

# U.S. EPA FACT SHEET

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## San Joaquin Valley Unified Air Pollution Control District Proposed Approval of Rule 3170 “Federally Mandated Ozone Nonattainment Fee” and Interim Final Rule to Defer Sanctions

*July 19, 2011*

### Summary

- Today, the U.S. Environmental Protection Agency (EPA) is proposing to approve San Joaquin Valley Unified Air Pollution Control District (SJV) Rule 3170, “Federally Mandated Ozone Nonattainment Fee” and its alternative equivalent program as meeting the Clean Air Act (CAA) Section 185 fee program requirements for the 1-hour ozone standard.
- EPA is also issuing an Interim Final Rule to defer imposing offset and highway sanctions in SJV.

### Background

- CAA Sections 182 and 185 require that states with severe and extreme 1-hour ozone nonattainment areas submit a revision to the State Implementation Plan (SIP) that assesses fees on certain major stationary sources. Under Section 185, the SIPs must require these sources to pay fees if the area has failed to attain the 1-hour ozone standard by the applicable attainment date.
- Although the 1-hour ozone standard was revoked in 2004, the requirements of Section 185 with respect to that standard continue to apply in order to ensure continued progress toward bringing the air quality into attainment with the National Ambient Air Quality Standard.
- Because SJV is classified as an extreme 1-hour ozone nonattainment area, a SIP providing for a section 185 fee program was required to be developed and submitted for the area.
- EPA took final action on a previous version of Rule 3170 on January 13, 2010. In that action, EPA determined that while Rule 3170 strengthened the SIP, it did not fully conform to Section 185. Without a deferral, this limited disapproval would require EPA to impose offset sanctions on August 12, 2011 and highway sanctions on February 12, 2012.
- On May 19, 2011, SJV adopted a revised version of SJV Rule 3170, an alternative 185 fee program. Under this version of Rule 3170 and the alternative equivalent 185 program, which is the subject of today’s action, SJV will collect fees from major stationary sources but exempt clean units. SJV will make up the amount of revenue from clean unit exemptions with mobile source fees. The new version of Rule 3170 also requires SJV to demonstrate to EPA that the combined annual fees collected from major stationary sources

and mobile sources are at least equal to the fees that would have been collected under Section 185. SJV will use these funds for projects that reduce emissions and improve air quality in the SJV.

- EPA believes that an alternative program may be acceptable if EPA determines, through notice-and-comment rulemaking, that it is consistent with the principles of section 172(e) of the CAA. This reasoning was included in EPA's 185 guidance that was vacated by the D.C. Circuit Court of Appeals on July 1, 2011 on the ground that it was final agency action in which EPA did not follow notice-and-comment rulemaking procedures (NRDC v. EPA, No. 10-1056, 2011 WL 2601560, C.A.D.C. 2011). Today, EPA is following the court's directive to follow the notice-and-comment rulemaking procedures and inviting the public to comment on whether it is appropriate for EPA to consider an alternative program and, if so, whether SJVUAPCD's program would constitute an approvable alternative program under the CAA.
- Today's proposed approval is based on EPA's preliminary finding that amended SJV Rule 3170 imposes control measures that, consistent with the principles of CAA Section 172(e), are at least as stringent as those under CAA Section 185, and therefore approvable.

### **Next Steps**

- EPA is providing a 30-day public comment period on the proposed approval of Rule 3170.
- While the Interim Final Rule to defer sanctions is effective upon publication, EPA is also providing a 30-day public comment period on this action. If comments submitted change our assessment, we intend to take a subsequent final action to reimpose the sanctions clocks. If no comments are submitted that change our current assessment, all sanctions and sanction clocks will be permanently terminated on the effective date of the final approval of Rule 3170.

### **How to Comment**

- EPA will accept comment on the proposal for 30 days after publication in the Federal Register. Comments, identified by docket number EPA-R09-OAR-2011-0571, may be submitted by one of the following methods:
  - [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
  - E-mail: [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).
  - Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

### **For More Information:**

- To view the proposed approval and the interim final rule from EPA's Web site, go to "San Joaquin Valley" at <http://www.epa.gov/region9/air/actions/ca.html>
- For further information about these actions, contact Ms. Lily Wong of EPA Region 9, Rules Office, at (415) 947-4114 or by e-mail at [wong.lily@epa.gov](mailto:wong.lily@epa.gov).