requirements for NO_X emissions under the NO_X and SO_X RECLAIM program;

• Rule 2015—Backstop Provisions. This rule specifies NO_X and SO_X RECLAIM program auditing requirements and actions that the SCAQMD will take in the event that the environmental goals of RECLAIM program are not achieved.

- Although the approval of Regulation XX will strengthen the SIP, the regulation still contains deficiencies, identified below and in the associated technical support document (TSD), which are required to be corrected pursuant to section 182(b)(2) of the CAA. The NO_X and SO_X RECLAIM program contains the following deficiencies:
- The program allows the use of variances to avoid compliance with program requirements; this results in the program failing to meet the requirements of section 110(i) of the Act,
- The program does not meet certain new source review requirements of the Act and Part D,
- The program allows the use of Executive Officer discretion in the implementation of certain emissions monitoring provisions; this results in the program failing to meet the requirements of section 110(i) of the Act,
- The program's references to other programs, notably those involving the use of mobile source emission reduction credits (MERCs) is inconsistent with section 110(i) of the Act, and

• The submittal does not provide all of the necessary demonstrations to ensure that the requirements of EPA's EIP Rules are being met.

A detailed discussion of the rule deficiencies can be found in the TSD for Regulation XX (January 5, 1995), which is available from the U.S. EPA, Region 9 office. Because SCAQMD is not using Regulation XX as a means to achieve or maintain attainment of the SO₂ NAAQS,⁵ the PM₁₀ NAAQS,⁶ or the NO₂ NAAQS, EPA does not believe that Regulation XX will interfere with SCAQMD's ability to meet the requirements necessary in the Act for achieving or maintaining these standards. EPA believes that the penalty

provisions found in RECLAIM Rule 2004 will be adequate for enforcement of the RECLAIM program. However, EPA does not believe that such penalty provisions would necessarily be adequate for other program designs. EPA will evaluate the penalty provisions of each program design on an individual basis, paying particular attention to the program elements found in the EIP rule (see 40 CFR 51.493(i) and 59 FR 16700–16701 dated April 7, 1994) where applicable.

Because of the above deficiencies, EPA cannot grant approval of this regulation under section 110(k)(3), section 110(a)(2), section 169A, and Parts C and D of the Act. Also, because the submitted regulation is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the regulation under section 110(k)(3). However, EPA may grant a conditional approval under section 110(k)(4) based on a commitment by the SCAQMD to revise the regulation to correct the identified deficiencies within one year of the Notice of Final Rulemaking of the conditional approval. EPA is optimistic that the SCAQMD will commit to adopt a regulation correcting the deficiencies within the required timeframe. The commitment letter must contain a schedule of interim steps (with dates) for the regulation. The State of California must submit the commitment letter to EPA. Therefore, EPA is proposing to give conditional approval to submitted Regulation XX under section 110(k)(4) of the CAA.

Under section 110(k)(4), the conditional approval shall be treated as a disapproval of a rule if the SCAQMD fails to adopt rules correcting the deficiencies within the time allowed. Under 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the CAA the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). It should be noted that the regulation covered by this NPRM has been adopted by the SCAQMD and is currently in effect in the SCAQMD.

In the event that SCAQMD is unable to provide EPA with a commitment which addresses all of the deficiencies identified by EPA within 12 months of the publication of this NPRM, then EPA will publish a final rule which finalizes a limited approval/limited disapproval action on the NO_X and SO_X RECLAIM program in lieu of publishing a final rule which finalizes a conditional approval action on the NO_X and SO_X RECLAIM program. In the instance in which SCAQMD fails to provide the commitment within 12 months of the publication of the NPRM, the limited approval/limited disapproval would be finalized based on the same deficiencies noted elsewhere in this document and the associated TSD. As noted above, because of the noted deficiencies, EPA cannot grant approval or partial approval of this regulation under section 110(k)(3) and part D. However, EPA may grant a limited approval of the submitted regulation under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In the instance where a commitment from SCAQMD is not submitted within 12 months of the publication of the NPRM, in order to strengthen the SIP, EPA will finalize a limited approval of SCAQMD's submitted Regulation XX under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA will also finalize a limited disapproval of this regulation because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the regulation does not fully meet the requirements of part D of the Act. As noted above, if the identified deficiencies are not corrected within 18 months of EPA's final limited disapproval, the sanctions described in section 179 of the CAA will be applied. It should be noted that the regulation covered by this NPRM has been adopted by the SCAQMD and is currently in effect in the SCAQMD. EPA's final limited disapproval action in this NPRM will not prevent the SCAQMD or the EPA from enforcing this regulation.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in

 $^{^5 \,} SCAQMD$ is presently in attainment of the SO_2 NAAQS.

 $^{^6}$ In this instance, SCAQMD is not asserting and EPA is not finding that $SO_{\rm X}$ RECLAIM is designed to be used as a means to identify or implement best available control measures (BACM) for PM_{10} in the South Coast Air Basin. If at some point in the future SCAQMD decides to use $SO_{\rm X}$ RECLAIM as a means of fulfilling this requirement, an additional SIP submittal must be made at which time EPA will apply the appropriate review criteria.