

(f) of this section. A parent or a person standing in place of a parent must sign the application for a child who is not yet 18 years old, except as shown in paragraph (d) of this section.

\* \* \* \* \*

(f) An acceptable signature may include:

(1) A handwritten signature that complies with the rules set out in paragraphs (a), (b), (c), (d), or (e) of this section; or

(2) In the case of an application being taken and processed in the Railroad Retirement Board's automated claims system, an electronic signature, which shall consist of a personal identification number (PIN) assigned by the Railroad Retirement Board as described in the application instructions; or

(3) An alternative signature or signature proxy acceptable to the Railroad Retirement Board. An example of an alternative signature is attestation, which refers to the action taken by a Railroad Retirement Board (RRB) employee of confirming and annotating RRB records of the applicant's intent to file or complete an application or related form, the applicant's affirmation under penalty of perjury that the information provided is correct, and the applicant's agreement to sign the application or related form.

\* \* \* \* \*

Dated: May 20, 2011.

By Authority of the Board.

**Steven A. Bartholow,**  
General Counsel.

[FR Doc. 2011-13056 Filed 5-27-11; 8:45 am]

**BILLING CODE P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2011-0211; FRL-9312-8]

#### Approval and Promulgation of Implementation Plans; State of California; Interstate Transport of Pollution; Interference With Prevention of Significant Deterioration Requirement

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a limited approval and limited disapproval of a State Implementation Plan ("SIP") revision submitted by the State of California on November 17, 2007, for the purpose of addressing the "transport SIP" provisions of Clean Air Act ("CAA") section 110(a)(2)(D)(i) for the

1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and the 1997 fine particulate matter ("PM<sub>2.5</sub>") NAAQS. Section 110(a)(2)(D)(i) of the CAA requires that each SIP contain adequate provisions to prohibit emissions that adversely affect air quality in other States through interstate transport. EPA is proposing a limited approval and limited disapproval of California's SIP revision for the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS with respect to the requirement in CAA section

110(a)(2)(D)(i)(II) that each SIP contain adequate measures prohibiting emissions of air pollutants in amounts which will interfere with other States' measures required under title I, part C of the CAA to prevent significant deterioration of air quality. Specifically, EPA is proposing to approve California's SIP revision with respect to those Districts in California that implement SIP-approved permit programs meeting the approval criteria under CAA section 110(a)(2)(D)(i), as discussed in this proposal. EPA is simultaneously proposing to disapprove California's SIP revision with respect to those Districts in California that do not implement SIP-approved permit programs meeting these approval criteria. For any District for which we finalize a disapproval, EPA intends to simultaneously promulgate a limited Federal Implementation Plan ("FIP"), as discussed in this proposal, unless the relevant area is already subject to a FIP.

**DATES:** Written comments must be received on or before June 30, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R09-OAR-2011-0211, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. *E-mail:* [mays.rory@epa.gov](mailto:mays.rory@epa.gov).

3. *Fax:* 415-947-3579.

4. *Mail or deliver:* Rory Mays (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the

<http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* 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., 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.

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#### I. Background

On July 18, 1997, EPA promulgated new standards for 8-hour ozone<sup>1</sup> and

<sup>1</sup> See 62 FR 38856. The level of the 1997 8-hour ozone NAAQS is 0.08 parts per million (ppm). 40 CFR part 50.10. The 8-hour ozone standard is met when the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentrations is 0.08 ppm or less (i.e., less than 0.085 ppm based on the rounding convention in 40 CFR part 50 Appendix I). This 3-year average is referred to as the "design value."

fine particulate matter<sup>2</sup> (“PM<sub>2.5</sub>”). This proposed action is in response to the promulgation of these standards (the “1997 8-hour ozone NAAQS” and “1997 PM<sub>2.5</sub> NAAQS”). This proposed action does not address the requirements of the 2006 PM<sub>2.5</sub> NAAQS or the 2008 8-hour ozone NAAQS; those standards will be addressed in future actions.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within three years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i) which pertains to interstate transport of certain emissions.

The transport SIP provisions in section 110(a)(2)(D)(i) (also called “good neighbor” provisions) require each State to submit a SIP that prohibits emissions that adversely affect another State in the ways contemplated in the statute. Section 110(a)(2)(D)(i) identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this rulemaking EPA is addressing the third element of section 110(a)(2)(D)(i), which requires that each SIP contain adequate measures to prohibit emissions of air pollutants from sources within the State in amounts that will interfere with any other State’s measures required under title I, part C of the CAA to prevent significant deterioration of air quality. We refer to this requirement as “element (3)” of section 110(a)(2)(D)(i).

On August 15, 2006, EPA issued guidance (herein “2006 Guidance”) to assist States and EPA Regional offices in developing and evaluating, respectively, transport SIPs for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS.<sup>3</sup> As to element (3) of section 110(a)(2)(D)(i), the 2006 Guidance states that this requirement may be met by the State’s confirmation

in a SIP submission that major sources and major modifications in the State are subject to Prevention of Significant Deterioration (“PSD”) and Nonattainment New Source Review (“NNSR”) programs that implement current requirements.<sup>4</sup>

The PSD and NNSR permit programs require preconstruction permits to protect the air quality within each State and are designed to prohibit construction of new major sources and major modifications at existing major sources from contributing to nonattainment in surrounding areas, including nearby States. Specifically, a PSD permit may not be issued unless the new or modified source demonstrates that emissions from the construction or operation of the facility will not cause or contribute to air pollution in any area that exceeds any NAAQS or any maximum allowable increase (*i.e.*, PSD increment). 42 U.S.C. 7475(a)(3); 40 CFR 51.166(k). An NNSR permit may not be issued unless the new or modified source shows it has obtained sufficient emissions reductions to offset increases in emissions of the pollutants for which an area is designated nonattainment, consistent with reasonable further progress toward attainment. 42 U.S.C. 7503(a)(1); 40 CFR 51.165(a)(3).

Because the PSD and NNSR permitting programs 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 requirement of section 110(a)(2)(D)(i)(II) regarding measures to prevent significant deterioration of air quality by submitting SIPs confirming that major sources and major modifications in the State are subject to PSD and NNSR programs that implement current requirements.

As such, we have evaluated California’s PSD and NNSR preconstruction permitting programs to determine whether these programs implement the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS. In addition, because stationary sources of greenhouse gas (“GHG”) emissions at or above certain thresholds are now subject to PSD permitting requirements, we have evaluated California’s PSD programs for compliance with the requirements for GHG PSD authorities.<sup>5</sup> Our evaluation is

summarized below (see section III of this proposed rule) and described in more detail in the technical support document (“TSD”) for this proposed rule, which is available in the docket for this action.

## II. What is the State process to submit these materials to EPA?

CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

On November 16, 2007, the California Air Resources Board (“CARB”) submitted the State Strategy for California’s 2007 State Implementation Plan to attain the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS (“2007 State Strategy”).<sup>6</sup> Appendix C of the 2007 State Strategy, as modified by Attachment A,<sup>7</sup> contains California’s SIP revision to address the transport SIP requirements of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS (“2007 Transport SIP”). CARB’s November 16, 2007 submittal includes public process documentation for the 2007 State Strategy, including the 2007 Transport SIP. In addition, the SIP revision includes documentation of a duly noticed public hearing held on September 27, 2007 on the proposed 2007 State Strategy.

We find that the process followed by CARB in adopting the 2007 Transport SIP complies with the procedural requirements for SIP revisions under CAA section 110 and EPA’s implementing regulations.

“Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Findings of Substantial Inadequacy and SIP Call; Final Rule,” 75 FR 77698 (December 13, 2010); “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas-Emitting Sources in State Implementation Plans; Final Rule,” 75 FR 82536 (December 30, 2010).

<sup>6</sup> See transmittal letter dated November 16, 2007, from James N. Goldstene, Executive Officer, CARB, to Wayne Nastro, Regional Administrator, EPA Region 9, with enclosures, and CARB Resolution No. 07–28 (September 27, 2007).

<sup>7</sup> See “Technical and Clarifying Modifications to April 26, 2007 Revised Draft Air Resources Board’s Proposed State Strategy for California’s 2007 State Implementation Plan and May 7, 2007 Revised Draft Appendices A through G,” included as Attachment A to CARB’s Board Resolution 07–28 (September 27, 2007).

<sup>2</sup> See 62 FR 38652. The level of the 1997 PM<sub>2.5</sub> NAAQS are 15.0 µg/m<sup>3</sup> (annual arithmetic mean concentration) and 65 µg/m<sup>3</sup> (24-hour average concentration). 40 CFR part 50.7. The annual standard is met when the 3-year average of the annual mean concentrations is 15.0 µg/m<sup>3</sup> or less (*i.e.*, less than 15.05 µg/m<sup>3</sup> based on the rounding convention in 40 CFR part 50 Appendix N Section 4.3). The 24-hour standard is met when the 3-year average annual 98th percentile of 24-hour concentrations is 65 µg/m<sup>3</sup> or less (*i.e.*, less than 65.5 µg/m<sup>3</sup> based on the rounding convention in 40 CFR part 40 Appendix N Section 4.3). *Id.* These 3-year averages are referred to as the annual PM<sub>2.5</sub> and 24-hour PM<sub>2.5</sub> “design values,” respectively.

<sup>3</sup> Memorandum from William T. Harnett, Director, Air Quality Policy Division, OAQPS, “Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards,” August 15, 2006.

<sup>4</sup> *Id.* at 6.

<sup>5</sup> For explanation of the GHG PSD permitting requirements, see “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule,” 75 FR 31514 (June 3, 2010);

### III. What is EPA's evaluation of the State's submission?

California's 2007 Transport SIP states that all areas of California are subject to some form of preconstruction permitting program for ozone and PM<sub>2.5</sub> and that "[t]hese rules are as stringent, or more stringent, than the federal preconstruction programs (PSD and NNSR)." <sup>8</sup> The submittal also states that California is on track to submit SIP revisions to meet the PSD and NNSR requirements of the Phase 2 Implementation Rule for the 1997 8-hour ozone NAAQS (70 FR 71612, November 29, 2005) ("Phase 2 Rule") and is implementing preconstruction programs for PM<sub>2.5</sub> in accordance with EPA's October 23, 1997 guidance memorandum entitled "Interim Implementation of New Source Review Requirements for PM<sub>2.5</sub>" ("PM<sub>10</sub> Surrogate Policy"). Finally, the submittal includes a list of local air districts that implement the PSD and NNSR programs throughout the State. In sum, the 2007 Transport SIP asserts that California's existing PSD and NNSR programs contain adequate measures to prohibit emissions of air pollutants which will interfere with any other State's required measures under title I, part C of the CAA, to prevent significant deterioration of air quality, for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS.

The 2007 Transport SIP provides little information to support the State's assertions regarding the adequacy of its existing PSD and NNSR permit programs. Furthermore, the 2007 Transport SIP relied solely on EPA's 2006 Guidance and, therefore, did not fully address certain implementation requirements for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS that are now relevant to our evaluation, as discussed further below and in our TSD. We have, therefore, conducted an independent evaluation of California's PSD and NNSR programs in relation to specific implementation provisions for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS that are necessary for approval of the 2007 Transport SIP. We conducted this evaluation for each of the 35 permitting authorities ("Districts") <sup>9</sup> in California, which cover the entire geographic

<sup>8</sup> See 2007 Transport SIP, Attachment A of 2007 State Strategy at 21–22 (modifying Appendix C of 2007 State Strategy).

<sup>9</sup> Although EPA's air quality designations for California in 40 CFR 81.305 are defined by planning areas, we discuss the relevant PSD and NNSR program requirements as they apply to the local permitting agencies that implement these requirements in each planning area. We use the term "District" throughout this document to refer both to the local agency responsible for issuing PSD/NNSR permits and to the geographic area over which that agency has jurisdiction.

extent of the State excluding Indian country. <sup>10</sup> The details of our evaluation are provided in the TSD for this proposed rule.

#### A. Evaluation of Measures To Prevent Significant Deterioration for 1997 8-Hour Ozone NAAQS

Fifteen air quality planning areas in California are designated nonattainment for the 1997 8-hour ozone NAAQS. See 40 CFR 81.305. Twenty Districts implement preconstruction permit programs in these 15 nonattainment areas. See TSD at 9–12. Thirteen air quality planning areas in California are designated unclassifiable/attainment for the 1997 8-hour ozone standard. See 40 CFR 81.305. Twenty-three Districts implement preconstruction permit programs in these 13 unclassifiable/attainment areas. See TSD at 12, 13.

##### 1. 8-hour Ozone Nonattainment Areas

The Phase 2 Rule requires specific revisions to States' NNSR SIPs to implement the requirements of the CAA Amendments of 1990, as applicable based on each area's classification for the 8-hour ozone standard. See 70 FR 71612 at 71675, 71698–71699. Specifically, the Phase 2 Rule requires that NNSR SIPs apply all NNSR requirements for major sources of volatile organic compounds (VOCs) to major sources of nitrogen oxides (NO<sub>x</sub>) as well, except where a NO<sub>x</sub> waiver applies under section 182(f) of the Act. 40 CFR 51.165(a)(8). In addition, NNSR SIPs must include provisions establishing the applicable major stationary source thresholds, significant emissions rates, and offset ratios for VOCs and NO<sub>x</sub> based on each area's classification for the 8-hour ozone NAAQS. 40 CFR 51.165(a)(1)(iv), (a)(1)(v), (a)(1)(x), (a)(8), (a)(9). These SIP revisions were due June 15, 2007. 70 FR at 71683.

Among the 20 Districts that are entirely or partially designated nonattainment for the 1997 8-hour ozone NAAQS, 12 Districts have nonattainment areas classified under subpart 2 of part D, title I of the CAA. The remaining eight Districts and a portion of a ninth District cover areas now referred to as "former subpart 1" nonattainment for the 1997 8-hour ozone NAAQS. See 40 CFR 81.305; *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (DC Cir. 2006) (vacating certain elements of EPA's Phase 1 ozone implementation rule), *reh'g denied* 489 F.3d 1245.

<sup>10</sup> California's SIP obligations under the CAA do not apply in Indian country.

For the 12 Districts covering subpart 2 nonattainment areas, EPA has reviewed the SIP-approved NNSR rules and determined that all but three of these SIP programs meet the approval criteria discussed above. See TSD at 9–11. The three Districts in which the SIP-approved NNSR programs do not currently satisfy these program requirements are the Feather River Air Quality Management District ("AQMD"), Placer County Air Pollution Control District ("APCD"), and Sacramento Metropolitan AQMD. These three agencies implement permit programs in the Sacramento Metro ozone nonattainment area, which was initially designated and classified as serious nonattainment for the 1997 8-hour ozone NAAQS. 69 FR 23858 (April 30, 2004). <sup>11</sup>

In separate actions, EPA has proposed to approve NNSR SIP revisions submitted by the Placer County APCD ("Placer"), Feather River AQMD ("Feather River"), and Sacramento Metropolitan AQMD ("Sacramento") to meet the approval criteria discussed above. <sup>12</sup> See 76 FR 28944 (May 19, 2011) and 76 FR 28942 (May 19, 2011). We propose to determine that final approval of the required NNSR SIP revisions will address element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS for these Districts. Alternatively, for any of these Districts for which we cannot finalize approval of the required NNSR provisions by our July 10, 2011 Consent Decree deadline <sup>13</sup> for final action on element (3) of the 2007 Transport SIP, we propose to disapprove the 2007 Transport SIP and to promulgate a limited NNSR FIP (for the relevant District) based on Sacramento's Rule 202 and the provisions of 40 CFR part 51, Appendix S identifying the major source threshold, significant emissions rate, and offset ratio applicable to the area's 8-hour ozone classification. EPA would retain authority to implement these

<sup>11</sup> In this action, we are evaluating the NNSR programs for these Districts in accordance with the requirements for "serious" ozone nonattainment areas. We note, however, that EPA reclassified the Sacramento Metro area as a "severe-15" nonattainment area for the 1997 8-hour ozone standard, effective June 4, 2010. 75 FR 24409 (May 5, 2010).

<sup>12</sup> These proposals address the NNSR requirements for "severe" ozone nonattainment areas, which each of these Districts has submitted in advance of the June 4, 2011 submittal deadline established as part of EPA's action to reclassify the Sacramento Metro area from serious to severe-15 nonattainment for the 8-hour ozone standard. See 75 FR 24409.

<sup>13</sup> See *WildEarth Guardians v. U.S. EPA* (Case No. 4:09-CV-02453-CW), Consent Decree dated November 10, 2009, as amended by *Notice of Stipulated Extensions to Consent Decree Deadlines*, dated April 28, 2011.

requirements for NO<sub>x</sub> and VOC emission sources in the relevant Districts (unless and until EPA delegates such authority to the District), while the District would retain authority to continue implementing any existing SIP-approved NNSR requirements. Our TSD describes the limited FIPs that we propose to promulgate for any District for which we cannot finalize approval of the required NNSR SIP revisions by July 10, 2011. *See* TSD at 10, 11.

For the nine Districts covering “former subpart 1” nonattainment areas, we have reviewed the existing SIPs and determined that two of the SIP-approved NNSR programs in these areas (for Eastern Kern APCD and San Diego County APCD) implement the 1997 8-hour ozone NAAQS. We propose to determine that the existing NNSR programs for these two former subpart 1 areas are, therefore, adequate to address element (3) of section 110(a)(2)(D)(i) for this standard. *See* TSD at 11.

The remaining seven Districts, which cover five former subpart 1 areas (Central Mountain Counties, Chico, Southern Mountain Counties, Sutter Buttes, and Western Nevada County), are currently subject to the NNSR permitting requirements in The Interpretative Rule (40 CFR part 51 Appendix S), except that the waiver provisions in section VI of 40 CFR part 51 Appendix S no longer apply. *See* Phase 2 Rule, 75 FR 71612 (November 29, 2005) and *NRDC v. EPA*, 571 F. 3d 1245 (DC Cir. 2009) (vacating EPA’s elimination of the 18-month limitation in 40 CFR part 52.24(k) with respect to the waiver provisions in section VI of 40 CFR part 51 Appendix S). *See* TSD at 11, 12. The California SIP remains deficient for purposes of 8-hour ozone NNSR requirements in these five former subpart 1 areas that do not yet have approved NNSR programs under part D, title I of the Act. Thus, we propose to disapprove the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS for the seven Districts covering these five former subpart 1 areas.

As discussed above, however, all of these areas are currently subject to NNSR permitting requirements under The Interpretative Rule in 40 CFR part 51, Appendix S, except for the waiver provisions in section VI. These permitting provisions will continue to apply in these areas until the State submits and EPA approves NNSR SIP revisions addressing the subpart 2 NNSR requirements that will apply following EPA’s classification of each area under subpart 2. *See* 74 FR 2936 (January 16, 2009) (proposing to require States to submit all required SIP

elements for the areas’ subpart 2 classifications one year after the effective date of a final rule classifying the areas). We propose to determine that implementation of The Interpretative Rule during this interim period adequately addresses the requirements of element (3) of section 110(a)(2)(D)(i) in these areas and that this discharges EPA’s obligation to promulgate a FIP for these limited purposes. This proposal applies only to our FIP obligation in this particular circumstance and should not be construed as an interpretation of our obligations in other nonattainment areas where The Interpretative Rule currently applies under 40 CFR 52.24(k). *See* TSD at 12.

## 2. 8-Hour Ozone Unclassifiable/Attainment Areas

For areas designated unclassifiable/attainment for the 1997 8-hour ozone NAAQS, the Phase 2 Rule requires revisions to PSD SIPs to require explicit identification of NO<sub>x</sub> as an ozone precursor. 70 FR 71612 at 71679, 71699–71700; 40 CFR 51.166(b)(1)(ii), (b)(2)(ii), (b)(23)(i), (b)(49)(i). These SIP revisions were due June 15, 2007. 70 FR at 71683. In areas subject to the Federal PSD program in 40 CFR 52.21, EPA’s revisions to 40 CFR 52.21 (including regulation of NO<sub>x</sub> as an ozone precursor) became effective January 30, 2006. 70 FR 71612 at 71683.

Fifteen Districts and portions of eight additional Districts in California are designated unclassifiable/attainment for the 1997 8-hour ozone NAAQS. All but four of these Districts are currently subject to the Federal PSD program in 40 CFR 52.21. 40 CFR 52.270. The California SIP remains deficient for purposes of 8-hour ozone PSD requirements in those areas subject to the Federal PSD program. Because EPA has already promulgated a PSD FIP for these areas, however, no further action is required to address element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS in these areas.

We reviewed the PSD rules for the four Districts with SIP-approved programs for ozone (Mendocino County AQMD (“Mendocino”), Monterey Bay Unified APCD (“Monterey”), North Coast Unified AQMD (“North Coast”), and Northern Sonoma County APCD (“Northern Sonoma”). Of these, only Monterey’s existing SIP PSD program identifies NO<sub>x</sub> as an ozone precursor. We propose to approve the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS for Monterey. *See* TSD at 12, 13.

The SIP-approved PSD programs for the other three Districts (Mendocino,

North Coast, and Northern Sonoma) do not currently identify NO<sub>x</sub> as an ozone precursor. However, by direct final rule on May 6, 2011, EPA approved PSD SIP revisions submitted by Mendocino and Northern Sonoma to explicitly identify NO<sub>x</sub> as an ozone precursor. *See* 76 FR 26192 and 76 FR 26224 (May 6, 2011). We propose to determine that these PSD SIP revisions satisfy the requirements of element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS in these Districts. If, however, either of these approvals is withdrawn and does not become effective by our July 10, 2011 Consent Decree deadline for final action on element (3) of the 2007 Transport SIP, we propose to disapprove the 2007 Transport SIP for the relevant area and to promulgate a limited PSD FIP based on the provisions of 40 CFR 52.21 identifying NO<sub>x</sub> as an ozone precursor. EPA would retain authority to implement the applicable requirements of 40 CFR 52.21 for NO<sub>x</sub> emission sources in the relevant area (unless and until EPA delegates such authority to the District), while the District would retain authority to continue implementing any existing SIP-approved PSD requirements. *See* TSD at 13.

Finally, although North Coast has also submitted PSD SIP revisions to address this requirement, among others, we are proposing to disapprove the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and to promulgate a limited PSD FIP for North Coast because we do not expect to finalize approval of that PSD submittal by our July 10, 2011 Consent Decree deadline for final action on element (3) of the 2007 Transport SIP. Thus, for North Coast, we are proposing to promulgate a limited PSD FIP based on the provisions of 40 CFR 52.21 regulating NO<sub>x</sub> as an ozone precursor. EPA would retain authority to implement the applicable requirements of 40 CFR 52.21 for NO<sub>x</sub> emission sources in North Coast (unless and until EPA delegates such authority to the District), while the District would retain authority to continue implementing any existing SIP-approved PSD requirements. *See* TSD at 13. This limited FIP would apply only until EPA approves a PSD SIP revision for North Coast addressing this requirement.

## B. Evaluation of Measures To Prevent Significant Deterioration for 1997 PM<sub>2.5</sub> NAAQS

Two air quality planning areas in California (the San Joaquin Valley and the Los Angeles-South Coast Air Basin) are designated nonattainment for the

1997 PM<sub>2.5</sub> NAAQS. See 40 CFR 81.305. Two Districts (San Joaquin Valley APCD and South Coast AQMD) implement preconstruction permit programs in these two nonattainment areas. See TSD at 13, 14. Twenty-five air quality planning areas that cover the rest of the State are designated unclassifiable/attainment for the 1997 PM<sub>2.5</sub> NAAQS. See 40 CFR 81.305. Thirty-four Districts implement preconstruction permit programs in these 25 unclassifiable/attainment areas. See TSD at 14, 15.

#### 1. PM<sub>2.5</sub> Nonattainment Areas

For areas designated nonattainment for the 1997 PM<sub>2.5</sub> NAAQS, the NSR Implementation Rule for PM<sub>2.5</sub>, 73 FR 28321 (May 16, 2008) (“PM<sub>2.5</sub> NSR Rule”), establishes new requirements under 40 CFR part 51.165 for States to include in their SIP-approved NNSR programs to address the PM<sub>2.5</sub> NAAQS. These NNSR SIP revisions were due May 16, 2011. See 73 FR 28321 (May 16, 2008). Under 40 CFR part 52.24(k), during the period of time allowed for States to amend their existing NNSR programs to address the new PM<sub>2.5</sub> requirements, States are allowed to rely on the procedures under 40 CFR part 51 Appendix S (“The Interpretative Rule”) to issue permits to new or modified major stationary sources proposing to locate in a PM<sub>2.5</sub> nonattainment area.<sup>14</sup> Both the San Joaquin Valley APCD and South Coast AQMD have confirmed to EPA that they are implementing and will continue to implement the requirements of The Interpretative Rule to any prospective project that triggers PM<sub>2.5</sub> NSR requirements during this interim period.<sup>15</sup> Thus, with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 PM<sub>2.5</sub> NAAQS, we propose to approve the 2007 Transport SIP for the San Joaquin Valley and the Los Angeles-South Coast Air Basin based on a determination that current implementation of The Interpretative Rule in these areas

<sup>14</sup> Note that for purposes of the 1997 PM<sub>2.5</sub> NAAQS, the waiver provisions in section VI of 40 CFR part 51 Appendix S expired in October 2006, i.e., 18 months after the April 2005 effective date of each area’s designation as nonattainment for this standard. See Phase 2 Rule, 75 FR 71612 (November 29, 2005) and *NRDC v. EPA*, 571 F. 3d 1245 (DC Cir. 2009) (vacating EPA’s elimination of the 18-month limitation in 40 CFR 52.24(k) with respect to the waiver provisions in section VI of 40 CFR part 51 Appendix S).

<sup>15</sup> See Policy Memorandum Dated October 27, 2009, “San Joaquin Valley Unified APCD: Interim New Source Review Requirements for PM<sub>2.5</sub>”; e-mail dated September 4, 2010, from Mohsen Nazemi, South Coast AQMD to Gerardo Rios, U.S. EPA Region 9, “Appendix S Implementation of NSR for PM<sub>2.5</sub>.”

adequately addresses the 1997 PM<sub>2.5</sub> NAAQS. See TSD at 13, 14.

#### 2. PM<sub>2.5</sub> Unclassifiable/Attainment Areas

For areas designated unclassifiable/attainment for the 1997 PM<sub>2.5</sub> NAAQS, the PM<sub>2.5</sub> NSR Rule establishes new PSD requirements under 40 CFR 51.166 for SIP-approved PSD programs to implement the new PM<sub>2.5</sub> requirements. These SIP revisions were due May 16, 2011. 73 FR 28321 at 28341 (May 16, 2008). In areas subject to the Federal PSD program in 40 CFR 52.21, the PM<sub>2.5</sub> requirements of 40 CFR 52.21 became effective July 15, 2008. 73 FR at 28340, 28343.

Thirty-four Districts implement preconstruction permit programs in the 25 air quality planning areas designated as unclassifiable/attainment for the 1997 PM<sub>2.5</sub> NAAQS. In all but five of these Districts, the Federal PSD program in 40 CFR 52.21 applies. 40 CFR 52.270. Under the PM<sub>2.5</sub> NSR Rule, the PM<sub>2.5</sub> requirements of 40 CFR 52.21 became applicable in these 29 Districts as of July 15, 2008, including regulation of SO<sub>2</sub> and NO<sub>x</sub> as precursors. See 73 FR at 28340, 28343 (May 16, 2008). Because the California SIP remains deficient with respect to PSD requirements in these areas generally, we propose to disapprove the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 PM<sub>2.5</sub> NAAQS for these areas. Because EPA has already promulgated a PSD FIP for these areas, however, no further action is required to address element (3) of CAA section 110(a)(2)(D)(i) for the 1997 PM<sub>2.5</sub> NAAQS in these areas.

The remaining five Districts (Mendocino, Monterey, North Coast, Northern Sonoma, and Sacramento) have SIP-approved PSD programs. We have reviewed the PSD rules for each of these Districts and determined that all five of these SIP PSD programs require owners and operators of sources and permitting authorities to conduct permit-related PM<sub>2.5</sub> analyses. We propose to approve the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 PM<sub>2.5</sub> NAAQS for these areas based on a determination that these five SIP-approved PSD programs implement the 1997 PM<sub>2.5</sub> NAAQS. See TSD at 14, 15.

#### C. Evaluation of Measures To Prevent Significant Deterioration for Greenhouse Gases

Three Districts (Mendocino, North Coast, and Northern Sonoma) were subject to EPA’s recently promulgated rule, Limitation of Approval of Prevention of Significant Deterioration

Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans (“PSD SIP Narrowing Rule”) (75 FR 82536, Dec. 30, 2010). In the PSD SIP Narrowing Rule, EPA withdrew its previous approval of California’s PSD programs for these three Districts to the extent that the programs applied PSD permit requirements to GHG emissions increases from GHG-emitting sources below the thresholds set in EPA’s June 3, 2010 Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (“Tailoring Rule”) (75 FR 31514). California’s 2007 Transport SIP relies, in part, on the PSD programs for Mendocino, North Coast, and Northern Sonoma as of November 2007—which was before December 30, 2010, the effective date of the PSD SIP Narrowing Rule—to satisfy element (3) of CAA section 110(a)(2)(D)(i). On April 21, May 5, and May 9 of 2011, respectively, Mendocino, Northern Sonoma, and North Coast each submitted letters clarifying that the 2007 Transport SIP should be read with respect to CAA section 110(a)(2)(D)(i)(II) to reflect each of their PSD programs as they are currently Federally approved as a result of the PSD SIP Narrowing Rule, 75 FR 82536 (Dec. 30, 2010).<sup>16</sup> EPA proposes, therefore, to fully approve the 2007 Transport SIP for Mendocino, North Coast, and Northern Sonoma with respect to element (3) of CAA section 110(a)(2)(D)(i).

In addition, Monterey has confirmed that its SIP provides GHG PSD permitting authority at thresholds consistent with the Tailoring Rule. See Monterey Bay Unified APCD, Rule 207 (as approved February 4, 2000, 65 FR 5433); see also letter dated July 28, 2010, from Richard Stedman, Monterey Bay Unified APCD to Jared Blumenfeld, EPA Region 9, re: “Implementation of Greenhouse Gas Tailoring Rule.” We propose, therefore, to fully approve the 2007 Transport SIP for Monterey with respect to element (3) of CAA section 110(a)(2)(D)(i).

Finally, Sacramento was subject to EPA’s recently promulgated rule, Findings of Substantial Inadequacy and SIP Call (“PSD GHG SIP Call”) (75 FR 77698, Dec. 13, 2010). In the PSD GHG SIP Call, EPA determined that

<sup>16</sup> See letter dated April 21, 2011, from Christopher D. Brown, APCO, Mendocino County AQMD, to Gerardo Rios, EPA Region 9, re: “Clarification of the 2007 Transport SIP as it relates to the PSD Program in Mendocino County”; letter dated May 5, 2011, from Barbara A. Lee, Northern Sonoma APCD, to Gerardo Rios, EPA Region 9, re: “Clarification of the CA Transport SIP submittal”; letter dated May 9, 2011, from Richard Martin, APCO, North Coast Unified AQMD, to Gerardo Rios, EPA Region 9.

Sacramento's PSD program was substantially inadequate because it did not apply to GHG-emitting sources, and established a deadline of January 31, 2011, for Sacramento to submit its corrective SIP revision. Sacramento submitted the corrective SIP revision on January 28, 2011, and in a separate action EPA has proposed to approve that SIP revision. *See* 76 FR 28942 (May 19, 2011). We propose, therefore, to fully approve the 2007 Transport SIP for Sacramento with respect to element (3) of CAA section 110(a)(2)(D)(i) if Sacramento's corrective SIP revision to address GHG permitting requirements receives final EPA approval.

All other areas in California are subject to current Federal PSD requirements for GHG emissions in 40 CFR 52.21. Because the California SIP remains deficient for purposes of GHG PSD requirements in these areas, we propose to disapprove the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) for these areas. Because these areas are already subject to the Federal PSD program, however, we propose to determine that no further action is required to address element (3) of CAA section 110(a)(2)(D)(i) in these areas. *See* TSD at 15, 16.

#### *D. Conclusion Regarding Measures To Prevent Significant Deterioration*

Based on our review of the NNSR and PSD programs that currently apply in each of California's 35 Districts, we propose a limited approval and limited disapproval of the 2007 Transport SIP with respect to the requirement in CAA section 110(a)(2)(D)(i) to prohibit emissions of air pollutants which will interfere with other States' required measures to prevent significant deterioration of air quality for the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS.

Specifically, we propose the following actions with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. For nine Districts<sup>17</sup> that are designated nonattainment and classified under subpart 2 of part D, title I of the CAA and that have SIP-approved NNSR programs meeting the approval criteria discussed above, we propose to approve the 2007 Transport SIP. For three Districts<sup>18</sup> with nonattainment areas classified under subpart 2 for which NNSR SIP revisions are necessary to

meet the approval criteria discussed above, we propose to approve the 2007 Transport SIP if we finalize approval of the required NNSR SIP revisions by our July 10, 2011 deadline for final action on element (3) of the 2007 Transport SIP. Alternatively, for any of these Districts for which we cannot approve the required NNSR SIP revision by our July 10, 2011 deadline, we propose to disapprove the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and to promulgate a limited NNSR FIP addressing the relevant requirements.

For two Districts<sup>19</sup> with "former subpart 1" nonattainment areas that implement SIP-approved NNSR programs meeting the approval criteria discussed above, we propose to approve the 2007 Transport SIP. For seven Districts<sup>20</sup> with "former subpart 1" nonattainment areas that do not yet have SIP-approved NNSR programs, we propose to disapprove the 2007 Transport SIP but to determine that implementation of The Interpretative Rule during this interim period pending EPA's final subpart 2 classifications of these areas adequately addresses the requirements of element (3) of CAA section 110(a)(2)(D)(i) and, therefore, discharges EPA's obligation to promulgate a FIP for these limited purposes.

For Monterey, which is designated unclassifiable/attainment and has a SIP-approved PSD program meeting the approval criteria discussed above, we propose to approve the 2007 Transport SIP. For two Districts<sup>21</sup> with unclassifiable/attainment areas for which we have recently approved PSD SIP revisions meeting these requirements by direct final rule, we propose to approve the 2007 Transport SIP. If, however, either of these direct final rules is withdrawn and does not become effective by our July 10, 2011 Consent Decree deadline for final action on element (3) of the 2007 Transport SIP, we propose to disapprove the 2007 Transport SIP for the relevant District and to promulgate a limited PSD FIP for that District based on the provisions of 40 CFR 52.21 identifying NO<sub>x</sub> as an ozone precursor. EPA would retain authority to implement the requirements of 40 CFR 52.21 in the relevant District, for NO<sub>x</sub> emission

sources only, unless and until it delegates such authority to the District. For North Coast, we propose to disapprove the 2007 Transport SIP and to promulgate a limited PSD FIP for NO<sub>x</sub> emission sources only, as discussed above. For the rest of the State, which is designated unclassifiable/attainment for the 1997 8-hour ozone NAAQS and subject to the Federal PSD program in 40 CFR 52.21, we propose to disapprove the 2007 Transport SIP but to determine that no further action is required to address element (3) of CAA section 110(a)(2)(D)(i) because EPA has already promulgated a PSD FIP for these areas.

We propose the following actions with respect to element (3) of CAA section 110(a)(2)(D)(i) for the 1997 PM<sub>2.5</sub> NAAQS. For two Districts<sup>22</sup> that are designated nonattainment, we propose to approve the 2007 Transport SIP based on a determination that implementation of The Interpretative Rule during the SIP-development period adequately addresses the requirements of element (3) of CAA section 110(a)(2)(D)(i). For five Districts<sup>23</sup> that are designated unclassifiable/attainment and that have SIP-approved PSD programs meeting the approval criteria discussed above, we propose to approve the 2007 Transport SIP. For the rest of the State, which is designated unclassifiable/attainment and subject to the Federal PSD program in 40 CFR 52.21, we propose to disapprove the 2007 Transport SIP but to determine that no further action is required to address element (3) of CAA section 110(a)(2)(D)(i) because EPA has already promulgated a PSD FIP for these areas.

Finally, with respect to PSD authority to regulate GHGs, we propose to take the following actions. For three Districts<sup>24</sup> that were subject to the PSD SIP Narrowing Rule (75 FR 82536, Dec. 30, 2010), we propose to fully approve the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) based on the Districts' letters clarifying that the 2007 Transport SIP should be read with respect to CAA section 110(a)(2)(D)(i)(II) to reflect each of their PSD programs as they are currently Federally approved as a result of the PSD SIP Narrowing Rule. For Monterey, which has confirmed that its SIP provides GHG PSD permitting authority at thresholds consistent with

<sup>17</sup> Antelope Valley AQMD, Bay Area AQMD, El Dorado APCD, Imperial County APCD, Mojave Desert AQMD, San Joaquin Valley APCD, South Coast District, Ventura County APCD, and Yolo-Solano AQMD.

<sup>18</sup> Placer County APCD, Feather River AQMD, and Sacramento Metropolitan AQMD.

<sup>19</sup> Eastern Kern APCD and San Diego County APCD.

<sup>20</sup> Amador County APCD, Butte County AQMD, Calaveras County APCD, Feather River AQMD, Northern Sierra AQMD, Mariposa County APCD, and Tuolumne County APCD.

<sup>21</sup> Mendocino County AQMD and Northern Sonoma County APCD.

<sup>22</sup> San Joaquin Valley APCD and South Coast AQMD (excluding Coachella Valley part).

<sup>23</sup> Mendocino County AQMD, Monterey Bay Unified AQMD, North Coast Unified AQMD, Northern Sonoma County APCD, and Sacramento Metropolitan AQMD.

<sup>24</sup> Mendocino County AQMD, Monterey Bay Unified AQMD, and North Coast Unified AQMD.

the Tailoring Rule, we propose to fully approve the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i). For Sacramento, which was subject to the PSD GHG SIP Call (75 FR 77698, Dec. 13, 2010), we propose to fully approve the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) if Sacramento's corrective SIP revision to address GHG permitting requirements receives final EPA approval. For all other areas in California, which are subject to the Federal PSD program in 40 CFR 52.21, we propose to disapprove the 2007 Transport SIP but to determine that no further action is required to address element (3) of CAA section 110(a)(2)(D)(i) because EPA has already promulgated a PSD FIP for these areas.

For a more detailed discussion of each of these proposed actions, see our TSD.

#### IV. Proposed Action

As authorized in CAA sections 110(k)(3) and 301(a), EPA is proposing a limited approval and limited disapproval of the 2007 Transport SIP with respect to the requirement in CAA section 110(a)(2)(D)(i) to prohibit emissions of air pollutants in amounts which will interfere with any other State's measures required under title I, part C of the CAA to prevent significant deterioration of air quality. CARB submitted the 2007 Transport SIP on November 17, 2007, to address the requirements of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS. Specifically, for those Districts in California that implement SIP-approved PSD or NNSR permit programs meeting the approval criteria discussed above, EPA is proposing to approve the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i). For those Districts in California with SIP-approved PSD or NNSR permit programs that do not meet the approval criteria discussed above, or that are subject to the Federal PSD program in 40 CFR 52.21, EPA is simultaneously proposing to disapprove the 2007 Transport SIP with respect to element (3) of CAA section 110(a)(2)(D)(i) and to promulgate limited FIPs as appropriate.

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. The 2007 Transport SIP was not submitted to meet either of these requirements. Therefore, if we take final action to disapprove this submittal, no sanctions will be

triggered. Disapproval of a required SIP revision also triggers the requirement under CAA section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the State corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. For any District in California for which we finalize a disapproval of the 2007 Transport SIP, EPA intends to simultaneously promulgate a limited PSD or NNSR FIP, as discussed in this proposal, unless the relevant area is already subject to the Federal PSD program in 40 CFR 52.21.

This proposed action does not apply to the remaining three elements of CAA section 110(a)(2)(D)(i) regarding significant contribution to nonattainment in any other State, interference with maintenance in any other State, and interference with measures required to protect visibility in any other State. In separate actions, EPA has fully approved the 2007 Transport SIP for purposes of these three additional elements of CAA section 110(a)(2)(D)(i). See Final Rule signed May 9, 2011, "Approval and Promulgation of Air Quality Implementation Plans; State of California; Regional Haze State Implementation Plan and Interstate Transport Plan; Interference with Visibility Requirement"; Final Rule signed May 10, 2011, "Approval and Promulgation of Implementation Plans; State of California; Interstate Transport of Pollution; Significant Contribution to Nonattainment and Interference with Maintenance Requirements."

EPA is soliciting public comments on this proposal and will accept comments until the date noted in the **DATES** section above.

#### V. Statutory and Executive Order Reviews

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

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

##### B. Paperwork Reduction Act

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

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any

rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or another statute 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 this proposal on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (See 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; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Although this rule may eventually lead to Federal permitting requirements for a handful of sources, EPA believes that in such an event, there will not be a significant economic impact on the potentially affected sources and that any such impacts would not affect a substantial number of sources, regardless of size. In this proposal, EPA is not proposing any requirements beyond those with which existing sources are already required to comply.

In the case of Mendocino and Northern Sonoma, EPA has already separately approved, by direct final rule, the SIP revisions necessary to make NO<sub>x</sub> a precursor for ozone under the SIP-approved PSD program. For these areas, EPA is only proposing a narrow FIP to take effect in the event that EPA receives adverse comment that require additional notice and comment rulemaking to take final action on those SIP submissions. In this action, EPA is proposing a FIP that would effectively only impose a Federal requirement that sources in these districts must already meet pursuant to existing state or local requirements. For this reason, EPA does not anticipate that such sources would be subject to any additional burden as a result of such a FIP and we expect that if there is any such burden, it would be minimal. Accordingly, EPA does not believe that such a FIP would have a significant economic impact on any sources in these areas, regardless of size.

In the case of North Coast, EPA has not yet proposed to approve the SIP

revision necessary to make NO<sub>x</sub> a precursor for ozone in the context of PSD permitting. For this area, EPA is likewise only proposing a narrow FIP to fill the gap with respect to requiring PSD permits to address NO<sub>x</sub> as a precursor for ozone. To EPA's knowledge, in the past ten years there have been no major sources or major modifications in this area subject to PSD permitting requirements for NO<sub>x</sub> emissions. EPA does not anticipate that there will be additional sources that would require such a permit in the future, and EPA is not required to analyze theoretical future impacts. It would be speculative to estimate potential impacts on sources based solely on theoretical future sources. Based on this fact, EPA does not believe that such a FIP would have an impact on a substantial number of sources, regardless of size.

EPA is also proposing a FIP for the Feather River, Placer, and Sacramento areas, to take effect in the event that EPA is not able to finalize its proposed approval of SIP submissions for these areas with respect to the nonattainment NSR permitting requirements for ozone. The affected sources in these three areas are already required to meet essentially the same applicable requirements under state or local regulations contained within the SIP submissions that EPA has proposed to approve, even if EPA were not to finalize the approval of such regulations into the SIPs for these areas. Because the sources are already required to comply with the same substantive requirements by existing regulatory regimes, the proposed FIPs would not impose an additional burden. Thus, in these circumstances, EPA believes that were it to impose such a FIP on any of these areas in the final action on this proposal, it would not impose a significant economic impact on any source, regardless of size.

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

#### *D. Unfunded Mandates Reform Act*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or Tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome

alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

#### *E. Executive Order 13132, Federalism*

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule

implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

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

EPA specifically solicits additional comment on this proposed rule from Tribal officials.

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

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

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

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

#### *I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary



consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

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

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

Air pollution control, Environmental protection, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 20, 2011.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

Title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart F—California

2. Section 52.233 is amended by adding paragraph (h) to read as follows:

##### § 52.233 Review of new sources and modifications.

\* \* \* \* \*

(h) *Regulation for review of major stationary sources and major modifications for nitrogen oxides.* (1) Upon the effective date of this regulation, the requirements of this paragraph are applicable to any source under the jurisdiction of the APCDs listed below that is a major stationary source or major modification for nitrogen oxides in a "serious" ozone nonattainment area under 40 CFR part 51, Appendix S, and that is not otherwise subject to new source review under the applicable SIP for the area.

(i) Feather River AQMD.

(ii) Placer County APCD.

(iii) Sacramento Metropolitan AQMD.

(2) Except for a major stationary source that is subject to new source review under the applicable SIP for the area, no owner or operator shall commence construction of a new stationary source that emits or has the potential to emit 50 tons per year or more of nitrogen oxides, without first obtaining approval from the Administrator.

(3) Except for a major modification that is subject to new source review under the applicable SIP for the area, no

owner or operator shall commence construction of a modification to an existing stationary source that results in a net emissions increase of 25 tons per year or more of nitrogen oxides, without first obtaining approval from the Administrator.

(4) For any major stationary source or major modification subject to this paragraph in accordance with the emission thresholds identified in paragraphs (h)(2) and (3) of this section, the Administrator shall approve the construction of such source or modification if the owner or operator demonstrates that construction of such source or modification satisfies the requirements of Sacramento Metropolitan AQMD Rule 202, as approved on June 19, 1985 (50 FR 25417).

\* \* \* \* \*

3. Section 52.270 is amended by adding paragraphs (b)(2)(iv), (b)(3)(iv), and (b)(4)(iv) to read as follows:

##### § 52.270 Significant deterioration of air quality.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) Those projects which are major stationary sources or major modifications for nitrogen oxides as precursors to ozone under § 52.21.

(3) \* \* \*

(iv) Those projects which are major stationary sources or major modifications for nitrogen oxides as precursors to ozone under § 52.21.

(4) \* \* \*

(iv) Those projects which are major stationary sources or major modifications for nitrogen oxides as precursors to ozone under § 52.21.

[FR Doc. 2011-13397 Filed 5-27-11; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 141

[FRL-9313-3]

#### Public Meeting: Preliminary Regulatory Determinations for the Third Contaminant Candidate List (CCL 3)

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

**ACTION:** Announcement of meeting.

**SUMMARY:** The 1996 Safe Drinking Water Act Amendments require the EPA to determine every five years, whether to regulate at least five contaminants from the current Contaminant Candidate List (CCL) with a national primary drinking

water regulation. The process of making decisions about whether to regulate any of the unregulated contaminants on the CCL is called Regulatory Determinations. On October 8, 2009, EPA published the third Contaminant Candidate List (CCL 3) containing 116 unregulated contaminants. The Agency is currently in the preliminary process of deciding whether to regulate at least five CCL 3 contaminants (i.e., Regulatory Determinations 3). The purpose of this notice is to announce that EPA will be hosting a public stakeholder meeting on June 16, 2011, from 1 p.m. to 5 p.m., to discuss and obtain input on EPA's process for Regulatory Determination 3 along with the contaminants and the technical information that the Agency is considering. EPA expects to publish the preliminary regulatory determinations for at least five CCL 3 contaminants in mid-2012 and final regulatory determinations by August 2013.

**DATES:** The public meeting will be held in the Washington, DC metropolitan area on Thursday, June 16, 2011, from 1 p.m. to 5 p.m., Eastern Daylight Savings Time. Participants will be notified of the specific meeting room upon confirmation of registration.

**FOR FURTHER INFORMATION CONTACT:** For technical inquiries regarding EPA's Regulatory Determinations for contaminants on CCL 3 contact: Mr. Zeno Bain at (202) 564-5970 or by e-mail: [bain.zeno@epa.gov](mailto:bain.zeno@epa.gov). For additional information about the drinking water Contaminant Candidate List and the Regulatory Determinations process, please visit: <http://water.epa.gov/scitech/drinkingwater/dws/ccl/index.cfm>. Additional information on these and other EPA activities under the Safe Drinking Water Act is also available at the Safe Drinking Water Hotline at (800) 426-4791.

#### SUPPLEMENTARY INFORMATION:

**Registration:** Individuals planning to attend the Stakeholder Meeting must register for the meeting by contacting Melissa Simic at (202) 564-7722 or by sending an e-mail to [simic.melissa@epa.gov](mailto:simic.melissa@epa.gov) no later than Wednesday, June 8, 2011. There is no charge for attending the meeting but seats are limited, so register as soon as possible. Please note that attendees will be required to pass through security checks at the front desk and obtain a visitor's badge. Pre-registration for this meeting will help us facilitate your check-in.

**Special Accommodations:** The meeting will be held in a building which is accessible to persons using wheel chairs or scooters. For