reimbursement payment was not treated as compensation and wages paid to Y, under section 274(e)(3)(A) and paragraph (f)(2)(iv)(C)(*1*) of this section Y is not subject to the section 274 deduction limitations. Under paragraph (f)(2)(iv)(C)(*2*) of this section, C, the payor, is subject to the section 274 deduction limitations.

Example 3. (i) The facts are the same as in *Example 1,* except that the written agreement between L and C expressly provides that the limitations of this section will apply to C.

(ii) Under paragraph (f)(2)(iv)(D)(*2*)(*b*) of this section, L and C have established a reimbursement or other expense allowance arrangement for purposes of paragraph (f)(2)(iv)(C) of this section. Because the agreement provides that the 274 deduction limitations apply to C, under section 274(e)(3)(B) and paragraph (f)(2)(iv)(C) of this section, C and not L is subject to the section 274 deduction limitations.

Example 4. (i) The facts are the same as in *Example 1,* except that the agreement between L and C does not provide that C will reimburse L for travel expenses.

(ii) The arrangement between L and C is not a reimbursement or other expense allowance arrangement within the meaning of section 274(e)(3)(B) and paragraph (f)(2)(iv)(D)(*2*) of this section. Therefore, even though L accounts to C for the expenses, L is subject to the section 274 deduction limitations.

(F) *Effective/applicability date.* This paragraph (f)(2)(iv) applies to expenses paid or incurred in taxable years beginning after August 1, 2013.

* * * * *

■ **Par. 3.** Section 1.274–8 is revised to read as follows:

§ 1.274–8 Effective/applicability date.

Except as provided in §§ 1.274–2(a), 1.274–2(e), 1.274–2(f)(2)(iv)(F), and 1.274–5, §§ 1.274–1 through 1.274–7 apply to taxable years ending after December 31, 1962.

Beth Tucker,

Deputy Commissioner for Services and Enforcement.

Approved: June 25, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013–18559 Filed 7–31–13; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0062; FRL–9837–5]

Approval and Promulgation of Implementation Plans, State of California, San Joaquin Valley Unified Air Pollution Control District, New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to correct the May 2004 approval of a version of the New Source Review (NSR) rules for the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan, consistent with the relevant provisions of state law. Specifically, EPA is taking final action to correct the May 2004 approval by limiting the approval, as it relates to agricultural sources, to apply the permitting requirements only to such sources with potential emissions at or above a major source applicability threshold and to such sources with actual emissions at or above 50 percent of a major source applicability threshold and to apply the emission offset requirement only to major agricultural sources and major modifications of such sources.

DATES: This rule is effective on September 3, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2010–0062 for this action. The index to the docket 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.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 972–3534, *yannayon.laura@epa.gov.*

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

Table of Contents

I. Background for Today's Final Action

A. Actions Proposed in January 29, 2010 Proposed Rule

On January 29, 2010 (75 FR 4745), under the Clean Air Act (CAA or ''Act''), we proposed three actions in connection with the permitting rules for the San Joaquin Valley Unified Air Pollution Control District (''District'') portion of the California State Implementation Plan (SIP).[1] Herein, we refer to our January 29, 2010 proposed rule as the ''proposed rule.'' As discussed further below, we have already finalized the second and third actions included in our proposed rule, and are taking action today to finalize the first action.

First, in our proposed rule, we proposed to correct an error in our May 2004 final rule approving Rules 2020 (''Exemptions'') and 2201 (''New and Modified Stationary Source Review Rule''), as amended by the District in December 2002, that establish the requirements and exemptions for review of new or modified stationary sources (''new source review'' or ''NSR''). Herein, we refer to District Rules 2020 and 2201 as the ''District's NSR rules.'' In our proposed rule, we explained how our error arose from the failure, in light of information available at the time, to recognize that the District did not have the authority under state law to implement the District's NSR rules with respect to permitting of minor agricultural sources with actual emissions less than 50% of the applicable ''major source'' thresholds and with respect to the imposition of emissions offset requirements for minor agricultural sources.

In addition to the error correction described above, our January 2010 proposed rule also proposed two other actions: (a) a limited approval and limited disapproval of the District's NSR rules, as further amended in 2007 and

[1] The San Joaquin Valley includes all of San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings and Tulare counties, and the western half of Kern County, in the State of California. The San Joaquin Valley is designated as a nonattainment area for the 1997 and 2008 8-hour ozone national ambient air quality standards (NAAQS) and the 1997 (annual) and 2006 (24-hour) fine particulate matter ($PM_{2.5}$) NAAQS and is designated as attainment or unclassifiable for the other NAAQS. See 40 CFR 81.305. The area is further classified as ''extreme'' for the now-revoked 1-hour ozone NAAQS, and the 1997 and 2008 8-hour ozone NAAQS.

2008 and a full approval of amended District Rule 2530 (''Federally Enforceable Potential to Emit''); and (b) rescission of certain obsolete permitting requirements from the District portion of the California SIP.

On May 11, 2010 (75 FR 26102), we finalized the proposed action on the 2007 and 2008 amendments to the District's NSR rules,[2] District Rule 2530, and the proposed rescission of obsolete permitting requirements, but we deferred final action on the proposed error correction pending receipt from the California Attorney General of an interpretation of the District's legal authority with respect to agricultural sources under state law.

B. Background, Authority, and Rationale for Proposed Error Correction

In our proposed rule, we provided a detailed background discussion regarding the District's NSR rules and related EPA SIP actions. See pages 4746–4747 of our proposed rule. In the following paragraphs, we provide a summary of this information. For more details, please see our proposed rule.

EPA originally approved the District's NSR rules as part of the California SIP in 2001.[3] See 66 FR 37587 (July 19, 2001). EPA's 2001 action was a limited approval and limited disapproval reflecting our conclusion that the rules could not be fully approved as meeting all applicable requirements because, among other reasons, District Rule 2020 exempted all agricultural sources from District permitting requirements. 66 FR at 37590. At that time, District Rule 2020, citing California Health & Safety Code (CH&SC) section 42310(e), included a permitting exclusion for ''any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals,'' except for certain orchard and citrus grove heaters in the southern portion of the District. Our limited disapproval stated that the District could not exempt major stationary sources or major modifications at existing major sources from NSR requirements and be found to meet applicable CAA requirements.[4]

To correct this deficiency, in December 2002, the District amended their NSR rules to eliminate the agricultural permitting exemption in its entirety, and, later that same month, the California Air Resources Board (CARB) submitted the District's amended NSR rules to EPA as a revision to the California SIP. Shortly thereafter, EPA proposed approval of the amended District NSR rules, see 68 FR 7330 (February 13, 2003), even though we recognized that ''California Health & Safety Code 42310(e) continues to preclude the District, as well as all other districts in California, from permitting agricultural sources under either title I or title V of the CAA.'' See 68 FR 7330, at 7335. We did so in light of a proposed ''SIP Call'' that we issued on the same day as we proposed approval of the amended District NSR rules. See 68 FR 7327 (February 13, 2003). The SIP Call was based on our finding that the California SIP was substantially inadequate by failing to provide the necessary assurances under CAA section 110(a)(2)(E) that the State had the legal authority to carry out its NSR permitting obligations under the CAA with respect to major agricultural sources. EPA finalized the SIP Call in mid-2003, and thereby required California to submit the necessary assurances of authority to support an affirmative finding by EPA under CAA section 110(a)(2)(E). 68 FR 37746 (June 25, 2003).

Later in 2003, the California legislature enacted Senate Bill (SB) 700, which the Governor of California signed on September 22, 2003. SB 700 removed the wholesale exemption from permitting for agricultural sources provided under CH&SC section 42310(e) and subjected major agricultural sources to permit requirements. SB 700, however, retained a limited exemption for new source permitting at certain minor agricultural sources, and limited the ability of districts to require minor agricultural sources to obtain offsets.[5] California notified EPA of the legislature's action by letter dated November 3, 2003 and enclosed a copy of SB 700.[6]

On May 17, 2004, EPA took final action approving the District's NSR rules, as amended by the District and submitted by CARB in 2002. See 69 FR 27837 (May 17, 2004). These rules, as approved by EPA, did not on their face exempt any agricultural sources from permitting or limit the applicability of offset requirements. EPA's final approval stated that the District had removed its exemption for agricultural sources and that the state had also ''removed a similar blanket exemption, thereby providing the District with authority to require air permits for agricultural sources, including federally required NSR permits.'' See 69 FR 27837, at 27838. EPA's final approval cited SB 700 in a footnote, but did not note the limited scope of authority for permitting and offset requirements under SB 700, which allowed permitting of only certain minor agricultural sources and continued the exemption for other minor agricultural sources.

In our proposed rule, under CAA section 110(k)(6), we found that (1) our May 2004 final full approval of District's NSR rules was in error in that our approval of the rules should have ensured that the authority in those rules was consistent with the authority granted by SB 700 and that (2) the District did not, as of May 2004, have the authority under SB 700 to require permits for new or modified minor agricultural sources with actual emissions less than 50 percent of the

[2] As discussed in more detail in our proposed rule, the amendments to the NSR rules that were adopted by the District in 2007 and 2008, among other things, aligned the rules explicitly with the limitations on the District's authority under state law to permit minor agricultural sources and to require emissions offsets for such sources. 75 FR 4745, at 4749–4750 (January 29, 2010). Thus, as of the effective date of EPA approval of the 2007- and 2008-amended District NSR rules at 75 FR 26102 (May 11, 2010), the SIP and State law is aligned with respect to permitting of agricultural sources (and imposition of the emissions offset requirement) in San Joaquin Valley. Today's final action thus affects the applicable California plan under 40 CFR part 52, subpart F during the period of time after the effective date of our May 2004 approval of the 2002-amended District NSR rules (i.e., June 16, 2004) and the effective date of our May 2010 approval of the subsequently amended NSR rules (i.e., June 9, 2010). During this period, a number of CAA enforcement actions were brought against San Joaquin Valley agricultural sources for failure to secure permits and/or provide emissions offsets even though such requirements were beyond the authority of the District to impose under State law. For additional background on why EPA is taking today's action, please see our January 29, 2010 proposed rule at 75 FR 4745, at 4748.

[3] Rules 2020 and 2201 were adopted by the District to meet NSR requirements under the Clean Air Act, as amended in 1990, for areas that have not attained the National Ambient Air Quality Standards (NAAQS). District Rules 2020 and 2201 replaced existing NSR rules from the individual county air pollution control districts that were combined into the San Joaquin Valley Unified Air Pollution Control District (''District'') in 1991.

[4] District NSR permitting rules do not adopt the distinction between minor sources and major sources as set forth under the CAA. District Rules 2020 and 2201 generally apply to both federal minor and major stationary sources. Our limited approval and limited disapproval specified that the rule deficiency was exempting major agricultural sources and major modifications. See 65 FR 58252, at 58254 (September 28, 2000).

[5] Specifically, under SB 700, minor agricultural sources with actual emissions below 50 percent of the major source threshold are exempt from permitting unless the District makes certain findings, while sources at or above 50 percent of the major source threshold are subject to permitting unless the District makes certain findings. See CH&SC section 42301.16(b) and (c). In addition, a district may not require an agricultural source to obtain emissions offsets for criteria pollutants for that source if emissions reductions from that source would not meet the criteria for real, permanent, quantifiable, and enforceable emission reductions. See CH&SC section 42301.18(c).

[6] See Letter from Bill Lockyer, Attorney General, California Office of the Attorney General, to Marianne Horinko, Acting Administrator, EPA, dated November 3, 2003.

major source threshold or to require new minor agricultural sources or minor modifications to agricultural sources to obtain emission reduction offsets, notwithstanding the absence of explicit exemptions in the District's NSR rules. Moreover, we noted in our proposed rule that California submitted a copy of SB 700 in November 2003, and thus we had information indicating that the District did not have the authority to implement the NSR rules to the extent that the language of the District's rule appeared to allow (i.e., to require permits and offsets from all new or modified agricultural sources, including those exempt under SB 700) prior to the time we took final action. In our proposed rule, we explained that we should have limited our approval of the District's NSR rules in May 2004 to conform with SB 700, and promulgated language in 40 CFR part 52 codifying that limitation on our approval.

To correct this error, we proposed to limit our approval of the District's NSR rules to exclude applicability to agricultural sources exempt from new source permitting under SB 700 (i.e., minor sources with actual emissions less than 50 percent of the major source threshold). We also proposed to limit our approval to require offsets only for major agricultural sources, because at the time of our 2010 proposed action, we believed that the District had not found emissions reductions from agricultural sources to meet the criteria for real, permanent, quantifiable, and enforceable emissions reductions and thus had not lifted the restriction otherwise provided in SB 700 (and codified in CH&SC section 42301.18(c)) on the imposition of the emissions offset requirement on new minor agricultural sources or minor modifications of agricultural sources.

For more information about our proposed determination of error and our proposed correction, please see pages 4747–4748 of our proposed rule.

C. Letters From the California Attorney General's Office

In response to our proposed rule, several comments were submitted that objected to our proposed error correction action and the interpretation of state law upon which it was based, and raised significant questions as to the extent of District authority with respect to agricultural sources under state law. Specifically, the commenters who objected to our proposed correction cited ''savings'' clauses in state law that they contend ratified the District's NSR rules that contain no permitting or offsets exemptions for agricultural sources notwithstanding other provisions in state law that would otherwise limit District authority over those sources.

To ensure our final action would be informed by the State's interpretation of the relevant provisions of state law, we requested that CARB provide us with a legal interpretation from the California Attorney General of the extent of District authority with respect to agricultural sources under state law.[7] More specifically, we requested that CARB provide us a legal interpretation from the California Attorney General of SB 700 as it applies to the District NSR rules adopted in December 2002 and approved by EPA in May 2004. By letters dated November 14, 2012 and March 18, 2013, the California Attorney General's Office has now provided us the requested interpretation of state law.[8]

II. Public Comments and EPA's Responses

Our proposed rule (75 FR 4745) provided for a 30-day comment period. During that period, we received adverse comments from three groups: (1) Greenberg-Glusker law firm, on behalf of Dairy Cares, a coalition of California's dairy producer and processor associations (referred to herein as ''Dairy Cares''), by letter dated March 1, 2010; (2) Earthjustice, by letter dated March 1, 2010; and (3) the Center on Race, Poverty & the Environment, on behalf of the Association of Irritated Residents and other community and environmental groups (referred to herein as ''AIR''), by letter dated March 1, 2010. AIR joins in the comments from Earthjustice, but also adds comments of its own.

All three comment letters cited above included comments on one or more aspects of our proposed rule (e.g., on our proposed limited approval and limited disapproval of the District's NSR rules, as further amended in 2007 and 2008) in addition to comments on the proposed error correction. With respect to the comments germane to the other aspects of our proposed rule, we provided responses in our final action published on May 11, 2010 (75 FR 26102) and do not reopen those issues through today's final action.[9] Rather, in the following paragraphs, we summarize the significant comments that relate to the proposed error correction that we are taking final action on today, and provide our responses.

Earthjustice Comment #1: EPA has incorrectly interpreted State law in proposing the error correction, and EPA should ask the State to provide the necessary assurances that the District has the authority under State law to permit all sources covered by Rule 2201.

Response to Earthjustice Comment #1: EPA requested that the California Attorney General provide an interpretation of SB 700 as applied to the District's NSR rules, as amended by the District in December 2002, and as noted above, the California Attorney General's Office has responded to EPA's request in the form of two letters, one dated November 14, 2012 and one dated March 18, 2013. EPA has taken the State's interpretation into account in responding to comments on our proposed error correction and in taking today's final action.

Earthjustice Comment #2: The District's authority to permit agricultural sources under the Clean Air Act is not limited to sources above 50 percent of any applicable major source threshold. EPA reads CH&SC section 42301.16(a) as only authorizing permits for major agricultural sources. Nothing in section 42301.16(a) refers to ''major'' sources or limits the CAA provisions referenced to ''major source'' requirements. To the contrary, the language refers to permits required for ''any'' source and instead of referring only to part D of Title I, as EPA suggests, refers to all of Title I beginning with section 101 of the Act. EPA's interpretation cannot be reconciled with the plain language of the CH&SC.

Response to Earthjustice Comment #2: Earthjustice is correct that our proposed error correction is predicated in part on the interpretation that CH&SC section 42301.16(a) refers to ''major sources'' as defined under the CAA, i.e., sources that emit or have the potential to emit at or above the major source threshold, notwithstanding the fact that an explicit reference to ''major sources'' is not found in CH&SC section 42301.16(a). See footnote #7 on page 4747 in the proposed rule.

CH&SC section 42301.16(a) provides: ''In addition to complying with the requirements of this chapter, a permit system established by a district

[7] See letters from Jared Blumenfeld, Regional Administrator, EPA Region IX, to Mary D. Nichols, Chairwoman, California Air Resources Board, dated April 12, 2010 and April 26, 2012.

[8] See letters dated November 14, 2012 and March 18, 2013 from Robert W. Byrne, Senior Assistant Attorney General, to Jared Blumenfeld, Regional Administrator, EPA Region IX.

[9] In its March 1, 2010 comment letter, AIR also provided comments germane to a separate EPA rulemaking also proposed on January 29, 2010 (''Approval and Promulgation of Implementation Plans: State of California; Legal Authority,'' and published at 75 FR 4742. We responded to AIR's comments germane to that separate rulemaking in a final rule published at 75 FR 27938 (May 19, 2010) and do not reopen those issues through today's final action.

pursuant to Section 42300 shall ensure that any agricultural source that is required to obtain a permit pursuant to Title I . . . or Title V . . . of the federal Clean Air Act is required by district regulation to obtain a permit in a manner that is consistent with the federal requirements.'' In proposing the error correction, we interpreted the reference to permits *required* under Title I as meaning permits for major sources covered under parts C or D of Title I, and not minor sources. This is because, under the relevant SIP content provisions under Title I [section 110(a)(2)(C)], while SIPs must provide for the ''regulation of the modification and construction of any stationary source,'' i.e., including minor sources, the only explicit permitting requirement is for a ''permit program as required in part C and D'' of Title I. Thus, under Title I, a permit program is only explicitly required for sources covered under parts C and D, and the sources covered under parts C and D are major sources.

Moreover, a State must identify the types and sizes of minor stationary sources which will be subject to review [see 40 CFR 51.160(e)]. As such, States are authorized to exempt certain minor stationary sources from such review. No such exemptions are allowed for review of new or modified major sources. Thus, permits for ''major sources'' can be considered to be ''required'' in a way that permits for minor sources are not.

In addition, our interpretation of CH&SC section 42301.16(a) is consistent with the fact that the California legislature adopted SB 700 in part in an effort to avoid sanctions that were set in motion by EPA's final determination that the California SIP was ''substantially inadequate'' because State law did not provide the legal authority allowing State and local permitting agencies to meet the permitting obligations under parts C and D of title I with respect to *major* agricultural sources. Lastly, we note that our interpretation of CH&SC section 42301.16(a) is consistent with California's interpretation. See the memorandum from James N. Goldstene, Executive Director, CARB, to Air Pollution Control Officers, dated September 3, 2008; and the letter from Robert W. Byrne, Acting Senior Assistant Attorney General, to Jared Blumenfeld, dated November 14, 2012. For the reasons given above, therefore, we continue to interpret CH&SC section 423016(a) as referring to major sources under Titles I and V of the CAA.

Earthjustice Comment #3: Even if one were to accept EPA's interpretation of CH&SC section 42301.16(a) as being limited to title I part D requirements, permitting of minor agricultural sources in the District would still be authorized because Rule 2201 relies on non-major source permitting to fulfill the requirements of part D. The District has chosen not to impose Part D requirements on major sources and has claimed instead (with EPA's approval) that its permitting of non-major sources can be credited to show that in the aggregate Rule 2201 is ''equivalent'' to the program required under part D for major sources. By relying on credit from its permitting of non-major sources to meet federal NSR requirements, the District has eliminated any lines between what portion of Rule 2201 is meant to comply with major source permit requirements and what part is not derived from or in satisfaction of the part D major source provisions. The same is true for agricultural sources. It is only by permitting both major and minor sources that the District can claim to satisfy part D. Having allowed this demonstration of compliance with major source requirements ''in the aggregate,'' EPA cannot now claim that the permitting of certain non-major source is not authorized under Title I.

Response to Earthjustice Comment #3: Earthjustice is correct that EPA has approved an equivalency tracking system that the District uses to assess overall equivalency of its NSR program with CAA nonattainment NSR (i.e., part D) requirements on an annual basis. 69 FR 27837 (May 17, 2004). The requirements for the tracking system are set forth in District Rule 2201, section 7.0 (''Annual Offset Equivalency Demonstration and Pre-Baseline ERC Cap Tracking System''). The goal of the tracking system is to show that, notwithstanding certain differences between the District and Federal NSR program, the District's NSR rules would require offsets that are, in the aggregate, equivalent to offsets required under the Federal program. 68 FR 7330, at 7332 (February 13, 2003).

To make the equivalency demonstration, the District can use, among other sources of emissions reductions, emission reductions used to meet offset requirements imposed on minor sources. However, the fact that the District can rely, and has relied, on minor source offsets to demonstrate equivalency does not mean that permits for new or modified minor agricultural sources are required under part D of Title I and therefore subject to District permitting authority under CH&SC section 42301.16(a). The District has demonstrated equivalency each year since the tracking system was approved and has never relied on offsets from new minor agricultural sources or minor modifications of agricultural sources to do so. Thus, we disagree with Earthjustice's contention that the District's reliance on minor source (non-agricultural source) offsets to demonstrate equivalency of the District's NSR program with Federal NSR requirements makes all minor source permits, including minor source permits for agricultural sources, required under part D of Title I and thus ''required'' for the purposes of CH&SC section 42301.16(a).

Earthjustice Comment #4: EPA's interpretation of State law regarding District permitting authority over agricultural sources fails to reconcile and give meaning to CH&SC section 39011.5. Under paragraphs (b) and (c) of CH&SC section 39011.5, the authority to permit any agricultural source under the terms of Rule 2201 as it was revised in December 2002 is expressly preserved and made applicable to agricultural sources. There is no dispute that, under the terms of Rule 2201, the District had jurisdiction over the permitting of all agricultural sources on January 1, 2003, and there is no dispute that Rule 2201 was adopted and submitted for EPA approval to satisfy the requirements of the CAA. Nothing in the language of CH&SC section 39011.5(b) and (c) suggests that the permitting authority conferred by these preserved regulations is subject to the limitations in CH&SC section 42301.16(c) [10] or elsewhere. To the contrary, the CH&SC uses broad language making ''any'' existing district regulation applicable to agricultural sources and ensuring that ''nothing'' limits existing district authority. If the District truly lacked authority to regulate sources with actual emission less than 50 percent of a major source threshold, there would be no need for these sections preserving the authority of existing regulations. State law could have been silent and allowed the permitting of these sources only to the extent authorized by SB 700. The only way to reconcile these provisions is to limit the effect of CH&SC section 42301.16(c) to future regulation (i.e., post enactment of SB 700) of these sources.

Response to Earthjustice Comment #4: We disagree with the contention that, under the terms of Rule 2201, the District had jurisdiction over the

[10] As noted in footnote #5 of this document, under CH&SC section 42301.16(b) and (c), minor agricultural sources with emissions below 50 percent of the major source threshold are exempt from permitting unless the District makes certain findings, while sources at or above 50 percent of the major source threshold are subject to permitting unless the District makes certain findings.

permitting of all agricultural sources on January 1, 2003. At that time, State law excluded all agricultural sources from District permitting authority. The absence of an exemption in Rule 2201 as adopted by the District in December 2002 did not imbue the District with authority otherwise denied under State law. In the following paragraphs, we explain how our interpretation of District permitting authority over agricultural sources can be reconciled with CH&SC section 39011.5. We also find further support for our view in the California Attorney General office's interpretation of the relevant sections of SB 700.

CH&SC section 39011.5(a) defines ''agricultural source of pollution'' and ''agricultural source'' for the purposes of Division 26 (''Air Resources'') of the CH&SC. As noted in our proposed rule (75 FR at 4752), California law defines ''agricultural source'' as a source of air pollution or group of sources used in the production of crops or the raising of fowl or animals located on contiguous property under common ownership or control that is a confined animal facility (e.g., barn, corral, coop); is an internal combustion engine used in the production of crops or the raising of fowl or animals (e.g., irrigation pumps, but excluding nonroad vehicles such as tractors); or is a title V source or is a source that is otherwise subject to regulation by a district or the federal Clean Air Act. See CH&SC section 39011.5(a). As such, agricultural sources include both combustion sources (such as, internal combustion engines and boilers) and non-combustion sources [e.g., confined animal facilities and on- and off-field vehicular activity (e.g., tilling and harvesting)]. Among the non-combustion agricultural sources, some by their nature generate fugitive emissions such as tilling, harvesting, and vehicle travel over unpaved farm roads.

CH&SC section 39011.5(b) provides that: ''Any district rule or regulation affecting stationary sources on agricultural operations adopted on or before January 1, 2004, is applicable to an agricultural source.'' In proposing the error correction, we were aware of CH&SC section 39011.5(b) but did not interpret that statutory provision as conferring authority to the District to require permits for all new or modified agricultural sources on January 1, 2004 (i.e., the effective date of SB 700).

Under our interpretation, the savings clause in CH&SC section 39011.5(b) preserves general prohibitory and permitting rules affecting agricultural sources and adopted prior to the effective date of SB 700 (i.e., January 1, 2004) but does not authorize the application of District permitting requirements inconsistent with the limited exemptions set forth in other sections of SB 700 [specifically, CH&SC section 42301.16(c) and 42301.18(c)]. That is, CH&SC section 39011.5(b) simply preserves District rules affecting agricultural sources that were adopted prior to SB 700 and avoids the need to re-adopt such rules after the effective date of SB 700. Under this view, CH&SC section 39011.5(b) preserved the ability of the District to administer its NSR rules and apply them to agricultural sources consistent with SB 700 upon the effective date of SB 700 notwithstanding the fact that the NSR rules were adopted prior to the effective date of SB 700 and thus could not be applied to agricultural sources (because of the preclusion from District permitting for agricultural sources in then-current CH&SC section 42310(e)) at the time the District adopted them.

The California Attorney General's office shares this view:

> ''. . . . Although California before SB 700's enactment exempted agricultural sources from New Source Review permitting requirements, California law did not preclude districts from adopting emissions-reduction rules of general application (independent of the New Source Review process) that would apply to agricultural stationary sources. Some districts had such rules and, following SB 700's enactment, section 39011.5, subdivision (b) preserved them. For example, where air pollution control districts had regulated stationary diesel engines or generators, those regulations were not limited or diminished by SB 700 merely because the regulated equipment happened to be located on or involved in what SB 700 now termed 'agricultural sources.' Therefore, section 39011.5, subdivision (b) has a limited and distinct purpose; it preserves and validates those existing equipment-governing regulations of general application, that, without such a savings clause, might be construed as invalid because the regulated equipment was included as part of SB 700's 'agricultural sources.' Subdivision (b) does not authorize district New Source Review rules that conflict with the sections of SB 700 that address the New Source Review permitting process.'' [11]

Thus, EPA's interpretation of CH&SC section 39011.5(b) is consistent with that expressed by the California Attorney General's office. Moreover, in the excerpt provided above, the California Attorney General's office explains the need for the savings clause.

CH&SC section 39011.5(c) provides in relevant part: ''Nothing in this section limits the authority of a district to regulate a source, including, but not limited to, a stationary source that is an agricultural source, over which it otherwise has jurisdiction pursuant to this division, or pursuant to the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or any rules or regulations adopted pursuant to that act that were in effect on or before January 1, 2003, or . . . .''

Similar to CH&SC section 39011.5(b), EPA did not view CH&SC section 39011.5(c) as validating the application of District permitting requirements to all new or modified agricultural sources inconsistent with the limited exemptions found in other sections of SB 700 [specifically, CH&SC section 42301.16(c) and 42301.18(c)]. Under our view, the phrase ''nothing in this section'' limits the reach of CH&SC section 39011.5(c) to the other provisions in CH&SC section 39011.5, i.e., the definition of ''agricultural source'' in CH&SC section 39011.5(a) and the savings clause in CH&SC section 39011.5(b), discussed above. As such, we view CH&SC section 39011.5(c) as ensuring that the definition of ''agricultural source'' and the savings clause in paragraph (b) does not inadvertently limit the authority of districts to regulate sources, including agricultural sources, over which the districts otherwise have jurisdiction pursuant to rules adopted before January 1, 2003, and does not inform our interpretation of other sections of SB 700, such as CH&SC section 42301.16(c) and 42301.18(c). Thus, CH&SC 39011.5(c) in no way undermines our determination in the proposed rule that the District's authority to permit agricultural sources and to impose emissions offset requirements on such sources was limited under State law notwithstanding the absence of such limiting language in the District's NSR rules as adopted in December 2002 and approved by EPA in May 2004.

The California Attorney General's office agrees that CH&SC section 39011.5(c) does not authorize NSR rules that conflict with other sections of SB 700 that expressly address the NSR permitting process. The California Attorney General's office explains:

> ''Likewise, [CH&SC section 39011.5(c)] does not authorize district New Source Review rules that conflict with SB 700's provisions concerning the New Source Review process. Subdivision (c) provides that nothing in that section limits a district's authority to regulate a source over which it otherwise has jurisdiction under the Clean Air Act or any Clean Air Act rules or regulations that were in effect on or before January 1, 2003. That is, subdivision (c) clarifies that section 39011.5 itself does not

[11] See California Attorney General Office's Letter, November 14, 2013, page 4.

limit a district's existing authority, but subdivision (c) does not concern whether some other provision of SB 700 might limit a district's authority. Therefore, the only effect of subdivision (c) is to assure that section 39011.5, by defining the term 'agricultural source,' did not inadvertently limit the validity or reach of any existing district rules. Subdivision (c) does not grant authority, and does not authorize New Source Review rules that conflict with other sections of SB 700 that expressly address the New Source Review permitting process.'' [12]

Thus, we continue to read the savings clauses of CH&SC section 39011.5(b) and (c) as not validating the application of District permitting requirements to all new or modified agricultural sources inconsistent with the limited exemptions found in other sections of SB 700, and as consistent with our finding in the proposed rule that the absence of the limited exemptions in SB 700 for agricultural sources in the District's NSR rules resulted in a mismatch between the SIP and the District's authority under State law when we approved the District's NSR rules in May 2004.

Earthjustice Comment #5: There is no requirement that the District make specific findings before requiring offsets from agricultural sources. First, EPA's interpretation of CH&SC section 42301.18(c) has no basis in the language of that section. There is nothing in CH&SC section 42301.18(c) that requires some ''finding'' by the District before imposing offsets. Second, EPA's interpretation is inconsistent with CARB's explanation that the issue in CH&SC 42301.18(c) is ''whether the emissions reductions meet the generic criteria that the U.S. EPA and the ARB and air district have, since 1976, required of sources in order for the reductions to 'count' for purposes of attaining ambient standards'' and ''[t]he existence of a District rule allowing such offsets to be generated is not germane. . . .'' [13]

Response to Earthjustice Comment #5: We start with the words of CH&SC section 42301.18(c): ''A district may not require an agricultural source to obtain emissions offsets for criteria pollutants for that source if emissions reductions from that source would not meet the criteria for real, permanent, quantifiable, and enforceable emission reductions.'' Earthjustice is correct that EPA did read CH&SC section 42301.18(c) as exempting new minor agricultural sources or minor modifications of existing agricultural sources from the emissions offset requirement pending a determination on the part of the District. Based on that understanding, EPA proposed to limit the Agency's prior approval in such a way as to give effect to the absence of such a determination during the period in which the relevant version of District's NSR rules were in effect as part of the SIP, i.e., mid-2004 through mid-2010.

In response to this comment, we reviewed again the language of CH&SC section 42301.18(c) and acknowledge that it does not specify any particular process for determining when the criteria, that would authorize imposition by a District of the emission offset requirement for a new or modified minor agricultural source, have been met for the given minor agricultural source. We also reviewed the CARB reference cited above in Earthjustice Comment #5, and agree that it does not support EPA's understanding that a determination by the District is a prerequisite to the District's authority to impose the emissions offset requirement to new or modified minor agricultural sources under CH&SC section 42301.18(c), to the extent that the ''determination'' consists of a regulatory protocol or District rule allowing such offsets to be generated. In the CARB reference cited by Earthjustice, CARB writes:

''With respect to our interpretation of [CH&SC section 42301.18(c)], we believe that section 42301.18(c) does not ask whether or not the District has a regulatory protocol to verify whether ERC's offered by agricultural source are creditable, but rather sets forth the objective, generic criteria that must be satisfied by an agricultural source seeking credits for its emission reductions. If the proffered reductions were real (i.e., surplus to required reductions), quantifiable, and enforceable, then the source would be able to use (or bank) them as credits and the District may, therefore, require the source to provide offsets. The use of the subjective ''would not meet'' is critical in interpreting this provision; it focuses the inquiry on whether the emissions reductions meet the generic criteria that the U.S. EPA and the ARB and air districts have, since 1976, required of sources in order for the reductions to ''count'' for purposes of attaining ambient standards and to qualify for use as offsets. The existence of a District rule allowing offsets to be generated is not germane to determining whether emission reductions from a given agricultural source ''would'' meet the criteria for real, permanent, quantifiable, and enforceable.''

However, whether emissions reductions from a given agricultural source meet the relevant criteria is not self-evident or self-implementing. Some determination is necessary. For instance, the District is the agency responsible for allowing the emissions reductions from a given agricultural source to be banked or used for the purpose of offsetting emissions increases from new or modified stationary sources that are subject to the offset requirement under an approved NSR program. If the District allowed emission reductions to be banked or used for offsetting emission increases, then the District would thereby be determining that the emissions reductions are ''real, permanent, quantifiable, and enforceable'' since those are the basic criteria for judging the creditability of emission reductions for use as NSR offsets. The District's authority to impose the offset requirement on new or modified minor agricultural sources would vest as to those agricultural sources for which it has allowed banking or use of emission reductions for NSR offset purposes. Thus, while no protocol or District rule specifically directed at agricultural sources need be adopted for the offset authority to vest, some determination is necessary. Because no such determination was made during the relevant period between the effective date of EPA's 2004 approval of the previous version of District NSR rules and the effective date of EPA's 2010 approval of District NSR rules that align such rules with SB 700, EPA continues to believe that limiting its approval to exempt new minor agricultural sources and minor modifications to existing agricultural sources from the offset requirement is warranted.

EPA's position is supported by the California Attorney General's Office. In its March 2013 letter, the California Attorney General's Office writes: ''It is our understanding that currently emissions reductions from minor agricultural sources do not meet the criteria for real, permanent, quantifiable and enforceable emission reductions. On these facts, the plain language of [CH&SC section 42301.18(c)] serves to suspend the duty of a minor agricultural source to offset emissions from that source.'' [14] If emission reductions from

[12] See California Attorney General Office's Letter, November 14, 2013, pages 4 and 5.

[13] Earthjustice cites a letter from W. Thomas Jennings, Chief Counsel, CARB, to Brent Newell, Center on Race, Poverty and the Environment, May 30, 2007.

[14] See letter from the California Attorney General's office, dated March 18, 2013. We recognize that the California Attorney General's Office's November 2012 letter states that CH&SC section 42301.18(c) ''does not create an exemption'' but merely ''disqualifies any offsets that do not meet the offset criteria and forbids the district from requiring these deficient offsets.'' We find this statement difficult to reconcile with that Office's March 2013 letter that states that CH&SC section 42301.18(c) serves to ''suspend the duty of a minor agricultural source to offset emissions from that source.'' We believe that ''exemption'' and ''suspend the duty'' are essentially the same, and thus both statements cannot be correct, but we place greater weight on the March 2013 statement

Continued

minor agricultural sources do not meet the criteria in March 2013, then they certainly did not meet the criteria during the relevant period affected by today's error correction action (mid-2004 through mid-2010).

The California Attorney General's Office, in its March 2013 letter, maintains that its reading of CH&SC section 42301.18(c) is consistent with CARB's letter to the California Air Pollution Control Officers, dated September 3, 2008, which was included as an attachment to the California Attorney General office's letter, dated March 18, 2013, and which provides the following guidance with respect to CH&SC section 42301.18(c):

''This limited exemption from the offset requirement means that agricultural sources that are not amenable to District prohibitory rules or control measures that would qualify for SIP credit—or that are unable to generate emission reductions that would qualify as offsets—because they fail to meet one or more of the basic criteria for a creditable rule or for offset credit cannot be required to provide offsets.

We believe this exemption is based upon considerations of equity. If a source cannot get credit for its emission reductions in the SIP or cannot quantify its surplus emission reductions for banking and later use as offsets, it should not be required to provide offsets. This exemption should be narrowly applied, and in any event, cannot be used to exempt major federal sources from offset requirements.'' [15]

During the relevant time period, EPA approved several District rules affecting agricultural sources, and several District air quality plans that reflect emissions reductions from implementation of those rules. For example, EPA approved District Rule 4550 (''Conservation Management Practices'') and its associated List of Conservation Management Practices at 71 FR 7683 (February 14, 2006), District Rule 4570 (''Confined Animal Facilities'') at 75 FR 2079 (January 14, 2010), the 2003 San Joaquin Valley PM_{10} Plan at 69 FR 30006 (May 26, 2004), the 2004 San Joaquin Valley Extreme Ozone Attainment Demonstration Plan at 75 FR 10420 (March 8, 2010), and the 2007 San Joaquin Valley PM_{10} Maintenance Plan and Redesignation Request at 73 FR 66759 (November 12, 2008).

However, the use of the conjunction ''or'' by CARB in its discussion of CH&SC section 42301.18(c), quoted above, means that, under CARB's interpretation, even if SIP credit were approved for prohibitory rules or control measures, new or modified minor agricultural sources could not be required to provide emissions offsets if they are unable to generate emission reductions that would qualify as offsets. Thus, we find that CARB's interpretation of CH&SC section 42301.18(c) supports EPA's limitation on its May 2004 approval to exempt new minor agricultural sources and minor modifications of existing agricultural sources from the emissions offset requirement because, under that provision of State law, the District did not have the authority to require such sources to provide emissions offsets because such sources were unable to generate emissions reductions that qualify as offsets during the relevant time period.

Earthjustice Comment #6: EPA's use of section 110(k)(6) to correct this error is unlawful. EPA cannot use section 110(k)(6) to achieve a result that EPA could not have achieved if it had acted ''correctly'' at the outset. EPA can point to no authority that allows EPA to adopt such a limitation when acting on this or any other SIP approval. To the contrary, such attempts to rewrite the rule submitted to EPA for approval violate well-established prohibitions against piecemeal approval of rule submittals. See *Bethlehem Steel Corp.* v. *Gorsuch,* 742 F.2d 1028 (7th Cir. 1984).

Section 110(k)(6) does not allow EPA to revise the rule itself, only the action used to approve the rule. The ''actions'' on a SIP submittal are outlined in section 110(k)(3) and include full and partial approval or disapproval. First, there should be little question that EPA could not have partially approved the District's NSR rules as submitted in 2002. The other option theoretically available to EPA at the time of the 2004 action was the ''limited approval/limited disapproval,'' but EPA guidance cautions against use of that option to approve any rule that is unenforceable for all situations.[16] None of the options available to EPA when acting on a SIP submittal allow EPA to do what it is proposing to do here. EPA cannot ''limit'' the approval by rewriting the applicability of the rule as submitted. Section 110(k)(6) does not create new options for EPA to act on SIP submittals and cannot be used to circumvent the limitations on EPA actions provided by the plain language of section 110(k)(3).

Response to Earthjustice Comment #6: First of all, we agree that we cannot use section 110(k)(6) to revise the District's NSR rules that we previously approved, but we are not doing so in this action. Our action to limit our approval would in no way change the language of the District NSR rules that we approved in May 2004. Instead, it would revise the scope of our approval in such a way as to align our approval with the limits of District permitting authority under State law at the time we initially approved the rules and thus does not conflict with the decision in *Bethlehem Steel.*

In doing so, our action amounts to a revision to the approved California SIP that was applicable between June 2004 and June 2010.[17] EPA is not changing the District rule component of the SIP. We believe that our action finalized today is the appropriate revision to make to the California SIP under CAA section 110(k)(6) to address the error that we made in our May 2004 final action.

Second, we agree that there are significant obstacles to correcting our May 2004 action on the District's NSR rules by revising the action from a full approval to a ''partial approval/partial disapproval'' or ''limited approval/limited disapproval.'' For instance, a ''partial approval/partial disapproval'' action is problematic in this instance because, as a general matter, NSR rules are not separable. Correcting our action from a full approval action to a ''limited approval/limited disapproval'' action is problematic in that it would incorporate the entire rule into the California SIP, and thus would not remedy the problem of the mismatch between the District

because it was prepared specifically to respond to the relevant issue addressed herein, i.e., the application of CH&SC section 42301.18(c) to minor agricultural sources.

[15] See letter from James N. Goldstene, Executive Officer, CARB, to ''Air Pollution Control Officers,'' September 3, 2008, page 4. CARB draws a distinction between SIP credit and NSR offset credit, a distinction that we also draw. Some prohibitory rules or control measures are credited in the SIP, particularly those related to mobile sources and non-traditional stationary sources, that do not necessarily qualify for NSR offset credit. For example, a programmatic level of documentation may be acceptable to support quantification of emissions reductions from mobile sources and non-traditional stationary sources for general SIP attainment demonstration purposes, but that same documentation may be insufficient to validate ERCs for owners or operators of individual mobile sources or individual non-traditional stationary sources for NSR offset purposes.

[16] Earthjustice cites EPA guidance memorandum titled ''Processing of State Implementation Plan (SIP) Submittals,'' dated July 9, 1992, from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards.

[17] As discussed in more detail in our proposed rule, the District amended the NSR rules in 2007 and 2008 to, among other things, align the rules explicitly with the District's authority to permit minor agricultural sources and to require emissions offsets for such sources. 75 FR 4745, at 4749–4750 (January 29, 2010). EPA approved the amended NSR rules in May 2010, effective June 10, 2010. 75 FR 26102 (May 11, 2010). Thus, our action today need only correct the mismatch between the District NSR rules and the District's authority with respect to minor agricultural sources under SB 700 from the effective date of our May 2004 approval of the 2002-amended District NSR rules (i.e., June 16, 2004) through June 9, 2010.

NSR rules in the SIP and the District's authority with respect to agricultural sources under SB 700.

We disagree, however, that we could not have limited our approval in May 2004 under section 110(k)(3) in the same manner as we are doing today, but in any event, for today's action, we are relying on section 110(k)(6), not on section 110(k)(3). We believe that the action we proposed to limit our previous approval and that we are finalizing today is authorized under the broad discretionary language of CAA section 110(k)(6):

> ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), . . . was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.''

The key provisions are that the Administrator has the authority to ''determine[ ]'' when a SIP approval was in ''error,'' and when he does so, he may then revise the SIP approval ''as appropriate,'' in the same manner as the approval, and without requiring any further submission from the state.

With this action, EPA is determining that its action approving the District's NSR rules in May 2004 was ''in error'' due to the mismatch between the facial applicability in the NSR rules of the permitting and emission offset requirements to minor agricultural sources and the limits on District authority under State law applicable at the time of our SIP approval. Given the mismatch between the exclusions and exemptions apparent from the words of the District NSR rules and the limits under State law, EPA was in error in fully approving the NSR rules because the SIP and SIP revisions must be supported by necessary assurances by the State that, in this context, the District will have adequate authority under State law to carry out such SIP or SIP revisions and the State of California could not have provided such necessary assurances in May 2004 with respect to minor agricultural sources because of the limits on District authority at the time manifest in SB 700. See CAA section 110(a)(2)(E) and our January 29, 2010 proposed rule at pages 4747–4748.

EPA is further determining that the appropriate action EPA can take—in light of the broad discretion conferred by the phrase, ''revise such action *as appropriate,''*—is to limit our previous approval of the District's NSR rules, as it relates to agricultural sources, (1) to the extent that the permit requirements apply to agricultural sources with potential emissions at or above a major source applicability threshold and to agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold; and (2) to the extent that the offset requirements apply to major agricultural sources and major modifications of such sources. We have also conducted this limiting of our prior approval through notice-and-comment rulemaking, which is the same manner as EPA conducted the prior approval.

In limiting our previous approval in this manner, we are taking an approach analogous to the one EPA took with respect to the Agency's previous SIP approvals of certain State programs for the Prevention of Significant Determination (PSD) to the extent those programs applied PSD to greenhouse gas (GHG) emitting sources below the thresholds in the final ''Tailoring Rule'' published at 75 FR 31514 on June 3, 2010. See our final rule, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans,'' referred to as the PSD SIP ''Narrowing Rule,'' at 75 FR 82536 (December 30, 2010). In the case of the previous approvals of State PSD programs, EPA determined that its action approving the PSD SIP provisions was ''in error'' due to the mismatch between the PSD applicability provisions and the state's ''necessary assurances'' under CAA section 110(a)(2)(E) of adequate resources and further determined that the ''appropriate action'' to correct the error was to narrow its approval of the PSD programs to the extent they applied PSD to GHG-emitting sources below the Tailoring Rule threshold.

Here, in this action, EPA is determining that its action approving the District's NSR rules was ''in error'' due to the mismatch between the applicability provisions of the District NSR rules and the state's ''necessary assurance'' under CAA section 110(a)(2)(E) of adequate legal authority and is further determining that the ''appropriate action'' to correct the error is to limit its previous approval of the District's NSR rules in May 2004 to align the permitting applicability and offset requirement in the approved SIP to the authority granted the District under State law. EPA's PSD SIP ''Narrowing Rule'' contains a detailed discussion (see pages 82543–82545) justifying the reliance on CAA section 110(k)(6) to narrow previous SIP approvals and we incorporate that discussion herein.

Lastly, Earthjustice would agree that EPA could have disapproved the District's NSR rules as submitted in December 2002, and thus would agree that we could now, under section 110(k)(6), change our former ''approval'' to ''disapproval,'' but such an action would have the deleterious effect of removing the December 2002 version of the NSR rules from the SIP entirely notwithstanding the significant strengthening they represented relative to the then-existing SIP District NSR rules approved in 2001 (66 FR 37587, July 19, 2001) that included a blanket exemption for agricultural sources. Our action to limit our approval is narrowly tailored to retain the strengthening aspects of the December 2002 version of the NSR rules while still addressing the mismatch between the language of the NSR rules and the District's authority under State law. Our purpose in doing so is to align the SIP approved by EPA in May 2004 with the intent of both EPA and the State of California to address the deficiencies in the District's NSR rules, including the previous blanket exemption for agricultural sources as it applied to *major* agricultural sources. The mismatch created in the applicable California SIP between the NSR rules and the authority vested in the District under State law with respect to minor agricultural sources was inadvertent, and section 110(k)(6) provides EPA with the broad discretionary authority to take action to fix the problem caused by the Agency's previous erroneous SIP action.

CRP&E Comment #1: The proposed rule conflicts with *Safe Air for Everyone* v. *EPA,* 488 F.3d 1088 (9th Cir. 2007) (''Safe Air''). The SIP means exactly that which the December 2002 version of District's NSR rules say it means, and EPA made no statement of administrative intent that would contradict that plain meaning. As such, the purported exemption in SB 700 cannot, as a matter of law, be part of the EPA-approved SIP.

Response to CRP&E Comment #1: We agree that we cannot simply interpret the California SIP to include statutory limitations not manifest in the SIP itself nor manifest in EPA's expressed intent or understanding at the time we conducted rulemaking to approve the December 2002 version of the District's NSR rules. However, agreement on this point simply highlights the need for EPA to take the action it is finalizing today. We have conducted this error correction action through a notice-and-comment rulemaking and have made our administrative intent manifest through that process. Also, we want to make clear that we are not changing the language of the District's NSR rules that

we approved in May 2004. Instead, our action will revise the scope of our approval in such a way as to align our approval with the limits of District permitting authority under State law at the time we approved the rules. In doing so, our action amounts to a revision to the California SIP applicable between June 2004 and June 2010. EPA is not changing the District rule component of the SIP. We believe that our action finalized today is the appropriate revision to make to the California SIP under CAA section 110(k)(6) to address the error that we made in our May 2004 final action.

CRP&E Comment #2: EPA lacks the power to amend the SIP to conform to EPA's interpretation of the District's state law permitting authority. Nothing in the CAA authorizes EPA to substantively amend a SIP or SIP revision, so EPA cannot accomplish that through a ''correction'' under section 110(k)(6).

Response to CRP&E Comment #2: Please see EPA's Response to Earthjustice Comment #6.

CRP&E Comment #3: Even if EPA could make an end-around *Safe Air* and could amend the SIP, SB 700 itself gives the District the authority to implement and enforce the December 2002 version of the District's NSR rules. EPA rationalizes its correction on the ground that the District lacked statutory authority to implement and enforce the December 2002 version of the District's NSR rules. EPA, however, fails to recognize the authority given to the District by CH&SC sections 39011.5(b) and (c).

Response to CRP&E Comment #3: Please see EPA's Response to Earthjustice Comment #4.

Dairy Cares Comment #1: Dairy Cares agrees that EPA erred in failing to expressly acknowledge the limitations imposed on the District's authority pursuant to SB 700, because the SB 700 exemptions plainly limited the District's permitting authority over agricultural sources and agrees that EPA's SIP correction is appropriate under section 110(k)(6) of the CAA. Dairy Cares, however, believes that because EPA's 2004 SIP action implicitly and necessarily included all of the expansion and limitation of District authority contained in SB 700, including the exemptions, the SIP, as it currently exists, should be read to include the exemptions.

Response to Dairy Cares Comment #1: EPA notes that the argument that limitations on authority under State law implicitly and necessarily determine the applicability of rules and regulations approved by EPA as part of a SIP, even if those statutory limitations are not also approved as part of the SIP, is not supported by case law. In *Safe Air for Everyone* v. *EPA* (488 F.3d 1088 (9th Cir. 2007), the Ninth Circuit held that ''SIPs are interpreted based on their plain meaning when such a meaning is apparent, not absurd, and not contradicted by the manifest intent of EPA, as expressed in the promulgating documents available to the public.'' *Id.* at 1100. In this instance, the absence of limited exemptions for minor agricultural sources with respect to permitting and offsets in the version of the District's NSR rules approved in 2004 is plain, not absurd, nor contradicted by EPA in taking the action in 2004 to approve the rules. Moreover, SB 700 itself is not approved into the California SIP. Thus, we continue to believe that is appropriate to correct our previous approval of the District's NSR rules to reconcile that approval with the limitations on District authority that were established by the California legislature in SB 700.

III. Final Action

After due consideration of the comments submitted on our proposed action, and in light of California's interpretation of SB 700 as it applies to the District's NSR rules, we are taking final action under CAA section 110(k)(6) to correct our erroneous approval in May 2004 of San Joaquin Valley District NSR rules, Rule 2020 (''Exemptions'') and Rule 2210 (''New and Modified Stationary Source Review Rule''), as amended by the District in December 2002. In doing so, we are determining that such previous approval was in error for the purposes of CAA section 110(k)(6) because we failed to recognize that the State could not provide the necessary assurances under CAA section 110(a)(2)(E) that the District had the authority to implement its amended NSR rules as those rules applied to agricultural sources given that the District's NSR rules, as adopted in 2002, did not reflect the qualified permitting and emissions offset exemptions provided in SB 700 with respect to minor agricultural sources.

To correct this error, we are revising our previous action by limiting our previous approval, as it relates to agricultural sources, to the extent that the permit requirements apply (1) to agricultural sources with potential emissions at or above a major source applicability threshold and (2) to agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold. We are also limiting our previous approval, as it relates to agricultural sources, to the extent that the emission offset requirements apply to major agricultural sources and major modifications of such sources.

To codify the new limitation on our previous approval, we are adding a new section to 40 CFR part 52 (''Approval and promulgation of implementation plans''), subpart F (''California''). The new section is 40 CFR 52.245 (''New Source Review Rules'').

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because error correction actions under section 110(k)(6) of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this error correction action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed

into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the error correction action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action aligns requirements under Federal law with those under state and local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, *Federalism,* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely corrects an error in a previous EPA rulemaking, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it corrects a previous EPA approval of a State rule implementing a Federal standard.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

K. Petitions for Review of This Action

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, 2013. 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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 12, 2013.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 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 52.245 is added to read as follows:

§52.245 New Source Review rules.

(a) Approval of the New Source Review rules for the San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201 as approved on May 17, 2004 in § 52.220(c)(311)(i)(B)(*1*), and in effect for Federal purposes from June 16, 2004 through June 10, 2010, is limited, as it relates to agricultural sources, to the extent that the permit requirements apply:

(1) To agricultural sources with potential emissions at or above a major source applicability threshold; and

(2) To agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold.

(b) Approval of the New Source Review rules for the San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201 as approved on May 17, 2004 in § 52.220(c)(311)(i)(B)(*1*), and in effect for Federal purposes from June 16, 2004 through June 10, 2010, is limited, as it relates to agricultural sources, to the extent that the emission offset requirements apply to major agricultural sources and major modifications of such sources.

[FR Doc. 2013–18413 Filed 7–31–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0884, FRL–9841–1]

Approval and Promulgation of Implementation Plans; Oregon: Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter and 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving the State Implementation Plan (SIP) submittals from the State of Oregon to demonstrate that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for fine particulate matter ($PM_{2.5}$) on July 18, 1997, and October 17, 2006, and for ozone on March 12, 2008. The EPA is finding that the Federally-approved provisions currently in the Oregon SIP meet the CAA infrastructure requirements for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and the 2008 ozone NAAQS. The EPA is also finding that the Federally-approved provisions currently in the Oregon SIP meet the interstate transport requirements of the CAA related to prevention of significant deterioration for the 2008 ozone NAAQS, and related to visibility for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS. This action does not approve any additional provisions into the Oregon SIP but is a finding that the current provisions of the Oregon SIP are adequate to satisfy the above-mentioned infrastructure elements required by the CAA.

DATES: This action is effective on September 3, 2013.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2011–0884. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357, *hall.kristin@epa.gov*, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, it is intended to refer to the EPA. Information is organized as follows:

Table of Contents

I. Background

On March 21, 2013, the EPA proposed to approve the September 25, 2008, December 23, 2010, August 17, 2011, and December 19, 2011 SIP submittals from the State of Oregon to demonstrate that the SIP meets the requirements of CAA sections 110(a)(1) and (2) for the NAAQS promulgated for fine particulate matter ($PM_{2.5}$) on July 18, 1997, and October 17, 2006, and for ozone on March 12, 2008 (78 FR 17304). In our March 21, 2013, notice of proposed rulemaking (NPR), we proposed to approve the SIP submittals and to find that the Federally-approved provisions currently in the Oregon SIP meet the following CAA section 110(a)(2) infrastructure elements for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We also proposed to find that the Federally-approved provisions currently in the Oregon SIP meet the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to prevention of significant deterioration for the 2008 ozone NAAQS, and CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS. An explanation of the CAA requirements and implementing regulations that are met by these SIP submittals, a detailed explanation of the submittals, and the EPA's reasons for approving the submittals and making the above-described findings were provided in the NPR, and will not be restated here. The public comment period for this proposed rule ended on April 22, 2013. The EPA received one comment on the NPR.