

## SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
(a) Each basic authentication service ..... (Items 47–50 vacant.) .....	\$20

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**Carl C. Risch,**

*Assistant Secretary for Consular Affairs,  
Department of State.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R09–OAR–2020–0096; FRL–10014–93–Region 9]

#### Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; California; Infrastructure Requirements for Ozone

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove the state implementation plan (SIP) revision submitted by the State of California pursuant to the requirements of the Clean Air Act (CAA or “Act”) for the implementation, maintenance, and enforcement of the 2015 national ambient air quality standards (NAAQS or “standards”) for ozone. As part of this action, we are proposing to reclassify certain regions of the State for emergency episode planning purposes with respect to ozone. We are also proposing to approve into the SIP an updated state provision addressing CAA conflict of interest requirements, and emergency episode planning rules for Amador County Air Pollution Control District (APCD), Calaveras County APCD, Mariposa County APCD, Northern Sierra Air Quality Management District (AQMD), and Tuolumne County APCD. Finally, we are proposing to approve an exemption from emergency episode planning requirements for ozone for Lake County AQMD. We are taking comments on this proposal and, after considering any comments submitted, plan to take final action.

**DATES:** Written comments must be received on or before November 16, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2020–0096 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, or if you need assistance in a language other than English, or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Panah Stauffer, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3247 or by email at [stauffer.panah@epa.gov](mailto:stauffer.panah@epa.gov)

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

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#### I. The EPA’s Approach to the Review of Infrastructure SIP Submittals

The EPA is acting upon two SIP submittals from California that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS. Whenever the EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions<sup>1</sup> and through regional actions on infrastructure submissions. Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the submitting state’s SIP for facial compliance with statutory and regulatory requirements, not for the

<sup>1</sup> The EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at <https://www3.epa.gov/airquality/urbanair/sipstatus/docs/>)

Guidance on Infrastructure SIP Elements Multipollutant FINAL\_Sept\_2013.pdf, as well as in numerous EPA actions, including the EPA’s prior action on California’s infrastructure SIP to address the 1997 and 2008 ozone NAAQS (79 FR 63350 (October 23, 2014)).

state's implementation of its SIP.<sup>2</sup> The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc., that comprise its SIP.

## II. Background

### A. Statutory Requirements

As discussed in section I of this proposed rule, CAA section 110(a)(1) requires each state to submit to the 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) contains the infrastructure SIP requirements, which generally relate to the information, authorities, compliance assurances, procedural requirements, and control measures that constitute the "infrastructure" of a state's air quality management program. These infrastructure SIP requirements (or "elements") required by section 110(a)(2) are as follows:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.
- Section 110(a)(2)(D)(ii): Interstate 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): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, prevention of significant deterioration (PSD), and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submittal of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-

year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: (i) Section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment 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 requirements for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I).

### B. NAAQS Addressed by This Proposal

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on-and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to elevated levels of ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.

On October 26, 2015, the EPA promulgated a revised NAAQS for ozone.<sup>3</sup> The EPA had previously promulgated NAAQS for ozone in 1979, 1997 and 2008. The 2015 ozone NAAQS revised the level of the standards to 0.070 parts per million (ppm) averaged across eight hours.

### C. EPA Guidance Documents

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

- March 2, 1978 guidance on the conflict of interest requirements of section 128, pursuant to the requirement of section 110(a)(2)(E)(ii).<sup>4</sup>
- August 15, 2006 guidance on the interstate transport requirements of section 110(a)(2)(D)(i) with respect to the 1997 ozone and 1997 fine particulate matter (PM<sub>2.5</sub>) NAAQS ("2006 Transport Guidance").<sup>5</sup>

<sup>3</sup> 80 FR 65292.

<sup>4</sup> Memorandum dated March 2, 1978, from David O. Bickart, Deputy General Counsel, Office of General Counsel (OGC), "Guidance to States for Meeting Conflict of Interest Requirements of Section 128."

<sup>5</sup> Memorandum dated August 15, 2006, from William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and

• September 25, 2009 guidance on infrastructure SIP requirements for the 2006 PM<sub>2.5</sub> NAAQS ("2009 Infrastructure SIP Guidance").<sup>6</sup>

• September 13, 2013 guidance on infrastructure SIP requirements for the 2008 ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), 2010 sulfur dioxide (SO<sub>2</sub>), 2012 PM<sub>2.5</sub>, and future NAAQS ("2013 Infrastructure SIP Guidance").<sup>7</sup>

## III. California's Submittal

In California, the California Air Resources Board (CARB or "State") is the state agency responsible for the adoption and submission to the EPA of California SIPs and SIP revisions. CARB submitted its infrastructure SIP revision ("2018 Infrastructure SIP" or "California's 2018 Submittal") for the 2015 ozone NAAQS on October 1, 2018.<sup>8</sup>

On June 25, 2020, CARB supplemented its 2018 Infrastructure SIP by submitting ozone emergency episode contingency plans for San Luis Obispo County APCD, Amador County APCD, Calaveras County APCD, Mariposa County APCD, Northern Sierra AQMD, and Tuolumne County APCD.<sup>9</sup> It also submitted an exemption request from emergency episode planning requirements for Lake County AQMD based on that District's attainment status. This submittal ("California's 2020 Submittal") addresses CAA section 110(a)(2)(G) requirements for the 2015 ozone NAAQS.

We find that these submittals (referred to collectively herein as "California's Infrastructure SIP Submittals") meet the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102. We also find that they meet the applicable completeness criteria in Appendix V to

Standards (OAQPS), "Guidance for State Implementation Plan Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards."

<sup>6</sup> Memorandum dated September 25, 2009, 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."

<sup>7</sup> Memorandum dated September 13, 2013, from Stephen D. Page, Director, OAQPS, "Guidance on Infrastructure State Implementation Plan Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)."

<sup>8</sup> Letter dated October 1, 2018, from Richard W. Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region IX.

<sup>9</sup> Letter dated June 16, 2020, from Richard W. Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX, with Ozone Emergency Episode Plans for Amador County, San Luis Obispo County, Northern Sierra, Tuolumne County, Mariposa County, and Calaveras County and Exemption Request for Lake County.

<sup>2</sup> See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (Aug. 30, 2018).

40 CFR part 51. We are proposing to act on California's Infrastructure SIP Submittals.

#### IV. The EPA's Evaluation and Proposed Action

##### A. Proposed Approvals and Partial Approvals

Based upon the evaluation presented in this notice, the EPA proposes to approve California's Infrastructure SIP Submittals with respect to the 2015 ozone NAAQS for the following infrastructure SIP requirements. Proposed partial approvals are indicated by the parenthetical "(in part)."

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): 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.
  - 110(a)(2)(D)(i)(II) (in part): Interstate pollution transport.
  - 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): 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.

##### B. Proposed Partial Disapprovals

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

- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new and modified stationary sources (due to prevention of significant deterioration (PSD) program deficiencies in certain air districts).
- Section 110(a)(2)(D)(i)(II) (in part): Interstate pollution transport (due to PSD program deficiencies in certain air districts).

- Section 110(a)(2)(D)(ii) (in part): Interstate pollution abatement and international air pollution.

- Section 110(a)(2)(J) (in part): Consultation with government officials, public notification, PSD, and visibility protection (due to PSD program deficiencies in certain air districts).

These partial disapprovals are for districts in California that do not have fully SIP-approved PSD programs. The disapprovals will not create any new consequences for these districts or the EPA as the districts already implement the EPA's federal PSD program at 40 CFR 52.21, pursuant to delegation agreements, for all regulated NSR pollutants. They will also not create any new highway sanctions, which are not triggered by disapprovals of infrastructure SIPs.

At this time, the EPA is not acting on the interstate transport requirements of 110(a)(2)(D)(i)(I), which prohibits emission sources from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state. The EPA will propose action on the interstate transport requirements for the 2015 ozone NAAQS in a separate notice.

##### C. The EPA's Evaluation of California's Submittal

We have evaluated California's 2018 Infrastructure SIP and the existing provisions of the California SIP for compliance with the infrastructure SIP requirements of CAA section 110(a)(2) and applicable regulations in 40 CFR part 51 ("Requirements for Preparation, Adoption, and Submittal of State Implementation Plans").

##### 1. CAA Section 110(a)(2)(A)—Emission Limits and Other Control Measures

###### a. Statutory and Regulatory Requirements

Section 110(a)(2)(A) requires SIPs to "include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act."

In the 2013 Infrastructure SIP Guidance, the EPA states that a submittal meets the requirements of CAA section 110(a)(2)(A) if it identifies "existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the subject NAAQS, including precursors of the

relevant NAAQS pollutant where applicable."

VOC and NO<sub>x</sub> are precursors to ozone formation across all source categories. Their emissions are grouped into two general categories: Stationary sources and mobile sources. Stationary sources are further divided into "point" and "area" sources. Point sources typically refer to permitted facilities that have one or more identified and fixed pieces of equipment and emissions points. Stationary area sources are many smaller point sources, and include sources that have internal combustion engines, and gasoline dispensing facilities (gas stations). Area sources consist of widespread and numerous smaller emission sources, such as small permitted facilities and households. The mobile sources category can be divided into two major subcategories: "on-road" and "off-road" mobile sources. On-road mobile sources include light-duty automobiles, light-, medium-, and heavy-duty trucks, and motorcycles. Off-road mobile sources include aircraft, locomotives, construction equipment, mobile equipment, and recreational vehicles.

###### b. Summary of the State's Submission

In its 2018 submittal, California describes different regulatory authorities in California involving state, local, and federal governments. The submittal explains that the state agency, California Air Resources Board (CARB), has authority to adopt and implement controls for on-road and off-road mobile sources, as well as for the fuels that power them. CARB also has authority to regulate consumer products. Local air pollution control districts have authority to adopt and implement controls for stationary sources and small local businesses. If a district fails to meet its responsibilities, CARB is authorized to act in its stead. Some of CARB's authorities also complement federal control measures, such as standards for fuels and vehicles that the EPA establishes. Although CARB acknowledges that several areas in California have not yet met the ozone standards, it notes that current and future regulations implemented under state and local authority will enable continued progress towards attaining those standards.

CARB describes how it has regulated a wide range of mobile sources, including heavy-duty trucks and passenger vehicles that are already in use. CARB has also regulated fuels. In the submittal, CARB states that these regulations have reduced emissions from vehicles and off-road sources such as lawn and garden equipment,

recreational vehicles and boats, and construction equipment.

Starting with mobile sources, California states that its stringent motor vehicle and fuel standards, in-use rules, and inspection programs such as Smog Check and heavy-duty truck inspections have resulted in cars and trucks that are 99 percent and 98 percent cleaner, respectively, than their uncontrolled counterparts. In addition, CARB describes its emission standards for off-road sources and states that it has collaborated with the EPA to regulate sources subject to a combination of state and federal authority, as exemplified by locomotive engine standards and low-sulfur diesel fuel standards for near-shore ships.

With respect to stationary sources and small local businesses, CARB states that emission limits are achieved through a combination of prohibitory rules establishing emission limits by facility type, permits specifying equipment use and operating parameters, and an NSR program that allows industrial growth while mitigating environmental

impacts. Examples of facilities regulated under such district programs include refineries, manufacturing facilities, cement plants, refinishing operations, electrical generation and biomass facilities, boilers, and generators.<sup>10</sup> The state then provides examples of SIP-approved emission control measures for VOCs (listed as hydrocarbons, or HC) and NO<sub>x</sub>.<sup>11</sup>

Finally, CARB notes that all EPA-approved SIP provisions that limit emissions of ozone precursors, along with all other pollutants, are listed online at the website <https://www.epa.gov/sips-ca>. These rules, along with others mentioned in California's submittal, are discussed further in our evaluation section below.

c. The EPA's Review of the State's Submission

California's 2018 Infrastructure SIP broadly describes, and provides examples of, the emission limitations employed by the State and air districts to achieve emission reductions that will help areas within the State attain and maintain the 2015 ozone NAAQS. The

submittal also includes the table below with specific examples of measures that control emissions of ozone precursors. Some emissions control one precursor, while others control multiple precursors and may also control other pollutants that are not affected by the 2015 ozone NAAQS. The control measures in this table reflect the authorities of state and local air agencies in a variety of geographic areas in California. These measures control the ozone precursors of HCs, VOCs, and NO<sub>x</sub>. The state-level regulations reflect state authority to regulate emissions from vehicles and fuels and to regulate consumer products. The local air district regulations reflect local authority to regulate stationary sources, such as boilers and cement kilns, as well as stationary area sources like confined animal feeding operations. Additional examples of rules that control ozone precursor emissions were discussed in the EPA's Overarching Technical Support Document<sup>12</sup> for our 2016 final action on California's Infrastructure SIP Submission for the 2008 ozone NAAQS.

TABLE 1—EXAMPLES OF CALIFORNIA SIP-APPROVED EMISSION CONTROL MEASURES

Rule description	Pollutant or precursor emission controlled <sup>a</sup>	Rule/regulation number <sup>b</sup>	Federal Register citation
Exhaust Emissions Standards and Test Procedures—1985 & Subsequent Model Heavy-Duty Engines and Vehicles.	HC, NO <sub>x</sub> , PM, CO.	State Regulation 13 CCR 1956.8 ...	75 FR 26653.
Exhaust Emissions Standards and Test Procedures—2004 & Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	HC, NO <sub>x</sub> , PM, CO.	State Regulation 13 CCR 1961 .....	75 FR 26653.
California Reformulated Gasoline Regulations .....	HC, SO <sub>x</sub> .....	State Regulation 13 CCR 2250–2297.	60 FR 43379, 75 FR 26653.
Regulations for Large Spark-Ignition Engines and Off-Road Large Spark Ignition Engine Fleet Requirements.	HC, NO <sub>x</sub> .....	State Regulation 13 CCR 2433, 13 CCR 2775–2775.2.	80 FR 76468.
Consumer Products .....	VOC .....	State Regulation, 17 CCR Subchapter 8.5, Article 2.	77 FR 7535.
RECLAIM (Regional Clean Air Incentives Market) Program .....	NO <sub>x</sub> .....	South Coast AQMD Rule 2002 .....	80 FR 43176.
NO <sub>x</sub> Emissions from Natural Gas Fired, Fan-Type Central Furnace .....	NO <sub>x</sub> .....	South Coast AQMD Rule 1111 .....	81 FR 17390.
Crude Oil Production Sumps .....	HC .....	San Joaquin Valley APCD Rule 4402.	77 FR 64227.
Confined Animal Facility Operations .....	VOC .....	San Joaquin Valley APCD Rule 4570.	77 FR 2228.
Portland Cement Kilns .....	NO <sub>x</sub> .....	Mojave Desert AQMD Rule 1161 ...	68 FR 9015.
Glass Melting Furnaces .....	VOC, NO <sub>x</sub> ...	Mojave Desert AQMD Rule 1165 ...	77 FR 39181.
Transfer of Gasoline into Vehicle Fuel Tanks .....	HC .....	Sacramento Metro AQMD Rule 449	78 FR 898.
Stationary Internal Combustion Engines Located at Major Stationary Sources of NO <sub>x</sub> .	NO <sub>x</sub> .....	Sacramento Metro AQMD Rule 412	61 FR 18962.
NO <sub>x</sub> and CO from Boilers, Steam Generators and Process Heaters in Petroleum Refineries.	NO <sub>x</sub> .....	Bay Area AQMD Rule 10 .....	73 FR 17896.

<sup>a</sup> HC = hydrocarbons; NO<sub>x</sub> = oxides of nitrogen; PM = particulate matter; CO = carbon monoxide; SO<sub>x</sub> = oxides of sulfur; VOC = volatile organic compounds, SO<sub>2</sub> = sulfur dioxide.  
<sup>b</sup> CCR = California Code of Regulations, AQMD = Air Quality Management District, APCD = Air Pollution Control District.

In sum, the state and local emission limit provisions in the California SIP, including those cited in California's 2018 Submittal, for mobile, area, and stationary sources address a wide variety of sources and are extensive. The

NO<sub>x</sub> and VOC emission limits serve to limit ambient ozone concentrations, which will help all areas in the State attain and maintain the 2015 ozone NAAQS. We therefore propose to find that the SIP-approved emission limits

discussed in California's Infrastructure SIP Submittals and in this notice provide an adequate basis to conclude that California meets the requirements of CAA section 110(a)(2)(A) for the 2015 ozone NAAQS.

<sup>10</sup> California's 2018 Infrastructure SIP, 6.

<sup>11</sup> Id. at 7, Table 3.

<sup>12</sup> California Infrastructure SIP Overarching Technical Support Document, U.S. EPA, Region 9 (September 2014).

## 2. CAA Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

### a. Statutory and Regulatory Requirements

Section 110(a)(2)(B) of the CAA requires SIPs to “provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.”

In the 2013 Infrastructure SIP Guidance, the EPA states that a submittal meets the requirements of CAA section 110(a)(2)(B) if it cites its authority to perform air quality monitoring, collect air quality data, and submit that data to the EPA, and provides a narrative description of how those provisions meet the requirements. The guidance notes that some authorizing provisions may provide general authority that includes monitoring activities. In the 2013 Infrastructure SIP Guidance, the EPA also notes that, for new or revised NAAQS, submittals should describe how the state will meet changes in monitoring requirements.

### b. Summary of the State’s Submission

In its 2018 Infrastructure SIP, California cites its overall authority to implement air quality control programs in Health and Safety Code (HSC) 39602. CARB also cites HSC 39607(a) and 39607(c) as the provisions that authorize it to collect air quality data and to monitor air pollutants in cooperation with local agencies, including local air districts.<sup>13</sup> Although these provisions are not SIP-approved, they direct the state to “[e]stablish a program to secure data on air quality in each air basin” and to “[m]onitor air pollutants in cooperation with districts and with other agencies.”

In its submittal, California goes on to describe the state’s monitoring network and requirements. CARB notes that over 700 monitors operate at over 250 sites in the State and that current information about individual monitors, and the data the monitors collect, are available on CARB’s website. The data are also reported to the EPA’s Air Quality System.

CARB describes how it and local districts conduct annual evaluations of the adequacy of the monitoring networks in annual network monitoring reports submitted to the EPA. Ten districts submit their own reports, and CARB submits a report that covers the

remaining 25 districts. The reports provide information about monitoring locations and data collected at those sites. Types of monitoring conducted at these sites include “State and Local Air Monitoring sites, National Core multi-pollutant monitoring stations, Chemical Speciation Network sites, Special Purpose Monitoring sites, and Photochemical Assessment Monitoring sites operated by CARB and the districts, as well as other data providers such as the National Park Service in more than 30 Core Based Statistical Areas.”<sup>14</sup> The EPA approves the reports and provides information on areas where the network can be improved. CARB explains that data that are collected for federal purposes are measured using EPA-approved methods and that they are subject to the quality assurance and siting requirements of 40 CFR part 58.

The 2018 Infrastructure SIP submission notes that the 2015 ozone standard did not establish new monitoring requirements, and states that the current network is adequate to continue monitoring for attainment status with the new standard.

### c. The EPA’s Review of the State’s Submission

In its 2018 submittal, CARB cites HSC section 39602 for overarching SIP authority, and HSC sections 39607(a) and (c) for specific authority to establish air quality monitoring with the air districts. CARB also describes California’s network of monitors, how data are collected and made publicly available online, and how data are submitted to the EPA annually. We propose to find that California’s provisions for monitoring and data collection provide adequate authority to monitor ambient air quality for purposes of CAA section 110(a)(2)(B) with respect to the 2015 ozone NAAQS.

With respect to California’s compliance with the federal regulatory requirements relevant for section 110(a)(2)(B), we reviewed California’s 2018 Infrastructure SIP in conjunction with California’s 2019 Annual Network Plans (ANPs) and the EPA response letters to those plans. As California’s 2018 Infrastructure SIP notes, CARB and ten districts submit ANPs to the EPA every year. The most recent ANPs California was required to submit to the EPA were for the year 2019. The EPA has approved all of the 2019 ANPs, and they are included in the docket for this action, along with the EPA’s response letters. Consequently, California’s 2018 Infrastructure SIP, along with its 2017

ANPs, provide an adequate basis for the EPA to propose approval with respect to CAA section 110(a)(2)(B).

## 3. CAA Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

### a. Statutory and Regulatory Requirements

Section 110(a)(2)(C) requires that each SIP “include a program to provide for the enforcement of the measures described in [section 110(a)(2)(A)], and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved, including a permit program as required in parts C and D [of title I of the Act].”

In the 2013 Infrastructure SIP guidance, the EPA states, “[t]his element consists of three sub-elements; enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources; and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.*, the major source PSD program).” The EPA’s guidance also explains that the element C requirement for infrastructure SIPs to comply with CAA title I part C requirements encompasses all regulated NSR pollutants, not just the 2015 ozone NAAQS.

### i. Enforcement

With respect to the requirement to include a program to provide for the enforcement of control measures, the EPA is evaluating the state’s general enforcement authorities to determine whether they have been approved into California’s SIP and whether they adequately provide for SIP enforcement statewide. In the 2013 Infrastructure SIP Guidance, the EPA states, “To satisfy this subelement, an infrastructure SIP submission should identify the statutes, regulations, or other provisions in the existing SIP (or new provisions that are submitted as part of the infrastructure SIP to be incorporated into the SIP) that provide for enforcement of those emission limits and control measures that the air agency has identified in its submission for purposes of satisfying Element A.”

### ii. PSD Permitting

The EPA is also evaluating whether California has a complete PSD permitting program in place covering the requirements for all NAAQS pollutants. The PSD program applies to

<sup>13</sup> California’s 2018 Infrastructure SIP, 8.

<sup>14</sup> *Id.* at 9.

any new major source or a source making a major modification in an attainment area. The program requirements include installation of the best available control technology (BACT), an air quality analysis, an additional impacts analysis, and public involvement. For the purposes of infrastructure SIPs, the EPA evaluates whether state PSD programs address the following “structural elements”: (1) Provisions identifying NO<sub>x</sub> as an ozone precursor consistent with the requirements of the EPA’s Phase 2 implementation rule for the 1997 8-hour ozone NAAQS;<sup>15</sup> (2) provisions to regulate PM<sub>2.5</sub>, including condensable PM, and its precursor emissions (SO<sub>2</sub> in all areas, and NO<sub>x</sub> and/or VOC as appropriate), consistent with the requirements of the EPA’s NSR/PSD implementation rule for the 1997 PM<sub>2.5</sub> NAAQS;<sup>16</sup> and (3) provisions to regulate Greenhouse Gases (GHGs) consistent with the EPA’s regulations to implement the PSD program for GHGs, including “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule,”<sup>17</sup> and “Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans,”<sup>18</sup> as applicable.

### iii. Minor NSR

With respect to the requirement to include a program that provides for regulation of the modification and construction of stationary sources, the EPA is evaluating whether California has existing EPA-approved SIP provisions for Minor NSR for the 2015 ozone NAAQS. The Minor NSR program applies to a new minor source and/or a minor modification at both major and minor sources, in both attainment and nonattainment areas. Major sources are facilities that have the potential to emit pollutants in amounts equal to or greater than the corresponding major source threshold levels. These threshold levels vary by pollutant and/or source category. Major sources must comply with specific emission limits, which are generally more stringent in nonattainment areas. Minor sources are facilities that have the potential to emit pollutants in amounts less than the corresponding major source thresholds.

Under the Minor NSR program, new sources or modifications at existing

sources must comply with any emissions control measures required by the state. The program must not interfere with attainment or maintenance of the NAAQS or the control strategies of a SIP or tribal implementation plan (TIP).

### b. Summary of the State’s Submission

#### i. Enforcement

California’s 2018 Infrastructure SIP describes three provisions of the state HSC that provide CARB and air districts with enforcement authority. HSC section 40001(a) states, “Subject to the powers and duties of the state board, the districts shall adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards in all areas affected by emission sources under their jurisdiction, and shall enforce all applicable provisions of state and federal law.” HSC section 40000 gives CARB the authority to regulate mobile sources and local air districts the authority to regulate all other sources. California’s HSC thus provides for the control of all types of sources and for the enforcement of those controls. In addition, HSC section 39002 gives local and regional authorities primary responsibility for control of air pollution from all sources other than vehicular sources.

#### ii. PSD Permitting

In its 2018 Infrastructure SIP, CARB explains that districts have the authority to adopt and enforce PSD permitting programs under HSC section 40000. The state explains that PSD applies statewide for new major sources or major modifications to existing major sources of NO<sub>2</sub>, SO<sub>2</sub> and CO because all areas in California are designated as attainment or unclassifiable for each NAAQS for those pollutants. PSD also applies in areas that are attainment or unclassifiable for the other NAAQS. A spreadsheet<sup>19</sup> listing the attainment status of California air districts for all NAAQS is included in the docket for this rulemaking. PSD permits can be issued by local districts, the EPA, or both.

The submittal includes a table from the EPA’s website listing districts that have SIP-approved PSD permit programs. The table indicates that 14 districts have PSD programs that are approved into the SIP: Bay Area,<sup>20</sup> Butte County,<sup>21</sup> Eastern Kern,<sup>22</sup> Feather

River,<sup>23</sup> Great Basin,<sup>24</sup> Imperial County,<sup>25</sup> Monterey Bay,<sup>26</sup> Placer County,<sup>27</sup> Sacramento Metro,<sup>28</sup> San Joaquin Valley,<sup>29</sup> San Luis Obispo,<sup>30</sup> Santa Barbara,<sup>31</sup> Yolo-Solano,<sup>32</sup> and Ventura.<sup>33</sup> At the time of CARB’s submission of the 2018 Infrastructure SIP, Sacramento Metro was incorrectly listed on the EPA’s website as having a fully SIP-approved PSD program. Sacramento Metro, along with four other air districts (Mendocino, North Coast, Northern Sonoma, and South Coast) operate PSD programs under a partial Federal Implementation Plan (FIP) and are not completely SIP-approved. The website has since been corrected.<sup>34</sup> The remaining 17 districts in California operate either partially or fully under a FIP, and do not have full SIP-approved PSD programs. Therefore, 22 air districts in California do not fully meet the PSD requirements of element C.

#### iii. Minor NSR

For Minor NSR programs, California reiterates that local districts are responsible for regulating stationary sources in California under HSC 39002 and 40000. CARB explains that this responsibility extends to implementing a Minor NSR program, and that all 35 California air districts administer their own Minor NSR programs. CARB also explains that many of the NSR rules are SIP-approved and explains that information about the approval status of those rules is available from the EPA.

### c. The EPA’s Review of the State’s Submission

#### i. Enforcement

California described HSC sections 39002, 40000, and 40001 in its 2018 Infrastructure SIP submittal. These three provisions provide authority to CARB and local air districts to enforce the emission limits on mobile and stationary sources which were described in element A.

In addition to the three authority provisions cited in California’s 2018 Infrastructure SIP, CARB has identified other statutory enforcement authorities in previous submittals. These include

<sup>23</sup> 80 FR 69880.

<sup>24</sup> Id.

<sup>25</sup> 77 FR 73316.

<sup>26</sup> 80 FR 15899 (March 26, 2015).

<sup>27</sup> 77 FR 73316.

<sup>28</sup> 76 FR 43183 (July 20, 2011).

<sup>29</sup> 77 FR 65305 (October 26, 2012).

<sup>30</sup> 80 FR 69880.

<sup>31</sup> 80 FR 69880.

<sup>32</sup> 77 FR 73316.

<sup>33</sup> 82 FR 13243 (March 10, 2017).

<sup>34</sup> <https://www.epa.gov/caa-permitting/air-permit-delegation-and-psd-sip-approval-status-epa-region-9/ca> (last visited on September 14, 2020).

<sup>15</sup> 70 FR 71611 (November 29, 2005) (codified at 40 CFR 51.166(b)(1)(ii), (b)(2)(ii), (b)(23)(i), (b)(49)(i)).

<sup>16</sup> 73 FR 28321 (May 16, 2008) (codified at 40 CFR 51.166(b)(23)(i), (b)(49)(i), (b)(49)(vi)).

<sup>17</sup> 75 FR 31514 (June 3, 2010).

<sup>18</sup> 75 FR 82535 (December 30, 2010).

<sup>19</sup> EPA Region IX, Spreadsheet of Nonattainment Areas in California Air Districts.

<sup>20</sup> 83 FR 23372 (May 21, 2018).

<sup>21</sup> 80 FR 69880 (November 12, 2015).

<sup>22</sup> 77 FR 73316 (December 10, 2012).

HSC 40752, which requires the air pollution control officers for each air district to observe and enforce rules, regulations, and permit conditions, and HSC 40753, which gives air pollution control officers authority to enforce certain air pollution-related provisions of California's Vehicular Code. They also included the provisions of HSC section 42400 *et seq.*, which establish criminal and civil penalties for violations of state and district rules, regulations, and permits. Further, the EPA's proposal to approve California's previous infrastructure SIP identified additional statutory provisions that relate to inspection and enforcement authority at the state and district level. It also identified numerous SIP-approved state and local rules that provide CARB and the air districts with authority to enforce SIP-approved emissions limits on various types of sources. These measures are described in the EPA's Overarching Technical Support Document for the EPA's action on California's previous Infrastructure SIP submission.<sup>35</sup> Some of the enforcement authorities apply broadly, while others are specific to the SIP-approved rules they address. For example, Lassen County APCD's agricultural burning rule cites the penalty provisions of HSC 42400 and establishes procedures for documenting violations of that rule. San Joaquin Valley APCD's rules 1040 and 1050 are general enforcement and penalty provisions that incorporate the enforcement authorities and penalty provisions of the state HSC into district rules.

Based on the provisions cited in California's 2018 Infrastructure SIP and the SIP-approved provisions discussed in the EPA's previous action on California's multi-pollutant infrastructure SIP, we propose to approve California's 2018 Infrastructure SIP submittal with respect to the requirement in section 110(a)(2)(C) to include a program to provide for the enforcement of control measures.

#### ii. PSD Permitting

For the 13 local air districts with EPA-approved PSD programs, we are proposing to partially approve California's 2018 Infrastructure SIP for the PSD portion of 110(a)(2)(C). This represents an increase from the EPA's 2016 final action on California's previous infrastructure SIP, when only seven air districts met the PSD

requirements.<sup>36</sup> These districts' PSD programs met all of the structural elements, in addition to other requirements for PSD rule approval, and were fully approved into the SIP.

Of the remaining 22 local air districts, five are subject to a partial FIP, which means their programs cover some, but not all, of the structural elements. These are the Mendocino County, North Coast Unified, Northern Sonoma County, Sacramento Metro, and South Coast air district PSD programs. South Coast AQMD has a SIP-approved PSD program for GHGs only, but it does not have a SIP-approved PSD program to address the other two structural elements. Mendocino County AQMD, Northern Sonoma County APCD, and Sacramento Metro AQMD each have PSD programs that generally address the structural PSD elements, but certain sources are subject to a FIP rather than the local PSD program.<sup>37</sup> In addition, the PSD program of North Coast Unified AQMD is subject to a FIP to address deficiencies related to identifying NO<sub>x</sub> as an ozone precursor and specifying 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>. None of the 17 remaining air districts in California have SIP-approved PSD programs. Consequently, they do not meet any of the structural elements.

For the 22 local air districts that do not meet each of the structural PSD elements for all criteria pollutants, we are proposing to partially disapprove California's 2018 Infrastructure SIP for the PSD-related requirements of CAA section 110(a)(2)(C). However, because each of these districts is already subject to a PSD FIP for each of the specific deficiencies, a final action of this proposed partial disapproval will not trigger any new obligation for the EPA to promulgate a FIP.

#### iii. Minor NSR

In the EPA's final rule approving California's previous infrastructure SIP, we determined that all California air districts had SIP-approved minor source permit programs that require minor sources to obtain a permit prior to construction. These Minor NSR programs cover all NAAQS through a broad definition of the term "air contaminants." The EPA's approvals are codified at 40 CFR 52.220 and have not

<sup>36</sup> 81 FR 18766 at 18772 (April 1, 2016).

<sup>37</sup> These sources are cogeneration and resource recovery projects, projects with stack heights greater than 65 meters or that use "dispersion techniques" as defined in 51.100 (which are major sources or major modifications under 52.21), and sources for which the EPA has issued permits under 52.21 for which applications were received by July 31, 1985.

been removed or replaced. Some local program rules have been updated; a table of those rules and their citations is included in the docket for this rulemaking.<sup>38</sup> Because all districts in California continue to have approved minor source permit programs, the EPA proposes to approve the 2018 Infrastructure SIP for the Minor NSR requirements of element C.

#### 4. CAA Section 110(a)(2)(D)—Interstate and International Air Pollution

##### a. Statutory and Regulatory Requirements

The requirements of CAA section 110(a)(2)(D) can be broken down into six sub-elements. The EPA refers to the first four of these sub-elements as "prongs." Prongs 1 and 2, which include the requirements of CAA section 110(a)(2)(D)(i)(I), prohibit emission sources from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state. The EPA is not evaluating California's 2018 Submittal against those requirements at this time and will propose action on the interstate transport requirements for the 2015 ozone NAAQS in a separate notice.

CAA section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required of any other state to prevent significant deterioration of air quality (Prong 3) or from interfering with measures required of any other state to protect visibility in Class I areas (Prong 4). The EPA's 2006 Transport Guidance states that the requirements of interstate transport Prong 3 may be met by the state's confirmation in a SIP submission that major sources and major modifications in the state are subject to PSD and nonattainment NSR programs that implement the relevant standards.<sup>39</sup> The EPA's subsequent guidance memos rely or expand upon the legal and technical rationale presented in the 2006 Transport Guidance.<sup>40</sup>

Therefore, to meet the requirements of Prong 3 in section 110(a)(2)(D)(i)(II) regarding measures to prevent significant deterioration of air quality, states may submit infrastructure SIPs confirming that major sources and major modifications in the state are subject to comprehensive EPA-approved PSD programs and nonattainment NSR programs that address the NAAQS

<sup>38</sup> EPA Region IX, Spreadsheet of California Minor NSR Programs.

<sup>39</sup> 2006 Transport Guidance, 6.

<sup>40</sup> 2009 Infrastructure SIP Guidance, 4–5, and 2013 Infrastructure SIP Guidance, 30–32.

<sup>35</sup> California Infrastructure SIP Overarching Technical Support Document, U.S. EPA, Region 9 (September 2014).

pollutants for areas of the state that have been designated nonattainment. States waiting for EPA action on their nonattainment NSR programs may implement 40 CFR part 51 Appendix S to meet this infrastructure SIP requirement.

Prong 4 of section 110(a)(2)(D)(i)(II) prohibits emissions activity within one state from interfering with measures required in another state to protect visibility. In the 2013 Infrastructure SIP Guidance, the EPA indicates that states can meet the requirements of Prong 4 by having an approved SIP that fully meets the EPA's regulations for regional haze.

The fifth and sixth sub-elements under 110(a)(2)(D) concern the interstate pollution abatement requirements of CAA section 126 and the international transport requirements of CAA section 115. In the EPA's 2013 Infrastructure SIP Guidance, the EPA states that this sub-element is satisfied when an infrastructure SIP ensures compliance with the applicable requirements of CAA sections 126(a), 126(b) and 126(c), and 115.

#### b. Summary of the State's Submission

For Prong 3, California states in its 2018 submittal that the requirement to prevent states from interfering with the ability of other states to prevent significant deterioration of air quality can be satisfied by SIP-approved PSD programs and SIP-approved nonattainment NSR programs. CARB states that, as described in the submission for element C, 14 districts have SIP-approved PSD programs. However, as noted earlier in this notice, only 13 districts have SIP-approved PSD programs. CARB also notes that many districts in California have SIP-approved nonattainment NSR programs. For Prong 4, CARB states that the EPA fully approved California's Regional Haze SIP in June 2011.<sup>41</sup>

For the requirements of 110(a)(2)(D)(ii) concerning interstate pollution abatement and international transport, CARB states in its submittal that no CAA 126 petitions have been filed by other states against California regarding emissions from any source or group of stationary sources that cause or would cause or contribute to violations of the NAAQS in the petitioning state. With respect to the international pollution abatement provisions of CAA section 115, CARB states that the EPA Administrator has not made any findings that California causes or contributes to air pollution in a foreign country that may reasonably be

anticipated to endanger public health or welfare.

#### c. The EPA's Review of the State's Submission

In the 2013 Infrastructure SIP Guidance, the EPA explains its interpretation of Prong 3 "to mean that the infrastructure SIP submission should have provisions to prevent emissions of any regulated pollutant from interfering with any other air agency's comprehensive PSD permitting program, in addition to the new or revised NAAQS that is the subject of the infrastructure submission." It also notes that, since nonattainment NSR requirements are due after infrastructure SIPs for new and revised NAAQS, "a fully approved nonattainment NSR program with respect to any previous NAAQS may generally be considered by the EPA as adequate for purposes of meeting the requirement of prong 3 with respect to sources and pollutants subject to such program." Because all districts in California are in attainment for at least one NAAQS, a SIP-approved PSD program is necessary to meet the requirements of Prong 3. In areas that are nonattainment for any NAAQS, a prior SIP-approved nonattainment NSR program is also required. A spreadsheet listing the attainment status of all California air districts for all NAAQS is included in the docket for this rulemaking.<sup>42</sup>

To determine whether California meets the Prong 3 requirements, we analyzed the attainment status of each district for all NAAQS to determine whether they are required to have SIP-approved PSD programs, SIP-approved nonattainment NSR programs, or both.

Nine districts have both SIP-approved PSD programs and SIP-approved nonattainment NSR programs: Bay Area, Butte, Eastern Kern, Feather River, Imperial, Placer, San Joaquin, Ventura, and Yolo-Solano. San Luis Obispo has a SIP-approved PSD program and submitted a 2008 ozone nonattainment NSR rule that has not yet been approved by the EPA, so the district relies on 40 CFR part 51 Appendix S for permitting of sources that emit ozone precursors.<sup>43</sup> We propose to fully approve these 10 districts for the requirements of element D, Prong 3.

Three additional districts, Great Basin, Monterey Bay, and Santa Barbara, have SIP-approved PSD programs.

<sup>42</sup> EPA Region IX, Spreadsheet of Nonattainment Areas in California Air Districts.

<sup>43</sup> Letter dated September 25, 2019, from Dora K. Drexler, Manager, Engineering & Compliance Division, San Luis Obispo County Air Pollution Control District, to Gerardo Rios, Chief, Air Permits Office, EPA Region IX.

Monterey Bay and Santa Barbara are in attainment with all NAAQS, so their PSD programs alone are sufficient to meet the requirements of Prong 3. Great Basin is a nonattainment area for PM<sub>10</sub> that has a previously approved nonattainment NSR program, which satisfies the requirements of Prong 3. We propose to fully approve these three districts for the requirements of element D, Prong 3.

Twelve districts have SIP-approved nonattainment NSR programs or are using Appendix S, but do not have a SIP-approved PSD program covering all pollutants. These districts are Amador,<sup>44</sup> Antelope Valley, Calaveras, El Dorado, Mariposa,<sup>45</sup> Mojave Desert, Northern Sierra,<sup>46</sup> Sacramento Metro, San Diego, South Coast, Tehama,<sup>47</sup> and Tuolumne.<sup>48</sup> We propose to partially disapprove these 12 districts for the PSD requirements of element D, Prong 3. Because these districts already implement the EPA's PSD FIP, there are no further consequences and no further FIP obligations on the EPA.

Ten districts are in attainment for all NAAQS and have no SIP-approved PSD programs in place. These districts are Colusa, Glenn, Lake, Lassen, Mendocino, Modoc, North Coast, Northern Sonoma, Shasta, and Siskiyou. Because these districts are not nonattainment for any NAAQS, nonattainment NSR requirements do not apply. However, because these districts all implement the EPA's PSD FIP, they do not meet the PSD requirements of element D, Prong 3. We propose to partially disapprove these districts for element D, Prong 3. Because these districts implement the EPA's PSD FIP, no further FIP obligation applies.

The requirements of Prong 4 relate to the Regional Haze Rule. The EPA previously approved California's most recent SIP submittal for Regional Haze.<sup>49</sup> As noted in the EPA's 2013 Infrastructure SIP Guidance, an

<sup>44</sup> Letter dated September 17, 2019, from Jim McHargue, Air Pollution Control Officer, Amador Air District, to Gerardo Rios, Chief, Air Permits Office, EPA Region IX.

<sup>45</sup> Letter dated August 23, 2019, from Eric Sergienko, Director, Mariposa County Air Pollution Control District, to Gerardo Rios, Chief, Air Permits Office, EPA Region IX.

<sup>46</sup> Letter dated August 27, 2019, from Gretchen Bennett, Executive Director, Northern Sierra Air Quality Management District, to Gerardo Rios, Chief, Air Permits Office, EPA Region IX.

<sup>47</sup> Letter dated September 27, 2019, from Joseph Tona, County of Tehama Air Pollution Control District, to Gerardo Rios, Chief, Air Permits Office, EPA Region IX.

<sup>48</sup> Letter dated November 4, 2019, from Kelle Schroeder, Air Pollution Control Officer, County of Tuolumne, to Gerardo Rios, Chief, Air Permits Office, EPA Region IX.

<sup>49</sup> 76 FR 34608 (June 14, 2011).

<sup>41</sup> 76 FR 34608 (June 14, 2011).

approved Regional Haze submittal meets the requirements for Prong 4. We therefore propose to approve the 2018 Infrastructure SIP for the Prong 4 requirements of CAA section 110(a)(2)(D)(i)(II).

With respect to the requirement in CAA section 110(a)(2)(D)(ii) regarding compliance with the applicable requirements of section 126 relating to interstate pollution abatement, we note that the requirements of section 126(b) and (c), which pertain to petitions by affected states to EPA regarding sources violating the interstate transport provisions of CAA section 110(a)(2)(D)(i), do not apply to our action because there are no such pending petitions relating to California. We therefore concur with California in this regard and have evaluated its 2018 Submittal only for purposes of compliance with CAA section 126(a).

Section 126(a) of the CAA 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. Many of California's 35 permitting jurisdictions (*i.e.*, air districts) have SIP-approved PSD permit programs that require notice to nearby states consistent with the EPA's relevant requirements. Specifically, the following air districts meet the requirements of CAA section 126(a): Bay Area, Butte, Eastern Kern, Feather River, Imperial, Placer, San Joaquin, Ventura, Yolo-Solano, San Luis Obispo, Great Basin, Monterey Bay, and Santa Barbara. We are proposing partial approval of the 2018 Infrastructure SIP for these districts for the requirements of CAA 110(a)(2)(D)(ii).

The remaining air districts do not have fully SIP-approved PSD programs covering all pollutants. Thus, California remains 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. We are proposing partial disapproval of the 2018 Infrastructure SIP for the requirements of 110(a)(2)(D)(ii) for Amador, Antelope Valley, Calaveras, Colusa, El Dorado, Glenn, Lake, Lassen, Mariposa, Mendocino, Modoc, Mojave Desert, North Coast, Northern Sierra, Northern Sonoma, Sacramento Metro, San Diego, Shasta, Siskiyou South Coast, Tehama, and Tuolumne air districts. These deficiencies are, however, adequately addressed with respect to all regulated

NSR pollutants in such air districts by the Federal PSD program in 40 CFR 52.21 and no further action is required. For these reasons, we propose to find that the California SIP partially meets, and partially does not meet the requirement in CAA section 110(a)(2)(D)(ii) regarding compliance with the applicable interstate pollution abatement requirements of CAA section 126.

Section 115 of the CAA authorizes the EPA Administrator to require a state to revise its SIP when certain criteria are met and the Administrator has reason to believe that any air pollutant emitted in the United States causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country. The Administrator may do so by giving formal notification to the governor of the state in which the emissions originate. Because no such formal notification has been made with respect to emissions originating in California, as noted in California's 2018 Submittal, the EPA has no reason to approve or disapprove any existing state rules with regard to CAA section 115. Therefore, we propose to find that the existing California SIP is sufficient to satisfy the requirement in CAA section 110(a)(2)(D)(ii) regarding compliance with the applicable requirements of section 115.

#### 5. CAA Section 110(a)(2)(E)—Resources, Authority, and Oversight

##### a. Statutory and Regulatory Requirements

Section 110(a)(2)(E) of the CAA requires SIPs to provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof), (ii) requirements that the state comply with the requirements regarding state boards under section 128, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

In the 2013 Infrastructure SIP Guidance, the EPA states that, in order

to meet the requirements of subelement (i) of 110(a)(2)(E) of the CAA, infrastructure SIP submittals should identify the organizations involved in developing, implementing, and enforcing EPA-approved SIP provisions for the relevant NAAQS, and describe their responsibilities. It also states that submittals should explain how resources, personnel, and legal authority are adequate to meet any changes in resources requirements that may be needed to meet the new or revised NAAQS.

In order to address the requirements of subelement (ii) regarding state boards under section 128, the provisions that implement section 128 need to be approved into the SIP. These provisions apply to any board or body that has responsibility for approving permits or enforcement orders or has authority to hear appeals of permits or enforcement orders. Specifically, such boards or bodies must have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to CAA permits or enforcement orders. In addition, any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers must be adequately disclosed. The EPA has previously approved California provisions that address these conflict of interest requirements<sup>50</sup> and is evaluating updates to those provisions in this submittal.

In order to meet subelement (iii), states that have authorized local or regional agencies to implement SIPs must provide necessary assurances that the state air agency retains responsibility for adequate SIP implementation of the relevant NAAQS, in this case the 2015 ozone NAAQS.

##### b. Summary of the State's Submission

Regarding legal authority, CARB's 2018 Infrastructure SIP cites HSC sections 39600 and 39602, which designate CARB as the authority responsible for all air pollution control purposes set forth in federal law. CARB also notes that HSC 39002 provides CARB authority to implement control activities in areas where local or regional authorities fail to meet their responsibilities under state law. In previous submittals, CARB also described various HSC provisions that give the state authority to regulate mobile sources, as well as provisions that give districts the authority to regulate stationary sources and

<sup>50</sup> 81 FR 18766 (April 1, 2016).

provisions that give other agencies, such as the California Department of Pesticide Regulation, the authority to regulate other sources, such as pesticides.<sup>51</sup>

Regarding funding and personnel, California states that “the 2017–2018 CARB and district budgets totaled over \$2.2 billion, with more than 3,600 full-time equivalent staff positions.” It explains that the state legislature approves CARB’s budget and staff resources every year and that district governing boards approve local air district budgets. CARB has the opportunity to present annual budget requests to meet the requirements of the CAA through the legislative budget process. While CARB cannot predict future levels of funding, it notes that CARB’s programs are mandated, that the agency has been funded through state appropriations for three decades, and that the Budget Act of 2018 included \$1.370 billion for CARB at the time of submission.

CARB notes that a majority of its budget and district budgets go toward meeting CAA requirements. It also explains that fees from regulated entities make up a portion of CARB’s budget and can only be used for air pollution control. Revenues from fees and taxes related to motor vehicles are also deposited into an account at the state level and are required to be used for mitigation of air and sound emissions from motor vehicles. At the district level, funding also comes from fees from regulated entities, motor vehicle registration fees, grants, and other sources.

Regarding conflict of interest provisions, California’s 2018 Submittal explains that Government Code (GC) 82048(a) and California Code of Regulations (CCR), Title 2, section 18700 define “public officials” and “members” of state or local government to include any “individual who performs duties as part of a committee, board, commission, group, or other body” that possesses “decisionmaking authority”, including by making “a final government decision.” CARB further explains that this broad definition encompasses the members of hearing boards and local district boards, as well as air pollution control officers, who approve permits or enforcement orders in California.

CARB also states that, under CCR, Title 2, section 18700, public officials may not make, participate in or influence decisions in which they have

a foreseeable material financial interest. This financial interest in a decision is defined in GC section 87103 as a material effect on the public official, or his or her immediate family, that is distinguishable from the financial effect on the public. According to the state, “section 87103 also provides that a public official has a financial interest in a decision if it involves: a business or property in which they have \$2,000 or more invested; any source of income amounting to \$500 or more within a year; any business where they are a director, officer, trustee, employee, or manager; or any donor who has given them \$250 or more within a year.”<sup>52</sup> CARB goes on to note that GC section 87302 creates requirements for board members to file disclosures of economic interests in order to disclose potential conflicts of interest. This includes the regular filing of Form 700 statements, which are made public.

In its 2018 Infrastructure SIP, CARB updated some of the conflict of interest statutes that were previously submitted to the EPA. Specifically, CCR, Title 2, section 18700 was changed to incorporate certain conflict of interest requirements contained in the version of section 18701 that was approved into the SIP in our 2016 action on California’s multi-pollutant Infrastructure SIP.<sup>53</sup> Corresponding parts of section 18701 were also removed.<sup>54</sup> CARB’s 2018 submittal included the revised text of both sections 18700 and 18701.

#### c. The EPA’s Review of the State’s Submission

California’s 2018 Infrastructure SIP provides assurance that the agencies charged with implementing federal clean air requirements have the necessary authority and resources to do so. The EPA has previously determined that these authorities comply with 40 CFR 51.240,<sup>55</sup> and we find that they continue to do so. While California’s Infrastructure SIP Submittals do not provide specific personnel and funding figures for each of the state and district air agencies, the 2017–2018 total figures of \$2.2 billion with over 3,600 full-time equivalent staff positions represent a very large investment towards fulfilling state and federal clean air requirements and goals. The state also describes

funding that comes from the legislature, fees, state and federal grants in its submittal. We conclude that the information on funding levels and sources, as well as personnel levels, are a fair representation of the state’s resources and provide the necessary assurance of adequate funding and personnel to implement the 2015 ozone NAAQS. Therefore, we propose to find that California’s 2018 Submittal meets the resource- and authority-related requirements of CAA section 110(a)(2)(E)(i).

California’s SIP submission includes GC statutes and California CCR provisions that impose the requirements mandated by CAA section 128. The EPA previously approved several versions of these provisions into the SIP when it took final action on California’s multi-pollutant infrastructure SIP submittal in 2016.<sup>56</sup>

In addition to referencing three provisions that the EPA relied upon in its final approval of California’s conflict of interest requirements in 2016, the State has also included an updated version of CCR, Title 2, section 18700, which maintains the key provisions of that section and also incorporates language in CCR, Title 2, section 18701 that the EPA previously approved into the SIP. We are proposing to approve the updated versions of CCR, Title 2, sections 18700 and 18701 into the SIP. These updated provisions continue to meet the conflict of interest requirements of CAA sections 110(a)(2)(E)(ii) and 128.

In our final approval of California’s conflict of interest requirements in 2016, the EPA concurred with California’s interpretation that “those who approve permits or enforcement orders within California . . . are ‘public officials’” and, by extension, that permits and enforcement orders fall within the meaning of “governmental decision.”<sup>57</sup> The revised provisions of CCR, Title 2, section 18700(a) continue to define public officials’ disqualifying financial interests based on reasonably foreseeable material financial effects. The revised section 18700 also continues to refer to section 18703 to define specific levels of financial interest and income that would constitute a disqualifying financial

<sup>56</sup> The provisions that were previously approved into the SIP in 2016, which remain in the SIP and form part of the basis of our proposed approval of California’s 2015 Ozone SIP submission for the conflict of interest requirements in CAA sections 110(a)(2)(E)(ii) and 128, include California Government Code sections 82048, 87103, and 87302.

<sup>57</sup> California Infrastructure SIP Conflict of Interest Technical Support Document, U.S. EPA, Region 9 (September 2014).

<sup>51</sup> California Infrastructure SIP Overarching Technical Support Document, U.S. EPA, Region 9 (September 2014).

<sup>52</sup> California’s 2018 Submittal, 17.

<sup>53</sup> 81 FR 18766 (April 1, 2016).

<sup>54</sup> See technical clarification dated March 21, 2019, from Matthew Densberger, CARB, to Panah Stauffer, EPA Region IX. Subject: California iSIP Conflict of Interest Provisions.

<sup>55</sup> California Infrastructure SIP Overarching Technical Support Document, U.S. EPA, Region 9 (September 2014).

interest for a public official. In addition, these limitations on a public official's actions continue to be on-going, and a public official must abide by them throughout his or her time as a public official. Thus, the requirements of the revised section 18700 apply in such a way that a board that acts on permits and/or enforcement orders may never have a majority of persons that have a conflict of interest. We find that the revised provisions of section 18700 meet the requirements of CAA section 128(a)(1).

The requirements for disclosure in GC section 87302 have not changed and continue to meet the requirements of CAA section 128(a)(2). GC 87302 creates requirements for the conflict of interest codes for local agencies, which must include initial and annual disclosures of financial interests. Air districts may have their own agency conflict of interest codes or may be governed by the conflict of interest provisions in their county administrative codes, depending on the geographic jurisdiction of the district. For example, San Joaquin Valley APCD has its own conflict of interest code that incorporates by reference the state conflict of interest regulations.<sup>58</sup> This and other air district codes identify which officials are required to file under the conflict of interest provisions. Those officials include district governing board members, hearing board members, and certain employees. In addition, governing boards may be mostly or entirely composed of elected officials, such as county supervisors and city councilmembers. Such officials are specifically required to disclose financial interests in the process of campaigning and being elected to those offices by GC 87200. The statewide statutes and regulations governing conflicts of interest ensure that air district boards and employees disclose their financial interests.

Therefore, we propose to find that GC sections 82048, 87103, and 87302, in combination with the updated version of CCR, Title 2, section 18700, are adequate to meet the requirements of CAA section 128. We also propose to approve the updated versions of CCR, Title 2, section 18700 and CCR, Title 2, section 18701 into the SIP to replace the previous versions of CCR, Title 2, sections 18700 and 18701.

Regarding oversight of local agencies, pursuant to CAA section 110(a)(2)(E)(iii), HSC section 41500(c)

requires CARB to review air district enforcement programs and determine whether "reasonable action is being taken to enforce their programs, rules, and regulations." In turn, if CARB finds that a district is not taking reasonable action, HSC section 41505 grants CARB the authority, after public hearing, to exercise the district's powers to achieve and maintain the state and federal ambient air quality standards. These provide the necessary assurances that, where the State has relied on the air districts, CARB retains responsibility for ensuring adequate implementation of the SIP. We propose to find that HSC sections 41500(c) and 41505 provide the State with adequate oversight authority as required under CAA section 110(a)(2)(E)(iii) and 40 CFR 51.232(b)(2).

#### 6. CAA Section 110(a)(2)(F)—Stationary Source Monitoring and Reporting

##### a. Statutory and Regulatory Requirements

CAA section 110(a)(2)(F) requires: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

Pursuant to 40 CFR 51.212, SIPs must provide for periodic testing and inspection of stationary sources as well as enforceable test methods for emission limits. In addition, plans must not preclude the use of credible evidence of compliance to establish whether emission standards have been violated. To meet these requirements, in the 2013 Infrastructure SIP Guidance the EPA indicates that SIP submissions should describe the air agency programs for source testing, reference the statutory authority for the air agency program, and certify the absence of any provision preventing the use of any credible evidence.

In addition, 40 CFR 51.211, 40 CFR 51.321–51.323, the EPA's Air Emissions Reporting Rule, and 40 CFR 51.45(b) establish requirements for states to receive emissions reports from stationary sources and to submit periodic emission inventory reports to the EPA. In the 2013 Infrastructure SIP Guidance, the EPA notes that all states have existing periodic source reporting and emission inventory practices, so

submittals may be able to certify existing air agency reporting authority and requirements.

Finally, 40 CFR 51.116 creates requirements for correlating source emissions reports with emission limitations or standards based on applicable test method(s) or averaging period(s). In the 2013 Infrastructure SIP Guidance, the EPA explains that submittals should reference or include air agency requirements that provide for correlation between estimated emissions and allowable emissions, as well as the public availability of emission reports by sources.

##### b. Summary of the State's Submission

In its 2018 submittal, CARB states that local districts are responsible for developing stationary source emission monitoring and reporting requirements. It cites HSC section 4001(a), which requires districts to adopt and enforce regulations to maintain federal ambient air quality standards, and HSC section 41511, which gives the state board and the district authority to require stationary source owners to determine the amount of emissions from their sources. For testing and inspection of stationary sources, California notes that districts have the authority to conduct inspections and take samples under HSC section 41510. Although CARB does not certify the absence of any provision preventing the use of credible evidence in its 2018 submittal, it notes that credible evidence includes the data from stationary source emission monitoring rules.<sup>59</sup>

CARB says in its 2018 submittal that districts typically fulfill the stationary source monitoring requirements by adopting regulations that establish emission limits and reporting requirements, including the requirements under the Air Emissions Reporting Requirements (AERR) Rule. Under these rules, stationary source owners and operators must determine the amount of pollutants emitted by their facilities. CARB explains that these rules may be incorporated into the SIP after they are adopted by the districts. California's submittal includes a table of examples of SIP-approved local district rules that fulfill federal monitoring and reporting requirements.<sup>60</sup> These rules all require continuous emissions monitoring systems (CEMS) at stationary sources and include requirements for stationary sources to report their emissions or to maintain

<sup>58</sup> [https://www.valleyair.org/Board\\_meetings/GB/agenda\\_minutes/Agenda/2019/August/final/18.pdf](https://www.valleyair.org/Board_meetings/GB/agenda_minutes/Agenda/2019/August/final/18.pdf) and [https://www.valleyair.org/Board\\_meetings/GB/agenda\\_minutes/Agenda/2019/June/final/25.pdf](https://www.valleyair.org/Board_meetings/GB/agenda_minutes/Agenda/2019/June/final/25.pdf) (last visited on September 14, 2020).

<sup>59</sup> California's 2018 Infrastructure SIP, 18–19.

<sup>60</sup> California's 2018 Infrastructure SIP, 20.

emissions data and make them available to the local air district on request.

CARB goes on to explain that, while some districts have rules that cover both monitoring and reporting, others have separate requirements for stationary source reporting. A second table in the submittal<sup>61</sup> provides examples of SIP-approved stationary source reporting rules. These rules range from requiring sources to provide written emissions statements to the local air district to making daily air monitoring data public.

In addition to the rules listed in the tables in the submittals, California's submittal includes links to two online databases. The first is California's District Rules Database,<sup>62</sup> which has stationary source rules for all districts; the rules in this online database may be SIP-approved. The second is the EPA's website listing state rules that have been approved into the SIP.<sup>63</sup>

For correlation of stationary source emission reports with applicable emission limits, California refers again to its overarching authorities in HSC section 41511. The state explains that all 35 local air districts in California address the correlation requirements through their programs for stationary source testing, inspection, and compliance. For example, some air districts have rules that require CEMS equipment. Those rules require sources to assess compliance with applicable emission limits and may include calculation procedures to correlate emissions with the applicable emission standards. CARB states that some air districts have SIP-approved rules that closely mirror the language of 40 CFR 51.116(c), such as Mendocino County AQMD Rule 240(e)(3) ("Permit to Operate—Compliance Verification") and Great Basin Unified APCD Rule 215(D) ("Public Availability of Emissions Data"). Finally, it states that all California air districts have federally-approved Title V operating permit programs wherein each permit specifies the air pollution requirements that apply to the permitted source, including those for emission limits, monitoring, recordkeeping, and reporting.

CARB explains that it is responsible for compiling stationary source emissions data from the districts and reporting it to the EPA. The submittal includes a link to CARB's internet Facility Search Tool, which allows the

public to search for facilities' emissions of criteria and toxic pollutants. CARB notes that California's emissions inventory includes information from over 14,000 stationary sources and requires sources to report at rates lower than the federal AERR's reporting thresholds. The emissions inventory is relevant to all federal criteria pollutant standards, including the 2015 ozone standard.

#### c. The EPA's Review of the State's Submission

California presents information in its 2018 Infrastructure SIP on the state's and districts' overarching authorities to adopt rules and regulations to determine emissions from stationary sources, specify recordkeeping and reporting requirements, assess compliance with emission limits and permit conditions, and make such data available to the public. The submittal also references databases of specific stationary sources within California, and representative examples of SIP-approved regulations that require stationary source monitoring, reporting, and correlation of emission limits with applicable emission limits and permit conditions. We find that the example SIP-approved rules cited in California's 2018 Infrastructure SIP submittal are representative of the State as a whole. Therefore, we propose to find that the overarching authorities and SIP-approved regulations provide an adequate basis to conclude that California meets the requirements of CAA section 110(a)(2)(F), as discussed below.

The underlying California statutes that provide authority for CARB and the air districts to adopt rules and regulations to determine emissions from stationary sources, specify recordkeeping and reporting requirements, assess compliance with emission limits and permit conditions, and make such data available to the public include HSC sections 40001(a), 41510, and 41511. CARB maintains an extensive online database of stationary sources and a means for the public to filter emissions data by air basin, county, or source category via a facility search engine on its website.<sup>64</sup>

In reviewing SIP-approved regulations for stationary source monitoring and reporting, we primarily reviewed the examples provided in California's 2018 Submittal and present our evaluation for each of the three sub-elements of section

110(a)(2)(F) as follows. For section 110(a)(2)(F)(i), California's 2018 Submittal cites several rules that require stationary source monitoring, especially for CEMS on applicable equipment. For instance:

- Placer County APCD Rule 233, section 500 requires CEMS for NO<sub>x</sub> emissions from biomass boilers;
- Santa Barbara County APCD Rule 328(C) requires continuous emissions monitoring for NO<sub>x</sub>, SO<sub>2</sub>, and opacity from fossil fuel-fired steam generators, for NO<sub>x</sub> from nitric acid plants, and for SO<sub>2</sub> from sulfuric acid plants, for SO<sub>2</sub> from certain fluid bed cokers, for SO<sub>2</sub> from CO boilers of regenerators of fluid bed catalytic cracking units, and for SO<sub>2</sub> and opacity from fluid bed catalytic cracking units;
- South Coast AQMD Rule 1146 requires boilers, steam generators, and process heaters equal to or greater than 5 million British thermal units per hour to install CEMS for ammonia emissions; and
- San Joaquin Valley APCD Rule 4354, section (5.9) requires CEMS for emissions of NO<sub>x</sub>, VOCs, and SO<sub>x</sub> from glass melting furnaces under certain conditions.

We propose to find that these and other examples in the California SIP are consistent with the stationary source monitoring requirement of CAA section 110(a)(2)(F)(i).

With respect to CAA section 110(a)(2)(F)(ii), California's 2018 Submittal provides examples of SIP-approved regulations for several districts that require reporting of stationary source emissions data. For example:

- Bay Area Regulation 2, Rule 1–429 requires permitted sources that may emit VOC or NO<sub>x</sub> and subject to the Rule to provide the District a written statement showing actual emissions from the source,
- Santa Barbara County APCD Rule 212 requires sources permitted to emit 10 tons per year (tpy) or more of NO<sub>x</sub> or reactive organic compounds (ROG, or VOC) to annually report actual emissions of NO<sub>x</sub> or VOC in writing to the air district,
- San Diego County APCD Rule 19.3, section (c)(3) similarly requires annual reporting by sources emitting 25 tpy or more of NO<sub>x</sub> or VOC in writing to the air district, and
- South Coast AQMD Rule 1420.1, sections (m) and (n) set requirements for large lead-acid battery facilities to monitor lead (Pb) emissions, report them to the district, and retain records of emissions.

We propose to find that these examples and others in the California

<sup>61</sup> Id. at 22.

<sup>62</sup> <https://ww3.arb.ca.gov/drdb/drdb.htm> (last visited on September 14, 2020).

<sup>63</sup> <https://www.epa.gov/air-quality-implementation-plans/approved-air-quality-implementation-plans-region-9?readform&count=100&state=California> (last visited on September 14, 2020).

<sup>64</sup> <https://www.arb.ca.gov/app/emsinv/facinfo/facinfo.php?ga=2.153745848.1835329346.1588725854-1437116183.1580401972> (last visited on September 14, 2020).

SIP provide for periodic reports on the nature and amount of emissions from applicable stationary sources, consistent with CAA section 110(a)(2)(F)(ii).

With respect to CAA section 110(a)(2)(F)(iii), California points to SIP-approved rules that require emission data from stationary source owners or operators to be correlated with applicable emission limitations and control measures and for that information to be available to the public during normal business hours at the district offices. For example, Mendocino County AQMD Rule 1–240(e)(3) and Great Basin Unified APCD Rule 215(D) track the language of 40 CFR 51.116(c) by requiring that emissions data will be correlated with applicable emission limits and other control measures and be made publicly available. California’s online database includes a facility search engine, which makes emissions information publicly available for correlation. Therefore, based on the extent of the source categories and sizes that are required to report emissions, California’s publicly available emissions databases, and the examples of SIP-approved rules requiring correlation of reported emissions with emission limitations, we propose to find that the California SIP meets the correlation and public availability requirements of CAA section 110(a)(2)(F)(iii).

#### 7. CAA Section 110(a)(2)(G)—Emergency Powers and Contingency Plans

##### a. Statutory and Regulatory Requirements

Section 110(a)(2)(G) of the CAA requires infrastructure SIPs to “provide for authority comparable to that in [CAA section 303],” which reads as follows:

Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is

based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

In the 2013 Infrastructure SIP Guidance, the EPA states that the best practice for states is to submit, for inclusion in the SIP, the statutory or regulatory provisions that provide authority comparable to CAA section 303 or to cite and include a copy of such provisions, without including them in the SIP, with a narrative of how they meet the requirements of section 110(a)(2)(G). The guidance also clarifies that contingency plans should be submitted for approval into the SIP (if not already in the SIP) for regions classified Priority I, IA, or II (Priority II applies only to the sulfur dioxide and particulate matter NAAQS).

The air quality thresholds for classifying air quality control regions (AQCRs) are prescribed in 40 CFR 51.150 and are pollutant-specific (e.g., ozone) rather than being specific to any given NAAQS (e.g., 1997 ozone NAAQS). For ozone, an AQCR with a 1-hour ozone level greater than 0.10 ppm over the most recent three-year period must be classified Priority I. If the ozone levels in an AQCR are primarily due to a single point source, it is classified as Priority IA. All other ozone areas are classified Priority III. Pursuant to 40 CFR 51.151 and 51.152, AQCRs that are classified Priority I or IA for ozone are required to have SIP-approved emergency episode contingency plans, while those classified Priority III are not required to have such plans. The purpose of emergency episode contingency plans is to ensure that the regions “provide for taking action necessary to prevent ambient pollutant concentrations” from reaching the significant harm levels defined in 40 CFR 51.151. For ozone, the significant harm level is 0.6 ppm for a 2-hour average.

Under 40 CFR 51.152 emergency episode contingency plans are required to specify two or more stages of episode criteria based on pollutant levels at any monitoring site. Plans must provide for public announcement whenever any episode stage has been determined to exist and must specify adequate emission control actions to be taken at each episode stage. Examples of adequate actions are provided in Appendix L to 40 CFR part 51.

In addition, 40 CFR 51.152 requires prompt acquisition of forecasts of atmospheric stagnation conditions and of updates of such forecasts as frequently as they are issued by the National Weather Service, inspection of sources to ascertain compliance with applicable emission control action requirements, and communications procedures for transmitting status reports and orders as to emission control actions to be taken during an episode stage. The provisions of 40 CFR 51.152(d) also allow the Administrator to exempt portions of Priority I regions that have been designated as attainment or unclassifiable for NAAQS such as the 2015 ozone standard.<sup>65</sup>

##### b. Summary of the State’s Submission

In the California 2018 Infrastructure SIP, the State requested that the EPA reclassify the Lake County, North Central Coast, and South Central Coast AQCRs from Priority III to Priority I based on hourly ozone data from 2015–2017.<sup>66</sup> Consistent with the provisions of 40 CFR 51.153, reclassification of AQCRs must rely on the most recent three years of air quality data. CARB states in its 2018 submittal that the remaining Priority III AQCRs remain Priority III for ozone. This means their ozone levels have not crossed the Priority I threshold for ozone based on the most recent three years of air quality data.

In its 2018 submittal, CARB identifies the air districts that fall within each AQCR in order to determine which districts need to develop emergency episode contingency plans. The Lake County AQCR includes the Lake County AQMD. The North Central Coast AQCR includes the Monterey Bay Air Resources District, which already has a SIP-approved emergency episode contingency plan. The South Central Coast includes the San Luis Obispo County APCD. CARB identifies Lake County AQMD and San Luis Obispo County APCD as needing to develop and submit emergency episode contingency plans for ozone based on the requested AQCR reclassifications.

In addition to the air districts identified above, five air districts in the Mountain Counties AQCR are identified in the 2018 plan as needing to develop and submit emergency episode

<sup>65</sup>This authority is delegated to the Regional Administrator based on Delegation 7–10 (“Approval/Disapproval of State Implementation Plans”), which grants Regional Administrators the authority to “propose or take final action on any State implementation plan under section 110 of the Clean Air Act.”

<sup>66</sup>EPA, Region IX, Spreadsheet of Air Quality Control Regions with Maximum 1-hour Ozone Values Over 100 ppb for 2015–2017.

contingency plans for ozone for the first time. These are Amador County APCD, Calaveras County APCD, Mariposa County APCD, Northern Sierra AQMD, and Tuolumne County APCD.

On June 25, 2020, CARB supplemented its 2018 Infrastructure SIP by submitting ozone emergency episode contingency plans for San Luis Obispo County APCD, Amador County APCD, Calaveras County APCD, Mariposa County APCD, Northern Sierra AQMD, and Tuolumne County APCD. It also submitted an exemption request from emergency episode planning requirements for Lake County AQMD based on that District's attainment status.

Pursuant to the requirements of 40 CFR 51.152, each of the emergency episode plans included in the submittal outlines three stages of an ozone emergency (*i.e.*, Alert, Warning and Emergency) based on monitored levels for the one-hour ozone concentration. For example, Amador, Western Nevada, Tuolumne, and Calaveras include an Alert stage of 0.20 ppm, a Warning stage of 0.40 ppm, and an Emergency stage of 0.50 ppm. At each episode stage, the plans provide actions to be implemented by the local air district, local offices of emergency services, local offices of education superintendents, local emitting facilities, and members of the public. These measures include prohibiting open burning, requesting that schools close, requesting that members of the public take mass transit instead of driving, and requesting that stationary sources emitting ozone precursors shut down. At the episode stages that include measures for stationary sources, the submitted plans also include provisions for inspection of those sources to make sure they are complying with the relevant plan requirements.

The emergency episode plans also provide for public announcement of these ozone emergency stages and communications procedures for transmitting status reports and orders during each episode stage. Each plan includes a list of government agencies, news media, facilities, and individuals who will be notified when any of the ozone emergency episode stages are reached. These lists include local county offices of emergency services, the county superintendents of education, outreach staff at the local air pollution control districts, and television and radio stations. The plans submitted to the EPA also account for acquiring forecasts from the National Weather Service, regional "Spare the Air" programs, and data generated internally by air districts for submission

to public air quality information resources such as the AirNow website.

The Lake County AQCR is made up of only one air district, the Lake County AQMD. In its 2018 submittal, CARB requests that this AQCR be reclassified to Priority I, and California's 2020 submittal includes an exemption request for Lake County from the emergency episode contingency planning requirements for ozone. The request is based on Lake County's attainment status and EPA discretion to exempt attainment areas from the emergency episode contingency planning requirements under 40 CFR 51.152(d)(1).

#### c. The EPA's Review of the State's Submission

In California's 2018 submittal, the State requests that three AQCRs be reclassified as Priority I for the purposes of requiring emergency episode contingency plans for ozone. In addition, it notes that 5 air districts in the Mountain Counties AQCR also met the threshold for Priority I ozone areas in the 2015–2017 time period. The air quality monitoring data for 2015–2017 indicates that the areas identified in the 2018 submission, along with the areas that have been previously classified as Priority I, are those that exceeded 0.10 ppm for 1-hour ozone measurements. In addition, the emissions inventory information provided in California's 2020 Submittal shows that the ozone levels in these areas are due to a mix of sources, including mobile sources, rather than to a single stationary source. On the basis of California's ambient air quality data for 2015–2017, we are proposing to grant California's requests to reclassify Lake County, North Central Coast, and South Central Coast to Priority I regions.

The ozone emergency episode contingency plans for San Luis Obispo County APCD, Amador County APCD, Calaveras County APCD, Mariposa County APCD, Northern Sierra AQMD, and Tuolumne County APCD meet the requirements of 51.152(a). Specifically, each plan specifies "two or more stages of episode criteria" and "adequate emission control actions to be taken at each episode stage". Each plan also provides for "public announcement whenever any episode stage has been determined to exist."

For example, Calaveras County APCD's ozone emergency episode contingency plan establishes three episode stages. At every stage, an emergency episode notification is prepared and sent to eight categories of recipients. These include the Calaveras County Health Officer, the Calaveras

County Office of Emergency Services, the Calaveras County of Education Superintendent, neighboring air pollution control districts, as well as major newspapers, television and radio stations and online services. Actions at the first stage, which corresponds to hourly ozone concentrations at or above 0.20 ppm, include prohibiting all open burning and requesting industrial permitted facilities to initiate control actions, including reducing or curtailing production. At stage 3, which corresponds to hourly ozone concentrations at or above 0.50 ppm, the plan specifies closing all non-emergency commercial and industrial facilities, all government facilities which are not immediately necessary for public health and safety, national security or national defense, and closing all recreational facilities. These closures would be implemented through the County Office of Emergency Services.

The ozone emergency episode contingency plans for San Luis Obispo County APCD, Amador County APCD, Calaveras County APCD, Mariposa County APCD, Northern Sierra AQMD, and Tuolumne County APCD also meet the requirements of 51.152(b). Specifically, they provide for "prompt acquisition of forecasts of atmospheric stagnation conditions and of updates of such forecasts as frequently as they are issued by the National Weather Service," as required by 40 CFR 51.152(b)(1). For example, the ozone emergency episode plan for Amador APCD explains that Amador APCD, Northern Sierra AQMD, Tuolumne APCD and Mariposa County APCD support the regional Spare the Air program in the Mountain Counties AQCR. This is "an air pollution forecasting program which provides notifications to the public on the daily ozone concentration forecasts, along with advisories with an episodic ozone reduction element, during the summer ozone season."<sup>67</sup> According to California's 2020 submittal, the Spare the Air program notifications include current ozone concentration measurements from all monitoring stations within the Mountain Counties Air Basin, and forecasts, based on the meteorological conditions from the National Weather Service advisories and local agencies.<sup>68</sup> The ozone emergency episode plan submitted for Calaveras County similarly discusses how the District participates in the same program, noting that the "District works cooperatively with CARB and neighboring counties on the daily burn

<sup>67</sup> California's 2020 submittal, 11.

<sup>68</sup> Id.

day information.” Tuolumne County APCD’s plan states that the District will “in coordination with the National Weather Service (NWS) Hanford and Sacramento forecast offices provide prompt notification of air quality forecasts to the public when atmospheric stagnation conditions would result in substantially high ozone concentrations.”<sup>69</sup> San Luis Obispo APCD’s plan describes how the district publishes 6-day air quality forecasts through its own website as well as the AirNow website, the EnviroFlash email program, the AirAware alerts text program, and through the National Weather Service’s communications.

Each of the district plans also provide for “communications procedures for transmitting status reports and orders as to emission control actions to be taken during an episode stage, including procedures for contact with public officials, major emission sources, public health, safety, and emergency agencies and news media”, as required by 40 CFR 51.152(b)(3). For example, the Northern Sierra AQMD notification list for each ozone emergency episode stage includes CARB, upwind and downwind districts, major newspapers, television and radio stations, regional Spare the Air programs, District permitted facilities, and District staff who do public outreach. The Tuolumne County APCD notification list for each ozone emergency episode stage includes CARB, the Tuolumne County Office of Emergency Services, the Tuolumne County Office of Education, adjacent air districts, as well as newspapers, television and radio stations, and online media.

Each of the district plans also provide for “inspection of sources to ascertain compliance with applicable emission control action requirements,” as required by 40 CFR 51.152(b)(2). For example, the Amador County APCD plan includes a provision to “[c]onduct on-site inspection of targeted facilities to ascertain accomplishment of applicable emission control actions” that applies beginning at the Alert (0.20ppm) stage.<sup>70</sup> The Northern Sierra AQMD plan states that it will “rely on both continuous emission monitoring technology and inspection to . . . ascertain compliance with applicable emission control action requirements during any ozone emergency episode stage . . .”<sup>71</sup> Mariposa County APCD and Calaveras County APCD use similar language to Amador County in their plans. The Tuolumne County APCD

plan indicates the District will “strive to inspect those sources that represent the greatest contribution of ozone precursor emissions and will ascertain whether [they] are adhering to the applicable emission control action requirements specified in the Emergency Episode Actions.”<sup>72</sup> The San Luis Obispo County APCD plan identifies the following action at each emergency episode stage: “If conditions do not threaten inspectors’ safety, confirm control actions have been implemented.”<sup>73</sup>

The emergency episode contingency plans for ozone in California’s 2020 submittal for Amador County APCD, San Luis Obispo County APCD, Northern Sierra AQMD, Tuolumne County APCD, Mariposa County APCD, and Calaveras County APCD meet the requirements of 40 CFR 51.152(a) to specify two or more stages of episode criteria, provide for public announcement whenever any episode stage has been determined to exist, and to specify adequate emission control actions to be taken at each episode stage. These emergency episode contingency plans also meet the requirements of 40 CFR 51.152(b) to provide for prompt acquisition of forecasts of atmospheric stagnation conditions, to provide for inspection of sources to ascertain compliance with applicable emission control action requirements, and provide for communications procedures for transmitting status reports and orders as to emission control actions to be taken during an episode stage. We propose to approve these emergency episode contingency plans into the California SIP.

The other portion of California’s 2020 submittal is the exemption request for ozone emergency episode planning requirements for Lake County AQMD. The request is based on Lake County being in attainment for all ozone standards as well as all other NAAQS.<sup>74</sup> In this request, Lake County demonstrates the largely rural nature of the area and documents that the largest sources of ozone precursors in the county emit less than 50 tpy of each. Further, it notes that the highest 1-hour ozone concentration observed in the last 40 years has been 0.103 ppm.

Because of Lake County’s attainment status for ozone, it meets the criteria of 51.152(d)(1) that permit the Administrator to exempt those portions of Priority I regions which have been

designated as attainment under section 107 of the CAA. The mix of ozone precursor sources in the County, as well as the historical 1-hour ozone levels below 0.10 ppm make it unlikely that additional measures are needed to keep ozone pollution below the significant harm level of 0.6 ppm. We propose to approve the request to exempt the Lake County AQMD from emergency episode contingency planning requirements of 40 CFR 51.152.

## 8. CAA Section 110(a)(2)(H)—SIP Revisions

### a. Statutory and Regulatory Requirements

Section 110(a)(2)(H) requires SIPs to “provide for revision of such plan—(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established” under this Act.

In the 2013 Infrastructure SIP Guidance, the EPA explains that states may comply with the requirements of element H by providing a reference or citation to the provisions that provide the air agency with authority to meet these requirements, along with a narrative explanation of how the provisions serve that function.

### b. Summary of the State’s Submission

California states in its 2018 submittal that California has revised and will continue to revise its SIP as mandated by the EPA. It states that CARB is submitting a revised SIP for the 2015 ozone NAAQS and that CARB will continue to work with local districts to develop approvable SIPs as federal standards change, as new attainment methods become available, or as the EPA determines an existing SIP is inadequate. California’s 2018 Submittal also cites HSC section 39602 as designating CARB as the agency responsible for implementing the federal CAA, which includes responsibility for preparing and submitting revisions to the California SIP to address new or revised standards or improved methods of meeting the standards. CARB also states that HSC

<sup>69</sup> California’s 2020 Submittal, 67.

<sup>70</sup> California’s 2020 Submittal, 16.

<sup>71</sup> Id. at 52.

<sup>72</sup> Id. at 67.

<sup>73</sup> Id. at 35.

<sup>74</sup> EPA, Region IX, Spreadsheet of Nonattainment Areas in California Air Districts.

section 39602 gives it responsibility for revising the California SIP if the EPA finds the SIP inadequate. It states that CARB consults with the air districts and other affected entities in developing SIP revisions and receives public comments on SIP revisions before submitting them to the EPA.

c. The EPA's Review of the State's Submission

California's 2018 Infrastructure SIP describes the general capacity, commitment, and process of the State to submit SIP revisions as required. It cites the overarching statutory authority of CARB to implement the CAA, including submission of SIP revisions to address new and revised NAAQS and improved methods of meeting the NAAQS. We have reviewed the authority provisions of HSC section 39602 and considered the authority provisions analyzed under 110(a)(2)(E)(i) above. We propose to find that they provide for SIP revisions in response to NAAQS revisions or whenever the EPA Administrator finds the California SIP to be substantially inadequate to attain the NAAQS or does not comply with requirements established under the Act, and therefore meet the requirements of CAA section 110(a)(2)(H).

9. CAA Section 110(a)(2)(I)—Plan Revisions for Nonattainment Areas

CAA section 110(a)(2)(I) requires SIPs to “in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas).”

While this section requires states to meet nonattainment area requirements, pursuant to CAA title I, part D, when submitting plans or plan revisions for nonattainment areas, the EPA has concluded that the submission of, and subsequent EPA action on, nonattainment SIP revisions by states is not governed by the three-year submission deadline identified in CAA section 110(a)(1). Instead, SIP revisions for nonattainment areas are due and evaluated under the requirements for nonattainment areas described in part D. Thus, we do not include a summary of California's response to this requirement nor an evaluation of such response.

10. CAA Section 110(a)(2)(J)—Consultation, Public Notification, Visibility Protection, and PSD

a. Statutory and Regulatory Requirements

Section 110(a)(2)(J) of the CAA requires SIPs to “meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to

public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection).”

Regarding the consultation portion of element J, in the 2013 Infrastructure SIP Guidance, the EPA explains that states may meet the requirements by showing that there is an established process for consultation with general-purpose local governments, designated organizations of elected officials of local governments, and any federal land manager having authority over federal land to which the plan applies. Submittals should also identify organizations that participate in plan development, implementation or enforcement under 40 CFR 51.240, and should include any related agreements among agencies to do this work.

CAA section 127 requires SIPs to contain measures to effectively notify the public during any calendar year on a regular basis of instances or areas in which any NAAQS is exceeded or was exceeded during any portion of the preceding calendar year; to advise the public of the health hazards associated with such pollution; and to enhance public awareness of the measures which can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality. Such measures may include the posting of warning signs on interstate highway access points to metropolitan areas or television, radio, or press notices or information. In the 2013 Infrastructure SIP Guidance, the EPA indicates that state submittals can meet this portion of the requirement by showing the air agency regularly notifies the public of NAAQS exceedances and the associated health hazards, and that it makes the public aware of air quality measures and ways to participate in them.

In EPA's 2013 Infrastructure SIP Guidance, the EPA states that the PSD-related requirements of element J are the same as those of element C. For that reason, we refer to the 2018 state submittal and our evaluation of element C above for the PSD requirements of element J.

Regarding the visibility protection requirements of element J, the EPA's 2013 Guidance notes that the CAA visibility protection requirements do not change when the EPA issues a new or revised NAAQS. The guidance states that air agencies do not need to address visibility protection requirements in infrastructure SIP submissions.

b. Summary of the State's Submission

Regarding the consultation portion of element J, California's 2018 Submittal largely includes the same information as

prior infrastructure SIP submittals. It cites HSC section 39602, which designates CARB as the agency responsible for implementing the federal CAA and coordinating with local air districts.<sup>75</sup> CARB notes that the districts are governed by boards primarily composed of elected officials and that the districts also play a role in developing SIP provisions. It states that the air districts collaborate through workgroups under the California Air Pollution Control Officers Association (CAPCOA) to discuss air quality matters and that CAPCOA meets regularly with state and federal air quality officials to develop rules and ensure their consistent application. The submittal provides examples of the local, state, and federal stakeholders CARB works with in developing SIP revisions such as California's 2007 State Strategy for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS. These stakeholders include the metropolitan planning organizations (MPOs) and the regional transportation planning agencies (RTPAs) located throughout the State. The submittal also lists stakeholders, including federal land managers, with whom CARB consulted during the development of California's 2009 Regional Haze Plan, and describes how CARB coordinates with federal land managers and other agencies on an ongoing basis for Regional Haze planning. In addition, the submittal cites the public notification requirements for state regulations under the California Administrative Procedures Act as well as the public hearing requirements for district rules and regulations under HSC section 40725.

In California's 2018 Submittal, CARB also states that, once a SIP revision is submitted to the EPA, consultation is on-going. For example, CARB, the EPA, the California Environmental Protection Agency (CalEPA), and the South Coast and San Joaquin Valley air districts have signed a memorandum of agreement (MOA) committing to develop and test new air quality control technologies and creating the Clean Air Technology Initiative with the purpose of accelerating “progress in meeting current and future federal standards” in South Coast and San Joaquin Valley.<sup>76</sup> The submittal identifies another example of such consultation in CARB's memorandum of understanding (MOU) with Union Pacific and Burlington Northern Santa Fe railroads to reduce diesel emissions from rail yards.

Regarding public notification of exceedances of air quality standards, in

<sup>75</sup> California's 2018 Infrastructure SIP, 29.

<sup>76</sup> California's 2018 Infrastructure SIP, 34.

California's 2018 Submittal, CARB reiterates past submittals, referring to the requirements in HSC section 39607(a) for CARB to acquire and publicly report air quality data for each air basin in the State. CARB explains that it maintains both current and historical data online. CARB also notes that HSC 40718 requires CARB to publish maps online that show areas violating federal air quality standards.<sup>77</sup> In addition, the air districts provide daily information about local air quality levels online. Finally, the submittal cites several websites that contain information on the health effects of air pollution, current air quality, and what the public can do to reduce air pollution.<sup>78</sup>

Regarding PSD requirements, California's 2018 Submittal refers to the PSD-approved programs described in element C. For visibility protection requirements, CARB notes the explanation in the EPA's 2013 Infrastructure SIP guidance that NAAQS revisions do not create new visibility protection requirements and points out that California has an approved Regional Haze SIP.<sup>79</sup>

#### c. The EPA's Review of the State's Submission

Regarding the consultation requirements of element J, we have reviewed California's 2018 Submittal, and propose to find that it provides a satisfactory process of consultation, consistent with CAA section 121 and 40 CFR 51.240. In its submittal, CARB cites its overarching responsibility in HSC section 39602 to implement the CAA, including the requirement to coordinate the activities of all districts necessary to comply with the CAA. The districts are governed by boards comprised primarily of local elected officials. They also play a role in developing, implementing, and enforcing SIP provisions. CARB states that the air districts collaborate through workgroups under CAPCOA to discuss air quality matters and that CAPCOA meets regularly with state and federal air quality officials to develop rules and ensure their consistent application. California's submittal also provides examples of local government organizations, including MPOs, organizations of elected officials, and

federal land managers who are consulted during SIP development, and provides an example of an MOA among CARB, the EPA, CalEPA, San Joaquin Valley APCD, and South Coast AQMD. We propose to find that California's Infrastructure SIP meets the consultation requirement of CAA section 110(a)(2)(J).

In 1980, the EPA approved intergovernmental consultation procedures into California's SIP.<sup>80</sup> That SIP submittal fulfilled the requirements of 40 CFR 51.240, designating the local air districts as the lead agencies for the adoption, review, and periodic update of basin-wide air pollution control plans for submission to CARB. It also specified that the air districts will propose, adopt, implement, and enforce control measures concerning stationary sources within their jurisdictions. The "Chapter 25—Intergovernmental Relations"<sup>81</sup> portion of that submittal included a MOU between CARB and Caltrans, the state transportation agency. The MOU outlined how the two agencies will work together on transportation controls in nonattainment air plans, on transportation plans and programs, and to ensure consistency of transportation plans, programs, and projects with the SIP. These provisions previously approved into the California SIP reinforce the consultation procedures described in California's recent SIP submittals.

With respect to the requirements of CAA section 127 and 40 CFR 51.285, California's 2018 Infrastructure SIP provides for adequate public notification. HSC section 39607(a) requires CARB to acquire and publicly report data on each air basin and HSC section 40718(a) requires CARB to publish maps of areas violating the NAAQS. In its 2018 submittal, CARB explains how it and the districts publish information online about air quality (including the current Air Quality Index), the health effects of air pollution, and what the public can do about air pollution. The submittal also describes the public hearing requirements applicable to CARB and the air districts. Thus, we propose to find that California's Infrastructure SIP Submittals meet the public notification requirements of CAA section 110(a)(2)(J).

As discussed above, when the EPA establishes or revises a NAAQS, the

visibility protection requirements under CAA title I, part C do not change and, therefore, there are no newly applicable visibility protection obligations pursuant to CAA section 110(a)(2)(J). We propose to find that California's Infrastructure SIP Submittals meets the visibility protection requirements of CAA section 110(a)(2)(J).

Regarding the PSD requirements of element J, we rely upon our earlier evaluation of the PSD portion of CAA section 110(a)(2)(C). For the 13 local air districts that have EPA-approved PSD programs, we are proposing to partially approve California's 2018 Infrastructure SIP. For the 22 local air districts that do not have EPA-approved PSD programs, we are proposing to partially disapprove California's 2018 Infrastructure SIP. Because the EPA has already delegated the PSD FIP at 40 CFR 52.21 to each of the districts without fully approved PSD programs, finalization of this proposed, partial disapproval will not trigger any new obligation for the EPA to promulgate a FIP.

#### 11. CAA Section 110(a)(2)(K)—Air Quality Modeling and Submission of Modeling Data

##### a. Statutory and Regulatory Requirements

Section 110(a)(2)(K) requires SIPs to provide for: "(i) The performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator." To satisfy section 110(a)(2)(K), in the 2013 Infrastructure SIP Guidance, the EPA indicates that states can provide a reference or citation to the provisions that give it authority to do the modeling and data submission required by this element, as well as a narrative explanation of how the state meets the requirements of this element.

##### b. Summary of the State's Submission

California's 2018 Submittal refers to HSC 39602, which designates CARB as the air pollution agency for all purposes set forth in federal law and thereby gives it the authority to conduct air quality monitoring as required under the CAA. CARB explains in the submittal how California meets the modeling requirements of element K. It notes that CARB has established an air quality modeling group, which models primary and secondary pollutants, and states that CARB's modeling complies

<sup>77</sup> Website on "Area Designations Maps/State and National" (<http://www.arb.ca.gov/degis/adm/adm.htm>) (last visited on September 14, 2020).

<sup>78</sup> CARB's websites on "Health Effects of Air Pollution" (<http://www.arb.ca.gov/research/health/health.htm>), AQMIS (<http://www.arb.ca.gov/aqmis2/aqmis2.php>), and "Air Pollution and What You Can Do" (<http://www.arb.ca.gov/html/cando.htm>) (last visited on September 14, 2020).

<sup>79</sup> 76 FR 34608 (June 14, 2011).

<sup>80</sup> 45 FR 53136 (August 11, 1980).

<sup>81</sup> Chapter 25, Intergovernmental Relations, Revision to State of California Implementation Plan for the Attainment and Maintenance of Ambient Air Quality Standards. Adopted by the CARB, October 26, 1978.

with EPA guidance. It explains that CARB ensures modeling performed by districts complies with federal requirements and that CARB and the districts also document and make public their SIP-related modeling protocols as part of the SIP review process. CARB also notes that modeling results are made available to the EPA and other stakeholders upon request.

#### c. The EPA's Review of the State's Submission

California's 2018 Infrastructure SIP identifies HSC 39602, which grants CARB its overarching SIP authority, as its statutory basis for authority to conduct modeling, and describes how it and the districts perform air quality modeling following guidelines prescribed by the EPA. In the EPA's proposal to approve California's infrastructure SIP for earlier NAAQS, we also identified examples of attainment modeling, such as in the 2007 State Strategy for 1997 ozone and 1997 PM<sub>2.5</sub>, and in the attainment SIP for the 2008 Pb NAAQS for Los Angeles County.<sup>82</sup> We found they provided evidence of California's authority to conduct modeling and submit its data and analysis to the EPA in conjunction with a SIP revision. We propose to find that the broad authority of HSC section 39602 in conjunction with the various modeling efforts undertaken by CARB and the districts provide for ambient air quality modeling and data submission consistent with CAA section 110(a)(2)(K).

#### 12. CAA Section 110(a)(2)(L)—Permit Fees

##### a. Statutory and Regulatory Requirements

Section 110(a)(2)(L) requires that each SIP require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V of the Act.

In the 2013 Infrastructure SIP Guidance, the EPA states that fee programs are not required to be part of the EPA-approved SIP. We explain that

infrastructure SIP submittals should provide citations to the regulations that provide for the collection of permitting fees to cover all CAA permitting, implementation, and enforcement for new and modified major sources as well as existing major sources.

##### b. Summary of the State's Submission

In its 2018 submittal, California states that California's 35 air districts bear responsibility for stationary source permitting and have regulations requiring the payment of fees from facilities subject to CAA title V requirements. The submittal cites HSC section 42311 as authorizing local air districts "to adopt a schedule of fees for the evaluation, issuance, and renewal of permits to cover the cost of air district programs related to permitting stationary sources." It states that major source permit applicants are assessed a fee for processing their application for an authority to construct or a permit to operate. The submittal also provides a link to CARB's website that provides a general overview of title V permitting in California.<sup>83</sup>

In its 2018 submittal, CARB further notes that the EPA has approved the title V programs of all 35 air districts, as reflected in 40 CFR part 70, Appendix A ("Approval Status of State and Local Operating Permits Programs") and provides a table that identifies the title V rule for each air district. The submittal explains that the rules cited in the table "represent the district's primary implementation rule, and in some cases, there may be other district rules that are also relevant to the Title V process."<sup>84</sup>

##### c. The EPA's Review of the State's Submission

We have reviewed California's response to this requirement and have also considered air district provisions approved into the California SIP. We agree with California that HSC section 42311 provides authority to require fees for the evaluation, issuance, and renewal of stationary sources, including new and existing major sources, except for South Coast AQMD, whose similar permit fee authority is instead found in HSC section 40510(b). We also agree that all 35 air districts have fully approved title V operating permit programs. Such program approvals supersede the operating fee requirements of CAA section 110(a)(2)(L).

<sup>83</sup> <http://www.arb.ca.gov/fcaa/tv/tvinfo/overview.htm> (last visited on September 14, 2020).

<sup>84</sup> California's 2018 Submittal, 38.

In addition to the title V fee programs, districts in California have SIP-approved rules requiring the payment of fees for construction and operating permits. In the EPA's 2016 final action on California's Infrastructure SIP submittals for earlier NAAQS, we provided examples of these rules for Bay Area AQMD, Sacramento Metro AQMD, and Yolo-Solano AQMD.<sup>85</sup> Additional examples of local district fee rules that have recently been updated include Mojave Desert AQMD Rule 301,<sup>86</sup> San Joaquin Valley APCD Rule 3010,<sup>87</sup> Monterey Bay ARD Regulation III,<sup>88</sup> and South Coast AQMD Rule 301.<sup>89</sup>

Therefore, based on the federally approved title V programs for all 35 air districts, the air district rules cited in California's 2018 submittal that establish permit fee requirements for major sources, and the local district rules that implement fees to cover permitting, implementation, and enforcement for new and modified major sources, we propose to find that California meets the requirements of CAA section 110(a)(2)(L).

#### 13. CAA Section 110(a)(2)(M)—Consultation and Participation by Affected Local Entities

##### a. Statutory and Regulatory Requirements

Section 110(a)(2)(M) requires SIPs to "provide for consultation and participation by local political subdivisions affected by the plan." In the 2013 Infrastructure SIP Guidance, the EPA explains that, to meet the requirements of element M, states may identify their policies or procedures that allow and promote such consultation in their SIP submittals.

##### b. Summary of the State's Submission

In its 2018 submittal, California states that CARB "routinely consults and provides liaison" with all districts, particularly on SIP revisions. The submittal explains that district boards are composed of local elected officials, so consultation with air districts provides for consultation with and participation by local government

<sup>85</sup> <https://www.regulations.gov/document?D=EPA-R09-OAR-2014-0547-0008> (last visited on September 14, 2020).

<sup>86</sup> <http://mdaqmd.ca.gov/home/showdocument?id=6783> (last visited on September 14, 2020).

<sup>87</sup> <https://www.valleyair.org/rules/currentrules/2018/R3010-a2.pdf> (last visited on September 14, 2020).

<sup>88</sup> <https://www3.arb.ca.gov/drdb/mbu/curhtml/r300.pdf> (last visited on September 14, 2020).

<sup>89</sup> <http://www.aqmd.gov/docs/default-source/rule-book/reg-iii/rule-301-june-2019.pdf> (last visited on September 14, 2020).

entities. CARB states that HSC section 41650 *et seq.* requires CARB “to conduct public hearings and to solicit testimony from air districts, air quality planning agencies, and the public when adopting SIP-related documents” for nonattainment area plans. It also adds that the air districts have a similar process for participation and comment on proposed regulatory actions.

CARB reiterates that HSC section 39602 designates CARB as the agency in charge of implementing federal air pollution law and that it requires CARB to coordinate the activities of all air districts necessary to comply with the CAA. It also reiterates that the California Administrative Procedures Act, GC section 11340, *et seq.*, requires notification and comment opportunities to parties affected by proposed state regulations, and that HSC section 40725 requires air districts to provide for public review when adopting, amending, or repealing district rules.

#### c. The EPA’s Review of the State’s Submission

In its 2018 submittal, CARB highlights its regular consultation with the air districts, whose governing boards are made up of local elected officials. The submittal cites HSC section 41650, which requires CARB to conduct public hearings on nonattainment plans. The submittal cites HSC section 39602, which requires CARB to coordinate the SIP activities of the air districts, the California Administrative Procedures Act, which has public notification requirements for state regulations, and HSC section 40725, which has public notification requirements for district-level rules. In addition, as noted in our evaluation for the consultation requirements of CAA section 110(a)(2)(J), CARB also consults with MPOs and RTPAs, which can be considered local political subdivisions of the state in that they address metropolitan and regional transportation planning issues and include elected officials representing their respective local areas.

California’s SIP submittal demonstrates that the air districts and the government entities represented by their boards are the local political subdivisions affected by the plan. The submittal enumerates how the districts are involved and consulted during the planning process. We therefore propose to conclude that California adequately provides for consultation and participation by local political subdivisions affected by the California SIP, and that California’s Infrastructure SIP Submittals meet CAA section 110(a)(2)(M).

#### D. Proposed Approval of State and Local Provisions Into the California SIP

As part of this action, we are also proposing to approve two revised state regulations and five air district rules into the California SIP. Specifically, we propose to approve into the SIP the updated provisions CCR, Title 2, sections 18700 and 18701. These revised regulations were part of California’s 2018 Submittal and continue to address the conflict of interest requirements of CAA sections 110(a)(2)(E)(ii) and 128. We also propose to approve into the SIP five Ozone Emergency Episode Plans for Amador County APCD, Calaveras County APCD, Mariposa County APCD, Northern Sierra AQMD, and Tuolumne County APCD to address the emergency episode planning requirements of CAA section 110(a)(2)(G) and 40 CFR part 51, subpart H.

#### E. Proposed Approval of Reclassification Requests for Emergency Episode Planning

In its 2018 submittal, CARB requested that the EPA reclassify three 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>. The air quality tests for classifying AQCRs are prescribed in 40 CFR 51.150 and are pollutant-specific (*e.g.*, ozone) rather than being specific to any given NAAQS (*e.g.*, 1997 ozone NAAQS). Consistent with the provisions of 40 CFR 51.153, reclassification of AQCRs must rely on the most recent three years of air quality data. For ozone, an AQCR with a 1-hour ozone level greater than 0.10 ppm over the most recent three-year period must be classified Priority I, while all other areas are classified Priority III. AQCRs that are classified Priority I are required to have SIP-approved emergency episode contingency plans, while those classified Priority III are not required to have such plans, pursuant to 40 CFR 51.151 and 51.152. We interpret 40 CFR 51.153 as establishing the means for states to review air quality data and request a higher or lower classification for any given region and as providing the regulatory basis for the EPA to reclassify such regions, as appropriate, under CAA sections 110(a)(2)(G) and 301(a)(1).

On the basis of California’s ambient air quality data for 2015–2017, we are proposing to grant California’s request to reclassify Lake County, North Central Coast, and South Central Coast to Priority I areas.

#### F. The EPA’s Action

Under CAA 110(a), we are proposing to partially approve and partially disapprove California’s 2018 Infrastructure SIP. Specifically, we are proposing to approve the submittal for the requirements of CAA sections 110(a)(2)(A), 110(a)(2)(B), 110(a)(2)(E), 110(a)(2)(F), 110(a)(2)(H), 110(a)(2)(K), 110(a)(2)(L), and 110(a)(2)(M). We are also proposing to partially approve and partially disapprove the submittal for CAA sections 110(a)(2)(C), 110(a)(2)(D)(ii), and 110(a)(2)(J) due to PSD program deficiencies in certain air districts. These partial disapprovals will not create any new consequences as the air districts with PSD deficiencies are already subject to PSD FIPs.

To meet CAA 110(a)(2)(E)(ii) requirements, we are proposing to approve into the SIP the updated versions of CCR, Title 2, sections 18700 and 18701, to replace the previous versions of 2 CCR 18700 and 18701.

To meet the requirements of CAA 110(a)(2)(G), we are proposing to approve California’s 2020 Submittal. This includes the ozone emergency episode contingency plans for Amador County APCD, San Luis Obispo County APCD, Northern Sierra AQMD, Tuolumne County APCD, Mariposa County APCD, and Calaveras County APCD, as well as the exemption request for Lake County AQMD.

At this time, EPA is not acting on 110(a)(2)(D)(i)(I), which prohibits emission sources from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state. The EPA will propose action on the interstate transport requirements for the 2015 ozone NAAQS in a separate notice.

We are soliciting comments on these proposed actions. We will accept comments from the public for 30 days following publication of this proposal in the **Federal Register** and will consider any relevant comments before taking final action.

#### V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference two revised state provisions from the California Code of Regulations for the conflict of interest requirements of CAA sections 110(a)(2)(E)(ii) and 128. These revised provisions are California Code of Regulations, Title 2, Sections 18700 and 18701. Similarly, the EPA is also proposing to incorporate by reference

five Ozone Emergency Episode Plans for Amador County APCD, Calaveras County APCD, Mariposa County APCD, Northern Sierra AQMD, and Tuolumne County APCD for the emergency episode planning requirements of CAA section 110(a)(2)(G) and 40 CFR part 51, subpart H. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, and Volatile Organic Compounds.

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

Dated: September 30, 2020.

**John Busterud,**

*Regional Administrator, Region IX.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[EPA-HQ-OAR-2020-0372; FRL-10015-53-OAR]

RIN 2060-AU91

### Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is proposing amendments to the Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23,

1984. We are proposing specific amendments that would allow owners or operators of storage vessels subject to the Standards of Performance for Volatile Organic Liquid Storage Vessels and equipped with either an external floating roof (EFR) or internal floating roof (IFR) to voluntarily elect to comply with the requirements specified in the National Emission Standards for Storage Vessels (Tanks)—Control Level 2 as an alternative standard, in lieu of the requirements specified in the Standards of Performance for Volatile Organic Liquid Storage Vessels, subject to certain caveats and exceptions for monitoring, recordkeeping, and reporting.

### DATES:

**Comments.** Comments must be received on or before November 30, 2020. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before November 16, 2020.

**Public hearing.** If anyone contacts us requesting a public hearing on or before October 21, 2020, we will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OAR-2020-0372, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

- **Email:** [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov). Include Docket ID No. EPA-HQ-OAR-2020-0372 in the subject line of the message.

- **Fax:** (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2020-0372.

- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2020-0372, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- **Hand Delivery or Courier (by scheduled appointment only):** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

**Instructions:** All submissions received must include the Docket ID No. for this rulemaking. Comments received may be