

submission addresses Virginia's compliance with the portion of CAA Section 110(a)(2)(C) & (J) relating to the CAA's part C PSD permit program for the 1997 Ozone NAAQS, because this proposed approval would approve regulating NO_x as a precursor to ozone in Virginia's SIP in accordance with the **Federal Register** action dated November 29, 2005 (70 FR 71612) that finalized NO_x as a precursor for ozone regulations set forth at 40 CFR 51.166 and in 40 CFR 52.21.

We are proposing to fully approve the Virginia SIP revision request for these changes only. Prior "limited approval" of certain aspects of Virginia's PSD program elements remain valid. A description of these items for "limited approval" can be found in the Technical Support Document contained in this Docket or in the **Federal Register** action dated October 22, 2008 (73 FR 62897). EPA is soliciting public comments on the issues discussed for this proposed approval document only. These comments will be considered before taking final action.

V. 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, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

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

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

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

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to include NO_x as a precursor to ozone in Virginia does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: April 25, 2011.

James W. Newson,

Acting Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-0210-0302; FRL-9309-9]

Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards; Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to approve and conditionally approve the State Implementation Plan (SIP) submissions from the State of Utah which demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the

National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a) of the CAA requires that each state adopt and submit an "infrastructure SIP" for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA. The State of Utah submitted two certifications of their Infrastructure SIP for the 1997 ozone NAAQS, one dated December 3, 2007, which was determined to be complete on March 27, 2008 (73 FR 16205), and one dated December 21, 2009. EPA does not propose to act on the State's March 22, 2007 submission to meet the requirements of section 110(a)(2)(D)(i) of the CAA, relating to interstate transport of air pollution, for the 1997 ozone NAAQS. EPA approved the State's interstate transport SIP submission on May 28, 2008 (73 FR 16543).

DATES: Written comments must be received on or before June 22, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2010-0302, by one of the following methods:

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

- *E-mail:* dolan.kathy@epa.gov

- *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2010-0302. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The

<http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to section I, General Information, of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. 303-312-6142, dolan.kathy@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iii) The initials *SIP* mean or refer to State Implementation Plan.

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I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register**, date, and page number);

- Follow directions and organize your comments;

- Explain why you agree or disagree;

- Suggest alternatives and substitute language for your requested changes;

- Describe any assumptions and provide any technical information and/or data that you used;

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;

- Provide specific examples to illustrate your concerns, and suggest alternatives;

Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,

Make sure to submit your comments by the comment period deadline identified.

II. Background

On July 18, 1997, EPA promulgated new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several "infrastructure elements," listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA.¹

On March 27, 2008, EPA published a final rule entitled, "Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS" (73 FR 16205). In the rule, EPA made a finding for each State that it had submitted or had failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In particular, EPA found that Utah had

¹ Memorandum from William T. Harnett, Director, Air Quality Policy Division, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards" (Oct. 2, 2007).

submitted a complete SIP to meet these requirements.

III. What infrastructure elements are required under sections 110(a)(1) and (2)?

Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements, such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action 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)(ii): Interstate and international pollution.
 - 110(a)(2)(E): Adequate resources and authority.
 - 110(a)(2)(F): Stationary source monitoring and reporting.
 - 110(a)(2)(G): Emergency powers.
 - 110(a)(2)(H): Future SIP revisions.
 - 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.
- A detailed discussion of each of these elements is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (i) Section 110(a)(2)(C) to the extent it refers to permit programs (known as “nonattainment new source review (NSR)”) required under part D, and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

This action also does not address the “interstate transport” requirements of element 110(a)(2)(D)(i). In a separate action, EPA approved the State’s submission to meet the requirements of 110(a)(2)(D)(i) for the 1997 ozone NAAQS. (73 FR 16543).

IV. How did the State of Utah address the infrastructure elements of sections 110(a)(1) and (2)?

1. *Emission limits and other control measures:* Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations 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 this Act.

a. *Utah’s response to this requirement:* SIP Section I (*Legal Authority*) A.1.a, codified at R307–110–2, identifies the statutory provisions that allow adoption of standards and limitations for attainment and maintenance of national standards. (19–2–104 and 109, Utah Code Annotated 1953 (UCA)). EPA approved this SIP originally in the early 1980’s and most recently on June 25, 2003 (68 FR 37744).

b. *EPA analysis:* Utah’s SIP meets the requirements of CAA section 110(a)(2)(A) for the 1997 ozone NAAQS, subject to the following clarifications. First, although Utah’s certification cited its legal authority to adopt emissions limitations for maintenance of the NAAQS, the certification did not identify emissions limitations specific to the 1997 8-hour ozone NAAQS that the State has adopted and that have been approved into the SIP. EPA notes that, among other emissions limitations, the Utah SIP contains emissions limitations originally developed to attain the previous 1-hour ozone standard. For the purposes of this action, EPA is reviewing any rules originally submitted in response to part D solely for the purposes of determining whether they support a finding that the State has met the basic infrastructure requirements under section 110(a)(2).

In this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director’s discretion or variance provisions. A number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, Nov. 24, 1987), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director’s discretion or variance provision which is contrary to the CAA and EPA

guidance to take steps to correct the deficiency as soon as possible.

Finally, in this action, EPA is also 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. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance² and the Agency plans to address such state regulations in the future. In the specific case of SSM provisions in the Utah SIP, EPA has issued a finding of substantial inadequacy and call for a SIP revision for Utah’s “unavoidable breakdown” rule (76 FR 21639, Apr. 18, 2011). As stated above, though, EPA is not proposing to address SSM provisions in the context of this action and therefore proposes to approve the Utah certification for infrastructure element 110(a)(2)(A) for the 1997 ozone NAAQS.

2. *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

a. *Utah’s response to this requirement:* SIP Section IV (*Ambient Air Monitoring Program*), codified at R307–110–5, provides a brief description of the purposes of the air monitoring program. EPA approved this SIP originally in the early 1980’s and most recently on June 25, 2003 (68 FR 37744).

b. *EPA analysis:* Utah’s air monitoring programs and data systems do not meet the requirements of CAA section 110(a)(2)(B) for the 1997 ozone NAAQS. In particular, deficiencies in Utah’s monitoring network plan are detailed in a memorandum in the docket for this action. Utah has formally committed to submitting an adequate annual monitoring plan not later than one year after the date of final action on Utah’s infrastructure SIP for the 1997 ozone NAAQS. The specific measures Utah will take are detailed in the commitment letter, which may be found in the docket for this action. EPA has reviewed these measures and agrees that they will rectify the deficiencies in Utah’s ambient air monitoring network.

² Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to EPA Air Division Directors, “State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.” (Sept. 20, 1999).

As a result of Utah's formal commitment, EPA proposes to conditionally approve the Utah infrastructure SIP for section 110(a)(2)(B) for the 1997 ozone NAAQS. If, however, Utah does not implement the measures specified in its commitment within one year after the date of final action on Utah's infrastructure SIP for the 1997 ozone NAAQS, EPA's conditional approval will automatically revert to disapproval of the infrastructure SIP for section 110(a)(2)(B) for the 1997 ozone NAAQS.

3. *Program for enforcement of control measures:* Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.

a. *Utah's response to this requirement:* SIP Section I (*Legal Authority*) A.1.b, identifies the statutory provisions that allow the Division of Air Quality (DAQ) to enforce applicable laws, regulations and standards and seek injunctive relief. (Sections 19–2–104 and 19–2–115, UCA.)

SIP Section I (*Legal Authority*) A.1.d, codified at R307–110–2, identifies the statutory provisions that allow the DAQ to prevent construction, modification or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard or interfere with PSD requirements. (Authority Utah Code Section 19–2–108) EPA approved this SIP originally in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

SIP Section VIII (*PSD*), codified at R307–110–9 and R307–405, describes the program to prevent significant deterioration of areas of the State where the air is clean. EPA approved the PSD SIP originally in the early 1980's and most recently on June 25, 2003 (68 FR 37744). EPA most recently approved R307–405 on August 19, 2004 (69 FR 51368). Utah submitted revisions to the PSD SIP and R307–405 on September 15, 2006. Updates to the incorporation by reference (IBR) date of 40 CFR 52.21 were submitted on October 1, 2007 and March 3, 2008. The October 1, 2007 update incorporated provisions in the Code of Federal Regulations (CFR) that added NO_x as a precursor for ozone. The most recent update of the IBR date was adopted on February 5, 2009 and will be submitted to EPA in the near future when the final administrative

paperwork is available. EPA has not yet acted on these submittals.

SIP Section XVII (*Visibility protection*), codified at R307–10–25, describes the program to protect visibility, especially within the boundaries of the five national parks located in Utah. (Sections 19–2–101 and 104, UCA) EPA approved this SIP in April 1997 and most recently on June 25, 2003 (68 FR 37744).

b. *EPA analysis:* To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment New Source Review (NSR), and minor NSR permitting programs adequate to implement the 1997 8-hour ozone NAAQS. As explained above, in this action EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

Utah has a SIP-approved PSD program that meets the general requirements of part C of the Act (51 FR 31125). Below, EPA considers requirements for the PSD program specific to the 1997 ozone NAAQS, but first considers the effects of recent rules regulating greenhouse gases on Utah's PSD program.

Greenhouse Gas Regulation

EPA notes a potential inconsistency between Utah's December 3, 2007 and December 21, 2009 infrastructure SIP certifications and EPA's recently promulgated rule, "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans" ("PSD SIP Narrowing Rule"), 75 FR 82536 (Dec. 30, 2010). In the PSD SIP Narrowing Rule, EPA withdrew its previous approval of Utah's PSD program to the extent that it applied PSD permitting to greenhouse gas (GHG) emissions increases from GHG-emitting sources below thresholds set in EPA's June 3, 2010 "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" ("Tailoring Rule"), 75 FR 31514. EPA withdrew its approval on the basis that the State lacked sufficient resources to issue PSD permits to such sources at the statutory thresholds in effect in the previously-approved PSD program. After the PSD SIP Narrowing Rule, the portion of Utah's PSD SIP from which EPA withdrew its approval had the status of having been submitted to EPA but not yet acted upon. In its December 3, 2007 and December 21, 2009 certifications, Utah relied on its PSD

program as approved at that date—which was before December 30, 2010, the effective date of the PSD SIP Narrowing Rule—to satisfy the requirements of infrastructure element 110(a)(2)(C). Given EPA's basis for the PSD SIP Narrowing Rule, EPA proposes approval of the Utah infrastructure SIP for infrastructure element (C) if either the State clarifies (or modifies) its certification to make clear that the State relies only on the portion of the PSD program that remains approved after the PSD SIP Narrowing Rule issued on December 30, 2010, and for which the State has sufficient resources to implement, or the State acts to withdraw from EPA consideration the remaining portion of its PSD program submission that would have applied PSD permitting to GHG sources below the Tailoring Rule thresholds. In the alternative, if Utah does not take either action, EPA proposes to disapprove the infrastructure SIP to the extent it incorporates that portion of the previously-approved PSD program from which EPA withdrew its approval in the PSD SIP Narrowing Rule, which is the portion which would have applied PSD permitting requirements to GHG emissions increases from GHG-emitting sources below the Tailoring Rule thresholds. Such disapproval, if finalized, would not result in a need for Utah to resubmit a SIP revision, sanctions, or a federal implementation plan (FIP).

Regulation of Ozone Precursors

In order for the State's SIP-approved PSD program to satisfy the requirements of section 110(a)(2)(C) for the 1997 ozone NAAQS, the program must properly regulate ozone precursors. On November 29, 2005, EPA promulgated the phase 2 implementation rule for the 1997 ozone NAAQS (Phase 2 Rule), which includes requirements for PSD programs to treat nitrogen oxides (NO_x) as a precursor for ozone (72 FR 71612). The Phase 2 Rule accordingly updated the federal program at 40 CFR 52.21 to meet these requirements, effective January 30, 2006. On August 7, 2008, Utah submitted to EPA revisions to the State's PSD program. The State's PSD program, as submitted, for the most part incorporates by reference the federal program at 40 CFR 52.21. The August 7, 2008 submittal updates the date of incorporation by reference to July 1, 2007, after the effective date of the Phase 2 Rule, and thereby implementing the requirements of the rule. On January 7, 2009, EPA proposed approval of the August 7, 2008 submittal (74 FR 667). We anticipate finalizing that approval in conjunction with finalizing approval of

Utah's infrastructure SIP. Contingent on that approval, Utah's PSD program meets the requirements of section 110(a)(2)(C) for the 1997 ozone NAAQS.

Minor NSR

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act that regulates emissions of ozone and its precursors. The minor NSR program is found in section II of the Utah SIP, and was originally approved by EPA as section 2 of the SIP (See 68 FR 37744, June 25, 2003). Since approval of the minor NSR program, the State and EPA have relied on the program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

In this action, EPA is proposing to approve Utah's infrastructure SIP for the 1997 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. A number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

Visibility Protection

Finally, Utah cited SIP provisions relating to visibility protection. With regards to part C of title I of the Act, section 110(a)(2)(C) of the Act (unlike section 110(a)(2)(f)) refers only to the required PSD permit program, and not to visibility protection. Moreover, as explained below under infrastructure element (j), EPA finds that no new visibility obligation is "triggered" under section 110(a)(2)(f) when a new NAAQS becomes effective. EPA is therefore not

assessing in this action the visibility protection provisions cited by Utah.

4. *Interstate transport*: Section 110(a)(2)(D)(i) requires SIPs to contain adequate provisions prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state, with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality or to protect visibility.

a. *Utah's response to this requirement*: SIP Section XXIII (*Interstate Transport*), codified at R307-110-36, was written to satisfy the requirements of section 110(a)(2)(D)(i) of the CAA for the 1997 NAAQS for 8-hour ozone. This SIP was approved by EPA on March 28, 2008 at 73 FR 16543.

b. *EPA Analysis*: EPA approved the State's Interstate Transport provisions for the 1997 ozone NAAQS on March 28, 2008 (73 FR 16543). EPA is taking no action relevant to section 110(a)(2)(D)(i) in this proposal.

5. *Interstate and International transport provisions*: Section 110(a)(2)(D)(ii) requires that each SIP shall contain adequate provisions insuring compliance with applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).

a. *Utah's response to this requirement*: Utah did not cite any specific provisions for this requirement.

b. *EPA Analysis*: Section 126(a) requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator regarding sources violating the "interstate transport" provisions of section 110(a)(2)(D)(i). Section 115 similarly pertains to international transport of air pollution.

Utah's rules for PSD permits IBR the public participation requirements at 40 CFR 51.166(q)(2). (See UAC R307-405-18). In particular, the rule incorporates 40 CFR 51.166(q)(2)(iii), which requires notice to states whose lands may be affected by the emissions of sources subject to PSD. This rule was submitted to EPA and proposed for approval in the action discussed in section IV.3 above (74 FR 667, Jan. 7, 2009). Contingent on approval of this rule, the Utah SIP satisfies the requirements of section 126(a).

Utah has no pending obligations under sections 126(c) or 115(b), therefore, Utah's SIP currently meets the requirements of those sections. The SIP therefore meets the requirements of 110(a)(2)(D)(ii) for the 1997 ozone NAAQS.

6. *Adequate resources*: 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 provision of federal or state law from carrying out the SIP or portion thereof), (ii) requires that the state comply with the requirements respecting state boards under 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.

a. *Utah's response to this requirement*: SIP Section V (*Resources*), codified at R307-110-6, commits to implement program activities in relation to resources provided by the annual State/EPA Agreement and 105 grant applications. EPA approved this SIP originally in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

SIP Section I (*Legal Authority*) A.1.g, codified at R307-110-2, identifies the statutory provisions that implement the provisions of the CAA (Section 128) respecting State Boards (Section 9-2-104 UCA.) EPA approved this SIP originally in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

Section 41-6a-1642 UCA provides the counties the authority to run their own emissions inspection and maintenance program, and Subsection 41-6a-1642 (2)(b)(i) UCA requires that the counties' emissions inspection and maintenance program "shall be made to attain or maintain ambient air quality standards in the county, consistent with the SIP and federal requirements." Section X of the SIP, codified at sections R307-110-31 to -35, outlines the specific requirements of the automotive inspection and maintenance program. EPA approved this SIP section in action on July 17, 1997 (62 FR 38213), August 1, 2005 (70 FR 44055), September 14, 2005 (70 FR 54267), and November 2, 2005 (70 FR 66264).

b. *EPA Analysis*: Chapter 2 of Title 19 of the Utah Code gives the DAQ and Air Quality Board (AQB) adequate authority to carry out the SIP. UCA 19-2-103 requires the AQB be composed and act in accordance with section 128 of the CAA. The State receives sections 103 and 105 grant funds through its

Performance Partnership Grant along with required State matching funds to provide funding necessary to carry out Utah's SIP requirements. Utah's SIP meets the requirements of CAA section 110(a)(2)(E) for the 1997 ozone NAAQS.

7. *Stationary source monitoring system*: 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 Act, which reports shall be available at reasonable times for public inspection.

a. *Utah's response to this requirement*: SIP Section I (*Legal Authority*) A.1.f, codified at R307-110-2, identifies the statutory provisions that require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the State Department of Environmental Quality (DEQ) on the nature and amounts of emissions from such sources. The State DEQ will make such data available to the public as reported and as correlated with any applicable emission standards or limitations (Section 19-2-104, UCA). EPA approved this SIP originally in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

SIP Section III (*Source Surveillance*), codified at R307-110-4, includes inventory requirements, stack testing, and plant inspections (Sections 19-2-107 and 19-2-108, UCA, allow inspection of air pollution sources). EPA approved this SIP section originally in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

b. *EPA Analysis*: Utah's SIP meets the requirements of section 110(a)(2)(F) for the 1997 ozone NAAQS.

8. *Emergency powers*: Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

a. *Utah's response to this requirement*: SIP Section 1 (*Legal Authority*) A.1.c, codified at R307-110-2, identifies the statutory provisions to abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons (Section 19-2-112, UCA). EPA approved this SIP originally

in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

More details can be found in SIP Section VII (*Prevention of Air Pollution Emergency Episodes*), codified at R307-110-8 (Section 19-2-112, UCA). EPA approved this SIP originally in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

b. *EPA analysis*: Section 19-2-112 of the UCA provides DEQ with general emergency authority comparable to that in section 303 of the Act. The SIP also requires DEQ to follow criteria in 40 CFR 51.151 in proclaiming an emergency episode and to develop a contingency plan. The SIP meets the requirements of 110(a)(2)(G) for the 1997 ozone NAAQS.

9. *Future SIP revisions*: 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 (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 this Act.

a. *Utah's response to this requirement*: SIP Section I (*Legal Authority*) A.1.a, codified at R307-110-2, identifies the statutory provisions that allow the DAQ to revise its plans to take account of revisions of a NAAQS and to adopt expeditious methods of attaining and maintaining such standard. EPA approved this SIP originally in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

b. *EPA analysis*: Section 19-2-104 of the UCA gives the AQB sufficient authority to meet the requirements of 110(a)(2)(H).

10. *Nonattainment Area Plan or Plan Revision under Part D*: Section 110(a)(2)(I) requires that a SIP or SIP revision for an area designated as a nonattainment area must meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).

a. *EPA analysis for section 110(a)(2)(I)*: As noted above, the specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirement of section 172, not the timing requirement of section 110(a)(1). This element is therefore not applicable to this action. EPA will take action on part D attainment plans through a separate process.

11. *Consultation with government officials, public notification, PSD and visibility protection*: Section 110(a)(2)(J) requires that each SIP meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).

a. *Utah's response to this requirement*: SIP Section I (*Legal Authority*) A.2, codified at R307-110-2, adopts requirements for transportation consultation (Section 174, Clean Air Act). EPA approved this SIP originally in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

SIP Section I (*Legal Authority*) A.1.d, codified at R307-110-2, identifies the statutory authority to prevent construction, modification or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard or interfere with PSD requirements. (UCA Section 19-2-108) EPA approved this SIP originally in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

SIP Section VI (*Intergovernmental Cooperation*), provides a brief listing of federal, state, and local agencies involved in protecting air quality in Utah. Codified at R307-110-7/EPA approved this SIP originally in the early 1980's and most recently on June 25, 2003 at 68 FR 37744.

SIP Section XII (*Transportation Conformity Consultation*), codified at R307-110-20, establishes the consultation procedures on transportation conformity issues when preparing State plans. EPA approved SIP Section XII, Transportation Conformity Consultation, on September 2, 2008 (73 FR 51222).

SIP Section VIII (*PSD*), codified at R307-110-9 and R307-405, describes the program to prevent significant deterioration of areas of the State where the air is clean. EPA approved the PSD SIP originally in the early 1980's and most recently on June 25, 2003 (68 FR 37744). EPA most recently approved R307-405 on August 18, 2004 (69 FR 51368). Utah submitted revisions to the PSD SIP and R307-405 on September 15, 2006. Updates to the IBR date of 40 CFR 52.21 were submitted on October 1, 2007 and March 3, 2008. The October 1, 2007 update incorporates provisions in the CFR that added NO_x as a precursor for ozone. The most recent update of the IBR date was adopted on February 5, 2009 and will be submitted to EPA in the near future when the final administrative paperwork is available.

EPA has not yet acted on these submittals.

SIP Section XVI (*Public Notification*), codified at R307–110–24, includes provisions to notify the public when NAAQS have been exceeded as per section 127 of the CAA. EPA approved this SIP originally in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

SIP Section XVII (*Visibility Protection*), codified at R307–110–25, describes the program to protect visibility, especially within the boundaries of the five national parks located in Utah. (Sections 19–2–101 and 104, UCA) EPA approved this SIP in April 1997 and most recently on June 25, 2003 (68 FR 37744).

SIP Section XX (*Regional Haze*), codified at R307–110–28, addresses the requirements in part C of the CAA relating to regional haze. The SIP was based on the recommendations of the Grand Canyon Visibility Transport Commission established by section 169B(f) of the CAA. (Sections 19–2–104, UCA). The Regional Haze SIP was submitted to EPA on December 12, 2003. Revisions to the Regional Haze SIP were submitted on August 8, 2004; May 8, 2006; and September 9, 2008. EPA has not yet acted on these submittals.

b. *EPA Analysis*: The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121. Furthermore, SIP section XVI, cited by Utah, satisfies the requirements of section 127 of the Act.

The State has a SIP-approved PSD program that incorporates by reference the federal program at 40 CFR 52.21. The federal program (and therefore Utah's SIP-approved PSD program) automatically implements new PSD requirements triggered by the effective date of any new NAAQS. EPA has further evaluated Utah's SIP-approved PSD program in this proposed action under IV.3 of section 110(a)(2)(C).

Finally, with regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the act. 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 visibility obligation "triggered" under section

110(a)(2)(J) when a new NAAQS becomes effective. In conclusion, the Utah SIP meets the requirements of section 110(a)(2)(J) for the 1997 ozone NAAQS.

12. *Air quality and modeling/data*: Section 110(a)(2)(K) requires that each SIP 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 NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

a. *Utah's response to this requirement*: SIP Section II (*Review of New and Modified Air Pollution Sources*), codified at R307–110–3, provides that new or modified sources of air pollution must submit plans to the DAQ and receive an Approval Order before operating. (Section 19–2–104, UCA) EPA approved this SIP originally in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

b. *EPA Analysis*: Utah's SIP meets the requirements of CAA section 110(a)(2)(K) for the 1997 ozone NAAQS. In particular, Utah's PSD program incorporates by reference the federal program at 40 CFR 52.21, including the provision at 52.21(l)(1) requiring that estimates of ambient air concentrations be based on applicable air quality models specified in Appendix W of 40 CFR part 51, and the provision at 52.21(l)(2) requiring that modification or substitution of a model specified in Appendix W must be approved by the Administrator. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

13. *Permitting fees*: Section 110(a)(2)(L) requires SIPs to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

a. *Utah's response to this requirement*: SIP Section I (*Legal Authority*) A.1.h, codified at R307–110–2, identifies the statutory authority to charge a fee to major sources to cover permit and

enforcement expenses. EPA approved this SIP originally in the early 1980s and most recently on June 25, 2003 (68 FR 37744).

b. *EPA Analysis*: Utah's approved title V operating permit program meets the requirements of CAA section 110(a)(2)(L) for the 1997 ozone NAAQS. Final approval of the title V operating permit program was approved on June 8, 1995 (60 FR 30192). As discussed in the notice proposing approval of the title V program (60 FR 15105, Mar. 22, 1995), the State demonstrated that the fees collected were sufficient to administer the program.

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

a. *Utah's response to this requirement*: SIP Section VI (*Intergovernmental Cooperation*), codified at R307–110–7, lists federal, state, and local agencies involved in protecting air quality in Utah. EPA approved this SIP originally in the early 1980's and most recently on June 25, 2003 (68 FR 37744).

SIP Section XII (*Transportation Conformity Consultation*), codified at R307–110–20, establishes the consultation procedures on transportation conformity issues when preparing state plans. EPA approved SIP Section XII, *Transportation Conformity Consultation*, on September 2 2008 (73 FR 51222).

b. *EPA Analysis*: Utah's submittal meets the requirements of CAA section 110(a)(2)(M) for the 1997 ozone NAAQS.

V. What action is EPA taking?

In this action, EPA is proposing to approve the following infrastructure elements for the 1997 ozone NAAQS: (A), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA proposes to approve the section 110(a)(2)(C) infrastructure element in full for the 1997 ozone NAAQS in the event that Utah takes one of the actions described in the discussion of that element; in the alternative, EPA proposes to disapprove the section 110(a)(2)(C) element to the extent described and to otherwise approve this element. EPA proposes to conditionally approve the section 110(a)(2)(B) infrastructure element for the 1997 ozone NAAQS based on the formal commitment by Utah described in the discussion of that element. Finally, in this action, EPA is taking no action on infrastructure elements (D)(i) and (I) for the 1997 ozone NAAQS.

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, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct

costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 16, 2011.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2011-12606 Filed 5-20-11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2008-0396; FRL-9307-1]

Approval, and Promulgation of Air Quality Implementation Plans; Indiana; Redesignation of the Evansville Area to Attainment of the Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 3, 2008, the Indiana Department of Environmental Management (IDEM) submitted a request for EPA to approve the redesignation of the Evansville, Indiana nonattainment area to attainment of the 1997 annual fine particulate matter (PM_{2.5}) standard. The air quality improvement in this area and maintenance of the standard in this area is attributable in substantial part to power plant emission reductions in the Eastern United States prompted by the Clean Air Interstate Rule (CAIR). The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has remanded CAIR, but EPA has proposed a replacement rule known as the Transport Rule. The Evansville area has attained the standard with only a fraction of the reductions that the proposed Transport Rule proposed to require. Therefore, EPA is proposing to approve the redesignation request for the Evansville area, along with related SIP revisions, if and when EPA takes final action to promulgate the Transport Rule, provided that the final Transport Rule requires emission reductions that are at least substantially equivalent to those of the proposed Transport Rule for purposes of maintaining the standard in the Evansville area.

DATES: Comments must be received on or before June 22, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2008-0396, by one of the following methods:

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

2. *E-mail*: mooney.john@epa.gov.

3. *Fax*: (312) 692-2551.

4. *Mail*: John M. Mooney, Chief, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: John M. Mooney, Chief, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2008-0396. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of