environmental impact statement is not required. The final EA and Finding of No Significant Impact may be reviewed at the Los Angeles District Office. Please contact Peggy Bartels at the phone number specified above for further information.

d. *Unfunded Mandates Reform Act.* This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found, under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Transportation, Waterways.

■ For the reasons stated in the preamble, the Corps is amending 33 CFR part 334 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Add § 334.866 to read as follows:

§ 334.866 Pacific Ocean at Naval Base Coronado, in the City of Coronado, San Diego County, California; Naval Danger Zone.

(a) *The area.* A fan-shaped area extending westerly into the waters of the Pacific Ocean from a point on the beach of Naval Base Coronado, Coronado, California beginning at latitude 32°41′13″ N, longitude 117°12′45″ W; thence easterly, along the mean high water mark, to latitude 32°41′14″ N, longitude 117°12′32″ W; thence southerly to latitude 32°40′31″ N, longitude 117°12′12″ W; thence westerly to latitude 32°40′25″ N, longitude 117°12′43″ W; thence northerly, landward, to the point of origin.

(b) *The regulations.* (1) Range live firing on the Naval Base Coronado, Coronado, California small arms range may occur at any time. Information on live firing schedules and coordination for community concerns can be obtained by calling the Naval Base Coronado Small Arms Range Safety Officer at 619–545–8413 during normal working hours. Assistance is also available via the Naval Base Coronado Hotline at 619–545–7190 or the Naval Base Coronado operator at 619–545–1011. If the phone numbers are changed, they will be updated on the Naval Base Coronado Web site *http://www.cnic.navy.mil/Coronado.*

(2) The danger zone will be open to fishing and general navigation when no weapons firing is scheduled, which will be indicated by the absence of any warning flags or flashing lights on land in the locations specified in paragraphs (b)(3) and (b)(4) of this section.

(3) When live firing is about to be undertaken or is in progress during daylight hours, three (3) large red warning flags will be displayed at the top of the flag poles on the southern berm of the small arms range, so as to be clearly visible from all points of entry into the danger zone. The west flag pole is located on the southern berm at latitude 32°41′21.5″ N, longitude 117°12′42.8″ W, the middle flag pole is located at latitude 32°41′21.7″ N, longitude 117°12′40.9″ W, and the east flag pole is located at latitude 32°41′22.4″ N, longitude 117°12′38.7″ W.

(4) When live firing is about to be undertaken or is in progress during periods of darkness, three (3) red flashing warning lights will be displayed at the top of the flag poles on the southern berm of the small arms range at the locations described in paragraph (b)(3) of this section, so as to be clearly visible from all points of entry into the danger zone.

(5) The danger zone is not considered safe for vessels or individuals when live firing is in progress. When live firing is about to begin or is scheduled as indicated by the warning flags or flashing warning lights described in paragraphs (b)(3) and (b)(4) of this section, all vessels will be required to expeditiously vacate the danger zone.

(6) Anchoring by any vessel within the danger zone is prohibited.

(7) Prior to conducting live firing, Navy personnel will visually scan the danger zone to ensure that no vessels or individuals are located within it. Any vessels or individuals in the danger zone will be notified by the Navy Range Safety Officer using a marine VHF–FM marine radio and by other means as necessary, to exit the danger zone and remain outside the area until conclusion of live firing. As new technology becomes available, the VHF–FM marine radio communications system may be updated.

(8) Safety observers will be posted in accordance with range standard operating procedures at all times when the warning flags or flashing lights described in paragraphs (b)(3) and (b)(4) of this section are displayed. Operation of the small arms range will only occur when visibility is sufficient to maintain visual surveillance of the danger zone and vicinity. In the event of limited visibility due to rain, fog or other conditions, live firing will be postponed until the danger zone can be confirmed clear of all vessels and individuals.

(9) Naval Base Coronado will maintain a schedule of live firing at the small arms range on its Web site, *http://www.cnic.navy.mil/Coronado,* which will be accessible to the public, mariners, and recreationists. The Navy will maintain the Web site on a year round basis and update information as needed for public safety.

(c) *Enforcement.* The regulation in this section will be enforced by the Commanding Officer, Naval Base Coronado, and such agencies and persons as he/she may designate.

Dated: April 30, 2010.

Approved:

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. 2010–11125 Filed 5–10–10; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0062; FRL–9141–3]

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 on revisions to the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan. Specifically, EPA is taking final action on three amended District rules, one of which was submitted on March 7, 2008 and the other two of which were submitted on March 17, 2009. Two of the submitted rules reflect revisions to approved District rules that provide for review of new and modified stationary sources ("new source review" or NSR) within the District, and the third reflects revisions to an approved District rule that provides a mechanism by which existing stationary sources may voluntarily limit their operations to avoid the requirement to secure a Federally-mandated operating permit. The NSR rule revisions relate to exemptions from permitting and offsets requirements for certain agricultural

operations, to the establishment of NSR applicability and offset thresholds consistent with a classification of "extreme" nonattainment for the ozone standard, and to the implementation of EPA's NSR Reform Rules. With respect to the revised District NSR rules, EPA is finalizing a limited approval and limited disapproval because, although the changes would strengthen the SIP, there are deficiencies in enforceability that prevent full approval. With respect to the rule pertaining to operating permit requirements, EPA is finalizing a full approval. EPA is also taking final action to remove certain obsolete conditions placed on previous approvals of various California nonattainment plans. Lastly, EPA is deferring further action on the Agency's proposal to correct the May 2004 approval of the previous version of the District's NSR rules pending receipt from California of an interpretation of the District's legal authority with respect to agricultural sources under state law.

The limited approval and limited disapproval action triggers a sanctions clock, and EPA's obligation to promulgate a Federal implementation plan, because the revisions to the District rules that are the subject of this action are required under anti-backsliding principles established for the transition from the 1-hour to the 8-hour ozone standard.

DATES: *Effective Date:* This rule is effective on June 10, 2010.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2010–0062 for this action. The index to the docket is available electronically at *http://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.

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I. Proposed Action

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]

A. Correction of EPA's May 2004 Final Approval

First, we proposed to correct an error in our May 2004 final rule approving the District's Rules 2020 and 2201 that establish the requirements and exemptions for review of new or modified stationary sources ("new source review" or "NSR"). In our proposed rule, we explained how our error arose from the failure, based on information available at the time, to recognize that the District did not have the authority under State law to implement Rules 2020 and 2201 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 response to our proposed rule, several comments were submitted that object to our proposed correction action and the interpretation of State law upon which it is based, and raise significant questions as to the true extent of District authority with respect to agricultural sources under State law. Specifically, the commenters who object to our proposed correction cite "savings" clauses in State law that they contend ratify District NSR rules that contain no permitting or offsets exemptions for agricultural sources notwithstanding other provisions in State law that would otherwise limit such District authority over those sources. To ensure our action is based on a correct interpretation of State law, we have decided to request the State of California to provide us with a legal interpretation of the extent of District authority with respect to agricultural sources under State law and to defer further rulemaking on the correction proposal until we have the opportunity to consider the StateY's response to our request.

B. Proposed Action on Amended District Rules

In this section, we summarize the information we provided in the proposed rule concerning the submitted rules subject to this final action, the changes in the rules relative to the corresponding rules in the existing SIP, and our evaluation of the amended rules relative to the applicable CAA and EPA requirements. We provide only a summary of this information herein. For a more detailed discussion of these issues, please see our January 29, 2010 proposed rule.

Table 1 lists the rules on which we proposed action in our January 29, 2010 proposed rule with the dates that they were revised by the District and submitted to EPA by the California Air Resources Board (CARB). Today, we are taking final action on the three listed rules.

[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 8-hour ozone national ambient air quality standard (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 81.303. The area is further classified as "serious" for the 8-hour ozone NAAQS, but the State of California has submitted a request to reclassify the area to "extreme." *See* 74 FR 43654 (August 27, 2009) for EPA's proposed approval of the State's reclassification request. The San Joaquin Valley was further classified as an "extreme" area for the now-revoked 1-hour ozone NAAQS when EPA designated the area with respect to the 8-hour ozone NAAQS.

TABLE 1—SUBMITTED RULES FOR WHICH WE ARE TAKING FINAL ACTION IN TODAY'S ACTION

Local agency	Rule #	Rule title	Amended	Submitted
SJVUAPCD	2020	Exemptions	12/20/07	03/07/08
SJVUAPCD	2201	New and Modified Stationary Source Review Rule	12/18/08	03/17/09
SJVUAPCD	2530	Federally Enforceable Potential to Emit	12/18/08	03/17/09

With respect to District Rule 2020 ("Exemptions"), the rule's purpose is to specify emission units that are not required to obtain an Authority to Construct or Permit to Operate and to specify the recordkeeping requirements to verify such exemptions. Generally, the changes that we are taking action on today relative to the existing SIP version would revise and clarify certain exemptions and exempt certain agricultural sources from permitting requirements.

Among the changes in amended District Rule 2020 relative to the version previously approved into the SIP are changes that will do the following:

- Revise the existing exemption for steam generators, steam superheaters, water boilers, water heaters, steam cleaners, and closed indirect heat transfer systems that have a maximum input heat rating of five million Btu per hour or less and that are fired exclusively on natural gas or liquefied petroleum gas (LPG) (*see* paragraph 6.1.1 of the submitted rule);[2]
- Clarify and tighten the existing exemption for certain types of transfer equipment, such as loading and unloading racks, and equipment used exclusively for the transfer of refined lubricating oil (*see* paragraph 6.7 of the submitted rule); and
- Exempt agricultural sources to the extent such sources are exempt pursuant to California Health & Safety Code (CH&SC) section 42301.16 (*see* paragraph 6.20 of the submitted rule). CH&SC section 42301.16 essentially exempts agricultural sources with actual emissions less than 50 percent of a major source applicability threshold from permitting unless the District makes certain findings.

With respect to District Rule 2201 ("New and Modified Stationary Source Review Rule"), the rule's purpose is to provide for the review of new and modified stationary sources of air pollution and to provide mechanisms including emission trade-offs by which Authorities to Construct such sources may be granted, without interfering with the attainment or maintenance of ambient air quality standards. District Rule 2201 is also intended to provide for no net increase in emissions above specified thresholds from new and modified stationary sources of all nonattainment pollutants and their precursors.

Generally, amended District Rule 2201 incorporates three major changes relative to the version of Rule 2201 that is approved into the SIP. First, amended District Rule 2201 would replace the term, "Major Modification," with two terms, "Federal major modification" and "SB 288 major modification." (*See* paragraphs 3.17 and 3.34 of the amended rule.) The former term incorporates EPA's NSR reform principles, and the latter term retains the pre-NSR reform approach to determining whether a modification is a major modification.[3] Second, amended District Rule 2201 would incorporate the lower "major source" and "Federal major modification" emissions thresholds, and higher offset ratios, for the ozone precursors, VOC and NO_X, consistent with an "extreme" ozone classification. (*See* paragraphs 3.17, 3.23, and 3.34 of the amended rule.) Lastly, changes to District Rule 2201 would exempt new or modified agricultural sources from offset requirements to the extent provided by CH&SC section 42301.18(c), which exempts agricultural sources from the offsets requirement if emissions reductions from such sources would not meet the criteria for real, permanent, quantifiable, and enforceable emissions reductions, unless the offsets are required by Federal CAA requirements. (*See* paragraph 4.6.9 of the amended rule.)

Unlike District Rules 2020 and 2201, District Rule 2530 ("Federally Enforceable Potential to Emit") is not an NSR rule, but is a rule that relies on thresholds based on certain percentages of the major source thresholds established for NSR purposes as a basis to exempt sources from the requirements of Rule 2520 ("Federally Mandated Operating Permits"). Relative to the corresponding rule in the existing SIP, the amended rule would lower the thresholds below which sources of VOC or NO_X are exempt from the requirements of Rule 2520 (*see* paragraph 6.1 of the amended rule), would lower the thresholds below which sources are exempt from certain recordkeeping and reporting requirements under Rule 2530 (*see* paragraph 5.4.1.2 of the amended rule); and would lower certain alternative operational limits (*see, e.g.,* paragraph 6.2.4 of the amended rule).

In evaluating the amendments to the three District Rules, we found that significant changes fall into four broad categories: Changes affecting minor source NSR permitting requirements; changes relating to the area's extreme classification for the 1-hour ozone standard; changes relating to NSR Reform; and changes affecting the mechanism used by sources to avoid title V requirements, and we evaluated these changes for compliance with the requirements under CAA section 110(a), section 110(l), and section 182(e) and (f). In addition, we reviewed the amended rules for compliance with EPA's regulations for NSR, including 40 CFR 51.160 through 40 CFR 51.165. In so doing, we took into account the pollutant-specific designations for the San Joaquin Valley, summarized in table 2.[4]

[2] The existing exemption is limited to the types of equipment described above but also establishes the following specifications for both natural gas and LPG combusted by the equipment: "provided the fuel contains no more than five percent by weight hydrocarbons * * * and no more than 0.75 grains of total sulfur per 100 standard cubic feet of gas * * *." The revised exemption establishes separate specifications for natural gas and for LPG. The hydrocarbon content limit remains five percent for natural gas but drops to two percent for LPG. The sulfur content limit increases from 0.75 grains, to 1.0 grain for natural gas, and to 15 grains (per 100 standard cubic feet of gas). The revised exemption requires use of the latest versions of the relevant ASTM test methods.

[3] Using these two definitions, the District performs two separate "major modification" determinations. Where the modification of an existing source falls within the definition of "SB 288 Major Modification," the modification will be required at a minimum to meet the NSR SIP requirements that had applied prior to adoption by the District of the 2002 NSR Reforms into Rule 2201. Where the modification also falls within the definition of "Federal Major Modification," the modification will have to meet additional NSR Requirements consistent with 2002 NSR Reform.

[4] We also identified and evaluated a number of other, less substantive changes, and found all of them to be either neutral or strengthening relative to the existing SIP and consistent with all applicable requirements. *See* section IV.B.5 of the January 29, 2010 proposed rule.

TABLE 2—SAN JOAQUIN VALLEY AREA DESIGNATIONS

Pollutant	Designation	Classification
(Revoked) Ozone—1-hour standard	Nonattainment	Extreme (at the time of designation for the 1997 8-hour ozone standard).
Ozone—1997 8-hour standard	Nonattainment	Serious.[a]
Respirable Particulate Matter (PM_{10})	Attainment	Not Applicable.
Fine Particulate Matter ($PM_{2.5}$)	Nonattainment	Not Applicable.
Carbon Monoxide	Attainment (4 urban areas); Unclassifiable/Attainment (rest of valley).	Not Applicable.
Nitrogen Dioxide	Unclassifiable/Attainment	Not Applicable.
Sulfur Dioxide	Unclassifiable/Attainment	Not Applicable.

[a] The State of California has requested reclassification of the San Joaquin Valley to "extreme" for the 1997 8-hour ozone standard. See 74 FR 43654 (August 27, 2009).

1. Summary of Evaluation of Changes Related to Minor NSR

As to the changes related to minor source NSR permitting requirements, we found that the amended rules would affect minor source NSR ("minor NSR") by revising an existing permitting exemption for certain natural-gas- or LPG-fired combustion and heat transfer systems (*see* paragraph 6.1 in submitted District Rule 2020), by exempting minor agricultural sources with actual emissions less than 50 percent of the major source threshold (*see* paragraph 6.20 in submitted District Rule 2020) from permitting, and by exempting all new or modified minor agricultural sources from the offset requirement (*see* paragraph 4.6.9 of submitted District Rule 2201).

We concluded that the amended rules met EPA's minor NSR requirements in 40 CFR 51.160 because, even with the new and amended exemptions, the District NSR program would continue to provide the District with the information necessary to determine whether the construction or modification of a stationary source would result in a violation of applicable portions of the control strategy; or would result in interference with attainment or maintenance of the NAAQS. With respect to the revised exemption for certain smaller combustion and heat transfer systems, we based this conclusion on our determination that the relaxed sulfur content specification in amended Rule 2020, paragraph 6.1, would have no significant impact on emissions in the valley.

With respect the limited permitting exemption for agricultural sources, we based this conclusion on a number of factors. For particulate matter, we rely upon the implementation of certain prohibitory rules, such as District Rule 4550 ("Conservation Management Practices") and the District's Regulation VIII ("Fugitive PM_{10} Prohibitions", particularly, Rules 8011 and 8081) to act as non-permitting means to reduce fugitive dust emissions at agricultural sources that fall under the exemption and thereby reduce the potential for localized exceedances of the PM_{10} and $PM_{2.5}$ standards. For ozone precursors (VOC and NO_X), we noted that the limited permitting exemption would only apply to agricultural operations with "actual" emissions (*i.e.,* including fugitive emissions) [5] of less than 5 tons per year, and that, as such, the scope of the exemption would be limited to small-scale agricultural operations and would be acceptable so long as the ozone plans for the valley do not count on permitting of such sources.

With respect to the regional planning context, for the proposed rule, we reviewed the various approved and submitted San Joaquin Valley attainment or maintenance plans, and noted that none of these plans rely upon reductions from NSR for agricultural sources less than 50 percent of the major source threshold. We also noted that, for attainment planning purposes, growth in emissions from agricultural sources has been established by CARB's area source inventory growth methodologies, and no mitigation of that growth from an offsets requirement has been considered when determining the impact of the growth on the District's ability to achieve attainment with the standards.[6] We concluded that, because the plans do not rely on emission reductions from permitting of agricultural sources less than 50% of the major source threshold and do not rely on offsets for new or modified minor agricultural sources, approval of the amended Rules 2020 and 2201 would be consistent with regional planning efforts to attain and maintain the NAAQS.

Lastly, with respect to minor source NSR changes, we noted that, under Federal law, minor sources are not required to obtain offsets, and thus, the exemption for minor agricultural sources from the offsets requirement is consistent with Federal requirements.

2. Summary of Evaluation of Changes Related to "Extreme" Ozone Area NSR Requirements

In our January 29, 2010 proposed rule, we identified the applicable requirements for nonattainment areas classified as "extreme" for the 1-hour ozone standard and reviewed the amended District rules for compliance with the applicable requirements. For such areas, the relevant NSR requirements include a major source threshold of 10 tons per year of VOC or NO_X [*see* CAA section 182(e) and 182(f) and 51.165(a)(1)(iv)], an offset ratio of 1.5 to 1 [*see* CAA section 182(e)(1) and 40 CFR 51.165(a)(9)], and definition of major modification that applies to any change at a major stationary source which results in any increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source [see CAA section 182(e)(2) and 40 CFR 51.165(a)(1)(x)(E)].

As submitted on March 17, 2009, the VOC and NO_X provisions in District Rule 2201 have been amended to include the 10 ton per year threshold

[5] The District's view on whether the CH&SC section 42301.16 (and cited in District Rule 2020, section 6.20) covers fugitive VOC emissions is found in the District's Final Staff Report (page B–13, response to comment #19) on proposed amendments to Rule 2201 and Rule 2530 (dated December 18, 2008): "The District appreciates the opportunity to reiterate that, for the purposes of implementing CH&SC sections 40724.6(c) and 42301.16(c), all emissions, except for fugitive dust, must be included in calculations to determine district permitting requirements based on one-half of the major source thresholds. The statutory language of these sections is consistent, which read separately or in the interrelated nature in which they were intended to be read, and [sic] District's implementation adheres to this statutory language." Thus, fugitive VOC emissions are included in the determination of whether actual emissions from a minor agricultural operation are greater than 50% of the applicable major source threshold which, for VOC, is 10 tons per year, or, in other words, greater than 5 tons per year.

[6] Also see the District's Clean Air Act section 110(l) analysis, entitled "San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201, as amended September 21, 2006, District's Clean Air Act 110(l) Analysis," dated November 20, 2007.

(*see* paragraph 3.23 of amended Rule 2201), the 1.5 to 1 offset ratio (*see* paragraph 4.8.1 of amended Rule 2201), and the "any increase" threshold for major modifications (*see* paragraph 3.17.1.4 of amended Rule 2201). As such, we concluded that District Rule 2201 has adequately been amended to reflect "extreme" ozone area requirements under the CAA and 40 CFR 51.165.

3. Summary of Evaluation of Changes Implementing EPA's NSR Reform Rules

In our proposed rule, we described EPA's implementation of NSR Reform Rules and the ensuing litigation and identified the basic program elements that NSR programs must be amended to include. We concluded that, as submitted on March 17, 2009, District Rule 2201 has been amended to provide for the minimum program elements of the 2002 NSR Reform Rules that remain in the wake of subsequent litigation and EPA rulemaking. The amended District Rule provides for the minimum program elements by replacing a single definition for "Major Modification" with two definitions, one for "Federal Major Modification" and the other for "SB 288 Major Modification." As discussed above, the former term captures the NSR Reform program elements (and the "any increase" emissions threshold required in "extreme" ozone areas), while the latter retains the pre-Reform approach to determining major modification status. Paragraph 3.17.1 of amended Rule 2201 incorporates the new method for determining baseline actual emissions and the actual-to-projected-actual methodology for determining whether a major modification has occurred. Paragraph 3.17.2 incorporates provisions allowing major stationary sources to comply with Plantwide Applicability Limits (PALs).

4. Summary of Evaluation of Amended Rules for Enforceability

For the reasons given in the January 2010 proposed rule and summarized above, we found the amendments to District Rules 2020 and 2201 to be acceptable under applicable NSR regulations; however, SIP rules must also be enforceable [*see* CAA section 110(a)], and we found two specific deficiencies related to enforceability of Rules 2020 and 2201 that prevent our full approval. These deficiencies arise from the ambiguity introduced by the references in both paragraph 6.20 (of Rule 2020) and paragraph 4.6.9 (of Rule 2201) to State law under circumstances where the State law has not been submitted to EPA for approval into the SIP. Specifically, paragraph 6.20 (of Rule 2020) provides a permitting exemption for: "Agricultural sources, but only to the extent provided by California Health and Safety Code, Section 42301.16." In turn, CH&SC section 42301.16(a) requires districts to extend permitting requirements to all agricultural sources that are "required to obtain a permit pursuant to Title I * * * or Title V * * * of the Federal Clean Air Act," which we have interpreted as referring to "major" sources under the CAA, and to all other agricultural sources (referred to herein as "minor") with actual emissions one-half of the applicable major source emissions thresholds (or greater) for any air contaminant, excluding fugitive dust. See CH&SC section 42301.16(b). However, CH&SC section 42301.16(b) also provides a means through which a district can extend the exemption from "one-half of any applicable emissions threshold" to the "major source" threshold if certain findings are made in a public hearing.

Because CH&SC section 42301.16 is not included in the California SIP, nor has California submitted the section to EPA for approval, the SIP would be ambiguous as to the extent of the agricultural source permitting exemption if EPA were to approve submitted District Rule 2020 into the SIP. Effective enforcement of the permitting requirements would rely on judicial notice of the statutory provision cited in the rule, and such judicial notice may or may not be forthcoming. There is no need to rely on judicial notice when the District can eliminate the ambiguity by clearly stating the exemption for agricultural sources in District Rule 2020 or by submitting CH&SC section 42301.16 to EPA for approval into the SIP. Moreover, even if we could assume that judicial notice of the statutory provision would be taken, CH&SC section 42301.16 by its terms allows for a relaxation of the one-half of major source permitting threshold for agricultural sources, and such relaxations should be reviewed by EPA under section 110 for approval as a SIP revision. Therefore, we proposed a limited approval and limited disapproval of submitted Rule 2020. In our January 2010 proposed rule, we noted that the deficiency in Rule 2020 can be remedied by the District by replacing the statutory reference to CH&SC section 42301.16 in paragraph 6.20 with a clear description of the sources covered by the exemption, and by submitting the amended rule to EPA (via CARB) as a SIP revision. In today's document, we are taking final limited approval and limited disapproval action today on amended Rule 2020 consistent with our January 29, 2010 proposal.

Paragraph 4.6.9 of submitted Rule 2201 contains a similarly-ambiguous reference to state law in listing emission offset exemptions: "Agricultural sources, to the extent provided by California Health and Safety Code, section 42301.18(c), except that nothing in this section shall circumvent the requirements of section 42301(a)." CH&SC section 42301.18(c) states: "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." Our understanding is that the District has no plans to require emissions offsets for new or modified agricultural sources unless such new or modified source is a "Major Source" or a "Federal Major Modification" as defined in another section of Rule 2201. Once again, there is no need for ambiguity in the applicability of the emissions offset exemption, and therefore, EPA proposed a limited approval and limited disapproval of submitted Rule 2201. The deficiency in Rule 2201 can be remedied by either submittal of the statutory provisions cited in paragraph 4.6.9 or by replacing the references with a clear description of the applicability of the offset requirement to agricultural sources, and by submitting the amended rule to EPA (via CARB) as a SIP revision. In today's document, we are taking final limited approval and limited disapproval action today on amended Rule 2201 consistent with our January 29, 2010 proposal.

5. Summary of Evaluation of Amended Rule 2530

In our January 2010 proposed rule, we discussed the purpose of District Rule 2530 and the applicable EPA guidance and corresponding parameters for such rules, and explained that the emission limits and the alternative operational limits in the rule were amended by the District in step with the valley's classification of "extreme" for the 1-hour ozone NAAQS. We reviewed the amended limits in District Rule 2530, as submitted on March 17, 2009, and found them to be acceptable. Based on our review of the amended rule in relation to its underlying purpose, we are taking final action today to approve amended District Rule 2530 because we find that it has been appropriately modified to reflect the decrease in the major source threshold for VOC and NO_X consistent with the area's

"extreme" classification for the 1-hour ozone standard.

6. Summary of Evaluation of Amended Rules for Compliance with CAA Section 110(l)

CAA section 110(l) provides: "Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title) or any other applicable requirement of this chapter." 42 U.S.C. 7410(l).

In our January 2010 proposed rule, for the purposes of CAA section 110(l), we took into account the overall effect of the revisions included in this action. Given the wide application of the lower major source thresholds to all types of new or modified stationary sources of VOC and NO_X and the limited extent of the exemptions from permitting and offsets for certain types of agricultural sources, we found that the overall effect of the revisions would strengthen the SIP, notwithstanding deficiencies identified above in enforceability. Moreover, we concluded that we do not anticipate localized exceedances of the PM_{10} or $PM_{2.5}$ standards, due to the permitting exemption for certain agricultural sources, given the application of non-permitting requirements in the SIP. Lastly, we noted that the revisions are consistent with the assumptions of the various air quality plans developed for the valley.

Accordingly, we concluded that the revisions to Rules 2020, 2201, and 2530 would not interfere with any applicable requirements for attainment and reasonable further progress or any other applicable requirement of the CAA and are approvable under section 110(l) of the Clean Air Act.

C. Removal of Obsolete Conditions on SIP Approvals

In our January 29, 2010 proposed rule, we also proposed to remove certain obsolete conditions placed on SIP approvals of certain California nonattainment plans in the 1980's. These NSR-related conditions are identified in table 3, below, by applicable county, EPA action, and CFR citation.

TABLE 3—OBSOLETE CONDITIONS BEING REMOVED

County	Conditional approval Federal Register citation	Regulatory citation
Kern County [a]	46 FR 42450 (August 21, 1981)	40 CFR 52.232(a)(5)(i)(A)
San Joaquin County	47 FR 19694 (May 7, 1982), amended at 50 FR 7591 (February 25, 1985).	40 CFR 52.232(a)(6)(i)(A)
Kings, Madera, Merced, Stanislaus, and Tulare Counties.	47 FR 19694 (May 7, 1982)	40 CFR 52.232(a)(10)(i)(A)
Fresno County	47 FR 28617 (July 1, 1982)	40 CFR 52.232(a)(11)(i)(A)

[a] In today's document, we are removing the Kern County condition for carbon monoxide and ozone only.

We proposed removal of the condition in 40 CFR 52.232(a)(5)(i)(A) because we concluded that it was obsolete as to carbon monoxide and ozone in light of the approval of District NSR rules in 2004 (69 FR 27837, May 17, 2004), the change in the boundary for the 1-hour ozone nonattainment boundary for San Joaquin Valley (66 FR 56476, November 8, 2001), and the redesignation of the East Kern County 1-hour ozone nonattainment area to attainment (69 FR 21731, April 22, 2004). However, as to particulate matter, we found the condition to be unfulfilled because the Kern County Air Pollution Control District (APCD) [7] retains jurisdiction over a small portion of the San Joaquin Valley planning area, the portion of the San Joaquin Valley planning area over which Kern County APCD retains jurisdiction remains nonattainment for PM_{10} (*see* 73 FR 66759, November 12, 2008), and because we have yet to approve a revision to Kern County APCD NSR rules that meet the condition in 40 CFR 52.232(a)(5)(i)(A). We proposed removal of the conditions set forth in 40 CFR 52.232(a)(6)(i)(A), (a)(10)(i)(A), and (a)(11)(i)(A) as obsolete in light of the approval of District NSR rules in 2004 (69 FR 27837, May 17, 2004).[8] We are taking final action today to remove the obsolete provisions described above for the reasons given in our January 29, 2010 proposed rule and that are summarized above. We are retaining the condition in 40 CFR 52.232(a)(5)(i)(A) as to particulate matter until we approve the Kern County APCD's nonattainment NSR rules for the East Kern County PM_{10} nonattainment area or until we approve a redesignation request for the East Kern PM_{10} area to "attainment."

II. Public Comments and EPA's Responses

Our January 29, 2010 proposed rule (75 FR 4745) provided for a 30-day comment period. During that period, we received adverse comments from three groups: Greenberg-Glusker law firm (referred to herein as "Dairy Cares"), on behalf of Dairy Cares, a coalition of California's dairy producer and processor associations, by letter dated March 1, 2010; Earthjustice, by letter dated March 1, 2010; and the Center on Race, Poverty & the Environment (referred to herein as "AIR"), on behalf of the Association of Irritated Residents and other community and environmental groups, by letter dated March 1, 2010. AIR joins in the comments from Earthjustice, but also adds comments of its own. As noted previously, we have decided to defer further rulemaking action on our proposal to correct our May 2004 approval of the previous version of District NSR rules pending a legal interpretation from the state regarding the extent of the District's permitting and offsets authority in connection with agricultural sources under State law. Thus, we have not responded to the comments related to that aspect of our proposal in this document, but will respond to those comments in a separate final rule if we subsequently finalize our proposed correction as proposed on January 29, 2010. In the following paragraphs, we provide a summary of the significant adverse comments and

[7] Kern County ACPD, one of the original county-based APCDs covering San Joaquin Valley, was not entirely consolidated into the current San Joaquin Valley Unified Air Pollution Control District (herein, referred to as "District"), but its jurisdiction is no longer county-wide, and is limited to the eastern portion of the county.

[8] The condition established in 40 CFR 52.232(a)(11) also relates to Ventura County, but removal of the condition is proper as to Ventura County in light of EPA's subsequent approval of the Ventura County nonattainment NSR rules at 68 FR 9561 (February 28, 2003).

our responses (*i.e.,* related to the aspects of our proposal other than the error correction).

Comment #1: Dairy Cares disagrees with EPA's approval of the District's Rule Revisions to the extent it is predicated on an interpretation that the exemption for emission offsets does not apply to major sources. Dairy Cares claims that CH&SC section 42301.18(c) prohibits any district from requiring any agricultural source to obtain offsets until agricultural source reductions meet the criteria for creditability. Dairy Cares claims that, under CH&SC 42301.18(c), the District does not have the requisite State authority to require emission offsets unless the offsets can be credited. Dairy Cares acknowledges that CH&SC section 42301.16(a) requires that agricultural sources obtain permits "consistent with Federal requirements," and that the Clean Air Act generally requires certain emission offsets from new or expanding Federal major sources, but argues that integral to such emission offsets requirements is the ability to credit emission reductions. To the extent there is a conflict between sections 42310.16(a) and 42301.18(c), Dairy Cares asserts that the more specific provision—section 42301.18(c)—must control.

Response #1: Dairy Cares is correct that EPA's proposed (limited) approval (and limited disapproval) of revised District Rule 2201 is predicated in part on an interpretation of CH&SC sections 42301.16(a) and 42301.18(c) to the effect that CH&SC section 42301.16(a) limits the applicability of the emission offset exemption in CH&SC section 42301.18(c) so as to exclude major agricultural sources from the exemption. In other words, we have concluded that State law requires the District to impose the emissions offsets requirements on new or modified agricultural sources that are considered new major sources or major modifications, notwithstanding the limitation on District authority set forth in CH&SC section 42301.18(c).

Paragraph 4.6.9 of revised District Rule 2201 provides that emission offsets shall not be required for:

> "Agricultural sources, to the extent provided by California Health and Safety Code, section 42301.18(c), except that nothing in this section shall circumvent the requirements of section 42301.16(a)."

CH&SC section 42301.16(a) provides:

> "In addition to complying with the requirements of this chapter, a permit system established by a district pursuant to section 42300 shall ensure that any agricultural source that is required to obtain a permit pursuant to Title I (42 U.S.C. Sec. 7401 *et seq.*) or Title V (42 U.S.C. Sec. 7661 *et seq.*) of the Federal Clean Air Act is required by district regulations to obtain a permit in a manner that is consistent with the Federal requirements."

CH&SC section 42301.18(c) provides:

> "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."

EPA interprets the reference in CH&SC section 42301.16(a) to "any agricultural source that is required to obtain a permit pursuant to Title I * * * or Title V * * * of the Federal Clean Air Act" as a reference to sources considered "major sources" under the Clean Air Act and not to "minor sources" because only the former are required to obtain a permit. A state may exempt new or modified minor sources from regulation so long as the overall program for regulation of new or modified stationary sources assures that the NAAQS are achieved. *See* section 110(a)(2)(C) of the Act.

EPA interprets the directive in CH&SC 42301.16(a) to the Districts to ensure that their permit rules require major agricultural sources (and major modifications of such sources) to obtain a permit in a manner "that is consistent with the Federal requirements" as referring to, in this context, the minimum requirements for new or modified major sources, including but not limited to, emission offsets [*see* CAA section 173(a)(1)] and use of emissions control technology representing the lowest achievable emission rate [*see* CAA section 173(a)(2)]. With certain exceptions not relevant here (*e.g.,* rocket engines), the Act does not exempt any major sources or major modifications in nonattainment areas from the offset requirement, regardless of whether emissions reductions for a given source meet the criteria for real, permanent, quantifiable, and enforceable emission reductions. In other words, contrary to Dairy Cares' claim, the ability to credit emission reductions is not integral to the emissions offset requirements.

We find no statutory or regulatory basis to support Dairy Cares' claim that exemption of major agricultural sources from the offset requirement does not conflict with the Clean Air Act. Dairy Cares points to Clean Air Act sections 173(c) and 182(e)(2), 40 CFR 51.165(a)(1)(vi)(A) and 40 CFR part 51, appendix S as support for the general principle that credits are an integral part of the statutory and regulatory scheme for offsets, and further, that one cannot be imposed (emission offsets requirements) without allowing for the other (credits for emissions reductions from the source).

First, section 173 ("* * * may comply with any offset requirement only by obtaining emission reductions from the same source or other sources * * * ") provides two basic approaches to meeting the emissions offset requirement, by obtaining emissions reductions from the same source or by obtaining emissions reductions from other sources. The fact that, for the time being, one approach (internal offsets) is quite limited (*i.e.,* limited to certain discrete units at a farm from which emissions reductions are considered creditable, *e.g.,* boilers and stationary engines and pumps) does not justify a full exemption from the emissions offset requirement for all major agricultural sources. If Congress had intended major agricultural sources to be exempt from the offset requirement, it could well have carved out an exception as it has for rocket engines [*see* CAA section 173(e)]. Moreover, a new major agricultural source is in no different position than any other new major source in that both have no internal emissions reductions to use to comply with the offset requirement.

Two other provisions cited by Dairy Cares, CAA section 182(e)(2) ("* * * not considered a modification if the owner * * * elects to offset the increase * * * from discrete operations, units or activities within the source") and 40 CFR 51.165(a)(1)(vi)(A) ("net emissions increase means * * * any other increases and decreases in actual emissions that are * * * otherwise creditable") relate to identification of modifications as "major modifications." Dairy Cares is correct in that the limited ability by agricultural sources to use internal credits may well make it harder to avoid "major modification" status and the corresponding requirements. However, there is simply no language in either the statutory provision or regulatory provision cited above that conditions "major modification" status on whether or not the source can credit its emissions reductions. Furthermore, as noted above, discrete units at agricultural sources, such as boilers and stationary pumps, can already be used for internal credits in a major modification applicability determination at an agricultural source.

Dairy Cares points to a provision in 40 CFR part 51, appendix S, that allows, under certain circumstances, emissions reduction credits from shutdowns or curtailments as further evidence that allowance for credits from a source are integral to the imposition of the emissions offset requirement on the source. However, once again, the

provision allowing under certain circumstances the use of credits from shutdowns or curtailments is but one means to comply with the offset requirement, and its unavailability to a certain category of sources does not negate the underlying statutory requirement on all new major sources and major modifications, including the category of sources for which shutdown or curtailment credits are unavailable, in nonattainment areas to provide emissions offsets for the applicable nonattainment pollutants.

Hence, with respect to agricultural sources, to be "consistent with the Federal requirements" within the meaning of CH&SC 42301.16(a) means a District permitting program must impose an emissions offset requirement for new major sources and major modifications. We view CH&SC 42301.16(a) as not only a grant of authority to Districts to establish a permitting system that, in nonattainment areas, requires imposition of an emissions offset requirement on all agricultural sources that are new major sources or major modifications, but as an affirmative directive to do so.

Lastly, we recognize that CH&SC section 42301.18(c), read in isolation, withholds the authority from Districts to require emissions offsets from any (*i.e.,* major and minor) new or modified agricultural sources until agricultural source reductions meet the criteria for creditability. As explained above, however, such a reading would prevent District from establishing permitting programs for major sources and major modifications "consistent with Federal requirements" as required by the Legislature through CH&SC section 42301.16(a).

We also do not agree that CH&SC section 42301.18(c) is simply a more specific statute that should be given precedence over the more general statute CH&SC section 42301.16(a). The two CH&SC sections simply address different permitting issues; one generally relates to emissions offsets for (both major and minor) agricultural sources whereas the other generally relates to permitting of major sources. We see no reason to interpret the two statutory provisions in question as in direct conflict and thereby to choose one provision over the other, but rather to give effect to both by interpreting CH&SC section 42301.18(c) as withholding the authority from Districts to impose an emission offset requirement on new or modified agricultural sources (until emissions reductions from such sources are creditable) but only with respect to non-major agricultural sources and modifications.

Our interpretation of CH&SC sections 42301.16(a) and 42301.18(c) is further supported by our knowledge of the regulatory context in which Senate Bill 700 (SB 700), which established the two cited provisions, was promulgated by the California Legislature. One of the principal purposes for promulgation of SB 700 was to respond to a "SIP call" under CAA section 110(k)(5) by EPA based on the lack of State or District authority to carry out the applicable nonattainment NSR or PSD portions of the SIP with respect to major agricultural sources. See 68 FR 37746 (June 25, 2003). Under Dairy Cares' interpretation, the California Legislature would have failed to address this deficiency by failing to provide the necessary authority with respect to nonattainment NSR. However, for the reasons stated above, the relevant provisions of SB 700, *i.e.,* CH&SC sections 42301.16(a) and 42301.18(c), need not be interpreted that way.

Finally, we note that CARB and the District interpret the relevant State law in the same way as EPA. In a letter to Air Pollution Control Officers dated September 3, 2008, the CARB Executive Officer requests the heads of the various air districts in California to update their permit rules as they apply to agricultural sources in accordance with CH&SC 42301.16. In reference to agricultural sources that are major, the CARB Executive Officer states that "Both Federal and State law require "best available control technology" (BACT) and offsets for these sources. Any exemption for major sources from permit requirements that can arguably be considered to be in your District's rule and in the SIP must be removed." See page 3 of the CARB September 3, 2008 letter. Later, in this letter, in reference to the offsets exemption in CH&SC 42301.18(c), the CARB Executive Officer states "This exemption should be narrowly applied, and, in any event, cannot be used to exempt major Federal sources from offset requirements." See page 4 of the CARB September 3, 2008 letter.

The District's interpretation can be found in its response to a similar comment as addressed herein, wherein the District stated:

> "The District appreciates the opportunity to further clarify this very important issue. To state it as clearly as possible, the offset exemption of section 4.6.9 is NOT [emphasis from original] available to agricultural sources which are major sources of air pollution. Only non-major sources are provided any exemption from offsetting requirements by this section.
>
> This is not new language, nor is it new interpretation. There is no confusion in the legislative history, or in CAPCOA's white paper on SB 700 implementation. The purpose of the language of section 42301.16(a) is to *specifically require* [emphasis from original] offsets from major sources of air contaminants, as this was specifically necessary to fulfill the mandates of the Federal SIP call that the state was under at the time. Without this language specifically requiring offsets of major agricultural sources, the law would not have met EPA's requirement that we subject major California agricultural sources to Federal permitting requirements, and EPA would not have been able to stop the SIP call and the impending sanctions. Therefore the suggested change cannot be made."

See the District's final staff report on proposed amendment to Rule 2201 (page B–12).

In light of EPA's, CARB's, and the District's interpretation of CH&SC sections 42301.16(a) and 42301.18(c), we view paragraph 4.6.9 of revised District Rule 2020 as simply, and correctly, reflecting current State law as set forth in the two cited sections of the CH&SC. In other words, with respect to the issue of emissions offsets requirements, we see no difference between the authority granted to the District under applicable State law and the language found in paragraph 4.6.9 of revised District Rule 2020. Thus, we disagree with Dairy Care's assertion that we are again making the error of approving a rule change that is in conflict with California law.

Comment #2: Earthjustice claims that EPA's rationale for approval of the various exemptions being added to the District's NSR rules is flawed because it is premised on the false claim that the District has a plan that will achieve the national standards for particulate matter and ozone.

Response #2: In our January 2010 proposed rule, we reviewed the status of air quality plans in the San Joaquin Valley, and relied upon the plans as a basis to conclude that the net effect of the changes in the rules would not interfere with reasonable further progress or attainment of any of the NAAQS and thus are approvable under CAA section 110(l). *See* sections IV.B.1 ("Regulatory Context") and IV.B.8 ("CAA Section 110(l)") of the proposed rule. In our proposed rule, we noted that EPA has not yet taken action on the submitted San Joaquin Valley 2007 Ozone Plan or the submitted San Joaquin Valley 2008 $PM_{2.5}$ Plan. Thus, it is incorrect to say that we have based our proposed approval of the revised District NSR rules on the premise that the District has a plan that will achieve the national standards for those

pollutants. Instead, we have reviewed the plans to ensure that the changes to the District's NSR rules are consistent with the assumptions and control strategies in these plans and found that the changes are indeed consistent with the plans and would strengthen the SIP. Furthermore, we continue to believe that the plans are facially valid, contrary to the unsupported claims by Earthjustice that they are not meaningful plans or that the plans have been undermined by the state.

Our detailed review of the plans and subsequent notice-and-comment rulemaking may lead to the requirement that California adopt additional control measures to provide for attainment of the ozone and particulate matter standards, but California will not necessarily be required to extend permitting and offsets requirements to minor agricultural sources to meet that requirement. While certain SIP requirements are prescribed by the Act and EPA regulations, extending permitting and offsets requirements to minor agricultural sources would be considered a discretionary control measure and thus the state may well decide to select some other measure.

Comment #3: Earthjustice claims that EPA's analysis under CAA section 110(l) of the boilers and steam generator exemptions is incomplete because it does not address whether the District can allow these sources to be constructed or expanded with no mitigation for emissions increases.

Response #3: As an initial starting point, the exemption in amended Rule 2020, paragraph 6.1, would not be a new permitting exemption. Rather, the existing exemption found in the current SIP version of paragraph 6.1 of Rule 2020 is being revised in certain ways, only one of which arguably expands the exemption. The revision that arguably expands the exemption involves changes in the maximum sulfur content specifications for natural gas and liquefied petroleum gas (LPG) combusted by the applicable types of sources (such as boilers and steam generators with maximum input heat ratings of 5 million Btu per hour (gross) or less).

With respect to the sulfur content specification, the amended rule would raise the maximum allowable limit from 0.75 grains (of total sulfur) per 100 standard cubic feet (scf) for both natural gas and LPG, to 1.0 grain per 100 scf for natural gas and 15 grains per 100 scf for LPG. The District's memo dated November 13, 2009, which is cited in the proposed rule, indicates that the reason for the increase is to align the maximum sulfur content specification in the exemption to the corresponding specification used by the relevant utilities in their own contracts for delivery of natural gas. For LPG, the reason for the increase is to align the specification in the exemption with the corresponding industry standard specifications as set by the Gas Processors Association (GPA). The industry practice by LPG distributors of adding odorant for safety purposes (typically mercaptan) containing between 1 and 3 grains of sulfur per 100 scf alone exceeds the existing specification of 0.75 grains of sulfur.

For perspective, we note that the sulfur dioxide emissions from natural gas combustion at 5 million Btu per hour or less amounts to 0.35 lb per day and 0.06 tons per year, assuming maximum operation 24 hours per day, 365 days per year (based on AP–42 (section 1.4) emissions factors, sulfur content of 1 grain per 100 cubic feet). The corresponding sulfur dioxide emissions for LPG are 1.97 lb/day and 0.36 ton per year, once again, assuming maximum continuous operation (based on AP–42 (section 1.5) emissions factors for propane, and sulfur content of 15 grains per 100 cubic feet). In other words, this particular exemption relates to very small emissions sources, that would not be subject to BACT under District Rule 2201, paragraph 4.1.1 ("* * * BACT shall be required for * * * any new emissions unit * * * with a Potential to Emit exceeding 2.0 pounds in any one day"), even if such sources were subject to permitting.

Sulfur dioxide is a criteria pollutant in its own right, but is also a precursor pollutant for PM_{10} and $PM_{2.5}$. While San Joaquin Valley is designated as "attainment" for both the sulfur dioxide NAAQS and the PM_{10} NAAQS, the valley is designated as nonattainment for the $PM_{2.5}$ NAAQS. Thus, to satisfy Federal Clean Air Act requirements regarding NSR, the valley must require emissions offsets for new major sources of sulfur dioxide and major modifications at existing major sources of sulfur dioxide. The applicable major source threshold for sulfur dioxide, as a precursor to $PM_{2.5}$, is 100 tons per year.

The District's NSR rule is more broad than required in this respect and applies the emission offset requirement for sulfur dioxide to sulfur dioxide sources with emissions exceeding 54,750 pounds per year (27.4 tons per year). See paragraph 4.5.3 of the District Rule 2201. Clearly, at less than 1 ton of sulfur dioxide per year, new sources of the type covered by the revised exemption would not otherwise be subject to the offset requirement unless they were located at an existing sulfur dioxide source with emissions greater than 27.4 tons per year. To gain some perspective as to the number of facilities with sulfur dioxide emissions greater than 27.4 tons per year within the valley, we used CARB's California Emission Inventory Development and Reporting System (CEIDARS) database and reviewed the listings of 3,651 facilities and discovered a total of only 26 that had sulfur dioxide emission greater than 27.4 tons per year based on actual emission in 2007. Based on the low rate of sulfur dioxide emissions generated by types of sources covered by the revised exemption and the small number of sources subject to the offset requirement, the potential in foregone sulfur dioxide emission reductions (offsets) due to the installation of the types of sources covered by this particular exemption is very limited.

Therefore, for the reasons stated in the proposed rule and supplemented herein, we continue to believe that the relaxed sulfur content specification in amended Rule 2020, paragraph 6.1, would have no significant impact on emissions in the valley. Even if there would be some small incremental increase in sulfur dioxide emissions due to the hypothetical relaxation in an otherwise applicable emissions offset requirement on account of the revised exemption, such an increase would be more than offset itself by the reductions in emissions that would flow from the lower major source emissions thresholds and more stringent emissions offset requirement for the other $PM_{2.5}$ precursors, volatile organic compounds and nitrogen oxides. Moreover, we have concluded that overall set of changes in District Rules 2020, 2201, and 2530, including the change in the sulfur fuel content specification, other changes in the permitting and offsets exemptions, the lower major source emissions thresholds, and the more stringent emissions offset requirement, would not interfere with reasonable further progress or attainment of any of the NAAQS and thus are approvable under CAA section 110(l).

Comment #4: Earthjustice contends that, in addition to the relaxations highlighted by EPA in the notice of proposed rulemaking, the District is also relaxing its equivalency demonstration outlined in section 7.0 of Rule 2201 by removing the requirement to demonstrate equivalency with the Federal new source review program that was in effect in December 2002. Earthjustice asserts that the purpose of this provision was to enshrine equivalency with the Federal program prior to the relaxations adopted by EPA as part of NSR Reform and that the

District now seeks to take advantage of the less stringent NSR Reform provisions governing major modifications. Earthjustice claims that the change to section 7.1.1 means that fewer offsets will be required in order to demonstrate equivalence, that EPA's analysis completely fails to address this relaxation, and that EPA needs to quantify the reduction in offsets this change will allow and explain how this growth in emissions can be reconciled with the fact that the District has no real strategy for attaining the national standards.

Response #4: Earthjustice claims that the revisions to Rule 2201 have the effect of (1) relaxing the equivalency demonstration required in Section 7.0 of Rule 2201, because it removed the requirement to demonstrate equivalency with the Federal NSR program that was in effect in December 2002, i.e., prior to the effective date of EPA's NSR reform rules, and (2) now requires demonstration with current "less stringent" Federal NSR program requirements. EPA disagrees with both of these claims. First, the only significant revisions made to Section 7.0 was to remove the December 2002 date reference as to which version of 40 CFR 51.165 should be used for determining equivalency with Federal offset requirements. The underlying requirements for demonstrating equivalency with the Federal NSR program offset requirements remain unchanged.

Second, regarding the claim that the current Federal NSR regulations are less stringent, and therefore fewer Federal offsets are now required, we do not agree that fewer offsets necessarily means that the San Joaquin Valley NSR program would achieve fewer emissions reductions overall. Even if the District's implementation of revised NSR rules that incorporate NSR reform requires fewer emissions offsets, EPA concludes that any such foregone offsets are themselves offset by the new lower "major modification" threshold of zero for ozone precursors, down from 25 tons per year under the existing SIP District Rule 2201, and higher offset ratio of 1.5 to 1, up from 1.2 to 1. Moreover, the regional air quality plans do not take credit for reductions and mitigations required under the District's NSR rules in that they do not reduce future year's emissions by taking credit for emissions reductions provided through permitting actions. *See, e.g.,* page D–4, of appendix D to the San Joaquin Valley 2007 Ozone Plan.

Comment #5: AIR takes issue with EPA's statement in the proposed rule that the Agency's 2001 limited approval and limited disapproval of Rule 2020 had the effect of exempting all agricultural sources from permitting in the San Joaquin Valley portion of the SIP. AIR contends that EPA's statement is at odds with the plain language of the Clean Air Act, which neither exempts major agricultural stationary sources nor affords EPA the authority to grant an exemption through a limited approval/limited disapproval action.

Response #5: AIR is objecting to EPA's background discussion concerning the effect of EPA's approval (in 2001) of the versions of the District's NSR rules that preceded the versions of the rules in the current applicable SIP (which were approved in 2004), and thus AIR's comment has no direct bearing on today's final action on amended District NSR rules, as submitted in 2008 and 2009.[9]

III. Final Action

Under CAA sections 110(k)(2) and 301(a) and for the reasons set forth above and in our January 29, 2010 proposed rule, we are finalizing a limited approval and limited disapproval of amended District NSR Rules 2020 and 2201, as submitted on March 7, 2008 and March 17, 2009, respectively. The amended District Rules 2020 and 2201 revise certain existing exemptions; establish an exemption from permitting, and from offsets, for certain minor agricultural operations; establish applicability thresholds (for major sources and major modifications) and offset thresholds consistent with a classification of "extreme" for the ozone standard; and implement NSR Reform.

We are finalizing a limited approval and limited disapproval action, because the individual provisions within District Rules 2020 and 2201 are not separable, and, because, although the rule amendments would strengthen the SIP and meet all but one of the applicable requirements for SIPs in general and NSR SIPs in particular, they contain unacceptably ambiguous references to statutory provisions that prevent full approval. This action incorporates amended Rules 2020 and 2201 into the District portion of the Federally enforceable California SIP, including those provisions identified as deficient. The amended Rules 2020 and 2201 approved herein supersede the versions of the corresponding rules that were approved in May 2004 in the applicable SIP.

The final limited disapproval triggers a sanctions clock and EPA's obligation to promulgate a Federal implementation plan. Sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a FIP under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rules have been adopted by the District, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

With respect to amended District Rule 2530, as submitted on March 17, 2009, we are taking final action to approve the amended rule because we find that it has been appropriately modified to reflect the decrease in the major source threshold for VOC and NO_X consistent with an "extreme" classification. This action incorporates amended Rule 2530 into the District portion of the Federally enforceable California SIP. The amended Rule 2530 approved herein supersedes the previous version of the corresponding rule that was approved in April 1996 in the applicable SIP.

EPA is also removing certain obsolete conditions placed on 1980's era approvals by EPA on various nonattainment plans submitted by California for the San Joaquin Valley.

Lastly, we have decided to defer further action on the Agency's January 2010 proposal to correct a previous approval of the District NSR rules pending receipt from California of a legal interpretation of the extent of District authority with respect to agricultural sources under state law.

[9] Nonetheless, we affirm our statement that, prior to our 2004 approval of the District's NSR rules (Rules 2020 and 2201), the District portion of the California SIP included a broad exemption from permitting for all agricultural sources. This is because our 2001 action on previous versions of District Rule 2020 and 2201 was a limited approval and limited disapproval action and that the version of Rule 2020 approved in 2001 included a full exemption from permitting for agricultural sources consistent with state law at the time. *See* paragraph 4.1.2 of District Rule 2020, as amended on September 17, 1998, and approved on July 19, 2001. We identified the agricultural permitting exemption as one of the deficiencies that prevented our full approval of the rules and that triggered a "sanctions clock." As explained in our July 2001 final rule, the limited approval and limited disapproval action incorporated the rules into the SIP, as they were submitted, with no exception as to those provisions that we found deficient. We generally take limited approval and limited disapproval actions where a given SIP revision is not composed of separable parts, and while the overall submittal strengthens the SIP, there are deficiencies that prevent full approval. *See* 66 FR 37587, at 37590 (July 19, 2001).

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 SIP approvals and limited approvals/limited disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this limited approval/limited disapproval action and approval 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 limited approval/limited disapproval action and approval action promulgated today do 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 approves pre-existing requirements under State or 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

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 approves a State rule implementing a Federal standard, 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 approves 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 *July 12, 2010.* 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: April 12, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(354)(i)(E)(*14*) and (c)(363)(i)(A)(*5*) and (*6*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(354) * * *

(i) * * *

(E) * * *

(*14*) Rule 2020, "Exemptions," adopted on September 19, 1991 and amended on December 20, 2007.

* * * * *

(363) * * *

(i) * * *

(A) * * *

(*5*) Rule 2201, "New and Modified Stationary Source Review Rule," adopted on September 19, 1991, and amended on December 18, 2008.

(*6*) Rule 2530, "Federally Enforceable Potential to Emit," adopted on June 15, 1995, and amended on December 18, 2008.

* * * * *

■ 3. Section 52.232 is amended by removing and reserving paragraphs (a)(6), (a)(10), and (a)(11) and by revising paragraph (a)(5)(i) to read as follows:

§ 52.232 Part D conditional approval.

(a) * * *

(5) * * *

(i) For PM:

(A) By November 19, 1981, the NSR rules must be revised and submitted as an SIP revision. The rules must satisfy section 173 of the Clean Air Act and 40 CFR Subpart I, "Review of new sources and modifications." In revising Kern County's NSR rules, the State/APCD must address all the requirements in EPA's amended regulations for NSR (45 FR 31307, May 13, 1980 and 45 FR 52676, August 7, 1980) which the APCD rules do not currently satisfy including those deficiencies cited in EPA's Evaluation Report Addendum which still apply despite EPA's new NSR requirements (contained in document File NAP–CA–07 at the EPA Library in Washington, DC and the Regional Office).

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[FR Doc. 2010–10925 Filed 5–10–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2009–0512; FRL–9147–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of Lake and Porter Counties to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking several related actions affecting Lake and Porter Counties and the State of Indiana for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard). EPA is approving a request from the State of Indiana to redesignate Lake and Porter Counties, the Indiana portion of the Chicago-Gary-Lake County, Illinois-Indiana (IL–IN) 8-hour ozone nonattainment area, to attainment of the 1997 8-hour ozone NAAQS. In addition, EPA is approving, as a revision to the Indiana State Implementation Plan (SIP), the State's plan for maintaining the 1997 8-hour ozone NAAQS through 2020 in Lake and Porter Counties and in the Chicago-Gary-Lake County, IL–IN ozone nonattainment area. EPA is also approving the 2002 Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) emission inventories for Lake and Porter Counties as a SIP revision and as meeting the requirements of the Clean Air Act (CAA). Finally, EPA finds adequate and is approving the State's 2010 and 2020 VOC and NO_X Motor Vehicle Emission Budgets (MVEBs) for Lake and Porter Counties.

DATES: This final rule is effective May 11, 2010.

ADDRESSES: EPA has established a docket for this action: Docket ID No. EPA–R05–OAR–2009–0512. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure 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 in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77