

attainment area districts that have an approved Prevention of Significant Deterioration (PSD) program. We did not receive any comments on our proposal. EPA is finalizing this finding, pursuant to our authority in section 110(k)(5) of the Clean Air Act (CAA or Act), because the State cannot provide "necessary assurances" that it or the districts have authority to carry out the applicable nonattainment New Source Review (NSR) or PSD portions of the SIP. This action requires California to amend its State law to eliminate the permitting exemption as it pertains to major agricultural sources of air pollution and submit the necessary assurances by November 23, 2003 to support an affirmative finding by EPA under section 110(a)(2)(E). If the State fails to submit the necessary assurances of authority or if EPA disapproves any such submittal in response to this final SIP call, the sanctions clock in section 179 of the Act will be triggered.

**EFFECTIVE DATE:** This rule is effective on July 25, 2003.

**ADDRESSES:** You can inspect copies of the administrative record for this action at EPA's Region IX office from 8:30 AM to 5 PM, Monday-Friday. Please call 24 hours in advance to accommodate building security procedures. A reasonable fee may be charged for copying.

Copies of the SIPs for the State of California are also available for inspection at the following location: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

**FOR FURTHER INFORMATION CONTACT:** Please call Ed Pike, EPA Region IX, at (415) 972-3974 or send e-mail to [pike.ed@epa.gov](mailto:pike.ed@epa.gov).

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

## Table of Contents

- I. Background
  - A. What action is EPA finalizing?
  - B. How can California correct the SIP inadequacy?
  - C. What are the consequences if California does not correct the SIP inadequacy?
- II. Statutory and Executive Order Reviews
  - A. Executive Order 12866, Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132, Federalism
  - F. Executive Order 13175, Coordination with Indian Tribal Governments
  - G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

- H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Congressional Review Act
- K. Petitions for Judicial Review

## I. Background

### A. What Action Is EPA Finalizing?

CAA section 110(k)(5) provides that whenever EPA finds the applicable implementation plan "is substantially inadequate to attain or maintain the relevant national ambient air quality standard, \* \* \* or to otherwise comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies." EPA did not receive any comments on our February 13, 2003 proposed finding of inadequacy. Today we are finalizing our finding that the approved California SIP is substantially inadequate. The SIP cannot provide "necessary assurances" that the State or districts have the authority to issue permits under their PSD and nonattainment NSR SIPs to all major sources because Health & Safety Code section 42310(e) exempts major agricultural stationary sources from these permitting requirements.

Specifically, sections 110(a)(2)(C) and (I) and 172 of the Act require the applicable implementation plan to contain a program for issuing permits to major stationary sources of air pollution pursuant to parts C and D of title I of the Act. In addition, section 110(a)(2)(E) requires that each SIP provide necessary assurances that the State or districts have adequate authority to carry out the SIP and that no State law prohibits the State or districts from carrying out any portion of the SIP. The California SIP does not meet these requirements because California Health & Safety Code section 42310(e) exempts "equipment used in agricultural operations in the growing of crops or the raising of fowl or animals" from all permitting, including PSD and NSR permitting otherwise required by parts C and D of title I of the Act. As a result, the State and districts cannot issue permits to these agricultural sources, even if they are major stationary sources under the Act. The CAA NSR and PSD permitting requirements do not provide for this exemption.

### B. How Can California Correct the SIP Inadequacy?

To correct the deficiency, EPA recommends that the State legislature amend Health & Safety Code section 42310(e) to remove the exemption as it applies to major agricultural sources.

The State is already subject to a sanctions clock based on the Notice of Deficiency (NOD) that EPA issued on May 22, 2002, 67 FR 35990, with respect to the State's title V operating permits program. In that NOD, EPA explained that California Health & Safety Code section 42310(e) improperly exempted major agricultural sources from CAA title V permitting. The NOD stated: "EPA has determined that significant action in this instance means the revision or removal of Health and Safety Code 42310(e) so that local air pollution control districts have the required authority to issue title V permits to stationary agricultural sources that are major sources of air pollution." A similar correction with respect to NSR and PSD permitting is necessary by November 23, 2003 to comply with this final action, *i.e.* remove the agricultural exemption for major sources. We are setting this deadline to be consistent with the deadline established in the May 22, 2002 NOD for making the revision for Title V purposes.

Our proposal listed several districts that have New Source Review exemptions that may pose problems for permitting major agricultural stationary sources, but did not call for specific revisions at this time. We believe it is reasonable to wait for the State legislature to correct Health and Safety Code section 42310(e) before we determine whether any such exemptions at the district level represent authority problems under section 110(a)(2)(E).<sup>1</sup> EPA, nonetheless, encourages districts to evaluate their SIP-approved rules to ensure that exemptions do not create potential authority problems. Once the State acts to address Health and Safety Code section 42310(e), EPA will work with the districts to determine if further rulemaking is necessary to address specific local deficiencies that remain after the State law change.

### C. What Are the Consequences if California Does Not Correct the SIP Inadequacy?

As noted earlier, California must adopt and submit to EPA a revision to

<sup>1</sup> We note that certain local exemptions are tied to exemptions such as Health and Safety Code section 42310(e) provided under State law. Removal of the exemption at the State level could automatically resolve authority problems at the district level. In addition, if the State legislature were to not only revise the language of Health and Safety Code section 42310(e) but also to clarify that any such local exemptions were also void, no further action by the districts may be necessary. Depending on the action at the State level, EPA may be able to make the required finding under 110(a)(2)(E) that the authority to carry out the air permitting programs is not prohibited by any State or local law.