VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, this action merely proposes to approve 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) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866
- 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 CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking action, pertaining to New Jersey's section 110(a)(2) infrastructure requirements for the 1997 and 2008 ozone NAAQS, 1997, 2006 and 2012 $PM_{2.5}$ NAAQS, 2006 PM_{10} NAAQS, 2010 NO_2 NAAQS, 2010 SO_2 NAAQS, 2011 CO NAAQS, and 2008 lead NAAQS do 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, Incorporation by reference, Nitrogen dioxide, Intergovernmental relations, Lead, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: February 14, 2018.

Peter D. Lopez,

Regional Administrator, Region 2.

[FR Doc. 2018–04191 Filed 2–28–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0080; FRL–9974–95—Region 9]

Revisions to California State Implementation Plan; Bay Area Air Quality Management District; Stationary Sources; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Bay Area Air Quality Management District (BAAQMD or District) portion of the California State Implementation Plan (SIP). These revisions concern permit program rules governing the issuance of permits for stationary sources, including review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act (CAA). The revisions correct deficiencies in BAAQMD Regulation 2, Rules 1 and 2, and Regulation 2, Rule 4, previously identified by the EPA in final rules dated August 1, 2016, and December 4, 2017, respectively. We are proposing to approve revisions that correct the identified deficiencies.

DATES: Any comments must arrive by April 2, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0080 at *http://www.regulations.gov,* or via email to *R9AirPermits@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region 9, (415) 972–3534, *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rule revisions?
II. The EPA's Evaluation and Action
A. How is the EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
1. Regulation 2, Rules 1 and 2
2. Regulation 2, Rule 4
3. Requirements of 40 CFR 51.165(a)(13)
4. Sections 110(a)(2) and 110(l) of the Act
5. Section 193 of the Act
III. Proposed Action and Public Comment
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The word or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The word or initials APCO mean or refer to the Air Pollution Control Officer.

(iii) The word or initials *BAAQMD* or *District* mean or refer to the Bay Area Air Quality Management District.

(iv) The initials *BACT* mean or refer to Best Available Control Technology.

(v) The words *Bay Area* mean or refer to the geographic area regulated by the Bay Area Air Quality Management District.

(vi) The initials *CARB* mean or refer to the California Air Resources Board.

(vii) The initials *CFR* mean or refer to Code of Federal Regulations.

(viii) The initials or words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(ix) The initials *ERC* mean or refer to Emission Reduction Credit.

(x) The initials *FR* mean or refer to **Federal Register**.

(xi) The initials *GHG* mean or refer to greenhouse gases.

(xii) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(xiii) The initials NO_X mean or refer to oxides of nitrogen.

(xiv) The initials *NSR* mean or refer to New Source Review.

(xv) The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).

(xvi) The initials *POC* mean or refer to precursor organic compound.

(xvii) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(xviii) The initials *PTE* mean or refer to potential to emit

(xix) The initials *SIP* mean or refer to State Implementation Plan.

(xx) The initials SO_2 mean or refer to sulfur dioxide.

(xxi) The initials *VOC* mean or refer to volatile organic compound.

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates they were adopted by BAAQMD and submitted by the CARB, which is the governor's designee for California SIP submittals. Regulation 2, Rule 1 contains general requirements that apply to all District air quality permitting programs. Regulation 2, Rule 2 contains the District's New Source Review (NSR) permit programs for both attainment and nonattainment pollutants. Regulation 2, Rule 4 contains requirements for banking emission reduction credits (ERCs).

TABLE 1—SUBMITTED RULES

Regulation & Rule No.	Rule title	Amended	Submitted
Regulation 2, Rule 1 (Rule 2–1)	Permits, General Requirements	12/6/2017	12/14/17
Regulation 2, Rule 2 (Rule 2–2)	Permits, New Source Review	12/6/2017	12/14/17
Regulation 2, Rule 4 (Rule 2–4)	Permits, Emissions Banking	12/6/2017	12/14/17

On February 14, 2018, the EPA determined that the submittal of Regulation 2, Rules 1, 2 and 4 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

The existing SIP-approved NSR program for new or modified stationary sources in the Bay Area consists of the rules identified below in Table 2. The EPA's approval of the rules identified above in Table 1 would have the effect of entirely superseding our prior approval of these rules in the current SIP-approved program.

TABLE 2—EXISTING SIP RULES

Regulation & Rule No.	Rule title	Approval date	FR citation
Regulation 2, Rule 1 (Rule 2–1)	Permits, General Requirements	8/1/2016	81 FR 50339
Regulation 2, Rule 2 (Rule 2–2)	Permits, New Source Review	8/1/2016	81 FR 50339
Regulation 2, Rule 4 (Rule 2–4)	Permits, Emissions Banking	12/4/2017	82 FR 57133

C. What is the purpose of the submitted rule revisions?

This SIP submittal is intended to correct deficiencies previously identified by the EPA in our August 1, 2016, limited approval and limited disapproval ction for Rules 2–1 and 2–2 (81 FR 50339), and our December 4, 2017, conditional approval action for Rule 2–4 (82 FR 57133).

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

The evaluation criteria for the submitted rules includes compliance with the CAA's requirements for SIPs in CAA sections 110(a)(2), 110(l), and 193. In addition, the EPA evaluated the submitted rules for consistency with the regulatory provisions of 40 CFR part 51, subpart I (Review of New Sources and Modifications) (*i.e.,* 40 CFR 51.160–51.166) and 40 CFR 51.307.

B. Do the rules meet the evaluation criteria?

In our previous August 1, 2016, and December 4, 2017, actions we evaluated prior submissions of the submitted rules in accordance with the CAA and regulatory requirements listed in Section II.A of this document. In those actions, we determined that for the most part the submitted rules satisfied the applicable requirements for NSR permit programs. However, in each action we identified certain deficiencies that prevented full approval. For both of the previous actions, we list the identified deficiencies and evaluate whether the submitted rule revisions correct the deficiency. We also evaluate any additional rule revisions and whether the submittal complies with the requirements of sections 110(a)(2), 110(l) and 193 of the CAA.

1. Regulation 2, Rules 1 and 2

Our August 1, 2016 action identified the following eleven deficiencies in Rules 2–1 and 2–2.

First, 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.

Second, 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.

Third, 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 40 CFR 51.165(a)(2) and 51.165(a)(6) & (7), which require nonattainment NSR programs to contain specific applicability procedures and recordkeeping provisions.

Fourth, 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.

Fifth, 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 part 51, appendix W.

Sixth, 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.

Seventh, 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).

Eighth, Section 2–2–411 pertaining to Offset Refunds does not contain any timeframe for obtaining an offset refund.

Ninth, 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.

Tenth, 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.

Eleventh, 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 by 40 CFR 51.165(a)(3)(ii)(J).

To address the first deficiency, the definition of ''agricultural source'' in Section 2–1–239 and the reference to ''large confined animal facility'' used in Section 2–1–424 have been revised to remove references to ''Regulation 2, Rule 10,'' which is not SIP approved. The District made additional edits to both of these provisions, as well as Subsection 2–1–113.1.2, to provide additional information due to the removal of the references to Regulation 2, Rule 10. These revisions cure this deficiency because the rules no longer reference rules which are not SIP approved.

To address the second deficiency, Section 2–1–234 has been revised by adding two new subparagraphs (2.3 and 2.4) to include the specific applicability procedures and recordkeeping provisions required by 40 CFR 51.166(a)(7) and 51.166(r)(6) & (7). These two new subparagraphs are acceptable to cure this deficiency.

To address the third deficiency, Section 2–1–234 has been revised by adding two new subparagraphs (2.3 and 2.4) to include the specific applicability procedures and recordkeeping provisions required by 40 CFR 51.165(a)(2) and 51.165(a)(6) & (7). These two new subparagraphs are acceptable to cure this deficiency.

To address the fourth deficiency, Section 2–2–224 has been revised to reference the term ''Regulated NSR Pollutant'' rather than ''PSD pollutant.'' This revision cures the deficiency by ensuring that a Major PSD Facility determination (as specified in Subsection 224.1) is based on emissions of all regulated NSR pollutants, including any nonattainment pollutant.

To address the fifth deficiency, Section 2–2–305.3—Air Quality Models, has been revised to require written EPA approval prior to using any modified or substituted air quality model. This revision cures this deficiency.

To address the sixth deficiency, Section 2–2–611 has been revised to add the following language: ''or is in any other stationary source category that was being regulated under section 111 or 112 of the Clean Air Act as of August 7, 1980.'' This revision cures this deficiency by adding the missing required language.

To address the seventh deficiency, Section 2–2–401.4 has been revised to indicate an analysis of potential impacts to air quality related values is required for a project which ''may have an impact on air quality related values (including visibility) within any Class I area(s),'' rather than only projects located within 100 km of a Class I area. In addition, language has been added to this section to clarify how such a determination is to be made by referencing the guidelines adopted by the Federal Land Managers Air Quality Related Values Work Group. These revisions cure this deficiency.

To address the eighth deficiency, Section 2–2–411.1 has been revised to specify that if excess offsets are provided, an offset refund request must be made within 2 years of the issuance of the authority to construct or within 6 months of issuance of the permit to operate. Section 2–2–411.2 has been revised to specify that if a source is never constructed or operated, and the authority to construct for the source has expired or been surrendered, an offset refund request must be made within 2 years of the issuance or renewal of the authority to construct. These revisions cure this deficiency.

To address the ninth identified deficiency, Section 2–2–415—Additional Offset Requirements Where District Has Not Demonstrated NO_X, POC or $PM_{2.5}$ Offset Program Equivalence, has been added to specify that if the demonstration required by Section 2–2–412 is not made by March 1 of each year (or other EPA-approved date), the Air Pollution Control Officer (APCO) shall require additional offsets for any subsequent Authority to Construct and/or Permit to Operate for a Federal Major NSR Source sufficient to make up for (i) any Federal Offsets Baseline Shortfall calculated pursuant to Section 2–2–229 and (ii) any Federal Surplus-at-Time-of-Use Shortfall calculated pursuant to Section 2–2–230. The new provision also states that this requirement shall continue until the District has made the required equivalence demonstration.

These new provisions cure this deficiency because they ensure an applicant will provide the full amount of federal offsets required for a new project if the District fails to make the required annual demonstration. The EPA recognizes that any shortfall for a year in which the District does not provide an adequate demonstration will not be immediately corrected, but it will be corrected prior to continued usage of the offset equivalence demonstration. The EPA finds this acceptable.

To address the tenth identified deficiency, Subsection 2–2–605.1 has been revised to clarify the requirements of an eligible emission reduction credit and Subsection 2–2–605.2 has been revised to eliminate a separate calculation methodology for ''fully-offset'' sources. The provision has also been revised to specify that the amount

of emission reduction shall be calculated as the difference between: (i) The source's adjusted baseline emissions before the change calculated pursuant to Section 2–2–603; and (ii) the source's potential to emit after the change. This revision cures this deficiency because it ensures that the amount of ERC is based on actual emission reductions.

To address the eleventh identified deficiency, the calculation methodology specified in Subsection 2–2–606.2 was not revised. Instead, Section 2–2–412—Demonstration of NO_X, POC and $PM_{2.5}$ Offset Program Equivalence, was revised to require the District to provide an annual demonstration that the District's NSR program as a whole has obtained at least as many NO_X, POC and $PM_{2.5}$ offsets as would have been required pursuant to the provisions of 40 CFR 51.165 for federal major sources during the previous calendar year. We note that although section 2–2–412 was modified to include $PM_{2.5}$, the revisions to Section 2–2–412 do not contain any provisions for demonstrating equivalency with SO_2 offset requirements. In section II.B.3 of this preamble we discuss our reasoning for proposing approval of Rule 2–2 without requiring an equivalency demonstration for SO_2 offsets.

In addition, new definitions for the terms Federal Major NSR Source, Federal Offsets Baseline Shortfall, Federal Surplus-at-Time of Use Shortfall and Equivalence Credit were added to define these terms as used in Section 2–2–412. We find these new definitions acceptable.

In the current SIP, the annual Offset Program Equivalence Demonstration is only required to account for the difference between the quantity of offsets obtained by the District using ERCs surplus adjusted solely at the time of generation and the subset of those offsets that continue to be surplus at the time of use. The new provisions require the District to also calculate the difference between the amount of offsets provided pursuant to the provisions of Subsection 2–2–606.2, and the amount required pursuant to the provisions of 40 CFR 51.165, when applied to new and modified major sources. We have reviewed the language added to Section 2–2–412 and new Section 2–2–415, and have determined that the provisions of Rule 2–2 will ensure that in the aggregate an equivalent number of ERCs will be provided as would otherwise be required by a NSR program without an equivalence mechanism that met the offset quantification provisions specified in 40 CFR 51.165. We find that these revised and new provisions are acceptable to cure this deficiency.

In addition to the revisions made to address the identified deficiencies discussed above, the District made several additional minor rule revisions. In Rule 2–1, the definitions for the terms ''Facility'' and ''New Source'' were revised to provide additional clarification regarding portable equipment. The provisions of Subsection 2–1–234.2 were revised to clarify which specific provisions of 40 CFR 51.165 (for nonattainment pollutants) and 40 CFR 52.21 (for other Federal NSR pollutants) must be used to determine if an emissions increase from a project will result in a major modification as defined in 40 CFR 51.165 or 52.21, as applicable. These revisions provide important clarifications to ensure the provisions are enforceable, as required by CAA section 110(a)(2)(C), and do not revise any of the requirements for determining if a project will result in a major modification. Therefore we find the revisions to Subsection 2–1–234.2 acceptable. Section 2–1–413—Permits for Operation of Equipment at Multiple Locations Within the District, was revised by adding new Subsection 413.7. This new provision ensures that equipment permitted under this provision do not effectively become ''stationary source equipment'' by residing at a single stationary source for more than 12 months. We find these revisions acceptable. Revisions were also made to Section 2–1–424—Loss of Exemption or Exclusion to remove the reference to non-SIP approved Rule 2–10, and provide additional clarification regarding the applicability of this provision. These revisions do not change the requirements of this section, therefore we find the revisions acceptable.

In Rule 2–2, the definitions for the terms ''Adjustment to Emission Reductions for Federal Purposes'' and ''Fully Offset Source'' were deleted because the rule no longer uses these terms. In Section 2–2–214, the definition of ''Greenhouse Gases'' was revised to remove the requirement that such gases be measured on a mass basis consistent with the Supreme Court's decision in *Utility Air Regulatory Group* v. *EPA,* and the subsequent Judgment in the United States Court of Appeals for the District of Columbia Circuit in *Coalition for Responsible Regulation, Inc.* v. *EPA* regarding the treatment of GHGs in the PSD program.[1]

[1] In 2014 the U.S. Supreme Court issued a ruling in *Utility Air Regulatory Group* v. *EPA,* 134 S.Ct. 2427 (2014) that interpreted several relevant provisions of the federal Clean Air Act regarding the Act's PSD permit program requirements. On April 10, 2015, the D.C. Circuit Court of Appeals effectuated the Supreme Court's judgment by vacating portions of the EPA's PSD regulations addressing GHGs. *See Coalition for Responsible Regulation, Inc.* v. *EPA,* 606 Fed. Appx. 6 (Apr. 10, 2015).

2. Regulation 2, Rule 4

Our December 4, 2017 action identified the following three deficiencies in Rule 2–4.

First, Rule 2–4 is deficient because it defines the term ERCs as emission reductions ''that are in excess of the reductions required by applicable regulatory requirements, and that are real, permanent, quantifiable, and enforceable,'' but does not contain any enforceable provisions requiring the APCO to determine that the emission reductions under review meet the offset integrity criteria prior to issuing an ERC Certificate.

Second, Rule 2–4 is deficient because it incorporates the deficient emission reduction calculation procedures found in Rule 2–2 subsection 605.2. This deficiency in Rule 2–2–605.2 is discussed in Section II.B.1 of the present document, and is identified as deficiency number ten.

Third, Rule 2–4 is deficient because Section 2–4–302.3 allows ERC Certificates to be issued that do not adequately ensure the permanency of an emission reduction due to a facility closure.

To address the first deficiency, Section 2–4–301 has been revised by adding language clarifying that emission reductions may be banked only if the APCO determines (i) that the reductions satisfy all of the criteria necessary to constitute Emission Reduction Credits as defined in Section 2–2–211, including but not limited to the requirements that the reductions are real, permanent, quantifiable, and enforceable, and are calculated in accordance with Section 2–2–605; and (ii) that banking the reductions is not prohibited by Section 2–4–303. These revisions cure this deficiency because they ensure that emission reductions may only be banked after the APCO determines the offset integrity criteria have been met.

To address the second deficiency, Section 2–2–605.2 has been revised to eliminate a separate calculation methodology for ''fully-offset'' sources. This revision is discussed in more detail in section II.B.1 of the present document in the discussion of deficiency number ten. Because the second identified deficiency in Rule 2–4 stems from the incorporation of a deficiency in Section 2–2–605.2, and we found in Section

II.B.1 above that the District's amendments to Rule 2–2 cure this deficiency, we also find that the corresponding deficiency cited in Rule 2–4 pertaining to how the quantity of an emission reduction is calculated has been cured.

To address the third identified deficiency, Section 2–4–302.3 has been removed from Rule 2–4. This revision cures this deficiency by removing the deficient provision.

In addition to the revisions to Rule 2–4 discussed above, the District deleted Section 301.7, which provided an example of a bankable emission reduction. Because this was only an example, this deletion has no effect on the approvability of Rule 2–4.

Our December 4, 2017, conditional approval action (82 FR 57133) was predicated on the state's commitment to submit SIP revisions to cure the three identified deficiencies. Because we are proposing to find that the present submission cures these deficiencies, we also propose to find that the state has fulfilled its commitment. If finalized as proposed, the EPA would fully approve the submitted version of Rule 2–4 into the SIP, curing the previously identified deficiencies, and remove the conditional approval contained in 40 CFR 52.248(c).

3. Requirements of 40 CFR 51.165(a)(13)

For any area designated nonattainment for $PM_{2.5}$, 40 CFR 51.165(a)(13) requires a nonattainment NSR program to require the same control requirements applicable to major stationary sources and major modifications of $PM_{2.5}$ to all $PM_{2.5}$ precursors. A permitting authority may exclude a specific precursor from this requirement if they submit—and the EPA approves—a precursor demonstration that meets the conditions for a nonattainment NSR precursor demonstration as set forth in 40 CFR 51.1006(a)(3). In our August 1, 2016 action we found that Rule 2–2 satisfied the requirements of CAA section 189(e), which are now enacted through 40 CFR 51.165(a)(13), for SO_2, NO_X, and VOC, and we approved a demonstration for ammonia allowing it to be excluded from this requirement.[2] A nonattainment NSR precursor demonstration must ''evaluate the sensitivity of $PM_{2.5}$ levels in the nonattainment area to an increase in emissions of a particular precursor.'' If the changes ''are not significant, based on the facts and circumstances of the area, the state may use that information to identify new major stationary sources and major modifications of [that] precursor that will not be considered to contribute significantly to $PM_{2.5}$ levels that exceed the standard in the nonattainment area.'' As part of the current SIP submittal, the District has provided an analysis in accordance with the requirements of 40 CFR 51.1006(a)(3).[3]

The analysis used the Community Multiscale Air Quality (CMAQ) Model and California Puff Model (CALPUFF) to model the impacts of 7 new greenfield sources emitting 370 tpy of SO_2 along with a 20% increase of current SO_2 emissions from existing sources to determine if such increases would contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area. The District provided reasoned explanations for choosing the number, size and location of the new sources to be modeled. For the CMAQ and CALPUFF modeling, the maximum contribution was just under 0.6 $\mu g/m^3$ and 0.68 $\mu g/m^3$, respectively. Both of these contribution estimates are well under the recommended insignificance threshold of 1.3 $\mu g/m^3$ contained in EPA's draft *$PM_{2.5}$ Precursor Demonstration Guidance*.[4]

Based on the information provided in the District's submitted analysis, EPA is proposing to approve the District's demonstration that SO_2 emissions from new and modified major SO_2 sources will not contribute significantly to 24-hour $PM_{2.5}$ concentrations exceeding the standard in the area. A more detailed summary of the District's demonstration and the EPA's analysis can be found in the docket for this action.

Based on our approval of the District's non-significance demonstration for SO_2, we find it acceptable that Section 2–2–412—Demonstration of NO_X, POC and $PM_{2.5}$ Offset Program Equivalence, does not require an annual demonstration that an equivalent number of SO_2 offsets are required under Rule 2–2, as would otherwise be required under a fully compliant nonattainment NSR program. While Section 2–2–303 requires offsets for SO_2 emissions (as required by state law), the District will not be required to include any offsets provided for SO_2 major sources in the annual equivalency demonstration required by Section 2–2–412—Demonstration of NO_X, POC and $PM_{2.5}$ Offset Program Equivalence.

4. Sections 110(a)(2) and 110(l) of the Act

We are proposing to find that Regulation 2, Rules 1, 2 and 4 satisfy the requirements of sections 110(a)(2) and 110(l) of the CAA. These sections state that each SIP revision submitted by a State shall be adopted by such State after reasonable notice and public hearing. Section 110(l) also states that the Administrator shall not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement.

With respect to the procedural requirements of CAA sections 110(a)(2) and 110(l), based on our review of the public process documentation included in the December 14, 2017 SIP submittal package, we find that BAAQMD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of these rules to the EPA.

With respect to the substantive requirements of section 110(l), we have determined that our approval of the BAAQMD NSR SIP submittal represents a strengthening of BAAQMD's NSR program as compared to the District's current SIP-approved NSR program that was last approved on August 1, 2016, and that the revision would not interfere with any applicable CAA requirement. Therefore we are proposing full approval of the BAAQMD NSR SIP submittal under section 110(l) of the Act.

5. Section 193 of the Act

Section 193 of the Act includes a savings clause which provides, in pertinent part: ''No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.''

We have reviewed the provisions included in BAAQMD's NSR SIP submittal and find that they would ensure equivalent or greater emission reductions compared to the current SIP-approved NSR program. The BACT and offset requirements of the submitted rules, which are the primary control requirements of a NSR program, are equivalent to or more stringent than those contained in the existing SIP-approved NSR rules. Therefore, we can

[2] See 80 FR 52236, 52242–3 (August 28, 2015), 81 FR 50339, 50341.

[3] *Final Report: Demonstration of SO_2 Precursor Contributions to $PM_{2.5}$ in the San Francisco Bay Area,* Bay Area Air Quality Management District, with technical assistance from Ramboll Environ, November 30, 2017.

[4] Draft *$PM_{2.5}$ Precursor Demonstration Guidance,* EPA–454/P–16–001, U.S. EPA OAQPS, November 17, 2016, available at *https://www.epa.gov/pm-pollution/draft-pm25-precursor-demonstration-guidance.*

approve the submitted NSR program under section 193 of the Act.

III. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA is proposing to fully approve the submitted rules because we believe they fulfill all relevant requirements. In support of this proposed action, we have concluded that our approval of the submitted rules would comply with sections 110(a)(2), 110(l) and 193 of the Act because the amended rules would not interfere with any applicable requirement concerning attainment of the NAAQS in the Bay Area, and do not relax control technology and offset requirements. If we finalize this action as proposed, our action would be codified through revisions to 40 CFR 52.220 (Identification of plan—in part), and removal of the conditional approval contained in 40 CFR 52.248(c).

We will accept comments from the public on the proposed approval of Rules 2–1, 2–2, and 2–4 for the next 30 days.

IV. Incorporation by Reference

In this rule the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the BAAQMD rules listed in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available electronically through *www.regulations.gov* and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. 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, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 the 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, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 20, 2018.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2018–04112 Filed 2–28–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2018–0040; FRL–9973–57]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before April 2, 2018.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2018–0040, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION: