

best interest rate available at the lowest possible cost to the borrower.

The proposed change in review time should not alter the current quality of review of the loan file or the quality of the Direct Endorsement lender approval process. FHA guidance, issued in accordance with 24 CFR 203.3(b)(2), already requires the lender to certify that their underwriter(s) have the qualifications, expertise, and experience to underwrite mortgage loans in accordance with FHA requirements. Given the certification required of lenders, the shift in the timeframe for review may in fact result in enhanced lender accountability; that is, the lender will place more emphasis on ensuring that their underwriting staff is sufficiently trained prior to requesting Direct Endorsement authority. Properly trained underwriters will help to increase the number of loans that are found to be acceptable, resulting in an even higher percentage of loan files that meet FHA policies and guidelines.

FHA analyzed data for mortgage loans that were submitted for review during the period beginning October 1, 2009 through June 30, 2012. The data demonstrated that 86.7 percent of all loans reviewed during this time period, and 90.5 percent of all loans reviewed year to date in FY 2012, were found to meet FHA policies and guidelines and were subsequently endorsed. In addition, of the lenders entering the Direct Endorsement review process during the October 1, 2009 through June 30, 2012 timeframe, 48.6 percent did not receive an unacceptable rating on any loan submitted for review, while 28 percent of lenders had only one loan rated unacceptable and 10.9 percent of lenders had two loans rated unacceptable. Overall, 87.4 percent of lenders had two or fewer loans rated unacceptable. Currently, in FY 2012, the percentage of lenders with two or fewer loans rated unacceptable has increased to 93.3 percent and is expected to continue to improve.

When material violations of FHA policies and procedures are uncovered during the loan file review, FHA will notify the lender that a preliminary assessment, based on file documentation, indicates that the loan contains material findings such that FHA is exposed to an unacceptable level of risk. FHA will provide the lender with an opportunity to present missing information or documentation to address the review findings and permit subsequent submission for endorsement. As is the current practice, if the lender is unable to adequately respond (or fails to respond) to the material findings, FHA will notify the

lender that the loan is not eligible for endorsement.

The lender will have satisfied the pre-endorsement review requirements necessary to be approved for unconditional Direct Endorsement authority once FHA has reviewed and found acceptable the requisite number of loan files pursuant to 24 CFR 203.3(b)(4).

### III. Solicitation of Comment

Comment is solicited on the proposed shift in the timeframe for conducting its pre-endorsement review of the loans originated by prospective Direct Endorsement lenders from prior to the lender closing each loan to before FHA's endorsement of the mortgage for insurance. Comment is also solicited on other proposals that would reduce the processing time and facilitate loan closing.

Dated: March 12, 2013.

**Carol J. Galante,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2013-06110 Filed 3-20-13; 8:45 am]

**BILLING CODE 4210-67-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2011-0884, FRL- 9791-7]

### Approval and Promulgation of Implementation Plans; Oregon: Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter and 2008 Ozone National Ambient Air Quality Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve the State Implementation Plan (SIP) submittals from the State of Oregon to demonstrate that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for fine particulate matter (PM<sub>2.5</sub>) on July 18, 1997 and October 17, 2006, and for ozone on March 12, 2008. The EPA is proposing to find that the Federally-approved provisions currently in the Oregon SIP meet the CAA infrastructure requirements for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and the 2008 ozone NAAQS. The EPA is also proposing to find that the Federally-approved provisions currently in the Oregon SIP meet the interstate transport requirements of the CAA

related to prevention of significant deterioration for the 2008 ozone NAAQS, and related to visibility for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS. This action does not propose to approve any additional provisions into the Oregon SIP but is a proposed finding that the current provisions of the Oregon SIP are adequate to satisfy the above-mentioned infrastructure elements required by the CAA.

**DATES:** Comments must be received on or before April 22, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2011-0884, by any of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

- *Email:* R10-

- *Public Comments@epa.gov.*

- *Mail:* Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle WA 98101.

- *Hand Delivery/Courier:* 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-2011-0884. 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](http://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](http://www.regulations.gov) or email. The [www.regulations.gov](http://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](http://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](http://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](http://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](mailto:hall.kristin@epa.gov), or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:**

Throughout this document wherever “we”, “us” or “our” are used, it is intended to refer to the EPA. Information is organized as follows:

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- II. Background
- III. CAA Sections 110(a)(1) and (2) Infrastructure Elements
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- V. Analysis of the State’s Submittal
- VI. Scope of Proposed Action
- VII. Proposed Action
- VIII. Statutory and Executive Order Reviews

**I. Proposed Action**

The EPA is proposing to approve the State Implementation Plan (SIP) submittals from the State of Oregon to demonstrate that the SIP meets the requirements of CAA section 110(a)(1) and (2) for the NAAQS promulgated for particulate matter on July 18, 1997 and October 17, 2006, and for ozone on March 12, 2008. The EPA is proposing to find that the Federally-approved provisions currently in the Oregon SIP meet the following CAA section 110(a)(2) infrastructure elements for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The EPA is also proposing to find that the Federally-approved provisions currently in the Oregon SIP meet the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to prevention of significant deterioration for the 2008 ozone

NAAQS, and CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS.

CAA section 110(a)(1) requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the “infrastructure” elements of CAA section 110(a)(2). The State of Oregon made multiple submittals to satisfy the infrastructure requirements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS and the 2008 ozone NAAQS. On September 25, 2008, the State submitted to the EPA a certification that the State’s SIP meets the infrastructure obligations for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS. Subsequently, on December 23, 2010, the State submitted the “Oregon SIP Infrastructure for Addressing the Interstate Transport of Ozone and Fine Particulate Matter” to address the requirements of CAA section 110(a)(2)(D)(i) for multiple NAAQS, including the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS. On August 17, 2011, the State submitted to the EPA a certification that the State’s SIP meets the infrastructure requirements for the 2006 PM<sub>2.5</sub> NAAQS. Finally, on December 19, 2011, the State submitted to the EPA a certification that the State’s SIP meets the infrastructure requirements for the 2008 ozone NAAQS.

At this time, the EPA is acting on the infrastructure submittals for the CAA section 110(a)(2) required elements as they relate to the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS. This action does not address infrastructure requirements with respect to the 1997 ozone NAAQS which the EPA previously approved on May 21, 2012 (77 FR 29904). This action also does not address the requirements of CAA section 110(a)(2)(D)(i) for the 1997 PM<sub>2.5</sub> NAAQS which have previously been approved by the EPA in three separate actions on June 9, 2011 (76 FR 33650), July 5, 2011 (76 FR 38997), and December 27, 2011 (76 FR 80747).

In addition, this action does not address the requirements of CAA section 110(a)(2)(D)(i)(II) as it relates to prevention of significant deterioration for the 2006 PM<sub>2.5</sub> NAAQS, which the EPA approved on December 27, 2011 (76 FR 80747). This action also does not address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS which the EPA will address in a future action. 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 are not changed by a new NAAQS.

**II. Background**

On July 18, 1997, the EPA promulgated a new 24-hour and a new annual NAAQS for PM<sub>2.5</sub> (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) (62 FR 38652). More recently, on October 17, 2006 (effective date December 18, 2006), the EPA revised the standards for particulate matter, tightening the 24-hour PM<sub>2.5</sub> standard from 65 micrograms per cubic meter (μg/m<sup>3</sup>) to 35 μg/m<sup>3</sup>, and retaining the current annual fine particle standard at 15 μg/m<sup>3</sup> (71 FR 61144). On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone standards to 0.075 parts per million (73 FR 16436).

The CAA requires State Implementation Plans (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. 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 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.

To help states meet this statutory requirement, the EPA issued guidance to states. On October 2, 2007, the EPA issued guidance to address infrastructure SIP requirements for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS.<sup>1</sup> On September 25, 2009, the EPA issued guidance to address infrastructure SIP requirements for the 2006 24-hour PM<sub>2.5</sub> NAAQS.<sup>2</sup> These guidance documents

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

<sup>2</sup> William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air

provide that, to the extent an existing SIP already meets the CAA section 110(a)(2) requirements, states may submit a certification to the EPA.

### III. 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 emissions inventories 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.
- 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 October 2, 2007 and September 25, 2009 EPA infrastructure guidance clarify 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. 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.

### IV. Scope of Action on Infrastructure Submittals

This rulemaking will not cover four substantive issues that are not integral to acting on a state’s infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and the EPA’s policies addressing such excess emissions (“SSM”)<sup>3</sup>; (ii) existing provisions related to “director’s variance” or “director’s discretion” that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by the EPA, that may be contrary to the CAA (“director’s discretion”); (iii) existing provisions for minor source NSR programs that may be inconsistent with the requirements of the CAA and the EPA’s regulations that pertain to such programs (“minor source NSR”); and, (iv) 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). The EPA has indicated that it has other authority to address any such existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found in the

<sup>3</sup> For further description of 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).

EPA’s previous action to approve the State of Oregon 1997 ozone infrastructure SIP submittal (proposed action on February 7, 2012, 77 FR 6044; final action on May 21, 2012, 77 FR 29904).

### V. Analysis of the State’s Submittal

The State of Oregon SIP submittals list 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 State submittals meet the requirements.

#### 110(a)(2)(A): Emission limits and other control measures

CAA section 110(a)(2) 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:* The State SIP submittals cite multiple State air quality laws and previously SIP-approved regulations to address this element for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone 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 the 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 air contamination sources, type of air contaminant, or specific areas of the State. The State submittals cite the following additional laws and regulations that establish emission limits and pollution controls:

- ORS 468A.045 Activities Prohibited Without Permit; Limit on Activities with Permit
- ORS 468A.050 Classification of Air Contamination Sources; Registration and Reporting of Sources; Rules; Fees

Quality Standards (NAAQS).” Memorandum to Regional Air Division Directors, Regions I–X, September 25, 2009. The EPA has not yet issued guidance to states to address the infrastructure SIP requirements for the 2008 ozone NAAQS.

- 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.085 Residential Open Burning of Vegetative Debris
- ORS 468A.315 Emission Fees for Major Sources; Base Fees; Basis of Fees; Rules
- ORS 468A.350–.455 Motor Vehicle Pollution Control
- ORS 468A.460–.520 Woodstove Emissions Control
- ORS 468A.550–.620 Field Burning and Propane Flaming
- ORS 468A.625–.645 Chlorofluorocarbons and Halon Control
- ORS 468A.650–.660 Aerosol Spray Control
- ORS 468A.990 Penalties
- 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 340–222 Stationary Source Plant Site Emission Limits
- OAR 340–224 Major New Source Review
- OAR 340–226 General Emission Standards
- OAR 340–228 Requirements for Fuel Burning Equipment and Fuel Sulfur Content
- OAR 340–232 Emission Standards for VOC Point Sources
- OAR 340–234 Emission Standards for Wood Products Industries
- OAR 340–236 Emission Standards for Specific Industries
- OAR 340–240 Rules for Areas with Unique Air Quality Needs
- OAR 340–242 Rules Applicable to the Portland Area
- OAR 340–250 General Conformity
- OAR 340–252 Transportation Conformity
- OAR 340–256 Motor Vehicles
- OAR 340–258 Motor Vehicle Fuel Specifications
- OAR 340–262 Residential Woodheating
- OAR 340–266 Field Burning Rules (Willamette Valley)
- OAR 340–268 Emission Reduction Credits

*EPA analysis:* The State regulations identified above were previously approved by the EPA into the Oregon SIP and demonstrate that the Oregon SIP includes enforceable emission limits and other control measures to implement the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS. OAR 340–200

“General Air Pollution Procedures and Definitions” defines direct PM<sub>2.5</sub>, nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) as precursors to PM<sub>2.5</sub>, and NO<sub>x</sub> and volatile organic compounds (VOCs) as precursors to ozone. This rule also defines significant emissions rates, *de minimis* emission levels, and plant site emission rates for air pollutants including direct PM<sub>2.5</sub>, NO<sub>x</sub> and SO<sub>2</sub> as precursors to PM<sub>2.5</sub>, and NO<sub>x</sub> and VOCs as precursors to ozone. OAR 340–202 “Ambient Air Quality Standards and PSD Increments” includes the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS. The EPA most recently approved into the State’s SIP revisions to OAR 340–200 and OAR 340–202 on December 27, 2011 (76 FR 80747).

The State of Oregon has no areas designated nonattainment for the 1997 PM<sub>2.5</sub> standard and no areas designated nonattainment for the 2008 ozone standard. The State has two areas designated nonattainment for the 2006 PM<sub>2.5</sub> standard (Klamath Falls and Oakridge). However, 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).

The State generally regulates emissions of PM<sub>2.5</sub>, PM<sub>2.5</sub> precursors, and ozone precursors through its SIP-approved New Source Review (NSR) permitting programs, in addition to other rules and control programs identified below. The EPA most recently approved revisions to the State’s major and minor NSR permitting programs on December 27, 2011 (76 FR 80747), to regulate direct PM<sub>2.5</sub> emissions, in addition to NO<sub>x</sub> and SO<sub>2</sub> as precursors to PM<sub>2.5</sub>. The State’s SIP-approved major and minor NSR permitting programs regulate NO<sub>x</sub> and VOCs as precursors to ozone. In addition to the State’s NSR permitting regulations, the State’s SIP contains rules that establish various controls on emissions of particulate matter, NO<sub>x</sub>, SO<sub>2</sub>, and VOCs. These controls include rules for operational and work practices standards, fuel burning equipment and fuel sulfur content, grain loading, specific industry sectors, motor vehicle pollution, industrial emission management, residential wood heating, field burning, and banking of emission reduction credits. Based on the analysis above, the EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(A) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS.

The EPA is 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 and the EPA has recently proposed action to address such state regulations.<sup>4</sup>

The EPA is 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 Agency plans to take action in the future to address such state regulations. In the meantime, the EPA encourages 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 State submittals reference 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. In addition, the State references ORS 468A.070 “Measurement and Testing of Contamination Sources; Rules” which provides ODEQ authority to establish a measurement and testing program pursuant to rules adopted by the EQC. The State also references the following regulations pertaining to air quality monitoring and data:

- OAR 340–200 General Air Quality Definitions
- OAR 340–206 Air Pollution Emergencies
- OAR 340–212 Stationary Source Testing and Monitoring
- OAR 340–214 Stationary Source Reporting
- OAR 340–216 Air Contaminant Discharge Permits
- OAR 340–222 Stationary Source Plant Site Emission Limits
- OAR 340–225 Air Quality Analysis Requirements

<sup>4</sup> See footnote 3.

- OAR 340–226 General Emission Standards
- OAR 340–232 Emission Standards for VOC Point Sources
- OAR 340–256 Motor Vehicles

*EPA analysis:* A comprehensive air quality monitoring plan, intended to meet the requirements of 40 CFR part 58 was submitted by the State 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, with the most recent submittal dated July 1, 2012 and approved by the EPA on October 25, 2012.<sup>5</sup> This plan includes, among other things, the locations for the particulate matter monitoring network and ozone monitoring network. The State provides an annual air quality data report to the public at <http://www.deq.state.or.us/aq/forms/annrpt.htm>. In addition, the State sends real time air monitoring information for ozone and particulate matter to the EPA's AIRNow Web page at <http://www.airnow.gov> and also provides the information on the ODEQ Air Quality Index (AQI) Web site at <http://www.deq.state.or.us/aqi>. Based on the foregoing, the EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone 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 permitting program to meet PSD and nonattainment NSR requirements as required by parts C and D of this subchapter.

*State submittal:* The State submittals refer to ORS 468.090–.140 “Enforcement” which provide 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 (j, k) “Functions of the Department” provide ODEQ with authority to enforce State air pollution laws and compel compliance with any rule, standard, order, permit or condition. The State submittals cite the following Oregon laws and regulations related to enforcement and permitting:

- ORS 468.065 Issuance of Permits; Consent; Fees; Use

- ORS 468.070 Denial, Modification, Suspension or Revocation of Permits

- ORS 468.090–.140 Enforcement
- ORS 468.920–.963 Environmental Crimes

- ORS 468.996–.997 Civil Penalties
- ORS 468A.040 Permits; Rules
- ORS 468A.045 Activities Prohibited without Permit

- ORS 468A.055 Notice Prior to Construction of New Sources
- ORS 468A.060 Duty to Comply with Laws, Rules, and Standards
- ORS 468A.105 Formation of Regional Air Quality Control Authorities

- ORS 468A.155 Rules Authorizing Regional Permit Programs

- ORS 468A.165 Compliance with State Standards Required; Hearing; Notice

- ORS 468A.990 Penalties for Air Pollution Offenses

- OAR 340–012 Enforcement Procedure and Civil Penalties

- OAR 340–200 General Air Pollution Procedures and Definitions

- 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 State code provisions referenced in the State submissions provide ODEQ with 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 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS.

The EPA is also proposing to find that the Oregon SIP meets the requirements related to PSD under CAA section 110(a)(2)(C) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS. As

discussed below, the State's previously-approved SIP provisions are adequate to satisfy the requirements of CAA section 110(a)(2)(C) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS because they meet current Federal standards. The State's major NSR program includes requirements for major source permitting in nonattainment areas, maintenance areas, and attainment and unclassifiable areas (OAR 340–224). The State'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 Lane Regional Air Protection Agency (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. The EPA most recently approved revisions to the State's major NSR rules on December 27, 2011 (76 FR 80747), including approval of PSD permitting requirements for PM<sub>2.5</sub> and greenhouse gases.<sup>6</sup> The State's SIP-approved PSD permitting program regulates NO<sub>x</sub> and VOCs as precursors to ozone.

The State'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 the State's minor NSR program, adopted pursuant to section 110(a)(2)(C) of the CAA, regulates emissions of PM<sub>2.5</sub>, NO<sub>x</sub> and SO<sub>2</sub> as precursors to PM<sub>2.5</sub>, and NO<sub>x</sub> and VOCs as precursors to ozone. In this action, the EPA is not evaluating the State's SIP for consistency with the EPA's regulations governing minor NSR. The EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. The EPA intends to work with states to reconcile

<sup>6</sup> Federal requirements pertaining to the permitting programs required under Subparts C and D of Title I of the CAA have not changed since the EPA last reviewed and approved changes to Oregon's Federally-approved PSD and NSR SIP provisions. Accordingly, the EPA incorporates by reference the rationale for its approval of Oregon's major source permitting program as discussed in its September 23, 2011, proposed rule and its December 27, 2011, final rule. See 76 FR 59090 (September 23, 2011) and 76 FR 80747 (December 27, 2011).

<sup>5</sup> Oregon Monitoring Network Approval Letter dated October 25, 2012.

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

Based on the analysis above, the EPA is proposing to find that the Oregon SIP includes enforcement, PSD, and minor source permitting provisions that are adequate to satisfy the requirements of CAA section 110(a)(2)(C) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS.

#### *110(a)(2)(D): Interstate transport*

CAA section 110(a)(2)(D)(i) requires that SIPs contain adequate provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

*State submittal:* The State submitted the "Oregon SIP Infrastructure for Addressing the Interstate Transport of Ozone and Fine Particulate Matter" (2010 Interstate Transport SIP) to satisfy the interstate transport requirements for multiple NAAQS, including the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS. The 2010 Interstate Transport SIP references the State's SIP-approved PSD program and the State's collaborative work with neighboring states on regional haze SIPs, which include plans and requirements for addressing visibility impairment caused by fine particulate matter and ozone in national parks and wilderness areas. In addition, the 2010 Interstate Transport SIP references the consultation ODEQ conducted with air agency staff in Washington, Idaho, Nevada and California in preparing the 2010 Interstate Transport SIP, specifically to identify and understand relevant air pollution issues in neighboring states, and whether these problems could be impacted by interstate transport.

*EPA analysis:* 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).

As noted above, this action does not address the requirements of CAA section 110(a)(2)(D)(i) for the 1997 PM<sub>2.5</sub> NAAQS which the EPA approved in three previous actions: June 9, 2011 (76 FR 33650), July 5, 2011 (76 FR 38997) and December 27, 2011 (76 FR 80747). In addition, this action does not address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS which the EPA will address in a separate action. This action also does not address the requirements of CAA section 110(a)(2)(D)(i)(II) with regards to prevention of significant deterioration (prong 3) for the 2006 PM<sub>2.5</sub> NAAQS, which the EPA approved in a previous action on December 27, 2011 (76 FR 80747).

In this action, the EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to PSD (prong 3) for the 2008 ozone NAAQS and the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility (prong 4) for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS.

To address whether emissions from sources in Oregon interfere with any other state's required measures to prevent significant deterioration of air quality, the State's 2010 Interstate Transport SIP references the SIP-approved Oregon PSD program. The EPA approved revisions to the State's major NSR rules on December 27, 2011 (76 FR 80747), including approval of PSD permitting requirements for PM<sub>2.5</sub> and greenhouse gases. The State's SIP-approved PSD program regulates NO<sub>x</sub> and VOCs as precursors to ozone. As discussed in the EPA's 2011 analysis of the State's PSD permitting requirements, the Federally-approved provisions of the State's SIP meet current Federal PSD requirements. Federal PSD requirements have not changed since the date of the EPA's most recent PSD-related SIP approval and the Oregon SIP provisions continue to meet Federal PSD permitting standards. Therefore, the EPA is proposing to approve the Oregon

SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to PSD (prong 3) for the 2008 ozone NAAQS.

To address whether emissions from sources in the State interfere with any other state's required measures to protect visibility, the 2010 Interstate Transport SIP refers to the Oregon Regional Haze SIP which was submitted to the EPA on December 14, 2010, and addresses PM<sub>2.5</sub> and PM<sub>2.5</sub> and ozone precursor visibility impacts across states within the region. 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). The EPA approved the remaining elements of the Oregon Regional Haze SIP on August 22, 2012 (77 FR 50611).

The EPA's September 25, 2009, infrastructure guidance states that the EPA believes the requirement for state SIPs to include adequate provisions prohibiting interference with measures to protect visibility in another state could be satisfied by an approved SIP addressing regional haze. The EPA's reasoning was that the development of the regional haze SIPs was intended to occur in a collaborative environment among the states, and that through this process states would coordinate on emissions controls to protect visibility on an interstate basis. The 2010 Interstate Transport SIP describes the State's participation in the Western Regional Air Partnership (WRAP), which is a regional planning organization created to address regional haze and related issues. WRAP member states include: Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming, in addition to member tribes. In developing their respective regional haze SIPs, WRAP states, including Oregon, consulted with each other through the WRAP's work groups. As a result of this process, the common understanding was that each state would take action to achieve the emissions reductions relied upon by other states in their reasonable progress demonstrations in their regional haze SIPs.

Because Oregon has a Federally-approved Regional Haze SIP that meets current requirements, the EPA concludes that the State's SIP contains adequate provisions to address the requirements of CAA section 110(a)(2)(D)(i)(II) with respect to visibility (prong 4) for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS. Therefore, the EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA

section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS (prong 4).

*Interstate and International transport provisions*

CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring 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 State submittals state that State regulations are consistent with Federal requirements in Appendix N of 40 CFR part 50 pertaining to the notification of interstate pollution abatement. The State refers to OAR 340–202 “Ambient Air Quality and PSD Increments.”

*EPA analysis:* The EPA most recently approved revisions to the State’s NSR regulations on December 27, 2011 (76 FR 80747). The State’s public notice requirements at OAR 340–209–0060 require that for major NSR actions, ODEQ will provide notice to neighboring states, among other officials and agencies. The State has no pending obligations under section 115 or 126(b) of the Act. Accordingly, the EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS.

*110(a)(2)(E): Adequate resources*

CAA section 110(a)(2)(E) requires each state SIP 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) requirements 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.

*State submittal:* The State submittals cite 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. 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 34–216 “Air Contaminant Discharge Permits” includes permitting authorities for LRAPA.

*EPA analysis:* The EPA proposes to find that the Oregon SIP meets the adequate personnel, funding and authority requirements of CAA section 110(a)(2)(E)(i). The State of Oregon receives sections 103 and 105 grant funds from the EPA and provides State matching funds necessary to carry out SIP requirements. For purposes of CAA section 110(a)(2)(E)(ii), the EPA approved OAR 340–200–0100 through OAR 340–200–0120 as meeting the requirements of CAA section 128 on January 22, 2003 (68 FR 2891). Finally, regarding CAA section 110(a)(2)(E)(iii) state responsibility and oversight of local and regional entities, the EPA is proposing to find that State law and regulation detailed above provides ODEQ with adequate authority to carry out SIP obligations with respect to the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS. Therefore the EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(E) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone 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 State submittals refer 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 (b, d) Functions of Department
- 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
- OAR 340–240 Rules for Areas with Unique Air Quality Needs

*EPA analysis:* The State statutory provisions listed above provide authority to establish a program for measurement and testing of sources, including requirements for sampling and testing. The State 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. Therefore, the EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone 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 contingency plans to implement the emergency episode provisions in their SIPs.

*State submittal:* The State submittals cite 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 ozone advisory to notify the public. OAR 340–214 “Stationary Source Reporting Requirements” requires reporting of emergencies and excess emissions and reporting requirements.

*EPA analysis:* ORS 468–115 “Enforcement in Cases of Emergency” provides emergency order authority comparable to CAA Section 303. Emergency episode SIP requirements are set forth at 40 CFR part 51 subpart H (prevention of air pollution emergency episodes, sections 51.150 through 51.153). The EPA has not promulgated revisions to these rules for PM<sub>2.5</sub>. However, the EPA’s September 25, 2009 guidance<sup>7</sup> made recommendations on how states could address emergency episode and contingency plans for PM<sub>2.5</sub>. Subsequently, on December 27, 2011 (76 FR 80747), the EPA approved State revisions to OAR 340–206 “Air Pollution Emergencies” to add a significant harm level, air pollutant alert level, air pollution warning level, and air pollutant emergency level for PM<sub>2.5</sub>, consistent with the EPA’s September 25, 2009 guidance. OAR 340–206 “Air Pollution Emergencies” is consistent with the requirements of 40 CFR 51.150 through 51.153 for ozone. Therefore, the EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone 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 State submittals refer to ORS 468A.025 “Air Purity Standards; Air Quality Standards; Treatment and Control of Emissions; Rules” which provides authority for the EQC to establish areas of the state that require controls necessary to achieve the NAAQS. The submittals also refer 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 State’s SIP provides for revisions, and in practice, the State 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 the State’s rules to reflect Federal changes to the NAAQS for PM<sub>2.5</sub>, ozone and lead (76 FR 80747). The EPA proposes to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS.

#### 110(a)(2)(I): Nonattainment area plan revision under part D

CAA section 110(a)(2)(I) requires states, in the case of a plan or revision for an area designated as nonattainment, to meet the applicable requirements of part D of Title I of the CAA relating to nonattainment areas.

*EPA analysis:* 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). 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. 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. Because the nonattainment planning requirements are not governed by the three-year submission deadline of CAA section 110(a)(1), this infrastructure action does not address to the requirements of 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 who are 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 State submittals reference specific laws and regulations relating to consultation, public notification, and PSD and visibility protection:

- ORS 468.020 Rules and Standards
- ORS 468.035(a, c, f–g) Functions of Department
- ORS 468A.010 (1) (b, c) Policy
- 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 340–224 Major New Source Review
- OAR 340–225 Air Quality Analysis Requirements

*EPA analysis:* The EPA proposes to find that the State’s Federally-approved SIP includes specific provisions for consulting with local governments and Federal Land Managers as specified in CAA section 121. ODEQ coordinates with local governments, states, Federal Land Managers and other stakeholders on air quality issues and provides notice to appropriate agencies related to permitting actions. The State regularly participates in regional planning processes including the Western Regional Air Partnership, which is a regional planning organization made up of states, tribes, Federal Land Managers, local air agencies, whose purpose is to understand current and evolving regional air quality issues in the West. The EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(J) for

<sup>7</sup> See footnote 2.

consultation with government officials for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS.

The State of Oregon sends real time air monitoring information for ozone, particulate matter, and carbon monoxide to the EPA's AIRNow Web page at <http://www.airnow.gov> and also provides the information on the ODEQ Air Quality Index (AQI) Web site at <http://www.deq.state.or.us/aqi> including measures that can be taken to improve air quality. The EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(J) for public notification for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS.

The requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C, title I of the CAA is the same as described earlier at CAA section 110(a)(2)(C) as it relates to PSD. The EPA most recently approved revisions to the State's Federally-approved PSD program on December 27, 2011 (76 FR 80747), including PSD program regulation of direct PM<sub>2.5</sub>, NO<sub>x</sub> and SO<sub>2</sub> as precursors to PM<sub>2.5</sub>, and PSD permitting of greenhouse gas-emitting sources. The State's SIP-approved PSD permitting program regulates NO<sub>x</sub> and VOCs as precursors to ozone. Therefore, the EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(J) for PSD for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone 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 Title I of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C, Title I of the CAA do not change. Thus we find that there is no new visibility obligation triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the analysis above, the EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone 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 State submittals refer to ORS 468.035 "Functions of Department" which provides ODEQ authority to conduct studies and investigations to determine air quality. OAR 340–202 "Ambient Air Quality Standards and PSD Increments" establishes standards and procedures for modeling and reporting data on air emissions. OAR 340–216 "Air Contaminant Discharge Permits" establishes requirements for testing, monitoring, recordkeeping, and reporting requirements to determine compliance with emission standards. OAR 340–225 "Air Quality Analysis Requirements" includes modeling requirements for analysis and demonstration of compliance with standards and increments in specified areas. OAR 340–226 "General Emission Standards" provides authority for ODEQ to establish additional controls through permitting to prevent violation of ambient air quality standards from a source as determined by modeling, monitoring or a combination thereof.

*EPA analysis:* The EPA previously approved the State's regulations on air quality modeling into the SIP on January 22, 2003 (68 FR 2891) 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, the State of Oregon has submitted a recent SIP revision, supported by modeling for ozone. 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). Based on the foregoing, the EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone 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, until such time as the SIP fee requirement is superseded by the EPA's approval of the state's title V operating permit program.

*State submittal:* The State submittals refer 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.050 "Classification of Air Contamination Sources; Registration and Reporting of Sources; Rules; Fees" provides authority to the EQC to establish fee schedules for air contamination sources. OAR 340–216 "Air Contaminant Discharge Permits" requires payment of permit fees based on a specified table of sources and fee schedule. In addition, the State submittals point to the State's approved title V program.

*EPA analysis:* On September 28, 1995, the EPA fully approved the State's title V program (60 FR 50106) (effective November 27, 1995). While the State's operating permit program is not formally approved into the State's SIP, it is a legal mechanism the State can use to ensure that ODEQ has sufficient resources to support the air program, consistent with the requirements of the SIP. The State'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). The EPA's review process prior to the approval of the State's Title V permitting program included an evaluation of the State's ability to collect adequate fees. Therefore, the EPA proposes to find that the State has satisfied the requirements of CAA section 110(a)(2)(L) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone 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 State submittals refer to the following laws and regulations:

- ORS 468.035 (a, c, f–g) Functions of Department
- ORS 468A.010 (1) (b, c) Policy
- ORS 468A.100–180 Regional Air Quality Control Authorities
- ORS 468A.405 Authority to Limit Motor Vehicle Operation and Traffic; Rules

- 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 the State 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. Therefore the EPA proposes to find that the State's SIP meets the requirements of CAA section 110(a)(2)(M) for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and 2008 ozone NAAQS.

## VI. Scope of Proposed Action

Oregon has not demonstrated authority to implement and enforce the Oregon Administrative rules within "Indian Country" as defined in 18 U.S.C. 1151. "Indian country" is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, the EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Therefore, this SIP approval does not extend to "Indian Country" in Oregon. See CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits).

## VII. Proposed Action

The EPA is proposing to find that the Federally-approved provisions currently in the Oregon SIP meet the following CAA section 110(a)(2) infrastructure elements for the 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, and the 2008 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The EPA is also proposing to find that the Federally-approved provisions currently in the Oregon SIP meet the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to prevention of significant deterioration

for the 2008 ozone NAAQS, and CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2006 PM<sub>2.5</sub> and 2008 ozone NAAQS. This action does not propose to approve any additional provisions into the Oregon SIP but is a proposed finding that the current provisions of the Oregon SIP are adequate to satisfy the above-mentioned infrastructure elements required by the CAA. This action is being taken under section 110 of the CAA.

## VIII. 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 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 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 Oregon, 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, Intergovernmental relations, Ozone, Particulate Matter, and Reporting and recordkeeping requirements.

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

Dated: March 6, 2013.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 54

[REG–122706–12]

**RIN 1545–BL50**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### 29 CFR Part 2590

**RIN 1210–AB56**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### 45 CFR Parts 144, 146, and 147

[CMS–9952–P]

**RIN 0938–AR77**

### Ninety-Day Waiting Period Limitation and Technical Amendments to Certain Health Coverage Requirements Under the Affordable Care Act

**AGENCY:** Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

**ACTION:** Proposed rules.