information that it should consider in determining whether visibility problems at the GCNP can be reasonably attributed to MGS, and if so, what, if any, pollution control requirements should be applied.

At the request of Southern California Edison Company, EPA is extending the comment period for 30 days.

**DATES:** The comment period on the advance notice of proposed rulemaking is extended until September 15, 1999.

**ADDRESSES:** Comments should be submitted (in duplicate, if possible) to: EPA Region IX, 75 Hawthorne Street (AIR2), San Francisco, CA 94105, Attn: Regina Spindler (Phone: 415–744-1251).

**FOR FURTHER INFORMATION CONTACT:** Regina Spindler (415) 744–1251, Planning Office (AIR2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: July 30, 1999.

**David Howekamp,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 99–20309 Filed 8–5–99; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 226–164; FRL–6415–4]**

## Approving Implementation Plans; California State Implementation Plan Revision, San Diego County Air Pollution Control Agency

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) which concern New Source Review permitting requirements for stationary sources in San Diego County. EPA also proposes to eliminate approval conditions created in 1981 that are no longer relevant.

The intended effect of proposing limited approval and limited disapproval is to ensure San Diego County's New Source Review rules are consistent with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action will incorporate these rules into the federally approved SIP. Although strengthening the SIP, these rules do not fully meet the CAA requirements for nonattainment areas. The rules have been evaluated based on CAA guidelines for EPA action on SIP submittals and general rulemaking authority.

**DATES:** Comments must be received on or before September 7, 1999.

**ADDRESSES:** Comments may be mailed to: David Wampler, Permits Office [AIR–3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, California 92123–1096

California Air Resources Board, 2020 ''L'' Street, Sacramento, California 95812

**FOR FURTHER INFORMATION CONTACT:** David Wampler, Permits Office, [AIR–3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; Telephone: (415) 744–1256; E-mail: wampler.david@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.



### I. What Action Is EPA Proposing?

*A. New Source Review Rules*

EPA today proposes a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) for San Diego Air Pollution Control District (District or SDCAPCD) rules 20.1, 20.2, 20.3, and 20.4. Table 1 lists the number and title of the rules. The rules were submitted to EPA by the California Air Resources Board (CARB) on May 13, 1999 and found complete by EPA on June 10, 1999.

TABLE 1.—RULES INCLUDED IN TODAY'S PROPOSED RULEMAKING

| Rule No. | Rule Title—New Source Review |
|---|---|
| 20.1 ..... | General Provisions. |
| 20.2 ..... | Non-Major Stationary Sources. |
| 20.3 ..... | Major Stationary Sources and PSD Stationary Sources. |
| 20.4 ..... | Portable Emission Units. |

Upon final action, the rules will replace existing SIP rules of the same number approved by EPA into the SIP on April 14, 1981. See 46 FR 21757 and 40 CFR 52.220(c)(64)(i)(A).[1]

We evaluated the rules for consistency with the CAA, EPA regulations, and EPA policy. We've found that the revisions are overall more stringent than the rules of the same number that exist in the SIP.

Even though San Diego County APCD rules 20.1, 20.2, 20.3 and 20.4 will strengthen the SIP, these rules still contain deficiencies (discussed below)

[1] In addition to the approval for rules 20.1 through 20.4, EPA's April 14, 1981 final rulemaking action also approved SDCAPCD rules 20.5, ''Power Plants;'' 20.6, ''Standards for Permit to Operate—Air Quality Analysis;'' and 20.7, ''Standards for Authority to Construct: Significant Deterioration.'' The 4/14/81 approval of Rule 20.7 was found to be incorrect and it was later rescinded from the SIP in a final rulemaking on June 4, 1982 (47 FR 24308). Rules 20.5 and 20.6 remain fully approved into the SIP today and are unaffected by this rulemaking.

and are not fully approvable under Part D of the CAA. Therefore, EPA today proposes a limited approval and limited disapproval of these four rules. If our final action remains a limited approval and limited disapproval, San Diego County APCD will have—from the date of the final action—18 months to correct any deficiencies to avoid federal sanctions. See CAA § 179(b). Further the final disapproval triggers the Federal implementation plan requirements under 110(c). A detailed discussion of the rule deficiencies is included in the Technical Support Document (TSD) for this rulemaking. The TSD is available from the EPA Region IX office.

*B. Remove Conditions in 1981 NSR SIP Approval*

In addition to our action on the NSR rules, we propose to delete the District NSR rule conditions identified when EPA finalized the NSR rules in 1981. See 46 FR 21757 and 40 CFR 52.232(a)(4).

## II. How Did EPA Arrive at the Proposed Action?

*A. Overview*

1. New Source Review Rules

EPA evaluated the rules for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). Our interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents.

EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements (See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion.

The Act requires States to comply with certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act require that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

2. How EPA Evaluates Past NSR Submittals

Since 1981, numerous revisions to rules 20.1 through 20.4 have been adopted by SDCAPCD and submitted by CARB to EPA for SIP approval. See the TSD for a list of all previous NSR rule submittals for San Diego County. Although EPA is acting only on the most recently submitted version of May 13, 1999, EPA has reviewed materials associated with the two most recent NSR SIP submittals dated July 13, 1994 and July 22, 1998.

Once approved as new rules into the California SIP for San Diego County, the May 13, 1999, submitted SDCAPCD rules 20.1, 20.2, 20.3 and 20.4 will strengthen the existing SIP by:

- Including major source and major modification thresholds that are consistent with the 1990 Clean Air Act Amendments for major stationary sources and major modifications locating in serious ozone non-attainment areas;
- Establishing the appropriate emissions offset ratio for major stationary sources and major modifications locating in serious ozone non-attainment areas.

3. Removing Conditions in 1981 NSR SIP Approval

In addition to our proposed limited action to approve SDCAPCD rules 20.1 through 20.4, we also propose to delete the District NSR rule conditions identified when EPA finalized the NSR rules in 1981. See 46 FR 21757 and 40 CFR 52.232(a)(4). These conditions are moot today for the following reasons:

- The current rules will, upon final approval, supercede the 1980 rules.
- EPA has not taken action on any revisions to SDCAPCD NSR rules 20.1 through 20.6.
- We have not issued final rulemaking to correct the deficiencies of SDCAPCD NSR rules discussed in the April 14, 1981 final rulemaking.
- The District has revised and submitted new NSR rules to comply with the 1990 CAA amendments.

*B. Rule Deficiencies*

The following rule deficiencies prevent EPA from being able to fully approve SDCAPCD rules 20.1, 20.2, 20.3 and 20.4 contained in today's action. In addition to identifying the deficiencies, we have provided information on how to correct some of the deficiencies.

1. Deficiencies With Rule 20.1

- 20.1(b)(4) provides for an exemption from the offset requirements of rule 20.2(d)(5)[2] or of rules 20.3(d)(5) and (d)(8) for $NO_X$ emission increases from new, modified or replacement emission units subject to the requirements of rule 69(d)(6). Rule 69, ''Electrical Generating Steam Boilers, Replacement Units and New Units,'' is not SIP approved and CARB, on behalf of SDCAPCD, does not intend to submit it to EPA for SIP approval. This exemption from the offset requirements is a deficiency because CAA section 173(c) requires offsets for all new major stationary sources or major modifications as defined in CAA 182(c) for serious ozone non-attainment areas. Rule 69 does not provide a recognized alternative to the offset requirement because it is not a SIP-approved rule.
- Rule 20.1(c)(26) definition of ''Federally Enforceable.'' There are two reasons why this definition is a rule deficiency. First, the definition allows Authority to Construct (ATC) terms and conditions imposed pursuant to the SDCAPCD rules and regulations or state law to be deemed ''non-federally enforceable'' unless otherwise requested by the owner. SDCAPCD has not defined which ''rules and regulations'' could create permit terms and conditions that are not federally enforceable. It is our position that SIP-approved rule 10[3]—''Permits Required,'' and rule 21—''Permit Conditions'' create a SIP-approved permitting program for subject sources in San Diego County. Additional SIP NSR rules for major and minor sources add—or will add, upon SIP approval—more specific pre-construction permitting requirements. Given the broad authority of SIP rules 10 and 21, it is our position that all permit terms and conditions in SIP-approved permits are federally enforceable.[4] The Air Pollution Control Officer (APCO) cannot unilaterally deem a such a permit condition ''non-federally-enforceable.''

Second, the definition incorrectly states, ''* * * which term or condition is imposed pursuant to * * * 40 CFR part 51, subpart I.'' Part 51, subpart I is not a permitting program that, on its own, provides a state authority to impose permit terms and conditions. Rather, part 51, subpart I contains

[2] Subsection (d)(5) of rule 20.2 was adopted locally by SDCAPCD on 11/4/98 but not included in the May 13, 1999 CARB SIP-submittal.

[3] Rule 10 ''Permits Required'' is a broad rule that states in subsection (a) ''Authority to Construct': ''Any person building, erecting, altering or replacing any article, machine, equipment or other contrivance * * * shall first obtain written authorization for such construction from the Air Pollution Control Officer.''

[4] See 40 CFR 52.23 and letter dated March 31, 1999 from John Sietz to Mr. Doug Allard, President of CAPCOA.

federal minor NSR (sections 51.160 through 51.166) and major non-attainment NSR (sections 51.160 through 51.165) requirements that state programs (i.e., rules) must contain before they can be SIP-approved. Once SIP-approved pursuant to part 51, subpart I, the NSR rules, and all terms and conditions of ATC permits issued pursuant to those rules, become federally enforceable.

To correct the deficiencies, the District must do either of the following:

1. The District could require all terms and conditions to be federally enforceable. To create this, the District must eliminate the entire paragraph that allows non-federally enforceable conditions to be created and revise the statement in rule 20.1(c)(26)(ii) to state, ''* * * which term or condition is imposed pursuant to * * * District rule 10, 21, 20.1 through 20.4 * * *'' EPA believes this option is the best way to correct the deficiencies and would eliminate any ambiguity surrounding the enforceability of the terms and conditions NSR permits.

2. Alternatively, if SDCAPCD would like the ability to separate NSR permit terms into federally enforceable and non-federally enforceable terms, SDCAPCD must revise and submit for SIP approval rules 10 and 21 and revise the statement in rule 20.1(c)(26)(ii) to state, ''* * * which term or condition is imposed pursuant to * * * District rule 10, 21, 20.1 through 20.4 * * *''

- 20.1(d)(5) requires that offsets be ''actual emission reductions'' but does not require offsets to be surplus at the time of use. Further, rule 20.1(d)(4)(ii) and (iii) prescribe how actual emission reductions are calculated (including any necessary adjustments), at the time of generation, not at the time of use. EPA requires that the emissions reductions used to offset any new or modified major stationary source be surplus at the time of use.[5]

To correct the deficiency the District must require offsets to be surplus at the time of use.

- 20.1(d)(5) is deficient because the subsection contains a reference to rule 27. Rule 27 has been submitted but contains a deficiency at 27(c)(1)(vi)—''Other Emission Reduction Strategies.'' Rule 27(c)(1)(vi) would allow emissions reduction credits (ERCs) to be created upon approval of the APCO and concurrence from ARB. EPA cannot approve into the SIP a reference to a rule that allows such broad APCO discretion as to how ERCs are created. Because the emission reductions are used to offset emission increases from new or modified major stationary sources, the district rules must be amended to assure that emission increases from new and modified stationary sources are offset by real reductions in actual emissions as required by Clean Air Act section 173(c)(1).

The following are two possible options to correct the deficiency:

(1) Remove the reference to rule 27 in the subsections of 20.1(d)(5).

(2) Revise and submit to EPA for SIP approval a new version of rule 27 that is approvable. Such approval must occur within 18 months from final approval of today's action.

2. Deficiency with Rules 20.3 and 20.4

- Rules 20.3(d)(5)(vi) and 20.4(d)(5)(vi) allow the APCO to authorize interpollutant[6] trading to satisfy the federal offset requirements. Specific ratios are provided in the rule. For example, a source may acquire, for every ton of $NO_X$ increase, 2.0 tons of VOC emission reduction. Conversely, a one ton VOC increase may be offset with one ton of $NO_X$ decrease. SDCAPCD has not provided a justification as to how the interpollutant offset ratios were obtained. Furthermore, to date, EPA has not developed a policy that describes how a state could establish appropriate basin-wide interpollutant offset ratios.

To correct the deficiency in Rules 20.3 and 20.4 the District must either delete the interpollutant ratios and add the requirement that interpollutant ratios will be evaluated on a case-by-case basis with public notice and EPA concurrence or provide modeling studies to adequately support the ratio in the rule.

3. Deficiency with Rule 20.2

- 20.2(d)(2) establishes the air quality impact analysis requirements for non-major (minor) sources in San Diego County. This section does not require an analysis of the available increment as required in 51.166(a)(1).

To correct the deficiency the District must revise the rule to add the requirement that minor sources subject to the AQIA requirements must evaluate their impact on the increment.

4. Deficiency with Rules 20.1 through 20.4

- Rules 20.1 through 20.4 do not provide 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. Although subsection of 20.3(d)(3)—Prevention of Significant Deterioration—of the locally adopted rule contains this requirement, rule 20.3(d)(3) has not been submitted to EPA to be included in the SIP.

To correct this deficiency the District must revise the rules to require 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.

## III. EPA Solicits Comment on Two Special Issues

In addition to the above deficiencies, there are two provisions in the submitted rules for which EPA solicits comment:

(1) The provision in 20.1(d)(1)(ii)(C) that allows a stationary source to exclude emissions from portable equipment from its aggregate potential to emit; and

(2) The overall adequacy of the SDCAPCD minor source NSR program requirements contained in submitted rule 20.2.

EPA is not proposing its limited approval, limited disapproval on the basis of these two deficiencies.[7] We are soliciting comment on the provisions and will, after evaluating the comments, either approve the above listed provisions, or cite the provisions as a deficiency and as a further basis for limited disapproval in the final rulemaking. The Agency's evaluation of the two provision are provided below.

### *A. Provision 20.1(d)(1)(ii)(C)—Exclusion of emissions from portable equipment from a stationary source's potential to emit (PTE)*

1. Overview

By excluding the emissions from portable equipment from a stationary source's aggregate PTE, major stationary sources could be improperly classified as minor sources and avoid applicable requirements.[8] On the surface, it appears that 20.1(d)(1)(ii)(C) is not consistent with federal law. However, CARB has submitted to EPA for SIP approval SDCAPCD rule 20.4 which is

[5] CAA section 173(c)(2) prohibits the use of emission reductions that are ''otherwise required by this chapter.''

[6] Although the term ''interpollutant'' is used, the District rules only allow for trades between the ozone precursors $NO_X$ and VOC.

[7] Except that San Diego's minor NSR rule contains one deficiency in that rule 20.2 does not require minor sources to analyze the impact on the available increment.

[8] SDCAPCD provided EPA an internal memo dated May 17, 1999 that explained how the District regulations would prevent a stationary source from abusing portable equipment to avoid major NSR requirements.

dedicated entirely to the NSR regulation of portable equipment.

EPA solicits comment on whether it is appropriate to exclude emissions from portable equipment from a stationary source's PTE. In general, EPA believes it could be appropriate if the portable equipment is subject to NSR regulations separate from, and equivalent to, stationary source NSR regulations. Without separate regulations, however, EPA believes emissions from portable equipment should not be excluded from the stationary source's PTE.

On a side note, Rule 20.1 (d)(1)(ii)(D) allows emissions from military tactical support equipment, including gas turbines, to be exempt from a stationary source's aggregate potential to emit. Based on conversations with District staff and data provided by representatives of the Department of Defense, EPA believes this is allowable in San Diego County because: (1) Most of the emissions from military tactical support equipment are from piston engines that are non-road engines and are therefore not required to be considered part of a stationary source; and (2) emissions from gas turbines (emission units that are not covered under non-road engine regulations) are *de minimus.* If the emissions from gas turbines exceed *de minimus* levels after approval of this rule, the District must submit a revision deleting this exemption or EPA will use its authority under section 110(k)(5) of the Act to require the District to submit a SIP revision.

2. History of Portable Equipment Regulations in San Diego

Rule 20.1(d)(1)(ii)(C) allows emissions from all portable emission units to be excluded from a stationary source's PTE. The exemption does not distinguish between portable units that were previously permitted (before regulations for portable units were adopted by SDCAPCD on May 17, 1994)[9] and those permitted after 1994. EPA solicits comment on whether such a distinction is necessary for the exclusion to be allowed. EPA believes that only portable equipment permitted after May 17, 1994 should be eligible for the exclusion because portable units permitted prior to that date were regulated as part of a stationary source and may not have met appropriate federal NSR requirements at that time.

In addition, EPA solicits comment on specific portable equipment NSR requirements contained in rule 20.4 as identified below.

3. Summary of the District's Current NSR Requirements for Portable Emission Units in San Diego

a. Portable emission unit is defined in rule 20.1(c)(49). The District's definition generally limits the amount of time a portable unit could operate at one location (stationary source) to no more than 12 consecutive months. If the portable unit exceeds this time limit or is otherwise operated in a manner to circumvent NSR, the portable unit is considered ''relocated'' and subject to the requirements for relocated units under 20.1, 20.2 and 20.3.

District rule 20.4 further defines two types of portable emissions units: Type I and Type III. Type I portable units can locate at stationary sources with an aggregate PTE less than 50 tpy and Type III portable units can locate at any stationary source regardless of the stationary source's aggregate PTE.

b. Offset Requirements for Type I and Type III units: According to rule 20.4(d)(5), Type III units are required to obtain offsets at a 1.2:1 ratio for any emission increase prior to operation at a major stationary source. Type I emission units are generally limited to operation at non-major stationary sources only. However, they are allowed, according to the District's definition of Type I, to operate at a major stationary source if they provide emission offsets prior to operation. Sources of emissions offsets may include same-pollutant or interpollutant reductions,[10] or emission reductions obtained from the ''emission offset pool'' as allowed in 20.4(d)(5)(v).

We solicit comment on the definition of Type I Portable Emission Unit (rule 20.4(c)(3)) that would allow Type I units to only obtain offsets (at the levels required for Type III portable units) before it locates at a major stationary source. This definition creates an apparent loophole by allowing Type I portable equipment to locate at a major stationary source without meeting the same LAER requirement as Type III portable equipment.

Finally, we solicit comment on rule 20.4(d)(5)(v) that would allow offsets from portable equipment to come from an ''emission offset pool.'' According to the rule, the offset pool consists of emission offsets which are designated for use by any number of portable emission units. EPA believes this alternative mechanism is workable as outlined in the rule provided the offsets are surplus emission reductions at the time of use,[11] enforceable, quantifiable, and permanent.

c. LAER Requirements for Type I and Type III units: Only Type III emission units are required to comply with LAER. See 20.4(d)(1)(ii). In lieu of complying with LAER, this subsection allows Type III portable units to obtain offsets at a 1.3:1 ratio from the stationary source at which the portable unit will locate.[12] [13]

We solicit comment on rule 20.4(d)(1)(ii) that allows Type III portable units to obtain additional offsets from a stationary source in lieu of LAER. While the CAA allows internal offsets to be used in lieu of LAER for stationary sources, SDCAPCD's portable equipment rule—in EPA's view—has decoupled portable equipment from the stationary source, and therefore, stationary source reductions cannot be extended to independent portable equipment.

d. Air Quality Impact Analysis (AQIA) for Portable Equipment: Type III and Type I emission units are required to perform an AQIA if a portable emission unit's proposed emissions are above the AQIA thresholds specified in table 20.4–1 (reproduced below in Table 2). See rule 20.4(d)(2). The AQIA requires that the portable unit perform such analyses based on the location at which the unit will locate. Furthermore, the APCO may require an AQIA even if the thresholds are not exceeded. Finally, rule 20.4(d)(2)(ii) does not require an AQIA for $NO_X$ and VOC impacts on ozone.

In general, an example of how the AQIA analysis will be performed for portable equipment is discussed by the District in response to written comment #96 in the District's 1992 NSR rule Workshop Report:

An applicant for a portable emission unit can perform a ''worst-case'' AQIA, where the impact of an emission unit's maximum emissions is analyzed and added to the maximum background concentration in the County. If the applicant can demonstrate that the proposed emissions do not cause or contribute to a violation of any Ambient Air Quality Standard (AAQS), then further analysis would not be required for that unit

[9] For example, many pre-1994 permits limited the portable unit *and* the stationary source to less than 100 #/day $NO_X$ to avoid BACT requirements.

[10] Interpollutant ratios established in the rule for Type III (or Type I) portable units has been identified as a rule deficiency.

[11] The District rules do not require that NSR offsets are surplus at the time of use. See rule Deficiency section and the TSD for more information.

[12] Type I portable units are not required to comply with LAER even if they plan to locate at a major stationary source (as allowed in the definition of Type I).

[13] The provision to allow ''internal'' offsets at a 1.3:1 ratio to be used in lieu of LAER is allowed under CAA section 182(c)(7) and (8) for major stationary source modifications in serious ozone non-attainment areas. See SDCAPCD rule 20.3(d)(7) for stationary source LAER requirements.

when it is moved from one site to another. If a worst case analysis cannot be made * * * then an AQIA would be required each time the equipment moves from one site to another.

As with the other provisions in the portable equipment rule, EPA solicits comment on the provisions for AQIA in 20.4(d)(2). In particular, because 20.4(d)(2) does not require any analysis for impacts related to a portable unit's potential VOC emissions, we solicit comments on how to evaluate ambient air quality impacts from a high VOC emitting portable source that moves from one location to another within San Diego the County. Furthermore, EPA is soliciting comment on whether or not there is any potential for this rule's implementation to cause or contribute to any disparate impact in local communities. We are not suggesting that this rule does have such an impact, but we are aware of community concerns surrounding these issues in San Diego and want to ensure that such concerns are not associated with this rule.

Also, although 20.4(d)(2)(iv) gives the APCO the authority to require an AQIA at any time—regardless of the portable unit's emission rates—the District, through CARB, has not submitted any analyses to justify the AQIA trigger levels in Table 20.4–1 (reproduced below in Table 2). EPA is concerned that the trigger levels in Table 20.4–1 do not account for multiple emission units that may independently locate at a single stationary source. EPA, therefore, solicits comment on whether the trigger levels in Table 20.4–1 are appropriate considering that multiple emission units may independently locate at a single stationary source.

e. Public Notification Requirements for Portable Equipment: If the owner or operator of a portable unit, with proposed emission increases above the thresholds in table 20.4–1, requests a permit, the APCO is required to provide at least a 40 day public comment period. Within that period, the APCO shall provide at least 30 days during which comment on the proposed project may be received. All comments will be considered prior to the APCO taking final action.

Federal regulations require at 40 CFR 51.161 public notification requirements for minor and major stationary sources. While section 51.161 does not establish a deminimus threshold below which no public notification is needed, 40 CFR 51.160(e) requires states to ''identify types and sizes of facilities that will be subject to review * * *'' and ''discuss the basis for determining which facilities will be subject to review.'' SDCAPCD, through CARB has not provided an analysis that the sizes and types of emissions units regulated—and for which public notice will be provided—will ensure the federal requirements of section 51.160 are met.

EPA solicits comment on whether the trigger levels are appropriately established in Table 20.4–1 to ensure the public has the opportunity to review the proposed portable equipment permits.

4. Title V Consistency and Enforcement

The title V program in San Diego County does not allow a stationary source to exclude emissions from portable equipment. See definition of stationary source at SDCAPCD Regulation XIV, rule 1401(c)(45). Further, the District requires emissions from insignificant emission units to be included in the title V applicability determination of a stationary source.

If the emissions from portable equipment are not required for NSR applicability determinations, EPA is concerned that the separate applicability determination requirements could create a source that is non-major under NSR and major under title V. While EPA generally promotes consistency across programs, an alternative may be acceptable if there is a rational basis for treatment under one program compared to the other. The EPA solicits comment on whether a separate permitting requirement for portable units will lead to confusion for sources, contractors operating portable units at those sources, the public and the District.

Furthermore, EPA solicits comment on whether possible confusion would lead to ill-informed, and incorrect compliance certifications under title V because a stationary source operator may not examine the Title V compliance requirements for certain portable equipment if the equipment has been excluded under NSR.

*B. Minor New Source Review Requirements in San Diego—Rule 20.2*

EPA also requests comment on whether the minor source NSR regulations contained in SDCAPCD rule 20.2—combined with the requirements in existing SIP rules 10 and 21—are sufficient to assure that the national air quality standards are achieved as required in CAA section 110(a)(2)(C).

1. Overview of Federal Minor NSR Requirements

In addition to the regulation of major stationary sources as required in part C (attainment areas) and part D (non-attainment areas) of the Clean Air Act, states are also required to include in the SIP a program to provide for the ''regulation of the modification and construction of *any* stationary source * * * as necessary to assure that national ambient air quality standards are achieved * * *'' [emphasis added]. See CAA section 110(a)(2)(C).

The implementing regulations require states to develop ''legally enforceable procedures'' to enable the state ''to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in—(1) a violation of applicable portions of the control strategy; or (2) interference with attainment or maintenance of a national standard * * *'' See 40 CFR 51.160(a). However, instead of establishing sizes and types of stationary sources that will be subject to minor new source review, EPA allows states some discretion. This discretion is not unbounded, however, and states are required to, ''discuss the basis for determining which facilities will be subject to review.''

2. San Diego's Minor NSR Program

Rule 20.2, ''New Source Review—Non-Major Stationary Sources,'' is part of the District's minor NSR rule. This rule supplements existing SIP [14] rule 10, ''Permits Required,'' and rule 21, ''Permit Conditions.'' Rule 20.2 applies to sources that are, after completion of a project, not a major source. See rule 20.2(a). Rule 20.2 contains two basic requirements: (1) an air quality impact analysis at subsection (d)(2); and (2) the public notification requirements at subsection (d)(4). The following is a discussion of the two substantive requirements both of which are triggered if the emissions increase from a project is greater than the levels indicated in the Table 2 below.

[14] See 60 FR 62756 for discussion on minor NSR as it applies to Title V permitting. In the discussion of the District's definition of ''Federally Mandated New Source Review'' in Regulation XIV, EPA identified—and SDCAPCD concurred—that SIP-approved rules 10 and 21 constitute the District minor NSR program, at that time. On a side note, today's proposed rulemaking does not alter the status of EPA's Title V interim approval in San Diego as it relates to minor NSR.

TABLE 2.—SAN DIEGO'S AQIA AND PUBLIC NOTIFICATION TRIGGER LEVELS FOR MINOR SOURCES AND PORTABLE EMISSION UNITS

| Air contaminant | Lb/hr | Lb/day | Tons/yr |
|---|---|---|---|
| Particulate matter(PM–10) | ..... | 100 | 15 |
| $NO_X$ | 25 | 250 | 40 |
| $SO_X$ | 25 | 250 | 40 |
| CO | 100 | 550 | 100 |
| Lead and Lead compounds | ..... | 3.2 | 0.6 |

a. Minor source NSR public notification requirements: Rule 20.2(d)(4) requires that the APCO shall not issue an ATC or modified PTO for any project subject to the AQIA requirements unless the APCO provides the public with at least 40 days notice of the proposed action. Within that time period, the APCO shall make available all information relevant to the proposed action and provide at least 30-days during which comments may be submitted.

b. Air quality impact analysis: An air quality impact analysis is required for any project (including relocated and replacement emission units) that has an emissions increase greater than or equal to the applicable thresholds in table 20.2–1. See 20.2(d)(2). If an AQIA is required, the applicant of a new, modified, replacement, or relocated emission unit shall demonstrate to the satisfaction of the APCO that the project will not:

''(A) cause a violation of a state or national ambient air standard anywhere that does not already exceed such standard; nor [15]

(B) cause additional violations of a national ambient air quality standard anywhere the standard is already being exceeded, nor

(C) cause additional violations of a state ambient air quality standard anywhere the standard is already being exceeded, except as provided for in Subsection (d)(2)(v), nor

(D) prevent or interfere with the attainment or maintenance of any state or national ambient air quality standard.''

As discussed in the Rule Deficiencies Section of this proposed rulemaking, San Diego's NSR rule for minor and major sources must require an analysis of the source's impact on the air quality increment.

[15] The District rule requires that the applicant analyze the project's impact on state air quality standards. CARB has requested that this subsection ''be submitted for inclusion in the SIP only with respect to the NAAQS.'' EPA interprets this to mean that sources are not required to assure compliance with the state air quality standards for purposes of fulfilling the federal permitting standards contained in the SIP.

3. Federal Enforceability of Terms and Conditions of Minor NSR Permits

As discussed in the Rule Deficiencies section above, EPA has identified the District's definition of ''federally enforceable'' as a rule deficiency. It is important to discuss how EPA interprets the District's definition of ''federally enforceable'' as it applies to terms and conditions of minor NSR permits.

For minor NSR, EPA interprets, and the District concurs,[16] that SIP-approved rules 10 and 21, combined with new rule 20.2 (upon SIP-approval) constitute the District's minor NSR rule. EPA recognizes that the District would like the ability to separate minor and major NSR terms and conditions into federally enforceable and non-federally enforceable terms and conditions.[17] EPA is concerned about the practical implementation of a program that allows for separation of permit terms and conditions because sources, the public, and regulators may experience confusion if competing compliance obligations reside within the same permit. Please see the Rule Deficiencies section for options on how the District could change the definition of ''federally enforceable.''

4. Discussion on Minor NSR

EPA solicits comment today on whether the thresholds for AQIA and public notice contained in 20.2 are sufficient and/or whether additional requirements are necessary in addition to the AQIA and public notice requirements.

SDCAPCD, through CARB has not provided an analysis, as required in section 51.160(e) that discusses the basis for determining which (minor) facilities will be subject to review. This analysis is important because it supports the ''legally enforceable procedures'' established in rule 20.2 (e.g., AQIA analysis). These ''procedures,'' in turn, must enable the District to determine whether the construction or modification of a facility, building, structure, or installation, or combination of these, will result in a violation of the applicable control strategy or interfere with attainment of the NAAQS. See section 51.160(a).

[16] See Footnote 14.

[17] See second to last paragraph of the district's definition of federally enforceable that would allow for such separation provided the term or condition is not created to fulfill a federal requirement.

While the District AQIA analysis requires an individual source with expected emissions above the AQIA thresholds to analyze its air quality impact, EPA is concerned that the District has not accounted for the combined impact from multiple sources with emissions below the AQIA thresholds.

Furthermore, in the past, EPA has accepted control requirements for minor sources (e.g. minor source BACT) to support a state's demonstration that minor source construction will not interfere with attainment or violate an applicable portion of the control strategy. Many air pollution control districts within the state of California require air pollution controls on non-major (minor) sources. CARB, however, has elected to not submit for SIP approval the state BACT requirements at SDCAPCD rule 20.2(d)(1). San Diego explicitly requested CARB to exclude the state BACT requirement (and other state requirements) from the submittal. For a complete list of the sections and subsections of this rule that are not included, please refer to the TSD.

To conclude, EPA solicits comment on whether the requirements for minor sources are adequate to assure that national ambient air quality standards are achieved. EPA has not received a demonstration from San Diego that shows the air quality impacts from individual or combined minor sources will not interfere with attainment of the NAAQS or result in a violation of the control strategy. We believe such a demonstration is necessary and we solicit comments on what should be required (e.g., minor source BACT). Furthermore. EPA solicits comment on the practical implementation of a minor source permitting program that allows for separation of permit terms and conditions into federally enforceable and non-federally enforceable. EPA believes such a permit program could be

confusing to sources, regulators and the public.

## IV. Overview of Limited Approval/ Disapproval

A detailed discussion of rule 20.1 through 20.4 deficiencies, a discussion of SDCAPCD's minor NSR program and portable emission unit NSR rule, as well as other rule clarifications and EPA interpretations, can be found in the Technical Support Document for Rules 20.1, 20.2, 20.3 and 20.4 which is available from the U.S. EPA, Region 9 office.

Because of the deficiencies identified in this rulemaking, rules 20.1, 20.2, 20.3 and 20.4 are not approvable pursuant to the section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of sections 110(a)(2)(C) and 173 of the CAA, and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rule(s) under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of San Diego County Air Pollution Control District's submitted rule 20.1, 20.2, 20.3 and 20.4 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of San Diego County Air Pollution Control District's rules 20.1, 20.2, 20.3 and 20.4 because they contain deficiencies and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this proposed rulemaking have been adopted by the SDCAPCD and are currently in effect in the SDCAPCD. EPA's final limited disapproval action will not prevent San Diego County Air Pollution Control District or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## V. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

### *B. Executive Order 12875*

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

### *C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

### *D. Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any

rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

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

**Authority:** 42 U.S.C. 7401–7671q.

Dated: July 29, 1999.

**Nara L. McGee,**

*Acting Regional Administrator, Region 9.*

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