

**Bay Area Air Quality Management District**

**939 Ellis Street  
San Francisco, CA 94109**

**Proposed Amendments to  
BAAQMD Regulation 1 (General Provisions) and Regulation 2  
(Permits) Rule 1 (General Requirements), Rule 2 (New Source  
Review), and Rule 4 (Emissions Banking)**

**Staff Report**

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**TEXT OF EPA LIMITED APPROVAL AND LIMITED DISAPPROVAL OF THE 1994 REVISIONS TO THE PERMIT RULE (64 FR 3850) FINAL RULE .....XII**

**RESPONSE TO COMMENTS ..... Comments-1**

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## **Proposed Amendments to Regulation 1 (General Provisions); Regulation 2 (Permits) Rule 1 (General Requirements), Rule 2 (New Source Review), Rule 4 (Emissions Banking); and**

### **Manual of Procedures, Volume II, Part 2, Permits, General**

#### **Executive Summary**

The proposed revisions to the District's permitting regulation are intended primarily to address deficiencies noted by US EPA in their partial disapproval of the District's New Source Review Rule (63 FR 59924, November 1998).

In addition, staff are proposing a number of changes designed to address permitting problems or issues that have arisen since the last revisions to this rule.

The proposed revisions will accomplish the following:

- ❖ Address EPA's identified deficiencies
  - Interpollutant trading between NO<sub>x</sub> and Precursor Organic Compounds (POC) has been revised to prohibit the use of NO<sub>x</sub> reductions to offset POC increases.
  - A "backstop provision" has been added, requiring permits from unusually large sources (emitting more than 5 tons/yr) even if the source category is included on the permit exemption list.
  - EPA's concern that the District ensure that offsets are surplus at the time of use has been satisfied through an annual demonstration that the District's entire offset program results in equivalent emission reductions.
- ❖ Correct a deficiency in the BACT requirement imposed by state law, as identified by ARB
- ❖ Exemptions for stationary internal combustion engines have been revised. The exemption level has been lowered from 250 hp to 50 hp, following the example of several other California Districts. The exemption for standby emergency generators has also been restricted.

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- ❖ Provisions have been added to address the requirements of federal regulations relating to review of toxic emissions from new sources
- ❖ Clarifying language has been added to require permit review for activities that may affect emissions from existing sources. These include non-identical component replacement.
- ❖ A new requirement has been added that will result in every permitted source having explicit throughput limits. This will mostly affect old equipment that has been in existence since before the District had a permit program.

In addition, a number of relatively minor changes, corrections, and clarifications have been included in this proposal.

A workshop was held on March 3, 2000, in the District office to discuss this proposal. Comments received at the workshop and in writing have been included and addressed in this staff report. The proposed amendments have been revised to address these comments.

### **Purpose of These Revisions**

The proposed amendments to Regulation 1; Regulation 2, Rule 1, Rule 2, Rule 4; and the Manual of Procedures, Volume II are necessary, in part, to address deficiencies in the District's implementation of the federal New Source Review program. These deficiencies were identified by EPA in November, 1998 (63 FR 59924).

Regulation 2, Rule 1, the District's basic permit regulation, and Regulation 2, Rule 2, New Source Review, are closely related. Changes to one rule often require changes in the other in order to be fully implemented and consistent. As a result, revisions to both rules are proposed together. Some minor changes to Regulation 1 and Regulation 2-4, Emissions Banking, are also proposed to promote consistency.

### **Socioeconomic Impacts of Rulemaking**

Section 40728.5 of the California Health and Safety Code (H&SC) requires districts to assess the socioeconomic impacts of amendments to regulations that, "...will significantly affect air quality or emissions limitations." This regulatory proposal does not fall within the scope of an amendment that significantly affects air quality or emissions limitations. Permitting programs generate revenue and allow for analysis and the imposition of applicable controls, administrative and monitoring requirements through permit conditions.

Operators of sources which were previously exempt from District permits will incur additional costs if they are no longer exempt. Operators of such existing

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sources (stationary engines between 50 and 250 HP, for example) will be required to obtain permits. This rule revision, however, will not impose additional regulatory requirements on existing sources.

New engines will encounter new requirements. New engines will be subject to the District's New Source Review program, including the District's Risk Management Program. Some proposed engines will have a difficult time meeting District standards for new sources without limits on hours of operation.

Under H&SC 40920.6, the District is required to perform an incremental cost analysis for a proposed rule. To perform this analysis, the District must (1) identify one or more control options achieving the emission reduction objectives for the proposed rule, (2) determine the cost effectiveness for each option, and (3) calculate the incremental cost effectiveness for each option. To determine incremental costs, the District must "calculate the difference in the dollar costs divided by the difference in the emission reduction potentials between each progressively more stringent potential control option as compared to the next less expensive control option." This section of the Health and Safety Code is not applicable to this amendment. There are no identifiable costs associated with this project as there is no change in the regulatory standards or emission limitations.

Section 40727.2 of the Health and Safety Code imposes requirements on the adoption, amendment, or repeal of air district regulations. The law requires a district to identify existing federal and district air pollution control requirements for the equipment or source type affected by the proposed change in district rules. The district must then note any differences between these existing requirements and the requirements imposed by the proposed change. Where the district proposal does not impose a new standard, make an existing standard more stringent, or impose new or more stringent administrative requirements, the district may simply note this fact and avoid the analysis otherwise required by the bill.

These proposed amendments do not impose any different standards.

### **Environmental Impacts of the Rulemaking**

The District has determined that these amendments to Regulation 1; Regulation 2, Rule 1, Rule 2, Rule 4; and the Manual of Procedures, Volume II are exempt from provisions of the California Environmental Quality Act pursuant to State CEQA Guidelines, Section 15061, subd. (b)(3). The amendments are administrative in nature, and District staff, based on the whole administrative record on this issue, has determined with certainty that this rulemaking project will have no environmental impacts and is therefore exempt under Guidelines Section 15061, subd (b)(3). The District intends to file a Notice of Exemption pursuant to State CEQA Guidelines, Section 15062.

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### Statutory Findings

Pursuant to Section 40727 of the California Health and Safety Code (H&SC), regulatory amendments must meet findings of necessity, authority, clarity, consistency, non-duplication, and reference. The proposed amendments are:

- Authorized by H&SC Sections 40000, 40001, 40702, 40709 through 40714.5, 40725 through 40728, 40918, and 42300 et seq., 40 CFR Part 51, 42 USC §7410, 42 USC §7503
- Written or displayed so that its meaning can be easily understood by the persons directly affected by it;
- Consistent with other District rules, and not in conflict with state or federal law;
- Non-duplicative of other statutes, rules, or regulations; and
- Are implementing, interpreting, or making specific the provisions of the federal New Source Review program (42 USC §7410 and 7503; 40 CFR 51).

### Conclusion

The proposed amendments have met all legal noticing requirements and have been discussed with all interested parties. District staff recommends adoption of the amendments as proposed.

## Proposed Revisions

In a proposed rule published in the Federal Register (63 FR 59924), EPA proposed a limited approval and limited disapproval of the 1994 Revisions to the Permit Rule. The federal register notice identified six issues that formed the basis for the limited disapproval. The revisions to the permit rules proposed in this report are intended to address the issues raised by EPA.

The six issues, and the staff's proposed response, are:

1. Interpollutant trading: *The proposed revisions incorporate EPA's suggestions.*
2. Exemption List: *The proposed revisions address EPA's concerns, but EPA's suggestion of basing a source's loss of exemption status on facility-wide emissions has not been incorporated.*
3. Functionally Identical Replacement: *The proposed revisions incorporate EPA's comment regarding the validity of alternate emission calculation procedures for replacement sources.*

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4. Ensuring Offsets are Surplus when Used: *Staff disagree with EPA comment. EPA's suggested changes have not been incorporated. However, EPA and District staff have worked out a procedure whereby the District may demonstrate that its program achieves emission reductions that are equivalent to EPA's suggested program. This procedure has been incorporated.*
5. Exemption, Emissions from Abatement Equipment: *EPA has commented that their issue has been resolved.*
6. Prevention of Significant Deterioration. *The proposal incorporates EPA's suggestions. EPA has commented that their issue has been resolved.*

### Interpollutant Trading

Regulation 2, Rule 2 Sections 302.1, 302.2 and 303.1 "are not approvable in their current form because they do not contain adequate safeguards to ensure an overall air quality benefit from this type of trading. For example, as currently drafted, the rule allows for the same trading ratio for POC to POC trades as it does for POC for NOx trades, without any demonstration that such trades will result in an equal air quality benefit. EPA continues to discourage interpollutant trading due to the scientific uncertainty of acceptable pollutant trading ratios. However, if the District wishes to allow interpollutant trading, the rule must be consistent with EPA guidance. For instance, the rule must restrict interpollutant trading to precursor pollutants contributing to the same secondary non-attainment pollutant (such as trading POC for NOx). The District must either perform adequate modelling (sic) studies to include a scientifically determined pollutant trading ratio and define that ratio in the rule, or perform a case-by-case analysis of the ratio, and state in the rule that the ratio will be determined after adequate modelling (sic), public notice, and EPA concurrence.

Additionally, the District's interpollutant trading provisions may allow inter-District trading without regard to the attainment status of the District where the ERCs are created and used, because the rule is silent on this issue. Therefore, the rule must be revised to prohibit this type of trading, or be revised to explicitly include the provisions of 173(c)(1) of the Clean Air Act." EPA Comments in 63 FR 59924

Clean Air Act §173(c)(1) has been codified as 42 USC §7503(c)(1)

(c) Offsets.- (1) The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this part for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the State may allow the owner or operator of a source to obtain such emission reductions in another nonattainment area if (A) the other area has an equal or higher nonattainment classification than the area in which the source is located

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and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located. Such emission reductions shall be, by the time a new or modified source commences operation, in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area. 42 USC §7503(c)(1)

H&S 40709.6. (a) Increases in emissions of air pollutants at a stationary source located in a district may be offset by emission reductions credited to a stationary source located in another district if both stationary sources are located in the same air basin or, if not located in the same air basin, if both of the following requirements are met:

- (1) The stationary source to which the emission reductions are credited is located in an upwind district that is classified as being in a worse nonattainment status than the downwind district pursuant to Chapter 10 (commencing with Section 40910).
- (2) The stationary source at which there are emission increases to be offset is located in a downwind district that is overwhelmingly impacted by emissions transported from the upwind district, as determined by the state board pursuant to Section 39610. Health & Safety Code §40709.6

Staff proposes to address EPA's interpollutant trading concerns by:

- Eliminating interpollutant trading of NO<sub>x</sub> for POC;
- Adding a case-by-case offset ratio determination for trades involving PM<sub>10</sub> precursors (i.e. NO<sub>x</sub> or SO<sub>2</sub> for PM<sub>10</sub>); and
- adding a requirement that any applicant that wishes to use POC or NO<sub>x</sub> offsets from outside the District must provide a demonstration that the requirements of 173(c)(1) are met. Health and Safety Code §40709.6 contains requirements for interbasin trades that must also be met. The revised regulation requires that the applicant demonstrate compliance with these requirements as well.

The District has determined that ozone formation within the Bay Area is *VOC-limited*. This means that reduction in VOC emissions is an effective means of reducing ozone formation, whereas a reduction in NO<sub>x</sub> emissions may not affect local or Bay Area Air Basin ozone levels at all. Under these conditions, allowing VOC reductions to offset, on a 1:1 basis,

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increases in NO<sub>x</sub> will always result in a local or Bay Area Air Basin air quality benefit, provided that the ambient standard for NO<sub>x</sub> is not violated by doing so.

The analysis supporting this determination is provided as 1999 Ozone Nonattainment Plan (June 1999) and attainment assessment (November 1998) adopted by the Board of Directors.

The District is non-attainment for the federal ozone standard (and therefore non-attainment for ozone precursors: POC and NO<sub>x</sub>). Clean Air Act Section 173(c)(1) applies only to these pollutants. The District is non-attainment for state PM<sub>10</sub> and ozone standards (and therefore non-attainment for ozone precursors: POC and NO<sub>x</sub>). Health & Safety Code Section 40709.6 applies only to these pollutants

The net air quality benefit of Interdistrict trading of the same pollutant can be demonstrated on a case-by-case basis. The demonstration can be made using PSD modeling protocols. Staff expect proposals involving inter-District offset trading to be very rare, and within the resources of the District to review.

### **2-2-214 Emission Offsets**

The definition of "Emission Offsets" has been revised to allow the use of Interdistrict emission reduction credits, provided that the applicant demonstrates that the requirements of Clean Air Act Section 173(c)(1) have been met. The definition has been revised to clarify that "contemporaneous emission reduction credits" refer only to emission reduction credits generated **onsite**. All offsite intradistrict credits must be deposited in the District Emissions Bank (pursuant to the requirements of Regulation 2 Rule 4) before they may be used as new source review offsets, as required under state law (H&S § 40709(1)).

### **2-2-302 Offset Requirement, Precursor Organic Compounds and Nitrogen Oxides, NSR**

Interpollutant trading provisions that allowed use of Nitrogen Oxide emission reductions to offset increases of Precursor Organic Compounds have been eliminated to satisfy EPA concerns. A demonstration has been provided that shows that ozone formation in the Bay Area Air Basin is VOC limited, justifying the allowed use of Precursor Organic Compounds emission reductions to offset increases of Nitrogen Oxide.

The offset requirements for small facilities (< 50 tons/year) have been clarified to require the applicant to provide offsets if the Small Facility Bank account has been depleted.

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### **2-2-303 Offset Requirements, PM<sub>10</sub> and Sulfur Dioxide, NSR**

Interpollutant trading provisions between PM<sub>10</sub> and its precursors Sulfur Dioxide and Nitrogen Oxides have been clarified in response to EPA comments: APCO discretion has been eliminated from this section and instead a case-by-case demonstration of a net air quality benefit must be made.

### **Exemption List**

"EPA's fundamental requirements with respect to permit exemptions are threefold. First, the exemptions must not keep a major source from appearing to be major. That is, emissions from exempt equipment must be included in the determination of whether a source is major (or whether a modification is major), whether for NSR or Title V purposes. Second, emissions from exempt equipment must be included in determining the offset liability for a source. Third, substantive requirements, such as BACT, must generally apply to all emissions units.

EPA continues to believe that if the 150 lb/day cap on exemptions applies to any group of emissions units or pieces of equipment, and not just to a single piece of equipment, the District is likely to be able to satisfy the above requirements. For example, the District may be able to argue that 150 pounds a day is de minimus from a BACT standpoint. Also, a maximum 150 pound per day facility wide exemption could be factored into offset requirements.

In addition, Regulation 2, Rule 1 exempts equipment such as internal combustion engines or gas turbines of less than 250 horsepower rating (Section 2-1-115.2) from authority to construct and permit to operate requirements, and exempts certain other sources subject to generally applicable requirements. These sources may have high emissions and a greater likelihood of violating emission standards and for these reasons should not be included on an exemptions list."

EPA Comments in 63 FR 59924

The District requires all sources of air pollutants to obtain a permit to operate unless the source type is specifically exempt or excluded from permits. The list is comprised of equipment that has been found by District staff not to be significant sources of emissions. The exemption list is periodically reviewed with this criterion in mind. The exemption of internal combustion engines is an example of a source that used to be considered insignificant, but has now become important as larger sources became well controlled.

The exemption list in Rule 2-1 used to have a backstop provision (referred to in EPA's comments) that resulted in loss of the permit exemption for an otherwise exempt source with emissions above 150 lb/day. This emission rate was also the trigger level for BACT. This backstop provision was removed when the exemption list was last modified in June 1995.

Staff agree that allowing individual sources to have emissions as high as 150 lb/day (equivalent to 25 TPY) without losing their exemption could result in a major source (emissions of 100 TPY) being incorrectly classified as non-major. As a result, the backstop provision has been restored to the exemption list

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(Section 2-1-319), and set to 5 tons per year per source, after abatement. Although it is still conceivable that a facility with many small exempt sources but few permitted sources could be a "major facility" without being so identified, it is not very likely. This is because the District's threshold for reviewing facility-wide potential-to-emit is 25 tons per year of actual emissions from inventoried sources. In order for a major facility to comply with the 5 ton/year per source permit exemption level and still avoid identification as a major facility, it would need to have at least 16 exempt sources all operating at just below the threshold.

In addition, a number of other changes to the exemption list are being proposed.

### ***Backstop provision***

#### **2-1-319 Source Expressly Subject to Permitting Requirements**

Section 2-1-319 has been added to require a permit for any source with emissions of any regulated air pollutant greater than 5 ton per year (after abatement). Certain sources (notably agricultural equipment and mobile sources) continue to be exempt or excluded from permits by operation of state law. Amendments to Regulation 2, Rule 1, Sections 114 through 128 prohibit any source subject to Regulation 2, Rule 1, Section 319 from being exempted from District permitting requirements.

The workshop draft would have required permits for sources subject to federal requirements like NESHAPS, MACT, or NSPS, or a California Air Resources Board Airborne Toxics Control Measure (ATCM). This requirement has been withdrawn. If District staff determine that an exempt source subject to one of these requirements ought to have a permit in order to facilitate compliance and communication, we will seek to amend the exemption list appropriately.

### ***Registered portable equipment***

#### **2-1-105 Exemption, Registered Statewide Portable Equipment**

Section 2-1-105 amendments eliminate the permit exemption for equipment registered pursuant to the CAPCOA Portable Equipment Registration Rule. Upon adoption of these amendments and within 90 days of notification of loss of exempt status, persons operating equipment within the boundaries of the District pursuant to a CAPCOA portable equipment registration and without a valid authority to construct or permit to operate will be subject to the loss of exemption requirements of Regulation 2, Rule 1, Section 424. Equipment registered pursuant to the Statewide Portable Equipment Registration Program remains exempt from District permitting requirements.

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Section 220 has been amended to eliminate the reference to Registered Inter-District Portable Equipment. Subsection 220.4 has been changed to clarify that the 1000 feet distance from a K-12 schoolsite to a portable source, within which a portable source may not be operated, is measured from the source to the outer boundary of the schoolsite, consistent with California Health and Safety Code Section 42301.6.

### ***Stationary internal combustion engines***

#### **1-110 Exclusions**

Section 110.2, which excluded emergency standby engines from all District regulations, has been deleted. All stationary engines, regardless of type of service, will be subject to District regulations. Emergency standby engines, however, that operate less than 200 hours per calendar year (changed from 30 calendar days) plus 100 hours of maintenance and testing per calendar year will continue to be exempt from District permits per Regulation 2, Rule 1, Section 114.2.

#### **2-1-112 Exemption, Internal Combustion Engines and Gas Turbines**

The exemptions that apply to IC engines have been moved from Section 113 to Section 114 and expanded to clearly distinguish between engines that are subject to permitting requirements and those that are not.

#### **2-1-114 Exemption, Combustion Equipment**

The general IC engine exemption has been lowered from 250 HP to 50 HP. This change, which will make the District's exemption level for engines consistent with those of other California districts, is being proposed because of the potential for engine NO<sub>x</sub> emissions and for the potential toxicity of diesel exhaust particulate. The exemption for portable internal combustion engines, standby internal combustion engines, and standby gas turbines has been amended to allow such equipment to be operated 100 hours per calendar year for purposes of maintenance and testing in addition to 200 hours per calendar year without triggering permit requirements. Standby engines at facilities with "non-firm service" power supply contracts cannot qualify for this exemption. This is because engines at these facilities may not be emergency standby generators; instead, they act as short-term supplements to the power supply network. Such engines should be subject to registration and control.

Additionally, this section has been amended to clarify that a permit is required for combustion devices that burn pollutants generated at other sources or abatement equipment.

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### ***Miscellaneous source categories***

The rest of the changes to the exemption list are being made to address issues that have arisen during routine permit and compliance review activities. They are not related to the EPA disapproval notice.

#### **2-1-113 Exemption, Sources and Operations**

An exemption for asbestos and asbestos containing material renovation or removal has been included along with an exemption for certain closed landfills. Asbestos removal projects are handled under a District registration program. The affected landfills have negligible emissions.

#### **2-1-118 Exemption, Surface Preparation and Cleaning Equipment**

This section has been amended to make it consistent with amendments to Regulation 8, Rule 16 adopted on September 16, 1998. Regulation, 2, Rule 1, Section 118 now specifies that not more than one cold solvent cleaner at any facility using a cleaning solution with a VOC content in excess of 50 grams per liter (0.42 lb/gal) may be exempt from permitting. This single exempt cold cleaner must meet an annual emission limit on net solvent loss not to exceed 20 gallons of solvent per year. Other cold solvent cleaners in a given facility may be exempted from permitting if the cleaning solvent used in the cold cleaner meets the 50 grams per liter (0.42 lb/gal) VOC limitation. Cold cleaners, even exempt ones, are also subject to cold cleaner requirements set forth in Regulation 8, Rule 16.

#### **2-1-121 Exemption, Material Working and Handling Equipment**

The exemption for semiconductor wafer cutting has been moved from Section 2-1-124 (semiconductors) to Subsection 121.1 because semiconductor wafer cutting or silicon cutting is not considered part of a fabrication operation but a separate source category with insignificant emissions.

Subsection 121.10 has been changed to clarify that the use of mold release products or lubricants is not exempt unless the VOC content of such products and lubricants is less than or equal to 1 percent, by weight, or unless the total uncontrolled facility-wide VOC emissions from the use of these materials are less than 150 pounds per year.

The backstop emission rate for loss of exemption due to high emissions in Subsections 121.1 and 121.13 has been lowered from 150 lb/day to 5 ton/yr, consistent with the proposed change to 2-1-319.

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### **2-1-122 Exemption, Casting and Molding Equipment**

Subsection 122.4 has been changed to clarify that the use of mold release products or lubricants is not exempt unless the VOC content of such products and lubricants is less than or equal to 1 percent, by weight, or unless the total uncontrolled facility-wide VOC emissions from the use of these materials are less than 150 pounds per year.

### **2-1-123 Exemption, Liquid Storage and Loading Equipment**

This section has been amended to clarify that the equipment used for storage or loading of asphalt emulsion is not exempt from permitting unless the sulfur content of the stored material is less than 0.5 percent, by weight.

### **2-1-128 Exemption, Miscellaneous Equipment**

This section has been amended to clarify that only passive aeration soil activities may be exempt from permitting pursuant to this section. Passive aeration expressly excludes the use of any device that causes air or another fluid to pass through or near the soil, potentially or actually accelerating the rate of contaminant removal from the soil. Soil vapor extraction operations are not exempted from permitting requirements pursuant to this section. Subsection 128.16 has been changed to clarify that the passive aeration of soil used as cover material at a landfill may not be exempted from permitting requirements pursuant to this section.

Subsection 128.23 has been added to exempt from permitting requirements structure demolition that does not involve asbestos or asbestos containing materials. Asbestos and asbestos containing material renovation and removal conducted in compliance with Regulation 11, Rule 2 and Regulation 3 is exempt from permitting pursuant to Regulation 2, Rule 1, Section 113.2.15.

### ***Sources of Toxic Air Contaminants***

#### **2-1-316 New or Modified Sources of Toxic Air Contaminants or Hazardous Air Contaminants**

This section has been retitled to include a reference to hazardous air contaminants. The content of what had been Section 316 has been redesignated as 316.1 and a new subsection numbered 316.2 has been added. Subsection 316.2 sets forth permitting requirements for new or modified sources, or new or modified related source groupings, which emit 5 tons per year or more of one hazardous air pollutant or 12.5 tons per year or more of any combination of hazardous air pollutants. The District's Risk Management Policy defines what the District considers to be a related source grouping.

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### **Table 2-1-316 Toxic Air Contaminant Trigger Levels**

The table has been amended to include additional carcinogenic materials and substantive revisions to some toxic air contaminant trigger levels. Diesel exhaust particulate matter has been added to the table and its risk trigger has been set at 0.64 pounds per year.

Ethanol has not been identified as either a Hazardous Air Pollutant by EPA, nor as a Toxic Air Contaminant by the State of California. The threshold for risk screening, derived from exposure limits for acute effects, is 43.5 tons/year. Ethanol emissions are controlled as precursor organic compounds long before risk management requirements are triggered.

Ethanol's presence in Table 2-1-316, however, means that any increase in ethanol emissions may trigger the public notice requirement of 2-1-412. This seems unnecessary, given the very low toxicity of ethanol .

Staff propose to delete ethanol from Table 2-1-316.

The paragraph following the table has been deleted. It is redundant to, and in partial conflict with, the requirements contained in Section 2-1-316.

### ***Public Notice Requirements***

#### **2-1-412 Public Notice, Schools**

This section has been amended to be more consistent with California Health and Safety Code Section 42301.6. Subsection 412.3 was based on Health and Safety Code Section 42301.6 (d):

(d) The requirements for public notice pursuant to subdivision (b) or a district rule in effect prior to January 1, 1989, are fulfilled if the air pollution control officer or applicant responsible for giving the notice makes a good faith effort to follow the procedures prescribed by law for giving the notice, and, in these circumstances, failure of any person to receive the notice shall not affect the validity of any permit subsequently issued by the officer. Health and Safety Code §42301.6 (d)

#### **2-1-502 Burden of Proof**

This section has been added to clarify the duty incumbent upon any person asserting that a source is exempt from Regulation 2, Rule 1, Section 301 and/or 302, to provide credible evidence sufficient to prove to the APCO that the source meets all requirements necessary to qualify for the exemption.

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### Functionally Identical Replacement

EPA does believe that the sections in Regulation 2, Rule 2 concerning functionally identical replacement may not fully meet the federal requirements found at 40 CFR 51.165. Specifically, section 51.165(a)(1)(v)(A) defines "major modification" as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act. Section 51.165 (a)(1)(v)(C)(1) excludes "routine maintenance, repair and replacement" from the definition of physical or operational change. Such assessments should be made on a case-by-case basis, but would generally not include replacement of emissions units ("sources" in BAAQMD's nomenclature), or life extension projects.

Additionally, Section 2-2-313 of Regulation 2 states that offset requirements for replacement sources of POC and NO<sub>x</sub> shall be met either in accordance with Section 2-2-302 Offset Requirements, or 2-2-608 Alternate Emission Calculation Procedures, Replacement Sources, which is an alternative to the calculation procedures outlined in Section 2-2-605. EPA believes that the alternate emission calculation procedures outlined in Section 2-2-608 may allow replacement sources to construct without fully applying offsets that would be required by Section 2-2-605, and by the federal regulations at 40 CFR 51.165. As drafted, the rule does not require the replacement source to consider the operating history of the replaced source, which could have been operating at a capacity well below its maximum allowable limits (e.g., actual emissions 50 percent of potential emissions). Therefore, the calculation appears to use a potential to potential emissions test, and as a result no offsets would be needed. EPA's regulations and policy (Emission Trading Policy Statement, FR 51 43838 and 40 CFR 51.165) require an actual to potential test for determining emission changes, and, consequently, offset requirements. EPA Comments in 63 FR 59924

The first paragraph of EPA's comment on this issue indicates that the District's definition of "new source" (currently Regulation 2-2-225; this proposal moves the definition to 2-1-232) applies to equipment that would be exempted from federal review. As a result, the District's new source review would cover projects that are exempt from federal new source review. The District relies upon authority granted under state law (Health and Safety Code §40001(a) et seq.) to regulate such projects. The District's requirements are more stringent than those required by EPA, and are therefore approvable.

#### **2-1-106 Limited Exemption, Accelerated Permitting Program**

A new definition of "Alter" has been added (Section 2-1-233) to make it clear that alterations to existing sources require permit review, even though the alteration may not affect emissions.

Examples of alterations include replacement of emission-related components (such as burners) with non-identical replacements. Other examples of alterations include a change of raw material that does not affect the toxicity of emissions or the quantity of VOC emitted.

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Evaluation of such projects is administrative, and consists of verification that the change will not increase emissions. This verification can happen after the change has taken place, and should not delay the project.

A category has been added to the Accelerated Permitting Program to allow applicants to proceed with such projects as soon as they have notified the District and paid the processing fee.

### **2-1-232; 2-2-225 New Source**

The definition of new source has been moved from Regulation 2-2 to Regulation 2-1. This definition applies to any new source subject to District permit, not just those subject to BACT and offsets.

### **2-1-233 Alter**

Last year a glass manufacturing plant in Oakland replaced one of its furnaces without undergoing District permit review. The operator successfully argued that the existing permit and NSR regulations were ambiguous with respect to whether District the facility's project required a permit. The intent of the new language in 2-1-232.6 and 2-1-233.2 is to make it absolutely clear that such a project will now be subject to the District's new source review rule, and will require the operator to install BACT and provide offsets, even though it may not be subject to the Federal New Source Performance Standard.

District staff also review the installation of replacement burners. Old burners are usually replaced with non-identical low-NOx burners. These replacements require engineering review, but do not result in increased emissions. The proposed Section 2-1-233.1 clarifies the current policy which requires permit applications for such replacements.

### **2-1-234 Modified Source**

The definition of "modification" contained in Regulation 2-2 has been deleted, and replaced with this new definition of modified source.

The new language is consistent with the District's application of the concept of "modification." As has been already discussed, however, existing vagueness in the language has resulted in successful challenges to the District's application. This has resulted in inequitable treatment of facilities under similar circumstances.

The new language makes it clear that its approval of projects is based upon the throughputs and emissions described in a permit application. Further increases may be allowable, but only after the District conducts a new review. Although the District currently puts explicit limits in its permit conditions, many sources have

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received permits in the past with only “implicit” limitations. The new language makes it clear that these implicit limitations are enforceable.

The new language also makes it clear that sources constructed before the District required permits (“grandfathered” sources, mostly built before 1979) are also subject to throughput and emission limitations. When the District’s permit program was set up, these sources were allowed to increase throughput and emissions without limit, *provided they were not physically modified, and that the process remained unchanged*. Most facilities have obtained appropriate permits from the District when they changed or upgraded their equipment to increase capacity, or when changes to other parts of the process “debottlenecked” production. Some facilities, however, have avoided this review, increasing capacity and production beyond the equipment’s original design through “maintenance” and other activities. Because of ambiguities in the existing definition, they have successfully avoided review of these activities which have substantially increased emissions.

The new language ends this process of rationalization. All sources which do not currently have permit conditions limiting annual or daily emissions or throughputs, will be limited to the throughputs or emissions that they have actually achieved and reported to the District, or the reported design capacities of the units, whichever is higher. Any change that would increase emissions beyond these levels will require District review and approval.

### **2-1-301 Authority to Construct**

The section has been revised to require an authority to construct for replacement of any component with non-identical components. Such a replacement may affect emissions. BACT and offsets are not triggered by such a replacement unless the emissions increase as a result. The change is necessary to maintain consistency with Section 2-1-233.

### **2-2-608 Alternate Emission Calculation Procedures, Replacement Sources**

Staff agrees with EPA that Section 2-2-608 uses a "potential to potential" emissions test for calculation of offsets. Therefore, 2-2-608 will be deleted. The remaining procedure, contained in 2-2-605, uses an “actual to potential” emissions test, consistent with federal requirements.

### **2-2-313 Offset Requirements, Replacement Sources of Precursor Organic Compounds and Nitrogen Oxides, NSR**

This section has been deleted. With the deletion of section 2-2-608, this section serves no purpose. Replacement sources are by definition (2-1-232.4) new sources, subject to BACT and offsets.

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### **2-2-241 Replacement Sources**

This definition has been deleted. The term was used only in Sections 2-2-608 and 2-2-313.

### **Ensuring Offsets are Surplus when Used**

Both Regulation 2, Rule 2 and Regulation 2, Rule 4 are silent regarding the requirement to ensure that ERCs are surplus at the time of use. All ERCs must be adjusted at the time of use pursuant to the requirements of Sections 173 (a), 173 (c)(1) and 173 (c)(2) of the Clean Air Act ("Act"). EPA has provided flexibility in the implementation of these requirements in the August 26, 1994 memo from John Seitz to David Howekamp entitled, "Response to Request for Guidance on Use of Pre-1990 ERCs and Adjusting for RACT at Time of Use." For example, if an ERC is created and approved this year, but the District subsequently proposes, passes and includes (implicitly or explicitly) in its plan a control measure related to the source category of the creator of the ERC, the District must, upon use of the ERC, evaluate the effect the control measure would have had on the source that created the reduction, and reduce the amount of the ERC appropriately. Section 173 (a) of the Act requires that offsetting emission reductions be federally enforceable at the time an NSR permit is issued, and in effect by the time the source commences operation (Section 173 (c)(1)). In addition, Section 173 (c)(2) requires that offsets be surplus of all other requirements of the Act. The District must adjust all emission reductions to ensure that the surplus requirement of Section 173(c)(2) is met at the time that the reductions are used to meet the offset requirements of Section 173 (a) and (c).  
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173 (c) Offsets.- (1) The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this part for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the State may allow the owner or operator of a source to obtain such emission reductions in another nonattainment area if (A) the other area has an equal or higher nonattainment classification than the area in which the source is located and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located. Such emission reductions shall be, by the time a new or modified source commences operation, in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area. (2) Emission reductions otherwise required by this Act shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by this Act shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of paragraph (1).

42 U.S.C. §7503(c)(1) & (2) (Clean Air Act §173(c)(1) & (2))

Staff respectfully disagrees with the EPA comment. The Clean Air Act requirement that offsets be surplus at the time of use is not equivalent with EPA's informal policy (i.e., citation of an internal memo from John Seitz to Dave Howekamp for authority) that offsets be adjusted for RACT at the time of use.

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The element at issue is the phrase “Emission reductions not otherwise required by this Act,” contained in 42 U.S.C. §7503(c)(2). Emission reductions that meet this test are usually labeled “surplus.”

EPA’s position (articulated as informal policy in the John Seitz memo referred to in EPA’s comments) is that new requirements that *would have* affected the source had it continued to operate in its baseline mode *require* the already-achieved reductions, and therefore disallow their use as offsets. The Clean Air Act requires the operator of the new or modified facility to provide the necessary offsets at the time that the application is approved. EPA argues that banking programs are not explicitly provided for in the Act; rather, the Act envisions an applicant identifying, *at the time of application*, specific actions that result in generation of offsetting emission reductions. Banking programs provide a convenient mechanism for validating emission reductions in advance. To be equivalent, however, to the transaction described in the Act, the offsetting reduction must be beyond reductions required *at the time of application*.

The District’s program reviews emission reductions for applicable requirements *at the time of credit generation*. Once the credit-generating source has been modified or shut down, that emission reduction cannot be “required” by a future change in emission standards. For example, if the reduction has been generated by a plant closure, a change in the emission requirements for the source category will not result in, or require, any reductions from the closed source. The source’s emissions are already zero. The change in emission requirements does not result in an “emission reduction required by the Act.” The emission reductions occurred at a time when no reductions were required. Under this interpretation, the credits are valid.

Staff agrees that EPA’s informal policy is *one* way of implementing the “surplus” requirement. It is, in fact, a reasonable interpretation. It is not, however, the *only* valid interpretation of this section.

Staff agrees that EPA has the authority to adopt a requirement that offsets be adjusted for RACT at the time of use. When such a requirement is promulgated by EPA rulemaking, the District will amend its rule to comply. In the absence of explicitly prohibitory language in either regulation or statute, EPA must permit programs that comply with reasonable interpretations of existing language.

The District’s program works like this:

- A source reduces its emissions beyond the requirements of the District’s rules and plans. The facility is granted credits for the excess, unplanned-for reductions. These credits may be used for future offsets.
- The District ensures that the future use of these credits is planned for by including credits in the planning inventory *as if they were being emitted*. In

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other words, the District uses the current emission inventory, plans for growth, and in addition *adds the banked credits*, and uses the resulting emission estimates in its ozone models to demonstrate attainment with the standards.

- If the source providing the offsets continues to operate, any future reductions required of that source under the Clean Air Act are measured from the new baseline. If the source providing the offsets has been shutdown, *new requirements under the Act cannot affect its emissions*.

There is also a practical obstacle to RACT-adjusting emission reduction credits at the time of use. Many of the credit certificates currently banked result from emission reductions at more than one source. The District tracks credit use on the certificate level. In order to adjust credits at the time of use, the District would have to track the use of credits from each individual generating source. Although this is feasible, it would require an extensive change in our emission credit accounting system, and increase the effort needed to administer the program. In the absence of a federal regulation requiring such an effort, the extra burden is not justified.

### ***Proposed revisions***

Although District staff and EPA continue to disagree on the interpretation of the requirement, EPA has indicated that the District may satisfy EPA's objection by a demonstration that the District's program results in equivalent offsets. This is possible because the District requires offsets for many projects that are outside of the federal program.

### **2-2-247 Adjustment to emission reductions for federal purposes**

This definition has been added as part of the proposed equivalence demonstration. It clearly states that the basis for the credit adjustment is application of new regulations to sources that no longer exist. It also states that the adjustment is for demonstration purposes only; credits will retain their full value throughout their life under this program.

### **2-2-423 Demonstration of Offset Program Equivalence with EPA Policy**

The proposed demonstration will show, once a year, that the District's offset program for all sources provides more offsets, even adjusted as EPA would wish, than would be required to offset *major modifications at major facilities*. The demonstration would cover a three year period (this period was selected because EPA has approved a similar proposal with a three year lookback period). The District will commit to providing offsets out of the small facility bank in the unlikely event that the demonstration fails to show equivalence, and

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seeking additional offsets in the extremely unlikely case that small facility bank offsets are not adequate for the demonstration.

### **Exemption, Emissions from Abatement Equipment**

This section states that BACT requirements shall not apply to emissions of secondary pollutants which are the direct result of the use of an abatement device which complies with the BACT or BARCT requirements for control of another pollutant. On July 1, 1994, EPA issued guidance from John Seitz, Director of the Office of Air Quality Planning and Standards, entitled "Pollution Control Projects and New Source Review (NSR) Applicability", which states that a source must secure offsetting reductions in the case of a pollution control project which will result in a significant increase in nonattainment pollutants.

Section 2-2-112 in Regulation 2, Rule 2 must be revised to make it clear that significant emissions of secondary pollutants which result from control devices or requirements are subject to the requirement to obtain offsets.

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Section 2-2-112 exempts secondary emissions (increased emissions of secondary pollutants that result from the use of a control device required for control of a primary pollutant) from BACT, subjecting them instead to RACT. The exemption explicitly applies to the BACT requirements of section 2-2-301. The exemption clearly does not apply to the offset requirements of sections 2-2-302 and 303, nor to any other part of this rule. Therefore, offsets for increased emissions from air pollution control equipment are required by the existing language.

The regulation, as written, complies with the requirement that offsets be provided for a "pollution control project which will result in a significant increase in nonattainment pollutants." The suggested revision would diminish, rather than increase, clarity.

No change is proposed.

### **Prevention of Significant Deterioration**

EPA suggests that the District add lead to the PSD pollutant list in Regulation 2, Rule 2, Sections 2-2-304, 2-2-305 and 2-2-306. The rule lists CO, PM<sub>10</sub>, SO<sub>2</sub>, POC and NO<sub>x</sub> as PSD pollutants, but excludes lead. EPA realizes that the District has a 0.6 ton/yr BACT threshold for lead, and in Regulation 2, Rule 1, Section 111.1 a 0.3 lb/day lead exemption threshold for authorities to construct or permits to operate. However, the PSD pollutant list must include all criteria pollutants, including lead.

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Staff agrees that the District's existing risk management program makes the PSD requirements for lead not only redundant, but also moot. In the October 7, 1998 revisions to this Rule, changes were made that eliminated the requirement for BACT and modeling for certain significant increases in other PSD pollutants. Nevertheless, there is nothing lost by including these pollutants in the PSD list, as suggested by EPA. Appropriate language has been added to Section 2-2-304 and 2-2-306. Section 2-2-305 applies to CO only; no change has been made.

### **2-1-202 Complete Application**

A reference to Section 2-2-306 has been added to this definition. The definition has been revised to make it applicable to emission credit banking applications as well.

### **2-2-304 PSD Requirement**

PSD modeling requirements have been added for substantial increases in lead emissions.

### **2-2-306 Non-Criteria Pollutant Analysis, PSD**

In the October 7, 1998 revisions to this Rule, changes were made that eliminated the requirement for BACT and modeling for certain significant increases in specified pollutants. This was done because the District's existing risk management program makes the PSD requirements for these pollutants not only redundant, but also moot. Federal rules do not require the use of BACT for such sources, nor do they require tracking of facility emission increases and decreases from a specific date. Federal rules do require an impact analysis for significant modifications. This requirement has been added to Section 2-2-306.

## **Implementation of the Requirements of CAA Section 112(g)**

The District is required, under the 1990 Clean Air Act Amendments, to implement a program to require all operators of major sources of hazardous air pollutants to install Maximum Achievable Control Technology (MACT) when they construct or reconstruct.

112(g)(2) Construction, reconstruction and modifications.-

- (A) After the effective date of a permit program under title V in any State, no person may modify a major source of hazardous air pollutants in such State, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for existing sources will be met. Such determination shall be made on a case-by-case basis where no applicable emissions limitations have been established by the Administrator.
- (B) After the effective date of a permit program under title V in any State, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology

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emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

### Clean Air Act Section 112(g)(2)

The District's existing Risk Management policy for new and modified sources accomplishes this. Some minor changes are needed to bring meet all of the requirements of the federal program.

#### **2-2-101 Description**

The application of TBACT has been added as one of the purposes of the rule.

#### **2-2-114 Exemption, MACT Requirement**

The federal MACT program only applies to certain facilities under certain circumstances.

#### **2-2-236 Hazardous Air Pollutant (HAP)**

The acronym HAP has been added to the definition.

#### **2-2-244 Best Available Control Technology for Toxics (TBACT)**

A definition has been added.

#### **2-2-317 Maximum Achievable Control Technology (MACT) Requirement**

This new standard section implements the requirements of 112(g).

#### **2-2-401 Application**

Information needed to make the 112(g) MACT determination has been added to the list of information required for a complete permit application.

#### **2-2-405 Publication and Public Comment**

A public comment period will be required for any permit application subject to a 112(g) MACT determination.

### **Alternate siting requirements of the Clean Air Act**

During its review of other District's permit programs, EPA has identified rare situations where CEQA does not meet the alternate siting analysis called for in the Clean Air Act.

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### SEC. 173. PERMIT REQUIREMENTS.

- (a) In General.- The permit program required by section 172(b)(6) shall provide that permits to construct and operate may be issued if –

...

(5) an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

This requirement applies only to major modifications at major facilities. Such projects are almost invariably required to conduct an alternative projects analysis under CEQA (Public Resources Code § 21002, 21003.1, 21061.2, and related CEQA Guidelines: Title 14 of the California Code of Regulations, Section 15000 et seq.).

Some modification projects, however, may be categorically or statutorily exempt from CEQA analysis. The proposed revision ensures that the federally required alternatives analysis is performed regardless of CEQA status.

#### **2-2-246 Analysis of Alternatives**

This definition has been added. It indicates that such an analysis contained in an EIR or focused EIR satisfies the requirement.

#### **2-2-318 Analysis of Alternatives**

The language from the Clean Air Act requiring the analysis has been added to the regulation.

### **Definition of Abatement Devices**

Section 3-103 describes abatement equipment as “... any piece of equipment whose sole function is to reduce the emission of contaminants to the atmosphere ...” This definition is different from the 1-202 definition for air pollution control equipment, which states “Any equipment, the operation of which has as its primary purpose a significant reduction in either the emission of air contaminants or the effects of such emissions.” Regulation 2, Rules 1, 2, and 6 have no definitions for abatement device, abatement equipment, or air pollution control equipment.

Regulation 2, Rule 2, Section 112 exempts secondary pollutant emissions from the use of an “abatement device” or emission reduction technique (which complies with BACT/BARCT for another pollutant) from BACT requirements. Section 2-2-112 can be confusing without an explicit definition of “abatement device” that applies to Regulation 2, Rule 2. This issue is frequently raised by

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landfill engine operators, but it could also apply to any combustion device that uses heat recovery at the device for some beneficial purpose.

### **1-240 Abatement Device**

The “Abatement Device” definition in Regulation 1-240 has been changed to apply to equipment whose “sole purpose” is the control of air pollutants. “Abatement device” is a subset of “air pollution control equipment” (defined in 1-202).

“Air pollution control equipment” refers to any device or process that results in a reduction in emissions of an air contaminant.

“Abatement device” refers to a process whose only purpose is the control of air contaminants.

Examples of abatement devices are flares, SCR, and scrubbers.

Examples of air pollution control equipment are abatement devices, landfill gas engines, and condensers (which recover reusable solvent).

## **Changes to implement revisions to H&S Code §42302**

Health and Safety Code §42302 was revised late last year to increase the amount of time available to file an appeal.

42302. An applicant for a permit that has been denied may request, within 30 days after receipt of the notice of the denial, the hearing board of the district to hold a hearing on whether the permit was properly denied.

42302.1. Within 30 days of any decision or action pertaining to the issuance of a permit by a district, or within 30 days after mailing of the notice of issuance of the permit to any person who has requested notice, or within 30 days of the publication and mailing of notice provided for in Section 1 of Chapter 1131 of the Statutes of 1993, any aggrieved person who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in the action before the district may request the hearing board of the district to hold a public hearing to determine whether the permit was properly issued. Except as provided in Section 1 of Chapter 1131 of the Statutes of 1993, within 30 days of the request, the hearing board shall hold a public hearing and shall render a decision on whether the permit was properly issued.

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### **2-1-410 Appeal**

The deadline for filing appeals has been changed to 30 days.

### **2-2-408 Appeal**

This redundant section has been deleted.

### **2-4-408 Appeal to the Hearing Board, Banking**

Although not covered by the change in 42302.1, the deadline for filing banking appeals has been changed to promote consistency and avoid confusion.

## **Other Changes**

### **1-108 Metric Governs**

English units alone are used in many District regulations. The “metric governs” section has been revised to more accurately reflect the principal used in documenting standards.

### **1-116 Definitions**

The primacy of local definitions has been clearly identified.

### **1-220 Operating Day**

The language has been clarified.

### **1-241 Owner or Operator**

A definition has been added. The language for this definition comes from 51 CFR 51.100 (f).

### **1-242 Parametric or Predictive Emission Monitoring System**

Last year when Regulation 3 was being revised, a fee for continuous emission monitors and parametric emission monitoring systems was placed upon all such systems at Title V and synthetic minor plants. The new definition clarifies this requirement, and distinguishes PEMs from parametric monitors which are not intended to replace CEMs, and are not charged \$1185 per pollutant per monitor.

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### **1-545 Monitor Maintenance and Calibration**

This new section requires that any monitors required by regulation or permit condition be maintained and calibrated in accordance with the equipment manufacturer's specifications.

### **2-1-101 Description**

Under some circumstances, an operator may wish to obtain an operating permit for a source that is exempt from District permit requirements. The proposed new language allows an applicant to voluntarily request that a source be subject to the requirement to obtain an operating permit. Because it is voluntary, the operator may subsequently request that the exempt status be restored.

### **2-1-103 Exemption, Source not Subject to any District Rule**

A minor clarification has been added.

### **2-1-105 Exemption, Registered Inter-District Portable Equipment**

The permit exemption for equipment registered under the CAPCOA Inter-District Portable Equipment Program has been deleted. Portable equipment that is registered by the ARB under their portable equipment registration program is still exempt. Operators of any other portable equipment may seek and obtain a District portable equipment permit under Section 2-1-413.

### **2-1-112 EIR**

The reference to the Public Resource Code has been revised to be more comprehensive.

### **2-1-129 Major Facility Review**

The exemption has been revised to clarify that exempt sources must be listed in applications for synthetic minor permits as well as major facility review permits.

### **2-1-204 Major Facility**

The definition has been revised to be consistent with the definition in Regulation 2-6, Major Facility Review.

### **2-2-220 Major Facility**

The definition in Regulation 2, Rule 2 has been deleted. The definition in 2-1 will apply in the future, reducing the possibility of inconsistency.

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### **2-1-214 Emission Offsets**

The definition of emission offsets has been revised to clarify that "contemporaneous emission reduction credits" refer only to credits generated onsite. All offsite credits must be deposited in the District Emissions Bank before they may be used as offsets. The purpose of this revision is to ensure that offsite emission reduction credits are thoroughly reviewed prior to use.

### **2-1-217 Potential to Emit**

The definition of "Potential to Emit" has been revised to apply to individual sources as well as to facilities. This change makes the definition more closely match the federal definition in 40 CFR § 51.165(a)(1)(iii). The definition has also been revised to clearly state that a source or facility that exceeds an enforceable limitation is no longer considered to be constrained by that limitation. All of these changes are consistent with the definition in Regulation 2-6, Major Facility Review.

### **2-2-238 Potential to Emit**

The definition in Regulation 2, Rule 2 has been deleted. The definition in 2-1 will apply in the future, reducing the possibility of inconsistency.

### **2-1-218 Regulated Air Pollutant**

The definition has been amended to clarify that pollutants regulated solely under Section 112(r) of the Clean Air Act (Prevention of Accidental Releases) are not "regulated air pollutants." These are acutely hazardous compounds that are sometimes stored in quantities that require special release prevention efforts, but are not routinely emitted, nor do they contribute to violations of ambient air quality standards.

### **2-2-239 Regulated Air Pollutant**

The definition in Regulation 2, Rule 2 has been deleted. The definition in 2-1 will apply in the future, reducing the possibility of inconsistency.

### **2-1-220 Portable Equipment**

The definition has been revised to clarify that the notice requirements of H&S Section 42301.6 are triggered by proximity to a school's outer boundary.

The definition has also been revised to reflect the fact that the District will no longer register portable equipment under the CAPCOA Inter-District Portable Equipment Program, nor will it honor registrations from other Districts. Portable

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equipment will need to either be registered under the State Portable Equipment Program, or obtain a District operating permit.

### **2-1-405 Posting of Permit to Operate**

The posting requirements have been clarified to require the posting of the permit, *including all relevant permit conditions*, either at the source or in the operator's manual. This requirement may be met by posting the *permit card* (the official-looking permit to operate that is issued when the source is first permitted or subsequently modified) plus *the permit conditions applying to that source* from the annual permit renewal package; or by posting the relevant *page from the permit renewal package* plus *the permit conditions applying to that source* from the annual permit renewal package.

### **2-1-422 Revocation**

This section has been revised to allow the revocation of an authority to construct under the same circumstances that a permit to operate may be revoked.

### **2-1-431 Date of Completion**

A definition has been added that clarifies that an application is deemed "complete" upon receipt by the District of all information and fees needed to complete the application.

### **2-2-208 CEQA**

The definition has been expanded to include reference to the CEQA guidelines contained in the California Code of Regulations

### **2-2-210 Complete Application**

This definition has been deleted. It is identical to the definition contained in 2-1-202.

### **2-2-245 Fully Offset**

A definition has been added to clarify the District's intended use of phrase "fully offset." Regulation 2-2-605 allows the use of a permitted maximum allowable emission rate as a baseline if that baseline was fully offset when established. Confusion has arisen in certain applications regarding whether part of a cap can be fully offset. The proposed clarification makes it plain that the answer is "no."

This baseline option was established for two reasons:

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- Because of the scrutiny applied by the District and the public at the time of credit generation, the offsets which established the “fully offset” cap readily meet four of the five tests: emission reductions are real, quantifiable, permanent, and enforceable. The fifth test, that reductions be surplus, is met by adjusting the baseline to reflect emission reductions already accounted for by the District’s pollution control strategy, as contained in the approved Clean Air Plan.
- This option also provides fairness. When a facility establishes an emission cap and provides the associated offsets, the facility usually builds in a compliance factor. The cap is set at a level that the operator expects never to exceed. Depending upon how conservative the operator is, this “compliance margin” results in the operator providing emission offsets that are never really used, above and beyond the “extra” offsets required by discount ratios. The opportunity to recover unused credits provides an incentive for facilities to provide more emission credits than actually needed for the application. This results in an air quality benefit over the lifetime of the project.

Any new source for which the applicant has provided offsets meets the definition of “fully offset.”

An example may help clarify the application of this definition to modifications. Assume that a source is modified to increase its emissions, and the increase triggers BACT and offsets. If the emission rate used for calculating offsets is based upon the *actual emission rate* for the source, and offsets are provided for the difference between actual future emissions and actual present emissions, then the new emission cap *is not fully offset*. Any future modifications will use unadjusted actual emissions as a baseline for calculating offset requirements.

If, on the other hand, the applicant wishes the new emissions cap to be considered “fully offset,” the applicant must request that the actual emission rate for the existing source be RACT-adjusted, and provide offsets for the difference between actual future emissions and *adjusted* actual present emissions. Conceptually, this evaluation process is equivalent to shutting down the existing source, banking the resulting emission reductions, and starting up a new source.

If the applicant knows that offsets provided in excess of actual emissions cannot be recovered, then the “compliance margin” will be shaved as closely as possible. This can result in compliance problems, if the margin is too small; or in extra costs, if the margin is too great. If, on the other hand, the applicant knows that excess offsets can be recovered at the end of the project’s life, the margin can be made comfortably large. To the extent that the margin remains unused, the environment benefits from offsets taken out of circulation but not actually emitted.

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### **2-2-301 Best Available Control Technology Requirement**

*The BACT standard conflicts with State law. Under the District regulation, BACT is being required only for emission increases greater than 10 pounds per day. ARB suggests revising Section 2-2-301.1 to require BACT for any application which results in an emission from a new or modified source ... equal to or in excess of 10 pounds per highest day."*

*CARB comment on 1998 draft rule*

**H&S Code § 40919. (a) Each district with serious air pollution shall, to the extent necessary to meet the requirements of the plan adopted pursuant to Section 40913, include the following measures in its attainment plan:**

- (1) All measures required for moderate nonattainment areas, as specified in Section 40918.**
- (2) A stationary source control program designed to achieve no net increase in emissions of nonattainment pollutants or their precursors from all new or modified stationary sources which emit, or have the potential to emit, 15 tons or more per year. The program shall require the use of best available control technology for any new or modified stationary source which has the potential to emit 10 pounds per day or more of any nonattainment pollutant or its precursors.**

ARB's comment is valid. Staff propose to make the necessary change. It should be noted that BAAQMD requires BACT for all pollutants, whereas the state requirement applies only to precursor organic compounds and NOx.

The effect of this change is shown below. Under the old rule, either the average or the maximum daily emissions would have to increase above 10 lb/day to trigger BACT. Under the proposed revision, either average or maximum daily emissions would have to increase, and post-control emissions would have to be equal to or greater than 10lb/highest day.

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Case	New emission (controlled)		Project emission increase		OLD RULE	NEW RULE
	Average day (lb/day)	Highest day (lb/day)	Average day (lb/day)	Maximum day (lb/day)	BACT required	BACT required
1	<10	<10	<10	<10	NO	NO
2	<10	>=10	<=0	<=0	NO	NO
3	<10	>=10	>0 <10	<10	NO	YES
4	<10	>=10	<10	>0 <10	NO	YES
5	<10	>=10	<10	>=10	YES	YES
6	>=10	>=10	<=0	<=0	NO	NO
7	>=10	>=10	>0 <10	<10	NO	YES
8	>=10	>=10	<10	>0 <10	NO	YES
9	>=10	>=10	>=10	<10	YES	YES
10	>=10	>=10	<10	>=10	YES	YES

### **2-2-305 Carbon Monoxide Modeling Requirement, PSD**

A minor correction has been made to make the requirement consistent with other similar requirements.

### **2-2-413 Public Notice, Schools**

This section has been deleted. It is identical to Section 2-1-412, which applies to all permit applications, including those subject to Regulation 2-2.

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### **2-2-604 Emission Increase Calculation Procedures, New or Modified Sources**

This section has been revised to be consistent with the new baseline calculation procedure contained in Section 2-2-605.

### **2-2-605 Emission Calculation Procedures, Emission Reduction Credits**

This section was revised on October 7, 1998 to reflect actual District practice in reviewing and approving alternate baselines. Based upon discussions with EPA during their review of the recently adopted (April, 1999) IERC Rule (Regulation 2-9), it became apparent that the practice reflected in 2-2-605 was not approvable by EPA. As a result, staff recommend removing APCO discretion from the baseline period selection process and using a long (three-year) baseline period to reduce the impact of business cycle fluctuations and the unusual operating conditions that occur as a source approaches shutdown.

The previous language has been replaced with a detailed emission calculation procedure, taken from Regulation 2-9, which was adopted in April 1999. This procedure makes the emission credit calculation procedure very clear.

### **2-4-202 Banking Credit Period; 2-4-402 Complete Banking Application**

The Hearing Board, in its consideration of a recent appeal of the denial of banking credits for Pacific Refining's shutdown Hercules refinery, was confused by the existing language requiring an applicant to submit a complete application within 18 months of emission reductions. Additionally, USEPA has expressed concerns about the District's practice of allowing the use of alternate baseline periods (see discussion of changes to Section 2-2-605, above). The proposal makes the baseline determination procedure for banking the same as the baseline determination procedure for emission reduction credits under the NSR rule.

The net effect of this change is to encourage applicants to complete their application in a timely manner (because the baseline period is not set until the application is complete, and every day of delay brings another day of reduced emissions into the baseline period); to eliminate inconsistency that may be caused by APCO discretion in approving alternate baselines; to eliminate inconsistency between treatment of emission reductions that are used directly as offsets and those deposited in the bank; and to reduce the impact of business cycle fluctuations by increasing the baseline period to three years rather than one year.

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### **2-4-414 Small Facility Banking Account**

From the small facility banking account, the District provides offsets for small facilities (between 15 and 50 TPY) in order to comply with the State no-net-increase program. The account is “funded” by source and facility shutdowns that are not banked by the facility operators. The bank allows these small facilities to expand without having to find expensive offsets.

Some facilities, however, have offsets available. The regulation requires these offsets to be provided before the small facility banking account is tapped.

Although it has never happened, it is possible for a small facility to circumvent this requirement by selling credits on the market before submitting an application that would have required their surrender. The proposed revision eliminates this loophole.

**Text of EPA Limited Approval and Limited Disapproval of the  
1994 Revisions to the Permit Rule (63 FR 59924) PROPOSED  
RULE**

[Federal Register: November 6, 1998 (Volume 63, Number 215)]  
[Proposed Rules]  
[Page 59924-59928]  
From the Federal Register Online via GPO Access [[wais.access.gpo.gov](http://wais.access.gpo.gov)]  
[DOCID:fr06no98-21]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 102-0111; FRL-6185-9]

Approval and Promulgation of Implementation Plans; California State  
Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

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SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP). This revision concerns Rules 1, 2 and 4 of Regulation 2--Permits, for the Bay Area Air Quality Management District (BAAQMD or the "District"). This State Implementation Plan (SIP) revision was submitted by the State of California for the purpose of meeting the requirements of the Clean Air Act (CAA), as amended in 1990, with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). This SIP revision was submitted by the State to satisfy Federal requirements for an approvable nonattainment area NSR SIP for the District.

The intended effect of proposing a limited approval and limited disapproval of these rules is to strengthen the federally approved SIP by incorporating these updated provisions. EPA's final action on this proposal will incorporate the rules into the SIP. EPA is proposing a simultaneous limited approval and limited disapproval under provisions of the Act regarding EPA action on SIP submittals and general rulemaking authority. While strengthening the SIP, this revision

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contains deficiencies which the BAAQMD must address before EPA can grant full approval under Section 110(k)(3).

**DATES:** Comments must be received on or before December 7, 1998.

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

Copies of the state submittal and rules are available for public inspection at EPA's Region IX office during normal business hours and at the following locations: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109. California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

**FOR FURTHER INFORMATION CONTACT:** John Walser, Permits Office, [AIR-3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744- 1257.

### SUPPLEMENTARY INFORMATION:

#### I. Applicability

The rules proposed for limited approval and limited disapproval into the California SIP are the District's Regulation 2 Permits, Rule 1 General Requirements, Rule 2 New Source Review, and Rule 4 Emissions Banking. These rules were submitted by the California Air Resources Board on behalf of the District to EPA on September 28, 1994.

#### II. Background

The air quality planning requirements for nonattainment NSR are set out in part D of title 1 of the Clean Air Act. 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. EPA has also proposed regulations to implement the changes under the 1990 Amendments in the NSR provisions in parts C and D of title 1 of the Act. [See 61 FR 38249 (July 23, 1996)]. Upon final promulgation of those regulations, EPA will review those NSR SIP submittals on which it has already taken final action to determine whether additional SIP revisions are necessary.

Part D of the Clean Air Act (CAA), Sections 171 to 173, Section 182, Section 187, and Section 189, requires that States incorporate in their State

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Implementation Plans an acceptable permitting program for the construction and operation of new or modified major stationary sources in nonattainment areas. The statutory permit requirements for ozone nonattainment areas are generally contained in Section 173, and in subpart 2 of part D. These are the minimum requirements that States must include in an approvable implementation plan. EPA's requirements are contained in 40 CFR 51.165, revised as of July 1, 1992, and the Emissions Trading Policy Statement, published December 4, 1986 under 51 FR 43814. EPA relied upon the following materials in its review of the District's NSR rules: CAA, as amended, 40 CFR 51.160 through 51.165, Emissions Trading Policy Statement, General Preamble to Title 1, and the December 15, 1992, draft comprehensive SIP checklist for all Part D NSR requirements.

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the San Francisco Bay Area (43 FR 8964). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the Bay Area Air Quality Management District's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.

On November 12, 1993, BAAQMD submitted a request for redesignation to attainment of the ozone standard. Subsequently, EPA approved BAAQMD's request and the San Francisco Bay Area was reclassified as an attainment area. 40 CFR 81.305. Subsequently, on July 10, 1998, EPA revoked the Bay Area's attainment status and reclassified the area back to nonattainment for ozone. 63 FR 37258. The Bay Area was redesignated under Subpart 1 of Part D of the Act, and for this reason does not have a classification. However, for purposes of the new source review and Title V programs, moderate area requirements apply to the Bay Area based on its design value of .138 ppm. See 62 FR 66581, December 19, 1997. Because the District is currently designated as nonattainment for ozone and attainment or unclassifiable for NO<sub>2</sub>, PM-10, Pb, CO, and SO<sub>2</sub>, the District's nonattainment rules must be applied to all major new or modified stationary sources proposing to emit ozone precursors, namely VOC and NO<sub>x</sub>.

This document addresses EPA's proposed action for BAAQMD Regulation 2 Permits, Rules 1, 2 and 4. The BAAQMD adopted these rules on June 15, 1994. These submitted rules were found to be complete on November 22, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V; <sup>1</sup> and are being proposed for limited approval and limited disapproval. -----

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\1\ EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216). -----

BAAQMD Regulation 2 clarifies the terms and requirements that apply to the District's NSR regulation and emissions banking program. BAAQMD Regulation 2 was originally adopted as part of BAAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The following is EPA's evaluation and proposed action for BAAQMD Regulation 2, Rules 1, 2 and 4.

### III. EPA Evaluation and Proposed Action

In determining the approvability of a rule submittal, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

The statutory requirements for nonattainment NSR SIPs and permitting are found in sections 172 and 173 of the Act. The Act requires States to address a number of nonattainment NSR provisions in a SIP submittal to meet the requirements of part D of title 1 of the Act.

EPA has evaluated District Rules 1, 2 and 4 of Regulation 2 and has determined that the rules contain deficiencies and are not fully consistent with CAA requirements, EPA regulations and EPA policy. A more detailed analysis is contained in the Technical Support Document for this submittal which is available for inspection at the Region IX address listed above.

The following six items are issues that EPA has identified as significant deficiencies (approvability issues) in BAAQMD Regulation 2.

#### 1. Interpollutant Trading

Regulation 2, Rule 2 Sections 302.1, 302.2 and 303.1

Section 302.1 states that emission reduction credits (ERCs) of nitrogen oxides ( $\text{NO}_x$ ) may be used to offset increased emissions of precursor organic compounds (POC) at the offset ratio specified in Section 2-2-302 (generally 1.15 to 1.0). Section 302.2 allows for emission reduction credits of POC to be used to offset increased emissions of  $\text{NO}_x$  at the offset ratio specified in Section 302.2, and Section 303.1 allows ERCs of  $\text{NO}_x$  and/or sulfur dioxide ( $\text{SO}_2$ ) to be used to offset increased emissions of particulate matter (PM<sub>10</sub>) at ratios deemed appropriate by the Air Pollution Control Officer.

These sections of Regulation 2, Rule 2 are not approvable in their current form because they do not contain adequate safeguards to ensure an overall air quality benefit from this type of trading. For example, as currently drafted, the rule

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allows for the same trading ratio for POC to POC trades as it does for POC for NO<sub>x</sub> trades, without any demonstration that such trades will result in an equal air quality benefit. EPA continues to discourage interpollutant trading due to the scientific uncertainty of acceptable pollutant trading ratios. However, if the District wishes to allow interpollutant trading, the rule must be consistent with EPA guidance.<sup>2</sup> For instance, the rule must restrict interpollutant trading to precursor pollutants contributing to the same secondary non-attainment pollutant (such as trading POC for NO<sub>x</sub>). The District must either perform adequate modeling studies to include a scientifically determined pollutant trading ratio and define that ratio in the rule, or perform a case-by-case analysis of the ratio, and state in the rule that the ratio will be determined after adequate modeling, public notice, and EPA concurrence. -----  
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\2\ See letter from Dave Howekamp to Dan Speer of the San Diego Air Pollution Control District dated April 13, 1995. -----  
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Additionally, the District's interpollutant trading provisions may allow inter-District trading without regard to the attainment status of the District where the ERCs are created and used, because the rule is silent on this issue. Therefore, the rule must be revised to prohibit this type of trading, or be revised to explicitly include the provisions of 173(c)(1) of the Clean Air Act.

### 2. Exemption List

#### Regulation 2 Permits, Rule 1 General Requirements

Sections 2-1-114 to 128, provide that "any equipment that produces air contaminants in excess of 150 lb/day of any single pollutant is not exempt" from permit review. EPA is concerned that the District interprets this language to apply on an individual emissions unit basis, rather than a facility-wide basis.

EPA's fundamental requirements with respect to permit exemptions are threefold. First, the exemptions must not keep a major source from appearing to be major. That is, emissions from exempt equipment must be included in the determination of whether a source is major (or whether a modification is major), whether for NSR or Title V purposes. Second, emissions from exempt equipment must be included in determining the offset liability for a source. Third, substantive requirements, such as BACT, must generally apply to all emissions units.

EPA continues to believe that if the 150 lb/day cap on exemptions applies to any group of emissions units or pieces of equipment, and not just to a single piece of equipment, the District is likely to be able to satisfy the above requirements. For example, the District may be able to argue that 150 pounds a day is de minimus

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from a BACT standpoint. Also, a maximum 150 pound per day facility wide exemption could be factored into offset requirements.

In addition, Regulation 2, Rule 1 exempts equipment such as internal combustion engines or gas turbines of less than 250 horsepower rating (Section 2-1-115.2) from authority to construct and permit to operate requirements, and exempts certain other sources subject to generally applicable requirements. These sources may have high emissions and a greater likelihood of violating emission standards and for these reasons should not be included on an exemptions list.

### 3. Functionally Identical Replacement

Regulation 2, Rule 2-NSR, Dated 6/15/94, Sections 2-2-225.4, 2-2-313, 2-2-241 and 2-2-608: Replacement Sources

EPA does believe that the sections in Regulation 2, Rule 2 concerning functionally identical replacement may not fully meet the federal requirements found at 40 CFR 51.165. Specifically, section 51.165(a)(1)(v)(A) defines "major modification" as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act. Section 51.165(a)(1)(v)(C)(1) excludes "routine maintenance, repair and replacement" from the definition of physical or operational change. Such assessments should be made on a case-by-case basis, but would generally not include replacement of emissions units ("sources" in BAAQMD's nomenclature), or life extension projects.

Additionally, Section 2-2-313 of Regulation 2 states that offset requirements for replacement sources of POC and NO<sub>x</sub> shall be met either in accordance with Section 2-2-302 Offset Requirements, or 2-2-608 Alternate Emission Calculation Procedures, Replacement Sources, which is an alternative to the calculation procedures outlined in Section 2-2-605. EPA believes that the alternate emission calculation procedures outlined in Section 2-2-608 may allow replacement sources to construct without fully applying offsets that would be required by Section 2-2-605, and by the federal regulations at 40 CFR 51.165. As drafted, the rule does not require the replacement source to consider the operating history of the replaced source, which could have been operating at a capacity well below its maximum allowable limits (e.g., actual emissions 50 percent of potential emissions). Therefore, the calculation appears to use a potential to potential emissions test, and as a result no offsets would be needed. EPA's regulations and policy (Emission Trading Policy Statement, FR 51 43838 and 40 CFR 51.165) require an actual to potential test for determining emission changes, and, consequently, offset requirements.

### 4. Ensuring Offsets Are Surplus When Used

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Proposed Amendments to Regulation 1 (General Provisions); Regulation 2 (Permits) Rule 1 (General Requirements), Rule 2 (New Source Review), Rule 4 (Emissions Banking)

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Both Regulation 2, Rule 2 and Regulation 2, Rule 4 are silent regarding the requirement to ensure that ERCs are surplus at the time of use. All ERCs must be adjusted at the time of use pursuant to the requirements of Sections 173 (a), 173 (c)(1) and 173 (c)(2) of the Clean Air Act ("Act"). EPA has provided flexibility in the implementation of these requirements in the August 26, 1994 memo from John Seitz to David Howekamp entitled, "Response to Request for Guidance on Use of Pre-1990 ERCs and Adjusting for RACT at Time of Use." For example, if an ERC is created and approved this year, but the District subsequently proposes, passes and includes (implicitly or explicitly) in its plan a control measure related to the source category of the creator of the ERC, the District must, upon use of the ERC, evaluate the effect the control measure would have had on the source that created the reduction, and reduce the amount of the ERC appropriately. Section 173 (a) of the Act requires that offsetting emission reductions be federally enforceable at the time an NSR permit is issued, and in effect by the time the source commences operation (Section 173 (c)(1)). In addition, Section 173 (c)(2) requires that offsets be surplus of all other requirements of the Act. The District must adjust all emission reductions to ensure that the surplus requirement of Section 173(c)(2) is met at the time that the reductions are used to meet the offset requirements of Section 173 (a) and (c).

### 5. Exemption, Emissions From Abatement Equipment

#### Section 2-2-112 in Regulation 2, Rule 2

This section states that BACT requirements shall not apply to emissions of secondary pollutants which are the direct result of the use of an abatement device which complies with the BACT or BARCT requirements for control of another pollutant. On July 1, 1994, EPA issued guidance from John Seitz, Director of the Office of Air Quality Planning and Standards, entitled "Pollution Control Projects and New Source Review (NSR) Applicability", which states that a source must secure offsetting reductions in the case of a pollution control project which will result in a significant increase in nonattainment pollutants.

Section 2-2-112 in Regulation 2, Rule 2 must be revised to make it clear that significant emissions of secondary pollutants which result from control devices or requirements are subject to the requirement to obtain offsets.

### 6. Prevention of Significant Deterioration

EPA suggests that the District add lead to the PSD pollutant list in Regulation 2, Rule 2, Sections 2-2-304, 2-2-305 and 2-2-306. The rule lists CO, PM<sub>10</sub>, SO<sub>2</sub>, POC and NO<sub>x</sub> as PSD pollutants, but excludes lead. EPA realizes that the District has a 0.6 ton/yr BACT threshold for lead, and in Regulation 2, Rule 1, Section 111.1 a 0.3 lb/day lead exemption threshold for authorities to construct

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or permits to operate. However, the PSD pollutant list must include all criteria pollutants, including lead.

Because the rule deficiencies described above are inappropriate for inclusion in the SIP, EPA cannot grant full approval of this rule under section 110(k)(3). Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule 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 BAAQMD's submitted Regulation 2 under sections 110(k)(3) and 301(a) of the CAA.

It should be noted that the rules covered by this proposed rulemaking have been adopted by the BAAQMD, subsequently revised, and are currently in effect in the BAAQMD. EPA's final limited disapproval action will not prevent the BAAQMD or EPA from enforcing this rule.

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.

### IV. Administrative Requirements

#### A. Executive Order 12866

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

#### B. Executive Order 12875

Under E.O. 12875, 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. If the mandate is unfunded, EPA must 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 written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an

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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 does not involve decisions intended to mitigate environmental health or safety risks.

### D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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. If the mandate is unfunded, EPA must 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 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

### E. Regulatory Flexibility Act

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Proposed Amendments to Regulation 1 (General Provisions); Regulation 2 (Permits) Rule 1 (General Requirements), Rule 2 (New Source Review), Rule 4 (Emissions Banking)

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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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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Proposed Amendments to Regulation 1 (General Provisions); Regulation 2 (Permits) Rule 1  
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Authority: 42 U.S.C. 7401 et seq.

Dated: October 29, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 98-29818 Filed 11-5-98; 8:45 am]

**Text of EPA Limited Approval and Limited Disapproval of the  
1994 Revisions to the Permit Rule (64 FR 3850) FINAL RULE**

[Federal Register: January 26, 1999 (Volume 64, Number 16)]

[Rules and Regulations]

[Page 3850-3852]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
[DOCID:fr26ja99-23]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 102-0120; FRL-6220-2a]

Final Approval and Promulgation of Implementation Plans; California State  
Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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SUMMARY: EPA is finalizing limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the Federal Register on November 6, 1998. This limited approval and limited disapproval action will incorporate portions of Rules 1, 2 and 4 of Regulation 2--Permits, for the Bay Area Air Quality Management District (BAAQMD or the "District") into the federally approved State Implementation Plan (SIP). The intended effect of finalizing this limited approval and limited disapproval of these rules is to strengthen the federally approved SIP by incorporating these updated provisions and to satisfy Federal requirements for an approvable nonattainment area NSR SIP for the District. Thus, EPA is finalizing simultaneous limited approval and limited disapproval as a revision into the California SIP under provisions of the Act regarding EPA action on SIP submittals, and general rulemaking authority. While strengthening the SIP, this revision contains deficiencies which the BAAQMD must address before EPA can grant full approval under Section 110(k)(3).

DATES: This action is effective on February 25, 1999.

## STAFF REPORT

Proposed Amendments to Regulation 1 (General Provisions); Regulation 2 (Permits) Rule 1 (General Requirements), Rule 2 (New Source Review), Rule 4 (Emissions Banking)

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ADDRESSES: Copies of the state submittal and other supporting information used in developing the final action are available for public inspection (Docket Number CA102-0120) at EPA's Region IX office during normal business hours and at the following locations:

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109. California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: John Walser, Permits Office [AIR-3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744- 1257.

### SUPPLEMENTARY INFORMATION:

#### I. Applicability

The following rules are being approved for limited approval and limited disapproval into the California SIP: District Regulation 2 Permits, Rule 1 General Requirements, Rule 2 New Source Review, and Rule 4 Emissions Banking. Rules 2 and 4 were submitted by the California Air Resources Board on behalf of the District to EPA on September 28, 1994. Rule 1 was submitted by the California Air Resources Board on behalf of the District to EPA on December 31, 1990.

#### II. Background

On November 6, 1998, in 63 FR 59924, EPA proposed limited approval and limited disapproval for BAAQMD Regulation 2 Permits, Rules 1, 2 and 4. The BAAQMD adopted Rule 1 on November 1, 1989, and Rules 2 and 4 on June 15, 1994. Submitted Rule 1 was found to be complete on February 28, 1991, and submitted Rules 2 and 4 were found to be complete on November 22, 1994,<sup>1</sup> pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V.<sup>2</sup> These rules were proposed for limited approval and limited disapproval. A detailed discussion of the background for these rules and EPA's evaluation is provided in the November 6, 1998 Proposed Rulemaking Notice (NPRM) cited above. -----

\1\ The proposed action on November 6, 1998 mistakenly identified the submittal and completeness date for Rule 1 as the same date as Rules 2 and 4.  
\2\ EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216). -----

#### III. Response to Comments

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A 30 day public comment period was provided in 63 FR 59924. EPA received one public comment on the proposal from the California Council for Environmental and Economic Balance (CCEEB), and is responding to that comment in this document. CCEEB commented that EPA should specifically exclude Section 2-4-304.3 of Regulation 2, Rule 4 from any final SIP approval of all or portions of Rule 4. Section 2-4-304.3 of Rule 4 states that "emission reduction credits may not be used to exempt a source from any other air pollution control requirements whatsoever of federal, State, or District laws, rules and regulations." CCEEB is concerned that Section 2-4-304.3 addresses State law issues, and is not necessary to meet Federal Clean Air Act requirements. In addition, CCEEB commented that the California H&SC Section 39602 provides that the California SIP "shall include only those provisions necessary to meet the requirements of the Clean Air Act." Section 2-4-304.3 was not a section of Regulation 2, Rule 4 that EPA identified as a SIP-approvability issue in 63 FR 59924. As written, Section 2-4-304.3 of Rule 4 is not inconsistent with federal requirements or EPA policy and does not present any SIP-approvability issues. If CCEEB believes the language is inconsistent with state law, its remedy is at the state and local level. The District, if in agreement with CCEEB, would need to revise the rule and submit the rule modification to the California Air Resources Board as a SIP submittal. EPA does not have the authority to revise the rule language as requested, or exclude Section 2-4-304.3 from final SIP approval.

#### IV. EPA Evaluation and Final Action

BAAQMD Regulation 2 clarifies the terms and requirements that apply to the District's NSR regulation and emissions banking program. BAAQMD Regulation 2 was originally adopted as part of BAAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. For EPA's detailed evaluation of BAAQMD Regulation 2, Rules 1, 2 and 4, please refer to the NPRM at 63 FR 59924, November 6, 1998. EPA has evaluated District Rules 1, 2 and 4 of Regulation 2 and has determined that the rules contain

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deficiencies and are not fully consistent with CAA requirements, EPA regulations and EPA policy. Because these rule deficiencies are inappropriate for inclusion in the SIP, EPA cannot grant full approval of these rules under section 110(k)(3). 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 rule under section 110(k)(3). However, EPA is granting final 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 final approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is finalizing limited approval of BAAQMD's submitted Regulation 2 under sections 110(k)(3) and 301(a) of the CAA. It should be noted that the rules

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covered by this final rulemaking have been adopted by the BAAQMD, subsequently revised, and are currently in effect in the BAAQMD. EPA's final limited disapproval action does not prevent the BAAQMD 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.

### IV. Administrative Requirements

#### A. Docket

Copies of Bay Area's submittal and other information relied upon for the final actions are contained in docket number CA102-0120 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final rulemaking. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

#### B. 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.

#### C. 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.

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Proposed Amendments to Regulation 1 (General Provisions); Regulation 2 (Permits) Rule 1 (General Requirements), Rule 2 (New Source Review), Rule 4 (Emissions Banking)

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### D. 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 does not involve decisions intended to mitigate environmental health or safety risks.

### E. 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.

### F. 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

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Proposed Amendments to Regulation 1 (General Provisions); Regulation 2 (Permits) Rule 1 (General Requirements), Rule 2 (New Source Review), Rule 4 (Emissions Banking)

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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).

### G. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995

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("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.

### H. Submission to Congress and the Comptroller General

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

### I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

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circuit by March 29, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

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

Dated: January 4, 1999. Laura Yoshii, Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

### PART 52--[AMENDED]

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

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

### Subpart F--California

2. Section 52.220 is amended by adding paragraphs (c)(182)(i)(B)(6)

and (c)(199)(i)(A)(8) to read as follows:

### Sec. 52.220 Identification of Plan.

\* \* \* \* \*

(c) \* \* \*

(182) \* \* \*

(i) \* \* \*

(B) \* \* \*

(6) Regulation 2, Rule 1 adopted on November 1, 1989.

\* \* \* \* \*

(199) \* \* \*

(i) \* \* \*

(A) \* \* \*

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(8) Regulation 2, Rule 2 and Rule 4 adopted on June 15, 1994.

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### Response to Comments on Workshop Draft

#### *Comments on the Process*

- 1. We are dismayed at the very short time frame the District has allotted for conducting this rulemaking. The substantive changes being proposed are too significant to be adequately addressed in the 25 day time period between notice of the workshop and close of the comment period. <Joint letter from BALIA, Bay Area Council, CEEB, SVMG, and WSPA 3/13/00>**

*We, too, are concerned about the short review time. Although it would be best to work out all controversial issues prior to publication of the final proposal, this may not be possible. There still remains an opportunity to propose revisions during the period between the final proposal and the May 3 hearing.*

#### *Interpollutant Trading*

- 2. The District should further amend the rule to eliminate the provision that allows a stationary source to obtain VOC reductions to offset NOx increases at a 1:1 ratio. The District could still allow interpollutant trade to occur on a case-by-case basis with public notice and EPA concurrence. In fact, we would consider the issue resolved if you adopted the same case-by-case language that you have included for the offset requirements for PM10 at 2-2-203. <US EPA letter 3/15/00>**

*We believe that the analysis in the 1999 Ozone Nonattainment Plan (June 1999), and attainment assessment (November 1998) adopted by the Board of Directors, adequately demonstrates the benefits associated with the proposed provision. Case-by-case demonstrations would, in almost all cases, support using an offset ratio of less than 1:1.*

- 3. By adding language at 2-2-214, the District has corrected the deficiency regarding federal requirements related to interbasin trades. <US EPA letter 3/15/00>**

*Comment noted.*

#### *Exemption List*

#### **Backstop Provision**

- 4. The 5 TPY backstop provision and lower IC engine and gas turbine threshold generally satisfy our concerns. However, although**

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Proposed Amendments to Regulation 1 (General Provisions); Regulation 2 (Permits) Rule 1 (General Requirements), Rule 2 (New Source Review), Rule 4 (Emissions Banking)

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**approvable, the 5 TPY level seems high especially since it is based on emissions after abatement. Also, by exempting qualifying equipment, there would not be a permit requirement to maintain the abatement device (we recognize that there may be independent rule requirements). If in the future, EPA finds that this backstop provision does not provide the necessary protections, we could require the District to submit a rule revision changing the backstop requirement (see CAA §110(k)(5)). <US EPA letter 3/15/00>**

*Comment noted.*

- 5. The backstop provision in Regulation 2, Rule 1, Section 319 should be removed. It is unnecessary. How will this provision be applied to existing exempt sources? <Buchan, WSPA> Proposed amendments to Regulation 2, Rule 1, Section 319 requiring permits for sources subject to a NSPS, MACT, or NESHAP standard should be written to allow for the exemption from permitting that currently exists in Regulation 2, Rule 1, Section 128.21. <Buchan, WSPA>**

*The District intends to preserve the exemption currently available pursuant to Regulation 2, Rule 1, Section 128.21.*

*The emission rate backstop is necessary to meet EPA requirements. The other proposed backstop provisions (subject to NSPS, NESHAPS, ACTM, etc.) are unnecessary, and have been deleted. Source categories which are exempt from permits but subject to such rules will be examined individually, and the exemption list itself will be amended as needed.*

*Pursuant to Regulation 2, Rule 1, Section 424, when an exempt source loses its exempt status as a result of a change in a District, State, or federal laws or regulations, a permit application must be submitted to the District within 90 days of written notification of the need for a permit.*

- 6. Any requirement to estimate emissions from exempt equipment would be a significant effort for little environmental benefit since the District has already reviewed the exemption list to identify significant emission sources. To comply with the requirements of Regulation 2, Rule 1, Section 502, emissions from all currently exempt sources must be estimated to enable facilities to provide substantial credible evidence proving to the APCO that the source meets all requirements to qualify for the exemption. <Buchan, WSPA>**

*For most sources, small effort will be required to demonstrate that emissions are less than 5 TPY. There are exceptions; research labs are a good one. The District is working with this industry to develop an acceptable approach.*

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*The District has identified source categories that are almost always insignificant, based on our experience. Our experience, however, is not universal. A big enough throughput could result in significant emissions from almost any source category. The backstop provision catches such unusually large sources.*

*Facilities may choose to obtain a permit for any exempt source, in lieu of estimating emissions from that exempt equipment.*

### Internal Combustion Engines

- 7. The Emergency Generator exemption needs more clarification. Do small engines covering a single building and large engines covering an entire campus “serve the same function?” <Napa State Hospital 3/10/00>**

*This language has been eliminated from the proposal.*

- 8. Regarding Regulation 2, Rule 1, Section 114, WSPA requests that the District provide justification for the District’s proposal to reduce the exemption trigger from 250 hp to 50 hp and to reduce the temporary use exemption from 30 calendar days per year to 200 hours per year. WSPA is concerned the District may not have the resources to permit the engines which lose their exempt status due to these changes. <Buchan, WSPA>**

*The District is proposing that the exemption for internal combustion engines and gas turbines be reduced from 250 hp to 50 hp to make the District’s exemption level for engines and turbines consistent with those of other California air districts, because of the potential for engine NOx emissions, and for the potential toxicity of diesel exhaust particulate. Based upon the experience of other districts, the District expects that its resources will be adequate to permit these equipment.*

*The basis for the exemption has been changed from 30 calendar days to 200 hours, plus 100 hours of testing, to improve the rule. Emergency generators require weekly testing; 30 calendar days was not an adequate allowance for this purpose. 200 hours of operation in the emergency mode is adequate for true emergency use.*

*The use of these engines is not appropriate for supplementing power production, however. They have relatively high emissions per kwh produced, and extended use can result in unacceptable levels of toxic emissions. The proposed language will require engines used for supplemental power production to obtain permits, and will probably require use of BACT for such operations.*

- 9. The District should retain an exemption for engines used for the emergency pumping of water and the exemption level should be set at**

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**400 hours per calendar year instead of 200 hours per calendar year.  
<Buchan, WSPA>**

*We disagree. For many engines 400 hours per year of operation may result in an unacceptable risk from toxic emissions. This potential for significant risk justifies permitting and risk management.*

### **Ozone generators**

**10. Regulation 2, Rule 1, Section 103.3, was revised to disallow the small source exemption for equipment that emits ozone. Lots of equipment emits ozone. Combustion equipment is an example of such equipment.**

*That language is meant to apply to equipment designed to generate ozone, eg ozone generators for ozonation of water. We have revised the language to refer to ozone generators. The intent is not to apply this section to equipment that generates incidental ozone.*

**11. WSPA questions the exceptionally low TAC trigger for diesel exhaust particulate at 0.6 pounds per year and requests that the District provide the scientific data supporting it. The key issue is the cancer potency factor of 3 E-4, which is not stated in the staff report. WSPA is concerned that the excessively conservative could result in a virtual ban on the use of new diesel fueled engines. <Buchan, WSPA>**

*The risk trigger for diesel exhaust particulate is based on the best scientific data available to date. The staff report has been amended to better explain the basis of the diesel exhaust particulate risk trigger. Assessment of the health risk associated with diesel particulate exhaust pursuant to the District's Risk Management Policy will not result in a virtual ban on diesel engines in the Bay Area. The District has been applying this potency factor to stationary diesel permit applications for over a year, and we have been able to work with applicants to keep risk at acceptable levels. Stationary diesel engines will continue to be permitted and exempted from permitting in the Bay Area.*

### ***Functionally Identical Replacement***

**12. The District has corrected the identified deficiency. However, we note that the definition of replacement has not been struck from the rule at 2-2-241. We think this is an oversight since you state on page 14 of the staff report that the definition has been struck. One additional point: Federal regulations require emission reductions to be actual reductions based on an actual-to-potential test, not an "actual-to-actual" emissions test as described in your staff report.**

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*Section 2-2-241 has been removed. The discussion of federal requirements in the staff report has been corrected.*

**13. In Section 114.2 of Regulation 2, Rule 1, how is “the same function” defined? <R. Bozorgnia, United Technologies, Chemical Systems Division>**

*We have amended Regulation 2, Rule 1, Section 114 to eliminate the use of this term.*

**14. It seems excessive for the District to require formal permit review for the replacement of a furnace burner with a replacement burner, if the replacement burner is not identical to the burner being replaced but is essentially identical to the burner being replaced. The cost for permit review could be excessive considered in the context of the District’s review of such a minor permit application.**

*We have recently discovered several instances of “capacity creep,” where successive “functionally identical” burner replacements have resulted in 50% and greater increases in capacity.*

*The permit requirements have been revised to allow alterations, where emissions do not increase, to qualify for the Accelerated Permit Program. This allows the applicant to proceed with the burner replacement without waiting for an authority to construct.*

*The District intends to amend Regulation 3 Fees in the next few months. The staff proposal for amendments to Regulation 3 includes a special reduced fee for administrative permit amendments, which would include component replacements that do not increase emissions.*

**15. Is an addition of a furnace burner a modification of the furnace? <Wampler, USEPA>**

*Yes.*

**16. The replacement of a furnace burner with an identical replacement burner is an alteration or a modification that is not exempt from NSR. Routine maintenance and repair is exempt from NSR but not identical replacement. <Wampler, USEPA>**

*The replacement of a furnace **burner** with an identical replacement **burner** is not the same as the replacement of an entire source. The replacement of the entire source is subject to NSR because the replacement source is a new source. The replacement of a component (burner) of a source with an identical replacement component is routine maintenance of an existing source, not a new source.*

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*Burner replacement with identical make and model is NOT a modification. It constitutes routine maintenance and repair. Component replacement is not the same as "identical replacement" of the source, which can trigger federal NSR.*

*Burner replacement with different make or model is a modification (requiring pre-construction review) if the emissions increase, and an alteration (qualifying for post-construction review under the accelerated permit program) if the emissions do not increase.*

### **Ensuring Offsets are Surplus at the Time of Use**

**17. The District has not included the requirement to ensure that ERCs (used to fulfill the offset requirements) are surplus at the time of use. This is a critical issue that remains unresolved at this time. Even if the District has properly accounted for banked emissions in the AQMP to ensure no credit is claimed in the attainment of maintenance plans, there are other requirements of the Act that would still effect (*sic*) the value of the credit. US EPA letter 3/15/00**

**We write separately on behalf of the Bay Area business community to express our support for Staff's position on the issue of whether offsets must be surplus at the time of use. EPA's insistence that ERCs be adjusted for RACT at the time of use is no more than informal policy guidance that finds no explicit support either in the Clean Air Act or in the Act's implementing regulations. Joint letter from BALIA, Bay Area Council, CEEB, SVMG, and WSPA 3/13/00**

**Kennedy/Jenks Consultants is opposed to USEPA trying to force the District to RACT adjust emission reduction credits when they are removed from the bank for use. USEPA should implement such a requirement through formal rulemaking. We support the District position to oppose USEPA on this policy. The USEPA policy creates disincentives for industries to take steps reduce air emissions through equipment retirement or other measures to create emission reduction credits. The District should amend its regulations to enable a facility to install replacement equipment in a cost effective, expeditious way with a simplified permit review process using, issuing a compliance letter instead of a permit. Timeliness is very important. The permit process takes too long. <Eric J. Hinzl, Kennedy/Jenks> (written comment dated 3-13-00)**

*The District contends that the regulation ensures that offsets are surplus from the date they are issued until they are used. EPA has never identified a "requirement of the Act" that would affect the emissions from a source that has already been shut down, nor has EPA been able to identify a "requirement of the Act" that would result in an emission reduction from a*

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*source which has achieved compliance with standards before they have been proposed. If EPA promulgates regulations requiring specific adjustments, the District will revise its rules to comply.*

*EPA has proposed that it may be able to approve the District's existing program if we can demonstrate that the offset program overall (major and minor NSR) provides EPA-acceptable offsets sufficient to cover major modifications at major stationary sources. The District has developed language to annually make such a demonstration, and to implement contingency measures if the demonstration cannot be made.*

### **Pollution Control Project Offset Exemption**

#### **18. EPA's issue has been resolved. US EPA letter 3/15/00**

*Comment noted*

### **Prevention of Significant Deterioration**

#### **19. EPA's issue has been resolved. US EPA letter 3/15/00**

*Comment noted.*

### **Other Changes**

#### **Posting of the Permit**

**20. WSPA objects to the proposed language in Regulation 2, Rule 1, Section 405 dictating where the permit to operate must be located at a facility. The requirement that the permit to operate be posted on or near the equipment would present significant logistical problems for large facilities. Permit conditions are generally written in terms have little meaning to plant operator personnel. The proposed new language should be deleted. <Buchan, WSPA>**

*The requirement to post the permit already exists. The purpose of this requirement is to ensure that the permit conditions are in the possession of the operator. Most permit conditions limit throughput or operating conditions, and should be of immediate concern to the operator. Others may not be. The point is that the operator is the one person who **must** have access to the permit conditions, and be conscious of them on a daily basis.*

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### **BACT trigger level**

- 21. To conform to State law, Section 301.1 of Regulation 2, Rule 2 should be amended to indicate that BACT is triggered if emissions are equal to or greater than 10 pounds per day. <ARB>**

*This suggested amendment has been incorporated into the proposed revisions.*

### **Emission baseline calculations**

- 22. Section 2-2-605 has been changed to allow a baseline of 3 years immediately preceding the date that the application is complete. However, the Emission Increase calculation at Section 604 has not been changed and still relies on one year in the past 5. We recommend changing 604.2 to be consistent with 605.1. USEPA's definition of actual emission reduction is based on 2 out of last 5 year period. <Wampler, USEPA>**

*2-2-604.2 has been changed to be consistent with 2-2-605.1.*

- 23. The calculation procedure in 2-2-604.2 for modified stationary sources allows a potential-to-potential test if the source has previously provided offsets. This may result in situations where a modification would trigger PSD review under federal rules, but would not under District rules. *US EPA letter 3/15/00***

*The current rulemaking is somewhat narrow in scope, and is designed to address the deficiencies noted by EPA and District staff since 1994. We expect to conduct a thorough comparison of District and federal requirements over the next year in order to address issues raised during Title V permit review and federal NSR reform proposals.*

- 24. Averaging over 3 years instead of selecting the highest 12 consecutive month period in the prior 5 year period could significantly impact facilities. A 3 year averaging period also limits the peak of the subsequent business cycle to the average of the previous 3 years, rather than matching it to a representative peak year. <Buchan, WSPA>**

*This section was revised on October 7, 1998 to reflect actual District practice in reviewing and approving alternate baselines. Based upon discussions with EPA during their review of the recently adopted (April, 1999) IERC Rule (Regulation 2-9), it became apparent that the practice reflected in 2-2-605 was not approvable by EPA. As a result, staff recommend removing APCO discretion from the baseline period selection process and using a long (three-year) baseline period to reduce the impact of business cycle fluctuations and*

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*the unusual operating conditions that occur as a source approaches shutdown.*

- 25. The existing regulation allows a facility to apply for banking within 18 months of reducing emissions. The revisions allow up to three years, but operation at reduced emission levels during that time is included in the baseline. We've been operating at lower limits to ensure that we can live with the lower level limits before we make a final decision to submit a banking application. How will this affect us?**

**The proposed amendments eliminate the ability to protect a quantity of potential emission reduction credits for 18 months, following the date of modification, by starting an immediate devaluation of the credits until an application is deemed complete. If the BAAQMD staff are unable to review and timely determine completeness the value of the ERCs would continue to diminish. <Buchan, WSPA>**

*If you submit your permit application after the rule change, it will reduce the available credits. Very few of the banking applications we have received are for anything other than shutdowns. The rule change will require complete banking applications before reductions occur for full credit; a delay in application will result in a reduction in credit.*

*The District has 30 calendar days after receipt of an application to determine completeness. The date of completion is the date that the required materials have been **submitted**, not the date that the District completes its review. The only delay occurs when an incomplete application has been submitted, and continues only until the applicant assembles and submits the information that is required for completion.*

- 26. WSPA asks that the District not cite a specific example in proposed amendments to Regulation 2, Rule 1, Section 232.6 (e.g., the burner and glass furnace examples). Instead, the District should use language that explains the definition without using specific examples. A compliance advisory should be issued to the regulated community to help clarify this issue. <Buchan, WSPA>**

*The District is trying to enhance clarity. The two specific activities were included because there have been disagreements in the past over the applicability of general language. We want there to be no doubt about the applicability of this requirement to these activities.*

### **Alternate Siting Analysis**

- 27. For a major modification of a major source, the language regarding CEQA analysis requirement may need to be tweaked a little bit. USEPA's position is even if CEQA is required and a full blown EIR is provided, that still may not meet the 173 statutory language quoted here**

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**“the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of the location, construction, or modification”. <Wampler, USEPA>**

*EPA has not been able to provide wording to accomplish this request.*

### ***Potential to Emit***

**28. In Regulation 2, Rule 1, Section 217, proposed language has been added explaining that a source or facility which exceeds an enforceable limit is considered to have a potential to emit that is unconstrained by any such exceeded limit. WSPA requests that the purpose for this language be explained along with the ramifications this language has on industry. WSPA requests that the District explain in the staff report the reasons why the last sentence in Regulation 2, Rule 1, Section 217 regarding enforceable limitation is included in the proposed amendments to the rule.**

*The explanation has been added.*