ability to collect adequate fees. Idaho's title V program included a demonstration the State will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). Idaho regulations require permitting fees for major sources subject to new source review, as specified at IDAPA 58.01.01.224 through 227. Therefore, we are proposing to conclude that Idaho has satisfied the requirements of CAA section 110(a)(2)(L) for the 2010 NO_2 and 2010 SO_2 NAAQS.

110(a)(2)(M): Consultation/Participation by Affected Local Entities

CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

State submittals: The Idaho submittals reference IDAPA 58.01.01.209, 364 and 404 which provide for the public processes related to developing and issuing air quality permits. In addition, the submittals reference the transportation conformity consultation and public processes at IDAPA 58.01.01.563 through 574. Finally, the submittals reference the consultation and participation process outlined in 40 CFR 51.102, incorporated by reference at IDAPA 58.01.01.107.

EPA analysis: The EPA most recently approved IDAPA 58.01.01.107 (incorporations by reference), which incorporates by reference EPA regulations at 40 CFR part 51—Requirements for Preparation, Adoption, and Submittal of Implementation Plans on March 3, 2014 (79 FR 11711). In addition, we most recently approved Idaho permitting rules at IDAPA 58.01.01.209 and 58.01.01.404, which provide opportunity and procedures for public comment and notice to appropriate Federal, state and local agencies, on November 26, 2010 (75 FR 47530). Finally, we approved the State rules that define transportation conformity consultation on April 12, 2001 (66 FR 18873). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2010 NO_2 and 2010 SO_2 NAAQS.

V. Proposed Action

The EPA is proposing to find that the Idaho SIP meets the following CAA section 110(a)(2) infrastructure elements for the 2010 NO_2 and 2010 SO_2 NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This action is being taken under section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the state's law as meeting Federal requirements and does not impose additional requirements beyond those imposed by the state's 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 the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because the action does not involve technical standards; and
- does not provide the 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 Idaho, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 27, 2014.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2014–08609 Filed 4–16–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2014–0018, FRL–9909–46–Region 10]

Approval and Promulgation of Implementation Plans; Oregon: Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve part of the December 27, 2013, State Implementation Plan (SIP) submittal from Oregon for purposes of meeting the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for lead (Pb) on October 15, 2008. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIP to ensure that it meets the infrastructure requirements necessary to implement the new or revised NAAQS. The EPA is proposing to find that the Oregon SIP meets the CAA infrastructure requirements for the 2008 Pb NAAQS.

DATES: Comments must be received on or before May 19, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2014–0018, by any of the following methods:

- Email: *R10-Public_Comments@epa.gov*.
- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- Mail: Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- Hand Delivery: EPA Region 10 Mailroom, 9th Floor, 1200 Sixth

Avenue, Suite 900, Seattle, WA 98101. Attention: Kristin Hall, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2014–0018. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at: (206) 553–6357, *hall.kristin@epa.gov*, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA. Information is organized as follows:

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I. Background

On October 15, 2008, the EPA revised the level of the primary and secondary Pb NAAQS from 1.5 micrograms per cubic meter (μg/m^3) to 0.15 μg/m^3. The CAA requires SIPs meeting the requirements of sections 110(a)(1) and (2) be submitted by states within three years after promulgation of a new or revised standard. CAA sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called ''infrastructure'' requirements. States were required to submit such SIPs for the 2008 Pb NAAQS to the EPA no later than October 15, 2011.

To help states meet this statutory requirement, the EPA issued guidance to address infrastructure SIP elements under CAA sections 110(a)(1) and (2).[1] As noted in the guidance, to the extent an existing SIP already meets the CAA section 110(a)(2) requirements, states may certify that fact in a letter to the EPA. The certification should address each CAA section 110(a)(2) infrastructure element as applicable to the 2008 Pb NAAQS. The certification should include documentation demonstrating a correlation between each 110(a)(2) infrastructure element and an equivalent state statutory authority in the existing or submitted SIP. As for all SIP submittals, a state should provide reasonable public notice of, and an opportunity for a public hearing on, the certification before it is submitted to the EPA.

CAA section 110(a) imposes the obligation upon states to make a SIP submission to the EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In the case of the 2008 Pb NAAQS, states typically have met the basic infrastructure elements set out in CAA section 110(a)(2) through earlier SIP submissions.

On December 27, 2013, the State of Oregon made a submittal to the EPA to meet the requirements of CAA section 110(a)(1) and (2) infrastructure elements for the 2008 Pb NAAQS, 2010 nitrogen dioxide NAAQS, and 2010 sulfur dioxide NAAQS. We note that this action is only addressing the portion of the submittal related to the 2008 Pb NAAQS. We will address the remainder of the submittal in a separate action.

The submittal included an analysis of Oregon's SIP as it relates to each section of the CAA section 110(a)(2) infrastructure elements for the 2008 Pb NAAQS. Oregon provided notice and an opportunity for public comment on the submittal from July 15, 2013, through August 15, 2013. A notice of public hearing was published in the *Oregonian* on July 15, 2013. The State held a public hearing on August 15, 2013, in Portland, Oregon. Comments received during the comment period and the State's responses were included in the submittal. We have evaluated Oregon's submittal and have determined that Oregon met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

II. CAA Sections 110(a)(1) and (2) Infrastructure Elements

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. CAA section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. These requirements include SIP infrastructure elements such as modeling, monitoring, and enforcement that are designed to assure attainment and maintenance of the NAAQS. The requirements, with their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.[2]

[1] Stephen D. Page, Director, Office of Air Quality Planning and Standards. ''Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards.'' Memorandum to EPA Air Division Directors, Regions I–X, October 14, 2011.

[2] Oregon's submittal does not address CAA section 110(a)(2)(D)(i)(I). In accordance with the panel of the U.S. Court of Appeals for the D.C. Circuit opinion, the EPA does not consider an Oregon 110(a)(2)(D)(i)(I) SIP for the 2008 Pb NAAQS as a required submittal at this time. *See EME Homer City generation, L.P.* v. *EPA, 696 F .3d*

- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

The EPA's October 14, 2011, guidance restated our interpretation that two elements identified in CAA section 110(a)(2) are not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather, are due at the time the nonattainment area plan requirements are due pursuant to CAA section 172 and the various pollutant specific subparts 2–5 of part D. These requirements are: (i) submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by CAA section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or CAA section 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title I of the CAA are not changed by a new NAAQS.

III. EPA Approach to Review of Infrastructure SIP Submittals

The EPA is acting upon the portion of the SIP submission from Oregon that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Pb NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

The EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, the EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by the EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[3] The EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, the EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for the EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while the EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the CAA, which specifically address nonattainment SIP requirements.[4] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires the EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[5] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, the EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether the

7 (D.C. Cir. 2012), *cert. granted,* 2013 U.S. Lexis 4801 (2013). Unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court, which granted review of the case on June 24, 2013 and heard oral argument on December 10, 2013, states are not required to submit 110(a)(2)(D)(i)(I) SIPs until the EPA has quantified their obligations under that section. The portions of the Oregon SIP submittal relating to 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii), in contrast, are required. In this notice, we are proposing to approve Oregon's submittal for purposes of 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii) for the 2008 Pb NAAQS.

[3] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[4] See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule,'' 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[5] The EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, the EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, the EPA can elect to act on such submissions either individually or in a larger combined action.[6] Similarly, the EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, the EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[7]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, the EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[8]

The EPA notes that interpretation of section 110(a)(2) is also necessary when the EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, the EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), the EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, the EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, the EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, the EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[9] The EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[10] The EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, the EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. The EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[11] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, the EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, the EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, the EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the

[6] See, e.g., ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (the EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of the EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' (78 FR 4337) (January 22, 2013) (the EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[7] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to the EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). The EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), the EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[8] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[9] The EPA notes, however, that nothing in the CAA requires the EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not the EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[10] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[11] The EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). The EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, the EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether the EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains the EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in the EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, the EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and the EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including greenhouse gases. By contrast, structural PSD program requirements do not include provisions that are not required under the EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions the EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, the EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, the EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, the EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and the EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of the EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007). Thus, the EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[12] It is important to note that the EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

The EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. The EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and the EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when the EPA evaluates adequacy of the infrastructure SIP submission. The EPA believes that a better approach is for states and the EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, the EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, the EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes the EPA to issue a ''SIP call'' whenever the EPA determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[13] Section 110(k)(6) authorizes the EPA to correct errors in past actions, such as past approvals of SIP submissions.[14]

[12] By contrast, the EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then the EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[13] For example, the EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

[14] The EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See ''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). The EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051

Continued

Significantly, the EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude the EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, the EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[15]

IV. Analysis of the State Submittal

The Oregon submittal lists specific provisions of the Oregon Revised Statutes (ORS) Chapter 468 Environmental Quality Generally, Public Health and Safety, General Administration; ORS Chapter 468A Air Quality, Public Health and Safety, Air Quality Control; Oregon Administrative Rules (OAR) Chapter 340, and the Oregon SIP. The specific sections are listed below, with a discussion of how the Oregon SIP meets the requirements of the CAA section 110(a)(2) infrastructure elements.

110(a)(2)(A): Emission Limits and Other Control Measures

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.

State submittal: Oregon's submittal cites multiple Oregon air quality laws and SIP-approved regulations to address this element for the 2008 Pb NAAQS. ORS 468A.035 ''General Comprehensive Plan'' provides authority to the Oregon Department of Environmental Quality (ODEQ) to develop a general comprehensive plan for the control or abatement of air pollution. ORS 468A.020 ''Rules and Standards'' gives the State Environmental Quality Commission (EQC) authority to adopt rules and standards to perform functions vested by law. ORS 468A.025 ''Air Purity Standards'' provides the EQC with authority to set air quality standards, emission standards, and emission treatment and control provisions. ORS 468A.040 ''Permits; Rules'' provides that the EQC may require permits for specific sources, type of air contaminant or specific areas of the State. The Oregon submittal cites the following additional laws and regulations:

- ORS 468A.045 ''Activities Prohibited without Permit; Limit on Activities with Permit''
- ORS 468A.050 ''Classification of Air Contamination Sources; Registration and Reporting; Registration and Reporting of Sources; Rules; Fees''
- ORS 468A.055 ''Notice Prior to Construction of New Sources; Order Authorizing or Prohibiting Construction; Effect of No Order; Appeal''
- ORS 468A.070 ''Measurement and Testing of Contamination Sources; Rules''
- ORS 468A.310 ''Federal Operating Permit Program Approval; Rules; Content of Plan''
- ORS 468A.315 ''Emission Fees for Major Sources; Base Fees; Basis of Fees; Rules''
- ORS 468A.350–455 ''Motor Vehicle Pollution Control''
- ORS 468A.365 ''Certification of Motor Vehicle Pollution Control Systems and Inspection of Motor Vehicles; Rules''
- ORS 468A.400 ''Fees; collection; Use; Motor Vehicle Pollution Control''
- ORS 468A.990 ''Penalties for Air Pollution Offenses''
- ORS 815 ''Vehicle Equipment Generally; Oregon Vehicle Code; General Provisions''
- OAR 340–200 ''General Air Pollution Procedures and Definitions''
- OAR 340–202 ''Ambient Air Quality Standards and PSD Increments''
- OAR 340–204 ''Designation of Air Quality Areas''
- OAR 340–216 ''Air Contaminant Discharge Permits''
- OAR 340–222 ''Stationary Source Plant Site Emission Limits''
- OAR 340–224 ''Major New Source Review''
- OAR 340–225 ''Air Quality Analysis Requirements''
- OAR 340–228 ''Requirements for Fuel Burning Equipment and Fuel Sulfur Content''
- OAR 340–234 ''Emission Standards for Wood Products Industries: Emission Limitations''
- OAR 340–236 ''Emission Standards for Specific Industries: Emission Limits''
- OAR 340–250 ''General Conformity''
- OAR 340–252 ''Transportation Conformity''
- OAR 340–256 ''Motor Vehicles''
- OAR 340–258 ''Motor Vehicle Fuel Specifications''
- OAR 340–268 ''Emission Reduction Credits''

The submittal includes revisions to Division 200 ''General Air Pollution Procedures and Definitions'' and Division 202 ''Ambient Air Quality Standards and PSD Increments.'' With respect to Division 200, the submittal revises OAR 340–200–0020 ''General Air Quality Definitions, Table 1—Significant Air Quality Impact'' to add significant impact levels to the table for purposes of implementing the Oregon source permitting program for the 1-hour NO_2 and 1-hour SO_2 NAAQS. The submittal also revises OAR 340–200–0040 ''State of Oregon Clean Air Act Implementation Plan'' to reflect the date last modified, specifically October 16, 2013. With respect to Division 202, the submittal revises OAR 340–202–0070 ''Sulfur Dioxide,'' OAR 340–202–0010 ''Nitrogen Dioxide,'' and OAR 340–202–0130 ''Ambient Air Quality Standard for Lead'' to align with the revised Federal NAAQS. The submittal also adds OAR 340–202–0020 ''Applicability'' to clarify that Lane County Lane Regional Air Protection Agency (LRAPA) implements Division 202 in Lane County, unless LRAPA has adopted rules that are at least as strict.

EPA analysis: The EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D, title I of the CAA to be governed by the submission deadline of CAA section 110(a)(1). Regulations and other control measures for purposes of attainment planning under part D, title I of the CAA are due on a different schedule than infrastructure SIPs. In addition, Oregon has no areas designated nonattainment for the 2008 Pb NAAQS and generally regulates emissions of Pb through its SIP-approved major and minor new source review (NSR) permitting programs, and other SIP-approved regulations cited above.

On December 27, 2011, the EPA approved an Oregon SIP revision to adopt the 2008 Pb NAAQS at OAR 340–202–0130 ''Ambient Air Quality Standard for Lead'' (76 FR 80747). In the same action, we approved revisions to update Oregon's major and minor NSR permitting programs for fine particulate matter, among other things. In the December 27, 2013, submittal, Oregon revises OAR 340–202–0130 ''Ambient

(November 3, 2009) (corrections to Arizona and Nevada SIPs).

[15] See, e.g., the EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

Air Quality Standard for Lead'' to include more specific language on the form of the standard and the appropriate reference method for determining compliance with the standard. The submittal also adds OAR 340–202–0020 ''Applicability'' to clarify that Lane Regional Air Protection Agency (LRAPA) implements Division 202 in Lane County, unless LRAPA has SIP-approved rules specific to its jurisdiction that are at least as strict.

Based on the above, we are proposing to approve the revision to OAR 340–202–0130 ''Ambient Air Quality Standard for Lead'' and the addition of OAR 340–202–0020 ''Applicability.'' We are taking no action on the rule revisions to OAR 340–200–0020 ''General Air Quality Definitions, Table 1—Significant Air Quality Impact,'' OAR 340–202–0070 ''Sulfur Dioxide,'' and OAR 340–202–0100 ''Nitrogen Dioxide'' because the revisions are outside the scope of this Pb infrastructure action. We intend to address the NO_2 and SO_2 revisions in a separate action.

Additionally, we are not approving the submitted revision to OAR 340–200–0040 ''State of Oregon Clean Air Act Implementation Plan'' because it is unnecessary to take action on a provision addressing State SIP adoption procedures and because the relevant SIP provisions have been separately submitted and approved. Based on the above analysis, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(A) for the 2008 Pb NAAQS.

We note that, in this action, we are not proposing to approve or disapprove any existing State provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. The EPA believes that a number of states may have SSM provisions that are contrary to the CAA and existing EPA guidance [16] and the EPA plans to address such state regulations. In the meantime, we encourage any state having a deficient SSM provision to take steps to correct it as soon as possible.

In addition, we are not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. The EPA believes that a number of states may have such provisions that are contrary to the CAA and existing EPA guidance (November 24, 1987, 52 FR 45109), and the EPA plans to take action in the future to address such state regulations. In the meantime, we encourage any state having a director's discretion or variance provision that is contrary to the CAA and the EPA guidance to take steps to correct the deficiency as soon as possible.

110(a)(2)(B): Ambient Air Quality Monitoring/Data System

CAA section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to the EPA upon request.

State submittal: The Oregon submittal references ORS 468.035(a-e, m) ''Functions of the Department'' which provides authority to conduct and supervise inquiries and programs to assess and communicate air conditions and to obtain necessary resources (assistance, materials, supplies, etc) to meet these responsibilities. Oregon also references OAR 340–212 ''Stationary Source Testing and Monitoring'' regulations.

EPA analysis: A comprehensive air quality monitoring plan, intended to meet the requirements of 40 CFR part 58 was submitted by Oregon to the EPA on December 27, 1979 (40 CFR 52.1970) and approved by the EPA on March 4, 1981 (46 FR 15136). This air quality monitoring plan has been subsequently updated and most recently approved by the EPA on March 10, 2014.[17] This plan includes, among other things, the locations for Pb monitoring. Oregon provides an annual air quality data report to the public at *http://www.deq.state.or.us/aq/forms/annrpt.htm.* Therefore, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2008 Pb NAAQS.

110(a)(2)(C): Program for Enforcement of Control Measures

CAA section 110(a)(2)(C) requires states to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

State submittal: The Oregon submittal refers to ORS 468.090–140 ''Enforcement'' which provides ODEQ with authority to investigate complaints, investigate and inspect sources for compliance, access records, commence enforcement procedures, and impose civil penalties. In addition, ORS 468.035 ''Functions of the Department,'' paragraphs (j) and (k), provide ODEQ with authority to enforce Oregon air pollution laws and compel compliance with any rule, standard, order, permit or condition. In addition to these statutes, the submittal cites the following Oregon laws and regulations:

- ORS 468.020 ''Rules and Standards''
- ORS 468.065 ''Issuance of Permits; Consent; Fees; Use''
- ORS 468.070 ''Denial, Modification, Suspension or Revocation of Permits''
- ORS 468.920–963 ''Environmental Crimes''
- ORS 468.996–997 ''Civil Penalties''
- ORS 468A.025 ''Air Purity Standards; Air Quality Standards; Treatment and Control of Emissions; Rules''
- ORS 468A.035 ''General Comprehensive Plan''
- ORS 468A.040 ''Permits; Rules''
- ORS 468A.045 ''Activities Prohibited without Permit; Limit on Activities with Permit''
- ORS 468A.050 ''Classification of Air Contamination Sources; Registration and Reporting; Registration and Reporting of Sources; Rules; Fees''
- ORS 468A.055 ''Notice Prior to Construction of New Sources; Order Authorizing or Prohibiting Construction; Effect of No Order; Appeal''
- ORS 468A.070 ''Measurement and Testing of Contamination Sources; Rules''
- ORS 468A.310 ''Federal Operating Permit Program Approval; Rules; Content of Plan''
- ORS 468A.990 ''Penalties for Air Pollution Offenses''
- OAR 340–012 ''Enforcement Procedure and Civil Penalties''
- OAR 340–202 ''Ambient Air Quality Standards and PSD Increments''
- OAR 340–210 ''Stationary Source Notification Requirements''
- OAR 340–214 ''Stationary Source Reporting Requirements''
- OAR 340–216 ''Air Contaminant Discharge Permits (ADCP)''
- OAR 340–224 ''Major New Source Review''

EPA analysis: The EPA is proposing to find that the Oregon code provisions referenced above provide ODEQ with

[16] For further description of the EPA's SSM Policy, *see, e.g.,* a memorandum dated September 20, 1999, titled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation. Also, the EPA issued a proposed action on February 12, 2013, titled ''State Implementation Plans: Response to Petition for Rulemaking: Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction.'' This rulemaking responds to a petition for rulemaking filed by the Sierra Club that concerns SSM provisions in 39 states' SIPs (February 22, 2013, 78 FR 12460).

[17] Oregon Monitoring Network Approval Letter, dated March 10, 2014.

authority to enforce the air quality laws, regulations, permits, and orders promulgated pursuant to ORS Chapters 468 and 468A. ODEQ staffs and maintains an enforcement program to ensure compliance with SIP requirements. The ODEQ Director, at the direction of the Governor, may enter a cease and desist order for polluting activities that present an imminent and substantial danger to public health (ORS 468–115). Enforcement cases may be referred to the State Attorney General's Office for civil or criminal enforcement. Therefore, the EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(C) related to a program of enforcement measures for the 2008 Pb NAAQS.

To generally meet the requirements of CAA section 110(a)(2)(C) with regard to the regulation of construction of new or modified stationary sources, a state is required to have PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2008 Pb NAAQS. As explained above, we are not in this action evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D, title I of the CAA. In addition, Oregon has no designated nonattainment areas for the 2008 Pb NAAQS.

We are proposing to find that the Oregon SIP meets the requirements related to PSD under CAA section 110(a)(2)(C) for the 2008 Pb NAAQS. The Oregon major NSR program includes requirements for major source permitting in nonattainment areas, maintenance areas, and attainment and unclassifiable areas (OAR 340–224). Oregon's Federally-enforceable state operating permit program is found at OAR 340–216 ''Air Contaminant Discharge Permits,'' and is also the administrative permit mechanism used to implement the notice of construction and major new source review programs. ODEQ delegates authority to LRAPA to implement the source permitting programs within LRAPA's area of jurisdiction. The requirements and procedures contained in OAR 340–216, OAR 340–222 and OAR 340–224 are used by LRAPA to implement its permitting programs until it adopts rules which are at least as restrictive as State rules. We most recently approved revisions to the Oregon major NSR rules on December 27, 2011 (76 FR 80747).

The EPA notes that on January 4, 2013, the U.S. Court of Appeals in the District of Columbia, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded two of the EPA's rules implementing the 1997 $PM_{2.5}$ NAAQS, including the ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' (73 FR 28321, May 16, 2008) (2008 $PM_{2.5}$ NSR Implementation Rule). The court ordered the EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.''*Id.* at 437. Subpart 4 of part D, title I of the CAA establishes additional provisions for particulate matter nonattainment areas. The 2008 $PM_{2.5}$ NSR Implementation Rule addressed by the court's decision promulgated NSR requirements for implementation of $PM_{2.5}$ in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 $PM_{2.5}$ NSR Implementation Rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, we do not anticipate the need to revise any PSD requirements promulgated in the 2008 $PM_{2.5}$ NSR Implementation Rule in order to comply with the court's decision. Accordingly, our proposed approval of elements 110(a)(2)(C), (D)(i)(II), and (J), with respect to the PSD requirements, does not conflict with the court's opinion. The EPA interprets the CAA section 110(a)(1) and (2) infrastructure submittals due three years after adoption or revision of a NAAQS to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which are due by the dates statutorily prescribed under subparts 2 through 5 under part D, extending as far as ten years following designations for some elements.

In addition, we note that on December 27, 2011, we approved revisions to the Oregon SIP made in response to the Federal ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC); Final Rule'' (2010 PSD $PM_{2.5}$ Implementation Rule) (75 FR 64864). *See 76 FR 80747.* However, on January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club* v. *EPA,* 703 F.3d 458 (D.C. Cir. 2013), issued a judgment that, *inter alia,* vacated the provisions adding the $PM_{2.5}$ Significant Monitoring Concentration to the Federal regulations, at 40 CFR 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*), that were promulgated as part of the 2010 PSD $PM_{2.5}$ Implementation Rule (75 FR 64864). In its decision, the court held that the EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for $PM_{2.5}$ be included in all PSD permit applications. Thus, although the $PM_{2.5}$ SMC was not a required element of a state's PSD program, were a state PSD program that contains such a provision to use that provision to issue new permits without requiring ambient $PM_{2.5}$ monitoring data, such application of the vacated SMC would be inconsistent with the court's opinion and the requirements of section 165(e)(2) of the CAA.

This decision also, on the EPA's request, vacated and remanded to the EPA for further consideration the portions of the 2010 PSD $PM_{2.5}$ Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to SILs for $PM_{2.5}$. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for $PM_{2.5}$, because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the **Federal Register** publication when we promulgated these provisions. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. The court's decision does not affect the PSD increments for $PM_{2.5}$ promulgated as part of the 2010 PSD $PM_{2.5}$ Implementation Rule.

On December 9, 2013 the EPA removed the affected $PM_{2.5}$ SILs and SMC provisions from the Code of Federal Regulations (78 FR 73698). In the December 9, 2013, action we stated that ''Permitting authorities with EPA-approved SIPs containing any or all of the affected $PM_{2.5}$ SILs and SMC provisions previously allowed by sections 51.166(k)(2) and 51.166(i)(5)(i)(*c*) should remove their corresponding SILs provisions and revise the numerical value of the $PM_{2.5}$ SMC to 0 $\mu g/m^3$ (or make equivalent changes) as soon as feasible, which may be in conjunction with the next otherwise planned SIP revision.'' We also advised that ''these provisions as reflected in the existing state and local EPA-approved SIPs are unlawful and may not be applied even prior to their removal from the SIPs.'' Oregon intends to address the court decision on SMC

and SIL provisions in a rulemaking proposal regarding updates to its permitting program in 2014.

Given the clarity of the court's decision and our December 9, 2013, action to remove the provisions from the Code of Federal Regulations, the $PM_{2.5}$ SILs and SMC provisions included in Oregon's SIP-approved PSD program on the basis of the EPA's regulations are unlawful and no longer enforceable by law. Permits issued on the basis of these provisions as they appear in Oregon's SIP would be inconsistent with the CAA and difficult to defend in administrative and judicial challenges. Thus, the SIP provisions may not be applied even prior to their removal from the SIP. As the vacated $PM_{2.5}$ SILs and SMC provisions in the Oregon SIP are no longer enforceable, the EPA does not believe the existence of the provisions in the Oregon SIP precludes our proposed approval of the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(C), (D)(i)(II), and (J) as those elements relate to a comprehensive PSD program.

Oregon's SIP-approved minor NSR program applies major source NSR/PSD requirements to any source with emissions over the significant emission rate, through the administrative mechanisms laid out in OAR 340–216 ''Air Contaminant Discharge Permits.'' The EPA has determined that Oregon's Federally-approved minor NSR program, adopted pursuant to section 110(a)(2)(C) of the CAA, regulates emissions of Pb. Based on the analysis above, we are proposing to find that the Oregon SIP includes enforcement and minor source permitting provisions that are adequate to satisfy the requirements of CAA section 110(a)(2)(C) for the 2008 Pb NAAQS. Based on the above analysis, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 2008 Pb NAAQS.

110(a)(2)(D): Interstate Transport

CAA section 110(a)(2)(D)(i) addresses four separate elements, or ''prongs.'' CAA section 110(a)(2)(D)(i)(I) requires state SIPs contain adequate provisions prohibiting emissions which will contribute significantly to nonattainment of the NAAQS in any other state (prong 1), and adequate provisions prohibiting emissions which will interfere with maintenance of the NAAQS by any other state (prong 2). CAA section 110(a)(2)(D)(i)(II) requires that state SIPs contain adequate provisions prohibiting emissions which will interfere with any other state's required measures to prevent significant deterioration (PSD) of its air quality (prong 3), and adequate provisions prohibiting emissions which will interfere with any other state's required measures to protect visibility (prong 4).

State submittal: The Oregon submittal addresses the requirements of CAA section 110(a)(2)(D)(i)(II) (prongs 3 and 4) only. As noted above, the Oregon submittal does not address CAA section 110(a)(2)(D)(i)(I). See footnote 2. The Oregon submittal references OAR–340–200 ''General Air Pollution Definitions and Procedures'' and OAR 340–202 ''Ambient Air Quality Standards and PSD Increments.'' The submittal also notes that the EPA most recently approved revisions to Oregon's major NSR rules on December 27, 2011 (76 FR 80747).

EPA analysis: In this action, we are proposing to approve the Oregon SIP for purposes of CAA sections 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii) for the 2008 Pb NAAQS. The EPA believes that the PSD sub-element of CAA section 110(a)(2)(D)(i)(II) (prong 3) is satisfied where new major sources and major modifications in Oregon are subject to a Federally-approved PSD program that satisfactorily implements the 2008 Pb NAAQS. In this action, as discussed under section 110(a)(2)(A), we are proposing to approve revisions to OAR Division 202 ''Ambient Air Quality Standards and PSD Increments.'' In addition, the EPA most recently approved revisions to Oregon's major NSR rules on December 27, 2011 (76 FR 80747) for purposes of fine particulate matter, among other things. As discussed in section 110(a)(2)(C) above, we believe that our proposed approval of element 110(a)(2)(D)(i)(II) is not affected by recent court vacaturs of Federal PSD implementing regulations. Therefore, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) with regard to PSD for the 2008 Pb NAAQS.

The EPA believes, as noted in the October 14, 2011, guidance, that with regard to the CAA section 110(a)(2)(D)(i)(II) visibility sub-element, significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from the source and most, if not all Pb stationary sources, are located at distances from Class I areas such that visibility impacts would be negligible. Although Pb can be a component of coarse and fine particles, Pb generally comprises a small fraction of coarse and fine particles. Furthermore, when evaluating the extent that Pb could impact visibility, Pb-related visibility impacts were found to be insignificant (e.g., less that 0.10%).[18] Where a state's regional haze SIP has been approved as meeting all current obligations, a state may rely upon those provisions in support of its demonstration that is satisfies the requirements of CAA section 110(a)(2)(D)(i)(II) as it relates to visibility.

On December 14, 2010, Oregon submitted the Oregon Regional Haze SIP. On July 5, 2011, the EPA approved portions of the Oregon Regional Haze SIP, including the requirements for best available retrofit technology (BART) (76 FR 38997). We approved the remaining elements of the Oregon Regional Haze SIP on August 22, 2012 (77 FR 50611). Because we approved the Oregon SIP as meeting the regional haze requirements, we are proposing to approve the Oregon SIP as meeting the CAA section 110(a)(2)(D)(i)(II) visibility requirements with respect to the 2008 Pb NAAQS.

Interstate and International transport provisions: CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

State submittal: The Oregon submittal references OAR 340–209 ''Public Participation,'' as part of the Federally-approved Oregon PSD program. The submittal states that Oregon regulations are consistent with Federal requirements in Appendix N of 40 CFR part 50 pertaining to the notification of interstate pollution abatement.

EPA analysis: The EPA most recently approved revisions to the Oregon major NSR regulations on December 27, 2011 (76 FR 80747). The public notice provisions at OAR 340–209–0060 require that for major NSR actions, ODEQ will provide notice to neighboring states, among other officials and agencies. Oregon has no pending obligations under section 115 or 126(b) of the CAA. Therefore, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 2008 Pb NAAQS.

110(a)(2)(E): Adequate Resources

CAA section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any

[18] Analysis by Mark Schmidt, OAQPS. ''Ambient Pb's Contribution to Class 1 Area Visibility Impairment,'' November 7, 2011.

provision of Federal or state law from carrying out the SIP or portion thereof), (ii) requirements that the State comply with the requirements respecting state boards under CAA section 128 and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the State has responsibility for ensuring adequate implementation of such SIP provision.

State submittal: With respect to the requirements of sub-element (E)(i), the Oregon submittal cites ORS 468.035 ''Functions of Department'' which provides ODEQ authority to employ personnel, purchase supplies, enter into contracts, and to receive, appropriate, and expend federal and other funds for purposes of air pollution research and control. In addition, ORS 468.045 ''Functions of Director; Delegation'' provides the ODEQ Director with authority to hire, assign, reassign, and coordinate personnel of the department and to administer and enforce the laws of the State concerning environmental quality. In addition, the submittal cites the CAA section 105 grants received from the EPA and matched through the Oregon General Fund.

With respect to the requirements of sub-element (E)(ii), the submittal cites OAR 340–200–0100 ''Purpose,'' OAR 340–200–0110 ''Public Interest Representation,'' and OAR 340–200–0120 ''Disclosure of Potential Conflicts of Interest.'' The submittal states that the EPA approved the listed regulatory provisions as meeting the requirements of CAA section 128 on January 22, 2003 (68 FR 2891).

With respect to the requirements of sub-element (E)(iii), the submittal cites ORS 468.020 ''Rules and Standards'' which requires a public hearing on any proposed rule or standard prior to adoption. ORS 468.035(c) ''Functions of Department'' provides ODEQ authority to advise, consult, and cooperate with other states, state and federal agencies, or political subdivisions on all air quality control matters. ORS 468A.010 ''Policy'' calls for a coordinated statewide program of air quality control with responsibility allocated between the state and the units of local government. ORS 468A.100–180 ''Regional Air Quality Control Authorities'' describes the establishment, role and function of regional air quality control authorities. State regulations at OAR 340–200 ''General Air Quality Definitions'' specify LRAPA has authority in Lane County and defines the term ''Regional Agency.'' OAR 340–204 ''Designation of Air Quality Areas'' includes designation of control areas within Lane County. OAR 340–216 ''Air Contaminant Discharge Permits'' includes permitting authorities for LRAPA.

EPA analysis: We are proposing to find that the above-referenced provisions provide Oregon with adequate authority to carry out SIP obligations with respect to the 2008 Pb NAAQS as required by CAA section 110(a)(2)(E)(i). We are also proposing to approve the Oregon SIP as meeting CAA section 110(a)(2)(E)(ii), which requires that SIPs contain requirements to comply with CAA section 128, for the Pb NAAQS. On January 22, 2003, we approved OAR 340–200–0100 through OAR 340–200–0120 as meeting the requirements of CAA section 128 (68 FR 2891). We previously approved LRAPA Title 12, Section 025 (recodified at LRAPA Title 13, section 025) as meeting the requirements of CAA section 128 on March 1, 1989 (54 FR 8538). Finally, we are proposing to find that Oregon has provided necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the State has responsibility for ensuring adequate implementation of the SIP with regards to the 2008 Pb NAAQS as required by CAA section 110(a)(2)(E)(iii). Therefore we are proposing to approve the Oregon SIP as meeting the requirements of CAA sections 110(a)(2)(E) for the 2008 Pb NAAQS.

110(a)(2)(F): Stationary Source Monitoring System

CAA section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

State submittal: The Oregon submittal refers to the following statutory and regulatory provisions which provide authority and requirements for source emissions monitoring, reporting, and correlation with emission limits or standards:

- ORS 468.035 ''Functions of Department'' paragraphs (b) and (d)
- ORS 468A.020 ''Rules and Standards''
- ORS 468A.025(4) ''Air Purity Standards; Air Quality Standards; Treatment and Control of Emissions; Rules''
- ORS 468A.070 ''Measurement and Testing of Contamination Sources; Rules''
- OAR 340–212 ''Stationary Source Testing and Monitoring''
- OAR 340–214 ''Stationary Source Reporting Requirements''
- OAR 340–222 ''Stationary Source Plant Site Emission Limits''
- OAR 340–225 ''Air Quality Analysis Requirements''
- OAR 340–234 ''Emission Standards for Wood Products Industries: Monitoring and Reporting''
- OAR 340–236 ''Emission Standards for Specific Industries: Emissions Monitoring and Reporting''

EPA analysis: The Oregon statutory provisions listed above provide authority to establish a program for measurement and testing of sources, including requirements for sampling and testing. The Oregon regulations cited above require facilities to monitor and report emissions, including requirements for monitoring methods and design, and monitoring and quality improvement plans. In addition, stationary source reporting requirements include maintaining written records to demonstrate compliance with emission rules, limitations, or control measures, and requirements for reporting and recordkeeping. Information is made available to the public through public processes outlined at OAR 340–209 ''Public Participation.''

Additionally, Oregon is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, Pb, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through

the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.*

Based on the analysis above, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2008 Pb NAAQS.

110(a)(2)(G): Emergency Episodes

CAA section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including adequate contingency plans to implement the emergency episode provisions in their SIPs.

State submittal: The Oregon submittal cites ORS 468–115 ''Enforcement in Cases of Emergency'' which authorizes the ODEQ Director, at the direction of the Governor, to enter a cease and desist order for polluting activities that present an imminent and substantial danger to public health. In addition, OAR 340–206 ''Air Pollution Emergencies'' authorizes the ODEQ Director to declare an air pollution alert or warning, or to issue an advisory to notify the public. OAR 340–214 ''Stationary Source Reporting Requirements'' requires reporting of emergencies and excess emissions and reporting requirements.

EPA analysis: Section 303 of the CAA provides authority to the EPA Administrator to restrain any source from causing or contribution to emissions which present an ''imminent and substantial endangerment to public health or welfare, or the environment.'' We find that ORS 468–115 ''Enforcement in Cases of Emergency'' provides emergency order authority comparable to CAA Section 303.

As noted in the October 14, 2011, guidance, based on the EPA's experience to date with the Pb NAAQS and designating Pb nonattainment areas, the EPA expects that an emergency episode associated with Pb emissions would be unlikely and, if it were to occur, would be the result of a malfunction or other emergency situation at a relatively large source of Pb. Accordingly, the EPA believes that the central components of a contingency plan would be to reduce emissions from the source at issue and public communication as needed. We note that 40 CFR part 51, subpart H (51.150–51.152) and 40 CFR part 51, Appendix L do not apply to Pb.

We most recently approved revisions to the Oregon air pollution emergency rules at OAR 340–206 ''Air Pollution Emergencies'' on December 27, 2011 (76 FR 80747). In the same action we approved revisions to OAR 340–214 ''Stationary Source Reporting Requirements,'' which requires that, where applicable, sources report emergencies and excess emissions to ODEQ. Accordingly, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2008 Pb NAAQS.

110(a)(2)(H): Future SIP Revisions

CAA section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

State submittal: The Oregon submittal refers to ORS 468.020 ''Rules and Standards'' which requires public hearing on any proposed rule or standard prior to adoption, and ORS 468A.035 ''General Comprehensive Plan'' which requires ODEQ to develop a general comprehensive plan for the control or abatement of air pollution. The submittal also refers to OAR 340–200 ''General Air Pollution Procedures and Definitions'' –0040 ''State of Oregon Clean Air Act Implementation Plan'' which provides for revisions to the Oregon SIP and submittal of revisions to the EPA, including standards submitted by a regional authority and adopted verbatim into ODEQ rules.

EPA analysis: As cited above, the Oregon SIP provides for revisions, and in practice, Oregon regularly submits SIP revisions to the EPA to take into account revisions to the NAAQS and other Federal regulatory changes. On December 27, 2011, the EPA approved numerous revisions to the Oregon SIP, including updates to reflect Federal changes to multiple Federal NAAQS (76 FR 80747). Accordingly, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 2008 Pb NAAQS.

110(a)(2)(I): Nonattainment Area Plan Revision Under Part D

There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but are rather due at the time of the nonattainment area plan requirements pursuant to section 172 and the various pollutant specific subparts 2–5 of part D. These requirements are: (i) submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment NSR or CAA section 110(a)(2)(I).

110(a)(2)(J): Consultation With Government Officials

CAA section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to CAA section 121, relating to consultation. CAA section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

State submittal: The Oregon submittal reference specific laws and regulations relating to consultation, public notification, and PSD and visibility protection:

- ORS 468.020 ''Rules and Standards''
- ORS 468.035 ''Functions of Department'' paragraphs (a), (c), (f), and (g)
- ORS 468A.010 ''Policy'' paragraphs (1)(b) and (c)
- ORS 468A.025 ''Air Purity Standards; Air Quality Standards; Treatment and Control of Emissions; Rules''
- OAR 340–202 ''Ambient Air Quality Standards and PSD Increments''
- OAR 340–204 ''Designation of Air Quality Areas''
- OAR 340–206 ''Air Pollution Emergencies''
- OAR 340–209 ''Public Participation''
- OAR 340–216 ''Air Contaminant Discharge Permits''
- OAR 340–224 ''Major New Source Review''
- OAR 340–225 ''Air Quality Analysis Requirements''
- OAR 340–223 ''Regional Haze Rules''
- OAR 340–252 ''Transportation Conformity''

EPA analysis: The Oregon SIP includes specific provisions for

consulting with local governments and Federal Land Managers as specified in CAA section 121, including the Oregon rules for major source PSD permitting. The EPA most recently approved revisions to the Oregon major NSR permitting rules at OAR 340–224, which provide opportunity and procedures for public comment and notice to appropriate Federal, state and local agencies, on December 27, 2011 (76 FR 80747). We most recently approved the Oregon rules that define transportation conformity consultation on October 4, 2012 (77 FR 60627). While transportation conformity requirements do not apply for Pb because of the nature of the standard, the consultation procedures that Oregon has in place to implement transportation conformity requirements provides evidence of the State's ability to consult with other governmental agencies on air quality issues.

In practice, ODEQ routinely coordinates with local governments, states, Federal Land Managers and other stakeholders on air quality issues including permitting action, transportation conformity, and regional haze. Therefore, we are proposing to find that the Oregon SIP meets the requirements of CAA section 110(a)(2)(J) for consultation with government officials for the 2008 Pb NAAQS.

Section 110(a)(2)(J) also requires the public be notified if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. The EPA calculates an air quality index for five major air pollutants regulated by the CAA: Ground-level ozone, particulate matter, carbon monoxide, sulfur dioxide, and nitrogen dioxide. This air quality index provides daily information to the public on air quality. While Pb is not specifically part of the air quality index, we note that Oregon actively participates and submits information to the EPA's AIRNOW and Enviroflash Air Quality Alert programs which provide information to the public on the air quality in their locale. Oregon provides the State's annual network monitoring plan and annual air quality monitoring data summaries to the public on their Web site at *http://www.deq.state.or.us/aq/forms/annrpt.htm.* The monitoring plans and data summaries include information on Pb monitoring. Therefore, we are proposing to find that the Oregon SIP meets the requirements of CAA section 110(a)(2)(J) for public notification for the 2008 Pb NAAQS.

Turning to the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C, title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C) with respect to permitting. The EPA most recently approved revisions to Oregon's PSD program on December 27, 2011 (76 FR 80747), updating the program for purposes of fine particulate matter NAAQS implementation in attainment and unclassifiable areas, among other things. We believe that our proposed approval of element 110(a)(2)(J) is not affected by recent court vacaturs of Federal PSD implementing regulations. Please see our discussion of section 110(a)(2)(C). Therefore, we are proposing to approve the Oregon SIP as meeting the requirements of CAA 110(a)(2)(J) with regards to PSD for the 2008 Pb NAAQS.

With regard to the applicable requirements for visibility protection, the EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new applicable requirement relating to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2008 Pb NAAQS.

110(a)(2)(K): Air Quality and Modeling/Data

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

State submittal: The Oregon submittal refers to ORS 468–020 ''Rules and Standards'' which requires public hearing on any proposed rule or standard prior to adoption, and ORS 468.035 ''Functions of Department'' which provides ODEQ authority to conduct studies and investigations to determine air quality. The submittal also references OAR 340–225 ''Air Quality Analysis Requirements'' which includes modeling requirements for analysis and demonstration of compliance with standards and increments in specified areas.

EPA analysis: The EPA previously approved OAR 340–225 ''Air Quality Analysis Requirements'' on November 27, 2011 (76 FR 80747) and these rules require all modeled estimates of ambient concentrations be based on 40 CFR part 51, Appendix W (Guidelines on Air Quality Models). Any change or substitution from models specified in 40 CFR part 51, Appendix W is subject to notice and opportunity for public comment and must receive prior written approval from ODEQ and the EPA.

As an example of the State's modeling capacity, we cite a recent Oregon SIP revision, supported by modeling. The Portland and Salem areas were historically nonattainment under the 1-hour ozone standard and require maintenance plans that ensure on-going compliance with the 1997 8-hour ozone standard. On May 22, 2007, the State submitted these maintenance plans to the EPA, supported by extensive modeling. The EPA approved the SIP revision on December 19, 2011 (76 FR 78571). Therefore, we are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2008 Pb NAAQS.

110(a)(2)(L): Permitting Fees

CAA section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

State submittal: The Oregon submittal refers to ORS 468.065 ''Issuance of Permits: Content; Fees; Use'' which provides the EQC authority to establish a schedule of fees for permits based upon the costs of filing and investigating applications, issuing or denying permits, carrying out Title V requirements and determining compliance. ORS 468A.040 ''Permits; Rules'' provides that the EQC may require permits for air contamination sources, type of air contaminant, or specific areas of the State. The submittal also references OAR 340–216 ''Air Contaminant Discharge Permits'' which requires payment of permit fees based on a specified table of sources and fee schedule.

EPA analysis: On September 28, 1995, the EPA fully approved Oregon's title V program (60 FR 50106) (effective November 27, 1995). While Oregon's title V operating permit program is not formally approved into the State's SIP, it is a mechanism the State can use to ensure that ODEQ has sufficient resources to support the air program, consistent with the requirements of the SIP. Before the EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. The

Oregon title V program included a demonstration that fees were adequate, and the State will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). In addition, Oregon regulations require fees for purposes of major and minor NSR permitting, as specified in OAR 340–216 ''Air Contaminant Discharge Permits''–0020 (Table 2) ''ACDP Fee Schedule'' and –0090 (Table 1) ''Sources Subject to ADCP and Fees.'' Therefore, we are proposing to conclude that Oregon has satisfied the requirements of CAA section 110(a)(2)(L) for the 2008 Pb NAAQS.

110(a)(2)(M): Consultation/Participation by Affected Local Entities

CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

State submittal: The Oregon submittal refers to the following laws and regulations:

- ORS 468.020 ''Rules and Standards''
- ORS 468.035 ''Functions of Department'' paragraphs (a), (c), (f), and (g)
- ORS 468A.010 ''Policy'' paragraphs (1)(b) and (c)
- ORS 468A.035 ''General Comprehensive Plan''
- ORS 468A.040 ''Permits; Rules''
- ORS 468A.055 ''Notice Prior to Construction of New Sources; Order Authorizing or Prohibiting Construction; Effect of No Order; Appeal''
- ORS 468A.070 ''Measurement and Testing of Contamination Sources; Rules''
- ORS 468A.100–180 ''Regional Air Quality Control Authorities''
- OAR 340–200 ''General Air Pollution Procedures and Definitions''
- OAR 340–204 ''Designation of Air Quality Areas''
- OAR 340–216 ''Air Contaminant Discharge Permits''

EPA analysis: The regulations cited by Oregon were previously approved on December 27, 2011 (76 FR 80747), and provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. We are proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2008 Pb NAAQS.

V. Proposed Action

The EPA is proposing to approve the portion of the December 27, 2013, SIP submittal from Oregon relating to the infrastructure requirements of the 2008 Pb NAAQS. Specifically, we are proposing to approve the submitted revision to OAR 340–202–0130 ''Ambient Air Quality Standard for Lead'' and the addition of OAR 340–202–0020 ''Applicability.'' We are proposing to find that the Oregon SIP meets the following CAA section 110(a)(2) infrastructure elements for the 2008 Pb NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

As described in detail above, we are not approving the submitted revision to OAR 340–200–0040 ''State of Oregon Clean Air Act Implementation Plan.'' In addition, we are taking no action on the submitted revisions to OAR 340–200–0020 ''General Air Quality Definitions, Table 1—Significant Air Quality Impact,'' OAR 340–202–0070 ''Sulfur Dioxide,'' and OAR 340–202–0100 ''Nitrogen Dioxide'' because these revisions are outside the scope of the 2008 Pb infrastructure SIP. We intend to address these revisions in a separate action.

VI. Statutory and Executive Order Reviews

Under the CAA, 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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the state's law as meeting Federal requirements and does not impose additional requirements beyond those imposed by the state's 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 the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- Does not provide the 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 the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: March 27, 2014.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2014–08608 Filed 4–16–14; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 511, 538, and 552

[GSAR Case 2010–G511; Docket 2014–0008; Sequence 1]

RIN 3090–AJ43

General Services Administration Acquisition Regulation (GSAR); Purchasing by Non-Federal Entities

AGENCY: Office of Acquisition Policy, General Services Administration.

ACTION: Proposed rule with request for comments.

SUMMARY: The General Services Administration (GSA) is issuing a proposed rule amending the General Services Administration Acquisition Regulation (GSAR), Describing Agency Needs, to implement the Federal Supply