
(ii) Additional material.

(A) California Department of Pesticide Regulation.


(414) The following plan revisions were submitted on August 2, 2011, by the Governor’s designee.

(i) Incorporation by reference.

(A) California Department of Pesticide Regulation.

(I) California Code of Regulations, Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 2 (Pesticides), Subchapter 4 (Restricted Materials), Article 4 (Field Fumigation Use Requirements), sections 6448.1, “1,3-Dichloropropene Field Fumigation Methods” (operative April 7, 2011); 6449.1, “Chloropicrin Field Fumigation Methods” (operative April 7, 2011); 6450.1, “Metam-Sodium and Potassium N-methylthiocarbamate (Metam-Potassium) Field Fumigation Methods” (operative April 7, 2011); 6452.2, “Fumigant Volatile Organic Compound Emission Limits” (excluding benchmarks for, and references to, Sacramento Metro, San Joaquin Valley, South Coast, and Southeast Desert in subsection (a) and excluding subsection (d))(operative April 7, 2011); 6452.3, “Field Fumigant Volatile Organic Compound Emission Allowances” (operative April 7, 2011); 6452.4, “Annual Volatile Organic Compound Emissions Inventory Report” (excluding reference to section 6446.1 in subsection(a)(4)(operative April 7, 2011).

(ii) Additional material.

(A) California Code of Regulations, Title 3 (Food and Agriculture), Division 6 (Pesticides and Pest Control Operations), Chapter 3 (Pest Control Operations), Subchapter 2 (Work Requirements), Article 1 (Pest Control Operations Generally), sections 6624, “Pesticide Use Records” (excluding references in subsection (f) to methyl iodide and section 6446.1) (operative December 20, 2010); section 6626, “Pesticide Use Reports for Production Agriculture” (operative April 7, 2011).
intended by the CAA. For a more detailed discussion of District Rule 2410, please refer to our proposed approval. See 77 FR 32493 (June 1, 2012).

II. EPA’s Evaluation of the SIP Revision

A. What action is EPA finalizing?

EPA is finalizing a SIP revision for the San Joaquin Valley portion of the California SIP. The SIP revision will be codified in 40 CFR 52.220 and 40 CFR 52.270 by incorporating by reference District Rule 2410, as adopted June 16, 2011 and submitted to EPA by the California Air Resources Board (CARB) on August 23, 2011. In addition, the letter from the District to EPA, dated May 18, 2012, providing certain clarifications concerning District Rule 2410 and 40 CFR 51.166, will be included as additional material in 40 CFR 52.220. The regulatory text addressing this action also makes it clear that EPA is relying, in part, on the clarifications provided in the District’s May 18, 2012 letter in taking this final approval action. As such, the District’s implementation of the PSD program in a manner consistent with these clarifications is a pre-condition of today’s final approval of the District’s PSD SIP revision. This SIP revision provides a federally approved and enforceable mechanism for the District to issue pre-construction PSD permits for certain new and modified major stationary sources subject to PSD review within the District.

As discussed in EPA’s proposal relating to today’s SIP revision approval action, the District has 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, including 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 in 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 and therefore are transferring authority for such permits to the District concurrent with the effective date of EPA’s approval of the District’s PSD program into the SIP. A list of the EPA-issued permits that we anticipate will be transferred to the District is provided in the docket for this action. EPA has already provided a copy of each such permit to the District.

As described in our proposal, EPA will 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 PSD 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 not yet been concluded or completed upon the effective date of EPA’s final SIP approval action for Rule 2410. The District will 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.

B. Public Comments and EPA Responses

In response to our June 1, 2012 proposed rule, we received two comment letters, one from the Western States Petroleum Association (WSPA) and one from Earthjustice on behalf of a consortium of environmental groups (Medical Advocates for Healthy Air, the Kern-Kaweah Chapter of the Sierra Club, the Center for Race, Poverty, and the Environment, and the Central Valley Air Quality Coalition). Copies of each comment letter have been added to the docket for this action and are accessible at www.regulations.gov. The comment letter from WSPA supports EPA’s analysis and proposal to approve District Rule 2410 into the SIP. The comment letter from Earthjustice opposes the SIP revision and raises several specific objections. We have summarized the comments received and provided a response to the comments below.

Response 1: WSPA expresses its support for EPA’s expeditious approval of District Rule 2410, and recommends that such approval be completed as soon as possible in order to ensure that permitting is not unduly impacted for facilities subject to PSD review.

Response 2: EPA appreciates the commenter’s support. We agree that EPA’s proceeding expeditiously with its final action on the District’s SIP revision, after careful consideration of public comments received on its proposed action, will serve to facilitate timely processing of PSD permit decisions for facilities within the District that are subject to PSD review.

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Response 1: EPA appreciates the commenter’s support. We agree that EPA’s proceeding expeditiously with its final action on the District’s SIP revision, after careful consideration of public comments received on its proposed action, will serve to facilitate timely processing of PSD permit decisions for facilities within the District that are subject to PSD review.

Comment 2: Earthjustice states that CAA sections 110(a)(2)(A) and (C) require SIPs to include enforceable measures to regulate the construction and modification of stationary sources. The commenter believes that District Rule 2410 includes loopholes for enforcing District compliance with its permitting requirements because currently, within the District, interested parties are able to seek judicial review of final PSD permitting decisions under section 307 of the Act, whereas under Rule 2410 and California state law there is no right to judicial review of permitting decisions for power plants licensed by the California Energy Commission (CEC). The commenter asserts that under California Public Resources Code (CPRC) section 25531, judicial review of such CEC approvals may only be had at the discretion of the State Supreme Court, and there is no guaranteed right of review. The commenter states that this legal conclusion regarding the limited availability of judicial review for power plant permitting decisions has been repeatedly asserted by the CEC and the District. The commenter concludes that approval of Rule 2410 would open the door for abuse and noncompliance in PSD permitting decisions, and does not comply with the requirements of section 110(a)(2) of the Act because it does not guarantee judicial enforceability.

Response 2: As EPA has stated previously, we interpret the CAA to require an opportunity for judicial review of a decision to grant or deny a PSD permit, whether issued by EPA or by a State under a SIP-approved or delegated PSD program. See 61 FR 1880, 1892 (Jan. 24, 1999) (EPA’s proposed disapproval of Virginia’s PSD program SIP revision due to State law standing requirements that limited judicial review); 72 FR 72617, 72619 (December 21, 2007) (in approving South Dakota’s PSD program, EPA stated: “We interpret the statute and regulations to require at minimum an opportunity for state judicial review of PSD permits”). EPA continues to interpret the relevant provisions of the Act as described in these prior rulemaking actions. We believe that Congress intended for state judicial review of PSD permit decisions to be available for members of the public who can satisfy threshold standing requirements under Article III of the Constitution. See 61 FR 1882, January 24, 1996.

The commenter argues that California’s judicial review procedures under CPRC 25531 for PSD permit decisions subject to the CEC certification process do not satisfy the CAA’s requirements for judicial review. The commenter states that these State judicial review procedures are inadequate because such review may
only be had at the discretion of the State Supreme Court, and there is no guaranteed right of judicial review.

CPRC section 25531(a) provides: "The decisions of the [CEC] on any application for certification of a site and related facility are subject to judicial review by the Supreme Court of California." California courts have found that California Supreme Court review of a power plant certification decision under CPRC section 25531 is a decision on the merits. Santa Teresa Citizen Action Group v. California Energy Commission, 105 Cal. App. 4th 1441, 1447–1448 (2003); see also In re Rose, 22 Cal.4th 430, 444 (2000) (when the sole means of review is a petition in the California Supreme Court, even when the court has denied the petition—with or without an opinion—reflects a judicial determination on the merits).

EPA believes that the opportunity provided by CPRC 25531 to seek review of a PSD permit decision for a CEC-certified facility before the California Supreme Court and to obtain that court’s judicial determination on the merits satisfies the CAA requirement that an opportunity for judicial review be provided under State law for PSD permits in SIP-approved PSD programs. We recognize that the judicial review process under CPRC 25531 differs in a number of respects from the administrative and judicial review processes available for PSD permit decisions under 40 CFR part 124 (opportunity to petition for administrative review by the EPA’s Environmental Appeals Board (EAB)) and section 307(b) of the CAA (opportunity to seek review before Circuit Court of Appeals) when EPA or a delegated agency under 40 CFR 52.21 is the PSD permit issuer. However, the CAA does not require that the process for judicial review of the grant or denial of a PSD permit issued under a SIP-approved PSD program be identical to that provided when EPA or a delegated agency under 40 CFR 52.21 is the PSD permit issuer. The commenter states that EPA has never been a part of the SIP and has never been a part of the SIP and is basing its approval of the District’s PSD SIP revision are essentially consistent with * * * those of the [Federal Implementation Plan] codified in 40 CFR 52.21” in support of EPA’s determination that its proposed SIP approval action here would be consistent with section 110(l).

The commenter states that the problem with this argument is that there has not been any analyses of whether these PSD regulations, with the various flexibilities that allow sources to be constructed without offsetting emission reductions, without best available control technology to minimize emission increases, and often without any obligation to ensure that the emissions will not cause or contribute to a violation of any national ambient air quality standards, are sufficient to prevent deterioration of air quality and sliding the District into nonattainment. The commenter notes that the PSD program being approved into the SIP has never been a part of the SIP and therefore has never been analyzed for its consistency with a plan for maintaining compliance with the national standards. The commenter believes it is meaningless to say that permitting program will not get any worse once it is approved into the SIP because it has...
never been demonstrated that this permitting program is adequate to prevent the deterioration of air quality in the District.

The commenter states that the California legislature has specifically rejected EPA’s finding that the 2002 New Source Review (NSR) Reforms could benefit air quality because permit requirements have impeded or deferred upgrades to sources, citing California Health and Safety Code sections 42501(e) and (f) (finding that the revisions to the federal regulations drastically reduce the circumstances under which modifications at an existing source would be subject to federal new source review and rejecting the argument that this would be beneficial to air quality because this claim is contradicted by California’s experience). The commenter believes that the 2002 NSR Reforms to the PSD regulations allow growth to increase with fewer mitigation requirements and fewer safeguards for assessing air quality impacts.

The commenter also notes that although the District is attainment or unclassifiable for particulate matter 10 micrometers (µm) in diameter and smaller (PM₁₀), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), carbon monoxide (CO), and lead, EPA has approved a maintenance plan only for PM₁₀ in the last 10 years since the revisions to the PSD regulations. The commenter asserts that without such a plan there is no basis for assessing how a permitting program that allows significant modifications of major sources to avoid control and air quality analysis requirements will ensure that increased emissions from these sources will not interfere with attainment of the national standards. The commenter argues that blind reliance on the District’s parallel nonattainment new source review permitting is no substitute for the missing analysis because the District allows sources to offset emission increases with “pre-baseline” emission reduction credits—meaning current air quality sees only an increase in emissions—and to offset emission increases of one pollutant with decreases of another, which may or may not be relevant to maintenance of the particular national standard.

The commenter asserts that EPA needs to provide its argument and analysis under section 110(l) of the Act for review and comment, as the proposed rule provides no rational basis for believing that the District’s PSD program continues to prevent growth in emissions that could interfere with attainment and maintenance of the national ambient air quality standards in the Valley.

Response 4: We disagree with the commenter’s contentions that EPA has not conducted the analysis required by section 110(l) of the Act and that EPA’s analysis does not provide adequate assurance that approval of the District’s PSD program would not interfere with maintenance of the NAAQS. As stated in the Federal Register notice for our proposed approval of the District’s PSD SIP revision, EPA included an analysis under section 110(l) in the technical support document (TSD) for the proposed rulemaking for this SIP revision approval action. In the TSD, we stated that our approval of the submittal would comply with CAA section 110(l), because the SIP, as revised to reflect the submitted revision, would provide for reasonable further progress and attainment of the NAAQS, and the requirements of the PSD SIP revision are essentially equivalent to, and at least as stringent as, those of the Federal Implementation Plan (FIP) codified in 40 CFR 52.21 and used to date by EPA to implement the required PSD program within the District. EPA noted that approval of the District’s PSD SIP submittal would merely result in the transfer of authority for the PSD program from the EPA to the District, and therefore would not result in any substantive changes to the PSD program requirements, other CAA requirements, or air quality. We believe that our 110(l) analysis was adequate and appropriate, for the following reasons.

Section 110(l) of the CAA states that “the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of this chapter...42 U.S.C. 7410(l), EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. Generally, a SIP revision may be approved under section 110(l) if EPA finds that it will at least preserve status quo air quality, particularly where, as here, the pollutants at issue are those for which an area has not been designated nonattainment.

In response to the commenter’s concern that approval of the District’s PSD SIP submittal including NSR Reform would allow fewer projects to be subject to PSD review,2 meaning that fewer sources must demonstrate that their emission increases will not cause or contribute to a violation of the NAAQS or apply the best available control technology to those emission increases, we note that our approval of the District’s PSD program, which incorporates by reference 40 CFR 52.21, into the SIP will not result in a change to the status quo. As stated in our TSD, the PSD program has been implemented within the District by EPA in accordance with the provisions of 40 CFR 52.21, which incorporated the NSR Reform provisions to which the commenter refers since their inception.

Even if the provisions of 40 CFR 52.21 as revised through NSR Reform were not already in place within the District, EPA is not aware of any basis for concluding that the PSD program under 40 CFR 52.21, including NSR Reform, that has been incorporated by reference by the District would interfere with the maintenance of the NAAQS within the District, nor has the commenter provided specific information demonstrating that such interference would occur. The commenter refers to a general legislative statement by the California legislature that appears to have been adopted in 2003 that disagrees generally with NSR Reform but which is not specific as to what changes in air quality, if any, would occur as a result of EPA’s approval of the District’s PSD program.

NSR Reform affects only permitting of modifications to existing sources, and more specifically, modifications to existing emissions units. Any growth occurring from new, greenfield sites would be controlled and permitted in the same manner both pre- and post-reform. Therefore, any concerns about NSR Reform would be related to unregulated growth from existing major sources. In the specific case of the District, modifications that are not subject to PSD review generally have been, and will continue to be, subject to review under the District’s minor NSR program, which is approved into the California SIP through District Rule 2201. Rule 2201 contains the District’s permit program for all increases in pollutants subject to a NAAQS, whether classified as attainment, nonattainment, or unclassifiable by EPA. The rule includes pre-construction permitting requirements for sources that are not required to be permitted under title I, to the method of determining what changes are deemed to be major modifications under EPA and San Joaquin’s rules and therefore subject to PSD review. Plainly, once a change is deemed a major modification, 40 CFR 52.21 and the District’s rule incorporating 52.21 by reference have provisions for BACT and air quality assessments required by PSD.
parts C and D of the Act as new major stationary sources or major modifications at existing major stationary sources in attainment or nonattainment areas, which are commonly referred to as “minor NSR,” although this term is not used in Rule 2201. A modification in the District that is not required to obtain a PSD permit (whether due to the application of the NSR Reform provisions or not) would still be subject to the preconstruction permit requirements of the District’s minor NSR program in Rule 2201, including any associated testing, monitoring, recordkeeping and reporting requirements. All modifications within the District are required to obtain a permit revision prior to modification of the applicable units. Generally, for any new or modified emission units, the District’s NSR program begins applying BACT for emission increases of two pounds per day (0.4 tons per year). See District Rule 2201, Sections 4.1 and 4.2. The District’s NSR program also generally requires a demonstration that emissions from certain new or modified stationary sources, including minor sources, will not cause or make worse the violation of an ambient air quality standard. See District Rule 2201, Section 4.14. EPA’s approval of the District’s PSD program will not change the level of review that is conducted for modifications not subject to PSD review within the District. The District’s robust minor NSR permitting program for such sources provides additional assurance that EPA’s approval of the District’s PSD SIP revision incorporates the NSR Reform, will not interfere with maintenance of the NAAQS within the District.

We note that at the time EPA adopted NSR Reform, we provided an analysis of the environmental impacts of the “various flexibilities” the commenter discusses. Based on examples and modeling, we concluded that NSR Reform would likely have a neutral to positive effect on air quality relative to the pre-Reform provisions. See generally Summary of the Environmental Impact of the 2002 Final NSR Improvement Rules (Nov. 21, 2002) (Supplemental Analysis).

The commenter has provided no specific data that leads EPA to conclude that this initial analysis was incorrect. Considering the District’s minor NSR program, which was not a part of the above-mentioned national analysis, the environmental impacts of continuing to implement the NSR Reform should not be different from the effect modeled in the analysis.

In sum, as EPA concluded in its TSD for the proposed rulemaking, the transfer of the PSD program under 40 CFR 52.21.2 from EPA to the District is not expected to result in any substantive changes to the PSD program requirements, other CAA requirements, or air quality within the District, and EPA continues to believe that its approval of the District’s PSD SIP revision would not interfere with attainment and maintenance of the NAAQS within the District, or with any other applicable requirement of the CAA. EPA bases this conclusion on the fact that the District’s PSD program will be less stringent than the federal PSD program under 40 CFR 52.21.2 that it is replacing. In addition, EPA has taken into consideration the District’s extensive minor source permitting program that will impose control requirements on sources that are not major under the PSD program. EPA finds that the approval of this SIP revision is entirely consistent with the development of a plan for the District to attain and maintain the NAAQS.

Last, it is unclear to EPA what the basis is for the commenter’s statement that relying on the existing District nonattainment NSR program is a substitute for the necessary analysis under CAA section 110(l) in terms of maintenance of the NAAQS, or how the commenter’s concerns with the District’s nonattainment NSR permitting process relate to EPA’s CAA section 110(l) analysis in this case. We assume that the commenter is referring in this statement to the District’s major nonattainment NSR program. For the reasons outlined above, EPA believes that its 110(l) analysis for this action is appropriate, and we have not specifically relied on the District’s major nonattainment NSR program to support our 110(l) analysis here because our approval action addresses the District’s PSD permitting program, which regulates only those pollutants for which the District has been designated attainment or unclassifiable. General concerns about the District’s major nonattainment NSR permitting process are outside the scope of this PSD SIP revision approval action.

III. EPA’s Final Action

EPA is approving CARB’s August 23, 2011 submittal of District Rule 2410—Prevention of Significant Deterioration (PSD)—into the California SIP to establish a PSD permit program for preconstruction review of certain new and modified major stationary sources in attainment or unclassifiable areas.

IV. Statutory and Executive Order Reviews

Under the CAA, 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. 7411(b). Thus, in reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this 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 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 20355, May 22, 2001);
• Is not subject to the requirements of Section 12(d) of the National
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 new paragraph (c)(415) to read as follows:

§ 52.220 Identification of plan.

(c) * * * * * (415) New and amended regulations were submitted on August 23, 2011 by the Governor’s designee. Final approval of these regulations is based, in part, on the clarifications contained in a May 18, 2012 letter from the San Joaquin Valley Unified Air Pollution Control District regarding specific implementation of parts of the Prevention of Significant Deterioration program.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.


(ii) Additional materials.

(A) San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD).

(1) Letter dated May 18, 2012 from David Warner, SJVUAPCD, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding Clarifications of District Rule 2410 and 40 CFR 51.166.

3. Section 52.270 is amended by adding new paragraph (b)(5) to read as follows:

§ 52.270 Significant deterioration of air quality.

(b) * * * * *

(5) Rule 2410, “Prevention of Significant Deterioration,” adopted on June 16, 2011, for the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) is approved under Part C, Subpart 1, of the Clean Air Act, based, in part, on the clarifications provided in a May 18, 2012 letter from the San Joaquin Valley Unified Air Pollution Control District described in § 52.220(c)(415). For PSD permits previously issued by EPA pursuant to § 52.21 to sources located in the SJVUAPCD, this approval includes the authority for the SJVUAPCD to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits, and authority to enforce such permits, except for:

(i) Those specific sources within the SJVUAPCD that have submitted PSD permit applications to EPA and for which EPA has issued a proposed PSD 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 not yet been concluded or completed by November 26, 2012. The SJVUAPCD will assume full responsibility for the administration and implementation of such PSD permits immediately upon notification from EPA to the SJVUAPCD that any and all administrative and judicial appeals processes (and any associated remand actions) have been completed or concluded for any such permit decision. Prior to the date of such notification, EPA is retaining authority to apply § 52.21 for such permit decisions, and the provisions of § 52.21, except paragraph (a)(1), are therefore incorporated and made a part of the State plan for California for the SJVUAPCD for such permit decisions during the identified time period.

(ii) [Reserved].

BILING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81


Additional Air Quality Designations for the 2006 24-Hour Fine Particle National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental amendments; final rule.

SUMMARY: The EPA is taking final action to establish the initial 2006 24-hour fine particle (PM2.5) national ambient air quality standards (NAAQS) air quality designations for the Ak-Chin Indian Community located in Pinal County, Arizona, and the Gila River Indian Community located in Pinal County and Maricopa County, Arizona. On November 13, 2009, and February 3, 2011, the EPA promulgated air quality designations nationwide for all but these two areas for the 2006 24-hour PM2.5 NAAQS. The EPA deferred initial PM2.5 air quality designations for the