We proposed a limited approval because we determined that these rules strengthen the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with CAA section 110, including Parts C and D, and the regulations implementing those laws. The disapproved provisions include the following:

1. The definitions of “agricultural source” in Section 2–1–239 and “large confined animal facility” used in Section 2–1–424 rely on other definitions and provisions in District rules that are not SIP approved. (See our evaluation of Sections 2–1–239 and 2–1–424 in section 6.1.2 of the TSD.)

2. Section 2–1–234, subparagraph 2.2, is deficient because it does not satisfy the PSD provisions at 40 CFR 51.166(a)(7) and 51.166(r)(6) & (7), which require PSD programs to contain specific applicability procedures and recordkeeping provisions. (See our evaluation of Section 2–1–234 in sections 6.1.2 and 7.2.2 of the TSD.)

3. The same deficiency discussed above for the PSD provisions applies to the nonattainment NSR provisions. Section 2–1–234, subparagraph 2.1, does not satisfy the requirements of 51.165(a)(2) and 51.165(a)(6) & (7), which require nonattainment NSR programs to contain specific applicability procedures and recordkeeping provisions. (See our evaluation of Section 2–1–234 in sections 6.1.2 and 7.3.12 of the TSD.)

4. The definition of the term “PSD pollutant” as defined in Section 2–2–223, which is used in place of the federal definition for the term “regulated NSR pollutant,” is deficient.
because it explicitly excludes nonattainment pollutants. (See our evaluation of Sections 2–2–223 and 2–2–224 in sections 6.2.2 and 7.2.3 of the TSD.)

5. Section 2–2–305 does not require written approval of the Administrator prior to using any modified or substituted air quality model as provided in subsection 3.2.2 of 40 CFR 51, appendix W. (See our evaluation of Section 2–2–305 in sections 6.2.3 and 7.2.15 of the TSD.)

6. Section 2–2–611 does not include the requirement regarding “any other stationary source category which as of August 7, 1980, is being regulated under section 111 or 112 of the Act” in the list of source categories that must include fugitive emissions to determine whether a source is a major facility. (See our evaluation of Section 2–2–611 in sections 6.2.6 and 7.3.10 of the TSD.)

7. Section 2–2–401.4 only requires a visibility analysis for sources that are located within 100 km of a Class I area, rather than for any source that “may have an impact on visibility” in any mandatory Class I Federal Area, as required by 40 CFR 51.307(b)(2). (See our evaluation of Section 2–2–401.4 in sections 6.2.4 and 7.3.9 of the TSD.)

8. Section 2–2–411 pertaining to Offset Refunds does not contain any timeframe for obtaining an offset refund. (See our evaluation of Section 2–2–411 in section 6.2.4 of the TSD.)

9. The Offset Program Equivalence demonstration required by Section 2–2–412 does not provide a remedy if the District fails to make the required demonstration. (See our evaluation of Section 2–2–412 in section 6.2.4 of the TSD.)

10. Subsection 2–2–605.2 allows existing “fully-offset” sources to generate ERCs based on the difference between the post-modification PTE and the pre-modification PTE. Emission reductions intended to be used as offsets for new major sources or major modifications are only creditable if they are reductions of actual emissions, not reductions in the PTE of a source. (See our evaluation of Section 2–2–605 in sections 6.2.6, 7.3.3, 7.3.13, and 7.3.22 of the TSD.)

11. Subsection 2–2–606.2, as it applies to major modifications, does not require “fully-offset” sources to calculate the emission increases from a proposed major modification based on the difference between the post-modification PTE and the pre-modification actual emissions as required under 40 CFR 51.165(a)(3)(ii)(J). (See our evaluation of Section 2–2–606 in sections 6.2.6 and 7.3.22 of the TSD.)

In addition, we had proposed a limited disapproval of Section 2–2–308. (See our evaluation of Section 2–2–308 in sections 6.2.3 and 7.4.1 of the TSD.) We also proposed to find the rules were deficient because they did not require a demonstration that a new source meet all applicable SIP requirements as required by 40 CFR 51.160(b)(1). (See section 7.4.1 in the TSD.)

7.3.3, 7.3.13, and 7.3.22 of the TSD.)

II. Summary of Public Comments and EPA Responses

Our August 28, 2015 proposed rulemaking provided a 30-day public comment period. The EPA granted a request from BAAQMD to extend the public comment period until November 12, 2015, which is the date the public comment period ended. We received comments from BAAQMD and the California Council for Environmental and Economic Balance (CCEEB). We also received a comment letter from the Sacramento Metropolitan Air Quality Management District (SMAQMD) after the public comment period ended. We received an anonymous, non-substantive comment letter and a comment letter submitted on behalf of the California Air Pollution Control Officers Association (CAPCOA) that was withdrawn during the comment period. Our Response to Comments document in the docket for this action contains a summary of the comments and the EPA’s responses. The full text of the public comments, as well as all other documents relevant to this action, are available in the docket (http://www.regulations.gov and search for Docket ID: EPA–R09–OAR–2015–0280). Below, we briefly summarize the significant comments and our responses to the major issues raised by commenters.

Comment 1: BAAQMD commented that the CAA is designed to achieve “cooperative federalism”, and that the EPA should defer to the District’s policy choices on how to implement its NSR program.

Response 1: The EPA understands its role under the cooperative federalism approach established under the CAA and we have applied the appropriate standard in reviewing the BAAQMD’s NSR rules.

Comment 2: BAAQMD disagrees with the EPA’s limited disapproval of Section 2–2–308 as it relates to satisfying the requirements in 40 CFR 51.160(b).

Response 2: We are finalizing our limited disapproval of Section 2–2–308 as it relates to 40 CFR 51.160(b)(2) for the reasons discussed in our Response to Comments document. Accordingly, the EPA is finalizing approval of Section 2–2–308.

Comment 3: BAAQMD disagrees with the EPA’s limited disapproval of the District NSR rules because it did not contain a prohibition on the issuance of an ATC if the project does not meet all applicable requirements of the control strategy as required in 40 CFR 51.160(b)(1).

Response 3: The EPA is finalizing our proposed limited disapproval of this issue because Section 2–1–304 satisfies the control strategy requirement in 40 CFR 51.160(b)(1). The EPA is finalizing approval of Section 2–1–304 as satisfying requirement in 40 CFR 51.160(b)(1).

Comment 4: BAAQMD disagrees with the EPA’s proposed limited disapproval of Section 2–2–602.2 for determining the amount of offsets required for major modifications that will be constructed at major sources that have previously provided offsets equal to the source’s PTE when the modification will not increase the PTE of the source.

Response 4: The EPA is finalizing our limited disapproval regarding this issue. 40 CFR 51.165(a)(3)(ii)(J) directs SIPs to include rules to ensure that the total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with section 173 of the Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification. This provision requires providing offsets for each major modification at a major source in an amount equal to the difference between pre-modification actual emissions and post-modification PTE.

Comment 5: BAAQMD disagrees with the EPA’s proposed limited disapproval of the PTE-to-PTE calculation method for determining the amount of ERCs generated from sources that have provided offsets up to their full PTE and that are being shut down.

Response 5: The EPA is finalizing its limited disapproval on this issue because offsets are required to be generated from reductions in actual.
emissions consistent with CAA section 173(a) and (c) and 40 CFR 51.165(a)(3).

Comment 6: BAAQMD comments that the EPA cannot require nonattainment offsets for SO2 because the San Francisco Bay Area is not designated as nonattainment for SO2.

Response 6: The EPA is finalizing its limited disapproval on this issue because 40 CFR 51.165(a)(1)(xxvii) specifies that sulfur dioxide is a precursor in all PM2.5 nonattainment areas and the BAAQMD is designated nonattainment for the 2006 PM2.5 National Ambient Air Quality Standards.

Comment 7: BAAQMD comments that the EPA’s visibility regulations at 40 CFR 51.307(b) do not specify what projects “may have an impact” on visibility at Federal Class I areas, therefore it is acceptable to use a 100-km radius to meet the requirement.

Response 7: The EPA is finalizing its limited disapproval on this issue because the EPA’s visibility regulations require a new major source or major modification that “may have an impact on visibility” at a Federal mandatory Class I area to conduct a visibility analysis on a case-by-case basis in consultation with the applicable FLM.

Comment 8: BAAQMD requests that the EPA confirm that the limited approval and limited disapproval action will make the BAAQMD’s NSR rules as a whole part of the California SIP and federally enforceable under the CAA.

Response 8: Regulation 2, Rules 1 and 2 will become the federally enforceable NSR program for the SIP for BAAQMD subject to an obligation to correct rule deficiencies listed in Section I of this Federal Register document.

III. EPA Action

For the reasons provided in our proposed rule and above in response to comments, pursuant to section 110(k) of the CAA, the EPA is finalizing a limited approval and limited disapproval of the submitted BAAQMD rules, listed in Table 1 above, into the California SIP. Regulation 2, Rules 1 and 2 will become the federally enforceable NSR program in the SIP for BAAQMD subject to an obligation to correct the rule deficiencies listed in Section I of this Federal Register document. We are finalizing a limited approval because incorporating the BAAQMD permitting rules will strengthen and update the BAAQMD portion of the California SIP. We are finalizing our limited disapproval because some of the BAAQMD permitting rules do not comply with federal NSR requirements. We are finalizing our action as proposed, except for the limited disapprovals regarding Sections 2–2–308 and the requirements of 40 CFR 51.160(a) and (b). Accordingly, the EPA will finalize approval of these provisions.

Our limited disapproval action will trigger an obligation for the EPA to promulgate a Federal Implementation Plan under CAA section 110(c) unless California corrects the deficiencies that are the bases for the limited disapproval, and the EPA approves the related rule revisions, within 24 months of the effective date of this final action. In addition, sanctions will be imposed unless the EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act and 40 CFR 52.31.

The District has been implementing the federal PSD permitting program based on a delegation agreement with the EPA pursuant to 40 CFR 52.21(u).

Despite limited deficiencies, this final action approving the District’s PSD permitting program into the SIP means that the District will be the PSD permitting authority on the effective date of this final action. Concurrent with the EPA’s approval of the District’s rules, all PSD permits for sources located in the BAAQMD issued directly by the EPA or under the PSD delegation agreement are being transferred to the District. A list of these EPA-issued permits is included in the docket for this rulemaking action.

IV. Incorporation by Reference

The EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the BAAQMD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through http://www.regulations.gov and in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

V. Statutory and Executive Order Review

Additional information about these statutes and Executive Orders can be found at http://www2.epa.gov/laws-regulations/laws-and-executive-orders.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those
regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. 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 circuit by September 30, 2016. 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

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

Authority:

42 U.S.C. 7401 et seq.

Dated: June 3, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

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)(7) and (c)(199)(i)(A)(9) and (c)(202)(i)(A)(2) and (c)(429)(i)(E)(1) and (2) to read as follows:

§52.220 Identification of plan.

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(7) Previously approved on January 26, 1999 in paragraph (c)(182)(i)(B)(6) of this section and now deleted with replacement in (c)(429)(i)(E)(1), Regulation 2, Rule 1 adopted on November 1, 1989.

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(199) * * * * (i) * * * * (A) * * * * (9) Previously approved on January 26, 1999 in paragraph (c)(199)(i)(A)(6) of this section and now deleted with replacement in (c)(429)(i)(E)(2), Regulation 2, Rule 2 adopted on June 15, 1994.

* * * * * * (202) * * * * (i) * * * * (A) * * * * (2) Previously approved on April 3, 1995 in paragraph (c)(202)(i)(A)(1) of this section and now deleted with replacement in (c)(429)(i)(E)(1), Rule 2–1–249, adopted on June 15, 1994.

* * * * * * * (429) * * * * (i) * * * * (E) Bay Area Air Quality Management District.


3. Section 52.270 is amended by adding paragraph (b)(16) to read as follows:

§52.270 Significant deterioration of air quality.

* * * * * *(b) * * * * *(16) The PSD program for the Bay Area Air Quality Management District (BAAQMD), as incorporated by reference in §52.220(c)(429)(i)(E)(2), is approved under part C, subpart 1, of the Clean Air Act. For PSD permits previously issued by EPA pursuant to §52.21 to sources located in the BAAQMD, this approval includes the authority for the BAAQMD 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.

* * * * *

[FR Doc. 2016–17904 Filed 7–29–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52


Air Plan Approval; VT; Prevention of Significant Deterioration, Nonattainment and Minor New Source Review

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving three State Implementation Plan (SIP) revisions submitted by the State of Vermont. These revisions primarily amend several aspects of Vermont’s new source review permitting regulations. The permitting revisions are part of Vermont’s major and minor stationary source preconstruction permitting programs, and are intended to align Vermont’s regulations with the federal new source review regulations. The revisions also contain amendments to other Clean Air Act (CAA) requirements, including updating the State’s ambient air quality standards and certain emissions limits for sources of nitrogen oxides and sulfur emissions.