforceable by the time of issuance of the permit, and in effect by the time the new or modified source commences operation.

Section 410.3 – Emission offsets, paragraph “e” requires that such reductions be enforceable and paragraph “f” requires that the credits be surrendered prior to commencing operation of the new or modified source. These provisions satisfy the statutory requirement.

3. Provisions to assure that emissions increases from new or modified major stationary sources are offset by real reductions in actual emissions as required by section 173(c)(1).

Section 302.4 requires offsets to be obtained pursuant to Rule 204 – *Emission Reduction Credits (ERCs)*. Rule 204 requires ERCs to be based on actual emission reductions and includes within the definition of this term a requirement that such reductions be real, enforceable, quantifiable and permanent. While Rule 204 is not approved into the SIP, the rule was submitted for SIP approval on December 19, 1997. Considered collectively, these two provisions in the submitted NSR rules assure that emissions increases from new or modified

major stationary sources are offset by real reductions in actual emissions as required by section 173(c)(1).

4. Provisions, pursuant to section 173(c)(2), to prevent emissions reductions otherwise required by the Act from being credited for purposes of satisfying the part D offset requirements.

Section 302.4 requires offsets to be obtained pursuant to Rule 204 – *Emission Reduction Credits (ERCs)*. Rule 204 requires ERCs to be based on actual emission reductions, which in turn requires such reductions to be surplus to any other reductions required by the CAA. (See Section 201.2) While Rule 204 is not approved into the SIP, the rule was submitted for SIP approval on December 19, 1997. These provisions prevent emissions reductions otherwise required by the Act from being credited for purposes of satisfying the part D offset requirements as required by section 173(c)(2).

5. Provisions, pursuant to section 173(a)(5), that, as a prerequisite to issuing any part D permit, require an analysis of alternative sites, sizes, production processes, and environmental control techniques for proposed sources that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 401 requires an applicant for a major source or major modification to prepare an analysis consistent with the requirements of CAA section 173(a)(5); and that the Air Pollution Control Officer (APCO) make necessary findings prior to issuance of an Authority to Construct. This provision satisfies the section 173(a)(5) requirement.

6. Definition of “stationary source” that certain internal combustion engines must be subject to control under State programs (i.e., those not used for transportation purposes), but excluding the category of “nonroad engines.” [See section 302(z) of the Act.]

SIP approved Rule 201 – *General Permit Requirements*, provides an exemption from permitting requirements for various types of emission units listed in Section 103 of the rule. Section 103.2 exempts internal combustion engines fired with natural or liquefied petroleum gas, and diesel or gasoline engines if the cylinder displacement is less than 16 liters. Section 103.1 exempts various mobile sources which are classified as nonroad engines. All other engines are therefore subject to permit requirements as part of the stationary source.

In addition, SMAQMD has submitted a revised version of Rule 201, which provides a similar exemption for mobile sources, and reduces the exemption for all other internal combustion engines to 50 brake horsepower or less. Therefore all engines, down to a reasonable de minimis exemption threshold, are required to obtain a permit from the District. We find that the exclusion of de minimis emissions from these categories of small stationary engines from the permitting program to be approvable.

7. Provisions, pursuant to section 173(a)(3), to assure that owners or operators of each proposed new or modified major stationary source demonstrate that all other major stationary sources under the same ownership in the State are in compliance with the Act.

Section 412.2 requires the APCO to deny an Authority to Construct unless the permit applicant demonstrates that all major stationary sources located within California owned or operated by the applicant are in compliance with all requirements of the Act (or on a schedule to come into compliance). This provision satisfies the requirements of section 173(a)(3).

- 8a. Definitions which contain language which is either identical or equivalent to that found in CAA Section 171, 40 CFR 51.100, and 51.165(a)(1).

In most cases, the definitions in Section 200 are either identical to or equivalent to language used in the CAA and/or CFR. In some instances, the definitions do not match the federal definitions as closely, but we have determined that they satisfy the federal criteria. Those specific definitions are discussed below. All section references are to 40 CFR Part 51, unless otherwise noted. Also see Section 8b. below for a discussion of specific definitions affected by implementation of the NSR Reform requirements, and see Section 8c below for a discussion of the deficiencies pertaining to the required definitions.

Allowable Emissions

Rule 214 does not provide a definition for this term. Instead the rule provides a definition for the term "Historic Potential Emissions" that is sufficiently similar to and has the same meaning for carrying out the NSR program. In addition, for the purposes of determining whether a project will result in a Federal Major Modification, the rule uses the section 165(a)(1)(xi) definition. See paragraph 8b below for additional information.

Construction

Rule 214 does not provide a definition for this term, but EPA believes the common usage definition of this term is adequate for the purposes of determining the requirements of Rule 214.

Commence

Rule 214 does not provide a definition for this term. Instead the rule provides a definition for the term "Construction Commences," that is sufficiently similar to and has the same meaning.

Lowest Achievable Emission Rate (LAER)

Rule 214 does not provide a definition for this term. Instead the rule provides a definition for the term "Best Available Control Technology (BACT)," which incorporates the definition of LAER, by specifying that BACT is the most stringent of 1) applied in practice technology (analogous to LAER standard) or 2) the technology that is technically feasible and cost-effective (analogous to BACT standard). This is an acceptable substitution.

Net Emission Increase

Rule 214 does not provide a definition for this term and does not use the term within the rule. The 51.165 definition of this term contains seven different subsections. Rule 214 defines the term “Creditable Increases and Decreases” to have the same meaning as subsections C, D, E and F of the term Net Emission Increase, which are the provisions detailing which emission increases and decreases are creditable. The portion it does not include (subsections A, B and G) pertains to performing netting calculations, which are not permissible under Rule 214, except to the extent that they are provided under the definition of a Federal Major Modification. See paragraph 8b below for additional information regarding the definition of Federal Major Modification. This is an acceptable substitution.

Regulated NSR Pollutant

Rule 214 does not provide a definition for this term, but does define the term “Regulated Air Pollutant” as any pollutant for which there is a NAAQS or a precursor to such air pollutant. Since this rule applies only to non-attainment pollutants, this definition plus the Section 234 definition of Precursor, provide an overall definition substantially similar to the section 165 definition for this term. This is an acceptable substitution.

Replacement unit

Rule 214 does not provide a definition for this term, but this term is only used in two instances within 40 CFR 51.65: the definitions of Net Emission Increase and Emission unit. In both cases, the phrase is used to allow special treatment of such sources when determining whether a proposed project will result in a major modification. To the extent that Rule 214 requires an applicant to make this determination by applying the definition of Federal Major Modification, which as noted below in paragraph 8b, is defined as the section 165(a)(1)(v) definition of Major Modification, it includes by reference all of the section 165 definitions for each term used within that definition, including Net Emission Increase and Emission Unit. Therefore Rule 214 adequately defines this term.

Secondary Emissions

Rule 214 does not provide a definition for this term. The only place in section 165 that this term is used is within the definition of Potential to Emit (PTE), clarifying that secondary emissions are not included when calculating PTE. Rule 214 provides a similar distinction within its definition of PTE, but without using the term Secondary Emissions. Therefore, the rule does not need to explicitly define this term.

Significant

Rule 214 does not provide a definition for this term. Instead the rule incorporates the appropriate significance thresholds for each pollutant, based on the District’s nonattainment status for each pollutant, consistent with the 40 CFR 51.165 definition of Major Modification. This is an acceptable substitution.

Temporary clean coal technology demonstration project, Clean coal technology, and Clean coal technology demonstration project

The above terms related to coal-fired facilities are not included in Rule 214. These terms are only used in section 165 within the definition of Major Modification, where it states that the

installation of such projects does not constitute a major modification. Rule 214 does not include such an exclusion from its definition of the term major modification, thus there is no need to define these terms in Rule 214.

Volatile organic compounds (VOC)

Rule 214 does not provide a definition for this term. Instead the term is defined in SIP approved Rule 101 – General Provisions and Definitions. This definition is consistent with the federal definition provided in 40 CFR 51.100(s) for this term.

- 8b. Definitions which contain language which are not either identical or equivalent to that found in 51.165(a)(1), related to implementation of the NSR Reform requirements.

This section provides a detailed discussion of specific definitions affected by the Districts implementation of the NSR Reform requirements. This includes the following terms, which are not otherwise defined in Rule 214. Allowable emissions, Baseline actual emissions, Electric utility steam generating unit, Emission unit, Major modification, Net emission increase, Projected actual emissions, Significant, Significant emissions increase, and Significant net emissions increase.

On December 31, 2002, EPA revised regulations governing federal NSR programs mandated by parts C and D of title I of the Act. (See 67 FR 80186, December 31, 2002). These revisions provide new optional calculation methods for determining whether a proposed project will result in a major modification. In order to meet the requirement to include the new NSR Reform calculation methods in their District program, Rule 214 adopts a definition for a new term – Federal Major Modification (FMM), which is defined the same as a Major Modification in section 51.165(a)(1)(v). The FMM definition also states that all terms used in the definition of Major Modification are as defined in 40 CFR 51.165(a)(1), with the clarification that the term “reviewing authority” shall mean Sacramento Metropolitan AQMD, and the term “major stationary source” shall mean a Major Stationary Source as defined in Section 224 (which incorporates the appropriate major source thresholds for the non-attainment pollutants), and that the term “significant” means the rate of emissions that would equal or exceed the rates specified in Section 223 (which incorporates the appropriate major modification thresholds for the non-attainment pollutants). Thus all terms used for the purposes of determining whether a project constitutes a FMM (see above list) are defined consistently with the provisions of 40 CFR 51.165(a)(1).

- 8c. Definitions which EPA has determined are deficient, in that they are not either identical or equivalent to that found in CAA Section 171, 40 CFR 51.100, and 51.165(a)(1). The absence of these definitions has been noted in the Federal Register notice proposing action on this submittal, as a requirement that must be added or addressed for full approval.

Begin actual construction

Rule 214 does not provide a definition for this term. While this term is only used within the definition of the terms Creditable Increases and Decreases and Construction Commences, the definition of this term is important to clarify that certain tasks must be completed in order for a

project to “begin actual construction.” The lack of this definition is a deficiency. To correct this deficiency, SMAQMD must submit a version of Rule 214 for SIP approval which includes a definition for this term.

Federally enforceable

Rule 214 does not define or use this term. Instead the phrase “enforceable as practical matter” is used throughout the rule. The use of this phrase creates a program deficiency since it does not ensure the legal enforceability element that is required if the term “federally enforceable” is not used. To correct this deficiency, SMAQMD must either 1) define the term federally enforceable and use it throughout the rule as appropriate, or 2) use a term that ensures legal as well as practical enforceability of specified provisions throughout the rule.

Necessary preconstruction approvals or permits

Rule 214 does not provide a definition for this term. While this term is only used within the definition of the term “Construction Commences,” the definition of this term is important to clarify that a source may only commence construction when it has all “necessary preconstruction approvals or permits. The lack of this definition is a deficiency. To correct this deficiency, SMAQMD must submit a version of Rule 214 for SIP approval which includes a definition for this term.

- 9a. Provisions, pursuant to 40 CFR 51.161 that require opportunity for public comment, as well as the consideration of any comments received during this period in the final permit determination. These provisions must also ensure the availability of all information relevant to the proposed permit during the comment period, and allow for a public hearing upon request.

Sections 406, Publication and Public Comment, and 407, Public Inspection, ensure that the requirements of 51.161 are met. These sections require the District to provide a 30 day public notice for each new source when the facility’s emissions exceed 12,500 lbs/quarter (25 tpy) of VOC or NO_x, 22,812 lbs/quarter (45.6 tpy) of SO_x, 7,300 lbs/quarter (14.6 tpy) of PM₁₀ and 100 tpy of PM_{2.5}, or for modified sources when the emissions increases exceed 12,500 lbs/quarter (25 tpy) of VOC or NO_x, 20,000 lbs/quarter (40 tpy) of SO_x, 7,300 lbs/quarter (14.6 tpy) of PM₁₀ and 10 tpy of PM_{2.5}. In addition, any project that increases the facility’s potential to emit by greater than the following thresholds must also be public noticed: 10 tpy for VOC, NO_x and PM_{2.5}, 27.3 tpy for SO_x, and 14.6 tpy for PM₁₀. Thus all major source and major modification actions and some minor modifications made at major sources require appropriate public notice. The provisions also require an opportunity to request a public hearing, and that all related materials be made available for inspection.

- 9b. For districts which have submitted a minor source NSR permitting program: provisions, pursuant to 40 CFR 51, sections 160 through 164, which contain substantive requirements for minor sources. These requirements include public notice, opportunity for—and consideration of—public comment, and the demonstration that a minor source will not contribute to a violation of any national standard or the area control strategy for attainment.

SMAQMD currently has a minor source NSR program approved in the SIP, therefore the requirement to include such provisions are applicable. We must evaluate whether replacing SIP approved Rule 202 with new Rule 214 and Rule 203 will create any SIP deficiencies for minor source permit requirements. Rule 214 does not apply to minor sources, but it does apply to minor modifications made at major sources. Rule 203 only applies to new major sources and major modifications and thus does not apply to minor sources.

SIP Rule 201 – *General Permit Requirements*, contains most of the provisions required to satisfy the requirements of 40 CFR 51, sections 160 through 164 for minor source programs. Included in Rule 201 is Section 300 – Standards, which requires a source to obtain a permit prior to construction, and that the APCO must deny a permit, unless the project is in compliance with all SIP requirements and will not violate any rules or regulations enforceable by the APCO, including a provision that the project shall not cause or contribute to a violation of the NAAQS. Rule 201 does not however contain any public notice requirements. The required public notice provisions are currently found in SIP Rule 202 – *New Source Review* and in the recently adopted local version of Rule 202 – *State New Source Review*, which SMAQMD has not provided as a SIP submittal. The net effect of replacing current SIP Rule 202, with submitted Rules 214 and 203 is that once approved, the SIP will no longer contain any public notice requirements for minor sources. Thus, this is a minor source program deficiency. The SIP must contain adequate public notice requirements for permit actions which occur at minor sources. EPA does believe, however, that 40 CFR 51.161(a) allows for the tailoring of the public participation process for less environmentally significant sources and modifications. See, generally, 60 FR 45530, at 45548-45549 (August 31, 1995).

To correct this deficiency, SMAQMD must either submit Rule 202 for SIP approval, submit an analysis showing why a minor NSR program for minor sources is not needed, submit an approvable justification for why this level of public notice is appropriate, or make appropriate revisions to Rules 201, 203 and/or 214, as applicable, to provide minor source public notice requirements and submit the revised rule(s) for SIP approval. The absence of this provision has been noted in the Federal Register notice proposing action on this submittal, as a requirement that must be changed or added for full approval.

10. Provisions, pursuant to 40 CFR 51.118(a), to assure that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice.

Section 403, Air Quality Models, states that "Credit shall not be given for stacks higher than that dictated by good engineering practice." This provision satisfies the regulatory requirement.

11. Provisions, pursuant to 40 CFR 51.165(a)(3)(ii)(C), which limit "prior shutdown" emission reduction credits (ERCs), i.e., ERCs that are generated by facilities that have already ceased operation. While these credits can be allowed, the regulations prohibit such credits in two cases: (1) if the attainment plan has been disapproved, or, (2) if an attainment plan or other part D required submission is delinquent.

At present, SMAQMD has submitted all plan revisions currently required under part D of title I of the Act, and all of these plan revisions have been found to be complete (or have been deemed complete by operation of law). Therefore credit for prior shutdown is allowed so long as the other requirements in 40 CFR 51.165(a)(3)(ii)(C) are met. Rule 204 – *Emission Reduction Credits (ERCs)* requires ERCs to be based on actual emission reductions and that such reductions, including those from source shutdowns, meet the basic requirements of being surplus, permanent, quantifiable, and federally enforceable. In addition, Section 201.4 of Rule 204 restricts the use of emission reductions from shutdown operations in such a manner as to ensure that the use of such reductions remains consistent with the District’s attainment plan. Thus, credit for prior shutdowns under Rule 214 is acceptable.

12. Provisions, pursuant to 40 CFR 51.165(a)(5)(ii), which require new source review for a source or modification which becomes major due to a relaxation in a federally-enforceable limit. Such sources and modifications are subject to new source review “as though construction had not yet commenced.”

Rule 214 does not contain such a provision. This omission is a deficiency. To correct this deficiency, the District must submit a revised version of Rule 214 for SIP approval that contains such a provision.

13. Provisions, pursuant to 40 CFR 51.307(b)(2), which identifies additional requirements for NSR for any new major source or major modification, proposing to locate in a nonattainment area, that may have an impact on visibility in any mandatory Class I Federal Area.

Rule 214 does not contain such a provision. This omission is a deficiency. To correct this deficiency, the District must submit a revised version of Rule 214 for SIP approval that contains such a provision.

14. Provisions, pursuant to 40 CFR 51.165(a)(1)(iv)(C), which require that fugitive emissions be included in the major source applicability determination if the source belongs to one of the source categories listed in this section. Otherwise, fugitives may be excluded from the applicability determination.

The definition of “major stationary source” in Section 224 of Rule 214 states that fugitive emissions are not to be counted when determining the potential to emit of the facility, unless the facility is one of the categories of stationary sources included in Rule 207 – *Title V – Federal Operating Permit Program*. While this list is the same list required by CFR 51.165(a)(iv)(C), Rule 207 is not SIP approved nor has it been submitted for SIP approval. While it is acceptable to cross reference provisions in other rules, the rules must be SIP approved, or at least submitted for SIP approval. Therefore the rule requires such sources to include their fugitive emissions when determining major source applicability. To address the enforceability of this provision, the District must include the list of source categories within Rule 214 or reference a SIP approved rule for this list.

15. Provisions, pursuant to section 173(a)(2), which require LAER, for a major source or major modification.

Section 204 defines BACT as the most stringent of several options. Section 204.1 a. requires the most effective emission limit which has been used for the specific type of equipment, unless it has not been achieved in practice. This is consistent with the definition of LAER as defined in section 165 (a)(1)(xiii). Section 301 requires new major stationary sources to apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts. For major modifications, the regulation requires BACT for each regulated NSR pollutant for which there is a significant emissions increase at the stationary source. These provisions satisfy the statutory requirement.

General Prevention of Significant Deterioration (PSD) Requirements (Rule 203)

The Act requires all States to submit a PSD program consistent with the requirements of 40 CFR 51.166. Rule 203 does this by incorporating by reference specific provisions of 40 CFR 52.21 necessary to implement a state PSD program. 40 CFR 52.21 contains the Federal Implementation Plan (FIP) used by EPA to implement the required PSD program in areas that do not have a SIP approved PSD program. To the extent that Rule 203 incorporates the provisions of 40 CFR 52.21 without revising those provisions, those provisions are consistent with the requirements of 40 CFR 51.166.

The following sections of 40 CFR 52.21 are specifically excluded from incorporation into Rule 203: subsections (a)(1) Plan Disapproval, (b)(55-58) Equipment Replacement Program (ERP) definitions struck down by DC Circuit Court but not yet removed from the CFR, (f) Reserved, (g) Redesignation, (i)(1)((i-v) and (ix-xi)), (i)(6-8) Specific Exemptions, (p)(6-8) Class I Variances by the Governor, (q) Public Participation, (s) Environmental impact statements, (t) Disputed permits or redesignations, (u) Delegation of authority, (v) Innovative control technology, (w) Permit rescission, (x) Reserved, (y) Reserved, (z) Reserved, (aa) PALs and (cc) ERP provisions struck down by DC Circuit Court. EPA has reviewed these exclusions and, except for sections (q) and (aa), concurs that these excluded sections are not necessary to implement a PSD program. For section (q), Rule 203 provides its own specific definition for this term, which includes the necessary public notice and hearing provisions required by a PSD program. For section (aa), please see the discussion below in the section entitled New Source Review Reforms, regarding the District's equivalency demonstration which provides a justification for excluding the section (aa) requirements.

In addition, Rule 203 revises the incorporated definition of the following terms: Actual Emissions, Baseline Actual Emissions, Major Modification, Net Emission Increase, and Potential to Emit. In each case, the revised definitions reflect the definitions that were in effect prior to EPA's 2002 adoption of the NSR Reforms. The intent of these revisions is that Rule 203 provides a current PSD program, but excludes all elements of the NSR Reforms regarding calculating emission increases. 40 CFR 51.166 (a)(7)(iv) states that the plan may deviate from using the emission calculation procedures required by paragraphs (a)(7)(iv)(a)-(f) if the State specifically demonstrates that the submitted provisions are more stringent than or at least as

stringent in all respects. EPA is proposing to find that SMAQMD provided such a demonstration with its SIP submittal of Rule 203 (see attachment).

While reviewing the equivalency demonstration provided by SMAQMD, EPA noted that several of the bases for its demonstration are based on California Clean Air Act (CA CAA) requirements, which apply to all Districts in California. Since EPA has several pending NSR/PSD SIP submittals from California Districts with similar issues relating to excluding certain NSR Reform provisions, we have reviewed and analyzed the information SMAQMD provided in light of CA CAA and its impact on the NSR Reforms for all California Districts. Please see the section of this TSD labeled “New Source Review Reforms” for additional information. Based on this review, EPA is proposing to find that it is acceptable for SMAQMD to not incorporate the NSR Reform provisions into their SIP approved NSR programs, since the same level of control will be required for modified sources, with or without inclusion of these provisions in the SIP, and their programs will not be any less stringent than the federal program.

New Source Review Reforms

California Clean Air Act – New Source Review Program

The air quality in California has historically been some of the worst in the nation. In light of this fact, California has always been at the forefront in implementing strict air quality regulations to address the state’s serious air quality problems.

In 1959, the State passed its first air quality standards for total suspended particulates, photochemical oxidants, sulfur dioxide, nitrogen dioxide, and carbon monoxide. These state standards were amended in 1969 by the Air Resources Board. At that time, the California ambient air quality standard for ozone was lower than the federal standard, thus most of California was exceeding the state standard for Ozone. As a result, most California Air Pollution control agencies had developed permitting programs that contained non-attainment new source review requirements such as Lowest Achievable Emissions Rate (LAER) and offsets.

In 1988, California adopted the California Clean Air Act of 1988 (California CAA). This legislation established new preconstruction review requirements for new and modified sources. It established uniform emission thresholds that trigger control and offset requirements for ozone (VOC and NO_x), carbon monoxide (CO), sulfur dioxide (SO₂) and nitrogen dioxide (NO₂) at levels significantly lower than the federal thresholds in effect at the time of adoption. These thresholds are even lower than the thresholds established two years later by the federal Clean Air Act Amendments of 1990 (federal CAA).

Under both state and federal requirements, all ozone nonattainment areas were classified according to the severity of the ozone violations measured for each area. Instead of a single major source threshold for all areas, the federal CAA set new major source and major modification thresholds of 100 and 40 tons per year (tpy) respectively, for areas classified as moderate or marginal; 50 and 25 tpy respectively, for areas classified as serious; 25 and 25 tpy respectively, for areas classified as severe; and 10 and 0 tpy respectively, for areas classified as

extreme. These thresholds are used to determine when a proposed project requires the application of LAER and emission offsets.

In comparison, the California CAA set thresholds for when project emissions trigger the application of California version of Best Available Control Technology (BACT) and offsets. (Note that CA BACT is defined in such a manner as to be equivalent to federal LAER requirements.) The application of CA BACT is triggered for emission increases of 25 lb/day in areas classified as moderate and 10 lbs/day in areas classified as serious, severe or extreme. In addition, some California Districts have adopted even lower CA BACT thresholds of two and zero lb/day. The requirement to provide offsets is triggered for all emission increases, once a facility's emissions exceed 25 tpy in areas classified as moderate; 15 tpy in areas classified as serious; and 10 tpy in areas classified as severe or extreme.

California and Federal BACT/LAER and Offset Thresholds for 1-hr Ozone

CA Ozone Classification (ppm)	Marginal	Moderate (0.09 - ≤0.12)	Serious (0.13 - ≤0.15)	Severe (0.16 - ≤0.20)	Extreme (>0.20)
CA BACT1 (tpy) [lb/day]	NA	4.6 [25]	1.8 [10]	1.8 [10]	1.8 [10]
CA Offset ¹ (tpy)	NA	25	15	10	10
EPA Ozone Classification (ppm)	Marginal (0.121 - <0.138)	Moderate (0.138 - ≤0.160)	Serious (0.160 - ≤0.180)	Severe (0.180 - ≤0.280)	Extreme (>0.28)
Federal Major Source (tpy) (Triggers both LAER & Offsets)	100	100	50	25	10
Federal Major Mods (tpy) (Triggers both LAER & Offsets)	40	40	25	25	0

Note: California design values are lower than federal values for the same classification.

NSR Reform Program Requirements

On December 30, 2002, EPA published a final rulemaking action to provide additional flexibility in the permitting of modified sources subject to the federal major source NSR and PSD programs. EPA's intent was to allow existing sources additional flexibility in the NSR/PSD permitting process that would encourage facilities to make process improvements or undertake energy efficiency projects that would provide additional environmental benefits by reducing emissions on a capacity basis. In 2005, a court vacated two key NSR Reform provisions², but also upheld the three key remaining provisions. These provisions all pertain to how emission increases from proposed modifications of existing sources are calculated.

One provision allows an existing facility to set a Plantwide Applicability Limit (PAL), which in effect is a facility-wide emissions cap for a specific pollutant. Once the PAL is determined, a facility can make any physical modification or change in the method of operation, which might otherwise trigger a major modification, without obtaining a NSR permit, as long as the plantwide emissions remain below the PAL level. For certain types of industries that need significant

¹ California Health & Safety Code §§ 40918, 40919, 40920 and 40920.5

² The United States Court of Appeals for the District of Columbia Circuit in *State of New York, et al., v. U.S. Environmental Protection Agency, et al.*, 413 F.3d 3 (D.C. Cir. 2005)

operational flexibility to make quick changes in response to changing market conditions, the ability to make changes without having to wait for the issuance of construction permits is worth the additional work to ensure emissions from all operations remain below the PAL and maintain the additional records needed to verify compliance with the plant-wide emission limits.

Another provision changed the allowable time frame to be used to determine baseline actual emissions. Baseline emissions are generally considered to be the pre-project emissions from the facility or emission units proposed to be modified. Prior to implementing the NSR Reforms, EPA required a source to use the actual emissions emitted during the two year period immediately preceding the application date for the new project. Sources were allowed to use a different two year period within the five year period immediately preceding the application date if they could demonstrate that the alternative two year period was more representative of normal operations. The NSR Reforms revised the allowable time frame to be any 24 month period during the 10 year period immediately preceding the application date. EPA believes that the use of a 10 year period allows a source to look back to a period from a more representative business cycle, i.e., 10 years vs. five years, and that significant resources are conserved by allowing the source to choose the 24 month period used to establish baseline actual emissions, rather than spend time and resources determining what period most represents “normal operations.” While going back further in time means a source may be able to choose a period with higher average emissions, the NSR Reforms also added requirements to ensure the baseline period is adjusted for any excess emissions or any additional emission reductions required by new regulations which have become effective since the baseline period.

The third provision upheld by the court changed how post-project emissions are determined. Prior to implementing the NSR Reforms, EPA required a source to use the worst case potential to emit (PTE) assumptions (i.e., operating at 100% capacity, 24 hrs/day, 7 days a week), unless the applicant agreed to practically enforceable permit conditions to limit operation of the emission unit (i.e. fuel usage limits or limits on hours of operation). In this “actual to potential” test, often the difference between the baseline actual emissions and the PTE of an operation would be greater than the major modification significance thresholds. As a result, many modifications were treated as major modifications, even when the actual emissions would decrease, not change, or the actual increase in emissions would not be significant. The NSR Reforms also changed the post-project emission calculation methodology to allow a source to use the highest actual emission rate projected to occur over the next 5 or 10 years and to subtract emissions the emission units could have accommodated prior to the project, that were unrelated to the project, in order to determine the emission increase from the proposed project.

It is important to note that none of these revisions changed the major modification significance thresholds for triggering control technology and offset requirements. They only changed the calculation to determine if the major modification threshold is triggered.

Impacts of Federal NSR Reforms on California NSR Permitting Programs

By not adopting the NSR Reforms, the NSR program in California Districts would not include the three program elements described earlier: use of PALs, a 10 year look back period for baseline actual emissions and projected actual emissions. The use of two of these three provisions (baseline actual emissions and projected actual emissions) is required under 40 CFR

51.165(a)(2). The requirement to adopt a NSR program that allows the use of PALs is found in 40 CFR 51.165 (f).

Section 116 of the CAA³ provides that nothing in the Act shall preclude the rights of States to adopt air pollution regulations that are more stringent than those contained in the CAA or implementing regulations. As noted above, the California CAA of 1988 adopted lower emission thresholds for triggering emission control (BACT/LAER) and offset requirements for new and modified sources as part of its NSR program. Consistent with this concept, when EPA adopted new calculation methods to implement the NSR reforms in 40 CFR 51.165 (a)(2), we also stated that each plan must use the specific applicability provisions specified unless the State specifically demonstrates that the submitted plan provisions “are more stringent than or at least as stringent” in all respects as the specified paragraphs. These applicability provisions specify the use of baseline actual emissions and projected actual emissions, two of the new NSR Reform provisions, but also retain the option for a source to use the actual to potential emission test.

Several air districts in California have argued that their NSR permit programs are inherently more stringent than the required federal program because the applicability thresholds to apply CA BACT and offsets are significantly lower than those in the federal CAA. In addition, for modifications, a source does not need to be a major source, as it does for federal purposes, before these lower applicability thresholds apply to a proposed project. The districts also point out that if a District adopted the NSR Reform calculation methods, and a project using these methods was no longer classified as a major modification, it would not be subject to Federal LAER and offsets requirements; but the project would still have to apply CA BACT and provide offsets in accordance with the CA CAA requirements. These lower state emission thresholds are already in almost all Districts’ portion of the California SIP, making these requirements enforceable under both state and federal law.

As a result, CA Districts have argued that the regulatory framework found in other states, where adopting the NSR Reforms provide additional permitting flexibility and environmental benefits, do not exist in California because adoption of the reform requirements would have no effect on the application of control technology or offset requirements. This claim is based on the more aggressive CA CAA program requirements not only for new and modified sources, but existing sources as well. For example, whereas the federal CAA requires States to apply at least Reasonably Available Control Technology (RACT) for all major source categories located in a nonattainment area, the CA CAA requires the application of Best Available Retrofit Control Technology (BARCT)^{4 5f} for all source categories where it is economically feasible to do so. Thus

3 Section 116: of the CAA: Except as otherwise provided in sections 119 (c), (e), and (f) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977), 209, 211(c)(4), and 233 (preempting certain State regulation of moving sources) nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 111 or 112, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

4 BARCT must meet the same evaluation criteria as BACT, except as it applies to existing, rather than new or modified sources.

even if an existing source is not proposing any physical or operational modifications, it must still reduce emissions periodically as part of an area's attainment plan by applying stringent control technologies. The Districts contend that this requirement leaves little room for additional voluntary emission reduction projects and eliminates any practical benefits of obtaining a PAL.

EPA has reviewed the Districts' claims and considered how the CA CAA provisions affect the effectiveness of the NSR Reforms to provide the intended regulatory relief, and we agree that the application of CA BACT and offsets at significantly lower thresholds means that the federal NSR Reform provisions do not provide any of EPA's intended additional flexibility to proposed projects that may otherwise trigger federal major modification requirements. If the State adopts these provisions, a new project will have to complete two different sets of emission calculations; and even if the federal requirements are not applicable, the source will still have to comply with the CA BACT control and offset requirements if they are triggered. In light of these facts, EPA is proposing to find that it is acceptable for SMAQMD to not incorporate the NSR Reform provisions into their SIP approved NSR programs, since the same level of control will be required for modified sources, with or without inclusion of these provisions in the SIP, and their program will not be any less stringent than the federal program.

Section 110(l) of the Act

Section 110(l) of the Act prohibits EPA from approving any revision of a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. The SIP approved version of Rule 202 – *New Source Review* was approved in 1986. While the District has adopted several revisions to the rule since that time, for the purposes of the 110(l) evaluation, we must compare the submitted rules with the current SIP version. SIP approved Rule 202 contains provisions for all major source and minor source permitting actions, regardless of whether the air pollutants are subject to the nonattainment NSR program or the attainment PSD program. Based on the following analysis, we conclude that limited approval / limited disapproval of Rules 214 and 203 (and their replacement of the existing SIP NSR Rule 202) would overall strengthen the applicable SIP.

Rule 214 – Federal New Source Review

For Rule 214, the most significant differences between the two NSR programs (SIP approved versus the NSR SIP submittal) are the emission thresholds at which an emission unit triggers Best Available Control Technology (BACT) and offset requirements.⁶ SIP approved Rule 202,

5 California Health and Safety Code Section 41010(b) and California Code of Regulations Title 17, Division 3, Chapter 1.5, Article 6, Section 70601

6 Rule 214 defines BACT as the most stringent of the following two options: 1) The most effective emission control device, emission limit, or technique, singly or in combination, which has been required or used for the type of equipment comprising such an emissions unit unless the applicant demonstrates to the satisfaction of the Air Pollution Control Officer that such limitations required on other sources have not been demonstrated to be achievable in practice (Federal LAER definition), and 2) Any alternative basic equipment, fuel, process, emission control device or technique, singly or in combination, determined to be technologically feasible and cost-effective by the Air Pollution Control Officer (Federal BACT definition). Thus BACT is defined as the most stringent of the two control requirements.

Section 301, requires a stationary source to apply BACT when emissions of any criteria pollutant, except CO and lead, exceed 150 lbs/day (27.4 ton per year (tpy)). The threshold for CO and lead is 550 lbs/day (100 tpy) and 3.3 lbs/day (0.6 tpy), respectively. New Rule 214, Section 301, requires each emission unit to apply BACT when emissions of any criteria pollutant, except CO and lead, exceed 0 lbs/day. The new rule does not contain a BACT requirement for CO or lead, but the District was reclassified attainment for CO on June 1, 1998 (See 63 FR Page 15305) and is classified as attainment for lead, therefore a nonattainment BACT requirement for CO is not required under NSR. Rule 203 does provide a separate BACT requirement for CO as an attainment pollutant (See 110(l) analysis for Rule 203). These changes represent a strengthening of the SIP, since BACT must now be applied when there is any emission increase, which is a significantly lower threshold than the existing SIP rule requirements.

In a similar manner, SIP approved Rule 202, Section 302 requires emission increases to be offset when the facility's emissions exceed 250 lbs/day (45.6 tpy) of volatile organic compounds (VOC), nitrogen oxides (NO_x) or sulfur oxides (SO_x), 150 lbs/day (27.4 tpy) of PM and 550 lb/day (100.4 tpy) for CO. New Rule 214, section 302, requires emission increases at new major sources to be offset when the facility's emissions exceed 12,500 lbs/quarter (25 tpy) of VOC or NO_x, 22,812 lbs/quarter (45.6 tpy) of SO_x, 7,300 lbs/quarter (14.6 tpy) of PM₁₀ and 100 tpy of PM_{2.5}, and for modified sources when the increases exceed 12,500 lbs/quarter (25 tpy) of VOC or NO_x, 20,000 lbs/quarter (40 tpy) of SO_x, 7,300 lbs/quarter (14.6 tpy) of PM₁₀ and 10 tpy of PM_{2.5}. This change represents a strengthening of the SIP, since offsets must now be applied at the same or lower thresholds for both new and modified sources.

Rule 203–Prevention of Significant Deterioration

Rule 203 applies not only to attainment pollutants, but also to any other pollutant subject to regulation under the CAA, which includes at least 7 other pollutants, such as fluorides, PM, hydrogen sulfide and greenhouse gases. There are no NAAQS for these other regulated pollutants; therefore 110(l) does not apply to them since this SIP action cannot affect attainment and reasonable further progress for these non-NAAQS pollutants. Therefore, this analysis only focuses on the pollutants for which there is a NAAQS.

For Rule 203, the most significant difference between the two PSD programs (SIP approved versus the PSD SIP submittal) is the emission threshold at which an emission unit triggers Best Available Control Technology (BACT). SIP approved Rule 202, Section 301, requires a stationary source to apply BACT when emissions of any criteria pollutant, except CO and lead, exceed 150 lbs/day (27.4 ton per year (tpy)). The threshold for CO is 550 lbs/day (100 tpy) and for lead is 3.3 lbs/day (0.6 tpy). New Rule 203 triggers the federal PSD BACT thresholds for any new major source which emits 250 tpy of any attainment pollutant or 100 tpy if the source is one of the CAA Section 302(j) source categories. In addition, unlike NSR, BACT applies to any other pollutant being emitted at major source, if it is emitted in quantities above the defined significance thresholds of 40 tpy for VOC, NO_x and SO_x, 25 tpy of PM, 15 tpy of PM₁₀, 10 tpy of PM_{2.5}, 100 tpy of CO and 0.6 tpy of lead. While the BACT applicability thresholds in Rule 203 are significantly higher than in Rule 202 for attainment NAAQS pollutants, for 110(l) purposes, the threshold is only higher for CO and lead, since the threshold for all other NAAQS

pollutants is lower pursuant to Rule 214 applicability (See 110(l) analysis provided above for Rule 214), which has also been submitted for SIP approval.

For CO and lead, the significance threshold at which a modified major source must apply BACT is the same for both SIP Rule 202 and submitted Rule 203 (100 and 0.6 tpy respectively). However the BACT emissions thresholds for new sources emitting these pollutants are quite different. Submitted Rule 203, consistent with federal PSD program requirements, triggers BACT requirements for new sources when the source has a potential to emit 250 tpy or 100 tpy if the source is one of the CAA Section 302(j) source categories, whereas SIP Rule 202 requires BACT when the source has a PTE of 100 tpy for CO and 0.6 tpy of lead. The SIP rule basically requires a source to apply BACT when the emission rate of any pollutant exceeds the PSD significance thresholds, rather than when the source is a major source. While the new rule represents a relaxation of the BACT applicability thresholds for these two pollutants, EPA notes that the District is and has been in attainment with the NAAQS for these pollutants for a number of years. In addition, historically, mobile sources have been responsible for the majority of both CO and lead emissions, except from lead manufacturing plants. Accordingly, we believe that this relaxation will not interfere with the District's ability to maintain the NAAQS for either CO or lead, and thus find this relaxation approvable under 110(l).

Section 193 of the Act

Section 193 of the Act, which was added by the Clean Air Act Amendments of 1990, includes a savings clause which provides, in pertinent part: "No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant."

The application of this provision of the savings clause to revisions in a SIP-approved NSR program is not straightforward. Soon after the Clean Air Act Amendments (CAAA) were enacted (November 15, 1990), EPA published a notice providing the Agency's interpretation of the effect of the 1990 CAAA, including newly enacted section 193, on a court order requiring EPA to promulgate FIPs for two CO nonattainment areas in Arizona. See 56 FR 826 (January 9, 1991). In the 1991 notice, we concluded that the savings clause in section 193 constitutes an "anti-backsliding" provision that is intended to preserve specific, adopted measures (or pre-CAAA obligations to adopt such measures) with identifiable emission reductions against which to measure the equivalency of any proposed substitution. Under this reading of the savings clause, "control requirement" would not apply to NSR revisions because NSR is a program under which general principles of air pollution control, such as BACT or LAER, are converted into specific control requirements for different types of stationary source proposals on an individual permit-by-permit basis. In other words, NSR does not represent a control requirement itself but rather a program that is used to identify control requirements.

NSR program revisions are inherently difficult to evaluate with respect to changes in emissions reductions because NSR covers all types of stationary sources and provides for application of different emissions limitations to different types of sources depending upon what is considered BACT or LAER for a particular source. In the context of the SMAQMD NSR SIP submittal, a determination of whether the SIP submittal would provide for equivalent or greater emission reductions relative to the existing SIP NSR program can be made by reviewing two parameters that most closely link to relative changes in emissions reductions from new or modified stationary sources: control technology review and for nonattainment NSR, the requirements for offsets including offset thresholds.

Control Technology Requirements. As noted above in the section of this TSD entitled “Section 110(l) of the Act,” submitted Rule 214 contains a much lower emission threshold for the application of BACT for each pollutant, except for CO and lead, which are attainment pollutants and therefore not subject to the provisions of Section 193. Therefore in this regard, new Rule 214 satisfies the Section 193 requirements.

Offsets requirements. As noted above in the section of this TSD entitled “Section 110(l) of the Act,” submitted Rule 214 requires that offsets be provided at the same or lower threshold for all pollutants except CO, which is an attainment pollutant and therefore not subject to the provisions of Section 193. Therefore in this regard, new Rule 214 satisfies the Section 193 requirements.

Conclusion. For the reasons set forth above, we can approve the submitted Rule 214 – *Federal NSR* under section 193 of the Act.

Recommendations

Pursuant to section 110(k)(3) of the Act, we recommend a limited approval / limited disapproval of the submitted NSR rules. We recommend limited approval of the submitted NSR rules based on our determination that the rules comply with applicable statutory and regulatory provisions requiring regulation of stationary sources in general and requiring permit programs for major stationary sources in particular, including section 110(a)(2)(C) and parts C and D of title I of the Act. In support of this recommendation, we have concluded that our approval of Rule 214 and Rule 203 (and thereby replacement of the existing SIP NSR Rule 202), complies with section 110(l) and 193 of the Act because the new rules do not relax control technology and offset requirements and therefore would not interfere with the strategy for attainment of the Ozone or PM₁₀ NAAQS in SMAQMD or the continued attainment of the other NAAQS in SMAQMD. We recommend limited disapproval to correct the deficiencies listed below. If we finalize this action as proposed, our action would be codified through revisions to 40 CFR 52.220 (identification of plan).

Deficiencies as listed in TSD under section entitled “General Nonattainment NSR Requirements (Rule 214).”

1. Add definitions for the terms “begin actual construction,” “federally enforceable” and “necessary preconstruction approvals or permits.” (See item 8c)

2. Submit a rule for SIP approval which contains adequate public notice requirements for minor sources. (See item 9b)
3. Add a provision, pursuant to 40 CFR 51.165(a)(5)(ii), which requires new source review for a source or modification which becomes major due to a relaxation in a federally-enforceable limit. Such sources and modifications shall be subject to new source review “as though construction had not yet commenced.” (See item 12)
4. Add a provision, pursuant to 40 CFR 51.307(b)(2), which identifies additional requirements for NSR for any new major source or major modification, proposing to locate in a nonattainment area, that may have an impact on visibility in any mandatory Class I Federal Area. (See item 13)
5. Remove cross references to Rule 207 – Title V – Federal Operating Permit Program, because it is not SIP approved or SIP submitted. The reference can be replaced with a reference to another SIP approved rule that includes the referenced list of source categories, or the list can be added to Rule 214. (See item 14)

Attachments

1. Current SMAQMD SIP Rule 201, *General Permit Requirements*, adopted November 20, 1984
2. Current SMAQMD SIP Rule 202, *New Source Review*, adopted November 20, 1984.
3. Submitted SMAQMD Rule 203, *Prevention of Significant Deterioration (PSD)*, adopted January 27, 2011
4. Submitted SMAQMD Rule 214, *Federal New Source Review*, adopted Oct 28, 2010
5. SMAQMD Rule 203, *Prevention of Significant Deterioration (PSD), State Implementation Plan Equivalency Determination*, January 28, 2011
6. EPA’s reclassification of the Sacramento Metro Air Basin (75 FR 24409), May 5, 2010.
7. EPA Greenhouse Gas SIP Call (75 FR 77698), December 13, 2010