

government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. However, today's proposed disapproval does not have federalism implications. Thus, Executive Order 13132 does not apply to this action.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

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

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under Section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

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

*National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, Section 12(d) (15 U.S.C. 272

note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

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

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

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove State choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under Section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

*Statutory Authority*

The statutory authority for this action is provided by Sections 110 of the CAA, as amended (42 U.S.C. 7410).

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

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: March 10, 2011.

**Karl Brooks,**

*Regional Administrator, Region 7.*

[FR Doc. 2011–6416 Filed 3–17–11; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R07–OAR–2011–0215; FRL–9283–3]**

**Approval and Promulgation of Air Quality Implementation Plan; Missouri; Proposed Disapproval of Interstate Transport State Implementation Plan Revision for the 2006 24-Hour PM<sub>2.5</sub> NAAQS**

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to our authority under the Clean Air Act (CAA or Act), EPA is proposing to disapprove the portion of the Missouri CAA Section 110(a)(2) “Infrastructure” State Implementation Plan (SIP) submittal addressing significant contribution to nonattainment or interference with maintenance in another state with respect to the 2006 24-hour fine particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). On December 18, 2009, Missouri submitted a State Implementation Plan (SIP) intended to address the infrastructure SIP requirements of CAA Section 110(a)(2) for “infrastructure.” In this action, EPA is proposing to disapprove the portion of the Missouri SIP revision intended to address Section 110(a)(2)(D)(i)(I) requirements prohibiting a state's emissions from significantly contributing to nonattainment or interfering with maintenance of the NAAQS in any other state. The rationale for the proposed action is described in this proposal.

**DATES:** Comments must be received on or before April 18, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2011–0215, by one of the following methods:

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

2. *E-mail:* [kramer.elizabeth@epa.gov](mailto:kramer.elizabeth@epa.gov).

3. *Mail:* Ms. Elizabeth Kramer, Air Planning & Development, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Deliver your comments to: Ms. Elizabeth

Kramer, Air Planning & Development, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation.

**Instructions:** Direct your comments to Docket ID No. EPA-R07-OAR-2011-0215. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and should be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, from 8 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Kramer, Air Planning & Development Branch, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101; *telephone number:* (913) 551-7186; *fax number:* (913) 551-7844; *e-mail address:* [kramer.elizabeth@epa.gov](mailto:kramer.elizabeth@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This Section provides additional information by addressing the following questions:

- I. What should I consider as I prepare my comments for EPA?
- II. What is the background for this action?
- III. What is EPA's evaluation of the State's submittal?
- IV. What action is EPA proposing?
- V. Statutory and Executive Order Reviews

#### **I. What should I consider as I prepare my comments for EPA?**

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

#### **II. What is the background for this action?**

On December 18, 2006, EPA revised the 24-hour average PM<sub>2.5</sub> primary and secondary NAAQS from 65 micrograms per cubic meter (µg/m<sup>3</sup>) to 35 µg/m<sup>3</sup>. Section 110(a)(1) of the CAA requires states to submit infrastructure SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period

as EPA may prescribe.<sup>1</sup> As provided by Section 110(k)(2), within 12 months of a determination that a submitted SIP is complete under 110(k)(1), the Administrator shall act on the plan. As authorized in Section 110(k)(3) of the Act, where portions of the State submittals are severable, within that 12 month period EPA may decide to approve only those severable portions of the submittals that meet the requirements of the Act. When the deficient provisions are not severable from the other submitted provisions, EPA must propose disapproval of the submittals, consistent with Section 110(k)(3) of the Act.

Section 110(a)(2) lists the elements that such new infrastructure SIPs must address, as applicable, including Section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. On September 25, 2009, EPA issued its "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)" (2009 Guidance). EPA developed the 2009 Guidance to make recommendations to states for making submissions to meet the requirements of Section 110, including 110(a)(2)(D)(i) for the revised 2006 24-hour PM<sub>2.5</sub> NAAQS.

As identified in the 2009 Guidance, the "good neighbor" provisions in Section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states.

In the 2009 Guidance, EPA indicated that SIP submissions from states pertaining to the "significant contribution" and "interfere with maintenance" requirements of Section 110(a)(2)(D)(i)(I) should contain adequate provisions to prohibit air pollutant emissions from within the state that contribute significantly to

<sup>1</sup> The rule for the revised PM<sub>2.5</sub> NAAQS was signed by the Administrator and publically disseminated on September 21, 2006. Because EPA did not prescribe a shorter period for 110(a) SIP submittals, these submittals for the 2006 24-hour NAAQS were due on September 21, 2009, three years from the September 21, 2006 signature date.

nonattainment or interfere with maintenance of the NAAQS in any other state. EPA further indicated that the state's submission should explain whether or not emissions from the state have this impact and, if so, address the impact. EPA stated that the state's conclusion should be supported by an adequate technical analysis. EPA recommended the various types of information that could be relevant to support the state SIP submission, such as information concerning emissions in the state, meteorological conditions in the state and the potentially impacted states, monitored ambient concentrations in the state, and air quality modeling. Furthermore, EPA indicated that states should address the "interfere with maintenance" requirement independently which requires an evaluation of impacts on areas of other states that are meeting the 2006 24-hour PM<sub>2.5</sub> NAAQS, not merely areas designated nonattainment. Lastly in the 2009 Guidance, EPA stated that states could not rely on the Clean Air Interstate Rule (CAIR) to comply with CAA Section 110(a)(2)(D)(i) requirements for the 2006 24-hour PM<sub>2.5</sub> NAAQS because CAIR does not address this NAAQS.

EPA promulgated the CAIR on May 12, 2005, (see 70 FR 25162). CAIR required states to reduce emissions of sulfur dioxide and nitrogen oxides that significantly contribute to, and interfere with maintenance of the 1997 NAAQS for PM<sub>2.5</sub> and/or ozone in any downwind state. CAIR was intended to provide states covered by the rule with a mechanism to satisfy their CAA Section 110(a)(2)(D)(i) obligations to address significant contribution to downwind nonattainment and interference with maintenance in another state with respect to the 1997 ozone and PM<sub>2.5</sub> NAAQS. Many states adopted the CAIR provisions and submitted SIPs to EPA to demonstrate compliance with the CAIR requirements in satisfaction of their 110(a)(2)(D)(i) obligations for those two pollutants.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR Federal Implementation Plans (FIP) in their entirety. *North Carolina v. EPA*, 531 F.3d 836 (D.C. Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to

"temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with its July 11, 2008, opinion, but declined to impose a schedule on EPA for completing that action. *Id.*

In order to address the judicial remand of CAIR, EPA has proposed a new rule to address interstate transport pursuant to Section 110(a)(2)(D)(i)(I), the "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone" (Transport Rule).<sup>2</sup> As part of the proposed Transport Rule, EPA specifically examined the Section 110(a)(2)(D)(i)(I) requirement that emissions from sources in a state must not "significantly contribute to nonattainment" and "interfere with maintenance" of the 2006 24-hour PM<sub>2.5</sub> NAAQS by other states. The modeling performed for the proposed Transport Rule shows that Missouri significantly contributes to nonattainment and interferes with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS in downwind areas.<sup>3</sup>

On December 28, 2009, EPA received a SIP revision from the State of Missouri intended to address the requirements of Section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM<sub>2.5</sub> NAAQS as well as other requirements of Section 110(a)(2). In this rulemaking, EPA is addressing only the requirements that pertain to prohibiting sources in Missouri from emitting pollutants that will significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS in other states. In its submission, Missouri indicated that several actions have been implemented to address the transport of direct PM<sub>2.5</sub> and also PM<sub>2.5</sub> precursors of Nitrogen Oxides (NO<sub>x</sub>) and Sulfur Dioxide (SO<sub>2</sub>) over time. The submission included a description of and references to the relevant state rules intended to address the interstate transport of emissions.

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

Missouri's December 28, 2009, submittal included a description of how the state has implemented rules or is

developing rules to meet various requirements to address the long-range transport of pollution. Missouri has a number of rules included in the SIP for the control of NO<sub>x</sub> and SO<sub>2</sub> emissions. For example, Missouri's SIP includes rules that control NO<sub>x</sub> emissions from Electric Generating Units (10 CSR 10–6.360), from Cement Kilns (10 CSR 10–6.680) and from Large Stationary Internal Combustion Engines (10 CSR 10–6.390). EPA's preliminary photochemical modeling for the proposed Transport Rule considered these rules and still indicates that emissions from the State of Missouri significantly contribute to nonattainment and interfere with maintenance in other states with respect to the 2006 24-hour PM<sub>2.5</sub> NAAQS.<sup>4</sup>

EPA's 2009 Guidance stated that a state's SIP submission pertaining to the requirement of Section 110(a)(2)(D)(i)(I) must be supported by an adequate technical analysis.<sup>5</sup> EPA recommended the various types of information that could be relevant to support the state's SIP submission. While Missouri submitted a description of state rules that have been implemented to reduce PM<sub>2.5</sub>, NO<sub>x</sub> and SO<sub>2</sub> emissions, the state did not further evaluate or demonstrate with a technical analysis that these measures address the requirements of 110(a)(2)(D)(i)(I) to prohibit Missouri's air pollutant emissions from significantly contributing to nonattainment or interfering with maintenance in other states.

Furthermore, the state's submittal also indicates that it is meeting its 110(a)(2)(D)(i)(I) obligations with respect to the 2006 PM<sub>2.5</sub> NAAQS in part by virtue of its approved CAIR SIP. However, CAIR was promulgated before the 24-hour PM<sub>2.5</sub> NAAQS were revised in 2006 and does not address interstate transport with respect to the 2006 PM<sub>2.5</sub> NAAQS.<sup>6</sup> Thus, reliance on CAIR cannot be used to comply with Section 110(a)(2)(D)(i)(I) for the respective 2006

<sup>4</sup> See Section IV on Defining "Significant Contribution" and "Interference With Maintenance," 75 FR 45229 of "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

<sup>5</sup> See William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards." Memorandum to EPA Air Division Directors, Regions I–X, (September 25, 2009).

<sup>6</sup> Further, as explained above and in the Transport Rule proposal, the D.C. Circuit in *North Carolina v. EPA* found that EPA's quantification of states' significant contribution and interference with maintenance in CAIR was improper and remanded the rule to EPA. CAIR remains in effect only temporarily.

<sup>2</sup> See "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

<sup>3</sup> See Section IV on Defining "Significant Contribution" and "Interference With Maintenance," 75 FR 45229 of "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Proposed Rule," 75 FR 45210 (August 2, 2010).

NAAQS. Several states recognize that some of the controls planned for or already installed on sources within the state (to meet CAIR provisions) satisfied the Section 110(a)(2)(D)(i)(I) requirements for the 2006 24-hour PM<sub>2.5</sub> NAAQS. However, states will not be able to permanently rely upon the emissions reductions predicted by CAIR, because CAIR was remanded to EPA and EPA is in the process of developing a Transport Rule (which it has proposed as a replacement for the remanded CAIR) to address the concerns outlined in its decision remanding CAIR. For these reasons, EPA would not be able to approve Missouri's SIP submission pertaining to the requirements under Section 110(a)(2)(D)(i)(I) because it relies, in part, on CAIR for emission reduction measures.

Based upon our evaluation, EPA is proposing that this SIP revision does not meet the requirements of 110(a)(2)(D)(i)(I) of the CAA. Therefore, EPA is proposing disapproval of the portion of Missouri's Infrastructure SIP relating to Interstate Transport, Section 110(a)(2)(D)(i)(I). The submitted provisions are severable from each other. Therefore, EPA is proposing to disapprove those provisions which relate to the Section 110(a)(2)(D)(i)(I) demonstration and will act on the remainder of the SIP submission in a subsequent rulemaking.

Also, under Section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a Part D Plan (42 U.S.C.A. §§ 7501–7515), or is required in response to a finding of substantial inadequacy as described in section 7410(k)(5) (SIP call), starts a sanctions clock. The provisions in the submittal we are proposing to disapprove were not submitted to meet either of those requirements. Therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered.

The full or partial disapproval of a state implementation plan revision triggers the requirement under Section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the disapproval unless the state corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. The Transport Rule FIP, if finalized in the manner proposed, may address these requirements for the State of Missouri.

#### IV. What action is EPA proposing?

We are proposing to disapprove a submission from the State of Missouri intended to demonstrate that Missouri

has adequately addressed the elements of CAA Section 110(a)(2)(D)(i)(I) that require the state's SIP to contain adequate provisions to prohibit air pollutant emissions from sources within a state from significantly contributing to nonattainment in or interference with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS in any other state. We are proposing to determine that the Missouri submission does not contain adequate provisions to prohibit air pollutant emissions from within the state that significantly contribute to nonattainment in or interference with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS in other downwind states. Any remaining elements of the submittal, including language to address other CAA Section 110(a)(2) elements, including Section 110(a)(2)(D)(i)(II) regarding interference with measures required in the applicable SIP for another state designed to prevent significant deterioration of air quality and protect visibility, are not addressed in this action. EPA is proposing to disapprove only the provisions which relate to the Section 110(a)(2)(D)(i)(I) demonstration.

#### V. Statutory and Executive Order Reviews

Under the CAA, 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, EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

##### *Executive Order 12866, Regulatory Planning and Review*

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

##### *Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed SIP disapproval under Section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under Section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain state requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

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

##### *Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. EPA has determined that the proposed

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

#### *Executive Order 13132, Federalism*

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.”

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely disapproves certain state requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. However, today’s proposed disapproval does not have federalism implications. Thus, Executive Order 13132 does not apply to this action.

#### *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

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

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as

applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under Section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain state requirements for inclusion into the SIP.

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

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

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

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

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

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

policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA’s role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain state requirements for inclusion into the SIP under Section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

#### *Statutory Authority*

The statutory authority for this action is provided by Sections 110 of the CAA, as amended (42 U.S.C. 7410).

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

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: March 10, 2011.

**Karl Brooks,**

*Regional Administrator, Region 7.*

[FR Doc. 2011–6418 Filed 3–17–11; 8:45 am]

**BILLING CODE 6560–50–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 63**

[EPA–R09–OAR–2011–0213; FRL–9283–5]

### **Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona, Maricopa County Air Quality Department; State of California, Santa Barbara County Air Pollution Control District**

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

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to section 112(l) of the 1990 Clean Air Act, EPA granted delegation of specific national emission standards for hazardous air pollutants (NESHAP) to the Maricopa County Air Quality Department on May 6, 2010, and December 14, 2010, and to the Santa Barbara County Air Pollution Control District on July 30, 2010. EPA is proposing to revise the Code of Federal Regulations to reflect the