

STATE OF NORTH DAKOTA REGULATIONS

| State citation      | Title/subject  | State effective date | EPA approval date and citation <sup>1</sup>                                      | Explanations |
|---------------------|--|----------------------|--|--------------|
| 33-15-15-01.2 ..... | Prevention of Significant Deterioration of Air Quality, Scope. | 10/27/10             | [9/27/12, Insert <b>Federal Register</b> page number where the document begins.] |              |

<sup>1</sup> In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

**Authority:** 42 U.S.C. 7401 *et seq.*  
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 [FR Doc. 2012-25667 Filed 10-22-12; 8:45 am]  
**BILLING CODE** 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2011-0047; FRL-9739-8]

**Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements for Ozone and Fine Particulate Matter**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving in part and disapproving in part State Implementation Plan (SIP) revisions submitted by the state of Nevada pursuant to the requirements of the Clean Air Act (CAA) for the 1997 8-hour ozone national ambient air quality standards (NAAQS) and the 1997 and 2006 NAAQS for fine particulate matter (PM<sub>2.5</sub>). The CAA requires that each State adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, and requires EPA to act on such SIPs. Nevada has met most of the applicable requirements. Where EPA is disapproving, in part, Nevada's SIP revisions, the majority of the deficiencies have been already been addressed by a federal implementation plan (FIP). For one remaining deficiency, this final rule sets a two-year deadline for EPA to promulgate a FIP, unless EPA approves an adequate SIP revision prior to that time. EPA remains committed to working with Nevada's environmental agencies to develop such a SIP revision.

**DATES:** *Effective Date:* This final rule is effective on November 23, 2012.

**ADDRESSES:** EPA has established a docket for this action, identified by

Docket ID Number EPA-R09-OAR-2011-0047. The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

**FOR FURTHER INFORMATION CONTACT:** Rory Mays, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3227, [mays.rory@epa.gov](mailto:mays.rory@epa.gov).

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

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**I. Background**

Section 110(a)(1) of the CAA requires each state to submit to EPA, within three years (or such shorter period as the Administrator may prescribe) after the promulgation of a primary or secondary NAAQS or any revision thereof, a SIP that provides for the "implementation, maintenance, and enforcement" of such NAAQS. EPA refers to these specific submissions as "infrastructure" SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS.

On July 18, 1997, EPA issued a revised NAAQS for ozone <sup>1</sup> and a new NAAQS for fine particulate matter (PM<sub>2.5</sub>).<sup>2</sup> EPA subsequently revised the 24-hour PM<sub>2.5</sub> NAAQS on September 21, 2006.<sup>3</sup> Each of these actions triggered a requirement for states to submit an infrastructure SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the new or revised NAAQS.

On August 3, 2012 (77 FR 46361), EPA proposed to approve in part and disapprove in part several SIP revisions and one proposed SIP revision submitted by Nevada Division of Environmental Protection (NDEP) to address the infrastructure requirements of CAA section 110(a)(1) and (2) for the 1997 ozone, 1997 PM<sub>2.5</sub>, and 2006 PM<sub>2.5</sub> NAAQS. NDEP's submittals include SIP revisions submitted to EPA on February 1, 2008 ("2008 Ozone Submittal"), February 26, 2008 ("2008 PM<sub>2.5</sub> Submittal"), September 15, 2009 ("2009 PM<sub>2.5</sub> Submittal"), and December 4, 2009 ("2009 PM<sub>2.5</sub> Supplement"), and a proposed SIP revision submitted on July 5, 2012. The proposed SIP revision served as a supplement to the prior four infrastructure SIP revisions and was submitted under the parallel processing mechanism provided by 40 CFR Part 51, Appendix V, Section 2.3. The final version of the July 5, 2012 proposed SIP revision was adopted on August 30, 2012 and submitted to EPA on the same day ("2012 Submittal").

We are taking final action on all five submittals since they collectively

<sup>1</sup> The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856).

<sup>2</sup> The annual PM<sub>2.5</sub> standard was set at 15 micrograms per cubic meter (µg/m<sup>3</sup>), based on the 3-year average of annual arithmetic mean PM<sub>2.5</sub> concentrations from single or multiple community-oriented monitors and the 24-hour PM<sub>2.5</sub> standard was set at 65 µg/m<sup>3</sup>, based on the 3-year average of the 98th percentile of 24-hour PM<sub>2.5</sub> concentrations at each population-oriented monitor within an area (62 FR 38652).

<sup>3</sup> The final rule revising the 24-hour NAAQS for PM<sub>2.5</sub> from 65 µg/m<sup>3</sup> to 35 µg/m<sup>3</sup> was published in the **Federal Register** on October 17, 2006 (71 FR 61144).

address the applicable infrastructure SIP requirements for the 1997 ozone, 1997 PM<sub>2.5</sub>, and 2006 PM<sub>2.5</sub> NAAQS. We refer to them collectively herein as “Nevada’s Infrastructure SIP Submittals.”

The rationale supporting EPA’s action, including the scope of infrastructure SIPs in general, is explained in our August 3, 2012 Notice of Proposed Rulemaking (proposed rule) and the three associated technical support documents (TSDs)<sup>4</sup> and will not be restated here. The proposed rule and TSDs are available online at <http://www.regulations.gov>, Docket ID number EPA–R09–OAR–2011–0047.

## II. EPA’s Response to Comments

The public comment period on EPA’s proposed rule opened on August 3, 2012, the date of its publication in the **Federal Register**, and closed on September 4, 2012. During this period, EPA received two comment letters: one from NDEP on September 4, 2012 (herein “NDEP’s comment(s)"); and one from Washoe County Health District Air Quality Management Division (WCHD–AQMD) on September 4, 2012 (herein “Washoe County’s comment(s)"). Both letters are available in the docket to today’s final rule.<sup>5</sup>

NDEP’s comment letter numbers its comments 1 through 9. NDEP comment numbers 1 through 3 support various aspects of EPA’s proposed rule, while numbers 4 through 9 request clarification on several points. Washoe County’s comment letter generally supports EPA’s proposed rule with two exceptions, which it numbers 1 and 2, and requests that EPA make a clarification on one additional point. We appreciate NDEP and Washoe County’s comments in support for our proposed rule and respond to their comments regarding requested clarifications and corrections below. Note that we have grouped comments from NDEP and Washoe County that are

similar in content into single comments and responses.

### *Comment #1:*

NDEP’s comment number 4 and Washoe County comment number 1 note that EPA proposes to disapprove the portion of the SIP related to prevention of significant deterioration (PSD) permit programs for NDEP and Washoe County because the programs do not completely satisfy the statutory and regulatory requirements for PSD permit programs. NDEP and WCHD–AQMD also note, however, that EPA recognizes that the deficiencies related to the PSD programs are adequately addressed by the existing federal implementation plan (FIP), for which EPA has delegated enforcement authority to NDEP and Washoe County. Moreover, NDEP argues that the provisions of 40 CFR 52.1485(b), which codify the PSD FIP by incorporating EPA’s PSD provisions in the Nevada SIP, make EPA’s PSD FIP a part of the SIP, with the exception of the portion applicable to Clark County. As such, NDEP and WCHD–AQMD believe that the elements of the Nevada SIP related to PSD programs under their jurisdictions should be approved.

### *Response #1:*

The CAA requires each State to adopt and submit a plan which provides for implementation, maintenance, and enforcement of the NAAQS. See CAA section 110(a)(1). CAA section 110(a)(2) sets forth the content requirements for such plans, including the requirement for a permit program as required in part C (“Prevention of Significant Deterioration of Air Quality,” or “PSD”) of title I of the CAA. Such plans are referred to as state implementation plans or SIPs.

EPA’s authority to promulgate a FIP derives from EPA’s determination that a State has failed to submit a complete, required SIP submission or from EPA’s disapproval of a State submission of a SIP or SIP revision. See CAA section 110(c)(1). The SIP, viewed broadly, thus includes both portions of the plan submitted by the State and approved by EPA as well as any FIP promulgated by EPA to substitute for a State plan disapproved by EPA or not submitted by a State. See 40 CFR 52.02(b).

In 1974, EPA disapproved each state’s SIP with respect to PSD and promulgated a FIP as a substitute for the SIP deficiency (“PSD FIP”). See 39 FR 42510 (December 5, 1974). In 1975, EPA codified the PSD FIP in each state’s subpart in 40 CFR part 52. See 40 FR 25004 (June 12, 1975)(adding 40 CFR 52.1485 to Subpart DD—Nevada). In 1978 and 1980, EPA amended the PSD regulations following the Clean Air Act

Amendments of 1977 and related court decisions and amended the codification of the PSD FIP in each state’s subpart, including 40 CFR 52.1485, accordingly. See 43 FR 26380 (June 19, 1978) and 45 FR 52676 (August 7, 1980). Since then, EPA has approved the PSD SIP for the sources and geographic area that lie within the jurisdiction of Clark County Department of Air Quality, and has delegated responsibility for conducting PSD review, as per the PSD FIP, to NDEP and the Washoe County District Health Department. Notwithstanding the delegation, however, the Nevada SIP remains deficient with respect to PSD for the geographic areas and stationary sources that lie within NDEP’s and Washoe County District Health Department’s jurisdictions. As such, EPA’s disapproval of the infrastructure SIP submittals for those elements that require states to have a SIP that includes a PSD permit program, including CAA sections 110(a)(2)(C), (D)(i)(II), (D)(ii), (J), and (K), is appropriate because EPA disapproved the State’s submitted plan as not adequately addressing PSD program requirements. To conclude otherwise would be inconsistent with the long-standing and current disapproval of the SIP for PSD for the applicable areas, with the statutory foundation upon which the PSD FIP is authorized, and with the obligation under section 110(a) for each State to adopt and submit a plan for implementation, maintenance, and enforcement of the NAAQS that includes a PSD program. EPA’s delegation of the PSD FIP is not the same as State adoption and submittal of state or district rules meeting PSD requirements and EPA’s approval thereof.

### *Comment #2:*

NDEP’s comment number 6 and Washoe County comment number 2 state that NDEP and Washoe County Health District AQMD “[do] not believe that the PSD program as it relates to greenhouse gases renders this SIP deficient with respect to ozone and PM<sub>2.5</sub>” and request that EPA explain why greenhouse gas (GHG) provisions are “essential to enforcing the PM<sub>2.5</sub> NAAQS.” Both comments refer to pages 10, 42, and 43 of EPA’s Overarching TSD for EPA’s proposed rule.

### *Response #2:*

The PSD requirements for the regulation of greenhouse gases are relevant to our evaluation of SIPs submitted with respect to the ozone and PM<sub>2.5</sub> (or any) NAAQS because those PSD requirements apply on a source-by-source basis for all federally regulated pollutants emitted by that source that meet the PSD applicability thresholds,

<sup>4</sup> The three TSDs are as follows: (1) “Technical Support Document: EPA Evaluation of Nevada Provisions for 1997 Ozone, 1997 PM<sub>2.5</sub>, and 2006 PM<sub>2.5</sub> National Ambient Air Quality Standards for Sections 110(a)(2)(A) thru (C) Sections 110(a)(2)(D)(i)(II) and (D)(ii), Sections 110(a)(2)(E)(i) and (E)(iii), Sections 110(a)(2)(F) thru (M),” July 2012 (“Overarching TSD”); (2) “Technical Support Document for EPA’s Proposed Action on the 2009 Infrastructure State Implementation Plan (Transport Portion) for the State of Nevada,” July 2012 (“2006 PM<sub>2.5</sub> Transport TSD”), or “Transport TSD”); and (3) “Technical Support Document: EPA Evaluation of Nevada Provisions for Section 110(a)(2)(E)(ii)/Section 128 Conflict of Interest Requirements,” July 2012 (“Section 128 TSD”).

<sup>5</sup> See document numbers EPA–R09–OAR–2011–0047–0135 (NDEP’s comment letter) and EPA–R09–OAR–2011–0047–0136 (Washoe County’s comment letter) at [www.regulations.gov](http://www.regulations.gov) under docket ID number EPA–R09–OAR–2011–0047.

rather than applying on a pollutant-by-pollutant basis. For example, the CAA specifies that a new source that triggers PSD because of its emissions of ozone precursors or PM<sub>2.5</sub> is also subject to PSD for any other federally regulated pollutant that it emits above the applicable significance levels and for GHGs, if it emits those pollutants above the thresholds established by the GHG Tailoring Rule.<sup>6</sup> Accordingly, for the Nevada Infrastructure SIPs for the 1997 ozone, 1997 PM<sub>2.5</sub>, and 2006 PM<sub>2.5</sub> NAAQS to be fully approvable, the Nevada SIP must include the appropriate PSD requirements for all other federally regulated pollutants, including GHGs. Because Nevada's Infrastructure SIPs fail to include those requirements for GHGs with respect to the NDEP and Washoe County portions of the SIP, the EPA must partially disapprove these SIP submittals. Consistent with our proposal, however, we reiterate that "[a]lthough the Nevada SIP remains deficient with respect to PSD requirements in both the NDEP and Washoe County portions of the SIP, these deficiencies are adequately addressed in both areas by the Federal PSD program." See 77 FR 46361 at 46367.

#### Comment #3:

NDEP's comment number 5 states that "EPA proposes to partially disapprove the NDEP's submittal [with respect to the 'good neighbor' requirements of CAA section 110(a)(2)(D)(i)(I)], stating that it is not relevant, and to partially approve the submittal based on EPA's independent evaluation of Nevada's impact on receptor states." NDEP stated its belief that "it would be simpler not to do a partial disapproval based on information that EPA deemed immaterial to its decision-making, but rather to fully approve the SIP based on EPA's own data analysis demonstrating a lack of impacts on receptor states."

#### Response #3:

We disagree. EPA proposed to partially disapprove Nevada's 2009 PM<sub>2.5</sub> Submittal and 2009 PM<sub>2.5</sub> Supplement with respect to the "good neighbor" requirements of CAA section 110(a)(2)(D)(i)(I), because the State's

submission "relies on irrelevant factors and lacks any technical analysis to support the State's conclusion with respect to interstate transport." See 77 FR 46361 at 46368. We also proposed to partially approve the submission, however, based on EPA's supplemental evaluation of relevant technical information, which supports a finding that emissions from Nevada do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS in any other state and that the existing Nevada SIP is, therefore, adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM<sub>2.5</sub> NAAQS. *Id.* Our proposal to partially approve and partially disapprove the submission was based not on information that "EPA deemed immaterial to its decision-making," but rather on information submitted by the State in the form of a SIP submission which we found inadequate to satisfy the applicable CAA requirements.

Specifically, as discussed in the Transport TSD for this proposal, Nevada's 2009 PM<sub>2.5</sub> Submittal and 2009 PM<sub>2.5</sub> Supplement (collectively the "2009 SIP Submittals") appear to conclude that the existing Nevada SIP satisfies the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM<sub>2.5</sub> NAAQS, among other requirements of CAA section 110(a). See Transport TSD at 1. The only support provided for this conclusion in the 2009 SIP Submittals is a reference to EPA's previous approval of Nevada's CAA section 110(a)(2)(D)(i) interstate transport SIP for the 1997 8-hour ozone and 1997 PM<sub>2.5</sub> NAAQS at 72 FR 41629 (July 31, 2007). See Transport TSD at 1, 2. The 2009 SIP Submittals contains no technical analysis of potential interstate transport or any other support for the State's conclusion that the existing Nevada SIP satisfies the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM<sub>2.5</sub> NAAQS. See *id.* Moreover, Nevada submitted nothing to address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM<sub>2.5</sub> NAAQS in Clark County. See *id.* at footnote 1.

As explained in the Transport TSD, EPA does not agree with NDEP's suggestion or conclusion in the 2009 SIP Submittals that EPA's previous approval of Nevada's section 110(a)(2)(D)(i) interstate transport SIP for the 1997 8-hour ozone NAAQS and the 1997 p.m.<sub>2.5</sub> NAAQS could support, in any way, the conclusion that the SIP adequately addresses the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM<sub>2.5</sub> NAAQS. See *id.* at 2. The

cited 2007 rulemaking addressed CAA requirements for different NAAQS and thus could not support a conclusion that the requirements have been met with respect to the 2006 24-hour PM<sub>2.5</sub> NAAQS. See *id.*

Given the absence of any technical demonstration in the State's submission showing that Nevada emission sources do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS in any other state, we cannot fully approve the 2009 SIP Submittals as satisfying the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM<sub>2.5</sub> NAAQS. We are, however, partially approving the 2009 SIP Submittals based on EPA's independent review of relevant technical information, which supports the State's conclusion that Nevada emission sources do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS in any other state and that section 110(a)(2)(D)(i)(I) of the CAA therefore does not require additional controls in Nevada to prohibit such impacts.

#### Comment and Response #4:

NDEP comment number 8 recommends several corrections and clarifications to the text of our Transport TSD. We respond to each sub-comment following separate comment summaries below.

First, citing pages 7 and 11 of our Transport TSD, NDEP states that "EPA has characterized Idaho as more distant from Nevada than Utah, Oregon and California" but notes that Nevada and Idaho share a border.

We agree that our Transport TSD could have better characterized the location of Idaho relative to Nevada and the distance from Nevada to nonattainment receptors in Idaho relative to those in "other western states" (i.e., Washington and Montana, see pages 7 and 11 of our Transport TSD). EPA discussed the nonattainment receptor in Idaho as part of its discussion of "other western states with nonattainment receptors located farther away" because the receptor in Shoshone County, Idaho (Pinehurst), located in northern Idaho, is more distant from Nevada compared to the receptors located in Utah, Oregon, and California. But NDEP correctly notes that like Utah, Oregon, and California, Idaho shares a border with Nevada.

Second, citing page 16 of the Transport TSD, NDEP encourages EPA to expressly state that "EPA's analysis shows no significant contribution by Nevada to nonattainment in the Southern California area."

<sup>6</sup> The full title of the GHG Tailoring Rule is "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." For further explanation of the GHG PSD permitting requirements, see the GHG Tailoring Rule, 75 FR 31514 (June 3, 2010); "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Findings of Substantial Inadequacy and SIP Call; Final Rule," 75 FR 77698 (December 13, 2010); "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas-Emitting Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010).

In Section IV.B.3. of our Transport TSD (see pages 15–16), regarding nonattainment receptors in California, for four of the five areas discussed we stated that “we believe it is reasonable to conclude that emissions from Nevada sources do not significantly contribute to nonattainment of the 2006 24-hour PM<sub>2.5</sub> standard at these receptor locations.” We inadvertently did not make such a statement for the Southern California—Los Angeles, Riverside, San Bernardino area. In response to this comment, we are clarifying our conclusion that emissions from Nevada sources do not significantly contribute to nonattainment of the 2006 24-hour PM<sub>2.5</sub> standard at the Southern California—Los Angeles, Riverside, San Bernardino nonattainment receptor locations.

Third, citing pages 20–22 of the Transport TSD, NDEP states that “EPA reaches a conclusion that Nevada emissions do not interfere with maintenance of the 2006 p.m.<sub>2.5</sub> NAAQS in California (Section V.B.1.) or Utah (Section V.B.3.); however, no conclusion is stated for Arizona (Section V.B.2).” NDEP believes a similar conclusion was implied and encourages EPA to state as much for Arizona.

We agree and are clarifying our conclusion that emissions from Nevada sources do not interfere with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS at the Arizona maintenance receptor locations discussed in Section V.B.2 (page 21) of the Transport TSD.

Fourth, NDEP asserts that EPA’s discussion on pages 20–22 of the Transport TSD “appears to talk about *nonattainment* areas rather than maintenance areas” while “Table III.A.1 lists Arizona as having two maintenance areas for PM<sub>2.5</sub> and no nonattainment areas.” NDEP perceives a discrepancy therein.

It appears NDEP has misunderstood a distinction that EPA is making between nonattainment or maintenance *receptors* and nonattainment or maintenance *areas*. Table III.A.1 lists the nonattainment and maintenance “receptors” located in western counties, which EPA selected based on the criteria discussed in Section III.A (“Discussion of Nonattainment and Maintenance Receptor Selection Methodology”). These criteria for selection of nonattainment and maintenance “receptors” are not related to the criteria for designation of nonattainment areas under CAA section 107 or for approval of maintenance plans under CAA section 175A. Thus, it is possible to have maintenance “receptors” in areas that have been

designated as nonattainment areas, as in Arizona and Utah.

Fifth, NDEP states that “Table III.A.1 lists Utah as having no maintenance areas, so the NDEP is uncertain why Utah is discussed in section V of this Appendix” and that “[t]he discussion of nonattainment areas in Utah (Section IV.B.1.) appears to be repeated in Section V.B.3 for maintenance receptors.” NDEP perceives a discrepancy therein.

We disagree that Table III.A.1 (“List of Western Counties with Daily PM<sub>2.5</sub> Nonattainment or Maintenance Receptors”, page 8) lists Utah as having no maintenance areas. The last three rows for Utah in this table include an asterisk in the Receptor Type column. The asterisk is defined below the table as follows: “This county contains both nonattainment and maintenance receptors. See Appendix A for more details.” Appendix A (“List of Nonattainment and Maintenance Receptors for 2006–2010”), in turn, lists all of the individual receptors that were summarized by county in Table III.A.1. There is one maintenance receptor in each of Utah and Weber counties, Utah—hence our discussion of Utah in Section V (“Transport Assessment for Maintenance Receptors”). The discussion of nonattainment receptors in Utah (Section IV.B.1.) is similar to the discussion in Section V.B.3 for maintenance receptors in Utah because the receptors are near to each other and the potential for transport from Nevada for each is similar.

*Comment #5:*

NDEP comment number 7 addresses EPA’s statements in the Overarching TSD (pages 11–13) regarding certain provisions that are part of the Nevada SIP, but have been repealed or replaced in the Nevada Administrative Code (NAC). NDEP highlights that such regulations “have not been rescinded from the Nevada SIP, and EPA considers them to be federally enforceable” and suggests that a more accurate characterization would be to say that such provisions “have been repealed or replaced in the NAC, but not in the SIP.”

*Response #5:*

It is true that the regulations cited in pages 11–13 of our Overarching TSD having parenthetical notes about replacement or repeal can be accurately characterized as having been repealed or replaced in the NAC (i.e., at the state level), but remaining in the Nevada SIP (i.e., the set of federally enforceable provisions with respect to Nevada air quality). In part, our intent was to clarify the status of these provisions so that the public could more readily

understand which provisions are in effect and to identify certain provisions that, as repealed or replaced (but not revised in the SIP), did not provide support for how Nevada meets the section 110(a)(2)(C) requirement that each SIP “include a program to provide for the enforcement of the measures described in [section 110(a)(2)(A)].”

However, the broader meaning of such clarifications and identifications relates to CAA section 110(a)(1), which requires the state to adopt and submit “a plan which provides for implementation, maintenance, and enforcement” of the relevant NAAQS (i.e., the 1997 ozone, 1997 PM<sub>2.5</sub>, and 2006 PM<sub>2.5</sub> NAAQS, in this case). On its face, if Nevada has repealed or replaced certain Nevada Administrative Codes, we would understand this to mean that NDEP is not in fact implementing such regulations as part of a plan to implement, maintain, and enforce the NAAQS. In other words, infrastructure SIPs are not merely a measure of what is federally enforceable under a state’s SIP; they are a collection of the provisions and plans that the state actively employs to implement the NAAQS.

Our Overarching TSD discussed three provisions in particular wherein we noted that “it is not clear how Nevada intended that these regulations support the enforcement of the emission limitation regulations.” See Overarching TSD at page 13. We reiterate our statement from that same page, however, that “[n]otwithstanding these three provisions, on the basis of the statutory and regulatory provisions, which have been approved into the SIP, we find that Nevada has an adequate program for enforcement of its provisions for emission limits at the state level.”

*Comment and Response #6:*

NDEP comment number 9 recommends several corrections and clarifications to the text of our Overarching TSD. We respond to each sub-comment following separate comment summaries below.

First, NDEP notes that on page 6, footnote 9, the second sentence should read, “Adele Malone, Supervisor, Planning and Modeling Branch, \* \* \*.” We thank NDEP for its clarification regarding the Branch title, which we had listed as “Air Planning Branch” in footnote 9 of the Overarching TSD.

Second, NDEP notes that on page 11 EPA listed Nevada Air Quality Regulation (NAQR) Article 16.3.3.2 and 16.3.3.3 as having been cited in support of CAA 110(a)(2)(C), and requests EPA to remove it from the list of submitted

regulations. We agree that Articles 16.3.3.2 and 16.3.3.3 were not cited in Nevada's Infrastructure SIP Submittals for section 110(a)(2)(C); our inclusion of these provisions in the list of regulations with respect to 110(a)(2)(C) was an inadvertent addition.

To clarify further, Nevada's 2008 Ozone Submittal, 2008 PM<sub>2.5</sub> Submittal, and 2009 PM<sub>2.5</sub> Submittal each cited Article 16.3.3.2 and 16.3.3.3 listed for section 110(a)(2)(A). See Enclosure 1, page 1 of each of these submittals. Given that these regulations pertain to opacity emission limits for kilns and related clinker coolers, they are appropriate for purposes of addressing the requirements of section 110(a)(2)(A), as referenced by these submittals and discussed in our Overarching TSD.

Third, NDEP notes a contradiction in the last sentence of the first full paragraph of page 43 regarding the PSD portion of the section 110(a)(2)(J) requirements and Clark County. We agree that this sentence contradicts our other stated conclusions regarding Clark County's PSD program and the PSD requirements of CAA section 110(a)(2)(J). We hereby clarify that our intended statement, as noted in the conclusion paragraph of that same page, was that "the Clark County portion of the Nevada SIP meets the PSD-related requirements of section 110(a)(2)(J), contingent upon final approval of the proposed SIP revisions [for permitting new or modified stationary sources in Clark County]." Furthermore, based on our final approval of those Clark County SIP revisions,<sup>7</sup> we are finalizing our approval of section 110(a)(2)(J) for the Clark County portion of the SIP.

Fourth, NDEP believes that EPA had intended to reference NAQR Article 13.3.1.2(b) on page 45, rather than Article 13.4.1.2(b), and that the latter is not in the applicable Nevada SIP. NDEP also refers to 77 FR 14862. We referred to Article 13.4.1.2(b) with respect to the requirements of section 110(a)(2)(K) because it was included in Enclosure 2 of Nevada's 2008 Ozone Submittal, 2008 p.m.<sub>2.5</sub> Submittal, and 2009 p.m.<sub>2.5</sub> Submittal and contains requirements for diffusion models for the permitting review of new sources. However, NDEP is correct that Article 13.4.1.2(b) is not in the Nevada SIP. Rather, Article 13.3.1.2(b), which is part of the Nevada SIP and contains requirements for diffusion modeling, relates most closely to the air quality modeling requirements

of section 110(a)(2)(K). See 77 FR 14862 at 14872.

Fifth, NDEP notes that Footnote 19 states that " \* \* \* NDEP repealed NAC 445.694 and did not submit a replacement for inclusion in the SIP." NDEP states that this footnote was inaccurate since the authority to repeal a state regulation lies with the Nevada State Environmental Commission. We thank NDEP for its clarification. Footnote 19 of the Overarching TSD should have made clear that the State Environmental Commission is the body authorized under state law to adopt regulations to prevent, abate and control air pollution (NRS 445B.210), the Department of Conservation and Natural Resources is designated as the air pollution control agency for the State of Nevada for the purposes of the CAA (NRS 445B.205), and the Administrator of NDEP is the official designee of the Director of the Department of Conservation and Natural Resources for the purposes of the CAA, including, but not limited to, adoption, revision, and submittal of SIPs to EPA.

*Comment #7:*

Washoe County notes a "minor correction/clarification that should be made" in EPA's Section 128 TSD on pages 4 and 7. Washoe County identifies the District Health Officer of the Washoe County Health District, or his designee, as the Control Officer, pursuant to Washoe County Air Quality Regulation (AQR) 010.042, rather than the AQMD Director, as stated in EPA's Section 128 TSD. The comment further states that the AQMD Director and Branch Chief are designees of the Control Officer and that the applicability of section 128 does not change and remains as "not applicable" because it "applies to boards and bodies composed of multiple individuals."

*Response #7:*

EPA agrees that we should have identified the District Health Officer of Washoe County Health District as the Control Officer in Washoe County. Washoe County Air Quality Regulation (AQR) 010.042 defines "Control Officer" as the "District Health Officer of the Washoe County Health District or the person designated by said District Health Officer to enforce these local air pollution control ordinances and regulations as approved by said District Board of Health created pursuant to the interlocal agreement of the City of Reno, the City of Sparks, and the County of Washoe, Nevada." AQR 020.020 ("Control Officer—Powers and Duties") states that the "Control Officer, or his designated agent or representative, shall enforce the provisions of these [air pollution control] regulations." From

the context of Washoe County's comments and conversation with WCHD—AQMD staff, we understand the AQMD Director and Branch Chief to be designated agents or representatives of the Control Officer (i.e., the District Health Officer of the Washoe County Health District), pursuant to AQR 020.020.

We cited AQR 020.020 in our Section 128 TSD because it authorizes the Control Officer and his designated agents or representatives to issue corrective action orders (a kind of enforcement order). Thus, the Control Officer and his designated agents or representatives are subject to the requirements of section 128(a)(2). This reflects a point of distinction with respect to Washoe County's comment that the requirements of CAA section 128 are "not applicable" to the Control Officer or his agents or representatives. While we agree that section 128(a)(1) regarding *board* membership requirements does not apply to individual decision-makers, such as the Control Officer, we reaffirm that the disclosure requirement of section 128(a)(2) applies both to board members *and* to heads of executive agencies and their delegates as is clear on the face of the statute. See page 2 of our Section 128 TSD.

As a result, we have assessed whether the Washoe County District Health Officer is covered by Nevada's statutes concerning disclosure of potential conflicts of interest. As per NRS 281A.160.1, a public officer in Nevada is defined by two criteria: (a) that the person is appointed or elected to a position established by a charter or ordinance of any county, and (b) that his or her position "[i]nvolves the exercise of a public power, trust, or duty." The District Health Officer is a public officer under these criteria because he or she is a person appointed to a position established by the Washoe County Code and because approval of permits or enforcement orders under state or county law involves an exercise of a public power, trust or duty.<sup>8</sup>

Our determinations regarding disclosure as it relates to the AQMD Director and Branch Chief remain

<sup>8</sup> For clarity's sake, we note that NRS 281A.160(2) contains several exemptions for the definition of "public officer." In particular, NRS 281A.160(2)(d) exempts county health officers appointed pursuant to NRS 439.290. It is important to note that while a county health officer is appointed by the relevant board of county commissioners, pursuant to NRS 439.290, a *district* health officer in a county whose population is less than 700,000 (e.g., Washoe County) is appointed by the relevant district board of health, pursuant to NRS 439.400. Thus, the exemption under NRS 281A.160 does not apply to the Washoe County District Health Officer.

<sup>7</sup> We have placed a copy of the signed, pre-publication version of the final rule approving the Clark County SIP revisions in the docket for this rulemaking.

unchanged. The AQMD Director is a public officer, pursuant to NRS 281A.160, and the AQMD Branch Chief of the Permitting and Compliance Branch is a public employee, pursuant to NRS 281A.150, (see pages 8–9 of our Section 128 TSD) and they are both subject to adequate disclosure requirements under CAA section 128(a)(2), as codified at NRS 281A.410 and NRS 281A.420 (see pages 11–13 of our Section 128 TSD).

Thus, our overall conclusion remains that the conflict of interest provisions<sup>9</sup> submitted in Nevada's 2012 Submittal meet the requirements of CAA section 128 and section 110(a)(2)(E)(ii). We are therefore finalizing our proposed approval of Nevada's conflict of interest provisions into the SIP and our proposed approval of Nevada's Infrastructure SIP Submittals for the 1997 ozone, 1997 PM<sub>2.5</sub>, and 2006 PM<sub>2.5</sub> NAAQS for section 110(a)(2)(E)(ii).

### III. Final Action

Under CAA section 110(k)(3), and based on the evaluation and rationale presented in the proposed rule, the related TSDs, and this final rule, EPA is approving in part and disapproving in part Nevada's Infrastructure SIP Submittals for the 1997 ozone, 1997 PM<sub>2.5</sub>, and 2006 PM<sub>2.5</sub> NAAQS. In the following subsections, we list the elements for which we are finalizing approval or disapproval and provide a summary of the basis for those elements that are partially approved and partially disapproved. We also describe the statutory provisions and other materials submitted by NDEP that we are approving herein, and describe the consequences of our disapprovals.

#### A. Summary of Approvals

EPA is approving Nevada's Infrastructure SIP Submittals with respect to the following requirements:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i) (in part): Interstate pollution transport.
- Section 110(a)(2)(D)(ii) (in part): Interstate pollution abatement and international air pollution.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.

<sup>9</sup>i.e., NRS 232A.020, NRS 281A.150, NRS 281A.160, NRS 281A.400, NRS 281A.410, and NRS 281A.420.

- Section 110(a)(2)(F) (in part): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J) (in part): Consultation with government officials, public notification, and prevention of significant deterioration (PSD) and visibility protection.
- Section 110(a)(2)(K) (in part): Air quality modeling and submission of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

We are approving Nevada's Infrastructure SIP Submittals for the Clark County portions of the SIP with respect to the requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), 110(a)(2)(J), and 110(a)(2)(K) related to PSD based upon our final approval of certain SIP revisions for the review of new or modified stationary sources for the Clark County portion of the SIP.<sup>10</sup>

For section 110(a)(2)(C), we are approving Nevada's Infrastructure SIP Submittals for all three jurisdictions (NDEP, Clark County, and Washoe County) with respect to the requirement that the SIP include a program to provide for enforcement of the emissions limitations described in section 110(a)(2)(A).

With respect to the requirement of CAA section 110(a)(2)(D)(i)(II) (regarding interference with other states' required measures to protect visibility), EPA previously approved Nevada's interstate transport SIP as satisfying this requirement for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS as part of EPA's action on Nevada's Regional Haze SIP. See 77 FR 17334 at 17339 (March 26, 2012). For purposes of the 2006 PM<sub>2.5</sub> NAAQS, in today's final rule we are approving Nevada's Infrastructure SIP Submittals as meeting the visibility requirement of CAA section 110(a)(2)(D)(i)(II) for the 2006 PM<sub>2.5</sub> NAAQS by virtue of Nevada's SIP-approved Regional Haze Plan (77 FR 17334, March 26, 2012), which contains adequate provisions to protect visibility in other states.

With respect to section 110(a)(2)(F), for the NDEP and Washoe County portions of the SIP, we are approving

<sup>10</sup>EPA's final rule on the Clark County NSR SIP revisions is included in the docket of today's final rule. While the Clark County NSR final rule is a limited approval and limited disapproval, the permitting elements necessary for infrastructure SIP approval for the Clark County portion of the SIP were all among those that were approved.

Nevada's Infrastructure SIP Submittals for all three subsections of section 110(a)(2)(F). We note that EPA has approved three Nevada Administrative Code (NAC) sections cited by NDEP in its 2012 Submittal, NAC sections 445B.315(3), 445B.3368, and 445B.346, in a separate rulemaking (see the pre-publication version signed August 30, 2012 and included in the docket of today's final rule). These provisions provide additional support for the NDEP portion of the SIP as meeting the requirements of sections 110(a)(2)(F)(ii) and 110(a)(2)(F)(iii). For the Washoe County portion of the SIP, our approval of subsections 110(a)(2)(F)(ii) and 110(a)(2)(F)(iii) is based on our approval of four Washoe County rules, AQR 030.218, 030.230, 030.235, and 030.970, which were included in the 2012 Submittal, in a separate rulemaking (see the pre-publication version signed September 14, 2012 and included in the docket of today's final rule). With respect to the Clark County portion of the SIP, we are approving the SIP for sections 110(a)(2)(F)(i) and (ii) based upon our final approval of certain SIP revisions for the review of new or modified stationary sources in Clark County.<sup>11</sup>

#### B. Approval of Statutory Provisions and Other Materials

In connection with our approval, or partial approval, of Nevada's Infrastructure SIP Submittals for these requirements as listed above, we are approving into the Nevada SIP certain statutes and other materials, which were included in the 2009 PM<sub>2.5</sub> Supplement and the 2012 Submittal.

First, with respect to section 110(a)(2)(E)(i) (i.e., necessary assurances for adequate personnel, funding, and authority), EPA is approving an interlocal agreement among the Washoe County District Board of Health, Washoe County and the cities of Reno and Sparks concerning the Washoe County District Health Department, and a comprehensive revision to Section 12 ("Resources") of the Nevada SIP. The interlocal agreement was submitted as Attachment D of Nevada's 2009 PM<sub>2.5</sub> Supplement and the revision to Section 12 was submitted as Attachment A to Nevada's 2012 Submittal. NDEP's 2012 revision to Section 12 hereby replaces, in its entirety, the former SIP version of Section 12, approved on May 31, 1972 (37 FR 10842), in the Nevada SIP.

<sup>11</sup>As noted previously, we have placed a copy of the signed, pre-publication version of the final rule approving the Clark County SIP revisions in the docket for this rulemaking.

Second, in connection with our approval of Nevada's Infrastructure SIP Submittals with respect to section 110(a)(2)(E)(ii) (i.e., State board conflict of interest requirements under CAA section 128), EPA is approving Nevada Revised Statutes (NRS) sections 232A.020, 281A.150, 281A.160, 281A.400, 281A.410, and 281A.420, as provided in Attachment B of Nevada's 2012 Submittal, into the Nevada SIP.

Third and last, in connection with our approval of Nevada's Infrastructure SIP Submittals with respect to section 110(a)(2)(J) (in part) and (M), EPA is approving a comprehensive revision to Section 11 ("Intergovernmental Consultation") of the Nevada SIP, which is included as Attachment D to Nevada's 2012 Submittal. NDEP's 2012 revision to Section 11 hereby replaces, in its entirety, the former SIP version of Section 11, approved on May 31, 1972 (37 FR 10842), in the Nevada SIP.

Nevada's 2012 revision to Section 11 ("Intergovernmental Consultation") cites a number of statutes. Two of these, NRS section 445B.503 and NRS section 439.390, are included as exhibits to Section 11 and are new to the SIP.<sup>12</sup> Another statute, NRS 445B.500, is included in Attachment B to the 2012 Submittal as an update to the former version of NRS 445B.500, which EPA had approved into the Nevada SIP (71 FR 51766, August 31, 2006). We are approving NRS 445B.503, NRS 439.390, and the updated version of NRS 445B.500 into the Nevada SIP in connection with our approval of the 2012 revision to Section 11 of the Nevada SIP. The updated version of NRS 445B.500 hereby replaces, in its entirety, the former SIP version of NRS 445B.500 in the Nevada SIP.

### C. Summary of Disapprovals

EPA is disapproving Nevada's Infrastructure SIP Submittals for the 1997 ozone, 1997 PM<sub>2.5</sub>, and 2006 PM<sub>2.5</sub> NAAQS with respect to the following infrastructure SIP requirements:

- Section 110(a)(2)(C)(in part): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i)(in part): Interstate pollution transport.
- Section 110(a)(2)(D)(ii)(in part): Interstate pollution abatement and international air pollution.

<sup>12</sup> In our proposed rule, we requested clarification as to whether NDEP intends NRS 439.390 to be included in the Nevada SIP. See 77 FR 46361 at 46367, footnote 26. NDEP's submittal on August 30, 2012 included NRS 439.390 in Attachment B ("Statutes for Inclusion in the Nevada [Applicable SIP]"). As such we are finalizing approval of NRS 439.390 into the Nevada SIP.

- Section 110(a)(2)(F)(in part): Stationary source monitoring and reporting.
- Section 110(a)(2)(J)(in part): Consultation with government officials, public notification, and prevention of significant deterioration (PSD) and visibility protection.
- Section 110(a)(2)(K)(in part): Air quality modeling and submission of modeling data.

As explained in our proposed rule and Overarching TSD, we are disapproving Nevada's Infrastructure SIP Submittals for the NDEP and Washoe County portions of the SIP with respect to the requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), 110(a)(2)(J), and 110(a)(2)(K) related to PSD because the Nevada SIP does not fully satisfy the statutory and regulatory requirements for PSD permit programs under part C of title I of the Act. Both NDEP and WCHD-AQMD currently implement the Federal PSD program in 40 CFR 52.21 for all regulated NSR pollutants, pursuant to delegation agreements with EPA. See 40 CFR 52.1485.<sup>13</sup> Accordingly, although the Nevada SIP remains deficient with respect to PSD requirements in both the NDEP and Washoe County portions of the SIP, these deficiencies are adequately addressed in both areas by the Federal PSD program.

With respect to the requirements regarding interstate transport in CAA section 110(a)(2)(D)(i)(I) for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS, EPA previously approved an interstate transport SIP submitted by Nevada as satisfying the requirements of CAA section 110(a)(D)(i)(I). See 72 FR 41629 (July 31, 2007). For the 2006 24-hour PM<sub>2.5</sub> NAAQS, in today's final rule we are partially approving and partially disapproving Nevada's 2009 PM<sub>2.5</sub> Submittal, and 2009 PM<sub>2.5</sub> Supplement. We are partially disapproving the submissions because they rely on irrelevant factors and lack any technical analysis to support the State's conclusion with respect to interstate transport. We are also partially approving the submission, however, based on EPA's supplemental

<sup>13</sup> EPA fully delegated the implementation of the federal PSD programs to NDEP on October 19, 2004 ("Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 9 to the Nevada Division of Environmental Protection"), as updated on September 15, 2011, and to Washoe County on March 13, 2008 ("Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 9 to the Washoe County District Health Department").

evaluation of relevant technical information, which supports a finding that emissions from Nevada do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS in any other state and that the existing Nevada SIP is, therefore, adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM<sub>2.5</sub> NAAQS. See our 2006 PM<sub>2.5</sub> Transport TSD.<sup>14</sup>

With respect to section 110(a)(2)(F), we are disapproving the Clark County portion of the SIP for subsection 110(a)(2)(F)(iii) because Clark County has repealed its regulation, Section 24, that formerly addressed the correlation requirement of this subsection, without submitting a SIP revision to replace it.

### D. Consequences of Disapprovals

EPA takes a disapproval of a state plan very seriously. Rather than implement a FIP, we believe that it is preferable, and preferred that it is preferable, and preferred in the provisions of the Clean Air Act, for states to implement the CAA requirements through state provisions that are developed and adopted by the state and approved into the SIP by EPA. A state plan need not contain exactly the same provisions that EPA might require, but EPA must be able to find that the state plan is consistent with the requirements of the Act in accordance with its obligations under section 110(k). Further, EPA's oversight role requires that it assure consistent implementation of Clean Air Act requirements by states across the country, even while acknowledging that individual decisions from source to source or state to state may not have identical outcomes. EPA believes these disapprovals are the only path that is consistent with the Act at this time.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D of title I of the CAA (CAA sections 171–193) or is required in response to a finding of substantial inadequacy as described in

<sup>14</sup> The recent opinion vacating the Transport Rule, *EME Homer City Generation v. EPA*, No. 11–1302 (DC Cir., August 21, 2012), does not alter our conclusion that the existing Nevada SIP adequately addresses this requirement. Nothing in the *Homer City* opinion disturbs or calls into question that conclusion or the validity of the technical information on which our August 3, 2012 proposal relied—e.g., ambient PM<sub>2.5</sub> levels at monitoring sites representative of regional background in nearby states and relevant meteorological and topographical information. In addition, nothing in that opinion undermines our proposed conclusion, based on our review of the available technical information, that emissions from Nevada do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM<sub>2.5</sub> NAAQS in another state.

CAA section 110(k)(5) (SIP Call) starts a sanctions clock. Nevada's Infrastructure SIP Submittals were not submitted to meet either of these requirements. Therefore, our partial disapproval of Nevada's Infrastructure SIP Submittals does not trigger mandatory sanctions under CAA section 179.

In addition, CAA section 110(c)(1) provides that EPA must promulgate a Federal Implementation Plan (FIP) within two years after finding that a State has failed to make a required submission or disapproving a State implementation plan submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period.

With respect to our partial approval and partial disapproval of Nevada's submissions related to interstate transport under CAA section 110(a)(2)(D)(i)(I), we conclude that any FIP obligation resulting from our final, partial disapproval is satisfied by our determination that there is no deficiency in the SIP to correct. Such disapproval also does not require any further action on Nevada's part given EPA's conclusion that the SIP is adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM<sub>2.5</sub> NAAQS.

With respect to our final disapproval of Nevada's Infrastructure SIP Submittals for section 110(a)(2)(F)(iii) for the Clark County portion of the SIP, today's action establishes a deadline two years from the effective date of this action for EPA to promulgate a FIP, unless EPA approves a SIP revision correcting the deficiency within that two-year period.<sup>15</sup> We encourage the state to submit a SIP revision to address the deficiencies identified in this final

<sup>15</sup> In our proposed rule, we did not explicitly state how EPA's proposed disapproval of section 110(a)(2)(F)(iii) for the Clark County portion of the SIP would trigger a new FIP obligation for EPA. However, our proposed rule made clear that "CAA section 110(c)(1) provides that EPA must promulgate a Federal Implementation Plan (FIP) within two years after finding that a State has failed to make a required submission or disapproving a State implementation plan submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period." (77 FR 46361 at 46370). By contrast, for our other proposed disapprovals, we made clear that EPA's FIP obligation would be satisfied "by our determination that there is no deficiency in the SIP to correct" (for section 110(a)(2)(D)(i)(I) for the 2006 PM<sub>2.5</sub> NAAQS; see 77 FR 46361 at 46370) and that the "deficiencies are adequately addressed in both areas by the Federal PSD program" (for the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), 110(a)(2)(J), and 110(a)(2)(K) for the NDEP and Washoe County portions of the SIP; see 77 FR 46361 at 46367).

rule and we stand ready to work with the state to develop a revised plan.

For all other final disapprovals of today's action (i.e., for the PSD-related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), 110(a)(2)(J), and 110(a)(2)(K) for the NDEP and Washoe County portions of the SIP), we conclude that although the Nevada SIP remains deficient with respect to PSD requirements in both the NDEP and Washoe County portions of the SIP, these deficiencies are adequately addressed in each jurisdiction by the Federal PSD program, and therefore no further FIP obligation is triggered by today's action.

#### IV. 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 partial approval and partial disapproval of SIP revisions under CAA section 110 will not in-and-of itself create any new information collection burdens but simply approves certain State requirements, and disapproves certain other 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 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 partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply approves certain State requirements, and disapproves certain other 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. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

##### 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 partial approval and partial 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 approves certain pre-existing requirements, and disapproves certain other 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 approves certain State requirements, and disapproves certain other 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 on which EPA is proposing action would not apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*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 partial approval and partial disapproval under CAA section 110 will not in-and-of itself create any new regulations but simply approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP.

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

This 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.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2). This rule will be effective on November 23, 2012.

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by December 24, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 28, 2012.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

Therefore, 40 CFR Chapter I is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart DD—Nevada**

- 2. Section 52.1470 in paragraph (e), the table is amended by:
  - a. Revising the entries for “Section 11—Intergovernmental Consultation,” “Section 12—Resources,” and “445B.500”;
  - b. Adding an entry for “Attachment D—Inter-Local Agreement Supporting CAA 110(a)(2)(A)–(M) Requirements” after the entry for “Section 11—Intergovernmental Consultation”;
  - c. Adding entries for “Enclosure 1—CAA 110(a)(2)(A)–(M) Requirements in the Current Nevada State Implementation Plan (SIP) for 8-Hour Ozone,” “Enclosure 1—CAA 110(a)(2)(A)–(M) Requirements in the Current Nevada State Implementation Plan (SIP) for PM<sub>2.5</sub>,” “Enclosure 1—CAA 110(a)(2)(A)–(M) Requirements in the Current Nevada State Implementation Plan (SIP) for PM<sub>2.5</sub>,” “Attachment A—Current CAA 110(a)(2)(A)–(M) Requirements in the Washoe County Portion of the Nevada PM<sub>2.5</sub> SIP,” and “Revisions to Nevada’s Clean Air Act Section 110(a)(2) Plan Submittals as of July 2012 (August 2012), excluding attachments A through D” after the entry for “Adopted Lead Meadows Basin, 4/26/84”;

■ d. Adding new table heading titled “Nevada Revised Statutes, Title 18, State Executive Department, Chapter 232A, Boards, Commissions and Similar Bodies” after the entry for “0.039,” and under the new heading, adding an entry for “232A.020”;  
 ■ e. Adding new table heading titled “Nevada Revised Statutes, Title 23, Public Officers and Employees, Chapter

281A, Ethics in Government” after the new entry for “232A.020,” and under the new heading, adding entries in numerical order for “281A.150,” “281A.160,” “282A.400,” “281A.410,” and “281A.420”;  
 ■ f. Adding new table heading titled “Nevada Revised Statutes, Title 40, Public Health and Safety, Chapter 439, Administration of Public Health” after

the entry for “366.060,” and under the new heading, adding an entry for “439.390”; and  
 ■ g. Adding an entry for “445B.503” after the entry for “445B.500.”

**§ 52.1470 Identification of plan.**  
 \* \* \* \* \*  
 (e) \* \* \*

EPA-APPROVED NEVADA NONREGULATORY AND QUASI-REGULATORY MEASURES

| Name of SIP provision   | Applicable geographic or nonattainment area | State submittal date | EPA approval date  | Explanation   |
|---|---|----------------------|--|---|
| <b>Air Quality Implementation Plan for the State of Nevada</b>  |   |                      |  |   |
| Section 11—Intergovernmental Consultation.  | State-wide                                  | 8/30/12              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | Submitted as attachment D to NDEP’s August 30, 2012 SIP revision submittal.   |
| Attachment D—Inter-Local Agreement Supporting CAA 110(a)(2)(A)–(M) Requirements.  | Washoe County                               | 12/4/09              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | Submitted as attachment D to NDEP’s December 4, 2009 SIP revision submittal.  |
| Section 12—Resources  | State-wide                                  | 8/30/12              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | Submitted as attachment A to NDEP’s August 30, 2012 SIP revision submittal.   |
| Enclosure 1—CAA 110(a)(2)(A)–(M) Requirements in the Current Nevada State Implementation Plan (SIP) for 8-Hour Ozone.                   | State-wide, within NDEP jurisdiction        | 2/1/08               | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | “Infrastructure” SIP for the 1997 8-Hour ozone standard. Enclosures (2) and (3) include copies of the regulatory and statutory provisions previously approved in the Nevada SIP.  |
| Enclosure 1—CAA 110(a)(2)(A)–(M) Requirements in the Current Nevada State Implementation Plan (SIP) for PM <sub>2.5</sub> .             | State-wide, within NDEP jurisdiction        | 2/26/08              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | “Infrastructure” SIP for the 1997 PM <sub>2.5</sub> standard. Enclosures (2) and (3) include copies of the regulatory and statutory provisions previously approved in the Nevada SIP.   |
| Enclosure 1—CAA 110(a)(2)(A)–(M) Requirements in the Current Nevada State Implementation Plan (SIP) for PM <sub>2.5</sub> .             | State-wide, within NDEP jurisdiction        | 9/15/09              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | “Infrastructure” SIP for the 2006 PM <sub>2.5</sub> standard. Enclosures (2) and (3) include copies of the regulatory and statutory provisions previously approved in the Nevada SIP.   |
| Attachment A—Current CAA 110(a)(2)(A)–(M) Requirements in the Washoe County Portion of the Nevada PM <sub>2.5</sub> SIP.                | Washoe County                               | 12/04/09             | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | Attachment B includes Washoe County regulations, that are addressed in separate rulemakings. Attachment C is the PSD delegation agreement between Washoe County District Health Department and EPA Region IX. Attachment D (“Inter-Local Agreement Supporting CAA 110(a)(2)(A)–(M) Requirements”) is approved into the SIP and listed separately in this table. |
| Revisions to Nevada’s Clean Air Act Section 110(a)(2) Plan Submittals as of July 2012 (August 2012), excluding attachments A through D. | State-wide                                  | 8/30/12              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | Attachment A (“Section 12-Resources”), the individual statutory provisions in attachment B (“Statutes for Inclusion in Nevada’s ASIP”), and attachment D (“Section 11—Intergovernmental Consultation”) are listed separately in this table. Attachment C was submitted for information only and not for incorporation into Nevada’s SIP.                        |

## EPA-APPROVED NEVADA NONREGULATORY AND QUASI-REGULATORY MEASURES—Continued

| Name of SIP provision  | Applicable geographic or nonattainment area  | State submittal date | EPA approval date  | Explanation  |
|--|--|----------------------|--|--|
| *  | *  | *                    | *  | *  |
| <b>Nevada Revised Statutes, Title 18, State Executive Department, Boards, Chapter 232A, Commissions and Similar Bodies</b> |  |                      |  |  |
| 232A.020 .....   | Residency requirement for appointment; terms of members; vacancies; qualification of member appointed as representative of general public; gubernatorial appointee prohibited from serving on more than one board, commission or similar body. | 8/30/12              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | Submitted in attachment B to NDEP's August 30, 2012 SIP revision submittal. (Nevada Revised Statutes, Volume 14, 2011, as published by the Legislative Counsel, State of Nevada, section 232A.020).                                    |
| <b>Nevada Revised Statutes, Title 23, Public Officers and Employees, Chapter 281A, Ethics in Government</b>                |  |                      |  |  |
| 281A.150 .....   | "Public employee" defined .....  | 8/30/12              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | Submitted in attachment B to NDEP's August 30, 2012 SIP revision submittal. (Nevada Revised Statutes, Volume 18, 2011, as published by the Legislative Counsel, State of Nevada, section 281A.150).                                    |
| 281A.160 .....   | "Public officer" defined .....   | 8/30/12              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | Submitted in attachment B to NDEP's August 30, 2012 SIP revision submittal. (Nevada Revised Statutes, Volume 18, 2011, as published by the Legislative Counsel, State of Nevada, section 481A.160).                                    |
| 281A.400 .....   | General requirements; exceptions ..  | 8/30/12              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | Submitted in attachment B to NDEP's August 30, 2012 SIP revision submittal. (Nevada Revised Statutes, Volume 18, 2011, as published by the Legislative Counsel, State of Nevada, section 281A.400).                                    |
| 281A.410 .....   | Limitations on representing or counseling private persons before public agencies; disclosure required by certain public officers.  | 8/30/12              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | Submitted in attachment B to NDEP's August 30, 2012 SIP revision submittal. (Nevada Revised Statutes, Volume 18, 2011, as published by the Legislative Counsel, State of Nevada, section 281A.410).                                    |
| 281A.420 .....   | Requirements regarding disclosure of conflicts of interest and abstention from voting because of certain types of conflicts; effect of abstention on quorum and voting requirements; exceptions.   | 8/30/12              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | Submitted in attachment B to NDEP's August 30, 2012 SIP revision submittal. (Nevada Revised Statutes, Volume 18, 2011, as published by the Legislative Counsel, State of Nevada, section 281A.420).                                    |
| *  | *  | *                    | *  | *  |
| <b>Nevada Revised Statutes, Title 40, Public Health and Safety, Chapter 439, Administration of Public Health</b>           |  |                      |  |  |
| 439.390 .....  | District board of health: Composition; qualifications of members.  | 8/30/12              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | Submitted in attachment B, and as an exhibit to attachment D, to NDEP's August 30, 2012 SIP revision submittal. (Nevada Revised Statutes, Volume 27, 2011, as published by the Legislative Counsel, State of Nevada, section 439.390). |

EPA-APPROVED NEVADA NONREGULATORY AND QUASI-REGULATORY MEASURES—Continued

| Name of SIP provision | Applicable geographic or nonattainment area   | State submittal date | EPA approval date  | Explanation   |
|-----------------------|---|----------------------|--|---|
| 445B.500              | Establishment and administration of program; contents of program; designation of air pollution control agency of county for purposes of federal act; powers and duties of local air pollution control board; notice of public hearings; delegation of authority to determine violations and levy administrative penalties; cities and smaller counties; regulation of certain electric plants prohibited. | 8/30/12              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | Submitted in attachment B to NDEP's August 30, 2012 SIP revision submittal. (Nevada Revised Statutes, Volume 28, 2011, as published by the Legislative Counsel, State of Nevada, section 445B.500).                                     |
| 445B.503              | Local air pollution control board in county whose population is 700,000 or more: Cooperation with regional planning coalition and regional transportation commission; prerequisites to adoption or amendment of plan, policy or program.  | 8/30/12              | [Insert <b>Federal Register</b> page number where the document begins] 10/23/12. | Submitted in attachment B, and as an exhibit to attachment D, to NDEP's August 30, 2012 SIP revision submittal. (Nevada Revised Statutes, Volume 28, 2011, as published by the Legislative Counsel, State of Nevada, section 445B.503). |

■ 3. Section 52.1472 is amended by adding paragraphs (d), (e), and (f) to read as follows:

**§ 52.1472 Approval status.**

\* \* \* \* \*

(d) *1997 8-hour ozone NAAQS*: The SIPs submitted on February 1, 2008 and August 30, 2012 are partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(ii), (J) and (K) for the Nevada Division of Environmental Quality (NDEP) and Washoe County portions of the Nevada SIP; and for CAA element 110(a)(2)(F) for the Clark County portion of the Nevada SIP.

(e) *1997 P<sub>2.5</sub> NAAQS*: The SIPs submitted on February 26, 2008 and August 30, 2012 are partially disapproved for CAA elements 110(a)(2)(C), (D)(ii), (J) and (K) for the NDEP and Washoe County portions of the Nevada SIP; and for CAA element 110(a)(2)(F) for the Clark County portion of the Nevada SIP.

(f) *2006 PM<sub>2.5</sub> NAAQS*: The SIPs submitted on September 15, 2009, December 4, 2009, and August 30, 2012 are partially disapproved for CAA elements 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality), (D)(ii), (J) and (K) for the NDEP and Washoe County portions of the Nevada SIP; for CAA element 110(a)(2)(D)(i)(I) for the NDEP, Washoe County, and Clark County portions of the Nevada SIP; and for CAA element

110(a)(2)(F) for the Clark County portion of the Nevada SIP.

[FR Doc. 2012–25558 Filed 10–22–12; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

[EPA–HQ–SFUND–1986–0005; FRL–9743–1]

**National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List: Partial Deletion of the Torch Lake Superfund Site**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The U.S. Environmental Protection Agency Region 5 is publishing a Direct Final Notice of Deletion of the Isle Royale Tailings and Michigan Smelter Tailing parcels of Operable Unit 3 (OU3), and the Mason Sands Tailings parcel of Operable Unit 1 (OU1) of the Torch Lake Superfund Site (Site), located in Houghton County, Michigan from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA, with the concurrence of the State of Michigan through the Michigan

Department of Environmental Quality (MDEQ), because EPA has determined that all appropriate response actions under CERCLA at these identified parcels have been completed. However, this partial deletion does not preclude future actions under Superfund.

This partial deletion pertains to the surface tailings, drums, and slag piles of Isle Royale Tailings and Michigan Smelter Tailings parcels of OU3 and the Mason Sands Tailings parcel of OU1. The following land parcels will remain on the NPL and are not being considered for deletion as part of this action: Dollar Bay, Point Mills, Calumet Lake Tailing, Boston Pond Tailing, North Entry and Quincy Smelter.

**DATES:** This direct final partial deletion is effective December 24, 2012 unless EPA receives adverse comments by November 23, 2012. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in *the Federal Register* informing the public that the deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1986–0005, by one of the following methods:

- <http://www.regulations.gov>: Follow on-line instructions for submitting comments.
- **Email:** Nefertiti DiCosmo, Remedial Project Manager, at [dicosmo.nefertiti@epa.gov](mailto:dicosmo.nefertiti@epa.gov)
- **Email:** Dave Novak, Community Involvement Coordinator, at [novak.dave@epa.gov](mailto:novak.dave@epa.gov)
- **Fax:** Gladys Beard, NPL Deletion Process Manager, at (312) 886–2077.