

**§ 42.70 Oral argument.**

\* \* \* \* \*

(b) Demonstrative exhibits must be served at least seven business days before the oral argument and filed no later than the time of the oral argument.

**Subpart B—Inter Partes Review**

■ 6. Section 42.100 is amended by revising paragraph (b) to read as follows:

**§ 42.100 Procedure; pendency.**

\* \* \* \* \*

(b) A claim in an unexpired patent that will not expire before a final written decision is issued shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. A party may request a district court-type claim construction approach to be applied if a party certifies that the involved patent will expire within 18 months from the entry of the Notice of Filing Date Accorded to Petition. The request, accompanied by a party's certification, must be made in the form of a motion under § 42.20, within 30 days from the filing of the petition.

\* \* \* \* \*

■ 7. Section 42.107 is amended by revising paragraph (a) and removing and reserving paragraph (c) to read as follows:

**§ 42.107 Preliminary response to petition.**

(a) The patent owner may file a preliminary response to the petition. The response is limited to setting forth the reasons why no *inter partes* review should be instituted under 35 U.S.C. 314 and can include supporting evidence. The preliminary response is subject to the word count under § 42.24.

\* \* \* \* \*

(c) [Reserved]

\* \* \* \* \*

■ 8. Section 42.108 is amended by revising paragraph (c) to read as follows:

**§ 42.108 Institution of inter partes review.**

\* \* \* \* \*

(c) *Sufficient grounds.* *Inter partes* review shall not be instituted for a ground of unpatentability unless the Board decides that the petition supporting the ground would demonstrate that there is a reasonable likelihood that at least one of the claims challenged in the petition is unpatentable. The Board's decision will take into account a patent owner preliminary response where such a response is filed, including any testimonial evidence, but a genuine issue of material fact created by such testimonial evidence will be viewed in the light most favorable to the petitioner

solely for purposes of deciding whether to institute an *inter partes* review. A petitioner may seek leave to file a reply to the preliminary response in accordance with §§ 42.23 and 42.24(c). Any such request must make a showing of good cause.

**Subpart C—Post-Grant Review**

■ 9. Section 42.200 is amended by revising paragraph (b) to read as follows:

**§ 42.200 Procedure; pendency.**

\* \* \* \* \*

(b) A claim in an unexpired patent that will not expire before a final written decision is issued shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. A party may request a district court-type claim construction approach to be applied if a party certifies that the involved patent will expire within 18 months from the entry of the Notice of Filing Date Accorded to Petition. The request, accompanied by a party's certification, must be made in the form of a motion under § 42.20, within 30 days from the filing of the petition.

\* \* \* \* \*

■ 10. Section 42.207 is amended by revising paragraph (a) and removing and reserving paragraph (c) to read as follows:

**§ 42.207 Preliminary response to petition.**

(a) The patent owner may file a preliminary response to the petition. The response is limited to setting forth the reasons why no post-grant review should be instituted under 35 U.S.C. 324 and can include supporting evidence. The preliminary response is subject to the word count under § 42.24.

\* \* \* \* \*

(c) [Reserved]

\* \* \* \* \*

■ 11. Section 42.208 is amended by revising paragraph (c) to read as follows:

**§ 42.208 Institution of post-grant review.**

\* \* \* \* \*

(c) *Sufficient grounds.* Post-grant review shall not be instituted for a ground of unpatentability unless the Board decides that the petition supporting the ground would, if un rebutted, demonstrate that it is more likely than not that at least one of the claims challenged in the petition is unpatentable. The Board's decision will take into account a patent owner preliminary response where such a response is filed, including any testimonial evidence, but a genuine issue of material fact created by such testimonial evidence will be viewed in

the light most favorable to the petitioner solely for purposes of deciding whether to institute a post-grant review. A petitioner may seek leave to file a reply to the preliminary response in accordance with §§ 42.23 and 42.24(c). Any such request must make a showing of good cause.

**Subpart D—Transitional Program for Covered Business Method Patents**

■ 12. Section 42.300 is amended by revising paragraph (b) to read as follows:

**§ 42.300 Procedure; pendency.**

\* \* \* \* \*

(b) A claim in an unexpired patent that will not expire before a final written decision is issued shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. A party may request a district court-type claim construction approach to be applied if a party certifies that the involved patent will expire within 18 months from the entry of the Notice of Filing Date Accorded to Petition. The request, accompanied by a party's certification, must be made in the form of a motion under § 42.20, within 30 days from the filing of the petition.

\* \* \* \* \*

Dated: March 28, 2016.

Michelle K. Lee,

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2016-07381 Filed 3-31-16; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR part 52**

[EPA-R09-OAR-2014-0547; FRL-9939-89-Region 9]

**Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; California; Infrastructure Requirements for Ozone, Fine Particulate Matter (PM<sub>2.5</sub>), Lead (Pb), Nitrogen Dioxide (NO<sub>2</sub>), and Sulfur Dioxide (SO<sub>2</sub>)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is partially approving and partially disapproving 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 matter (PM<sub>2.5</sub>), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), and sulfur dioxide (SO<sub>2</sub>). 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 reclassifying certain regions of the state for emergency episode planning purposes with respect to ozone, NO<sub>2</sub>, SO<sub>2</sub>, and particulate matter (PM). Finally, we are approving into the California SIP several state provisions addressing CAA conflict of interest requirements and an emergency episode planning rule for Great Basin Unified Air Pollution Control District for PM.

**DATES:** This final rule is effective on May 2, 2016.

**ADDRESSES:** EPA has established a docket for this action, identified by Docket ID Number EPA–R09–OAR–2014–0547. The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

**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](mailto:mays.rory@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, the terms “we,” “us,” and “our” refer to EPA.

**Table of Contents**

I. Background
A. Statutory Requirements
B. NAAQS Addressed by This Final Rule
C. California’s Submittals
II. EPA’s Response to Comments
III. Final Action
A. Approvals and Partial Approvals
B. Partial Disapprovals
C. Consequences of Disapprovals
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

**I. Background**

EPA proposed action on several California infrastructure SIP submittals on October 23, 2014 (proposed rule).<sup>1</sup> Today’s rule finalizes that proposal in its entirety with minor changes due to comments, rulemakings, and other information that has come to light over the past year. We briefly summarize the infrastructure SIP statutory requirements and the eight NAAQS and five California SIP submittals to which this final rule applies. Section II of this final rule presents our response to public comments and Section III describes our final action, including full approvals, partial approvals, partial disapprovals, and consequences of each partial disapproval.

The rationale supporting EPA’s action is explained in our October 23, 2014 proposed rule and the five associated technical support documents (TSDs)<sup>2</sup> and will not be restated here. The proposed rule and TSDs are available in the docket for today’s rulemaking and online at <http://www.regulations.gov>, Docket ID number EPA–R09–OAR–2014–0547.

**A. Statutory Requirements**

Section 110(a)(1) of the CAA 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) of the CAA 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. 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 new source review

(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 Final Rule**

Between 1997 and 2012, EPA promulgated a series of new or revised NAAQS for ozone, PM<sub>2.5</sub>, Pb, NO<sub>2</sub>, and SO<sub>2</sub>, each of which triggered the requirement for states to submit infrastructure SIPs. The NAAQS addressed by this infrastructure SIP final rule 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).<sup>3</sup>
- 2008 ozone NAAQS, which revised the 8-hour ozone standards to 0.075 ppm.<sup>4</sup>
- 1997 PM<sub>2.5</sub> NAAQS, which set 24-hour average primary and secondary PM<sub>2.5</sub> standards of 65 µg/m<sup>3</sup> and annual primary and secondary PM<sub>2.5</sub> standards of 15 µg/m<sup>3</sup>.<sup>5</sup>
- 2006 PM<sub>2.5</sub> NAAQS, which revised the 1997 24-hour PM<sub>2.5</sub> standards to 35 µg/m<sup>3</sup>, and retained the 1997 annual standards.<sup>6</sup>
- 2012 PM<sub>2.5</sub> NAAQS, which revised the 1997 and 2006 annual PM<sub>2.5</sub> standards to 12.0 µg/m<sup>3</sup>, and retained the 2006 24-hour standards.<sup>7</sup>
- 2008 Pb NAAQS, which revised the 1978 Pb quarterly average standard of 1.5 µg/m<sup>3</sup> to a rolling 3-month average not to exceed 0.15 µg/m<sup>3</sup>, and revised the secondary standard to 0.15 µg/m<sup>3</sup>, making it identical to the revised primary standard.<sup>8</sup>
- 2010 NO<sub>2</sub> NAAQS, which revised the primary 1971 NO<sub>2</sub> annual standard of 53 parts per billion (ppb) by supplementing it with a new 1-hour average NO<sub>2</sub> standard of 100 ppb, and retained the secondary annual standard of 53 ppb.<sup>9</sup>
- 2010 SO<sub>2</sub> NAAQS, which established a new 1-hour average SO<sub>2</sub> standard of 75 ppb, retained the secondary 3-hour average SO<sub>2</sub> standard of 500 ppb, and established a mechanism for revoking the primary

<sup>1</sup> 79 FR 63350, October 23, 2014.

<sup>2</sup> The five TSDs are as follows: 1) “California Infrastructure SIP Overarching Technical Support Document,” September 2014 (“Overarching TSD”); 2) “California Infrastructure SIP Permit Programs Technical Support Document,” September 2014 (“Permit Programs TSD”); 3) “California Infrastructure SIP Interstate Transport Technical Support Document,” September 2014 (“Interstate Transport TSD”); 4) “California Infrastructure SIP Conflict of Interest Technical Support Document,” September 2014 (“Conflict of Interest TSD”); and 5) “California Infrastructure SIP Emergency Episode Planning Technical Support Document,” September 2014 (“Emergency Episode Planning TSD”).

<sup>3</sup> 62 FR 38856, July 18, 1997.

<sup>4</sup> 73 FR 16436, March 27, 2008.

<sup>5</sup> 62 FR 38652, July 18, 1997.

<sup>6</sup> 71 FR 61144, October 17, 2006.

<sup>7</sup> 78 FR 3086, January 15, 2013.

<sup>8</sup> 73 FR 66964, November 12, 2008.

<sup>9</sup> 75 FR 6474, February 9, 2010. The annual NO<sub>2</sub> standard of 0.053 ppm is listed in ppb for ease of comparison with the new 1-hour standard.

1971 annual and 24-hour SO<sub>2</sub> standards.<sup>10</sup>

### C. 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 final 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<sub>2.5</sub> NAAQS. ("California's 2007 Submittal").<sup>11</sup> 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<sub>2</sub> NAAQS. ("California's 2012 Submittal").

- March 6, 2014—"California Infrastructure SIP," which provided new submittals for the 2008 ozone, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS and supplemented and amended the state's prior infrastructure SIP submittals. ("California's 2014 Submittal").

- June 2, 2014—Great Basin Unified Air Pollution Control District (APCD) Rule 701 ("Air Pollution Episode Plan"), which addresses CAA section 110(a)(2)(G) for the 1987 coarse particulate matter (PM<sub>10</sub>) NAAQS and 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2012 PM<sub>2.5</sub> 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 acting on all of these submittals since they collectively address the infrastructure SIP requirements for the NAAQS addressed by this final 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 110(a)(2)(D)(i)(I) with respect to the 2006 PM<sub>2.5</sub>, 2012 PM<sub>2.5</sub>, 2008 ozone, and 2010 SO<sub>2</sub> NAAQS.<sup>12</sup> Thus, as noted in our proposed rule, we are not addressing the requirements of section 110(a)(2)(D)(i)(I) with respect to these four NAAQS in this final rule.

## II. EPA's Response to Comments

The public comment period on EPA's proposed rule opened on October 24, 2014, the date of its publication in the **Federal Register**, and closed on November 24, 2014. During this period, EPA received four comment letters, each of which is available in the docket to today's final rule.<sup>13</sup> Three letters relate to permitting requirements and we address each of those here. The fourth letter is from Wyoming Department of Environmental Quality<sup>14</sup> and supports EPA's approach to the review of infrastructure SIPs.

### Comment #1:

Mr. Robert Ukeiley commented on EPA's proposal with respect to the permitting-related infrastructure SIP requirements for the prevention of significant deterioration (PSD).<sup>15</sup> Specifically, Mr. Ukeiley requested confirmation that the SIP-approved PSD permit programs for seven air districts (Eastern Kern, Imperial County, Monterey Bay Unified, Placer County, Sacramento Metro, San Joaquin Valley, and Yolo-Solano) include requirements for PM<sub>2.5</sub> increments or, for any air district whose SIP-approved PSD program lacks such requirements, that

EPA disapprove the PSD-related infrastructure SIP elements. He also asked that EPA disapprove the PSD-related elements of the infrastructure SIP submittals for any air district whose SIP-approved PSD rules contain significant impact levels (SILs) provisions for PM<sub>2.5</sub>.

### Response to Comment #1:

We have confirmed that the SIP-approved PSD permit rules of the seven air districts named in Mr. Ukeiley's letter include PM<sub>2.5</sub> increment requirements that meet the federal requirements. Six of these air districts (Eastern Kern, Imperial County, Placer County, Sacramento Metro, San Joaquin Valley, and Yolo-Solano) incorporate the applicable federal regulations by reference and the date of such incorporation was after the effective date of the PM<sub>2.5</sub> increment requirements, thus ensuring their inclusion.<sup>16</sup> The remaining air district (Monterey Bay Unified) has a PSD permit rule that also includes the applicable PM<sub>2.5</sub> increment requirements.<sup>17</sup> Furthermore, EPA has finalized approval of the PSD permit rules for five additional air districts (Butte County, Feather River, Great Basin Unified, San Luis Obispo County, and Santa Barbara County),<sup>18</sup> each of which includes the applicable PM<sub>2.5</sub> increment requirements. Thus, we are finalizing approval of California's Infrastructure SIP Submittals for the PSD-related elements for these 12 air districts.

With respect to SILs for PM<sub>2.5</sub>, on January 22, 2013, at EPA's request, the U.S. Court of Appeals for the District of Columbia vacated and remanded

<sup>16</sup> The federal requirements for PSD increments for PM<sub>2.5</sub> became effective October 20, 2010 and thus air district PSD programs that incorporated the federal regulations by reference after this date include the applicable PSD increment requirements for PM<sub>2.5</sub>. The adoption and SIP-approval dates of the SIP-approved PSD permit rules for five of these air districts are as follows: Eastern Kern (Rule 210.4, adopted January 12, 2012), Imperial County (Rule 904, adopted December 20, 2011), Placer County (Rule 518, adopted February 10, 2011), and Yolo-Solano (Rule 3.24 adopted June 13, 2012), which were each SIP-approved on December 10, 2012 (77 FR 7331); and Sacramento Metro (Rule 203, adopted January 27, 2011), which was SIP-approved on August 29, 2013 (78 FR 53271). San Joaquin Valley APCD's Rule 2410 (adopted June 16, 2011) was approved into the California SIP on October 26, 2012 (77 FR 65305), and similarly includes the applicable PSD increment requirements for PM<sub>2.5</sub>. However, San Joaquin Valley is currently designated nonattainment for both the 1997, 2006, and 2012 PM<sub>2.5</sub> NAAQS. Therefore, the SIP-approved PSD program does not apply to PM<sub>2.5</sub> emissions from new or modified major stationary sources.

<sup>17</sup> Monterey Bay Unified APCD Rule 207 (adopted April 20, 2011), which was SIP-approved on March 26, 2015 (80 FR 15899).

<sup>18</sup> 80 FR 69880, November 12, 2015.

<sup>10</sup> 75 FR 35520, June 22, 2010. The 3-hour SO<sub>2</sub> standard of 0.5 ppm is listed in ppb for ease of comparison with the new 1-hour standard.

<sup>11</sup> 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<sub>2.5</sub> NAAQS. 76 FR 34872, June 15, 2011 and 76 FR 43175, July 20, 2011 (transport prongs 1 and 2); 76 FR 48002, August 8, 2011 and 76 FR 48006, August 8, 2011 (transport prong 3); and 76 FR 34608, June 14, 2011 and 76 FR 43149, July 20, 2011 (transport prong 4).

<sup>12</sup> California made an infrastructure SIP submittal for the 2006 PM<sub>2.5</sub> NAAQS on July 7, 2009 that was subsequently withdrawn on July 18, 2014. All infrastructure SIP requirements for that 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 PM<sub>2.5</sub> NAAQS. EPA has issued a finding of failure to submit such SIP revisions. 79 FR 63536, October 24, 2014.

<sup>13</sup> See document numbers EPA-R09-OAR-2014-0547-0144 thru 0147 at <http://www.regulations.gov> under docket ID number EPA-R09-OAR-2014-0547.

<sup>14</sup> Letter from Todd Parfitt, Director, Wyoming Department of Environmental Quality, to Gina McCarthy, Administrator, U.S. EPA, November 24, 2014.

<sup>15</sup> Email from Robert Ukeiley to Rory Mays, U.S. EPA Region IX, October 24, 2014.

portions of EPA's significant impact levels (SILs) requirements for PM<sub>2.5</sub>.<sup>19</sup> Later that year EPA removed the vacated portion of the SILs requirements from 40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2).<sup>20</sup> However, several SIP-approved PSD rules in California still include the vacated PM<sub>2.5</sub> SILs provisions.

Specifically, six of the 12 air districts in California with SIP-approved PSD permit rules include PM<sub>2.5</sub> SILs provisions, including Eastern Kern, Feather River, Imperial County, Placer County, Sacramento Metro, and San Joaquin Valley. Given the clarity of the Court's decision and EPA's removal of the vacated portion of the SILs requirements from 40 CFR 51.166(k)(2), it would now be inappropriate for any pending or proposed permits in these districts to rely on the PM<sub>2.5</sub> SILs provision in their rules as an absolute "safe harbor" when a substantial portion of the PM<sub>2.5</sub> NAAQS or increment is known to be consumed.<sup>21</sup> However, as we previously stated following the Court's decision, EPA does not interpret the Court's decision to preclude the use of SILs for PM<sub>2.5</sub> entirely.<sup>22</sup> Permitting authorities should consult with the EPA before using any of the SIL values in the EPA's regulations for this purpose (including the PM<sub>2.5</sub> SIL value in section 51.165(b)(2), which was not vacated by the Court).

EPA has advised the districts with PM<sub>2.5</sub> SILs that the Court determined to be invalid to begin preparations to remove those provisions as soon as feasible, which may be in conjunction with the next otherwise planned SIP revision. EPA has informed these

districts that new permits issued solely on the basis of these SILs provisions are inconsistent with the Clean Air Act and may be difficult to defend in administrative and judicial challenges as they are without legal effect. However, as the previously approved PM<sub>2.5</sub> SILs provisions in the California SIP are no longer enforceable, EPA does not believe the existence of the provisions in the State's implementation plan precludes today's approval of the infrastructure SIP submissions as they relate to the PSD-related elements for these six districts for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

The PSD permit rules for the remaining six air districts (Butte County, Great Basin Unified, Monterey Bay Unified, San Luis Obispo County, Santa Barbara County, and Yolo-Solano) do not include any PM<sub>2.5</sub> SILs provision. Accordingly, we are finalizing approval of California's Infrastructure SIP Submittals for the PSD-related elements for all 12 air districts with SIP-approved PSD programs.

*Comment #2:*

Mojave Desert Air Quality Management District (AQMD) commented that EPA was incorrect in stating that the district's minor NSR program had not been approved into the California SIP.<sup>23</sup> The comment letter states that district Rules 1300, 201, and 219 cover preconstruction review of any equipment that emits air contaminants (and which is not exempt from permitting requirements) and that these rules have been approved into the California SIP. Accordingly, the district requested to be removed from the list of air districts that lack SIP-approved minor NSR programs.

*Response to Comment #2:*

EPA agrees that Mojave Desert AQMD indeed has a minor NSR program in the California SIP that is sufficient to approve California's Infrastructure SIP Submittals consistent with the requirement of section 110(a)(2)(C) that the SIP include a program for the regulation of minor sources, though with one clarification.

In reviewing the minor NSR permit programs of California's 35 air districts, EPA generally relied on permit programs that applied to the whole air district. However, in some cases we found that air districts with two or more counties had county-based minor NSR programs that had been approved into the California SIP and applied to the NAAQS addressed by this rulemaking. For example, for Feather River AQMD

we found that minor NSR rules for each of the two counties in the air district, Yuba and Sutter counties, had been approved into the California SIP and covered the NAAQS addressed by our rulemaking.<sup>24</sup> On that basis, we proposed to partially approve California's infrastructure SIP Submittals with respect to this minor NSR requirement.

We inadvertently missed identifying the county-based minor NSR programs that have been approved into the California SIP for the portions of the two counties (San Bernardino and Riverside counties) that are within the jurisdiction of Mojave Desert AQMD. Specifically, EPA previously approved each county's Rule 201,<sup>25</sup> which require permits for all equipment that may emit air contaminants, and each county's Rule 102,<sup>26</sup> which define the term "air contaminants," into the California SIP. Rule 1300, which is a district-based, rather than county-based, rule, contains additional requirements for the district's minor NSR program.<sup>27</sup> These rules are sufficient to address the requirement of section 110(a)(2)(C) that the SIP include a program for the regulation of minor sources.

Thus, while Mojave Desert AQMD is correct that the district has sufficient minor NSR permit rules in the California SIP for purposes of CAA section 110(a)(2)(C), it is on the basis of the SIP-approved county-based Rules 102 and 201 that we remove Mojave Desert AQMD from the list of air districts that lack SIP-approved minor NSR programs. Please refer to section III of this final rule where we finalize this minor change from our proposed partial disapproval for Mojave Desert AQMD.<sup>28</sup>

*Comment #3:*

Northern Sonoma County Air Pollution Control District (APCD) states that its Board of Directors revised four regulations implementing the district's PSD program, for submittal through ARB as revisions to the California SIP, and that those revisions address the deficiencies identified in EPA's proposed rule.<sup>29</sup> Therefore, the district

<sup>24</sup> Permit Programs TSD, Appendix D ("California Minor NSR Permit Programs").

<sup>25</sup> 43 FR 52237, November 9, 1978.

<sup>26</sup> 55 FR 49281, November 27, 1990 for San Bernardino County and 43 FR 59489, December 21, 1978 for Riverside County.

<sup>27</sup> 61 FR 58133, November 13, 1996.

<sup>28</sup> Additionally, Mojave Desert AQMD's letter led us to reexamine the SIP status of minor source permit rules for the other four air districts that we proposed to partially disapprove for section 110(a)(2)(C). Our evaluation of the minor source programs for these four districts is discussed further in section III of this final rule.

<sup>29</sup> Letter from Barbara Lee, Air Pollution Control Officer, Northern Sonoma County APCD to Deborah

Continued

<sup>19</sup> *Sierra Club v. EPA*, 705 F.3d 458, 463–464 (D.C. Cir. 2013).

<sup>20</sup> 78 FR 73698, December 9, 2013.

<sup>21</sup> Five of the applicable districts (Eastern Kern, Feather River, Imperial County, Placer County, and Sacramento Metro) have provided letters to EPA indicating that they will implement their PSD rules consistent with this approach and EPA's Guidance for PM<sub>2.5</sub> Permit Modeling. See Memorandum from Stephen D. Page, Director, OAQPS, "Guidance for PM<sub>2.5</sub> Permit Modeling," May 20, 2014. For four of these districts, these letters are available in the dockets of the rulemakings on the districts' PSD rules: For Eastern Kern, Imperial County, and Placer County, see 77 FR 73316, December 10, 2012; and for Feather River, see 80 FR 69880, November 12, 2015. For Sacramento Metro, a copy of the district's letter dated October 1, 2015 is included in the docket to this final rule. For the San Joaquin Valley, the area is currently designated nonattainment for the 1997, 2006, and 2012 PM<sub>2.5</sub> NAAQS and, therefore, San Joaquin Valley APCD's SIP-approved PSD permit rule does not apply to PM<sub>2.5</sub> emissions from new or modified major stationary sources.

<sup>22</sup> U.S. EPA, Office of Air Quality Planning and Standards, "Circuit Court Decision on PM<sub>2.5</sub> Significant Impact Levels and Significant Monitoring Concentration, Questions and Answers," March 4, 2013, pp. 3–4.

<sup>23</sup> Letter from Karen Nowak, District Counsel, Mojave Desert AQMD, to Rory Mays, U.S. EPA Region IX, November 20, 2014.

requested that EPA approve such PSD submittal and approve, rather than partially disapprove, Northern Sonoma County APCD with respect to the PSD-related infrastructure SIP requirements.

*Response to Comment #3:*

EPA received Northern Sonoma County APCD's PSD program SIP revision on December 11, 2014 and it became complete by operation of law on June 11, 2015. While we have begun our review of that SIP submittal, we have not yet issued any proposed or final rulemaking on the submittal. We anticipate proposing and finalizing action on that SIP submittal over the coming months, per the CAA section 110(k)(2) deadline for EPA to take final action within 12 months of a completeness determination. To the extent that the district's PSD SIP revision resolves the deficiency identified in our proposed rule on California's Infrastructure SIP Submittals (*i.e.*, requirements for a baseline date for PSD increments for PM<sub>2.5</sub>), we would accordingly update the California SIP with respect to the PSD-related requirements of CAA section 110(a)(2) for Northern Sonoma County APCD.

### III. Final Action

Under CAA section 110(k)(3), and based on the evaluation and rationale presented in the proposed rule, the related TSDs, and this final rule, EPA is approving in part and disapproving in part California's Infrastructure SIP Submittals for the 1997 ozone, 2008 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2012 PM<sub>2.5</sub>, 2008 Pb, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. In the following subsections, we list the elements for which we are finalizing approval or disapproval and provide a summary of the basis for those elements that are partially disapproved. We also describe the consequences of our disapprovals.

#### A. Approvals and Partial Approvals

Based upon our evaluation, as presented in our proposed rule and our five TSDs, and additional information discussed below, EPA approves California's Infrastructure SIP Submittals with respect to the 1997 ozone, 2008 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2012 PM<sub>2.5</sub>, 2008 Pb, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS for the following infrastructure SIP requirements. 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.<sup>30</sup>
- 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. Approval of State and Local Provisions Into the California SIP

As part of these approvals, we also 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 approve into the SIP five state provisions from the California Government Code statutes and California Code of Regulations, which were submitted in California's 2014 Submittal and address the conflict of interest requirements of CAA sections 110(a)(2)(E)(ii) and 128. These provisions include California Government Code, Title 9, Sections 82048, 87103, and 87302, and California Code of Regulations, Title 2, Sections 18700 and 18701. For discussion of these conflict of interest provisions, please see our Conflict of Interest TSD.

We also approve Great Basin Unified Air Pollution Control District (APCD) Rule 701 into the California SIP with respect to the 1987 PM<sub>10</sub>, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2012 PM<sub>2.5</sub> NAAQS for the emergency episode planning

<sup>30</sup> As noted in section I of this final 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<sub>2.5</sub>, 2012 PM<sub>2.5</sub>, 2008 ozone, and 2010 SO<sub>2</sub> NAAQS. Thus we are not taking any action with respect to the requirements of section 110(a)(2)(D)(i)(I) with respect to these four NAAQS in this final rule.

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. Approval of Reclassification Requests for Emergency Episode Planning

California's 2012 and 2014 Submittals requested that EPA reclassify several air quality control regions (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<sub>2</sub>, and SO<sub>2</sub>. In our proposed rule, we stated that the authority to take final action to reclassify AQCRs is reserved by the EPA Administrator. That conclusion was based upon prior examples from 1980 and 1981 where the Administrator reclassified certain AQCRs in Arizona, California, and Nevada<sup>31</sup> and upon our initial review of EPA's Delegations Manual.<sup>32</sup> However, we have since reviewed the earlier versions of EPA's regulations that gave rise to the emergency episode regulations in 40 CFR part 51, subpart H,<sup>33</sup> and re-reviewed the Delegations Manual. In particular, Delegation 7–10 ("Approval/Disapproval of State Implementation Plans") was established in 1989 and grants Regional Administrators the authority to "propose or take final action on any State implementation plan under Section 110 of the Clean Air Act." In the context of EPA acting on emergency episode SIP revisions, whether as part of an infrastructure SIP revision or an independent SIP revision, consistent with CAA section 110(a)(2)(G) (*i.e.*, part of section 110 of the CAA), and our implementing regulations at 40 CFR part 51, subpart H, whose requirements are dependent upon AQCR classification, we find that

<sup>31</sup> See 45 FR 67345, October 10, 1980 for Arizona; 46 FR 3883, January 16, 1981 for California; and 45 FR 7544, February 4, 1980 for Nevada.

<sup>32</sup> EPA's Delegations Manual, Chapter 7 ("Clean Air Act"), available at: <http://intranet.epa.gov/ohr/rmpolicy/ads/dm/index7.htm>.

<sup>33</sup> See the 1983 versions of 40 CFR 51.3 ("Classification of regions") and 40 CFR 51.16 ("Prevention of air pollution emergency episodes"), which refer to CAA sections 110, 301(a), 313, and 319 as the statutory basis for such regulations. (By contrast, 40 CFR part 51, subpart H does not have statutory citations.) Section 301(a) grants the Administrator authority to prescribe regulations necessary to carry out the CAA, which, as applied here, refers to the emergency episode requirements of section 110(a)(2)(G). Section 301(a) also limits the Administrator's ability to delegate authority regarding rules that are required to be promulgated under the procedures of section 307(d). Since classifications are not among the procedures of section 307(d)(1), there is no restriction on the Administrator's authority to delegate decision-making on area classification, such as those for emergency episode planning.

EPA's Regional Administrators indeed have authority to reclassify AQCRs for purposes of emergency episode planning.

Accordingly, on the basis of California's ambient air quality data for 2011–2013 and the evaluation presented in our proposed rule and Emergency Episode Planning TSD, we hereby grant five of California's ten requests, and deny the five remaining requests, to reclassify AQCRs for emergency episode planning purposes for ozone, NO<sub>2</sub>, and SO<sub>2</sub>. We also are reclassifying two AQCRs for PM as part of our evaluation of the State's emergency episode planning for the PM<sub>2.5</sub> NAAQS.

For ozone, we reclassify two AQCRs, Lake Tahoe and North Central Coast, to Priority III. We deny the State's reclassification requests for ozone for five AQCRs, including Mountain Counties, Sacramento Valley, San Diego, San Francisco Bay Area, and Southeast Desert. As a result, upon the effective date of this final rule, California will have seven Priority I AQCRs for ozone, including the five for which we deny California's reclassification request and two others (Metropolitan Los Angeles and San Joaquin Valley AQCRs). California's applicable air districts have adequate emergency episode contingency plans for ozone for six of these seven Priority I areas, including Metropolitan Los Angeles, Sacramento Valley, San Diego, San Francisco Bay Area, San Joaquin Valley, and Southeast Desert AQCRs. Therefore, we partially approve California's 2007 and 2014 Submittals with respect to the 1997 ozone and 2008 ozone NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G). Please see section III.B.iii of this final rule for our partial disapproval of these submittals with respect to the Mountain Counties AQCR.

For NO<sub>2</sub>, we reclassify the Metropolitan Los Angeles AQCR to Priority III. As a result, upon the effective date of this final rule, the whole state will be classified Priority III for NO<sub>2</sub>, and therefore no emergency episode contingency plan for NO<sub>2</sub> will be required for any of the state's 14 AQCRs. Accordingly, we approve California's 2012 and 2014 Submittals with respect to the 2010 NO<sub>2</sub> NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G).

For SO<sub>2</sub>, we reclassify the Metropolitan Los Angeles and San Francisco Bay Area AQCRs to Priority III. As a result, upon the effective date of this final rule, the whole state will be classified Priority III for SO<sub>2</sub>, and

therefore no emergency episode contingency plan for SO<sub>2</sub> will be required for any of the state's 14 AQCRs. Thus, we approve California's 2014 Submittal with respect to the 2010 SO<sub>2</sub> NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G).

For PM, we identified two areas where concentrations exceeded EPA's recommended 24-hour PM<sub>2.5</sub> threshold of 140.4 µg/m<sup>3</sup> for emergency episode planning:<sup>34</sup> Great Basin Valley AQCR and San Joaquin Valley AQCR. For these two areas, we also reviewed the 24-hour PM<sub>10</sub> air quality data to determine the appropriate emergency episode classification under 40 CFR 51.150. Accordingly, for PM, we reclassify Great Basin Valley AQCR to Priority I and San Joaquin Valley AQCR to Priority II. As discussed in section III.A.i of this final rule, we are approving Great Basin Unified APCD Rule 701 into the California SIP and, as such, Great Basin Unified APCD has an adequate emergency episode contingency plan for PM. Therefore, we partially approve California's 2007 and 2014 Submittals with respect to the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2012 PM<sub>2.5</sub> NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G). Please see section III.B.iii of this final rule for our partial disapproval of these submittals with respect to the San Joaquin Valley AQCR.

#### iii. Approval of CAA Section 110(a)(2)(C) for Minor NSR

EPA previously proposed to partially disapprove five of California's 35 air districts for CAA section 110(a)(2)(C) with respect to minor NSR on the basis that they each lacked permit rules for minor sources in the California SIP.<sup>35</sup> Upon further review of the California SIP and comments received during the public comment period, EPA has found that each of these air districts does, in fact, have permit rules for minor sources in the California SIP that cover all NAAQS, as discussed below.

As noted in Mojave Desert AQMD's comment letter, Mojave Desert AQMD has county-based minor NSR rules in the California SIP for each of its two counties (San Bernardino and Riverside counties), which we inadvertently

missed during our original evaluation of the California Infrastructure SIP Submittals.<sup>36</sup> This also led us to reexamine the SIP status of minor source permit rules for the other four air districts that we had proposed to partially disapprove for section 110(a)(2)(C), including Lake County, Mariposa County, Northern Sierra (Plumas and Sierra counties, only),<sup>37</sup> and Tuolumne County. This reexamination involved reviewing the original copies of California's SIP submittals dated February 22, 1972 and June 30, 1972; EPA's approval of these submittals, as codified at 40 CFR 52.220 (b) and (c)(6); a copy of the California SIP as it existed in August 1978; subsequent EPA rulemakings that revised the California SIP; and other historic records as they pertain to these four air districts.<sup>38</sup>

We determined that, for each of the five remaining counties (Lake, Mariposa, Plumas, Sierra, and Tuolumne counties) in these four districts, the county-based rules that constitute each county's minor source permit program were approved into the California SIP<sup>39</sup> and have never been removed or replaced. These minor source permit programs require minor sources to obtain an Authority to Construct permit prior to construction and cover all NAAQS through a broad definition of the term "air contaminants" that includes all NAAQS and their precursors. Since the basis of our proposed partial disapproval is no longer applicable (*i.e.*, lack of a SIP-approved permit program for minor sources) and as these districts now meet the same test used to propose approval for other districts (*i.e.*, having such a program in the SIP that applies to all NAAQS addressed by this final rule), we are finalizing approval for these five additional districts, including Lake County, Mariposa County, Mojave Desert, Northern Sierra, and Tuolumne County, as meeting the requirements of

<sup>36</sup> See section II of this final rule.

<sup>37</sup> Note that we had proposed to partially disapprove Northern Sierra AQMD for Plumas and Sierra counties only, since we had already identified Nevada County as having a SIP-approved minor NSR program. See 79 FR 63350 at 63359, footnote 35, October 23, 2014 and our Permit Programs TSD, footnote 34, p. 9.

<sup>38</sup> See Memorandum from Laura Yannayon, EPA Region IX to R. Mays, EPA Region IX, "Investigation of Approved SIP Contents for Lake, Tuolumne, Mariposa, Plumas and Sierra Counties, related to minor source permit programs," October 30, 2015. This memorandum, as well as short narratives on each of the five counties, are included in the docket to this final rule.

<sup>39</sup> 37 FR 10842, May 31, 1972 and 37 FR 19812, September 22, 1972.

<sup>34</sup> See 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, pp. 6–7 and Attachment B ("Recommended Interim Significant Harm Level, Priority Levels, and Action Levels for PM<sub>2.5</sub> Emergency Episode Plans (EEPs)").

<sup>35</sup> 79 FR 63350 at 63359, October 23, 2014, and our Permit Programs TSD, pp. 8–10.

CAA sections 110(a)(2)(C) with respect to minor NSR.

In sum, all 35 air districts in California have minor NSR permit programs in the California SIP that cover all NAAQS. Notwithstanding this approval, to the extent that air districts have revised their permit rules for minor sources and such revisions are not yet reflected in the California SIP, we recommend that such districts work with ARB to submit SIP revisions to revise the California SIP.

#### B. Partial Disapprovals

EPA partially disapproves 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 final rule due to PSD program deficiencies in certain air districts).
- Section 110(a)(2)(D)(i) (in part): Interstate pollution transport (for all NAAQS addressed by this final 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 final 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<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2012 PM<sub>2.5</sub> 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 final rule due to PSD program deficiencies in certain air districts).

#### i. Ambient Air Monitoring Partial Disapproval

We 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).

#### ii. Permit Program-Related Partial Disapprovals

We 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.

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 hereby 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 partially disapprove California's Infrastructure SIP Submittals for multiple air districts. We provide a summary of the basis and district-by-district accounting of our partial disapprovals in the following paragraphs, including consideration of comments from Northern Sonoma County APCD, and review of EPA rulemaking on PSD and nonattainment NSR SIP submittals that has occurred since our proposal on California's Infrastructure SIP Submittals.

#### 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<sub>x</sub>) as ozone precursors; provisions to regulate PM<sub>2.5</sub>, including condensable PM<sub>2.5</sub>, PM<sub>2.5</sub> precursor emissions, and PSD increments for PM<sub>2.5</sub>; and provisions to regulate greenhouse gases (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 our proposed rule.<sup>40</sup>

We proposed to approve seven air districts as meeting the structural PSD requirements. Our proposed approval of one of these seven air districts, Monterey Bay Unified APCD, was contingent on finalizing approval of the district's PSD SIP revision.<sup>41</sup> We have taken final action on that SIP revision, approving provisions in the California SIP that resolve the deficiencies identified in our proposed rule.<sup>42</sup> Thus, we finalize approval of seven districts, including Eastern Kern, Imperial County, Monterey Bay Unified, Placer County, Sacramento Metro, San Joaquin Valley, and Yolo-Solano air districts, as meeting the PSD-related requirements of CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for all NAAQS addressed by this final rule.

In addition, our proposed rule on California's Infrastructure SIP Submittals identified eight air districts that had submitted PSD SIP revisions for which EPA had not yet proposed or finalized action.<sup>43</sup> We proposed to partially disapprove these districts with respect to the PSD-related requirements of section 110(a)(2)(C), (D)(i)(II), and (J) since they were subject to the existing PSD FIP at 40 CFR 52.21, rather than SIP-approved PSD programs. We have since finalized approval of the PSD SIP revisions of five of those eight districts,<sup>44</sup> including provisions addressing the same structural PSD requirements as we relied on to propose approval for the set of seven districts discussed above. Since the basis of our proposed partial disapproval is no longer applicable and as these districts now meet the same test used to propose approval for other districts, we are finalizing approval for these five

<sup>40</sup> *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S. Ct. 2427. EPA has since amended the federal PSD program regulations to allow for the rescission of certain PSD permits issued by EPA and delegated reviewing authorities (e.g., California air districts) for purposes of regulating GHGs. See 80 FR 26183, May 7, 2015. Notwithstanding those amendments, PSD programs must still include provisions to regulate GHGs and such provisions continue to be relevant to our review of infrastructure SIPs.

<sup>41</sup> 79 FR 63350 at 63358, October 23, 2014.

<sup>42</sup> 80 FR 15899, March 26, 2015. We finalized a limited approval and limited disapproval of Monterey Bay Unified APCD's PSD SIP revision. While not a full approval, that final rule approved provisions into the California SIP for the regulation of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, condensable PM<sub>2.5</sub>, or PSD increments for PM<sub>2.5</sub>.

<sup>43</sup> 79 FR 63350 at 63359, October 23, 2014.

<sup>44</sup> 80 FR 69880, November 12, 2015.

additional districts, including Butte County, Feather River, Great Basin Unified, San Luis Obispo County, and Santa Barbara County, as meeting the PSD-related requirements of CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for all NAAQS addressed by this final rule. In sum, 12 of California's 35 air districts meet the PSD-related requirements for these infrastructure SIP elements.

Four other 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 lacks a SIP-approved PSD program to address any other regulated NSR pollutant. Thus, we partially disapprove California's Infrastructure SIP Submittals with respect to South Coast AQMD for the PSD-related requirement of sections 110(a)(2)(C), (D)(i)(II), and (J).<sup>45</sup>

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<sub>x</sub> as an ozone precursor and does not include requirements for the regulation of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, condensable PM<sub>2.5</sub>, or PSD increments for PM<sub>2.5</sub>. Therefore, we partially disapprove California's Infrastructure SIP Submittals with respect to North Coast Unified AQMD 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<sub>2.5</sub>. As discussed in section II of this final rule, Northern Sonoma County APCD has submitted a PSD SIP revision that is pending rulemaking by EPA within the time afforded by CAA section 110(k)(2). To the extent that Northern Sonoma County APCD's PSD SIP revision resolves the deficiency identified in our proposed rule on California's Infrastructure SIP Submittals (*i.e.*, requirements for a baseline date for PSD increments for PM<sub>2.5</sub>), such requirements have not yet been approved into the California SIP and, thus, the deficiency remains. Accordingly, we partially disapprove California's Infrastructure SIP

Submittals with respect to Mendocino County AQMD and Northern Sonoma County APCD for this specific deficiency in the PSD-related requirements of section 110(a)(2)(C), (D)(i)(II), and (J).

The remaining 19 air districts are subject to the existing PSD FIP in 40 CFR 52.21, including Amador County, Antelope Valley, Bay Area, Calaveras County, Colusa County, El Dorado County, Glenn County, Lake County, Lassen County, Mariposa County, Modoc County, Mojave Desert, Northern Sierra, San Diego County, Shasta County, Siskiyou County, Tehama County, Tuolumne County, and Ventura County.

At the time of our proposal on California's Infrastructure SIP Submittals, three of these districts (Bay Area, San Diego County, and Ventura County air districts) had submitted PSD SIP revisions for which EPA had not yet proposed or finalized action. EPA has proposed a limited approval and limited disapproval of the SIP revision from Bay Area AQMD, noting that most of the submittal's rules satisfy applicable requirements under CAA section 110(a)(2)(C) for the regulation of the modification and construction of stationary sources.<sup>46</sup> However, as we have not yet finalized that proposal, the Bay Area AQMD remains subject to the PSD FIP in 40 CFR 52.21. San Diego County APCD withdrew its PSD SIP submittal on June 10, 2015, while Ventura County APCD's submittal is pending EPA rulemaking. These two districts similarly remain subject to the PSD FIP at this time.

Accordingly, we partially disapprove California's Infrastructure SIP Submittals as to each of these 19 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 III.C of this final rule, the partial disapprovals with respect to these 19 districts would not result in new FIP obligations, because EPA has already promulgated a PSD FIP for each district.

#### 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 reviewed the nonattainment NSR programs of California's 22 air districts that are designated nonattainment for ozone, PM<sub>2.5</sub>, or Pb, as applicable.<sup>47</sup> 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 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. We refer to this aspect of section 110(a)(2)(D)(i)(II) herein as the "nonattainment NSR element."

We 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<sub>2.5</sub> NAAQS); and San Joaquin Valley (for the 1997 ozone, 2008 ozone, 1997 PM<sub>2.5</sub>, and 2006 PM<sub>2.5</sub> NAAQS). Since the time of our proposal on California's Infrastructure SIP Submittals, we finalized approval of South Coast AQMD's nonattainment NSR SIP revision with respect to the PM<sub>2.5</sub> NAAQS.<sup>48</sup> As a result, this district implements its SIP-approved nonattainment NSR program for the portions of the district that are designated nonattainment for the 1997 ozone, 2008 ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2012 PM<sub>2.5</sub>, and 2008 Pb NAAQS. Thus, South Coast AQMD also meets the nonattainment NSR element via a SIP-approved program.

An additional eight air districts, which have each been designated nonattainment for more than one NAAQS, have affirmed that they implement the interim nonattainment NSR program in 40 CFR part 51, Appendix S, including 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, and Yolo-

<sup>45</sup> We note that South Coast AQMD is subject to the PSD FIP in 40 CFR 52.21 for all regulated NSR pollutants except GHGs (*see* 40 CFR 52.270(b)(10)).

<sup>46</sup> 80 FR 52236 at 52243, August 28, 2015.

<sup>47</sup> No area of California has been designated nonattainment for the 2010 NO<sub>2</sub> or 2010 SO<sub>2</sub> NAAQS.

<sup>48</sup> 80 FR 24821, May 15, 2015.

Solano (for the 1997 ozone, 2008 ozone, and 2006 PM<sub>2.5</sub> NAAQS).<sup>49</sup>

Two other districts, Amador County APCD and Tuolumne County APCD, are designated nonattainment only for the 1997 ozone NAAQS. EPA revoked that NAAQS as part of the final implementation rule for the 2008 ozone NAAQS,<sup>50</sup> which relieves these two air districts of the requirement to submit nonattainment NSR SIP revisions.<sup>51</sup>

Lastly, portions of San Luis Obispo County APCD and Tehama County APCD are designated nonattainment only for the 2008 ozone NAAQS. Until 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 new or modified major source emitting an applicable nonattainment pollutant (*i.e.*, NO<sub>x</sub> or volatile organic compounds) in the respective nonattainment areas.<sup>52</sup>

In sum, we approve California's Infrastructure SIP Submittals for the 22 air districts designated nonattainment for ozone, PM<sub>2.5</sub>, 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

As described in section IV.B.i of our proposed rule, with respect to the international pollution abatement requirement in CAA section 110(a)(2)(D)(ii), we noted that EPA has no reason to approve or disapprove any existing state rules with regard to CAA section 115 since the EPA Administrator has made no formal notification that emissions originating in California endanger public health or welfare in a foreign country. With respect to the interstate pollution abatement requirement in CAA section

110(a)(2)(D)(ii), we evaluated California's 2014 Submittal only for purposes of compliance with section 126(a).<sup>53</sup> Section 126(a) of the Act 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.

We proposed that 10 of California's 35 air districts have SIP-approved PSD permit programs that require notice to nearby states consistent with EPA's relevant requirements, and proposed to partially disapprove the remaining 25 air district with respect to CAA section 110(a)(2)(D)(ii). We have since finalized approval of the PSD SIP revisions of five additional districts,<sup>54</sup> including Butte County, Feather River, Great Basin Unified, San Luis Obispo County, and Santa Barbara County, which similarly require notice to nearby states consistent with EPA's relevant requirements. Thus, the basis of our proposed partial disapproval is no longer applicable with respect to these five districts and these districts meet the same test used to propose approval for other districts.

We therefore approve California's 2014 Submittal for section 110(a)(2)(D)(ii) regarding compliance with the requirements of section 115 for the whole state and with respect to section 126(a) for the following 15 air districts: Butte County, Eastern Kern, Feather River, Great Basin Unified, Imperial County, Mendocino County, Monterey Bay Unified, North Coast Unified, Northern Sonoma County, Placer County, Sacramento Metro, San Joaquin Valley, San Luis Obispo County, Santa Barbara County and Yolo-Solano.

The remaining 20 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. Therefore, we 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 20 air districts: Amador County, Antelope Valley, Bay Area, Calaveras County, Colusa County, El Dorado County, Glenn County, Lake County, Lassen County, Mariposa County, Modoc County, Mojave Desert,

Northern Sierra, San Diego County, Shasta County, Siskiyou County, South Coast, Tehama County, Tuolumne County, and Ventura County.

#### iii. Emergency Episode Planning Partial Disapprovals

##### Mountain Counties AQCR for Ozone

As described in section III.A.ii of this final rule, we deny California's request to reclassify the Mountain Counties AQCR to Priority III for ozone. Of the seven air districts that comprise the Mountain Counties AQCR, only El Dorado County APCD and Placer County APCD recorded 1-hour ozone levels above the Priority I ozone threshold of 0.10 ppm during 2011–2013. We proposed that to satisfy the requirements of 40 CFR 51.151 for contingency plans for Mountain Counties AQCR, California needed to provide emergency episode contingency plans applicable to ozone for El Dorado County APCD and Placer County APCD. We maintain that position in this final rule. Since the time of our proposal, Placer County APCD adopted and submitted an ozone emergency episode contingency plan that we have approved into the California SIP.<sup>55</sup> However, El Dorado County APCD still does not have a SIP-approved ozone emergency episode plan.<sup>56</sup> Therefore, we partially disapprove California's 2007 and 2014 Submittals for the Mountain Counties AQCR (for El Dorado 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<sub>2.5</sub>

As discussed in section III.A.ii of this final rule, we reclassify San Joaquin Valley AQCR from Priority I to Priority II for PM emergency episode planning. However, San Joaquin Valley APCD's SIP-approved emergency episode plan, which comprises multiple rules under the district's Regulation 6 ("Air Pollution Emergency Episodes"), still does not have provisions specific to PM<sub>2.5</sub>. As such, we partially disapprove California's 2007 and 2014 Submittals for San Joaquin Valley AQCR with respect to the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>,

<sup>49</sup> EPA has proposed a limited approval and limited disapproval of the SIP revision from Bay Area AQMD submitted to address the outstanding nonattainment NSR requirements. 80 FR 52236, August 28, 2015. However, as we have not yet finalized that proposal, we continue to rely on the Bay Area AQMD's implementation of 40 CFR part 51, Appendix S for purposes of the nonattainment NSR element.

<sup>50</sup> 80 FR 12264, March 6, 2015.

<sup>51</sup> 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 is 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 no longer applies to the Sutter Buttes area.

<sup>52</sup> We note that Tehama County APCD has adopted and transmitted nonattainment NSR SIP provisions for the 2008 ozone NAAQS to ARB for submittal to EPA as a SIP revision. See Letter dated September 4, 2015 from Kristin Hall-Stein, Air Pollution Control Officer, Tehama County APCD to Carol Sutkus, ARB.

<sup>53</sup> 79 FR 63350 at 63360, October 23, 2014.

<sup>54</sup> 80 FR 69880, November 12, 2015.

<sup>55</sup> See direct final rule approving Placer County APCD Ozone Emergency Episode Plan, signed October 26, 2015, which is included in the docket to this final rule.

<sup>56</sup> We note that El Dorado County APCD issued a notice of public hearing in October 2015 of its proposed ozone emergency episode plan to be heard at the District's December 1, 2015 board hearing. This notice is included in the docket to this final rule and is available at: <http://www.edcgov.us/AirQualityManagement>.

and 2012 PM<sub>2.5</sub> NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G).

#### iv. General Note on Disapprovals

EPA takes a disapproval of a state plan very seriously, 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 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, the partial disapprovals in this final rule will not trigger mandatory sanctions under CAA section 179.

Section 110(c)(1) of the Act 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. However, many of these partial disapprovals finalized by this final rule do 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 or by a prior finding of failure to submit.

When preparing our proposed rule, we inadvertently did not consider existing FIP deadlines that were triggered by prior findings of failure to submit for the 1997 PM<sub>2.5</sub> and 2008 ozone NAAQS in our description of FIP deadlines that would result from our proposed, partial disapprovals. In

October 2008 EPA found that California's applicable certification letter had failed to address the emergency episode planning requirements of section 110(a)(2)(G) for the 1997 PM<sub>2.5</sub> NAAQS and established a FIP deadline of November 21, 2010.<sup>57</sup> In January 2013 EPA found that California had failed to submit an infrastructure SIP for the requirements of sections 110(a)(2)(A)–(C), (D)(i)(II), (D)(ii), (E)–(H), and (J)–(M) for the 2008 ozone NAAQS and established a FIP deadline of February 14, 2015, while noting that the findings did not trigger any additional FIP obligations with respect to the PSD-related and notification-related requirements of sections 110(a)(2)(C), (D)(i)(II), (D)(ii), or (J) for portions of California (*i.e.*, air districts) that were already subject to the PSD FIP in 40 CFR 52.21.<sup>58</sup>

For the most part, the approval actions taken in this final rule obviate the basis of the FIP obligations established by EPA's findings of failure to submit discussed above. The remaining FIP obligations stemming from these findings are relevant with respect to outstanding deficiencies for ozone related to ambient monitoring and emergency episode planning, and an outstanding deficiency for PM<sub>2.5</sub> related to emergency episode planning.

Accordingly, we describe the consequences of our partial disapprovals first for those where a FIP is already in place, then for those that have FIP obligations that are overdue, and finally for those that establish new FIP obligations.

The provisions for which our partial disapprovals do 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 19 air districts identified

<sup>57</sup> 73 FR 62902 at 62905, October 22, 2008. Note that we also found that California had failed to submit SIP revisions for some air districts addressing the PSD-related requirements of CAA section 110(a)(2)(C) and (J). However, such failure to submit did not trigger a FIP deadline since those air districts were already subject to the PSD FIP in 40 CFR 52.21. For the 1997 ozone NAAQS, EPA found that California had failed to submit SIP revisions for some air districts addressing the PSD-related requirements of CAA section 110(a)(2)(C). 73 FR 16205 at 16208, March 27, 2008. However, similar to EPA's findings on the 1997 PM<sub>2.5</sub> NAAQS, such failure to submit did not trigger a FIP deadline since those air districts were already subject to the PSD FIP in 40 CFR 52.21.

<sup>58</sup> 78 FR 2882 at 2889, January 15, 2013. Note that we did not make completeness findings or findings of failure to submit with respect to CAA sections 110(a)(2)(C) (to the extent it refers to permit programs required under part D of title I of the CAA (nonattainment NSR)), section 110(a)(2)(D)(i)(I) (pertaining to two of several interstate transport requirements), or section 110(a)(2)(I), (pertaining to the nonattainment planning).

in section III.B.ii of this final 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 all regulated NSR pollutants except GHGs (*see* 40 CFR 52.270(b)(10)).

- PSD requirement in sections 110(a)(2)(C), (D)(i)(II), and (J) to regulate NO<sub>x</sub> as an ozone precursor in North Coast Unified AQMD, which is subject to a narrow PSD FIP addressing this requirement (codified at 40 CFR 52.270(b)(2)(iv)).<sup>59</sup>

- 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.<sup>60</sup>

The provisions for which our FIP obligation is overdue include:

- Ambient air monitoring requirement in section 110(a)(2)(B) with respect to the 2008 ozone NAAQS in the Bakersfield MSA, whose FIP deadline expired on February 14, 2015.

- Emergency episode planning requirement in section 110(a)(2)(G) with respect to the 2008 ozone NAAQS in the Mountain Counties AQCR (for El Dorado County APCD only), whose FIP deadline expired on February 14, 2015.

- Emergency episode planning requirement in section 110(a)(2)(G) with respect to the 1997 PM<sub>2.5</sub> NAAQS in the San Joaquin Valley AQCR, whose FIP deadline expired on November 21, 2010.

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 to submit based on the same deficiency. Thus, under CAA section 110(c)(1), these remaining partial disapprovals of California's Infrastructure SIP Submittals require EPA to promulgate a FIP within two years after the effective date of this 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 partial disapprovals trigger a new FIP obligation include:

- Ambient air monitoring requirement in section 110(a)(2)(B) with respect to the 1997 ozone NAAQS in the Bakersfield MSA.

<sup>59</sup> 76 FR 48006, August 8, 2011.

<sup>60</sup> 79 FR 51913, September 2, 2014.

- PSD requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) to regulate PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, and condensable PM<sub>2.5</sub> 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<sub>2.5</sub> in Mendocino County APCD and Northern Sonoma County APCD.

- Emergency episode planning requirement in section 110(a)(2)(G) with respect to the 1997 ozone NAAQS in the Mountain Counties AQCR (for El Dorado County APCD only).

- Emergency episode planning requirement in section 110(a)(2)(G) with respect to the 2006 PM<sub>2.5</sub> and 2012 PM<sub>2.5</sub> NAAQS in the San Joaquin Valley AQCR.

#### IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of five state provisions from the California Government Code statutes and California Code of Regulations for the conflict of interest requirements of CAA sections 110(a)(2)(E)(ii) and 128. These provisions include California Government Code, Title 9, Sections 82048 (last amended in 2004), 87103 (last amended in 2000), and 87302 (last amended in 1992), and California Code of Regulations, Title 2, Sections 18700 (last amendment filed on December 20, 2005) and 18701 (last amendment filed on December 29, 2005). Similarly, EPA is also finalizing the incorporation by reference of Great Basin Unified Air Pollution Control District (APCD) Rule 701, adopted on March 3, 2014, with respect to the 1987 p.m.<sub>10</sub>, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2012 PM<sub>2.5</sub> NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G) and 40 CFR part 51, subpart H. The incorporation by reference of the five state provisions and the one Great Basin Unified APCD provision are described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

#### V. Statutory and Executive Order Reviews

##### 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.

##### 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 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 approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. 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 rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply approves certain State requirements, and disapproves 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.

##### 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 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 approves certain pre-existing requirements, and disapproves 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 action.

##### 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 approves certain State requirements, and disapproves 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.

##### F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR

67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets EO 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 EO has the potential to influence the regulation. This action is not subject to EO 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 partial approval and partial disapproval under CAA section 110 will not in-and-of itself create any new regulations but simply approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP.

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

This 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.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 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.

EPA believes that this 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.

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

Executive Order (EO) 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 rulemaking.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective on May 2, 2016.

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2016. Filing a petition for reconsideration by the Administrator of this final rule does

not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

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

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

Dated: November 24, 2015.

**Jared Blumenfeld,**

*Regional Administrator, U.S. EPA, Region IX.*

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

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart F—California**

■ 2. Section 52.220 is amended by adding paragraphs (c)(386)(ii)(A)(5), (c)(466), (467), (468), and (469) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*  
(386) \* \* \*  
(ii) \* \* \*  
(A) \* \* \*

(5) “110(a)(2) Infrastructure SIP,” submitted as Appendix B to the 2007 State Strategy, and “Legal Authority and Other Requirements,” submitted as Appendix G to the 2007 State Strategy (collectively, “2007 Infrastructure SIP”).

\* \* \* \* \*

(466) The following plan was submitted on October 6, 2011, by the Governor’s Designee.

(i) [Reserved].

(ii) Additional materials.

(A) California Air Resources Board (CARB).

(1) CARB Resolution 11–28, dated September 22, 2011, adopting the “Proposed State Implementation Plan Revision for Federal Lead Standard Infrastructure Requirements.”

(2) “Proposed State Implementation Plan Revision for Federal Lead Standard

Infrastructure Requirements,” (“2011 Pb Infrastructure SIP”).

(467) The following plan was submitted on December 12, 2012, by the Governor’s Designee.

(i) [Reserved].

(ii) Additional materials.

(A) California Air Resources Board (CARB).

(1) CARB Resolution 12–32, dated November 15, 2012, adopting the “Proposed State Implementation Plan Revision for Federal Nitrogen Dioxide Standard Infrastructure Requirements.”

(2) “Proposed State Implementation Plan Revision for Federal Nitrogen Dioxide Standard Infrastructure Requirements,” (“2012 NO<sub>2</sub> Infrastructure SIP”).

(468) The following plan was submitted on March 6, 2014, by the Governor’s Designee.

(i) *Incorporation by Reference.*

(A) California Air Resources Board

(1) California Government Code, Title 9 (Political Reform), Chapter 2 (Definitions), Section 82048, “Public official,” added by California Initiative Measure approved on June 4, 1974, effective January 7, 1975, and last amended in 2004.

(2) California Government Code, Title 9 (Political Reform), Chapter 7 (Conflicts of Interest), Article 1 (General Prohibition), Section 87103, “Financial interest in decision by public official,” added by California Initiative Measure approved on June 4, 1974, effective January 7, 1975, and last amended in 2000.

(3) California Government Code, Title 9 (Political Reform), Chapter 7 (Conflicts of Interest), Article 3 (Conflict of Interest Codes), Section 87302, “Required provisions; exemptions,” added by California Initiative Measure approved on June 4, 1974, effective January 7, 1975, and last amended in 1992.

(4) Title 2, California Code of Regulations, Division 6 (Fair Political Practices Commission), Chapter 7 (Conflict of Interest), Article 1 (Conflicts of Interest; General Prohibition), Section 18700, “Basic Rule and Guide to Conflict of Interest Regulations” (filed on December 17, 1976, effective upon filing, and last amendment filed on December 20, 2005, operative January 19, 2006).

(5) Title 2, California Code of Regulations, Division 6 (Fair Political Practices Commission), Chapter 7 (Conflict of Interest), Article 1 (Conflicts

of Interest; General Prohibition), Section 18701, “Definitions: Source of Income, Commission Income and Incentive Income” (filed on January 22, 1976, effective February 21, 1976, and last amendment filed on December 29, 2005, operative January 28, 2006).

(ii) Additional materials.

(A) California Air Resources Board (CARB).

(1) CARB Resolution 14–1, dated January 23, 2014, adopting the “California Infrastructure SIP.”

(2) “California Infrastructure SIP,” (“2014 Multi-pollutant Infrastructure SIP”).

(469) The following plan was submitted on June 2, 2014, by the Governor’s Designee.

(i) *Incorporation by Reference.*

(A) Great Basin Unified Air Pollution Control District.

(1) Rule 701, “Air Pollution Episode Plan for Particulate Matter,” adopted on March 3, 2014.

■ 3. Section 52.221 is revised to read as follows:

#### § 52.221 Classification of regions.

The California plan was evaluated on the basis of the following classifications:

Air quality control region	Pollutant				
	Particulate matter	Sulfur oxides	Nitrogen dioxide	Carbon monoxide	Photochemical oxidants (hydrocarbons)
Great Basin Valley Intrastate .....	I	III	III	III	III
Lake County Intrastate .....	II	III	III	III	III
Lake Tahoe Intrastate .....	II	III	III	I	III
Metropolitan Los Angeles Intrastate .....	I	III	III	I	I
Mountain Counties Intrastate .....	II	III	III	I	I
North Central Coast Intrastate .....	II	III	III	III	III
North Coast Intrastate .....	II	III	III	III	III
Northeast Plateau Intrastate .....	III	III	III	III	III
Sacramento Valley Intrastate .....	II	III	III	I	I
San Diego Intrastate .....	II	III	III	I	I
San Francisco Bay Area Intrastate .....	II	III	III	I	I
San Joaquin Valley Intrastate .....	II	III	III	I	I
South Central Coast Intrastate .....	III	III	III	III	III
Southeast Desert Intrastate .....	I	III	III	III	I

■ 4. Section 52.223 is amended by adding paragraphs (i) thru (o) to read as follows:

#### § 52.223 Approval status.

\* \* \* \* \*

(i) 1997 ozone NAAQS: The 2007 Infrastructure SIP, submitted on November 16, 2007, and the 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, are partially disapproved for specific requirements of Clean Air Act section 110(a)(2) for the 1997 8-hour ozone NAAQS for the Air Pollution Control Districts (APCDs), Air Quality Management Districts (AQMDs),

or Air Quality Control Regions (AQCRs) listed in this paragraph.

(1) San Joaquin Valley APCD (Bakersfield Metropolitan Statistical Area (MSA), only) for section 110(a)(2)(B).

(2) Mendocino County AQMD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(3) North Coast Unified AQMD (PSD requirements for the regulation of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, condensable PM<sub>2.5</sub>,

PM<sub>2.5</sub> increments, and NO<sub>x</sub> as an ozone precursor, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(4) Northern Sonoma County APCD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(5) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections

110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J), except for South Coast AQMD where the Federal PSD program applies to greenhouse gases, only.

(6) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(D)(ii) (with respect to section 126(a), only).

(7) Mountain Counties AQCR (El Dorado County, only) for section 110(a)(2)(G).

(j) *1997 PM<sub>2.5</sub> NAAQS*: The 2007 Infrastructure SIP, submitted on November 16, 2007, and the 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, are partially disapproved for specific requirements of Clean Air Act section 110(a)(2) for the 1997 PM<sub>2.5</sub> NAAQS for the Air Pollution Control Districts (APCDs), Air Quality Management Districts (AQMDs), or Air Quality Control Regions (AQCRs) listed in this paragraph.

(1) Mendocino County AQMD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(2) North Coast Unified AQMD (PSD requirements for the regulation of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, condensable PM<sub>2.5</sub>, PM<sub>2.5</sub> increments, and NO<sub>x</sub> as an ozone precursor, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(3) Northern Sonoma County APCD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(4) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J), except for South Coast AQMD where the Federal PSD program applies to greenhouse gases, only.

(5) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(D)(ii) (with respect to section 126(a), only).

(6) San Joaquin Valley Mountain Counties AQCR for section 110(a)(2)(G).

(k) *2006 PM<sub>2.5</sub> NAAQS and 2012 PM<sub>2.5</sub> NAAQS*: The 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, is partially disapproved for

specific requirements of Clean Air Act section 110(a)(2) for the 2006 PM<sub>2.5</sub> NAAQS and 2012 PM<sub>2.5</sub> NAAQS for the Air Pollution Control Districts (APCDs), Air Quality Management Districts (AQMDs), or Air Quality Control Regions (AQCRs) listed in this paragraph.

(1) Mendocino County AQMD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(2) North Coast Unified AQMD (PSD requirements for the regulation of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, condensable PM<sub>2.5</sub>, PM<sub>2.5</sub> increments, and NO<sub>x</sub> as an ozone precursor, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(3) Northern Sonoma County APCD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(4) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J), except for South Coast AQMD where the Federal PSD program applies to greenhouse gases, only.

(5) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(D)(ii) (with respect to section 126(a), only).

(6) San Joaquin Valley Mountain Counties AQCR for section 110(a)(2)(G).

(l) *2008 ozone NAAQS*: The 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, is partially disapproved for specific requirements of Clean Air Act section 110(a)(2) for the 2008 8-hour ozone NAAQS for the Air Pollution Control Districts (APCDs), Air Quality Management Districts (AQMDs), or Air Quality Control Regions (AQCRs) listed in this paragraph.

(1) San Joaquin Valley APCD (Bakersfield Metropolitan Statistical Area (MSA), only) for section 110(a)(2)(B).

(2) Mendocino County AQMD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(3) North Coast Unified AQMD (PSD requirements for the regulation of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, condensable PM<sub>2.5</sub>, PM<sub>2.5</sub> PSD, and NO<sub>x</sub> as an ozone precursor, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(4) Northern Sonoma County APCD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(5) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J), except for South Coast AQMD where the Federal PSD program applies to greenhouse gases, only.

(6) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(D)(ii) (with respect to section 126(a), only).

(7) Mountain Counties AQCR (El Dorado County, only) for section 110(a)(2)(G).

(m) *2008 Pb NAAQS*: The 2011 Pb Infrastructure SIP, submitted on September 22, 2011, and the 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, are partially disapproved for specific requirements of Clean Air Act section 110(a)(2) for the 2008 Pb NAAQS for the Air Pollution Control Districts (APCDs), Air Quality Management Districts (AQMDs), or Air Quality Control Regions (AQCRs) listed in this paragraph.

(1) Mendocino County AQMD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(2) North Coast Unified AQMD (PSD requirements for the regulation of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, condensable PM<sub>2.5</sub>, PM<sub>2.5</sub> increments, and NO<sub>x</sub> as an ozone precursor, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(3) Northern Sonoma County APCD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(4) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J), except for South Coast AQMD where the Federal PSD program applies to greenhouse gases, only.

(5) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(D)(ii) (with respect to section 126(a), only).

(n) *2010 NO<sub>2</sub> NAAQS*: The 2012 NO<sub>2</sub> Infrastructure SIP, submitted on November 15, 2012, and the 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, are partially disapproved for specific requirements of Clean Air Act section 110(a)(2) for the 2010 NO<sub>2</sub> NAAQS for the Air Pollution Control Districts (APCDs), Air Quality Management Districts (AQMDs), or Air Quality Control Regions (AQCRs) listed in this paragraph.

(1) Mendocino County AQMD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(2) North Coast Unified AQMD (PSD requirements for the regulation of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, condensable PM<sub>2.5</sub>, PM<sub>2.5</sub> increments, and NO<sub>x</sub> as an ozone precursor, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(3) Northern Sonoma County APCD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(4) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J), except for South Coast AQMD where the Federal PSD program applies to greenhouse gases, only.

(5) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(D)(ii) (with respect to section 126(a), only).

(o) *2010 SO<sub>2</sub> NAAQS*: The 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, is partially disapproved for specific requirements of Clean Air Act section 110(a)(2) for the 2010 SO<sub>2</sub> NAAQS for the Air Pollution

Control Districts (APCDs), Air Quality Management Districts (AQMDs), or Air Quality Control Regions (AQCRs) listed in this paragraph.

(1) Mendocino County AQMD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(2) North Coast Unified AQMD (PSD requirements for the regulation of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, condensable PM<sub>2.5</sub>, PM<sub>2.5</sub> increments, and NO<sub>x</sub> as an ozone precursor, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(3) Northern Sonoma County APCD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(4) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J), except for South Coast AQMD where the Federal PSD program applies to greenhouse gases, only.

(5) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(D)(ii) (with respect to section 126(a), only).

#### **§ 52.225 [Amended]**

■ 5. Section 52.225 is amended by removing and reserving paragraph (a).

■ 6. Section 52.283 is amended by adding paragraphs (c) thru (g) to read as follows:

#### **§ 52.283 Interstate Transport.**

\* \* \* \* \*

(c) *2006 PM<sub>2.5</sub> NAAQS* and *2012 PM<sub>2.5</sub> NAAQS*: The 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, and the additional plan elements listed below meet the following specific requirements of Clean Air Act section 110(a)(2)(D)(i) for the 2006 PM<sub>2.5</sub> NAAQS and 2012 PM<sub>2.5</sub> NAAQS.

(1) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with any other state's measures required under title I, part C of the Clean Air Act to prevent significant deterioration of air quality, except that these requirements are not fully met in the Air Pollution Control Districts (APCDs) or Air Quality

Management Districts (AQMDs) listed in this paragraph.

(i) Mendocino County AQMD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only)

(ii) North Coast APCD (PSD requirements for the regulation of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, condensable PM<sub>2.5</sub>, PM<sub>2.5</sub> increments, and NO<sub>x</sub> as an ozone precursor, only)

(iii) Northern Sonoma County APCD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only)

(iv) South Coast AQMD (PSD requirements for the NAAQS, only).

(v) All other areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270.

(2) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with other states' measures to protect visibility are met by chapter 3 (Emissions Inventory), chapter 4 (California 2018 Progress Strategy), and chapter 8 (Consultation) of the "California Regional Haze Plan," adopted January 22, 2009.

(d) *2008 ozone NAAQS*: The 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, and the additional plan elements listed below meet the following specific requirements of Clean Air Act section 110(a)(2)(D)(i) for the 2008 ozone NAAQS.

(1) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with any other state's measures required under title I, part C of the Clean Air Act to prevent significant deterioration of air quality, except that these requirements are not fully met in the Air Pollution Control Districts (APCDs) or Air Quality Management Districts (AQMDs) listed in this paragraph.

(i) Mendocino County AQMD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only)

(ii) North Coast APCD (PSD requirements for the regulation of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, condensable PM<sub>2.5</sub>, PM<sub>2.5</sub> increments, and NO<sub>x</sub> as an ozone precursor, only)

(iii) Northern Sonoma County APCD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only)

(iv) South Coast AQMD (PSD requirements for the NAAQS, only).

(v) All other areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270.

(2) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with other states' measures to protect visibility are met by chapter 3 (Emissions Inventory), chapter 4 (California 2018 Progress Strategy), and chapter 8 (Consultation) of the

“California Regional Haze Plan,” adopted January 22, 2009.

(e) *2008 Pb NAAQS*: The 2011 Pb Infrastructure SIP, submitted on September 22, 2011, and the 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, and the additional plan elements listed below meet the following specific requirements of Clean Air Act section 110(a)(2)(D)(i) for the 2008 Pb NAAQS.

(1) The requirements of CAA section 110(a)(2)(D)(i)(I) regarding significant contribution to nonattainment of the 2008 Pb NAAQS in any other State and interference with maintenance of the 2008 Pb NAAQS by any other State.

(2) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with any other state’s measures required under title I, part C of the Clean Air Act to prevent significant deterioration of air quality, except that these requirements are not fully met in the Air Pollution Control Districts (APCDs) or Air Quality Management Districts (AQMDs) listed in this paragraph.

(i) Mendocino County AQMD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only)

(ii) North Coast APCD (PSD requirements for the regulation of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, condensable PM<sub>2.5</sub>, PM<sub>2.5</sub> increments, and NO<sub>x</sub> as an ozone precursor, only)

(iii) Northern Sonoma County APCD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only)

(iv) South Coast AQMD (PSD requirements for the NAAQS, only).

(v) All other areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270.

(3) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with other states’ measures to protect visibility are met by chapter 3 (Emissions Inventory), chapter 4 (California 2018 Progress Strategy), and chapter 8 (Consultation) of the “California Regional Haze Plan,” adopted January 22, 2009.

(f) *2010 NO<sub>2</sub> NAAQS*: The 2012 NO<sub>2</sub> Infrastructure SIP, submitted on November 15, 2012, and the 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, and the additional plan elements listed below meet the following specific requirements of Clean Air Act section 110(a)(2)(D)(i) for the 2010 NO<sub>2</sub> NAAQS.

(1) The requirements of CAA section 110(a)(2)(D)(i)(I) regarding significant contribution to nonattainment of the 2010 NO<sub>2</sub> NAAQS in any other State and interference with maintenance of the 2010 NO<sub>2</sub> NAAQS by any other State.

(2) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with any other state’s measures required under title I, part C of the Clean Air Act to prevent significant deterioration of air quality, except that these requirements are not fully met in the Air Pollution Control Districts (APCDs) or Air Quality Management Districts (AQMDs) listed in this paragraph.

(i) Mendocino County AQMD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only)

(ii) North Coast APCD (PSD requirements for the regulation of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, condensable PM<sub>2.5</sub>, PM<sub>2.5</sub> increments, and NO<sub>x</sub> as an ozone precursor, only)

(iii) Northern Sonoma County APCD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only)

(iv) South Coast AQMD (PSD requirements for the NAAQS, only).

(v) All other areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270.

(3) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with other states’ measures to protect visibility are met by chapter 3 (Emissions Inventory), chapter 4 (California 2018 Progress Strategy), and chapter 8 (Consultation) of the “California Regional Haze Plan,” adopted January 22, 2009.

(g) *2010 SO<sub>2</sub> NAAQS*: The 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, and the additional plan elements listed below meet the following specific requirements of Clean Air Act section 110(a)(2)(D)(i) for the 2010 SO<sub>2</sub> NAAQS.

(1) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with any other state’s measures required under title I, part C of the Clean Air Act to prevent significant deterioration of air quality, except that these requirements are not fully met in the Air Pollution Control Districts (APCDs) or Air Quality Management Districts (AQMDs) listed in this paragraph.

(i) Mendocino County AQMD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only)

(ii) North Coast APCD (PSD requirements for the regulation of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, condensable PM<sub>2.5</sub>, PM<sub>2.5</sub> increments, and NO<sub>x</sub> as an ozone precursor, only)

(iii) Northern Sonoma County APCD (PSD requirements for a baseline date for PM<sub>2.5</sub> increments, only)

(iv) South Coast AQMD (PSD requirements for the NAAQS, only).

(v) All other areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270.

(2) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with other states’ measures to protect visibility are met by chapter 3 (Emissions Inventory), chapter 4 (California 2018 Progress Strategy), and chapter 8 (Consultation) of the “California Regional Haze Plan,” adopted January 22, 2009.

[FR Doc. 2016–07323 Filed 3–31–16; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 92

[Docket No. FWS–R7–MB–2015–0158; FF09M21200–156–FXMB1231099BPP0]

RIN 1018–BB10

#### Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2016 Season

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) is establishing migratory bird subsistence harvest regulations in Alaska for the 2016 season. These regulations allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking establishes region-specific regulations that will go into effect on April 2, 2016, and expire on August 31, 2016.

**DATES:** The amendments to subpart D of 50 CFR part 92 are effective April 2, 2016, through August 31, 2016. The amendments to subparts A and C of 50 CFR part 92 are effective May 2, 2016.

**FOR FURTHER INFORMATION CONTACT:** Donna Dewhurst, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 786–3499.

#### SUPPLEMENTARY INFORMATION:

##### Why is this rulemaking necessary?

This rulemaking is necessary because, by law, the migratory bird harvest