

Business Conference Center is available at no charge.

The Tulsa open house and public hearing is scheduled to be held on Thursday, April 14, 2011, at the Tulsa Tech—Riverside Campus, in the Auditorium of the Alliance Conference Center, 801 East 91st Street, Tulsa, Oklahoma 74132, (918) 828-4000. Driving directions to the Tulsa Tech—Riverside Campus may also be found using the following address: 801 West K Place, Jenks, Oklahoma 74037. The Tulsa Tech—Riverside Campus is located on the south side of Tulsa, and is east of Highway 75 and north of the Creek Turnpike. Parking is available on campus at no charge.

For both locations the open house will begin at 1 p.m. and end at 3 p.m. local time. The public hearing will be held from 4 p.m. until 6 p.m., and again from 7 p.m. until 9 p.m. Opening remarks for the public hearing will be provided at 4 p.m., and again at 7 p.m. The public hearing will provide interested parties the opportunity to present information and opinions to EPA concerning our proposal. Interested parties may also submit written comments, as discussed in the proposal. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. We will not respond to comments during the public hearing. When we publish our final action, we will provide written responses to all oral and written comments received on our proposal. To provide opportunities for questions and discussion, we will hold an open house prior to the public hearing. During the open house, EPA staff will be available to informally answer questions on our proposed action. Any comments made to EPA staff during the open house must still be provided formally in writing or orally during the public hearing in order to be considered in the record.

At the public hearing, the hearing officer may limit the time available for each commenter to address the proposal to 5 minutes or less if the hearing officer determines it to be appropriate. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. Any person may provide written or oral comments and data pertaining to our proposal at the Public Hearing. Verbatim transcripts, in English, of the hearing and written statements will be included in the rulemaking docket.

Dated: March 23, 2011.

Carl E. Edlund,

Multimedia Planning and Permitting Division, Director, Region 6.

[FR Doc. 2011-7459 Filed 3-29-11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2011-0309; FRL-9287-9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) submittal from the state of Missouri addressing the requirements of Clean Air Act (CAA) sections 110(a)(1) and (2) for the 1997 revisions to the National Ambient Air Quality Standards (NAAQS) for ozone. Section 110(a)(1) requires that each state adopt and submit a SIP to support implementation of each new or revised NAAQS promulgated by the EPA and these SIPs are commonly referred to as “infrastructure” SIPs. EPA believes that Missouri’s infrastructure SIP adequately addresses the elements described in section 110(a)(2) and further described in the October 2, 2007, guidance for infrastructure SIPs issued by the EPA Office of Air Quality Planning and Standards. However, because EPA already approved the portion of Missouri’s SIP submittal relating to the interstate transport infrastructure element, section 110(a)(2)(D)(i), this proposed rulemaking does not address the interstate transport element, nor does this proposal reopen any aspect of EPA’s prior action on the interstate transport element. Furthermore, this action does not address infrastructure requirements with respect to the 1997 PM_{2.5} NAAQS or the 2006 revisions to the NAAQS. Those requirements will be addressed in future rulemaking.

DATES: Comments must be received on or before April 29, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2011-0309 by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *E-mail:* kramer.elizabeth@epa.gov.
3. *Mail:* Ms. Elizabeth Kramer, Air Planning and Development Branch, U.S.

Environmental Protection Agency, Region 7, Air and Waste Management Division, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Deliver your comments to Ms. Elizabeth Kramer, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2011-0309. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and should be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, from 8 a.m. to 4:30 p.m., Monday through Friday,

excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

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

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we refer to EPA. This section provides additional information by addressing the following questions:

- I. What is a section 110(a)(1) and (2) infrastructure SIP?
- II. What elements are applicable under section 110(a)(1) and (2)?
- III. What is EPA’s evaluation of how the state addressed the relevant elements of section 110(a)(1) and (2)?
- IV. What action is EPA proposing?
- V. Statutory and Executive Order Reviews

I. What is a section 110(a)(1) and (2) infrastructure SIP?

Section 110(a)(1) and (2) of the CAA require, in part, that states submit to EPA plans to implement, maintain and enforce each of the NAAQS promulgated by EPA. These provisions require states to address basic SIP requirements including, for example, adequate provisions for emission inventory development, monitoring, and modeling to assure attainment and maintenance of the applicable standards. By statute, SIPs meeting the requirements of section 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. These SIPs are commonly referred to as “infrastructure” SIPs.

II. What elements are applicable under section 110(a)(1) and (2)?

On October 2, 2007, EPA issued guidance to address infrastructure SIP elements required under section 110(a)(1) and (2) for the 1997 8-hour ozone and PM_{2.5} NAAQS.¹ EPA will address these elements below under the following headings: (A) Emission limits and other control measures; (B) Ambient air quality monitoring/data system; (C)

Program for enforcement of control measures (PSD, New Source Review for nonattainment areas, and construction and modification of all stationary sources); (D) Interstate and international transport; (E) Adequate authority, resources, implementation, and oversight; (F) Stationary source monitoring system; (G) Emergency authority; (H) Future SIP revisions; (I) Nonattainment areas;² (J) Consultation with government officials, public notification, prevention of significant deterioration (PSD), and visibility protection;³ (K) Air quality and modeling/data; (L) Permitting fees; and (M) Consultation/participation by affected local entities.⁴

III. What is EPA’s evaluation of how the state addressed the relevant elements of section 110(a)(1) and (2)?

On July 18, 1997, EPA promulgated new 8-hour ozone and new fine particulate matter primary and secondary NAAQS. (62 FR 38894; 62 FR 38711.) On February 27, 2007, EPA Region 7 received the state of Missouri’s ozone and particulate matter infrastructure SIP submittal. The SIP submission was determined to be complete on March 27, 2007. EPA has reviewed the state’s formal submission and the relevant statutory and regulatory authorities and provisions generally referenced in the submittal from Missouri.

As described below, today’s action only pertains to the 1997 ozone standard; it does not pertain to EPA’s 1997 promulgation of the PM_{2.5} standards. In addition, it does not address issues relating to interstate transport under section 110(a)(2)(D)(i), which have already been addressed for the 1997 ozone and PM_{2.5} NAAQS in prior rulemaking (72 FR 25975).

Missouri’s SIP submittal addresses the provisions of section 110(a)(1) and (2) as described below. EPA believes that Missouri has the adequate infrastructure needed to address all applicable elements of section 110(a)(1) and (2) for the 1997 8-hour ozone NAAQS.

(A) *Emission limits and other control measures:* Section 110(a)(2)(A) requires

² As discussed in further detail below, subsection 110(a)(2)(I) is not applicable for the infrastructure SIP approval process and therefore EPA will take action on the requirements of part D attainment plans separately.

³ As discussed in further detail below, subsection 110(a)(2)(J), as it relates to visibility protection, is also not applicable for the infrastructure SIP approval process, and therefore EPA is not addressing it in today’s proposed rulemaking.

⁴ This action also does not address infrastructure requirements with respect to the 1997 PM_{2.5} NAAQS or the 2006 revisions to the NAAQS. Those requirements will be addressed in future rulemaking.

SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters as needed to implement, maintain and enforce each NAAQS.

The state of Missouri’s Air Conservation Law and Air Pollution Control Rules authorize the Missouri Department of Natural Resources (MDNR) to regulate air quality and implement air quality control regulations. Section 643.030 of the Missouri Revised Statutes (“Air Conservation Law”) authorizes the “Air Conservation Commission of the State of Missouri” (MACC) to control air pollution, which is defined in Section 643.020 to include air contaminants, which cause or contribute to injury to public health or welfare. Section 643.050 authorizes the MACC to classify and identify air contaminants.

State rule 10 Code of State Regulations (CSR) 10–6.010 (“Ambient Air Quality Standards”) adopts the 1997 ozone standards promulgated by EPA. EPA also notes that emissions from new and existing sources of both volatile organic compounds (VOCs) and nitrogen oxides (NO_x)—which are known ozone precursors⁵—are also regulated (e.g., 10 CSR 10–2.360 relating to VOC emissions from bakery ovens in Kansas City, 10 CSR 10–5.510 relating to NO_x emissions from various sources in the St. Louis area). In addition, 10 CSR 10–6.040 incorporates by reference the relevant appendices in 40 CFR part 50 for measuring and calculating the concentration of photochemical oxidants (ozone) in the atmosphere to determine whether the ozone standards have been met. Therefore, ozone is an air contaminant which may be regulated under Missouri law.

Section 643.050 of the Air Conservation Law authorizes the MACC, among other things, to regulate the use of air contaminant sources and to establish emissions limitations for air contaminant sources. Missouri also establishes timetables for compliance in its rules, as appropriate. Appendix A of the state submittal contains a link to the Missouri Air Conservation Law and Appendix C contains a link to Missouri’s Effective State Rules and Forms.

EPA notes that 10 CSR 10–6.050 provides that sources may submit information relating to excess emissions during startup, shutdown or malfunction (SSM) events, but expressly provides that nothing in this rule limits the ability of MDNR or the MACC to

⁵ VOCs and NO_x as precursors to ozone are also discussed in element (C).

¹ William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards.” Memorandum to EPA Air Division Directors, Regions I–X, October 2, 2007.

take appropriate enforcement action. In today's proposed rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during a SSM of operations at a facility. EPA believes that a number of states have SSM provisions that are contrary to the Clean Air Act and existing EPA guidance,⁶ and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

EPA also notes that the Air Conservation Law contains provisions at Sections 643.055 and 643.110, which give the MACC the authority, under certain circumstances, to grant variances from rules and regulations established pursuant to the Clean Air Act.⁷ Furthermore, the Missouri air regulations contain provisions which allow the Director of MDNR to exercise his or her discretion to approve alternatives to the Missouri regulations (see, e.g., 10 CSR 10–6.030(19), which allows for the use of an alternative sampling method). In this action, EPA is not proposing to approve or disapprove any existing state rules with regard to “variance” or “Director’s discretion” provisions. EPA believes that a number of states have such provisions that are contrary to the Clean Air Act and existing EPA guidance,⁸ and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a “variance” or “Director’s discretion” provision that is contrary to the Clean Air Act and EPA guidance to take steps to correct the deficiency as soon as possible.

EPA believes that Missouri has statutory and regulatory authority to establish additional emissions limitations and other measures, as

necessary to address attainment and maintenance of the ozone standards. Therefore, EPA believes that the Missouri SIP adequately addresses the requirements of section 110(a)(2)(A) for the 1997 8-hour ozone NAAQS.

(B) *Ambient air quality monitoring/data system*: Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collection and analysis of ambient air quality data, and making these data available to EPA upon request.

To address this element, section 643.050 of the Air Conservation Law provides the enabling authority necessary for Missouri to fulfill the requirements of section 110(a)(2)(B). The Air Pollution Control Program and Air Quality Analysis Section, within MDNR, implement these requirements. Along with their other duties, the monitoring program collects air monitoring data, quality assures the results, and reports the data.

MDNR submits annual monitoring network plans to EPA for approval, including plans for its ozone monitoring network, as required by 40 CFR 58.10.⁹ Prior to submission to EPA, Missouri makes the plans available for public review on MDNR’s Web site. See <http://dnr.mo.gov/env/apcp/monitoring/monitoringnetworkplan.pdf>. MDNR also conducts five-year monitoring network assessments, including the ozone monitoring network, as required by 40 CFR 58.10(d). On October 27, 2010, EPA approved Missouri’s 2010 Ambient Air Quality Monitoring Plan and Missouri’s Five-Year Air Monitoring Network Assessment. As mentioned previously under element (A), 10 CSR 10–6.040(4)(D) requires that ambient concentrations of ozone be measured in accordance with the applicable Federal regulations in 40 CFR Part 50, App. D, or equivalent methods as approved by EPA pursuant to 40 CFR Part 53. Missouri submits air quality data to EPA’s Air Quality System (AQS) system quarterly, pursuant to the provisions of work plans developed in conjunction with EPA grants to the state.

Based on the foregoing, EPA believes that the Missouri SIP meets the requirements of section 110(a)(2)(B) for the 1997 8-hour ozone NAAQS.

(C) *Program for enforcement of control measures* (PSD, New Source Review for nonattainment areas, and construction and modification of all stationary sources): Section 110(a)(2)(C)

requires states to include the following elements in the SIP: (1) A program providing for enforcement of all SIP measures described in section 110(a)(2)(A); (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS; and (3) a permit program to meet the major source permitting requirements of the Act (including the program for areas designated as not attaining the NAAQS, and a program for the prevention of significant deterioration of air quality program in other areas). As discussed in further detail below, this infrastructure SIP rulemaking will not address the Missouri program for nonattainment area-related provisions, since these submittals are not applicable for the infrastructure SIP approval process.

(1) With respect to enforcement of requirements of the SIP, the Missouri statutes provide authority for MDNR to enforce the requirements of the Air Conservation Law, and any regulations, permits, or final compliance orders issued under the provisions of that law. For example, Section 643.080 of the Air Conservation Law authorizes MDNR to issue compliance orders for violations of the Air Conservation Law, rules promulgated thereunder (which includes rules comprising the Missouri SIP), and conditions of permits (which includes permits under SIP-approved permitting programs). Section 643.085 authorizes MDNR to assess administrative penalties for violations of the statute, regulations, permit conditions, or administrative orders. Section 643.151 authorizes the MACC to initiate civil actions for these violations, and to seek penalties and injunctive relief to prevent any further violation. Section 643.191 provides for criminal penalties for knowing violations of the statute, regulations or permit conditions, in addition to other acts described in that section.

(2) Section 110(a)(2)(C) also requires that the SIP include measures to regulate construction and modification of stationary sources to protect the NAAQS. With respect to smaller sources (Missouri’s major source permitting program is discussed in (3) below), Missouri has a program under rule 10 CSR 10–6.060 to review such sources to ensure, among other requirements, that new and modified sources will not interfere with NAAQS attainment. The state rule contains two general categories of sources subject to the minor source permitting program. The first category is “de minimis” sources (regulated at 10 CSR 10–6.060(5))—sources which are not exempt by virtue

⁶ Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation. “State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.” Memorandum to EPA Air Division Directors, September 20, 1999.

⁷ With respect to Missouri, we note that the EPA-approved SIP rules do not contain variance provisions. In any event, any variances issued by the MACC under its statutory authority must be approved by EPA as revisions to the SIP before they can alter any requirements of the approved SIP (see, 40 CFR 51.104(d)).

⁸ J. Craig Potter, Assistant Administrator for Air and Radiation, Thomas L. Adams, Jr., Assistant Administrator for Enforcement and Compliance Monitoring, and Francis S. Blake, General Counsel, Office of General Counsel. “Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency.” Memorandum, September 23, 1987. See also 52 FR 45109 (November 24, 1987).

⁹ See <http://www.dnr.mo.gov/env/esp/aqm/critmap.htm>, for a description of the monitoring network for all pollutants, including identification of locations for the ozone monitoring network.

of rule 10–6.061, permit exemptions, and emit below specified levels (e.g., 40 tons per year of VOCs). De minimis sources which emit above certain levels specified in rule 10–6.061 (e.g., 2.75 pounds per hour of NO_x or VOCs, and, for VOCs that do not contain hazardous air pollutants, more than 4 tons per year) are required to do an ambient air quality analysis to show that they are not adversely impacting the NAAQS. MDNR may also require impact analyses for other sources (sources lower than these levels) that may be likely to adversely affect air quality. 10 CSR 10–6.060(5).

Missouri also requires preconstruction permits for a second category of sources above the de minimis levels, but below the major source levels. Permits for these sources may only be issued after a determination, among other requirements, that the proposed source or modification would not interfere with attainment or maintenance of a NAAQS. 10 CSR 10–6.060(6).

EPA has determined that Missouri's minor new source review (NSR) program adopted pursuant to section 110(a)(2)(C) of the Act regulates emissions of ozone and its precursors. EPA has also determined that certain provisions of the state's minor NSR program adopted pursuant to section 110(a)(2)(C) of the Act likely do not meet all the requirements found in EPA's regulations implementing that provision. See 40 CFR 51.160–51.164. EPA previously approved Missouri's minor NSR program into the SIP, and at the time there was no objection to the provisions of this program. See 61 FR 7714 (February 29, 1996) (originally approved at 37 FR 10842 (May 31, 1972)). Since then, the state and EPA have relied on the existing state minor NSR program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

In this action, EPA is proposing to approve Missouri's infrastructure SIP for ozone with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the state's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work

with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

(3) Missouri also has a program approved by EPA as meeting the requirements of Part C, relating to prevention of significant deterioration of air quality. Missouri's implementing rule, 10 CSR 10–6.060(8), incorporates the relevant portions of the Federal rule, 40 CFR 52.21, by reference, including the relevant portions of EPA's "NSR reform" rule promulgated by EPA on December 31, 2002. In this action, EPA is not proposing to approve or disapprove any state rules with regard to NSR reform requirements. EPA will act on NSR reform submittals through a separate rulemaking process. For Missouri, we have previously approved the relevant portions of Missouri's NSR reform rules for attainment areas. See 71 FR 36486 (June 27, 2006).

The Missouri SIP also contains a permitting program for major sources and modifications in nonattainment areas; however, this requirement is not addressed in this rulemaking (see discussion of the section 110(a)(2)(I) requirements for nonattainment areas, below).

With respect to the PSD program, EPA notes that the Missouri SIP provides that ozone precursors (volatile organic compounds—VOC and nitrogen oxides—NO_x) are regulated. For example, a source that is major for NO_x is major for ozone under the state's prevention of significant deterioration of air quality program in rule 10 CSR 10–6.060(8). In addition, rules 10 CSR 10–6.060(1)(A) and 10–6.060(8)(A) incorporate 40 CFR 52.21(b)(50)(i)(a) by reference. The latter regulation specifically identifies volatile organic compounds and nitrogen oxides as precursors to ozone in all attainment and unclassifiable areas.

Finally, with respect to the applicability of the Missouri PSD program to greenhouse gas (GHG) emissions, EPA notes that Missouri promulgated an emergency amendment to its rules effective January 3, 2011, to ensure that it maintains full authority over its permitting program with respect

to GHGs and avoids an overwhelming increase in the number of required permits and resulting burden on Missouri's permitting resources. See 36 Missouri Register 218–219 (January 18, 2011). Although this emergency amendment expires on July 2, 2011, EPA understands that prior to that date, Missouri intends to take further regulatory action to more permanently address GHGs.¹⁰

In the interim, on March 8, 2011, Missouri informed EPA that the infrastructure SIP for the 1997 ozone standard that it submitted on February 22, 2007 only covered the portion of Missouri's PSD program that remained approved after promulgation of EPA's GHG PSD "Narrowing Rule" (75 FR 82536, December 30, 2010).¹¹ Therefore, EPA believes that it can approve the SIP submission as meeting the applicable infrastructure SIP requirements for the PSD requirements referenced in section 110(a)(2)(C).

On the basis of the foregoing, EPA believes that the Missouri SIP and underlying statutory authority are adequate to meet the requirements of section 110(a)(2)(C) for the 1997 8-hour ozone NAAQS.

(D) Interstate and international transport: Section 110(a)(2)(D)(i) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment in, or interfering with maintenance by, another state with respect to the NAAQS, or from interfering with measures required in another state to prevent significant deterioration of air quality or to protect visibility.

Missouri addressed the provisions of section 110(a)(2)(D)(i), as it relates to the 1997 ozone and PM standards, in the SIP submission received by EPA on February 27, 2007. EPA approved the portion of the Missouri SIP submittal relating to section 110(a)(2)(D)(i), on May 8, 2007 (72 FR 25975). Therefore, the proposed action addressed in this notice does not include the interstate transport elements, nor does this rulemaking reopen any aspect of EPA's prior action on the transport elements for Missouri for the 1997 standards.

Section 110(a)(2)(D)(ii) requires that the SIP insure compliance with the

¹⁰ Missouri proposed regulations, by notice dated February 15, 2011, to adopt EPA's "tailoring rule" (75 FR 31514, June 3, 2010).

¹¹ The narrowing rule, in effect, narrowed EPA's approval of Missouri's PSD program for GHGs so that the approved SIP would only cover sources of GHGs consistent with the timing and thresholds specified by EPA in the tailoring rule referenced previously.

applicable requirements of Sections 126 and 115, relating to interstate and international pollution abatement.

Missouri sources have not been identified by EPA as having any interstate or international impacts under Section 126 or Section 115 in any pending actions relating to the 1997 ozone standards. Missouri sources have been identified in findings under 110(a)(2)(D)(i)(I), relating to interstate impacts, in the NO_x SIP call (63 FR 57355) and the Clean Air Interstate Rule (70 FR 25162),¹² and Missouri has satisfactorily revised its SIP to respond to these findings.

Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from sources within the state. Missouri regulations require that affected states receive notice prior to the commencement of any construction or modification of a source. Rule 10 CSR 10–6.060(6) requires that the review of all PSD permit applications follow the procedures of 10 CSR 10–6.060(12)(A), Appendix A. Appendix A in turn requires that the permitting authority notify affected states once a draft permit goes out for public comment. 10 CSR 10–6.060(12)(A)11.

Based on the foregoing, EPA believes that Missouri has the adequate infrastructure needed to address section 110(a)(2)(D)(ii) for the 1997 8-hour ozone NAAQS.

(E) *Adequate authority, resources, implementation, and oversight:* Section 110(a)(2)(E) requires that SIPs provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements that the state comply with the requirements relating to state boards, pursuant to section 128 of the Act; and (3) necessary assurances that the state has responsibility for implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

(1) With respect to adequate authority, we have previously discussed Missouri's authority to implement the SIP for the 1997 ozone standards,

primarily in the discussion of section 110(a)(2)(A). Neither Missouri nor EPA has identified any legal impediments to implementation of those standards.

With respect to adequate resources, MDNR asserts that it has adequate personnel to implement the SIP. The SIP submittal for the 1997 ozone standards describes the regulations governing the various functions of personnel within the Air Pollution Control Program, including the Technical Support (Air Quality Analysis), Air Quality Planning, Enforcement, and Permitting Sections of the program (10 CSR 10–1.010(2)(D)).

With respect to funding, the Air Conservation Law requires the MACC to establish an annual emissions fee for sources in order to fund the reasonable costs of the implementing various air pollution control programs. Section 643.079 of the Air Conservation Law provides for the deposit of the fees into various subaccounts (e.g., a subaccount for the Title V operating permit program used for Title V activities; a subaccount for non-Title V activities) for use in implementing the programs. The state uses funds in the non-Title V subaccounts, along with General Revenue funds and EPA grants under, for example, sections 103 and 105 of the Act, to fund the programs. EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among others, implement the SIP.

(2) Conflict of interest provisions—Section 128.

Section 110(a)(2)(E) also provides that the state must meet the requirements of Section 128, relating to representation on state boards and conflicts of interest by members of such boards. We note that this particular provision is not related to promulgation or revision of any NAAQS, and we have not determined that Missouri must show specifically that it meets this requirement with respect to the ozone infrastructure SIP for the 1997 standards. However, the following discussion shows how Missouri generally meets the requirements of Section 128.

Section 128 requires that a SIP-implementing body which approves permits or enforcement orders under the Act must have at least a majority of members who represent the public interest and do not derive a “significant portion” of income from entities or individuals subject to permits and enforcement orders under the Act. In addition, Section 128 requires that members of such a body or the agency head with similar authorities adequately

disclose any potential conflicts of interest.

Section 643.040 of the Air Conservation Law generally tracks the language of section 128 of the Act, and requires that the Missouri Air Conservation Commission promulgate rules regarding conflict of interest. Rule 10 CSR 10–1.020 provides the specific process for disclosure of potential conflicts of interest prior to discussion of, or voting on, a rule, variance, appeal or order, and rules for voting when a member has been excluded from participation. The MACC also has an operations manual which directs members to comply with statutory requirements relating to conflict of interest, including Chapter 105 of the Missouri Revised Statutes, which contains more general prohibitions relating to conflict of interest.

MDNR officials, including the Director, are also subject to the conflict of interest provisions in Chapter 105 of the Missouri Revised Statutes. Sections 105.452 and 105.454 contain prohibitions on actions which may result in a conflict of interest.

(3) With respect to assurances that the state has responsibility to adequately implement the SIP when it authorizes local or other agencies to carry out portions of the plan, Section 643.190 designates the MDNR as the air pollution control agency “for all purposes” of the Clean Air Act. Although Section 643.140 authorizes the MACC to allow local governments such as cities or counties to carry out their own air pollution control programs, the MACC retains authority to carry out the provisions of Missouri's Air Conservation Law in local areas, notwithstanding any such authorization.

The MDNR Air Program oversees the activities of the local agencies to ensure adequate implementation of the plan by the local agencies (Kansas City, City of St. Louis, St. Louis County, and Springfield-Greene County). MDNR utilizes subgrants to the local agencies both to provide adequate funding, and as an oversight mechanism with respect to the local agencies. EPA conducts reviews of the local program activities in conjunction with its oversight of the state program.

Based on the foregoing, EPA believes that Missouri has the adequate infrastructure needed to address section 110(a)(2)(E) for the 1997 8-hour ozone NAAQS.

(F) *Stationary source monitoring system:* Section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. That section also requires that the state

¹² EPA notes that subsequent to the promulgation of the Clean Air Interstate Rule, on December 23, 2008, the District of Columbia Circuit Court of Appeals remanded the rule back to EPA without vacatur. *North Carolina v. EPA*, 550 F.3d 1176 (DC Cir. 2008). EPA has since proposed the Transport Rule (75 FR 45210) that would replace CAIR when final.

correlate the source reports with emission limitations or standards established under the Act and make reports available for public inspection.

To address this element, Section 643.050.1(3)(a) of the Air Conservation Law authorizes the state to require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to rate, period of emission and composition of effluent. Missouri rule 10 CSR 10–6.030 incorporates various EPA reference methods for testing source emissions, including methods for NO_x and VOCs. The Federal test methods are in 40 CFR Part 60, App. A.

Missouri rule 10 CSR 10–6.110 also requires monitoring of emissions and filing of periodic reports on emissions, and Missouri makes this information available to the public. Missouri uses this information to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with emission regulations and additional EPA requirements. Missouri rule 10 CSR 10–6.210, relating to treatment of confidential information, specifically excludes emissions data from confidential treatment. Under that rule emissions data includes information regarding monitoring results required to be reported by sources under Missouri's air pollution control rules. Finally, Section 643.192.2 of the Air Conservation Law requires that MDNR provide an annual report that summarizes annual changes in air quality.

EPA believes that Missouri has the adequate infrastructure needed to address section 110(a)(2)(F) for the 1997 8-hour ozone NAAQS.

(G) Emergency authority: Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or the environment (comparable to the authorities provided in Section 303 of the Act), including contingency plans to implement the emergency authorities.

Section 643.090 of the Air Conservation Law authorizes the MACC or the Director of MDNR to declare an emergency where the ambient air, due to meteorological conditions and a buildup of air contaminants, may present an “emergency risk” to public health, safety, or welfare. The MACC or Director may, with the written approval of the governor, by order prohibit, restrict or condition all sources of air

contaminants contributing to the emergency condition, during such periods of time necessary to alleviate or lessen the effects of the emergency condition. The statute also enables MDNR to promulgate implementing regulations. Even in the absence of an emergency condition, Section 643.090 also authorizes the Director to issue “cease and desist” orders to specific persons engaging in activities which involve a discharge of air contaminants, or a risk of air contamination, that presents a danger to public health or welfare.

Missouri rule 10 CSR 10–6.130 (“Controlling Emissions During Episodes of High Air Pollution Potential”) includes action levels and contingency measures for ozone and other pollutants. This rule specifies the conditions that establish an air pollution alert, watch or emergency and the associated procedures and emissions reduction objectives for dealing with each. The rule establishes action levels for one-hour and eight-hour average concentrations. The action levels and associated contingency measures vary depending on the level of ozone concentrations in a particular area. This rule is contained in the Federally approved SIP.

EPA believes that the Missouri SIP adequately addresses section 110(a)(2)(G) for the 1997 8-hour ozone NAAQS.

(H) Future SIP revisions: Section 110(a)(2)(H) requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

In addition to Missouri's general enabling authority in Section 643.050 of the Air Conservation Law, discussed previously, Section 643.055 and rules 10 CSR 10–1.010(2)(B)9 and (D) grant MACC authority to promulgate rules, and establish standards and guidelines, to ensure that the state complies with the provisions of the Federal Clean Air Act. This includes authority to revise rules as necessary to respond to a revised NAAQS and to respond to EPA findings of substantial inadequacy (*see*, for example, 71 FR 46860, August 15, 2006, in which EPA approved Missouri rules promulgated in response to EPA's NO_x SIP call for Missouri and other states).

EPA believes that Missouri has the adequate authority to address section 110(a)(2)(H) for the 1997 8-hour ozone NAAQS.

(I) Nonattainment areas: Section 110(a)(2)(I) requires that in the case of

a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of Part D of the Act, relating to SIP requirements for designated nonattainment areas.

The plan submitted by Missouri is a statewide ozone infrastructure SIP and was not intended by Missouri to meet its obligations for nonattainment areas. Missouri has one ozone nonattainment area (the St. Louis metropolitan area).

EPA has not addressed Section 110(a)(2)(I) in its recent infrastructure SIP guidance because Part D SIPs are due on a different schedule than the infrastructure SIP submittal schedule. (*See, e.g.*, the infrastructure SIP guidance for the revised lead standard, 73 FR 67034, n. 113, Nov. 12, 2008, and the infrastructure SIP guidance for the revised NO₂ standards, 75 FR 6523, n. 27, Feb. 9, 2010.) Therefore, this proposal does not address Section 110(a)(2)(I). EPA will take action on any Part D nonattainment plans through a separate rulemaking.

(J) Consultation with government officials, public notification, PSD and visibility protection: Section 110(a)(2)(J) requires SIPs to meet the applicable requirements of the following CAA provisions: (1) section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; and (3) Part C of the Act, relating to prevention of significant deterioration of air quality and visibility protection.

(1) With respect to interagency consultation, Section 643.050.3 of the Air Conservation Law requires the MACC to consult and cooperate with other Federal and state agencies, and with political subdivisions, for the purpose of implementing its air pollution control responsibilities. Missouri also has appropriate interagency consultation provisions in its preconstruction permit program. For instance, Missouri rule 10 CSR 10–6.060(12)(B) requires that when a permit goes out for public comment, the permitting authority must provide notice to local air pollution control agencies, the chief executive of the city and county where the installation or modification would be located, any comprehensive regional land use planning agency, any state air program permitting authority, and any Federal Land Manager whose lands may be affected by emissions from the installation or modification.

(2) With respect to the requirements for public notification in Section 127, Missouri rule 10 CSR 10–6.130, discussed previously in connection with

the state's authority to address emergency episodes, contains provisions for public notification of elevated ozone and other air pollutant levels, and measures which can be taken by the public to reduce concentrations. In addition, information regarding air pollution and related issues, is provided on an MDNR website, <http://www.dnr.mo.gov/pubs/index.html>.

(3) With respect to the applicable requirements of Part C, relating to prevention of significant deterioration of air quality and visibility protection, we previously noted in the discussion of section 110(a)(2)(C) (relating to enforcement of control measures) how the Missouri SIP meets the PSD requirements, incorporating the Federal rule by reference. With respect to the visibility component of section 110(a)(2)(J), we reiterate the statutory requirement providing, in relevant part, that each plan must meet the "applicable requirements" of Part C (of Title I of the Act) relating to visibility protection. We note that the other Part C requirements specified in Section 110(a)(2)(J) (applicable requirements relating to prevention of significant deterioration of air quality), specifically relate to the 1997 and 2006 NAAQS (as well as other pollutants regulated under the CAA), and a state must be able to implement those requirements with respect to a new or revised NAAQS when promulgated. In contrast to the PSD program, the visibility protection requirements are not directly related to the promulgation of, or revision to, a NAAQS. While the SIP must independently meet the visibility protection requirements of Part C by virtue of the specific SIP requirements in Sections 169A and 169B of the Act, EPA believes that the visibility protection requirements are not "applicable requirements" within the meaning of Section 110(a)(2)(J) and that the infrastructure SIP is not required to be revised with respect to visibility protection merely due to promulgation of, or revision to, these 1997 ozone NAAQS.

For the reasons stated above, EPA believes that Missouri has met the applicable requirements of Section 110(a)(2)(J) for the 1997 8-hour ozone NAAQS in the state.

(K) *Air quality and modeling/data:* Section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling, as prescribed by EPA, to predict effects on ambient air quality of emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

Missouri has authority to conduct air quality modeling and report the results

of such modeling to EPA. Section 643.050 of the Air Conservation Law provides Missouri with the general authority to develop a general comprehensive plan to prevent, abate, and control air pollution. EPA believes that this statutory authority, along with other authorities such as found in Section 643.055 discussed above, provides MDNR with authority to conduct modeling to address NAAQS issues. As an example of regulatory authority to perform modeling for purposes of determining NAAQS compliance, Missouri regulation 10 CSR 10-6.060, App. F requires the use of EPA-approved air quality models (e.g., those found in 40 CFR part 51, App. W) for construction permitting. Rule 10 CSR 10-6.110 requires specified sources of air pollution to report emissions to MDNR, which among other purposes may be utilized in modeling analyses. These data are available to any member of the public, upon request. 10 CSR 10-6.110(3)(D).

EPA believes that Missouri has the adequate infrastructure needed to address section 110(a)(2)(K) for the 1997 8-hour ozone NAAQS.

(L) *Permitting Fees:* Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to the permitting authority to cover the cost of reviewing, approving, implementing and enforcing a permit. That section provides that the fee requirement applies until a fee program established by the state pursuant to Title V of the Act, relating to operating permits, is approved by EPA.

Section 643.079 of the Air Conservation Law provides authority for MDNR to collect permit fees, including Title V fees. Missouri's Title V program, including the fee program addressing the requirements of the Act and 40 CFR 70.9 relating to Title V fees, was approved by EPA in May 1997 (62 FR 26405, May 14, 1997). Therefore, EPA believes that the requirements of section 110(a)(2)(L) are met.

(M) *Consultation/participation by affected local entities:* Section 110(a)(2)(M) requires SIPs to provide for consultation and participation by local political subdivisions affected by the SIP.

Section 643.050.3(6) of the Air Conservation Law requires that the MACC encourage political subdivisions to handle air pollution control problems within their respective jurisdictions to the extent possible and practicable. Section 643.140 provides the mechanism for local political subdivisions to participate in plan development, while maintaining

oversight of local programs within the MACC. The MDNR's Air Pollution Control Program has signed State and Local Agreements with the air agencies with St. Louis City, St. Louis County, Kansas City and Springfield/Greene County. In addition, the program participates in community meetings, consults with, and participates in, interagency consultation groups such as the Metropolitan Planning Organizations in both Kansas City and St. Louis. In Kansas City, MDNR works with the Mid-America Regional Council and in St. Louis, MDNR works with East-West Gateway Coordinating Council of Governments.

Therefore, EPA believes that Missouri has the adequate infrastructure needed to address Section 110(a)(2)(M) for the 1997 8-hour ozone NAAQS.

IV. What action is EPA proposing?

EPA proposes to approve the State Implementation Plan (SIP) submittal from the state of Missouri which addresses the requirements of Clean Air Act section 110 (a)(2) for the 1997 revisions to the National Ambient Air Quality Standards (NAAQS) for ozone. As described above, EPA believes that Missouri has the required infrastructure to address all elements of section 110(a)(2) to ensure that the revised ozone standards are implemented in the state.

We are hereby soliciting comment on this proposed action. Final rulemaking will occur after consideration of any comments.

V. Statutory and Executive Order Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- 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 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to 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.

Statutory Authority

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: March 23, 2011.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011-7470 Filed 3-29-11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2011-0310; FRL-9287-8]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) submittal from the state of Nebraska addressing the requirements of Clean Air Act (CAA) sections 110(a)(1) and (2) for the 1997 revisions to the National Ambient Air Quality Standards (NAAQS) for ozone. Section 110(a)(1) requires that each state adopt and submit a SIP to support implementation of each new or revised NAAQS promulgated by the EPA and these SIPs are commonly referred to as “infrastructure” SIPs. EPA believes that Nebraska’s infrastructure SIP adequately addresses the elements described in section 110(a)(2) and further described in the October 2, 2007 guidance for infrastructure SIPs issued by the EPA Office of Air Quality Planning and Standards. However, because EPA already approved the portion of Nebraska’s SIP submittal relating to the interstate transport infrastructure element, section 110(a)(2)(D)(i), this proposed rulemaking does not address the interstate transport element, nor does this proposal reopen any aspect of EPA’s prior action on the interstate transport element. Furthermore, this action does not address infrastructure requirements with respect to the 1997 PM_{2.5} NAAQS or the 2006 revisions to the NAAQS. Those requirements will be addressed in future rulemaking.

DATES: Comments must be received on or before April 29, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2011-0310 by one of the following methods:

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

2. *E-mail:* kramer.elizabeth@epa.gov.

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

4. *Hand Delivery or Courier:* Deliver your comments to Ms. Elizabeth Kramer, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2011-0310. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and should be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we refer to EPA. This section provides additional