

parties, but data is lacking about third-party participation rates. For the sake of our evaluation, we assumed that third parties are involved with these consultations and that each party is a small entity, providing an annual estimate of 50 small entities that may be involved over the 20-year time horizon of the study. This is likely an over estimate of the number of third parties involved with timber management consultations and therefore an over estimate of the number of small entities involved as well. The DEA further explored the projection of small businesses in timber-related sectors in the geographic areas overlapping the critical habitat designation which differed depending on the specific data sets used, either 7,140 entities or 2,616 entities. Using our conservative estimate of 50 small entities involved annually, the proportion of entities potentially impacted by the designation would be 0.70 percent and 1.9 percent, respectively, over the 20-year time horizon of the study. Based on these calculations, we have concluded that these proportions do not represent a substantial number of small business entities potentially affected in the timber management sector. Please refer to Appendix A of the DEA for further details of our evaluation.

Next we explored the potential impact to third parties that may be involved with consultations related to linear projects. On the basis of similar conservative assumptions explained in the DEA, we concluded that there may be a total of 11 projects in a given year that may involve third parties. If we similarly assume that each of these parties represent small entities, then we estimate that 11 small entities in a given year could be impacted by the designation. However, based on an evaluation of the relative proportion these 11 entities may represent of the specific sector, we believe that they are unlikely to represent a substantial number. Further, the projected impacts to third parties resulting from the consultations on linear projects are anticipated to be administrative in nature. Thus, based on our conservative estimates in identifying third parties in this sector that potentially may be impacted and the projected proportion of the number of entities and types of impacts, we conclude that the designation would not result in a significant impact to a substantial number of small business entities in this sector. Please refer to Appendix A of the DEA for further details of our evaluation.

In conclusion, we believe that, based on our interpretation of directly

regulated entities under RFA and relevant case law, this designation of critical habitat will only directly regulate Federal agencies which are not by definition small business entities. However, though not necessarily required by the RFA, we chose to consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to the designation of critical habitat. As discussed above, we determined that there may be entities that would most likely be involved with consultations in two sectors—timber management and linear projects. However, based on our conservative evaluation of the number of entities in these sectors potentially impacted, the proportion of the affected entities to those representing the sector in the study area, and the types of impacts, we certify that, if promulgated, the proposed revised critical habitat designation would not have a significant economic impact on a substantial number of small business entities. As such, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Oregon Fish and Wildlife Office, Pacific Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 1, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0408; FRL-9680-1]

Approval of Air Quality Implementation Plans; California; San Joaquin Valley Unified Air Pollution Control District; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a permitting rule submitted for the San Joaquin Valley Unified Air Pollution Control District (District) portion of the California State Implementation Plan

(SIP). The State is required under Part C of title I of the Clean Air Act (CAA or Act) to adopt and implement a SIP-approved Prevention of Significant Deterioration (PSD) permit program. This SIP revision proposes to incorporate District Rule 2410—Prevention of Significant Deterioration—into the SIP to establish a PSD permit program for pre-construction review of certain new and modified major stationary sources in attainment or unclassifiable areas. The District is currently attainment or unclassifiable for the PM₁₀, NO₂, CO, and lead National Ambient Air Quality Standards (NAAQS). We are soliciting public comments on this proposal and plan to follow with a final action after consideration of comments received.

DATES: Any comments must be submitted no later than July 2, 2012.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2012-0408, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.

2. *Email:* R9airpermits@epa.gov.

3. *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or email. www.regulations.gov is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and

some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Lisa Beckham, Permits Office (AIR-3), U.S. Environmental Protection Agency, Region IX, (415) 972-3811, beckham.lisa@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to EPA.

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I. The State’s Submittal

A. What rule did the State submit?

Table 1 lists the rule on which we are proposing action with the date it was adopted by the local agency and submitted to EPA by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	2410	Prevention of Significant Deterioration	6/16/2011	8/23/2011

CAA section 110(k)(1)(B) requires EPA to determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any SIP submittal that we have not affirmatively determined to be complete or incomplete will become complete by operation of law six months after the day of submittal. The August 23, 2011 submittal of the District’s PSD regulation became complete by operation of law on February 23, 2012.

B. Are there other versions of this rule?

There are no previous versions of Rule 2410 in the California SIP. The District originally adopted Rule 2410 on June 16, 2011 and it has not been revised since that date.

C. What is the purpose of the submitted rule?

Section 110(a) of the CAA requires states to adopt and submit regulations for the implementation, maintenance and enforcement of the primary and secondary NAAQS. Specifically, section 110(a)(2)(j) requires the state’s plan to meet the applicable requirements of section 165 relating to a pre-construction permit program for the prevention of significant deterioration of air quality and visibility protection. The purpose of District Rule 2410—Prevention of Significant Deterioration, is to implement a pre-construction PSD permit program as required by section 165 of the CAA for certain new and modified major stationary sources located in attainment areas. Because the State does not currently have a SIP-approved PSD program within the District, EPA is currently the PSD permitting authority in the District. Inclusion of this rule into the SIP will transfer PSD permitting authority from EPA to the District. EPA would then assume the role of overseeing the

District’s PSD permitting program, as intended by the CAA.

II. EPA’s Evaluation and Action

A. How is EPA evaluating this rule?

The relevant statutory provisions for our review of the submitted rules include CAA sections 110(a), 110(l), and 165 and Part 51, section 166 of title 40 of the Code of Federal Regulations (40 CFR 51.166). Section 110(a) requires, among other things, that SIP rules be enforceable, while section 110(l) precludes EPA approval of SIP revisions that would interfere with any applicable requirements concerning attainment and reasonable further progress. Section 165 of the CAA requires states to adopt a pre-construction permitting program for certain new and modified major stationary sources located in attainment or unclassifiable areas. 40 CFR 51.166 establishes the specific requirements for SIP-approved PSD permit programs that must be met to satisfy the requirements of section 165 of the CAA.

B. Does the rule meet the evaluation criteria?

With some exclusions and revisions, Rule 2410 incorporates by reference EPA’s PSD permit program at 40 CFR 52.21, as of June 16, 2011. We generally consider the EPA’s PSD permit program to be consistent with the criteria in 40 CFR 51.166. However, we conducted a review of Rule 2410 to ensure that all requirements of 40 CFR 51.166 are met. Our evaluation is available as an attachment to the technical support document (TSD) for this rulemaking. We also reviewed the revisions the District made to the provisions of 40 CFR 52.21 that were incorporated by reference into Rule 2410, such as revising certain terms and definitions to reflect that the District, rather than the EPA, will be the

PSD permitting authority. Rule 2410 also relies on the existing SIP-approved public notice requirements contained in Rule 2201—New Source Review. In addition, we reviewed revisions made to 40 CFR 51.166 and 52.21 after the District adopted Rule 2410. Please see the TSD for additional information. Based on our review of Rule 2410 and confirmation from the District, in a letter dated May 18, 2012, regarding its implementation procedures and commitment to revise Rule 2410 in the future for clarity, we are proposing to find the SIP revision acceptable under CAA sections 110(a), 110(l) and 165 and 40 CFR 51.166.

EPA’s TSD for this rulemaking has more information about this rule, including our evaluation and recommendation to approve it into the SIP.

C. Transfer of Existing EPA-Issued PSD Permits

The District has also requested approval to exercise its authority to administer the PSD program with respect to those sources located in the District that have existing PSD permits issued by EPA. This would include authority to conduct general administration of these existing permits, authority to process and issue any and all subsequent PSD permit actions relating to such permits (e.g., modifications, amendments, or revisions of any nature), and authority to enforce such permits. Pursuant to the criteria under section 110(a)(2)(E)(i) of the CAA, we have determined that the District has the authority, personnel, and funding to implement the PSD program within the District for existing EPA-issued permits. Concurrent with EPA’s approval of the District’s PSD program into the SIP, the EPA-issued permits would be transferred to the

District. A list of these EPA-issued permits is provided as an attachment to the TSD. EPA intends to provide a copy of each permit to the District prior to the effective date of the final SIP approval.

In order to promote an orderly transition of the PSD program from the EPA to the District, the efficient use of the District's and EPA's resources, and certainty for the regulated community and the public, EPA proposes to retain PSD permit implementation authority for those specific sources within the District that have submitted PSD permit applications to EPA and for which EPA has issued a proposed permit decision, but for which final agency action and/or the exhaustion of all administrative and judicial appeals processes (including any associated remand actions) have been not yet been concluded or completed upon the effective date of EPA's final action on Rule 2410. The District would assume full PSD responsibility for the administration and implementation of such PSD permits immediately upon notification from EPA that all administrative and judicial appeals processes and any associated remand actions have been completed or concluded for any such permit application.

D. Public Comment and Proposed Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as a revision to the SIP pursuant to section 110(k)(3) of the Act. Specifically, we are proposing to approve District Rule 2410—Prevention of Significant Deterioration, as adopted by the District on June 16, 2011 and submitted by CARB on August 23, 2011.

We will accept comments from the public on this proposal until July 2, 2012.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Dated: May 22, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

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