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ENVIRONMENTAL PROTECTION AGENCY

40 CFR part 52

[EPA-R09-OAR-2014-0547; FRL-9918-39-Region 9]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; California; Infrastructure Requirements for Ozone, Fine Particulate Matter ($PM_{2.5}$), Lead (Pb), Nitrogen Dioxide (NO_2), and Sulfur Dioxide (SO_2)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove several State Implementation Plan (SIP) revisions submitted by the State of California pursuant to the requirements of the Clean Air Act (CAA or the Act) for the implementation, maintenance, and enforcement of national ambient air quality standards (NAAQS) for ozone, fine particulate patter ($PM_{2.5}$), lead (Pb), nitrogen dioxide (NO_2), and sulfur dioxide (SO_2). We refer to such SIP revisions as "infrastructure" SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS including, but not limited to, legal authority, regulatory structure, resources, permit programs, and monitoring necessary to assure attainment and maintenance of the standards. In addition, we are proposing to reclassify certain regions of the state for emergency episode planning purposes with respect to ozone, NO_2, SO_2, and particulate matter (PM). Finally, we are proposing to approve into the SIP several state provisions addressing CAA conflict of interest requirements into the California SIP and an emergency episode planning rule for Great Basin Unified Air Pollution Control District (APCD) for PM. We are taking comments on this proposal and, after considering any comments submitted, plan to take final action.

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R09-OAR-2014-0547, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail:* mays.rory@epa.gov
3. *Mail or deliver:* Rory Mays (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), 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: Rory Mays, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972-3227, *mays.rory@epa.gov.*

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

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I. EPA's Approach to the Review of Infrastructure SIP Submittals

EPA is acting upon several SIP submittals from California that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 1997 ozone, 2008 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, 2008 Pb, 2010 NO_2, and 2010 SO_2 NAAQS. The requirement for states to

make a SIP submittal of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submittals "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submittals are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submittals, and the requirement to make the submittals is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submittal must address.

EPA has historically referred to these SIP submittals made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submittals. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submittal from submittals that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment SIP" submittals to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submittals required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NSR) permit program submittals to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submittals, and section 110(a)(2) provides more details concerning the required contents of these submittals. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[1] EPA therefore believes that while the timing requirement in

[1] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to

section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submittals provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submittal.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submittals for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submittal must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[2] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submittals to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submittal of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[3] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submittal.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submittal, and whether EPA must act upon such SIP submittal in a single action. Although

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address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[2] *See*, e.g., "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule," 70 FR 25162, at 25163–25165, May 12, 2005 (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[3] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submittal of certain types of SIP submittals in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submittal of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submittals separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submittals to meet the infrastructure SIP requirements, EPA can elect to act on such submittals either individually or in a larger combined action.[4] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submittal for a given NAAQS without concurrent action on the entire submittal. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submittal.[5]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submittal requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submittals for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submittal for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submittal to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[6]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submittals required under the CAA. Therefore, as with infrastructure SIP submittals, EPA

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[4] *See*, e.g., "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339, January 22, 2013 (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," 78 FR 4337, January 22, 2013 (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[5] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[6] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submittals. For example, section 172(c)(7) requires that attainment plan SIP submittals required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submittals must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submittals required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the air quality prevention of significant deterioration (PSD) program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submittal may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submittal. In other words, EPA assumes that Congress could not have intended that each and every SIP submittal, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submittals against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP

submittals for particular elements.[7] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Infrastructure SIP Guidance).[8] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submittals to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submittals.[9] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submittals need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submittal for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submittals. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submittals to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Infrastructure SIP Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and

[7] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submittals. The CAA directly applies to states and requires the submittal of infrastructure SIP submittals, regardless of whether or not EPA provides guidance or regulations pertaining to such submittals. EPA elects to issue such guidance in order to assist states, as appropriate.

[8] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[9] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submittals to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submittals because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submittals with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C, title I of the Act and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and regulated NSR pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 Code of Federal Regulations (CFR) 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submittal focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has a SIP-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submittal, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submittal is necessarily the appropriate type of action in which to address possible

deficiencies in a state's existing SIP. These issues include: (i) existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186, December 31, 2002, as amended by 72 FR 32526, June 13, 2007 ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submittal without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submittal even if it is aware of such existing provisions.[10] It is important to note that EPA's approval of a state's infrastructure SIP submittal should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submittals is to identify the CAA requirements that are logically applicable to that submittal. EPA believes that this approach to the review of a particular infrastructure SIP submittal is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless

[10] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submittal that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submittal. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Infrastructure SIP Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submittal for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[11] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submittals.[12] Significantly, EPA's determination that an action on a state's infrastructure SIP submittal is not the appropriate time and place to address all

[11] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 76 FR 21639, April 18, 2011.

[12] EPA has used this authority to correct errors in past actions on SIP submittals related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536, December 30, 2010. EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664, July 25, 1996 and 62 FR 34641, June 27, 1997 (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051, November 3, 2009 (corrections to Arizona and Nevada SIPs).

potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submittal, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[13]

II. Background

A. Statutory Requirements

As discussed in section I of this proposed rule, CAA section 110(a)(1) requires each state to submit to EPA, within three years after the promulgation of a primary or secondary NAAQS or any revision thereof, an infrastructure SIP revision that provides for the implementation, maintenance, and enforcement of such NAAQS. Section 110(a)(2) sets the content requirements of such a plan, which generally relate to the information and authorities, compliance assurances, procedural requirements, and control measures that constitute the "infrastructure" of a state's air quality management program. These infrastructure SIP elements required by section 110(a)(2) are as follows:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.
- Section 110(a)(2)(D)(ii): Interstate and international pollution abatement.

[13] See, e.g., EPA's disapproval of a SIP submittal from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344, July 21, 2010 (proposed disapproval of director's discretion provisions); 76 FR 4540, January 26, 2011 (final disapproval of such provisions).

- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, PSD, and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submittal of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: (i) section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment NSR), and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I).

B. NAAQS Addressed by this Proposal

Between 1997 and 2012, EPA promulgate a series of new or revised NAAQS for ozone, $PM_{2.5}$, Pb, NO_2, and SO_2, each of which triggered the requirement for states to submit infrastructure SIPs. The NAAQS addressed by this infrastructure SIP proposal include the following:

- 1997 ozone NAAQS, which established 8-hour average primary and secondary ozone standards of 0.08 ppm, and revoked the 1979 1-hour ozone standard of 0.12 parts per million (ppm).[14]
- 2008 ozone NAAQS, which revised the 8-hour ozone standards to 0.075 ppm.[15]

[14] 62 FR 38856, July 18, 1997.

- 1997 $PM_{2.5}$ NAAQS, which set 24-hour average primary and secondary $PM_{2.5}$ standards of 65 $\mu g/m^3$ and annual primary and secondary $PM_{2.5}$ standards of 15 $\mu g/m^3$.[16]
- 2006 $PM_{2.5}$ NAAQS, which revised the 1997 24-hour $PM_{2.5}$ standards to 35 $\mu g/m^3$, and retained the 1997 annual standards.[17]
- 2012 $PM_{2.5}$ NAAQS, which revised the 1997 and 2006 annual $PM_{2.5}$ standards to 12.0 $\mu g/m^3$, and retained the 2006 24-hour standards.[18]
- 2008 Pb NAAQS, which revised the 1978 Pb quarterly average standard of 1.5 $\mu g/m^3$ to a rolling 3-month average not to exceed 0.15 $\mu g/m^3$ as a rolling 3-month average, and revised the secondary standard to 0.15 $\mu g/m^3$, making it identical to the revised primary standard.[19]
- 2010 NO_2 NAAQS, which revised the primary 1971 NO_2 annual standard of 53 parts per billion (ppb) by supplementing it with a new 1-hour average NO_2 standard of 100 ppb, and retained the secondary annual standard of 53 ppb.[20]
- 2010 SO_2 NAAQS, which established a new 1-hour average SO_2 standard of 75 ppb, retained the secondary 3-hour average SO_2 standard of 500 ppb, and established a mechanism for revoking the primary 1971 annual and 24-hour SO_2 standards.[21]

C. EPA Guidance Documents

EPA has issued several guidance memos on infrastructure SIPs that have informed our evaluation, including the following:

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[15] 73 FR 16436, March 27, 2008.
[16] 62 FR 38652, July 18, 1997.
[17] 71 FR 61144, October 17, 2006.
[18] 78 FR 3086, January 15, 2013.
[19] 73 FR 66964, November 12, 2008.
[20] 75 FR 6474, February 9, 2010. The annual NO_2 standard of 0.053 ppm is listed in ppb for ease of comparison with the new 1-hour standard.
[21] 75 FR 35520, June 22, 2010. The annual SO_2 standard of 0.5 ppm is listed in ppb for ease of comparison with the new 1-hour standard.

- March 2, 1978 guidance on the conflict of interest requirements of section 128, pursuant to the requirement of section 110(a)(2)(E)(ii).[22]
- August 15, 2006 guidance on the interstate transport requirements of section 110(a)(2)(D)(i) with respect to the 1997 ozone and 1997 $PM_{2.5}$ NAAQS.[23]
- October 2, 2007 guidance on infrastructure SIP requirements for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS.[24]
- September 25, 2009 guidance on infrastructure SIP requirements for the 2006 $PM_{2.5}$ NAAQS. ("2009 Infrastructure SIP Guidance") [25]
- October 14, 2011 guidance on infrastructure SIP requirements for the 2008 Pb NAAQS.[26]
- September 13, 2013 guidance on infrastructure SIP requirements for the 2008 ozone, 2010 NO_2, 2010 SO_2, 2012 $PM_{2.5}$, and future NAAQS. ("2013 Infrastructure SIP Guidance") [27]

D. Changes to the Application of PSD Permitting Requirements to GHG Emissions

With respect to CAA sections 110(a)(2)(C) and 110(a)(2)(J), EPA interprets the Clean Air Act to require each state to make an infrastructure SIP submittal for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The PSD-related requirement of section 110(a)(2)(D)(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting

[22] Memorandum from David O. Bickart, Deputy General Counsel, Office of General Counsel (OGC), "Guidance to States for Meeting Conflict of Interest Requirements of Section 128," March 2, 1978.
[23] Memorandum from William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards (OAQPS), "Guidance for State Implementation Plan Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards," August 15, 2006.
[24] Memorandum from William T. Harnett, Director, Air Quality Policy Division, OAQPS, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards," October 2, 2007.
[25] Memorandum from William T. Harnett, Director, Air Quality Policy Division, OAQPS, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standards," September 25, 2009.
[26] Memorandum from Stephen D. Page, Director, OAQPS, "Guidance on State Implementation Plan Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards," October 14, 2011.
[27] Memorandum from Stephen D. Page, Director, OAQPS, "Guidance on Infrastructure State Implementation Plan Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," September 13, 2013.

program correctly addressing all regulated NSR pollutants. California has shown that it currently has a PSD program in place for ten air districts (Eastern Kern, Imperial County, Mendocino County, Monterey Bay Unified, North Coast Unified, Northern Sonoma County, Placer County, Sacramento Metropolitan (Metro), San Joaquin Valley, and Yolo-Solano) that cover all regulated NSR pollutants, including GHGs, and one air district (South Coast AQMD) that covers GHGs.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions.[28] The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, EPA is not continuing to apply EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.*, 40 CFR 51.166(b)(48)(v)). EPA anticipates a need to revise federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States Court of Appeals for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have

[28] *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S. Ct. 2427.

revised their PSD programs for purposes of infrastructure SIP submittals and is only evaluating such submittals to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, EPA has determined that California's Infrastructure SIP Submittals are sufficient to satisfy CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for the 11 districts noted in this section that have SIP-approved PSD programs with respect to GHGs because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the SIP-approved PSD permitting programs for these 11 air districts in California may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render California's Infrastructure SIP Submittals inadequate to satisfy sections 110(a)(2)(C), (D)(i)(II), and (J) for these air districts. The SIP contains the necessary PSD requirements at this time for these 11 districts, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect EPA's proposed partial approval of California's Infrastructure SIP Submittals as to the requirements of CAA sections 110(a)(2)(C), (D)(i)(II), and (2)(J).

III. California's Submittals

The California Air Resources Board (ARB) has submitted several infrastructure SIP revisions pursuant to EPA's promulgation of the NAAQS addressed by this proposed rule, including the following:

- November 16, 2007 – "Proposed State Strategy for California's 2007 State Implementation Plan." Appendices B ("110(a)(2) Infrastructure SIP") and G ("Legal Authority and Other Requirements") contain California's infrastructure SIP revision for the 1997 ozone and 1997

$PM_{2.5}$ NAAQS. ("California's 2007 Submittal").[29] This submittal incorporates by reference California's section 110(a)(2) SIP submitted in response to the 1970 CAA and approved by EPA in 1979 in 40 CFR 52.220.

- October 6, 2011 – "State Implementation Plan Revision for Federal Lead Standard Infrastructure Requirements," which addresses the 2008 Pb NAAQS. ("California's 2011 Submittal").
- December 12, 2012 – "State Implementation Plan Revision for Federal Nitrogen Dioxide Standard Infrastructure Requirements," which addressed the 2010 NO_2 NAAQS. ("California's 2012 Submittal").
- March 6, 2014 – "California Infrastructure SIP," which provided new submittals for the 2008 ozone, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS and supplemented and amended the state's prior infrastructure SIP submittals. ("California's 2014 Submittal").
- June 2, 2014 – Great Basin Unified APCD Rule 701 ("Air Pollution Episode Plan"), which addresses CAA section 110(a)(2)(G) for the 1987 coarse particulate matter (PM_{10}) and 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2012 $PM_{2.5}$ NAAQS. ("Great Basin Rule 701").

We find that these submittals meet the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102. We are proposing to act on all of these submittals since they collectively address the infrastructure SIP requirements for the NAAQS addressed by this proposed rule. We refer to them collectively herein as "California's Infrastructure SIP Submittals." Importantly, however, California has not made a submittal for the interstate transport requirements of CAA section

[29] California's November 16, 2007 Submittal is often referred to as California's 2007 State Strategy. EPA previously acted on Appendix C ("Revised Interstate Transport State Implementation Plan") of California's 2007 State Strategy, as modified by Attachment A of the same submittal, which contained California's SIP revision to address the interstate transport requirements of CAA section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. 76 FR 14616, March 17, 2011 (transport prongs 1 and 2); 76 FR 48002, August 8, 2011 (transport prong 3); and 76 FR 34608, June 14, 2011 and 76 FR 48006, August 8, 2011 (transport prong 4).

110(a)(2)(D)(i)(I) with respect to the 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, 2008 ozone, and 2010 SO_2 NAAQS.[30] Thus we are not addressing the requirements of section 110(a)(2)(D)(i)(I) with respect to these four NAAQS in this proposed rule.

IV. EPA's Evaluation and Proposed Action

We have evaluated California's Infrastructure SIP Submittals and the existing provisions of the California SIP for compliance with the infrastructure SIP requirements (or "elements") of CAA section 110(a)(2) and applicable regulations in 40 CFR part 51 ("Requirements for Preparation, Adoption, and Submittal of State Implementation Plans"). In addition, our evaluation has been informed by EPA guidance memos cited in section II.C of this proposed rule. Given the large volume of information required to evaluate multiple SIP revisions for multiple NAAQS in a state with the largest number of local air districts in the country – 35 APCDs and air quality management districts (AQMDs) in total – we have prepared five technical support documents that contain the details of our evaluation and are available in the public docket for this rulemaking. The TSDs include our Overarching TSD, which introduces our evaluation as a whole and addresses the majority of the requirements under section 110(a)(2), and four other TSDs that are specific to certain requirements and CAA programs, as follows:

- Permit Programs TSD – addressing CAA sections 110(a)(2)(C)/permit programs (only), (D)(i)(II)/interstate transport and PSD (only), (J)/PSD (only), and (L)/permit fees.
- Interstate Transport TSD – addressing CAA section 110(a)(2)(D).
- Conflict of Interest TSD – addressing CAA section 110(a)(2)(E)(ii).
- Emergency Episode Planning TSD – addressing CAA section 110(a)(2)(G).

A. Proposed Approvals and Partial Approvals

[30] California made an infrastructure SIP submittal for the 2006 24-hour $PM_{2.5}$ NAAQS on July 7, 2009 that was subsequently withdrawn on July 18, 2014. All infrastructure SIP requirements for the 2006 24-hour $PM_{2.5}$ NAAQS are addressed in California's 2014 Submittal with the exception of the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I). Therefore, there is no California submittal before EPA with respect to the interstate transport requirements of section 110(a)(2)(D)(i)(I) for the 2006 24-hour $PM_{2.5}$ NAAQS.

Based upon our evaluation as presented in our five TSDs, EPA proposes to approve California's Infrastructure SIP Submittals with respect to the 1997 ozone, 2008 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5,}$ 2012 $PM_{2.5}$, 2008 Pb, 2010 NO_2, and 2010 SO_2 NAAQS for the following infrastructure SIP requirements. Proposed partial approvals are indicated by the parenthetical "(in part)."

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B) (in part): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i) (in part): Interstate pollution transport.[31]
- Section 110(a)(2)(D)(ii) (in part): Interstate pollution abatement and international air pollution.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G) (in part): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J) (in part): Consultation with government officials, public notification, PSD, and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submittal of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

i. Proposed Approval of State and Local Provisions into the California SIP

[31] As noted in section III of this proposed rule, California has not made a submittal for the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, 2008 ozone, and 2010 SO_2 NAAQS.[31] Thus we are not proposing any action with respect to the requirements of section 110(a)(2)(D)(i)(I) with respect to these four NAAQS in this proposed rule.

As part of these proposed approvals, we are also proposing to approve several state statutes and regulations and one air district rule into the California SIP. Specifically, for all of the NAAQS addressed in this proposal, we propose to approve into the SIP five state provisions from the California Government Code (GC) statutes and California Code of Regulations (CCR), which were submitted in California's 2014 Submittal and which address the conflict of interest requirements of CAA sections 110(a)(2)(E)(ii) and 128. These provisions include 9 GC 82048, 9 GC 87103, 9 GC 87302, 2 CCR 18700, and 2 CCR 18701. For discussion of these conflict of interest provisions, please see our Conflict of Interest TSD.

We also propose to approve Great Basin Rule 701 into the California SIP with respect to the 1987 PM_{10}, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2012 $PM_{2.5}$ NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G) and 40 CFR part 51, subpart H. For our evaluation of this emergency episode rule, please refer to our Emergency Episode Planning TSD.

ii. Proposed Approval of Reclassification Requests for Emergency Episode Planning

California's 2012 and 2014 Submittals requested that EPA reclassify several AQCRs with respect to the emergency episode planning requirements of CAA section 110(a)(2)(G) and 40 CFR part 51, subpart H, as applicable to ozone, NO_2, and SO_2. The air quality tests for classifying AQCRs are prescribed in 40 CFR 51.150 and are pollutant-specific (e.g., ozone) rather than being specific to any given NAAQS (e.g., 1997 ozone NAAQS). Consistent with the provisions of 40 CFR 51.153, reclassification of AQCRs must rely on the most recent three years of air quality data. AQCRs that are classified Priority I, IA, or II are required to have SIP-approved emergency episode contingency plans, while those classified Priority III are not required to have such plans, pursuant to 40 CFR 51.151 and 51.152. We interpret 40 CFR 51.153 as establishing the means for states to review air quality data and request a higher or lower classification for any given region and as providing the regulatory basis for

EPA to reclassify such regions, as appropriate, under the authorities of CAA sections 110(a)(2)(G) and 301(a)(1).

On the basis of California's ambient air quality data for 2011-2013, we are proposing to grant five of California's ten requests and deny the five remaining requests. Note, however, that our proposed denial of such a reclassification request does not necessarily lead to disapproval as most districts that are required to have emergency episode contingency plans for a given set of air pollutants continue to have SIP-approved emergency episode rules that apply to such pollutants. The exception to this scenario is the Mountain Counties AQCR for ozone, which we discuss in section IV.B.iii of this proposed rule. For further discussion of the emergency episode planning evaluation, please refer to our Emergency Episode Planning TSD.

While we propose to grant or deny such requests within this proposed rule, the authority to take final action to reclassify AQCRs is reserved by the EPA Administrator. We will draft a reclassification final rule for signature by the EPA Administrator that will be separate from the broader final rule on California's Infrastructure SIP Submittals for signature by the EPA Region 9 Regional Administrator.

Ozone

For ozone, an AQCR with a 1-hour ozone level greater than 0.10 ppm over the most recent three-year period must be classified Priority I, while all other areas are classified Priority III. Per California's requests, we propose to reclassify the Lake Tahoe and North Central Coast AQCRs to Priority III for ozone as neither recorded 1-hour ozone levels greater than 0.10 ppm in 2011-2013. We propose to deny California's reclassification requests for the Mountain Counties, Sacramento Valley, San Diego, and Southeast Desert AQCRs for ozone as each area has exceeded the ozone classification threshold in 2011-2013. As a result, California would have seven Priority I AQCRs for ozone, including five for which we are proposing to deny California's reclassification request and two others (Metropolitan Los Angeles and San Joaquin Valley AQCRs). Five of these AQCRs, including Metropolitan Los Angeles,

San Diego, San Francisco Bay Area, San Joaquin Valley, and Southeast Desert, have adequate SIP-approved emergency episode rules applicable to ozone that cover the full geographic extent of the AQCRs.[32]

Two additional AQCRs in northern and central California comprise many air districts. Sacramento Valley AQCR includes all or portions of eight air districts, just one of which (Sacramento Metro AQMD) recorded a 1-hour ozone level above 0.10 ppm during 2011-2013. Sacramento Metro AQMD already has an adequate SIP-approved emergency episode rule applicable to ozone. Mountain Counties includes portions of seven air districts, just two of which (El Dorado County APCD and Placer County APCD) recorded a 1-hour ozone level above 0.10 ppm during 2011-2013. Unlike Sacramento Metro, these two air districts do not have SIP-approved emergency episode rules. Within these two AQCRs, the population and concentration of emission sources is greatest in the greater Sacramento metropolitan area and the air districts of El Dorado County, Placer County, and Sacramento Metro (i.e., Sacramento County) each share a county border with one another.

Because recent ambient air quality data do not indicate that ozone levels are likely to approach the first recommended 1-hour ozone alert level of 0.20 ppm, much less the 2-hour significant harm level of 0.6 ppm, we propose to find that to satisfy the requirements of 40 CFR 51.151 for contingency plans for these two AQCRs classified Priority I, California needs to provide emergency episode contingency plans for the three air districts that have recorded a 1-hour ozone level above 0.10 ppm. As noted, Sacramento Metro AQMD already has an adequate SIP-approved emergency episode rule applicable to ozone. Thus, we propose to approve California's 2007 and 2014 Submittals with respect to the 1997 ozone and 2008 ozone for the Sacramento Valley AQCR for the emergency episode planning requirements of CAA section 110(a)(2)(G). Since El Dorado County APCD and Placer County APCD do not have such SIP-approved rules, we propose to partially disapprove California's 2007 and 2014

[32] Note that Metropolitan Los Angeles and Southeast Desert AQCRs comprise multiple districts, each of which have SIP-approved emergency episode rules applicable to ozone.

Submittals with respect to the 1997 ozone and 2008 ozone NAAQS for the Mountain Counties AQCR, as discussed in section IV.B.iii of this proposed rule.

NO_2 and SO_2

For NO_2, an AQCR with an annual average NO_2 level greater than 0.06 ppm over the most recent three-year period must be classified Priority I. Per California's request, we propose to reclassify the Metropolitan Los Angeles AQCR to Priority III for NO_2 since no part of this region (comprised of all or portions of Santa Barbara County, South Coast, and Ventura County air districts) recorded an annual average NO_2 level greater than 0.06 ppm in 2011-2013. Finalization of this proposed reclassification would mean that the whole state would be classified Priority III for NO_2, and therefore no emergency episode contingency plan for NO_2 would be required for any of the state's 14 AQCRs. We therefore propose to approve California's 2012 and 2014 Submittals with respect to the 2010 NO_2 NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G).

For SO_2, the classification thresholds for SO_2 are unique in that they are prescribed for three different averaging periods, including the following Priority II classification thresholds: 3-hour average greater than 0.5 ppm, 24-hour average between 0.10 – 0.17 ppm, and annual arithmetic mean between 0.02 – 0.04 ppm. Per California's request, we propose to reclassify the Metropolitan Los Angeles and San Francisco Bay Area AQCRs to Priority III for SO_2 as neither recorded SO_2 levels exceeding the 3-hour average threshold or the lower end of the 24-hour and annual classification threshold ranges in 2011-2013. Finalization of this proposed reclassification would mean that the whole state would be classified Priority III for SO_2, and therefore no emergency episode contingency plan for SO_2 would be required for any of the state's 14 AQCRs. We therefore propose to approve California's 2014 Submittal with respect to the 2010 SO_2 NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G).

iii. Proposed Reclassifications for PM Emergency Episode Planning

California's 2014 Submittal requested that EPA treat all areas of the state as though they were classified Priority III for purposes of $PM_{2.5}$ with respect the emergency episode planning requirements of CAA section 110(a)(2)(G) and 40 CFR part 51, subpart H, with the exception of Great Basin Valley AQCR, for which ARB requested treatment as a Priority II area. However, the air quality test for classifying AQCRs for PM that are prescribed in 40 CFR 51.150 are not specific to either $PM_{2.5}$ or PM_{10} – they are simply for PM. Thus, we evaluated California's 2014 Submittal as follows.

As an initial screen, and given the provision of 40 CFR 51.153(a) to review the most recent three years of air quality data, we reviewed California's 24-hour $PM_{2.5}$ air quality data from 2011-2013 to identify areas where concentrations exceeded EPA's recommended 24-hour $PM_{2.5}$ threshold of 140.4 $\mu g/m^3$ for emergency episode planning.[33] There were two occasions where the concentrations exceeded this threshold: 208 $\mu g/m^3$ on December 1, 2011 at the Keeler-Cerro Gordo Road monitor in Great Basin Valley AQCR, and 167 $\mu g/m^3$ on May 5, 2013 at the Bakersfield-Planz monitor in San Joaquin Valley AQCR.

For these two areas, we also reviewed the 24-hour PM_{10} air quality data to determine the appropriate emergency episode classification under 40 CFR 51.150. We propose to classify such areas based on PM_{10} values, rather than $PM_{2.5}$ values alone, in order to ensure adequate protection from PM emergency episodes as a whole. Following classification, however, we also propose that such differences could be relevant in determining the adequacy of a PM emergency episode contingency plan. We discuss the rationale for these two proposal in our Emergency Episode Planning TSD.

For PM, an AQCR with a 24-hour PM maximum level between 150-325 $\mu g/m^3$ over the most recent three-year period must be classified Priority II and an AQCR with a 24-hour PM maximum level greater than 325 $\mu g/m^3$ must be classified Priority I. The monitors in Great Basin Valley AQCR recorded over 90 instances during 2011-2013 where 24-hour PM_{10} levels exceeded the Priority I

[33] 2009 Infrastructure SIP Guidance, pp. 6-7 and Attachment B ("Recommended Interim Significant Harm Level, Priority Levels, and Action Levels for $PM_{2.5}$ Emergency Episode Plans (EEPs)").

threshold of 325 μg/m^3. As such, we propose to revise the PM emergency episode classification of Great Basin Valley AQCR from Priority III to Priority I in 40 CFR 52.221. The monitors in San Joaquin Valley AQCR recorded 15 instances during 2011-2013 where 24-hour PM_{10} levels were within the Priority II range of 150-325 μg/m^3, with no exceedances of the Priority I threshold of 325 μg/m^3 during that time. We therefore propose to revise the PM emergency episode classification of San Joaquin Valley AQCR from Priority I to Priority II in 40 CFR 52.221.

Based on these classifications, we have reviewed the adequacy of each area's PM emergency episode plans. As noted in section IV.A.i of this proposed rule, we propose to approve Great Basin Rule 701 for the emergency episode planning requirements of CAA section 110(a)(2)(G) with respect to the $PM_{2.5}$ and PM_{10} NAAQS. However, for San Joaquin Valley AQCR, we proposed to partially disapprove California's 2007 and 2014 Submittals for section 110(a)(2)(G) with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2012 $PM_{2.5}$ NAAQS, which we discuss in section IV.B.iii of this proposed rule. For further discussion of the emergency episode planning evaluation as a whole, please refer to our Emergency Episode Planning TSD.

B. Proposed Partial Disapprovals

EPA proposes to partially disapprove California's Infrastructure SIP Submittals with respect to the NAAQS identified for each of the following infrastructure SIP requirements (details of the partial disapprovals are presented after this list):

- Section 110(a)(2)(B) (in part): Ambient air quality monitoring/data system (for the 1997 ozone and 2008 ozone NAAQS for the Bakersfield Metropolitan Statistical Area (MSA) in San Joaquin Valley APCD).
- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new and modified stationary sources (for all NAAQS addressed by this proposed rule due to PSD program and minor NSR deficiencies in certain air districts).

- Section 110(a)(2)(D)(i) (in part): Interstate pollution transport (for all NAAQS addressed by this proposed rule due to PSD program deficiencies in certain air districts).
- Section 110(a)(2)(D)(ii) (in part): Interstate pollution abatement and international air pollution (for all NAAQS addressed by this proposed rule due to PSD program deficiencies in certain air districts).
- Section 110(a)(2)(G) (in part): Emergency episodes (for the 1997 ozone and 2008 ozone NAAQS for the Mountain Counties AQCR, and for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2012 $PM_{2.5}$ NAAQS for the San Joaquin Valley AQCR).
- Section 110(a)(2)(J) (in part): Consultation with government officials, public notification, PSD, and visibility protection (for all NAAQS addressed by this proposed rule due to PSD program deficiencies in certain air districts).

i. Ambient Air Monitoring Partial Disapproval

We propose to partially disapprove California's 2007 and 2014 Submittals for CAA section 110(a)(2)(B) with respect to the 1997 ozone and 2008 ozone NAAQS for the Bakersfield MSA portion of the California SIP because the ozone monitor located at the Arvin-Bear Mountain Road site, which had been the maximum ozone concentration monitor in the Bakersfield MSA, was closed without an approved replacement site. The requirement to have such a maximum ozone concentration monitor is found in 40 CFR part 51, Appendix D, 4.1(b) and the requirement that modifications to a monitoring network must be reviewed and approved by the relevant Regional Administrator is found in 40 CFR 58.14(b). For further discussion of this partial disapproval, please see our evaluation for CAA section 110(a)(2)(B) in our Overarching TSD.

ii. Permit Program-related Partial Disapprovals

We propose to partially disapprove portions of California's Infrastructure SIP Submittals with respect to the PSD-related requirements of sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for several

air districts because the California SIP does not fully satisfy the statutory and regulatory requirements for PSD permit programs as to those air districts. In addition, we propose to partially disapprove portions of California's Infrastructure SIP Submittals with respect to the minor NSR-related requirements of section 110(a)(2)(C) for several air districts because the California SIP does not include minor NSR programs for five air districts. With respect to interstate transport requirement of CAA section 110(a)(2)(D)(i)(II), we also considered the status of the nonattainment NSR programs of the applicable California air districts and propose to approve California's Infrastructure SIP Submittals for this aspect of the interstate transport requirements. Lastly, regarding section 110(a)(2)(D)(ii) and compliance with the requirement of section 126(a) for proposed, major new or modified sources to notify all potentially affected, nearby states, as applicable, we propose to partially disapprove California's Infrastructure SIP Submittals for many air districts. We provide a summary of the basis of our proposed partial disapprovals in the following paragraphs. For further detail on the nature and extent of these proposed partial disapprovals, please refer to our Permit Programs TSD.

PSD Permit Programs

We reviewed the permit programs of California's 35 air districts for SIP-approved provisions to address PSD requirements that we consider "structural" for purposes of sections 110(a)(2)(C), (D)(i)(II), and (J), including the following requirements that were most recently added to the federal PSD regulations: provisions identifying nitrogen oxides (NO_x) as ozone precursors; provisions to regulate $PM_{2.5}$, including condensable $PM_{2.5}$, $PM_{2.5}$ precursor emissions, and PSD increments for $PM_{2.5}$; and provisions to regulate GHGs. For the PSD requirements for GHGs, we conducted our evaluation consistent with the recent changes to the application of such requirements due to the U.S. Supreme Court decision of June 23, 2014, as discussed in section II.D of this proposed rule.

We propose to approve seven districts as meeting the structural PSD requirements, including Eastern Kern, Imperial County, Monterey Bay Unified, Placer County, Sacramento Metro, San Joaquin

Valley, and Yolo-Solano air districts. With respect to Monterey Bay Unified APCD, our proposed approval for sections 110(a)(2)(C), (D)(i)(II), and (J) is contingent on finalizing our proposed rule on a PSD SIP revision for this district that meets such structural PSD requirements.[34] However, we note that the district's current SIP-approved PSD program does not include requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, or PSD increments for $PM_{2.5}$. Thus, in the event that we are not able to finalize our proposed action on such PSD SIP revision prior to finalizing action on California's Infrastructure SIP Submittals, we propose in the alternative to partially disapprove Monterey Bay Unified APCD for these specific PSD-related requirements for sections 110(a)(2)(C), (D)(i)(II), and (J).

An additional four air districts, including Mendocino County, North Coast Unified, Northern Sonoma County, and South Coast air districts, partially meet and partially do not meet the structural PSD requirements. South Coast AQMD has a SIP-approved PSD program for GHGs only, but it does not have a SIP-approved PSD program to address any other regulated NSR pollutants. Thus we propose to partially disapprove California's Infrastructure SIP Submittals as to this district for the PSD-related requirement of sections 110(a)(2)(C), (D)(i)(II), and (J).

North Coast Unified AQMD has a SIP-approved PSD program that, on the whole, addresses all regulated NSR pollutants. However, it does not explicitly regulate NO_x as an ozone precursor and does not include requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, or PSD increments for $PM_{2.5}$. Therefore, we propose to partially disapprove California's Infrastructure SIP Submittals as to this district for these specific deficiencies for PSD-related requirements of section 110(a)(2)(C), (D)(i)(II), and (J). Mendocino County AQMD and Northern Sonoma County APCD each have SIP-approved PSD programs that generally address the structural PSD requirements, but do not include requirements for a baseline date for PSD increments for $PM_{2.5}$. Thus, we propose to partially

[34] The pre-publication copy of our proposed rule on Monterey Bay Unified APCD's PSD SIP revision, signed on September 30, 2014, is included in the docket of our proposed rule.

disapprove California's Infrastructure SIP Submittals as to both of these districts for this specific deficiency in the PSD-related requirements of section 110(a)(2)(C), (D)(i)(II), and (J).

The remaining 24 air districts are subject to the existing PSD FIP in 40 CFR 52.21, including Amador County, Antelope Valley, Bay Area, Butte County, Calaveras County, Colusa County, El Dorado County, Feather River, Glenn County, Great Basin Unified, Lake County, Lassen County, Mariposa County, Modoc County, Mojave Desert, Northern Sierra, San Diego County, San Luis Obispo County, Santa Barbara County, Shasta County, Siskiyou County, Tehama County, Tuolumne County, and Ventura County air districts. Eight of these, including Bay Area, Butte County, Feather River, Great Basin Unified, San Diego County, San Luis Obispo County, Santa Barbara County, and Ventura County air districts, have made PSD SIP submittals for which EPA has not yet proposed or finalized action. Accordingly, we propose to partially disapprove California's Infrastructure SIP Submittals as to each of these 24 air districts with respect to the PSD-related requirements of section 110(a)(2)(C), (D)(i)(II), and (J). As discussed further in section IV.C of this proposed rule, the partial disapprovals as to these 24 districts would not result in new FIP obligations, because EPA has already promulgated a PSD FIP for each district.

Minor NSR Programs

Consistent with the requirement of section 110(a)(2)(C) that the SIP include a program for the regulation of minor sources, we also evaluated California's Infrastructure SIP Submittals and the California SIP with respect to minor NSR programs covering the NAAQS addressed by this proposed rule. Thirty of the 35 air districts have a SIP-approved minor NSR program that applies to all NAAQS, and therefore meet the minor NSR component of section 110(a)(2)(C). The remaining five air districts –

Lake County, Mariposa County, Mojave Desert, Northern Sierra,[35] and Tuolumne County air districts – have minor NSR programs that establish similar requirements, but they have not been submitted and approved into the California SIP. Therefore, we propose to partially disapprove California's Infrastructure SIP Submittals with respect to the minor NSR requirement of CAA section 110(a)(2)(C) for these five air districts.

Nonattainment NSR Permit Programs

With respect to interstate transport requirement of CAA section 110(a)(2)(D)(i)(II), in addition to reviewing the air districts' PSD programs, we also considered the nonattainment NSR programs of the applicable California air districts as follows. CAA section 110(a)(2)(D)(i)(II) requires SIPs to prohibit emissions that will interfere with other state's measures to prevent significant deterioration of air quality. The PSD and nonattainment NSR permit programs require preconstruction permits to protect the air quality within each state and are designed to prohibit construction of new major sources and major modifications at existing major sources from contributing to nonattainment in surrounding areas, including nearby states. Specifically, a PSD permit may not be issued unless the new or modified source demonstrates that emissions from the construction or operation of the facility will not cause or contribute to air pollution in any area that exceeds any NAAQS or any maximum allowable increase (i.e., PSD increment).[36]A nonattainment NSR permit may not be issued unless the new or modified source shows it has obtained sufficient emissions reductions to offset increases in emissions of the pollutants for which an area is designated nonattainment, consistent with reasonable further progress toward attainment.[37] Because the PSD and nonattainment NSR permitting programs currently applicable in each area require a demonstration that new or modified sources will not cause or contribute to air pollution in excess of the NAAQS in neighboring states or that sources in nonattainment areas procure

[35] Note that Northern Sierra AQMD comprises three counties, one of which (Nevada County) has a SIP-approved minor NSR program while the other two (Plumas and Sierra counties) do not. Thus, our conclusion on the absence of a SIP-approved minor NSR program pertains only to these two counties within Northern Sierra AQMD.
[36] 42 U.S.C. § 7475(a)(3); 40 CFR 51.166(k).
[37] 42 U.S.C. § 7503(a)(1); 40 CFR 51.165(a)(3).

offsets, states may satisfy the PSD-related requirement of section 110(a)(2)(D)(i)(II) by submitting SIPs confirming that major sources and major modifications in the state are subject to PSD programs that implement current requirements and nonattainment NSR programs that address the NAAQS pollutants for which areas of the state that have been designated nonattainment.

Accordingly, we reviewed the nonattainment NSR programs of California's 22 air districts that are designated nonattainment for ozone, $PM_{2.5}$, or Pb, as applicable,[38] to determine whether these programs generally address the applicable nonattainment pollutants. We refer to this aspect of section 110(a)(2)(D)(i)(II) herein as the "nonattainment NSR element."

We propose to find that California meets the nonattainment NSR element of section 110(a)(2)(D)(i)(II) through a variety of mechanisms, as follows. Nine of the 22 air districts with nonattainment areas meet the nonattainment NSR element via SIP-approved programs, including the following air districts: Antelope Valley, Eastern Kern, Mojave Desert, Placer County, San Diego County, and Ventura County (for the 1997 ozone and 2008 ozone NAAQS); Sacramento Metro and Feather River (for the 1997 ozone, 2008 ozone, and 2006 $PM_{2.5}$ NAAQS); and San Joaquin Valley (for the 1997 ozone, 2008 ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS).

An additional eight air districts have affirmed that they implement the interim nonattainment NSR program in 40 CFR part 51, Appendix S, which applies to new or modified major stationary sources pursuant to 40 CFR 52.24(k), until California submits (on behalf of a given district) and EPA approves SIP revisions addressing the applicable nonattainment NSR program requirements. This scenario applies to the following districts: Calaveras County, Mariposa County, and Northern Sierra (for the 1997 ozone and 2008 ozone NAAQS); and Bay Area, Butte County, El Dorado County, Imperial County, Yolo-Solano (for the 1997 ozone, 2008 ozone, and 2006 $PM_{2.5}$ NAAQS). We note that Bay Area, Butte County, Imperial County, and South Coast air districts have each submitted SIP revisions to

[38] No area of California has been designated nonattainment for the 2010 NO_2 or 2010 SO_2 NAAQS.

address some or all of the outstanding nonattainment NSR requirements. We anticipate proposing or taking final action on some or all of these four SIP submittals over the coming months. To the extent that each submittal meets the applicable nonattainment NSR requirements, we propose that such actions would alter the basis of our proposed approval of California's Infrastructure SIP Submittals with respect to the nonattainment NSR element of section 110(a)(2)(D)(i)(II) (i.e., having SIP-approved nonattainment NSR provisions rather than relying on 40 CFR part 51, Appendix S) while maintaining the proposed approval itself.

South Coast AQMD implements its SIP-approved nonattainment NSR program for the portions of the air district that are designated nonattainment for the 1997 ozone, 2008 ozone, and 2008 Pb NAAQS, and implements the interim nonattainment NSR program in 40 CFR part 51, Appendix S with respect to the 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS.

Two other districts, Amador County APCD and Tuolumne County APCD, are designated nonattainment only for the 1997 ozone NAAQS. EPA has proposed to revoke that NAAQS as part of the proposed implementation rule for the 2008 ozone NAAQS,[39] which for these two air districts would have the effect of revoking the requirement to submit a nonattainment NSR SIP revision.[40] We anticipate that EPA will finalize that proposed rule prior to finalization of this proposed rule on California's Infrastructure SIPs, so these two districts will be relieved of the requirement to submit nonattainment NSR SIP revisions.

Lastly, portions of San Luis Obispo County APCD and Tehama County APCD are designated nonattainment only for the 2008 ozone NAAQS. Stemming from EPA's proposed implementation rule for the 2008 ozone NAAQS,[41] required nonattainment NSR SIP revisions would not be due until July

[39] 78 FR 34178, June 6, 2013.
[40] This scenario also applies to the Sutter Buttes area within Feather River AQMD that is designated nonattainment for the 1997 ozone NAAQS. However, the southern portion of Feather River AQMD has been designated nonattainment for both the 1997 ozone and 2008 ozone NAAQS. Thus, the requirement for this air district to submit a nonattainment NSR SIP revision remains, though it will no longer apply to Sutter Buttes area.
[41] 78 FR 34178, June 6, 2013.

20, 2015 and, thus, this requirement is not yet due for these two districts. Until such SIP revisions are submitted by these two districts and approved by EPA, the districts are required to implement 40 CFR part 51, Appendix S for any major source emitting an applicable nonattainment pollutant (i.e., NO_x or VOCs) that may propose to locate in the respective nonattainment areas.

Accordingly, we propose to approve California's Infrastructure SIP Submittals for the 22 air districts designated nonattainment for ozone, $PM_{2.5}$, or Pb, as applicable, with respect to the nonattainment NSR element of the interstate transport requirement of section 110(a)(2)(D)(i)(II).

Interstate Pollution Abatement and International Air Pollution

With respect to the requirement in CAA section 110(a)(2)(D)(ii) regarding compliance with the applicable requirements of section 126 relating to interstate pollution abatement, we note that the requirements of section 126(b) and (c), which pertain to petitions by affected states to EPA regarding sources violating the "interstate transport" provisions of CAA section 110(a)(2)(D)(i), do not apply to our action because there are no such pending petitions relating to California. We thus evaluated California's 2014 Submittal (the only submittal of California's Infrastructure SIP Submittals to explicitly address this sub-section) only for purposes of compliance with section 126(a), which requires that each SIP require that proposed, major new or modified sources, which may significantly contribute to violations of the NAAQS in any air quality control region in other states, to notify all potentially affected, nearby states. For further discussion of these requirements, please refer to our Interstate Transport TSD.

Ten of California's 35 air districts have SIP-approved PSD permit programs that require notice to nearby states consistent with EPA's relevant requirements, including the following districts: Eastern Kern, Imperial County, Mendocino County, Monterey Bay Unified, North Coast Unified, Northern Sonoma County, Placer County, Sacramento Metro, San Joaquin Valley, and Yolo-Solano. The remaining 25 air districts are deficient with respect to the PSD requirements in part C, title I of the Act

and with respect to the requirement in CAA section 126(a) regarding notification to affected, nearby states of major new or modified sources proposing to locate in these remaining air districts.

With respect to the requirement in CAA section 110(a)(2)(D)(ii) regarding compliance with the applicable requirements of section 115 relating to international air pollution, the EPA Administrator is authorized to require a state to revise its SIP when certain criteria are met and the Administrator has reason to believe that any air pollutant emitted in the United States causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country. The Administrator may do so by giving formal notification to the Governor of the State in which the emissions originate. Because no such formal notification has been made with respect to emissions originating in California, EPA has no reason to approve or disapprove any existing state rules with regard to CAA section 115.

Thus, while the existing California SIP is sufficient to satisfy most of the requirement in CAA section 110(a)(2)(D)(ii) regarding compliance with the applicable requirements of section 115 for the whole state and section 126 for ten air districts, we propose to partially disapprove California's Infrastructure SIP Submittals for section 110(a)(2)(D)(ii) regarding compliance with the requirements of section 126(a) for the following 25 air districts: Amador County, Antelope Valley, Bay Area, Butte County, Calaveras County, Colusa County, El Dorado County, Feather River, Glenn County, Great Basin Unified, Lake County, Lassen County, Mariposa County, Modoc County, Mojave Desert, Northern Sierra, San Diego County, San Luis Obispo County, Santa Barbara County, Shasta County, Siskiyou County, South Coast, Tehama County, Tuolumne County, and Ventura County.

iii. Emergency Episode Planning Partial Disapprovals

We are proposing to partially disapprove California's 2007 and 2014 Submittals for CAA section 110(a)(2)(G) with respect to the 1997 ozone and 2008 ozone NAAQS for the Mountain Counties AQCR and with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2012 $PM_{2.5}$ NAAQS for the San Joaquin Valley

AQCR. We provide a summary of the basis of our proposed partial disapproval in the following paragraphs. For further discussion of these partial disapprovals, please refer to our Emergency Episode Planning TSD.

Mountain Counties AQCR for Ozone

As described in section IV.A.ii of this proposed rule, we propose to deny California's request to reclassify the Mountain Counties AQCR to Priority III for ozone and have assessed the status of this region's ambient air quality and emergency episode rules. Of the seven air districts that comprise the Mountain Counties AQCR, only El Dorado County APCD and Placer County APCD recorded a 1-hour ozone level above the Priority I ozone threshold of 0.10 ppm during 2011-2013. Because recent ambient air quality data for the AQCR as a whole do not indicate that ozone levels are likely to approach the Stage 1 one-hour ozone alert level of 0.20 ppm, much less the 2-hour significant harm level of 0.6 ppm, we propose to find that to satisfy the requirements of 40 CFR 51.151 for contingency plans for Mountain Counties AQCR, California needs to provide emergency episode contingency plans applicable to ozone for El Dorado County APCD and Placer County APCD. Since these two air districts do not have SIP-approved emergency episode rules, we propose to partially disapprove California's 2007 and 2014 Submittals for the Mountain Counties AQCR (for El Dorado County APCD and Placer County APCD only) with respect to the 1997 ozone and 2008 ozone NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G).

San Joaquin Valley AQCR for $PM_{2.5}$

As discussed in section IV.A.iii of this proposed rule, we propose to revise the PM emergency episode classification of San Joaquin Valley AQCR from Priority I to Priority II. Accordingly, we reviewed San Joaquin Valley APCD's SIP-approved emergency episode plan, which comprises multiple rules under the district's Regulation 6 ("Air Pollution Emergency Episodes").[42] We did not find

[42] 64 FR 13351, March 18, 1999.

provisions specific to $PM_{2.5}$ within Regulation 6. As such, we propose to conclude that the California SIP does not have an adequate PM emergency episode contingency plan with respect to $PM_{2.5}$ for San Joaquin Valley AQCR and therefore propose to partially disapprove California's 2007 and 2014 Submittals for San Joaquin Valley AQCR with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2012 $PM_{2.5}$ NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G).

iv. General Note on Disapprovals

EPA takes very seriously a proposal to disapprove a state plan, as we believe that it is preferable, and preferred in the provisions of the Clean Air Act, that these requirements be implemented through state plans. A state plan need not contain exactly the same provisions that EPA might require, but EPA must be able to find that the state plan is consistent with the requirements of the Act. Further, EPA's oversight role requires that it assure consistent implementation of Clean Air Act requirements by states across the country, even while acknowledging that individual decisions from source to source or state to state may not have identical outcomes. EPA believes these proposed disapprovals are the only path that is consistent with the Act at this time.

C. Consequences of Proposed Disapprovals

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA (CAA sections 171-193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. California's Infrastructure SIP Submittals were not submitted to meet either of these requirements. Therefore, any action we take to finalize the described partial disapprovals will not trigger mandatory sanctions under CAA section 179.

In addition, CAA section 110(c)(1) provides that EPA must promulgate a FIP within two years after finding that a state has failed to make a required submittal or disapproving a SIP submittal in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period.

As discussed in section IV.B of this proposed rule and Overarching TSD, Permit Programs TSD, Interstate Transport TSD, and Emergency Episode Planning TSD, we are proposing several partial disapprovals. However, many of these partial disapprovals would not result in new FIP obligations, either because EPA has already promulgated a FIP to address the identified deficiency or because a FIP deadline has been triggered by EPA's disapproval of a prior SIP submittal based on the same identified deficiency. The provisions for which our proposed disapproval, if finalized, would not result in a new FIP obligation include:

- PSD-related requirements in sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) in the 24 air districts identified in section IV.B.ii of this proposed rule, which are subject to the PSD FIP in 40 CFR 52.21 for the NAAQS and GHGs (*see* 40 CFR 52.270).
- PSD-related requirements in sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) in South Coast AQMD, which is subject to the PSD FIP in 40 CFR 52.21 for the NAAQS only (*see* 40 CFR 52.270(b)(10)).
- PSD requirement in sections 110(a)(2)(C), (D)(i)(II), and (J) to regulate NO_x as an ozone precursor in North Coast Unified AQMD, which is subject to a narrow PSD FIP addressing this requirement (76 FR 48006, August 8, 2011, codified at 40 CFR 52.270(b)(2)(iv)).
- PSD requirement in sections 110(a)(2)(C), (D)(i)(II), and (J) to regulate PSD increments in North Coast Unified AQMD, for which EPA issued a finding of failure to submit that triggered an October 6, 2016 deadline for EPA to promulgate a FIP addressing this requirement (79 FR 51913, September 2, 2014).

For the remaining partial disapprovals, EPA has not previously promulgated a FIP to address the identified deficiency or triggered a FIP deadline by disapproving a prior SIP submittal or issuing a finding of failure based on the same deficiency. Thus, under CAA section 110(c)(1), these remaining partial disapprovals of California's Infrastructure SIP Submittals would, if finalized, require EPA to

promulgate a FIP within two years after the effective date of our final rule, unless the State submits and EPA approves a SIP revision that corrects the identified deficiencies prior to the expiration of this two-year period. The provisions for which our proposed partial disapprovals, if finalized, would trigger a new FIP obligation include:

- Ambient air monitoring requirement in section 110(a)(2)(B) with respect to the 1997 ozone and 2008 ozone NAAQS in the Bakersfield MSA.
- PSD requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) to regulate $PM_{2.5}$, $PM_{2.5}$ precursors, and condensable $PM_{2.5}$ in North Coast Unified AQMD.
- PSD requirement in sections 110(a)(2)(C), (D)(i)(II), and (J) for a baseline date for PSD increments for $PM_{2.5}$ in Mendocino County APCD and Northern Sonoma County APCD.
- Minor NSR requirements in section 110(a)(2)(C) with respect to the 1997 ozone, 2008 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, 2008 Pb, 2010 NO_2, and 2010 SO_2 NAAQS in Lake County APCD, Mariposa County APCD, Mojave Desert AQMD, Northern Sierra AQMD (for Plumas and Sierra counties only), and Tuolumne County APCD.
- Emergency episode planning requirement in section 110(a)(2)(G) with respect to the 1997 ozone and 2008 ozone NAAQS in the Mountain Counties AQCR (for El Dorado County APCD and Placer County APCD only).
- Emergency episode planning requirement in section 110(a)(2)(G) with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2012 $PM_{2.5}$ NAAQS in the San Joaquin Valley AQCR.

D. Request for Public Comments

We stand ready to work with ARB and the affected air districts to develop SIP revisions that would serve to adequately address the partial disapprovals of California's Infrastructure SIP Submittals where no FIP is currently in place.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. We will accept comments from the public on this proposal for the next 30 days. We will consider these comments before taking final action.

V. Statutory and Executive Order Reviews

IV.A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

IV.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, because this proposed partial approval and partial disapproval of SIP revisions under CAA section 110 will not in-and-of itself create any new information collection burdens but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

IV.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. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule, we certify that this proposed action will not have a significant impact on a substantial number of small entities. This proposed rule does not impose any requirements or create impacts on small entities. This proposed partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

IV.D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. EPA has determined that the proposed partial approval and partial disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to approve certain pre-existing requirements, and to disapprove certain other 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 proposed action.

IV.E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), 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."

This action does not have federalism implications. It 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 proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

IV.F. Executive Order 13175, Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP on which EPA is proposing action would not apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed action.

IV.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 proposed action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed partial approval and partial disapproval under CAA section 110 will not in-and-of itself create any new

regulations but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP.

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

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

IV.I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

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

List of Subjects in 40 CFR Part 52

Approval and promulgation of implementation plans, Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Pb, Reporting and recordkeeping requirements, and Sulfur dioxide.

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

Dated: September 30, 2014

Jared Blumenfeld

Regional Administrator

U.S. EPA, Region IX

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