particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise paragraph § 117.237(d) to read as follows:

§ 117.237 Christina River

* * * * *

(d) The following drawbridges at Wilmington shall operate as follows:

(1) The Norfolk Southern Railroad Bridge, mile 4.1, shall be maintained in the closed-to-navigation position;

(2) The Norfolk Southern Railroad Bridge, mile 4.2, shall be maintained in the open-to-navigation position.

* * * * *

Dated: January 12, 2012.

William D. Lee,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2012–2789 Filed 2–6–12; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0716, FRL–9628–1]

Approval and Promulgation of Implementation Plans; Oregon: Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) submittal from the State of Oregon to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. EPA is proposing to find that the current Oregon SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

DATES: Comments must be received on or before March 8, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2011–0716, by any of the following methods:

- *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, 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–

0716. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means 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 EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic coment, 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.

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

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

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, we mean EPA. Information is organized as follows:

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I. What action is EPA proposing?
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IV. What is the scope of action on infrastructure submittals?
V. What is EPA's analysis of Oregon's submittal?
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VII. Proposed Action
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I. What action is EPA proposing?

EPA is proposing to approve the State Implementation Plan (SIP) submittal from the State of Oregon to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. EPA is proposing to find that the current Oregon SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

Section 110(a)(1) of the CAA 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 section 110(a)(2). The State of Oregon submitted a certification to EPA on September 25, 2008, certifying that Oregon's SIP meets the infrastructure obligations for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. The certification included an analysis of Oregon's SIP as it relates to each section of the infrastructure requirements with regard to the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.

At this time, EPA is acting on the infrastructure SIP submittal for the 110(a)(2) required elements as they relate to the 1997 8-hour ozone NAAQS. This action does not address infrastructure requirements with respect to the 1997 $PM_{2.5}$ NAAQS which EPA intends to act on at a later time. This action also does not address the requirements of 110(a)(2)(D(i) for the 1997 8-hour ozone NAAQS which were previously approved by EPA in three separate actions on June 9, 2011 (76 FR 33650), July 5, 2011 (76 FR 38997), and November 9, 2011 (76 FR 80747).

II. What is the background for the action that EPA is proposing?

On July 18, 1997, EPA promulgated a new NAAQS for ozone. EPA revised the ozone NAAQS to provide an 8-hour averaging period which 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).

The CAA requires SIPs meeting the requirements of sections 110(a)(1) and (2) be submitted by states within 3 years after promulgation of a new or revised standard. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called ''infrastructure'' requirements. States were required to submit such SIPs for the 1997 8-hour ozone NAAQS to EPA no later than June 2000. However, intervening litigation over the 1997 8-hour ozone standard created uncertainty about how to proceed, and many states did not provide the required infrastructure SIP submissions for the newly promulgated standard.

To help states meet this statutory requirement for the 1997 8-hour ozone NAAQS, EPA issued guidance to address infrastructure SIP elements under section 110(a)(1) and (2).[1] This guidance provides 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. Section 110(a) imposes the obligation upon states to make a SIP submission to 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 federally approved SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards.

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 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,

[1] William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.'' Memorandum to EPA Air Division Directors, Regions I–X, October 2, 2007.

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.

EPA's October 2, 2007 guidance clarified that two elements identified in section 110(a)(2) are not governed by the 3 year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to CAA section 172. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, Title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address infrastructure elements related to section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or 110(a)(2)(I).

This action also does not address the requirements of 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS which have been addressed by three separate actions issued by EPA. On June 9, 2011, EPA approved the SIP revision submitted by the Oregon Department of Environmental Quality (ODEQ) to address specific provisions of Clean Air Act section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS including two of the four prongs of 110(a)(2)(D)(i): significant contribution to nonattainment of these NAAQS in any other state (prong 1) and interference with maintenance of these NAAQS by any other state (prong 2) (76 FR 33650). Subsequently, on July 5, 2011, EPA approved portions of a SIP revision submitted by ODEQ as meeting the requirements of the fourth prong of Clean Air Act section 110(a)(2)(D)(i) as it applies to visibility for the 1997 8-hour ozone NAAQS (prong 4) (76 FR 38997). Finally, on November 9, 2011, EPA approved an Oregon SIP revision that addressed among other things, interference with any other state's required measures to prevent significant deterioration (PSD) of its air quality with respect to the 1997 8-hour ozone NAAQS (prong 3) (76 FR 80747).

Furthermore, EPA interprets the 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.

IV. What is the scope of action on infrastructure submittals?

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[2] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (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 EPA's policies addressing such excess emissions (''SSM'') and (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 EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR'') and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80,186 (December 31, 2002), as amended by 72 FR 32,526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIP for the 1997 8-hour ozone NAAQS submittal from Oregon.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the 1997 8-hour ozone infrastructure SIP for Oregon.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the

[2] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPS are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, new source review permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[3] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[4]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[5] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission.

Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[6] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[7]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs

[3] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[4] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule,'' 70 FR 25,162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[5] See, e.g., Id., 70 FR 25,162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[6] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

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

required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[8] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [9] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements. '' [10] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [11] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[12] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS, e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS. Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the 1997 8-hour ozone infrastructure SIP for Oregon.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific

[8] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[9] Id., at page 2.

[10] Id., at attachment A, page 1.

[11] Id., at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[12] See, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[13] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[14] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[15]

V. What is EPA's analysis of Oregon's submittal?

The Oregon SIP submittal lists specific provisions of the Oregon Revised Statutes (ORS) Chapter 468 Environmental Quality, 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 an analysis of how the Oregon submittal by ODEQ meets the requirements.

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

Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters. EPA notes that 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).

Oregon's submittal: The Oregon SIP submittal cites multiple Oregon air quality laws and regulations to address this element. ORS 468A.035 ''General Comprehensive Plan'' provides authority to ODEQ to develop a general comprehensive plan for the control or abatement of air pollution. ORS 468A.020 ''Rules and Standards'' gives the Environmental Quality Commission (EQC) authority to adopt rules and standards to perform function vested by law. ORS 468A.025 ''Air Purity Standards'' provides the EQC with authority to set air quality standards, emission standards, and emission treatment and control provisions. The Oregon submittal goes on to cite the following listing of Oregon laws and regulations that establish emission limits and pollution controls. For a detailed description, please refer to the Technical Support Document (TSD) in the docket for this action:

- ORS 468A.085 Residential Open Burning of Vegetative Debris
- 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
- 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 340–256 Motor Vehicles
- 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 340–258 Motor Vehicle Fuel Specifications
- OAR 340–262 Residential Woodheating
- OAR 340–266 Field Burning Rules (Willamette Valley)

EPA analysis: EPA finds that Oregon's rules define and reference emissions limits and significant emissions rates for air pollutants including NO_X and VOCs, as precursors to ozone. Oregon has no areas designated nonattainment for the 1997 8-hour ozone NAAQS.

Some of the rules listed above were approved into the SIP under part D because certain areas in Oregon were historically nonattainment under the 1-hour ozone standard and required maintenance plans to ensure on-going compliance with the 1997 8-hour ozone standard. As a result, Oregon regulates ozone and its precursors through its SIP-approved major and minor source permitting programs and ozone maintenance plans. EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Nevertheless, Oregon has referenced some SIP provisions originally submitted in response to part D in its submittal documenting its compliance with the infrastructure requirements of section 110(a)(1) and (2). Oregon has over time continually updated the elements of its SIP addressing the ozone NAAQS, and the provisions reviewed here are a weave of SIP revisions submitted in response to the infrastructure requirements of section 110(a)(2) and the nonattainment requirements of part D.

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). EPA is proposing to approve Oregon's SIP as meeting the requirements of section 110(a)(2)(A) for the 1997 8-hour ozone NAAQS.

In this action, 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. EPA believes that a number of

[13] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21,639 (April 18, 2011).

[14] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82,536 (Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38,664 (July 25, 1996) and 62 FR 34,641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67,062 (November 16, 2004) (corrections to California SIP); and 74 FR 57,051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[15] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42,342 at 42,344 (July 21,2010) (proposed disapproval of director's discretion provisions); 76 FR 4,540 (Jan. 26, 2011) (final disapproval of such provisions).

states may have SSM provisions that are contrary to the Clean Air Act and existing EPA guidance [16] and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

In this action, EPA is not proposing to approve or disapprove any existing state rules relating to director's discretion or variance provisions. EPA believes that a number of states may have such provisions that are contrary to the Clean Air Act and existing EPA guidance (52 FR 45109), November 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 that is contrary to the Clean Air Act and EPA guidance to take steps to correct the deficiency as soon as possible.

110(a)(2)(B): Ambient air quality monitoring/data system:

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

Oregon's submittal: Oregon references ORS 468.035(a–e, m) ''Functions of the Department'' which provide 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.

EPA analysis: A comprehensive air quality monitoring plan, intended to meet requirements of 40 CFR part 58 was submitted by Oregon to EPA on December 27, 1979 (40 CFR 52.1970) and approved by 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, 2011. EPA approved the plan on January 6, 2012. This plan includes, among other things, the locations for the ozone monitoring network. Oregon provides an annual air quality data report to the public on the ODEQ Web site at *http://www.deq.state.or.us/aq/forms/annrpt.htm*. In addition, Oregon sends real time air monitoring information for ozone, particulate matter, and carbon monoxide to 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, EPA proposes to approve the Oregon's SIP as meeting the requirements of CAA Section 110(a)(2)(B) for the 1997 8-hour ozone NAAQS.

110(a)(2)(C): Program for enforcement of control measures:

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

Oregon's submittal: Oregon's SIP submittal refers to ORS 468.090–.140 ''Enforcement'' which provides ODEQ with authority to investigate complaints, investigate and inspect sources for compliance, access records, commence enforcement procedures, and impose civil penalties. In addition, ORS 468.035 (j, k) ''Functions of the Department'' provides ODEQ with the authority to enforce state air pollution laws and compel compliance with any rule, standard, order, permit or condition. The Oregon submittal goes on to cite the following listing of Oregon laws and regulations related to enforcement and permitting. For a detailed description, please refer to the TSD in the docket for this action:

- ORS 468.920–.963 Environmental Crimes
- ORS 468.996–.997 Civil Penalties
- ORS 468.065 Issuance of Permits; Content: Fees: Use
- ORS 468.070 Denial, Modification, Suspension or Revocation of Permits
- ORS 468A.040 Permits; Rules
- ORS 468A.045 Activities Prohibited without Permit
- ORS 468A.055 Notice Prior to Construction of New Sources
- ORS 468A.990 Penalties for air pollution offenses
- OAR 340–012 Enforcement Procedure and Civil Penalties
- OAR 340–216 Air Contaminant Discharge Permits (ADCP)
- OAR 340–210 Stationary Source Notification Requirements
- OAR 340–214 Stationary Source Reporting Requirements
- OAR 340–224 Major New Source Review

EPA analysis: To generally meet the requirements of section 110(a)(2)(C), the state is required to have PSD, nonattainment 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 CAA. In addition, Oregon has no nonattainment areas for the 1997 8-hour ozone NAAQS.

EPA believes Oregon code provides ODEQ with the 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, EPA is proposing to approve the Oregon SIP as meeting the requirements of 110(a)(2)(C) related to enforcement for the 1997 8-hour ozone NAAQS.

EPA is proposing to approve Oregon's SIP as generally meeting the requirements related to PSD under section 110(a)(2)(C) for the 1997 8-hour ozone standard. EPA most recently approved revisions to Oregon's major NSR rules (which encompass PSD and Part D NSR) to include NO_X as a precursor for ozone for PSD purposes and PSD permitting of GHGs on November 9, 2011 (76 FR 80747).

EPA is proposing to approve Oregon's infrastructure certification for the 1997 8-hour 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 most recently approved revisions to Oregon's NSR program, including NSR Reform on November 9, 2011 (76 FR 80747). EPA has determined that Oregon's minor NSR program adopted pursuant to section 110(a)(2)(C) of the Act regulates emissions of ozone and its' precursors.

Oregon's NSR program includes requirements for major source permitting in nonattainment areas, maintenance areas, and attainment and unclassifiable areas (OAR 340–224). Oregon's federally-enforceable state operating permit program is found at OAR 340–216 ''Air Contaminant Discharge Permits'' and is also the administrative permit mechanism used to implement the notice of construction and major new source review programs. ODEQ delegates authority to Lane

[16] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation. ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.'' Memorandum to EPA Air Division Directors, August 11, 1999.

Regional Air Protection Agency (LRAPA) to implement the source permitting programs within its 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. In this action, EPA is not proposing to approve or disapprove any state rules with regard to NSR reform requirements for major sources.

In addition, EPA is not proposing to approve or disapprove the state's existing minor NSR program in this action; we are not evaluating this program for consistency with EPA's regulations governing minor NSR herein. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

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

Section 110(a)(2)(D) requires SIPs to include 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.

As noted above, this action does not address the requirements of 110(a)(2)(D)(i) for the 8-hour ozone NAAQS which have been addressed by three separate actions issued by EPA. On June 9, 2011, EPA approved the ODEQ SIP submittal to address specific provisions of Clean Air Act section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS including two of the four prongs of 110(a)(2)(D)(i): Significant contribution to nonattainment of these NAAQS in any other state (prong 1); and interference with maintenance of these NAAQS by any other state (prong 2) (76 FR 33650). Subsequently, on July 5, 2011, EPA approved portions of a SIP revision submitted by ODEQ as meeting the requirements of the fourth prong of Clean Air Act section 110(a)(2)(D)(i) as it applies to visibility for the 1997 8-hour ozone NAAQS (prong 4) (76 FR 38997). Finally, on November 9, 2011, EPA approved an Oregon SIP revision that addressed among other things, interference with any other state's required measures to prevent significant deterioration (PSD) of its air quality with respect to the 1997 8-hour ozone NAAQS (prong 3) (76 FR 80747).

Interstate and International transport provisions:

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

EPA analysis: EPA most recently approved revisions to Oregon's NSR regulations on November 9, 2011 (76 FR 80747). Oregon'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. EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA Section 110(a)(2)(D)(ii) for the 1997 8-hour ozone NAAQS.

110(a)(2)(E): 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.

Oregon's submittal: Oregon cites ORS 468.035 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 provides the ODEQ director with the power to hire, assign, reassign, and coordinate personnel of the department; authority to administer and enforce the laws of the state concerning environmental quality. ORS 468.035(c) provides 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 calls for a coordinated statewide program of air quality control with responsibility allocated between the state and the units of local government and ORS 468A.100–180 describes the establishment, role and function of regional air quality control authorities and includes the provision that regional rules may not be less strict than state rules. The statute also provides the state Environmental Quality Commission with authority to require corrective measures by the regional agency or to remove the regional agency's administrative and enforcement functions if they fail to meet the specified requirements of state law. Oregon regulations at OAR 340–200 specify Lane Regional Air Protection Agency (LRAPA) has authority in Lane County and defines the term ''Regional Agency.''

EPA analysis: Regarding adequate personnel, funding and authority, EPA believes the Oregon SIP meets the requirements of this element. Oregon receives sections 103 and 105 grant funds from EPA and provides state matching funds necessary to carry out SIP requirements. Regarding the state board requirements under section 128, 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 state responsibility and oversight of local and regional entities, Oregon law and regulation listed above provide ODEQ with adequate authority to carry out SIP obligations with respect to the 1997 8-hour ozone NAAQS. Therefore EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA Section 110(a)(2)(E) for the 1997 8-hour ozone NAAQS.

110(a)(2)(F): 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 CAA, which

reports shall be available at reasonable times for public inspection.

Oregon's submittal: Oregon's SIP submittal refers to statute and regulation which provides authority and requirements for source emissions monitoring, reporting, and correlation with emission limits or standards. For a detailed description, please refer to the TSD in the docket for this action:

- 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
- ORS 468A.365 Certification of Motor Vehicle Pollution Control Systems and Inspection of Motor Vehicles; 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 provisions cited by the Oregon SIP submittal provide for monitoring, recordkeeping and reporting requirements for sources subject to major and minor source permitting. EPA proposes to approve the Oregon SIP as meeting the requirements of CAA Section 110(a)(2)(F) for the 1997 8-hour ozone NAAQS.

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

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.

Oregon's submittal: The Oregon submittal cites ORS 468–115 ''Enforcement in Cases of Emergency'' which authorizes the ODEQ Director, at the direction of the Governor, to enter a cease and desist order for polluting activities that present an imminent and substantial danger to public health. In addition, OAR 340–206 ''Air Pollution Emergencies'' authorizes the ODEQ Director to declare an air pollution alert or warning or to issue an 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: As noted in EPA's October 2, 2007 guidance, the significant harm level for the 8-hour ozone NAAQS shall remain unchanged at 0.60 ppm ozone, 2 hour average, as indicated in 40 CFR 51.151. EPA believes that the existing ozone-related provisions of 40 CFR part 51 subpart H remain appropriate. Oregon's regulations discussed above, which have previously been approved by EPA into the SIP on January 22, 2003 (68 FR 2891) continue to be consistent with the requirements of 40 CFR 51.151. Accordingly, EPA proposes to find that the Oregon SIP is adequate for purposes of CAA section 110(a)(2)(G) for the 1997 8-hour ozone NAAQS.

110(a)(2)(H): 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 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.

Oregon's submittal: Oregon's SIP submittal refers to OAR 340–200 ''General Air Pollution Procedures and Definitions: -0040 State of Oregon Clean Air Act Implementation Plan'' which provides for revisions to Oregon's SIP and submittal of revisions to the EPA, including standards submitted by a regional authority and adopted verbatim in ODEQ rules.

EPA analysis: Oregon regularly submits SIP revisions to EPA. On November, 9, 2011, EPA most recently approved a number of Oregon SIP revisions, including updates to Oregon's rules to reflect federal changes to the NAAQS for $PM_{2.5,}$ ozone and lead (76 FR 80747). EPA proposes to approve the Oregon SIP as meeting the requirements of section 110(a)(2)(H) for the 1997 8-hour ozone NAAQS.

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

EPA analysis: There are two elements identified in section 110(a)(2) not governed by the 3 year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather due at the time of the nonattainment area plan requirements pursuant to section 172. These requirements are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address infrastructure elements related to section 110(a)(2)(C) with respect to nonattainment NSR or section 110(a)(2)(I).

110(a)(2)(J): Consultation with government officials:

Section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to Section 121 relating to consultation. 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, Section 110(a)(2)(J) requires states to meet applicable requirements of Part C related to prevention of significant deterioration and visibility protection.

Oregon's submittal: Oregon's SIP submittal refers to a number of laws and regulations relating to consultation, public notification, and PSD and visibility protection. For a detailed description, please refer to the TSD in the docket for this action:

- ORS 468.020 Rules and Standards
- ORS 468.035 (a, c, f–g) Functions of Department
- ORS 468A.010 Policy (1) (b, c)
- ORS 468A.025 Air Purity Standards; Air Quality Standards; Treatment and Control of Emissions; Rules (c)
- 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: EPA finds that Oregon's SIP includes specific provisions for consulting with local governments and Federal Land Managers relating to CAA section 121. ODEQ routinely 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. Oregon regularly participates in regional planning processes including the Western Regional Air Partnership which is a voluntary partnership of states, tribes, federal land managers, local air agencies and the U.S. EPA whose purpose is to understand current and evolving regional air quality issues in the West. Therefore EPA proposes to approve the Oregon SIP as meeting the requirements of CAA Section 110(a)(2)(J) for consultation with government officials.

Oregon sends real time air monitoring information for ozone, particulate matter, and carbon monoxide to 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. Therefore, EPA is proposing to approve the Oregon SIP as meeting the requirements of CAA Section 110(a)(2)(J) for public notification.

Turning to the requirement in section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the CAA, EPA has evaluated this requirement in the context of section 110(a)(2)(C) with respect to permitting. EPA most recently approved revisions to Oregon's PSD program on November 9, 2011 (76 FR 80747). Oregon's PSD program regulates NO_X as a precursor for ozone. Oregon has no nonattainment areas for the 1997 8-hour ozone standard. Therefore, EPA is proposing to approve Oregon's SIP as meeting the requirements of CAA Section 110(a)(2)(J) related to PSD.

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 CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new visibility obligation triggered under section 110(a)(2)(J) when a new NAAQS becomes effective.

110(a)(2)(K): Air quality and modeling/data:

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.

Oregon's submittal: Oregon's SIP submittal refers to ORS 468.035 ''Functions of Department'' (b) which provides ODEQ authority to conduct studies and investigations to determine air quality. Oregon's SIP submittal also refers to OAR 340–225 ''Air Quality Analysis Requirements'' which includes modeling requirements for analysis and demonstration of compliance with standards and increments in specified areas.

EPA analysis: EPA previously approved Oregon's regulations on air quality modeling into the SIP on January 22, 2003 (68 FR 2891). Oregon's rules above 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. While Oregon has no nonattainment areas for the 1997 8-hour ozone NAAQS, 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, Oregon submitted these maintenance plans to EPA, supported by extensive modeling. EPA approved the SIP revision on December 19, 2011 (76 FR 78571). Based on the foregoing, EPA is proposing to approve Oregon's SIP as meeting the requirements of CAA Section 110(a)(2)(K) for the 1997 8-hour ozone NAAQS.

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

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 EPA's approval of the state's title V operating permit program.

Oregon's submittal: Oregon's SIP submittal refers to ORS 468.065 ''Issuance of Permits: Content; Fees; Use'' which provides the EQC authority to establish a schedule of fees for permits based upon the costs of filing and investigating applications, issuing or denying permits, carrying out Title V requirements and determining compliance. Oregon's submittal also refers to OAR 340–216 ''Air Contaminant Discharge Permits'' which requires payment of permit fees based on a specified table of sources and fee schedule.

EPA analysis: On September 28, 1995, EPA fully approved Oregon's Title V program (60 FR 50106) (effective November 27, 1995). While Oregon'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. Before EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Oregon'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). Oregon collects sufficient fees to administer the title V permit program. Therefore, EPA proposes to conclude that Oregon's SIP demonstrates the state has satisfied the requirements of CAA Section 110(a)(2)(L) for the 1997 8-hour ozone NAAQS.

110(a)(2)(M): 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.

Oregon's submittal: Oregon's SIP submittal refers to the following laws and regulations. For a detailed description, please refer to the TSD that can be found in the docket for this proposed action:

- ORS 468.035 (a, c, f–g) Functions of Department
- ORS 468A.010 Policy (1) (b, c)
- ORS 468A.100–180 Regional Air Quality Control Authorities
- OAR 340–200 General Air Pollution Procedures and Definitions
- OAR 340–204 Designation of Air Quality Areas
- OAR 340–216 Air Contaminant Discharge Permits

EPA analysis: The regulations cited by Oregon's submittal were previously approved on November 9, 2011 (76 FR 80747) and provide for authority and procedures for local and regional authorities to participate and consult in the SIP development process. Therefore EPA proposes to find that Oregon's SIP meets the requirements of CAA Section 110(a)(2)(M) for the 1997 8-hour 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.[17] 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). This is consistent with EPA's previous approval of Oregon's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Oregon because the State had not shown it had authority to regulate such sources. See 40 CFR 52.1987(c). It is also consistent with EPA's approval of Oregon's title V operating permits program. See 59 FR 61820, 61827 (December 2, 1994) (interim approval does not extend to Indian Country); 60 FR 50106, 50106 (September 28, 1995) (full approval does not extend to Indian Country).

VII. Proposed Action

EPA is proposing to approve the SIP submittal from the State of Oregon to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the CAA for the NAAQS promulgated for ozone on July 18, 1997. EPA is proposing to approve in full the following section 110(a)(2) infrastructure elements for Oregon for the 1997 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), (M). EPA is taking no action on infrastructure elements (D)(i) and (I) for the 1997 ozone NAAQS. 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, 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 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 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate Matter, and Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: January 27, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2012–2779 Filed 2–6–12; 8:45 am]

BILLING CODE 6560–50–P

[17] ''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, 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.