120, 121, 122, 123, 124, 125, 126, 127, 128, 129, and 130''.

[FR Doc. C1–2012–15070 Filed 6–27–12; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0141; FRL–9694–1]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the applicable state implementation plan for the State of Nevada. The submitted revisions include new or amended State rules governing applications for, and issuance of, permits for stationary sources, but not including review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act. EPA is proposing this action under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans. The intended effect of the limited approval and limited disapproval action is to update the applicable state implementation plan with current State rules with respect to permitting, and to set the stage for remedying deficiencies in the permitting rules with respect to certain new or revised national ambient air quality standards. If finalized as proposed, this limited disapproval action would not trigger sanctions under section 179 of the Clean Air Act but would trigger an obligation on EPA to promulgate a Federal Implementation Plan unless the State of Nevada corrects the deficiencies, and EPA approves the related plan revisions within two years of the final action.

DATES: Written comments must be received on or before July 30, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0141, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the on-line instructions.
2. *Email: R9airpermits@epa.gov*.
3. *Mail or deliver:* Gerardo Rios (AIR–3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, 75 Hawthorne Street (AIR–3), San Francisco, CA 94105, phone number (415) 972–3534, fax number (415) 947–3579, or by email at *yannayon.laura@epa.gov*.

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

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I. The State's Submittals

A. Which rules did the state submit?

On January 24, 2011, the Nevada Division of Environmental Protection (NDEP) submitted a revision to the Nevada State Implementation Plan (SIP) to EPA for approval or disapproval under section 110(k) of the Clean Air Act (CAA or ''Act''). NDEP's submittal includes certain new or amended State rules [i.e., certain sections of Nevada Administrative Code (NAC)] that govern applications for, and issuance of, permits for stationary sources [a process referred to herein as ''New Source Review'' (NSR) and rules referred to herein as ''NSR rules''].[1] NDEP's January 24, 2011 submittal also includes a rescission of one definition from the existing SIP (the definition of ''special mobile equipment''). In addition to the NSR rules, NDEP's January 24, 2011 submittal contains evidence of public notice and adoption of the rules, or amendments to the rules, since March 2006. Evidence of public notice and adoption of the NSR rules or amendments that predate March 2006 were previously submitted by NDEP in SIP revision submittals dated February 16, 2005 and January 12, 2006. By letter dated February 17, 2011, we found that the January 24, 2011 submittal fulfills the completeness criteria in 40 CFR part 51, appendix V.

On November 9, 2011, NDEP replaced one of the NSR rules, that had been submitted on January 24, 2011 (NAC 445B.3457) and that had been submitted as a temporary regulation, with the version of the rule that had been adopted by the State Environmental Commission (SEC) as a permanent regulation, and enclosed the related evidence of public notice and adoption for the permanent regulation.

On May 21, 2012, NDEP submitted a small set of additional NSR-related rules [and one definition from the Nevada Revised Statutes (NRS)] to supplement the NSR rules submitted on January 24, 2011 and November 9, 2011. NDEP's May 21, 2012 submittal also includes certain clarifications concerning the previously-submitted NSR rules, and documentation supporting the selection

[1] We note that the stationary source permitting rules that are the subject of this proposed rule are not intended to satisfy the requirements for pre-construction review and permitting of major sources or major modifications under part C (''Prevention of Significant Deterioration of air quality'') or part D (''Plan requirements for nonattainment areas'') of title I of the Clean Air Act.

of emissions-based thresholds for triggering the public notice requirements for draft permits for certain source modifications.

Table 1 below lists the rules (and one statutory definition) that were submitted by NDEP on January 24, 2011, November 9, 2011, and May 21, 2012 and on which EPA is proposing action in this document.

TABLE 1—SUBMITTED RULES (AND STATUTORY DEFINITION) GOVERNING NSR FOR STATIONARY SOURCES UNDER NDEP JURISDICTION

Submitted rule	Title	Adoption date	Submittal date
NAC 445B.003	''Adjacent properties'' defined	11/03/93	01/24/11
NAC 445B.0035	''Administrative revision to a Class I operating permit'' defined	08/19/04	01/24/11
NAC 445B.007	''Affected state'' defined	11/03/93	01/24/11
NAC 445B.013	''Allowable emissions'' defined	10/04/05	01/24/11
NAC 445B.014	''Alteration'' defined	10/03/95	01/24/11
NAC 445B.016	''Alternative operating scenarios'' defined	10/03/95	01/24/11
NAC 445B.019	''Applicable requirement'' defined	06/17/10	01/24/11
NAC 445B.035	''Class I–B application'' defined	10/03/95	01/24/11
NAC 445B.036	''Class I source'' defined	08/19/04	01/24/11
NAC 445B.037	''Class II source'' defined	06/17/10	01/24/11
NAC 445B.038	''Class III source'' defined	06/17/10	01/24/11
NAC 445B.0423	''Commence'' defined	03/18/08	05/21/12
NAC 445B.044	''Construction'' defined	10/04/05	01/24/11
NAC 445B.046	''Contiguous property'' defined	09/16/76	01/24/11
NAC 445B.054	''Dispersion technique'' defined	10/04/05	01/24/11
NAC 445B.064	''Excessive concentration'' defined	10/04/05	01/24/11
NAC 445B.066	''Existing stationary source'' defined	10/03/95	01/24/11
NAC 445B.068	''Facility'' defined	10/03/95	01/24/11
NAC 445B.069	''Federally enforceable'' defined	03/18/08	01/24/11
NAC 445B.070	''Federally enforceable emissions cap'' defined	11/03/93	01/24/11
NAC 445B.082	''General permit'' defined	10/03/95	01/24/11
NAC 445B.083	''Good engineering practice stack height'' defined	10/04/05	01/24/11
NAC 445B.087	''Increment'' defined	11/03/93	01/24/11
NAC 445B.093	''Major modification'' defined	08/19/04	01/24/11
NAC 445B.094	''Major source'' defined	05/10/01	01/24/11
NAC 445B.0945	''Major stationary source'' defined	08/19/04	01/24/11
NAC 445B.099	''Modification'' defined	10/03/95	01/24/11
NAC 445B.104	''Motor vehicle'' defined	05/10/01	01/24/11
NRS 485.050	''Motor vehicle'' defined	As amended in 2003	05/21/12
NAC 445B.107	''Nearby'' defined	10/04/05	01/24/11
NAC 445B.108	''New stationary source'' defined	10/03/95	01/24/11
NAC 445B.117	''Offset'' defined	10/03/95	01/24/11
NAC 445B.123	''Operating permit'' defined	06/17/10	01/24/11
NAC 445B.124	''Operating permit to construct'' defined	11/19/02	01/24/11
NAC 445B.1345	''Plantwide applicability limitation'' defined	06/17/10	01/24/11
NAC 445B.138	''Potential to emit'' defined	10/05/10	01/24/11
NAC 445B.142	''Prevention of significant deterioration of air quality'' defined	11/03/93	01/24/11
NAC 445B.147	''Program'' defined	11/03/93	01/24/11
NAC 445B.154	''Renewal of an operating permit'' defined	11/03/93	01/24/11
NAC 445B.156	''Responsible official'' defined	06/17/10	01/24/11
NAC 445B.157	''Revision of an operating permit'' defined	08/19/04	01/24/11
NAC 445B.179	''Special mobile equipment'' defined	10/05/10 (repealed)	01/24/11
NAC 445B.187	''Stationary source'' defined	10/05/10	01/24/11
NAC 445B.194	''Temporary source'' defined	05/10/01	01/24/11
NAC 445B.200	''Violation'' defined	11/03/93	05/21/12
NAC 445B.287	Operating permits: General requirements; exception; restriction on transfers.	06/17/10	01/24/11
NAC 445B.287(2)	[Provision addressing the operating permit requirements for certain types of Class I sources].	06/17/10	05/21/12
NAC 445B.288	Operating permits: Exemptions from requirements; insignificant activities.	03/18/08	01/24/11
NAC 445B.295	Application: General requirements	09/06/06	01/24/11
NAC 445B.297	Application: Submission; certification; additional information	03/08/06	01/24/11
NAC 445B.298	Application: Official date of submittal	06/17/10	01/24/11
NAC 445B.305	Operating permits: Imposition of more stringent standards for emissions.	06/17/10	01/24/11
NAC 445B.308	Prerequisites and conditions for issuance of certain operating permits; compliance with applicable state implementation plan.	03/18/08	01/24/11
NAC 445B.310	Environmental evaluation: Applicable sources and other subjects; exemption.	09/06/06	01/24/11
NAC 445B.311	Environmental evaluation: Contents; consideration of good engineering practice stack height.	10/05/10	01/24/11
NAC 445B.313	Method for determining heat input: Class I sources	10/05/10	01/24/11
NAC 445B.3135	Method for determining heat input: Class II sources	11/19/02	01/24/11
NAC 445B.314	Method for determining heat input: Class III sources	11/19/02	01/24/11

TABLE 1—SUBMITTED RULES (AND STATUTORY DEFINITION) GOVERNING NSR FOR STATIONARY SOURCES UNDER NDEP JURISDICTION—Continued

Submitted rule	Title	Adoption date	Submittal date
NAC 445B.315	Contents of operating permits: Exception for operating permits to construct; required conditions.	03/08/06	01/24/11
NAC 445B.318	Operating permits: Requirement for each source; form of application; issuance or denial; posting.	03/08/06	01/24/11
NAC 445B.319	Operating permits: Administrative amendment	08/19/04	01/24/11
NAC 445B.325	Operating permits: Termination, reopening and revision, revision, or revocation and reissuance.	06/17/10	01/24/11
NAC 445B.331	Request for change of location of emission unit	09/06/06	01/24/11
NAC 445B.3361	General requirements	06/17/10	01/24/11
NAC 445B.3363	Operating permit to construct: Application	12/09/09	01/24/11
NAC 445B.33637	Operating permit to construct for approval of plantwide applicability limitation: Application.	08/19/04	01/24/11
NAC 445B.3364	Operating permit to construct: Action by Director on application; notice; public comment and hearing.	12/09/09	01/24/11
NAC 445B.3365	Operating permit to construct: Contents; noncompliance with conditions.	03/08/06	01/24/11
NAC 445B.33656	Operating permit to construct for approval of plantwide applicability limitation: Contents; noncompliance with conditions.	03/08/06	01/24/11
NAC 445B.3366	Expiration and extension of operating permit to construct; expiration and renewal of plantwide applicability limitation.	09/06/06	01/24/11
NAC 445B.3368	Additional requirements for application; exception	12/09/09	01/24/11
NAC 445B.3375	Class I–B application: Filing requirement	09/06/06	01/24/11
NAC 445B.3395	Action by Director on application; notice; public comment and hearing; objection by Administrator; expiration of permit.	03/18/08	01/24/11
NAC 445B.340	Prerequisites to issuance, revision or renewal of permit	03/18/08	01/24/11
NAC 445B.342	Certain changes authorized without revision of permit; notification of authorized changes.	10/04/05	01/24/11
NAC 445B.3425	Minor revision of permit	08/19/04	01/24/11
NAC 445B.344	Significant revision of permit	11/19/02	01/24/11
NAC 445B.3441	Administrative revision of permit to incorporate conditions of certain permits to construct.	09/06/06	01/24/11
NAC 445B.3443	Renewal of permit	11/12/08	01/24/11
NAC 445B.3447	Class I general permit	11/19/02	05/21/12
NAC 445B.3453	Application: General requirements	03/08/06	01/24/11
NAC 445B.3457	Action by Director on application; notice; public comment and hearing; expiration of permit.	10/05/11	11/09/11
NAC 445B.346	Required contents of permit	10/03/95	01/24/11
NAC 445B.3465	Application for revision	10/04/05	01/24/11
NAC 445B.3473	Renewal of permit	11/12/08	01/24/11
NAC 445B.3477	Class II general permit	03/18/08	01/24/11
NAC 445B.3485	Application: General requirements	09/06/06	01/24/11
NAC 445B.3487	Action by Director on application; expiration of permit	09/06/06	01/24/11
NAC 445B.3489	Required contents of permit	09/06/06	01/24/11
NAC 445B.3493	Application for revision	09/18/01	01/24/11
NAC 445B.3497	Renewal of permit	11/12/08	01/24/11

B. What is the regulatory history of the Nevada SIP?

On April 17, 2007 (72 FR 19144), we proposed to disapprove a previous version of essentially the same set of NSR rules that we are taking action on today. In that proposed rule, we described in detail the evolution of the Nevada SIP from 1972 through the mid-1980's. Please see our April 17, 2007 proposed rule (at page 19145) for additional details on the evolution of the Nevada SIP during that period. In more recent years, NDEP has submitted various updates to the Nevada SIP, and EPA has over time taken a number of actions to approve (or in a few cases, disapprove) these SIP updates. See, e.g., 71 FR 51766 (August 31, 2006) (approval of updated statutory provisions); 71 FR 71486 (December 11, 2006)(approval of updated monitoring and volatile organic compound rules); and 72 FR 25971 (May 8, 2007) (approval of updated visible emissions and particulate matter rules). We finalized our April 17, 2007 proposed disapproval of the previous version of the NSR rules on April 16, 2008 (73 FR 20536). Today's proposal continues the process of updating the Nevada SIP by proposing action on a new set of NSR rules submitted by NDEP that reflect a number of revisions relative to the previous set of NSR rules that EPA disapproved in 2008.

C. What are the existing Nevada rules governing NSR in the Nevada SIP?

Table 2 lists the existing rules in the Nevada SIP governing NSR for sources under NDEP jurisdiction (i.e., other than those related to nonattainment NSR). As shown in table 2, these rules were approved into the SIP at various times in the 1970's and 1980's. The rules in table 2 would be replaced in, or otherwise deleted from, the SIP by the submitted set of rules (and one statutory provision) listed in table 1 if EPA were to take final action as proposed herein.

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

Nevada Air Quality Regulations (NAQR) or Nevada Administrative Code (NAC)	Fed. reg. citation and EPA approval date
NAQR article 1.36—Commenced	43 FR 36932 (August 21, 1978).
NAQR article 1.42—Construction	43 FR 36932 (August 21, 1978).
NAQR article 1.43—Contiguous property	43 FR 36932 (August 21, 1978).
NAQR article 1.72—Existing facility	43 FR 36932 (August 21, 1978).
NAQR article 1.104—Major stationary source	43 FR 36932 (August 21, 1978).
NAQR article 1.109—Modification	43 FR 36932 (August 21, 1978).
NAQR article 1.111—Motor vehicle	43 FR 36932 (August 21, 1978).
NAC 445.559—"Operating permit" defined	49 FR 11626 (March 27, 1984).
NAQR article 1.182—Special mobile equipment	43 FR 36932 (August 21, 1978).
NAQR article 1.187—Stationary source	43 FR 36932 (August 21, 1978).
NAC 445.649—"Violation" defined	49 FR 11626 (March 27, 1984).
NAQR article 3.1.6—["Application forms for requesting the issuance of either a registration certificate or an operating permit can be obtained from the Director."].	43 FR 1341 (January 9, 1978).
NAC 445.704—Registration certificates and operating permits required	49 FR 11626 (March 27, 1984).
NAC 445.705—Exemptions	49 FR 11626 (March 27, 1984).
NAC 445.706(1)—Application date; payment of fees	49 FR 11626 (March 27, 1984).
NAC 445.707—Registration certificates: Prerequisite; application; fee; issuance, denial; expiration	49 FR 11626 (March 27, 1984).
NAC 445.712—Operating permits: Prerequisite; application; fee; issuance, denial; posting	49 FR 11626 (March 27, 1984).
NAC 445.713—Operating permits: Renewal	49 FR 11626 (March 27, 1984).
NAC 445.714—Operating permits: Replacement of lost or damaged permits	49 FR 11626 (March 27, 1984).
NAC 445.715—Operating permits: Revocation	49 FR 11626 (March 27, 1984).
NAC 445.716—Operating permits: Change of location	49 FR 11626 (March 27, 1984).
NAQR article 13.1—("General Provisions for the Review of New Sources"), subsection 13.1.3(1)	46 FR 21758 (April 14, 1981).
NAQR article 13.1—("General Provisions for the Review of New Sources"), subsections 13.1.4, 13.1.5, 13.1.6, and 13.1.7.	40 FR 13306 (March 26, 1975).
NAQR article 13.2—[applicability thresholds for environmental evaluations (EEs)], subsections 13.2.3 and 13.2.4.	47 FR 27070 (June 23, 1982).
NAQR article 13.3—[content requirements for EEs], subsection 13.3.1, 13.3.1.1, 13.3.1.2[2]	47 FR 27070 (June 23, 1982).

D. 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 new and amended NSR rules submitted by NDEP on January 24, 2011, November 9, 2011, and May 21, 2012. We provide our reasoning in general terms below but provide more detailed analysis in the technical support document (TSD) that has been prepared for this proposed rulemaking.

II. EPA's Evaluation

A. How is EPA evaluating the rules?

EPA has reviewed the rules submitted on January 24, 2011, November 9, 2011, and May 21, 2012 by NDEP governing NSR for stationary sources under NDEP jurisdiction for compliance with the CAA requirements for SIPs in general set forth in CAA section 110(a)(2), for compliance with EPA regulations for stationary source permitting programs in 40 CFR part 51, sections 51.160 through 51.164, and also for compliance with CAA requirements for SIP revisions in CAA section 110(l).[3] 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?

As to procedural requirements for SIPs and SIP revisions, we find that, based on our review of the public participation documentation included in the January 24, 2011 and November 9, 2011, as well as the earlier NSR SIP submittals dated February 16, 2005 and January 12, 2006, NDEP has provided sufficient evidence of public notice and opportunity for comment and hearing prior the adoption and submittal to EPA for the rules that are the subject of today's proposed action.

As to the substantive requirements, we have used our comprehensive review of the previous set of NSR rules that formed the basis for our April 17, 2007 proposed rule as the starting point for the analysis of the current set of NSR rules. In our April 17, 2007 proposed rule, we found that, in general, the submitted NSR rules that were the subject of that proposed action met the relevant CAA and regulatory criteria, but we proposed to disapprove the rules on the basis of 10 specific deficiencies that we found in the rules. Following our final disapproval action published on April 16, 2008 (73 FR 20536), the SEC adopted revisions to the NSR rules to address the deficiencies that EPA had identified, and NDEP re-submitted the rules, which are the subject of today's action. As explained further below, we have found that the amended rules now sufficiently address all of the deficiencies that EPA had found in the prior set of NSR rules, but that we have identified certain new deficiencies that prevent full approval of the rules. The new deficiencies relate to new requirements that were not in effect at the time of EPA's April 2008 final rule.

1. Previous Deficiencies in Prior-Submitted NSR Rules

In the following paragraphs, we cite the deficiencies that we identified in 2007, describe how the rules have been amended by the SEC, and evaluate whether the revisions fully resolve the

[2] NDEP's NSR SIP retains certain nonattainment NSR provisions including the definition of the term, "lowest achievable emission rate" (LAER), and NAQR article 13.1.3(2) in the SIP. NAQR article 13.1.1 establishes an environmental evaluation (EE) requirement, and NAQR article 13.1.3(2) establishes the LAER requirement. LAER is defined to apply to applicants who are required to submit EEs, and such applicants are identified by emissions-based threshold values in article 13.2, 13.2.1, and 13.2.2, submitted on July 24, 1979 and approved on June 23, 1982 (47 FR 27070). Thus, the existing SIP definition for LAER, NAQR articles 13.1.1, 13.2, 13.2.1, and 13.2.2 must be retained in the SIP to properly interpret and apply the major source nonattainment requirements in NAQR article 13.1.3(2).

[3] CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

issues previously raised by EPA. In a separate subsection, we describe the new deficiencies in the NSR rules.

First, we found that certain submitted rules used undefined terms, contained incorrect citations, or relied on rules or statutory provisions that had not been submitted for approval as part of the SIP, or that multiple versions of the same rule were included in the same submittal; and thus were unnecessarily ambiguous. Specifically, we found that:

- NAC 445B.3366 (''Expiration and extension of operating permit to construct; expiration and renewal of plantwide applicability limitation'') relied on the term, ''commence,'' that is not defined in the SIP for contexts outside of CAA section 111 (Standards of performance for new stationary sources)(i.e., not defined for NSR purposes);
- NAC 445B.069 (''Federally enforceable'' defined) included incorrect citations to EPA regulations;
- The following submitted rules relied on rules or statutory provisions that hade not been submitted: NAC 445B.287 [which cited subsection (2) but did not include subsection (2)], NAC 445B.104 (citing NRS 485.050), NAC 445B.179 (citing NRS 482.123), and NAC 445B.311 (citing NAC 445B.083); and
- Multiple versions of the following rules were submitted: NAC 445B.308, NAC 445B.3363, and NAC 445B.3364.

To address these issues:

- SEC adopted a rule (NAC 445B.0423) that defines ''commence'' for NSR purposes and NDEP submitted the rule on May 21, 2012.
- SEC amended NAC 445B.069 (''Federally enforceable'' defined) to correct the citations to EPA regulations and NDEP re-submitted the rule on January 24, 2011.
- NDEP submitted NAC 445B.287, subsection (2), and NRS 485.050 on May 21, 2012; SEC amended the rules such that the NSR program no longer relies on NRS 482.123 (''Special mobile equipment''); and NDEP submitted NAC 445B.083 on January 24, 2011.
- The current submittals evaluated herein, dated January 24, 2011, November 9, 2011, and May 21, 2012 do not contain multiple versions of the same rule.

Second, we concluded that the definition of ''potential to emit'' in submitted rule NAC 445B.138 must be revised to require effective limits and to include criteria by which a limit is judged to be practicably enforceable by NDEP. In response, SEC amended the rule to allow certain physical or operational limitations on the capacity of a stationary source to emit pollutants to be treated as part of its design for the purposes of determining its potential to emit if the limitations are ''federally enforceable,'' a term that is appropriately defined in NAC 445B.069. This revision fully addresses the issue that EPA had identified in the previous version of the rule. NDEP included the revised rule NAC 445B.187 in its January 24, 2011 SIP submittal.

Third, we found that NDEP's stationary source program may not be as inclusive as required under the CAA depending upon whether the exclusion of ''special mobile equipment'' from the definition of ''stationary source'' in submitted rule NAC 445B.187 extends to engines and vehicles that are not considered to be ''nonroad.'' In response, SEC amended NAC 445B.187 to delete the exclusion for ''special mobile equipment,'' and NDEP included the revised rule NAC 445B.138 in its January 24, 2011 SIP submittal.

Fourth, we found that the method for determining heat input for class I sources [4] in submitted rule NAC 445B.313 must be amended to require that combustion sources make applicability determinations based on the maximum heat input. In response, SEC amended NAC 445B.313 accordingly, and NDEP included the revised rule NAC 445B.313 in its January 24, 2011 SIP submittal.

Fifth, we concluded that NAC 445B.331 (''Request for change of location of emission unit'') must be amended to limit its applicability to location changes within the confines of the existing stationary source at which the emission unit is originally permitted. NDEP explained that NAC 445B.331 relates to temporary sources and that such sources must choose between two types of permits: A normal stationary source operating permit [5] or a general operating permit. If the former is chosen, the normal permitting process occurs, and if the latter is chosen, the owner or operator must obtain a general operating permit and request to operate at the selected location within the constraints of the general operating permit. Either way, an environmental evaluation (EE) is performed to ensure compliance with the national ambient air quality standards (NAAQS) (with the exception of NAAQS that have been added or revised in recent years—see II.B.2 of this document). NDEP further explained that the request for approval of a specific location under NAC 445B.331 simply allows the NDEP to evaluate the owner or operator's proposal to ensure that the proposal complies with the terms and conditions of the general operating permit. Based on NDEP's explanation, we believe that no further changes in this rule are required.

Sixth, we found that submitted rule NAC 445B.3477 (''Class II general permit'') must be amended to identify the requirements for general permits, the public participation requirements for issuing such permits, and the criteria by which stationary sources may qualify for such a permit. NDEP has explained that, under Nevada's regulations, a ''general permit'' is a type of operating permit (one issued by the Director to cover numerous similar stationary sources) and that requirements for a general permit and the criteria by which sources may qualify for a general permit are found in the general permit. In addition, NDEP has explained that class II general permits are subject to requirements that are similar to those for class II operating permits, and that NDEP performs a worst-case environmental evaluation to ensure that the terms and conditions of the class II general operating permit will ensure compliance with the NAAQS (with the exception of NAAQS that have been added or revised in recent years—see II.B.2 of this document). We find this explanation satisfactory. As to public participation, SEC amended the rule to establish public participation requirements for issuing class II general permits, and NDEP submitted the revised rule on January 24, 2011. We have reviewed these new requirements and find them acceptable.

Seventh, we found that submitted rule NAC 445B.311 (''Environmental evaluation: Required information'') allows for NDEP to authorize use of a modification or substitution of an EPA-approved model specified in appendix W of 40 CFR part 51 without EPA approval and must be amended accordingly to comply with 40 CFR 51.160(f). In response, SEC has amended the rule to require written approval by EPA for the use of modified or

[4] EPA generally refers to stationary sources with potentials to emit 100 tons per year or more of criteria pollutants (those for which national ambient air quality standards have been promulgated, such as, e.g., ozone, carbon monoxide, and particulate matter) as ''major sources'' and such sources with potentials to emit less than 100 tons per year as ''minor sources.'' Generally, speaking, the NSR program adopted by the Nevada SEC relies on the term ''class I'' sources to refer to ''major sources'' and ''class II'' and ''class III'' sources to refer to ''minor sources.'' In Nevada's NSR program, generally speaking, ''class III'' sources are non-exempt sources with potentials to emit of less than 5 tons per year of criteria pollutants, while ''class II'' sources are those sources that are covered under the NSR rules but that are neither ''class I'' or ''class III'' sources.

[5] Nevada's NSR program uses the term ''operating permit to construct'' or just ''operating permit'' to refer to permits that EPA generally cites as ''construction'' permits.

substitute model, and to require public participation prior to authorization of the use of such a modified or substitute model. NDEP submitted the revised rule on January 24, 2011.

Eighth, to comply with 40 CFR 51.161 (''Public availability of information''), we concluded that the NSR rules must be amended to provide for adequate public review of new or modified class II sources; for notification to the air pollution control agencies for Washoe County or Clark County for those sources proposed to be constructed or modified in Washoe County or Clark County, respectively; and to provide for public participation for new or modified sources of lead with potential to emit 5 tons per year or more.

In response, the SEC has amended the rule to require public participation prior to issuance of all new class II permits and prior to issuance of revisions to class II permits for which allowable emissions would increase in excess of specified thresholds; to require notification to the relevant county air agencies; and to provide for public participation for new or modified sources of lead with potentials to emit 5 tons per year or more. NDEP submitted the revised rule on November 9, 2011. See NAC 445B.3457, subsections (5) and (6).

The emission-based thresholds that the SEC has established in NAC 445B.3457 to identify class II permit revisions that are subject to the public participation requirement are 40 tons per year for carbon monoxide, volatile organic compounds, nitrogen oxides, and sulfur dioxide; 15 tons per year for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten microns (PM_{10}); and 0.6 tons per year for lead (Pb). In its submittal dated May 21, 2012, NDEP included documentation that indicates that selected thresholds capture more than 80 percent of the emissions associated with stationary sources.

EPA regulations in 40 CFR 51.160(e) allow State NSR programs to exclude new minor sources and minor modifications from the NSR program so long as such sources and modifications are not environmentally significant, consistent with the de minimis exemption criteria set forth in *Ala. Power Co.* v. *Costle,* 636 F.2d 323, at 360–361 (D.C. Cir. 1979).[6] Given that 40 CFR 51.160(e) allows for sources and modifications that are not environmentally significant to be excluded entirely from the NSR program, it follows that a State or local agency can choose to exempt some new sources or modifications subject to permitting from public participation requirements, but, it must do so consistent with the de minimis principles and by application of well-defined objective criteria. Thus, EPA believes that 40 CFR 51.161(a) allows for the tailoring of the public participation process for less environmentally significant sources and modifications. See, generally, 60 FR 45530, at 45548–45549 (August 31, 1995). In this instance, we believe that the emissions-based thresholds represent well-defined objective criteria and, based on NDEP's documentation of the extent to which overall stationary source emissions are covered by sources subject to mandatory public participation, we find that the thresholds established in NAC 445B.3457 are reasonably calculated to exclude from mandatory public participation only less environmentally significant sources and modifications. This is acceptable.

In addition, with respect to public participation associated with permits for new class II sources and for class II modifications, we note that the SEC has also revised NAC 445B.3457 to provide for notification to the public through means (a state Web site and mailing list) other than through the traditional newspaper notice. EPA believes that the requirement to provide the required notice by ''prominent advertisement'' in 40 CFR 51.161(b)(3) for new or modified minor sources (other than synthetic minor sources) is media neutral and can be met by means other than, or in combination with, the traditional newspaper notice.[7] See Memorandum dated April 17, 2012 from Janet McCabe, Principal Deputy Assistant Administrator, EPA Office of Air and Radiation, to Regional Administrators, Regions 1–10, titled ''Minor New Source Review Program Public Notice Requirements under 40 CFR 51.161(b)(3).''

Subsection (6) of NAC 445B.3457 provides two means of providing public notice. Paragraph (b) of subsection (6) requires a copy of the notice to be published ''on an Internet Web site designed to give general public notice,[8] '' and paragraph (c) of subsection (6) requires notification through a mailing list developed to include individuals that have requested to be included on such a list. We believe that such notification, with one exception, satisfies the requirement to provide the public with notice through ''prominent advertisement'' in the area affected.

While EPA believes that notice of permitting actions may be made by means other than traditional newspaper notice for most types of minor sources, EPA also believes that, with respect to synthetic minor sources, an exception should be made to the use of electronic means as the sole means to notify the general public of proposed permitting actions. For synthetic minor sources, i.e., sources that have taken enforceable limitations to restrict their potential to emit below major source thresholds, we believe that the traditional means of notification (i.e., newspaper notice) should be included as one of the means for notifying the general public of proposed permit actions on the grounds that such sources should be treated for public participation purposes as major sources for which such notice is required. See 40 CFR 51.166(q)(2)(iii).

NAC 445B.3457 does not provide for traditional newspaper notice of class II sources that constitute synthetic minor sources, but although we recognize that there may be instances where a proposed new synthetic minor source

[6] While the *Alabama Power* court discusses the de minimis principle in the context of a Federal administrative agency's authority in promulgating rules to satisfy statutory requirements, the same principle can be applied where a State promulgates rules to satisfy requirements by a Federal administrative agency. With regards to the de minimis principle, the Alabama Court writes: ''Determination of when matters are truly de minimis naturally will turn on the assessment of particular circumstances, and the agency will bear the burden of making the required showing. But we think most regulatory statutes, including the Clean Air Act, permit such agency showings in appropriate cases. While the difference is one of degree, the difference of degree is an important one. Unless Congress has been extraordinarily rigid, there is likely a basis for an implication of de minimis authority to provide exemption when the burdens of regulation yield a gain of trivial or no value. That implied authority is not available for a situation where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs. For such a situation any implied authority to make cost-benefit decisions must be based not on a general doctrine but on a fair reading of the specific statute, its aims and legislative history.'' See *Ala. Power Co.* v. *Costle,* 636 F.2d 323, at 360–361 (D.C. Cir. 1979).

[7] As noted in footnote 4, above, ''minor sources'' are sources that have the potential to emit regulated NSR pollutants in amounts that are less than the applicable major source thresholds. Synthetic minor sources are those sources that have the potential to emit regulated NSR pollutants at or above the major source thresholds, but that have taken enforceable limitations to restrict their potential to emit below such thresholds.

[8] NDEP has clarified in its submittal dated May 21, 2012 that NDEP's own Web site is the ''Internet Web site'' referred to in NAC 445B.3457. The submittal refers to the wording ''state Web site'' which was included in the January 24, 2011 submittal, rather than ''Internet Web site'' of the November 9, 2011 submittal for NAC 445B.3457, but we believe the clarification is the same for either term.

would not be subject to newspaper notice because, under Nevada's regulations, it is considered a class II source subject to NAC 445B.3457, rather than a class I source subject to NAC 445B.3364 (for which newspaper notice is required), we anticipate that such instances would be few in number. This is because, with very few exceptions, Nevada's NSR rules apply to sources in ''attainment'' or ''unclassified'' areas [9] where the major source thresholds (for the purposes of NSR) are 250 tons per year for most types of sources whereas the requirements for class I sources under NAC 445B.3364 (under which newspaper notice is required) apply to sources with potentials to emit 100 tons per year or more. Thus, most synthetic minor sources under Nevada's regulations would be considered ''class I'' sources (and subject to traditional newspaper notice), because they would have potentials to emit at least 100, but less than 250, tons per year, although still considered ''minor sources'' for the purposes of NSR. Therefore, we do not find that the deficiency in Nevada's public notice requirements with respect to synthetic minor sources to be significant. Nonetheless, we recommend that the SEC amend the public notice regulations to ensure that the general public is notified of new synthetic minor sources by traditional (newspaper) means, at a minimum, or, preferably, in combination with electronic means.

Ninth, we found that the affirmative defense provision in submitted rule NAC 445B.326 (''Operating permits: Assertion of emergency as affirmative defense to action for noncompliance'') was not approvable under CAA section 110(a)(2) as written because it could be applied to technology-based emission limitations approved into the SIP. NDEP did not include NAC 445B.326 in the revised sets of NSR rules submitted to EPA for action as a SIP revision. Furthermore an affirmative defense provision, such as that provided for in NAC 445B.326, is not required to be included in a SIP NSR program; therefore, the previously-identified deficiencies in NAC 445B.326 do not need to be considered further in the context of action on the submitted NSR rules.

Lastly, while the submitted rules include a specific prohibition on approving a permit for any source where the degree of emission limitation required is affected by that amount of the stack height as exceeds good engineering practice stack height or any other dispersion technique, we found that the relevant provision (i.e., 445B.308(3)) includes director's discretion (* * * if ''the Director determines'' * * *), which must be removed in order for EPA to approve the rules as meeting the requirements of 40 CFR 51.164. In response, the SEC amended the rule to clarify that the Director's discretion in this instance is limited by the additional procedural requirements set forth in subsection (3) of NAC 445B.311. We have reviewed the additional procedural requirements in subsection (3) of NAC 445B.311 and find that they are consistent with the related requirements in 40 CFR 51.164. NDEP submitted the revised rule on January 24, 2011.

In conclusion, based on our point-by-point evaluation of the previous deficiencies in the previously-submitted NSR rules, as described above and in further detail in our TSD, we find that Nevada has adequately addressed all of the previously-identified deficiencies by submittal of appropriately amended rules and supporting documentation.

2. New Deficiencies in NSR Rules

While we believe that Nevada has adequately addressed the previously-identified deficiencies in the NSR rules, we now find that the State's NSR rules fail to address certain new requirements that were not in effect in 2008 when EPA last took action on them.

Under 40 CFR 51.160, in connection with NSR, each SIP must set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a facility, building, structure or installation or combination of these will result in, among other impacts, interference with attainment or maintenance of a national standard in the state in which the proposed source (or modification) is located or in a neighboring State.

To address this requirement, NAC 445B.310 and 445B.311 require permit applicants to prepare environmental evaluations (EE) that contain dispersion analyses showing the effect of the source on the quality of the ambient air. As explained below, NAC 445B.308, 445B.310, and 445B.311 represent a legally enforceable procedure that enables NDEP to make the necessary determinations under 40 CFR 51.160 with respect to the national ambient air quality standards, circa 1991, but not with respect to the new or revised national standards promulgated by EPA since that time.

Subsection (2) of NAC 445B.308 prohibits the issuance of an operating permit or revision thereto for any stationary source if the EE shows that the stationary source would ''prevent the attainment and maintenance of the state or national ambient air quality standards. For the purposes of this paragraph, only those ambient air quality standards that have been established in NAC 445B.22097 need to be considered in the environmental evaluation.''

NAC 445B.22097 in turn lists the Nevada ambient air quality standards (''Nevada standards'') and national ambient air quality standards (''National standards'' or NAAQS).[10] With respect to the NAAQS, NAC 445B.22097 has not been updated since 1991 and thus does not include the new, revised, or revoked NAAQS since that time. Moreover, NAC 445B.22097 includes a note that states: ''The Director shall use the Nevada standards in considering whether to issue a permit for a stationary source and shall ensure that the stationary source will not cause the Nevada standards to be exceeded in areas where the general public has access.'' The Nevada ambient air quality standards are equal to the NAAQS (i.e., as of 1991) for those pollutants for which both Nevada and EPA have established ambient standards, but, because the Nevada standards do not reflect the changes in the NAAQS since 1991, reliance on them for permitting purposes does not ensure protection of the new or revised NAAQS established since then as NDEP reviews permit applications for new or modified stationary sources.

With respect to the ozone NAAQS, we therefore encourage the SEC to update NAC 445B.22097 to take into account the replacement of the 1-hour ozone standard (0.12 ppm) with an 8-hour ozone standard (0.075 ppm), although we do not consider the failure to update the rule for ozone as a significant deficiency because, given the regional nature of ambient ozone concentrations, applicants for permits for new or modified stationary sources are not required to show, through dispersion modeling techniques, that the ozone precursor emissions from the source or modification would not violate the standard.

With respect to $PM_{2.5}$, we recognize that NDEP submitted ''infrastructure''

[9] See 40 CFR 81.329 for the designations of air quality planning areas in the State of Nevada. As shown in the tables codified at 40 CFR 81.329, other than certain areas within Clark and Washoe Counties, air quality planning areas in Nevada are designated as attainment or unclassifiable.

[10] EPA approved NAC 445B.22097 (''Standards of quality for ambient air'') as part of the Nevada SIP in a separate rulemaking. See 71 FR 15040 (March 27, 2006).

SIPs [11] on February 26, 2008 and September 15, 2009 to address the 1997 $PM_{2.5}$ NAAQS and 2006 $PM_{2.5}$ NAAQS, respectively. In both such $PM_{2.5}$ ''infrastructure'' SIPs, NDEP indicated that the NSR requirements for the $PM_{2.5}$ NAAQS were to be met by evaluating new and modified sources for compliance with the PM_{10} standard. At the time these ''infrastructure'' SIPs were submitted, EPA's policy allowed States to permit new or modified $PM_{2.5}$ sources using the PM_{10} NSR program requirements as a surrogate for $PM_{2.5}$. We also recognize that we did not take timely action on the two ''infrastructure'' SIP submittals, and, as a result of the passage of time, the ''surrogate'' policy has lapsed (since May 16, 2011). As a result, States must now evaluate $PM_{2.5}$ emissions from new or modified sources directly to determine whether such sources would violate the 24-hour (35 μg/m^3) or annual (15 μg/m^3) $PM_{2.5}$ standards. See 40 CFR 51.166(a)(6)(i) and 73 FR 28321, at 28344 (May 16, 2008). The submitted NSR rules evaluated herein do not yet address $PM_{2.5}$, and given the now-current requirements for $PM_{2.5}$ and the lapse of the surrogate policy, we cannot now fully approve the submitted NSR rules. In response, the State Environmental Commission must revise the NSR rules to ensure protection of the $PM_{2.5}$ NAAQS in the issuance of permits for new or modified sources or EPA must promulgate a FIP within two years of final action.

With respect to lead (Pb), we recognize that NDEP submitted an ''infrastructure'' SIP on October 12, 2011 to address the 2008 Pb NAAQS and that we have not yet taken action on it. Furthermore, we recognize that, at the time NDEP submitted the Pb ''infrastructure'' SIP, the deadline for States to submit the necessary NSR-related changes to address the 2008 Pb NAAQS had not yet passed. Now, however, with the passage of time, the deadline for such NSR-related changes has passed, and we must evaluate the submitted NSR requirements against the now-current NSR requirements. Thus, similar to the approach we are taking for $PM_{2.5}$, we find that the submitted NSR rules do not address the new rolling 3-month average Pb NAAQS (0.15 μg/m^3) and thus we cannot now fully approve the submitted NSR rules. See 73 FR 66964, 67034–67041 (November 12, 2008). In response, the State Environmental Commission must revise the NSR rules to ensure protection of the Pb NAAQS in the issuance of permits for new or modified sources or EPA must promulgate a FIP within two years of final action.

With respect to new or revised NAAQS for nitrogen dioxide and sulfur dioxide, and based on the promulgation dates of these new or revised NAAQS, the State still has additional time to amend its NSR rules to address the revised NAAQS for these pollutants, and thus we do not view the failure to update NAC 445B.22097 to address the 2010 1-hour nitrogen dioxide standard and the 2010 1-hour sulfur dioxide standard as precluding approval of the submitted NSR rules at this time. See 75 FR 6474, at 6523–6525 (February 9, 2010) (NSR SIP revisions for the 1-hour nitrogen dioxide NAAQS are due on January 22, 2013); and 75 FR 35520, at 35573–35580 (June 22, 2010) (NSR SIP revisions for the 1-hour sulfur dioxide NAAQS are due on June 2, 2013). We encourage the SEC to make any necessary revisions to the NSR rules to address these revised NAAQS, and we encourage NDEP to adopt and submit the revised NSR rules as a SIP revision prior to the upcoming deadlines.

3. Conclusion

For the reasons stated above, we find that the State has adequately addressed all of the previously-identified deficiencies in the NSR rules but new deficiencies related to the new or revised $PM_{2.5}$ and Pb NAAQS prevent us from proposing a full approval of the rules. Therefore, we are proposing a limited approval and limited disapproval of the submitted NSR rules. We do so based also on our finding that, while the rules do not meet all of the applicable requirements, the rules would represent an overall strengthening of SIP by clarifying and enhancing the NSR permitting requirements.

III. Public Comment and Proposed Action

Pursuant to section 110(k) of the Clean Air Act, and for the reasons provided above, EPA is proposing a limited approval and limited disapproval of revisions to the Nevada SIP that govern applications for, and issuance of, permits for stationary sources under the jurisdiction of the Nevada Division of Environmental Protection, excluding review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act. Specifically, EPA is proposing a limited approval and limited disapproval of the new or amended sections of the Nevada Administrative Code (and one section of the Nevada Revised Statutes) listed in table 1, above as a revision to the Nevada SIP.

EPA is proposing this action because, although we find that the new or amended rules meet most of the applicable requirements for such NSR programs and that the SIP revisions improve the existing SIP, we have also found certain deficiencies that prevent full approval. Namely, the submitted NSR rules do not address the new or revised national ambient air quality standards for $PM_{2.5}$ and lead (Pb) and must be revised accordingly.

The intended effect of this limited approval and limited disapproval action is to update the applicable state implementation plan with current State rules with respect to permitting,[12] and to set the stage for remedying deficiencies in the permitting rules with respect to new or revised national ambient air quality standards for $PM_{2.5}$ and Pb. If finalized as proposed, this limited approval action would not trigger mandatory sanctions under section 179 of the Clean Air Act because sanctions apply to nonattainment areas and no areas within the State of Nevada have been designated as nonattainment for the national $PM_{2.5}$ or Pb standards. However, this limited disapproval action would trigger an obligation on EPA to promulgate a Federal Implementation Plan unless the State of Nevada corrects the deficiencies, and EPA approves the related plan revisions within two years of the final action.

We will accept comments from the public on this proposed limited approval and limited disapproval for the next 30 days.

IV. Statutory and Executive Order Reviews

A. Executive Order 12988, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 128665, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

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

[11] ''Infrastructure SIPs'' refer to SIPs submitted in response to EPA's promulgation of a new or revised NAAQS and include provisions necessary to comply with the SIP content requirements set forth in CAA section 110(a)(2), other than those arising from designation of any area within a state as ''nonattainment'' for the new or amended NAAQS.

[12] Final approval of the rules (and statutory provision) in table 1 would supersede the rules listed in table 2, above, in the existing Nevada SIP.

C. Regulatory Reduction 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.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this proposed limited approval/limited disapproval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposed to approve and 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

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve and disapprove a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

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

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

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

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

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

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

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

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 proposed rulemaking. 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 a limited approval/limited disapproval of 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: June 20, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–15873 Filed 6–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA—R06–RCRA–2012–0367; FRL–9692–6]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Louisiana has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant Final authorization to the State of Louisiana. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by July 30, 2012.

ADDRESSES: Send written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, (6PD–O), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–6444; or Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884–2178, phone number (225) 219–3559. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the immediate final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section in this issue of the **Federal Register**.

Dated: June 15, 2012.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2012–15871 Filed 6–27–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120307159–2155–01]

RIN 0648–BB99

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Framework Adjustment 6

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes a change in the Mid-Atlantic Fishery Management Council's risk policy regarding stocks without an overfishing limit. The current risk policy does not allow increases of the acceptable biological catch for stocks that do not have an overfishing limit derived from the stock assessment. The modification will allow increases of the acceptable biological catch for stocks that have stable or increasing trends in abundance, and for which there is robust scientific information to suggest that an increased acceptable biological catch will not lead to overfishing.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on July 30, 2012.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Supplemental Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) for Framework Adjustment 6, are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov.*

You may submit comments, identified by NOAA–NMFS–2012–0110, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0110 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the