(2) For penalties assessed before the date that these regulations are published as final regulations in the **Federal Register**, § 301.6707A–1 (as contained in 26 CFR part 1, revised April 2013) shall apply.

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2015–21259 Filed 8–27–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701, 773, 774, 777, 779, 780, 783, 784, 785, 800, 816, 817, 824, and 827

[Docket ID: OSM–2010–0018; OSM–2010–0021; OSM–2015–0002 S1D1 SS08011000SX064A000156S180110; S2D2SS08011000SX064A00015X501520]

RIN 1029–AC63

Stream Protection Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Notice of public hearings.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing the schedule for public hearings on the proposed Stream Protection Rule and the accompanying Draft Environmental Impact Statement (DEIS).

DATES: We will be holding public hearings on the proposed rule and DEIS on September 1, 3, 10, 15, and 17, 2015 at the locations listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section of this notice for the addresses at which we will hold the public hearings on the proposed rule and DEIS.

FOR FURTHER INFORMATION CONTACT:

Jessica Villanueva, 1999 Broadway, Suite 3320, Denver, Colorado 80201, Phone: (303) 293–5057

Robert Evans, 2675 Regency Road, Lexington, Kentucky 40503, Phone: (859) 260–3902

Len Meier, 501 Belle Street, Room 216, Alton, Illinois 62002, Phone: (618) 463–6463 x 5109

Ben Owens, 3 Parkway Center, Pittsburgh, PA 152220, Phone: (412) 937–2827

Ian Dye, Jr., 1947 Neeley Road, Compartment 116, Suite 220, Big Stone Gap, VA 24219, Phone: (276) 523–0022 x 16

Roger Calhoun, 1027 Virginia Street East, Charleston, West Virginia 25301, Phone: (304) 347–7158

SUPPLEMENTARY INFORMATION: The proposed rule, announced on July 16, 2015 and published on July 27, 2015 (80 FR 44436–44698), would modernize rules that are 32 years old in order to better protect people, water quality, and the environment from the adverse effects of coal mining. We will hold public hearings on the proposed Stream Protection Rule and the accompanying DEIS at the following locations on the listed dates:

Tuesday, September 1, 2015: Jefferson County Fairgrounds Event Center, 15200 W. 6th Ave., Golden, CO 80401.

Thursday, September 3, 2015: Lexington Convention Center, 430 W. Vine St., Lexington, KY 40507.

Thursday, September 10, 2015: St. Charles Convention Center, 1 Convention Center Plaza, St. Charles, MO 63303.

Thursday, September 10, 2015: DoubleTree by Hilton Hotel Pittsburgh, 500 Mansfield Ave., Pittsburgh, PA 15205.

Tuesday, September 15, 2015: Mountain Empire Community College, 3441 Mt. Empire Rd., Big Stone Gap, VA 24219.

Thursday, September 17, 2015: Charleston Civic Center, 200 Civic Center Dr., Charleston, WV 25301

All hearings are scheduled to begin at 5 p.m. and end at 9 p.m. We will provide opportunities for interested parties to deliver or write comments onsite at each public hearing. We will also provide an opportunity for participants to speak with a court reporter who will transcribe their verbal comments for the written record. Additionally, the public will be able to speak in a public hearing format. Those speaking in the public hearing format must register to do so at the hearing, and will be called on a first-come, first-served basis as time allows. Verbal comments will be limited to two minutes in order to allow as many people to speak as possible. People are encouraged to provide their complete detailed comments in writing.

The primary purpose of the hearings is to obtain input on the proposed rule and DEIS. Therefore, we encourage you to limit your testimony to the merits of the provisions of the proposed rule and DEIS.

At the hearing, a court reporter will record and prepare a verbatim transcription of all comments presented. This written record will be made part of the docket for the DEIS and/or proposed rule. If you have a written copy of your comments, we encourage you to provide a copy to the moderator to assist the court reporter in preparing the written record.

If you are a disabled individual who needs reasonable accommodations to attend a public hearing, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 24, 2015.

Harry J. Payne,

Acting Assistant Director, Program Support.

[FR Doc. 2015–21412 Filed 8–27–15; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0280; FRL–9933–20–Region 9]

Revisions to California State Implementation Plan; Bay Area Air Quality Management District; Stationary Sources Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of Regulation 2, Rules 1 and 2 for the Bay Area Air Quality Management District (BAAQMD or District) portion of the California State Implementation Plan (SIP) submitted on April 22, 2013. These revisions consist of significant updates to rules governing the issuance of permits for stationary sources, including review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act (CAA). The intended effect of this proposed limited approval and limited disapproval action is to update the applicable SIP with current BAAQMD permitting rules and to set the stage for remedying certain deficiencies in these rules. If finalized as proposed, this limited disapproval action would trigger an obligation for EPA to promulgate a Federal Implementation Plan unless California submits and we approve SIP revisions that correct the deficiencies within two years of the final action, and for certain deficiencies the limited disapproval would also trigger sanctions under section 179 of the CAA unless California submits and we approve SIP revisions that correct the deficiencies within 18 months of final action.

DATES: Any comments must arrive by September 28, 2015.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2015–0280, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions.

2. *Email: R9airpermits@epa.gov.*

3. *Mail or deliver:* Gerardo Rios (Air–3), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

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

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Shaheerah Kelly, EPA Region 9, (415) 947–4156, *kelly.shaheerah@epa.gov.*

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

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- The word or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- The word or initials *BAAQMD* or *District* mean or refer to the Bay Area Air Quality Management District.
- The initials *BACT* mean or refer to Best Available Control Technology.
- The words *Bay Area* mean or refer to the San Francisco Bay Area.
- The initials *CARB* mean or refer to the California Air Resources Board.
- The initials *CFR* mean or refer to Code of Federal Regulations.
- The initials *CO* mean or refer to carbon monoxide.
- The initials or words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.
- The initials *ERC* mean or refer to Emission Reduction Credit.
- The initials *FIP* mean or refer to Federal Implementation Plan.
- The initials *FR* mean or refer to **Federal Register**.
- The initials *GHG* mean or refer to greenhouse gases.
- The initials *IBR* mean or refer to incorporation by reference.
- The initials *LAER* mean or refer to Lowest Achievable Emission Rate.
- The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.
- The initials NO_X mean or refer to oxides of nitrogen.
- The initials *NPOC* mean or refer to non-precursor organic compound.
- The initials *NSR* mean or refer to New Source Review.
- The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).
- The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).
- The initials *PSD* mean or refer to Prevention of Significant Deterioration.
- The initials *PTE* mean or refer to potential to emit
- The initials *SIP* mean or refer to State Implementation Plan.
- The initials SO_2 mean or refer to sulfur dioxide.
- The initials *TSD* mean or refer to the technical support document for this action.
- The initials *VOC* mean or refer to volatile organic compound.

I. The State's Submittal

A. What rules did the State submit?

On April 22, 2013, CARB submitted amended rules, BAAQMD Regulation 2, Rules 1 and 2 for approval as a revision to the BAAQMD portion of the California SIP under the CAA. Regulation 2 contains the District's air quality permitting programs. Regulation 2, Rule 1 contains general requirements that apply to all District air quality permitting programs. Regulation 2, Rule 2 contains the District's New Source Review (NSR) permit programs for both attainment and nonattainment pollutants. This SIP revision submittal represents a comprehensive revision to BAAQMD's preconstruction review and permitting program and is intended to satisfy the requirements of part C (PSD) and part D (nonattainment NSR) of title I of the Act as well as the general preconstruction review requirements for minor sources [1] under section 110(a)(2)(C) of the Act.[2] These preconstruction review and permitting programs are often collectively referred to as NSR.

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by BAAQMD and submitted to EPA by CARB, which is

[1] We note that any references to the term ''source'' in Regulation 2, Rules 1 and 2, as well as in the District's other SIP rules, refer to the ''emission unit'' rather than the ''stationary source.''

[2] Parts C and D of the federal Clean Air Act regulate the construction of new major stationary sources and major modifications. BAAQMD's NSR rules do not distinguish between major sources and major modifications in the same way as the federal Clean Air Act. Throughout this document, any references to major sources or major modifications means those new sources and modifications exceeding the major source and modification thresholds specified in the federal Clean Air Act.

the governor's designee for California SIP submittals.

TABLE 1—SUBMITTED RULES

Regulation & Rule No.	Rule title	Adopted/ Amended	Submitted
Regulation 2, Rule 1 (2–1)	Permits, General Requirements	12/19/12	4/22/13
Regulation 2, Rule 2 (2–2)	Permits, New Source Review	12/19/12	4/22/13

On June 26, 2013, the April 22, 2013 submittal of Regulation 2, Rules 1 and 2 was deemed to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. The submittal includes evidence of public notice and adoption of the amended rules. While we can act only on the most recently submitted version of each regulation (which supersedes earlier submitted versions), we have reviewed materials provided with previous submittals. Our TSD provides additional background information on our evaluation of Regulation 2, Rules 1 and 2.

B. What are the existing BAAQMD rules governing stationary source permits in the California SIP?

The existing SIP-approved NSR program for new or modified stationary sources in the Bay Area consists of the rules identified below in Table 2. Collectively, these rules establish the NSR requirements for both major and minor stationary sources under BAAQMD jurisdiction in California, including requirements for the generation and use of emission reduction credits in nonattainment areas.

Consistent with the District's stated intent to have the submitted NSR rules replace the existing SIP-approved NSR program in its entirety, EPA's approval of the regulations identified above in Table 1 would have the effect of entirely superseding our prior approval of these two rules (including a prior approval of a single subsection) in the current SIP-approved program. Table 2 lists the existing rules in the California SIP governing NSR for stationary sources under BAAQMD jurisdiction.

TABLE 2—EXISTING SIP RULES GOVERNING NSR FOR STATIONARY SOURCES UNDER BAAQMD JURISDICTION

Regulation & Rule No. & Section No.	Rule title	BAAQMD adoption date	EPA approval date	**Federal Register** citation
2–1	Permits, General Requirements	11/1/1989	1/26/1999	64 FR 3850
2–1–429	Permits, General Requirements; Federal Emissions Statement.	6/15/1994	4/3/1995	60 FR 16799
2–2	Permits, New Source Review	6/15/1994	1/26/1999	64 FR 3850

C. What is the purpose of this proposed rule?

The purpose of this proposed rule is to present our evaluation under the CAA and EPA's regulations of the amended NSR rules submitted by CARB on April 22, 2013, as identified in Table 1. We provide our reasoning in general terms below but provide a more detailed analysis in our TSD, which is available in the docket for this proposed rulemaking.

II. EPA's Evaluation

A. How is EPA evaluating the rules?

EPA has reviewed BAAQMD Regulation 2, Rules 1 and 2 for compliance with the CAA's general requirements for SIPs in CAA section 110(a)(2), part C of title I (sections 160 through 169) for the PSD program, and part D of title I (sections 172, 173, 182(a) and 189(e)) for the nonattainment NSR program. EPA also evaluated the rules for compliance with the CAA requirements for SIP revisions in CAA sections 110(l), 193 and 302(z). In addition, EPA evaluated the submitted rules for consistency with the regulatory provisions of 40 CFR part 51, subpart I (Review of New Sources and Modifications) (*i.e.,* 40 CFR 51.160–51.166) and 40 CFR 51.307.

Among other things, section 110 of the Act requires that SIP rules be enforceable, and provides that EPA may not approve a SIP revision if it would interfere with any applicable requirements concerning attainment and reasonable further progress or any other requirement of the CAA. Section 110(a)(2) and section 110(l) of the Act require that each SIP or revision to a SIP submitted by a State must be adopted after reasonable notice and public hearing.

Section 110(a)(2)(C) of the Act requires each SIP to include a program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the NAAQS. In addition to the permit programs required under parts C and D of title I of the Act for PSD and nonattainment NSR sources, respectively, EPA's regulations at 40 CFR 51.160–51.164 provide general programmatic requirements to implement this statutory mandate commonly referred to as the ''minor NSR program.''

Part C of title I of the Act establishes the general statutory requirements for a PSD permit program. Additionally, 40 CFR 51.166 sets forth EPA's regulatory requirements for a SIP-approved PSD program. 40 CFR 52.21 is EPA's FIP containing regulatory requirements to implement a PSD program and its provisions may be incorporated by reference into a SIP-approved PSD program.

Part D of title I of the Act contains certain procedural requirements for developing and revising SIPs, and establishes general statutory requirements for a nonattainment NSR permit program. Subpart 4 of part D of title I of the Act includes section 189(e), which requires the control of major stationary sources of PM_{10} precursors (and hence $PM_{2.5}$ precursors) ''except where the Administrator determines that such sources do not contribute significantly to PM_{10} [and $PM_{2.5}$] levels

which exceed the standard in the area.'' Additionally, 40 CFR 51.165 sets forth EPA's regulatory requirements for SIP-approval of a nonattainment NSR permit program.

Our TSD, which can be found in the docket for this rule, contains a more detailed evaluation and discussion of the approval criteria. As described below, EPA is proposing a limited approval and limited disapproval of the submitted NSR rules.

B. Do the rules meet the evaluation criteria?

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

Based on our review of the public process documentation included in the April 22, 2013 submittal, we find that the BAAQMD has provided sufficient evidence of public notice, and an opportunity for comment and a public hearing prior to adoption and submittal of these rules to EPA.

With respect to substantive requirements, we have evaluated Regulation 2, Rules 1 and 2, in accordance with the CAA and regulatory requirements that apply to: (1) General preconstruction review programs for minor sources under section 110(a)(2)(C) of the Act, (2) PSD permit programs under part C of title I of the Act, and (3) nonattainment NSR permit programs under part D of title I of the Act. For the most part, the submitted NSR rules satisfy the applicable requirements for these three permit programs and will strengthen the applicable SIP by updating the rules and adding requirements to address new or revised NSR permitting provisions promulgated by EPA in the last several years. However, the submitted NSR rules also contain a few deficiencies which prevent full approval. Below, we discuss generally our evaluation of BAAQMD's submitted rules and the deficiencies that are the basis for our proposed limited disapproval of these rules. Our TSD contains a more detailed evaluation and recommendations for program improvements.

1. Minor New Source Review Requirements

Section 110(a)(2)(C) of the Act requires that each SIP include a program to provide for ''regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D'' of title I of the Act. Thus, in addition to the permit programs required in parts C and D of title I of the Act, which apply to new or modified major stationary sources of pollutants, each SIP must include a program to regulate the construction and modification of any stationary source within the area as necessary to assure that the NAAQS are achieved. These general pre-construction requirements are commonly referred to as ''minor NSR'' and are subject to EPA's implementing regulations in 40 CFR 51.160–51.164. Regulation 2, Rules 1 and 2 satisfy most of the statutory and regulatory requirements for minor NSR programs, but we have identified the following three deficiencies that form part of the basis for our proposed limited disapproval.

First, the definition of ''Agricultural Source'' in section 2–1–239 and the provision concerning the loss of an exemption in section 2–1–424 cross-reference and rely on requirements in other District rules that are not approved in the SIP. Specifically, subsection 2–1–239.1 and section 2–1–424 rely on requirements in Regulation 2, Rule 10 (Large Confined Animal Facility Operations). In addition, subsection 2–1–239.3 relies on requirements in Regulation 2, Rule 6 (Major Facility),[3] which is also not approved in the SIP. The District may resolve this deficiency by incorporating the specific threshold(s) or requirement(s) from these District rules into Regulation 2, Rule 1.

Second, section 2–2–308 specifies that the District's APCO shall not issue an Authority to Construct (ATC) for a new or modified emission unit or stationary source that will result in a ''significant net increase'' (*i.e.,* a major modification) in emissions of any NAAQS pollutant unless the APCO determines that such increase will not cause or contribute to an exceedance of any NAAQS for that pollutant. Because this provision only prohibits issuance of an ATC for a source or project that will result in a ''significant net increase'' rather than any projects (*i.e.,* both minor or major modifications) that would cause or contribute to a NAAQS violation, this provision does not satisfy the requirements of 40 CFR 51.160(a) and is therefore deficient.

Lastly, the rule submittal is deficient because it does not contain a prohibition on the issuance of an ATC if the project does not meet all applicable requirements of the control strategy as required in 40 CFR 51.160(a).

Compared to the provisions in the existing SIP that are used to implement the minor NSR program, the submitted rule revisions represent an overall strengthening of BAAQMD's minor NSR program. For example, the rule revisions include: (1) more specific criteria for permit applications and conditions for permit issuance, (2) new provisions to prevent emissions from new or modified sources from causing or contributing to a violation of a NAAQS, (3) new provisions for public notification and comment for minor NSR projects that result in a significant net emission increase, and (4) new and revised provisions that clarify what new and modified sources are exempt from obtaining an ATC permit. Overall, we expect the submitted revisions will allow for more effective implementation and enforcement of the requirements applicable to minor stationary sources in the Bay Area.

2. Prevention of Significant Deterioration (PSD) Requirements

Part C of title I of the Act contains the provisions for the prevention of significant deterioration of air quality in areas designated ''attainment'' or ''unclassifiable'' for the NAAQS, including preconstruction permit requirements for new major sources or major modifications proposing to construct in such areas. EPA's regulations for PSD permit programs are found in 40 CFR 51.166. EPA's FIP implementing the PSD program in areas without a SIP-approved program is found at 40 CFR 52.21. BAAQMD is currently designated as ''attainment'' or ''unclassifiable/attainment'' for all NAAQS pollutants, except for the 2008 8-hour ozone (marginal) and 2006 24-hour $PM_{2.5}$ (moderate) NAAQS.

Regulation 2, Rules 1 and 2 contain the requirements for review and permitting of PSD sources. Regulation 2, Rule 1 contains some general NSR definitions, the major modification applicability determination procedures, and certain administrative requirements that apply to the issuance of all permits covered under Regulation 2, including PSD permits. Regulation 2, Rule 2 contains most of the NSR and PSD definitions, and all of the substantive

[3] Regulation 2, Rule 6 (Major Facility) contains the District Title V operating permit program.

and administrative requirements for review of PSD permit applications and for the approval of PSD permits. These rules satisfy most of the statutory and regulatory requirements for PSD permit programs, thus forming part of the basis for our limited approval. However, these rules also contain four deficiencies that form part of the basis for our proposed limited disapproval, as discussed below.

First, subsection 2–1–234.2.2 provides an adequate definition of major modification by incorporating 40 CFR 51.166(b)(2) by reference. However, the second sentence of section 2–1–234.2 attempts to satisfy these requirements by incorporating by reference the substantive requirements of the PSD applicability procedures for determining if a project will result in a major modification. (See 40 CFR 51.166(a)(7)) The BAAQMD rules cannot incorporate 40 CFR 51.166(a)(7) by reference because it consists of instructions to the State and not requirements for an applicant seeking a PSD permit. When provisions are incorporated by reference, the exact wording of the provision is read into the text of the rule. Therefore, the text of 40 CFR 51.166(a)(7) does not contain the necessary wording to require a source to perform the calculations required by the PSD applicability procedures in 40 CFR 51.166(a)(7). Similarly, the recordkeeping provisions required when projected actual emissions are used to determine emission increases are set forth in 40 CFR 51.166(r)(6) and (r)(7). For the same reason, these provisions cannot be incorporated by reference. These deficiencies may be resolved by incorporating by reference the provisions contained in 40 CFR 52.21 for specifying the applicability procedures, applicable definitions, and recordkeeping requirements.

Second, the definition of ''PSD Pollutant'' in section 2–2–223 begins by referencing EPA's definition of a regulated NSR pollutant in 40 CFR 52.21(b)(50). However, section 2–2–223 then excludes from the definition any pollutants for which the Bay Area has been designated as nonattainment for a NAAQS. Excluding nonattainment pollutants conflicts with the federal definition of ''regulated NSR pollutant'' in 40 CFR 52.21(b)(50) which includes all NAAQS pollutants, regardless of attainment status. Because this definition is used for determining whether a source is a ''Major PSD Facility,'' as defined in subsection 2–2–224.1, the rule is deficient for PSD applicability purposes. A stationary source is considered a major stationary source if *any* pollutant emitted by the source exceeds the applicable major source thresholds (100 or 250 tpy), regardless of the area's designation.[4] Additionally, since the definition of ''PSD Pollutant'' is used for determining whether a modification to a stationary source is a ''PSD Project'' pursuant to section 2–2–224, we also find that section 2–2–224 is deficient. To resolve this deficiency, the District may remove the exclusion of nonattainment pollutants from the definition of ''PSD Pollutant'' or address applicability as it relates to nonattainment pollutants in determining whether a source is a ''Major PSD Facility'' in subsection 2–2–224.1.

Third, the air quality analysis and modeling requirements in subsection 2–2–305.3 provide that where an air quality model specified in 40 CFR part 51, appendix W (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted upon written approval by the Air Pollution Control Officer (APCO) after public notice and opportunity for public comment under the procedures set forth in section 2–2–404. This provision is deficient because subsection 3.2.2 of 40 CFR 51, appendix W, regarding the use of alternative models, requires written approval by the Administrator prior to using any modification or substitution of a model, and subsection 2–2–305.3 does not require this approval. The District may resolve this deficiency by revising subsection 2–2–305.3 such that it requires approval by the EPA, as well as the APCO.

Finally, the fugitive emission calculation procedure in Section 2–2–611 provides that fugitive emissions shall be included only if the facility is in one of the 28 source categories listed in section 169(1) of the Act. However, 40 CFR 51.166(b)(1)(iii)(aa) includes an additional source category: ''any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.'' Therefore, we find that Regulation 2, Rule 2 is deficient for PSD purposes because it does not require fugitive emissions from all listed source categories.

Although BAAQMD's existing SIP rules in Regulation 2, Rule 2 contained certain PSD-related provisions, the District has never had a SIP-approved PSD permitting program. The BAAQMD has been conducting PSD evaluations and issuing PSD permits under a delegation agreement between the District and the EPA pursuant to 40 CFR 52.21(u).[5] Accordingly, the applicable requirements governing the issuance of PSD permits in the BAAQMD are currently the FIP implementing the PSD program at 40 CFR 52.21. The EPA's approval of Regulation 2, Rules 1 and 2 into the California SIP, if finalized, will give the District a SIP-approved PSD permit program.

Approval of Regulation 2, Rules 1 and 2 represents an overall strengthening of BAAQMD's SIP rules because it includes updated PSD provisions, is mostly consistent with EPA's requirements in the CAA and 40 CFR 51.166, and results in a SIP-approved PSD program to regulate new or modified major stationary sources of attainment or unclassifiable NAAQS pollutants.

3. Nonattainment New Source Review Requirements

Part D of title I of the Act contains the general requirements for areas designated ''nonattainment'' for a NAAQS, including preconstruction permit requirements for new major sources or major modifications proposing to construct in such nonattainment areas, commonly referred to as ''Nonattainment New Source Review'' or ''NSR.'' EPA's regulations for NSR permit programs are found in 40 CFR 51.165. BAAQMD is currently designated nonattainment for the 2008 8-hour ozone (marginal) and 2006 24-hour $PM_{2.5}$ (moderate) NAAQS.[6] (See 40 CFR 81.305.)

Regulation 2, Rules 1 and 2 contain the NSR requirements for review and permitting of major sources and major modifications located in the Bay Area. Similar to the District's PSD program, Regulation 2, Rule 1 contains some general NSR definitions, the major modification applicability procedures, and certain administrative requirements that apply to the issuance of all permits covered under Regulation 2, including major nonattainment NSR permits. Regulation 2, Rule 2 contains most of the NSR-specific definitions, and most

[4] While 40 CFR 51.166(i)(2) provides that the PSD program requirements contained in paragraphs (j) through (r) need not apply to nonattainment pollutants, PSD major source applicability must be determined for all regulated NSR pollutants, as defined in 51.166(b)(49), which includes all pollutants for which a NAAQS has been promulgated.

[5] On June 21, 2004, the EPA issued a PSD delegation agreement, which was updated on January 20, 2006, February 4, 2008, and March 9, 2011.

[6] The BAAQMD was designated nonattainment of both the 1-hour ozone (moderate) and 1997 8-hour ozone (marginal) NAAQS at the time those standards were revoked. While BAAQMD is no longer ''designated'' nonattainment for these two revoked standards, certain requirements based on these previous designations may still apply if those requirements are more stringent than those imposed under the current nonattainment designations.

of the substantive and administrative requirements for review of major nonattainment NSR applications and for the approval of these permits. These rules satisfy most of the statutory and regulatory requirements for NSR permit programs, thus forming part of the basis for our limited approval. However, these rules also contain seven deficiencies that form part of the basis for our proposed limited disapproval, as discussed below.

First, the language in subsection 2–1–234.2.1 for nonattainment pollutants fails for the same reasons discussed above for the PSD program. Specifically, while it is appropriate to incorporate 40 CFR 51.165(a)(1)(v) by reference, the second sentence of this subsection cannot incorporate the applicability procedures in 40 CFR 51.165(a)(2) by reference because it provides direction to States rather than to applicants seeking a nonattainment NSR permit. For the same reason, the recordkeeping requirements of 40 CFR 51.165(a)(6) and (a)(7) cannot be incorporated by reference. These deficiencies may be resolved by including the specific requirements contained in 40 CFR 51.165(a)(2), as well as (a)(6), and (a)(7). Our TSD has a further discussion of this issue and potential remedies.

Second, subsection 2–2–401.4 requires any application for a new major stationary source or major modification located in or within 100 km of a Class I area, to provide an analysis of potential impacts to air quality related values (including visibility) for each affected Class I area. However, Regulation 2, Rule 2 is deficient because it only requires a visibility analysis for sources that are located within 100 km of a Class I area, rather than for any source that ''may have an impact on visibility in any mandatory Class I Federal Area,'' as required by 40 CFR 51.307(b)(2). The NSR program must include this requirement as it pertains to any new major stationary source or major modification subject to nonattainment NSR permitting.

Third, subsection 2–2–411.2, pertaining to offset refunds, allows the District to provide an ''offset refund'' to a stationary source if excess offsets were provided at the time of permit issuance or for an emission unit that has not been constructed (or is constructed but never operated) and for which offsets have been provided. The provision does not specify a time after which a stationary source can no longer obtain an offset refund. It would not be appropriate to allow a source to request such a refund years after the project has been completed or canceled. To correct this deficiency, BAAQMD must remove this provision or amend the rule to provide an appropriate timeframe for obtaining an offset refund.

Fourth, the ''Demonstration of NO_X and POC Offset Program Equivalence'' required by section 2–2–412 is deficient because it does not provide a remedy if the District fails to make the required demonstration. BAAQMD must add a remedy provision, and identify a deadline to eliminate any offset shortfall if the District's Small Facility Banking Account does not contain sufficient surplus emission reductions to demonstrate that Rule 2 provides offset program equivalence. Such a remedy, at a minimum must provide that the offsets for any new or modified major stationary source must comply with all federal offset criteria, rather than the offset criteria provided in the rule, until equivalence is re-established.

Fifth, subsection 2–2–605.2 is deficient because it allows existing ''fully-offset'' sources to generate ERCs based on the difference between the post-modification PTE and the surplus adjusted pre-modification PTE. ERCs intended to be used as offsets for emissions from new major sources or major modifications are only creditable if they are reductions of *actual* emissions, consistent with the requirement in CAA section 173(c)(1), not reductions in the PTE of the source. To resolve this deficiency, BAAQMD may revise the calculation method for ''fully offset'' sources to be the same as for sources that are not ''fully offset''. Alternatively, BAAQMD may add provisions to differentiate between state and federally compliant ERCs (*i.e.,* ERCs based on actual emission reductions) and provide that new major sources and major modifications must use federally compliant ERCs.

Sixth, subsection 2–2–606.2 is deficient as it applies to major modifications because it allows ''fully-offset'' sources to calculate the emission increases from a proposed modification based on the difference between the post-modification PTE and pre-modification adjusted PTE. 40 CFR 51.165(a)(3)(ii)(J) requires that offsets must be provided for the actual increase in emissions from a major modification based on an actual to PTE emissions increase test. BAAQMD may resolve this deficiency by developing separate procedures based on the difference between the allowable emissions (*i.e.* PTE) after the modification and the actual emissions before the modification for calculating the quantity of offsets required for an emission unit or modification subject to the major NSR preconstruction review requirements. Alternatively, BAAQMD may revise the offset equivalency provisions of Section 2–2–412 to track the difference in the quantity of offsets required under the rule and as required by the CAA, and demonstrate that in the aggregate, an equivalent amount of offsets are provided. We note that if the District addresses this deficiency in section 2–2–412, offsets must be addressed for $PM_{2.5}$ and the $PM_{2.5}$ precursors (NO_X and SO_2) in addition to the ozone precursors already addressed in this provision.

Finally, for the same reasons stated above in our evaluation of the PSD program, we find that section 2–2–611 of Regulation 2, Rule 2 is deficient because it does not require fugitive emissions from all listed source categories to be included when determining major source applicability for major nonattainment NSR review.

Compared to the provisions in the existing SIP, the submitted rule revisions represent an overall strengthening of BAAQMD's nonattainment NSR program. For example, the rule revisions include: (1) Incorporation of new requirements (*e.g.,* District BACT (equivalent to federal LAER), offsets, and emissions measurement methods for regulating $PM_{2.5}$ emissions and the applicable $PM_{2.5}$ precursors,[7] (2) new requirements for ensuring protection of air quality related values in Class I areas, (3) specific calculation procedures for determining if a project will result in a major modification, and (4) several minor revisions that clarify definitions of important NSR terms, and substantive and administrative procedures consistent with EPA's requirements in 40 CFR 51.165.

4. Section 110(l) of the Act

We are proposing to find that Regulation 2, Rules 1 and 2 satisfy the requirements of section 110(a)(2)(C) and parts C and D of title I of the Act. Section 110(l) of the CAA states that each SIP revision submitted by a State shall be adopted by such State after reasonable notice and public hearing. It also states that the Administrator shall not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement.

[7] As discussed below in section II.B.5 and in our TSD, with respect to the $PM_{2.5}$ precursors applicable to the Bay Area, the District's current SIP-approved rule already included BACT provisions in section 2–2–302 for VOC, NO_X and SO_2. Additionally, the rule already included offset requirements for VOC and NO_X, and the District incorporated new offset provisions in section 2–2–303 for SO_2.

With respect to the procedural requirements of CAA section 110(l), based on our review of the public process documentation included in the April 22, 2013 SIP submittal package, we find that BAAQMD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of these rules to EPA. See the TSD for additional details.

With respect to the substantive requirements of section 110(l), we have determined that our approval of the BAAQMD NSR SIP submittal, as described in more detail in our TSD, represents a strengthening of BAAQMD's NSR program as compared to the District's current SIP-approved NSR program that was approved on January 26, 1999 (64 FR 3850), and that our limited approval of this SIP submittal would not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act. Therefore we are proposing limited approval and limited disapproval of the BAAQMD SIP revision under section 110(l) of the Act.

5. Section 189(e) of the Act

CAA title I, Part D, subpart 4 includes section 189(e), which requires the control of major stationary sources of PM_{10} and $PM_{2.5}$ precursors ''except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the standard in the area.'' The provisions of subpart 4, do not define the term ''precursor'' for purposes of $PM_{2.5}$, nor does subpart 4 explicitly require the control of any specifically identified particulate matter precursor. The statutory definition of ''air pollutant,'' however, provides that the term ''includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term ''air pollutant'' is used.'' (See CAA section 302(g)) The EPA has identified the main precursor gases associated with $PM_{2.5}$ formation as SO_2, NO_X, VOC, and ammonia. Accordingly, the nonattainment NSR permit program for $PM_{2.5}$ presumptively must apply to emissions of all four precursors listed above, and direct $PM_{2.5}$, when emitted from major sources in the Bay Area. The BAAQMD's revisions to Regulation 2, Rule 2 regulate SO_2, NO_X and VOC, but not ammonia.

With respect to VOC and NO_X emissions, both new and modified sources of these emissions are subject to BAAQMD's BACT requirements (equivalent to federal LAER) at a 10 lb/day emission rate threshold under its nonattainment NSR program. Also, Section 2–2–302 of the District's revised Rule 2 requires VOC and NO_X emissions to be offset at a 1:1 ratio for any facility with a PTE greater than 10 tpy but less than 35 tpy of NO_X or VOC, and a 1:1.15 ratio for any facility with a PTE of 35 tpy or more of NO_X or VOC. These applicability thresholds are well below the BACT and offset thresholds of 100 tpy for new sources and 40 tpy for major modifications that would be required under federal requirements for a $PM_{2.5}$ precursor. The offset ratio for sources with a PTE of 35 tpy or more is also higher than the 1:1 offset ratio required federally for $PM_{2.5}$ precursors. In addition, Regulation 2, Rule 2, also requires BACT (equivalent to federal LAER) and offsets for major sources and modifications of SO_2 in sections 2–2–301 and 2–2–303.

Because Regulation 2, Rule 2 contains control and offset requirements for VOC, NO_X and SO_2 that are consistent with, or more stringent than, the federal nonattainment NSR requirements for those $PM_{2.5}$ precursors, we are proposing to approve Regulation 2, Rule 2 as satisfying the requirements of CAA section 189(e) for VOC, NO_X and SO_2.

The only $PM_{2.5}$ precursor that is not regulated by Regulation 2 is ammonia, which the BAAQMD has excluded. In reviewing any determination of the State (in this case the BAAQMD) to exclude a $PM_{2.5}$ precursor (in this case ammonia) from the required evaluation of potential nonattainment NSR applicability and regulation, the EPA considers both the magnitude of the precursor's contribution to ambient $PM_{2.5}$ concentrations in the nonattainment area and the sensitivity of ambient $PM_{2.5}$ concentrations in the area to reductions in emissions of that precursor.[8] To determine if the District appropriately excluded ammonia emissions from the requirements of Regulation 2, Rule 2, EPA is relying primarily on three sources of information: (1) The District's December 22, 2014 letter regarding compliance with $PM_{2.5}$ precursor requirements in CAA Title I, Part D, Subpart 4 (District 189(e) letter); (2) the District's July 15, 2015 letter regarding the quantity of ammonia emitted from major sources compared to the overall ammonia emission inventory (District EI letter); and (3) EPA's $PM_{2.5}$ Clean Data Determination for the BAAQMD, published in the **Federal Register** on January 9, 2013 (78 FR 1760) (CDD).

First, the District's EI letter indicates that the magnitude of actual ammonia emissions from major sources in the San Francisco Bay Air Basin is small. There are only three major sources of ammonia emissions (*i.e.,* 100 tpy or greater of actual ammonia emissions). These three major sources contribute 686 tpy of ammonia emissions while all sources of ammonia in the Bay Area Air Basin emit 12,407 tpy. The relative contribution of the existing major sources to the overall ammonia emissions in the area, therefore, is 5.5 percent.

Second, the District's 189(e) letter states that the District evaluated the impacts that ammonia emissions within the Bay Area may have on secondary particulate matter formation. The District conducted a modeling study in 2009 to evaluate this issue, and based on that study the District concluded that ammonia was not a significant contributor to secondary particulate matter formation that warranted inclusion in the District's NSR program at the time of the study.[9] This study showed the ammonia emissions are predominately from area sources. Modeling results from the study showed that a 20 percent reduction in ammonia emissions (around 15 tons per day) would reduce secondary $PM_{2.5}$ levels by an average of 2 percent.

Third, based on EPA's $PM_{2.5}$ Clean Data Determination, EPA has determined that the Bay Area is currently attaining the 2006 24-hour $PM_{2.5}$ NAAQS.

As noted above, section 189(e) of the Act requires nonattainment NSR to apply to major stationary sources of $PM_{2.5}$ precursors ''except where the Administrator determines that such sources do not contribute significantly to [$PM_{2.5}$] levels which exceed the standard in the area.'' Given the relatively small amount of ammonia emissions from major point sources, the District's 2009 modeling analysis showing that ammonia was not a significant contributor to secondary particulate matter formation and the fact that the BAAQMD is currently attaining the $PM_{2.5}$ NAAQS, we are proposing to conclude that the $PM_{2.5}$ impacts from major stationary sources of ammonia emissions are insignificant and do not

[8] 80 FR 1816, Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; San Joaquin Valley Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 $PM_{2.5}$ NAAQS; (Proposed Rule), January 13, 2015, page 1822. 80 FR 24281, Approval of Air Quality Implementation Plans; California; South Coast Air Quality Management District; Stationary Source Permits; May 1, 2015.

[9] See BAAQMD's *Fine Particulate Matter Data Analysis and Modeling in the Bay Area,* Research and Modeling Section Publication No. 200910–004–PM, October 2009.

contribute significantly to $PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQS in the Bay Area nonattainment area. Therefore, this requirement is satisfied.

6. Section 193 of the Act

Section 193 of the Act, which was added by the Clean Air Act Amendments of 1990, includes a savings clause which provides, in pertinent part: ''No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.''

We have reviewed the provisions included in BAAQMD's NSR SIP submittal and find that they would ensure equivalent or greater emission reductions compared to the current SIP-approved NSR program. The BACT and offset requirements, which are the primary control requirements of a NSR program, are equivalent or more stringent in the submitted rules as are contained in the existing SIP approved NSR rules. Therefore, we can approve the submitted NSR program under section 193 of the Act. Our TSD contains a more detailed evaluation.

III. Proposed Action and Public Comment

Because the rule deficiencies described above are inappropriate for inclusion in the SIP, EPA cannot grant full approval of this rule under section 110(k)(3) of the Act. Pursuant to section 110(k)(3) of the Act, EPA is proposing a limited approval and limited disapproval of the submitted rules. We are proposing to approve the submitted rules based on our determination that the most of the rules satisfy the applicable statutory and regulatory provisions governing regulation of stationary sources under CAA section 110(a)(2)(C), including the permitting requirements for major stationary sources in parts C and D of title I of the Act. In support of this proposed action, we have concluded that our limited approval of the submitted rules would comply with sections 110(l) and 193 of the Act because the amended rules as a whole would not interfere with continued attainment of the NAAQS in the Bay Area, and do not relax control technology and offset requirements. We recommend limited disapproval to correct the deficiencies listed above. The intended effect of our proposed limited approval and limited disapproval action is to update the applicable SIP with current BAAQMD rules and to set the stage for remedying the rule deficiencies. If we finalize this action as proposed, our action would be codified through revisions to 40 CFR 52.220 (identification of plan).

If finalized as proposed, our limited disapproval action would trigger an obligation on EPA to promulgate a Federal Implementation Plan unless the deficiencies are corrected, and EPA approves the related plan revisions, within two years of the final action. Additionally, for those deficiencies that relate to the nonattainment NSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the Bay Area nonattainment area 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply six months after the offset sanction is imposed. Neither sanction will be imposed under the CAA if California submits and we approve, prior to the implementation of the sanctions, SIP revisions that correct the deficiencies that we identify in our final action.

IV. 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 BAAQMD Regulation 2, Rule 1 (Permits, General Requirements) and BAAQMD Regulation 2, Rule 2 (Permits, New Source Review) which are discussed in section I.A. of this preamble. The EPA has made, and will continue to make, this document generally available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., because this 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).

C. Regulatory Flexibility Act

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

After considering the economic impacts of today's proposed rule 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.

D. Unfunded Mandates Reform Act

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

E. Executive Order 13132, Federalism

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

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely 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. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, 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.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This 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.

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

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

I. National Technology Transfer and Advancement Act

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

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.

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: August 19, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

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