

meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, this proposed rule, pertaining to Delaware's offset lithographic printing and letterpress printing, does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 6, 2011.

James W. Newsom,

Acting, Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2011-0767, FRL-9470-6]

Approval and Promulgation of Implementation Plans; Oregon: New Source Review/Prevention of Significant Deterioration Rule Revisions and Air Quality Permit Streamlining Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a portion of the State Implementation Plan (SIP) revision submitted by the State of Oregon for the purpose of addressing the third element of the interstate transport provisions of Clean Air Act (CAA or the Act) section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and the 1997 and 2006 fine particulate matter (PM_{2.5}) NAAQS. The third element of CAA section 110(a)(2)(D)(i)(II) requires that a State not interfere with any other State's required measures to prevent significant deterioration (PSD) of its air quality.

EPA is also proposing to approve numerous revisions to the Oregon SIP that were submitted to EPA by the State of Oregon on October 8, 2008; October 10, 2008; March 17, 2009; June 23, 2010; December 22, 2010 and May 5, 2011. The revisions include updating Oregon's new source review (NSR) rules to be consistent with current Federal regulations and streamlining Oregon's air quality rules by clarifying requirements, removing duplicative rules, and correcting errors. The revisions were submitted in accordance with the requirements of section 110 and part D of the Act).

DATES: Comments must be received on or before October 24, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2011-0767, by any of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* R10-Public_Comments@epa.gov.

- *Mail:* Scott Hedges, 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: Scott Hedges, 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-2011-0767. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy 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:

Scott Hedges at telephone number: (206) 553-0296, e-mail address: hedges.scott@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. Purpose of Proposed Action

EPA proposes to approve a portion of Oregon’s Interstate Transport SIP revision for the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS submitted by the Oregon Department of Quality

(ODEQ) on June 23, 2010, and December 22, 2010.¹ Specifically, we are proposing to approve the portion of the plan that addresses the third element of section 110(a)(2)(D)(i), interference with any other State’s required measures to PSD of its air quality with respect to these NAAQS. On June 9, 2011, EPA approved elements one and two of CAA section 110(a)(2)(D)(i): (1) Significant contribution to nonattainment of these NAAQS in any other State, and (2) interference with maintenance of these NAAQS by any other State (76 FR 33650). In addition, on July 5, 2011, EPA approved the SIP for the fourth element of CAA section 110(a)(2)(D)(i) found the SIP to be adequate for element four: interference with any other State’s required measures to protect visibility (76 FR 38997).

EPA is also proposing to approve multiple revisions to Oregon’s SIP that were submitted to EPA by ODEQ on October 8, 2008, October 10, 2008, March 17, 2009, June 23, 2010, December 22, 2010, and May 5, 2011. The revisions update Oregon’s NSR rules to be consistent with Federal requirements by regulating PM_{2.5} and precursor pollutants, as well as adding greenhouse gases (GHGs) to the list of pollutants whose emissions are subject to control under the State’s NSR permitting process and establishes a threshold for such regulation. Approval of the State’s GHG permitting regulations is proposed to be accompanied by a simultaneous withdrawal of the Federal Implementation Plan (FIP) that EPA promulgated on December 9, 2010 (75

FR 82246). EPA also proposes to approve changes to Oregon’s Plant Site Emissions Limit (PSEL) program which address the method for establishing baseline emissions and adopt a threshold or significant emission rate of 10 tons per year of PM_{2.5} as a significant change at an existing facility. Other SIP rule changes that are proposed for approval in this action streamline and clarify the State’s air quality rules that are unrelated to NSR and remove duplicative or outdated requirements (such as the removal of unused basic permit categories that are covered under the general permitting provisions of the Oregon Administrative Rules (OAR). The SIP submittals, described in greater detail in this Notice, revise and amend OAR, chapter 340, divisions 200, 202, 204, 206, 209, 210, 214, 216, 222, 224, 225, 228, 234, and 236, currently in the Federally approved Oregon SIP (CFR part 52, subpart MM), and add portions of OAR chapter 340, division 208 to the Federal approved Oregon SIP. The proposed SIP revisions are explained in more detail below along with our evaluation of how these rules comply with the requirements for SIPs and the basis for our proposed action.

II. Oregon SIP Revisions

Table 1 provides a list of each SIP submittals by ODEQ (by submittal date, and subject) evaluated in this proposed action. The paragraphs that follow Table 1 include further information for each SIP submittal including a summary of the submittal with relevant background information and analysis to support our action.

TABLE 1—ODEQ SIP SUBMITTALS ADDRESSED IN THIS ACTION²

Date of submittal	Subject
10/08/2008	Statutory Agricultural Operations Exemption. Permit Streamlining Rules. (<i>Repealed Rules in Italics</i>).
10/10/2008	
03/17/2009	Plant Site Emission Limit (PSEL) Rule. Infrastructure SIP Rule Changes.
06/23/2010 (Report on interstate transport of PM _{2.5} and ozone added to submittal on 12/22/2010).	
05/05/2011	NSR, PM _{2.5} , and GHG Permitting Rule Updates.

Title I of the CAA, as amended by Congress in 1990, specifies the general requirements for States to submit SIPs to attain and/or maintain the NAAQS and EPA’s actions regarding approval of those SIPs. With this action we are proposing approval of the third element of Oregon’s Interstate Transport SIP

revision for the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS related to PSD.

EPA last approved the Oregon major NSR rules (which encompass PSD and part D NSR) on December 17, 2002 (published January 22, 2003, 68 FR 2891). That approval acted on a July 1,

2001, comprehensive version of Oregon’s NSR rules submitted to EPA on June 26, 2001, prior to the 2002 NSR Reform Rules (published on December 31, 2002, effective date March 3, 2003). Since the approval of the State’s July 2001 rules, ODEQ has submitted several NSR/PSD rule revisions for

¹ See transmittal letters dated June 23, 2010, from Joni Hammond, Deputy Director, ODEQ, and December 22, 2010, from Dick Pedersen, Director, ODEQ, to Dennis McLerran, Regional Administrator, EPA Region 10.

² EPA is not proposing to take action on each of the regulatory provisions that were included in the five SIP submissions identified in Table 1. Only the SIP revisions and implementing regulations

specifically identified in Table 2 are being proposed for action in today’s notice.

incorporation into the Federally approved SIP including, most recently, the changes needed for the permitting of PM_{2.5} and GHGs under ODEQ's major NSR program. The regulations which are proposed for approval in this action accordingly include PSD permitting of PM_{2.5} and GHGs and nonattainment NSR permitting of PM_{2.5}.

Finally, EPA is also proposing to approve multiple SIP submittals containing ODEQ rule revisions that effectuate structural reorganizations of the Oregon code. These rules have been clarified and streamlined with duplicative and outdated requirements removed. Further background for each one is provided in the section below.

A. Third PSD Element of Oregon's Interstate Transport SIP for the 1997 Ozone and 1997 and 2006 PM_{2.5} NAAQS

On July 18, 1997, EPA promulgated the 1997 8-hour ozone³ NAAQS and the 1997 PM_{2.5} NAAQS.⁴ Additionally on December 18, 2006, EPA revised the 1997 24-hour PM_{2.5} standard.⁵ Today's proposed actions relate to these revised standards (the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS).

Section 110(a)(1) of the CAA requires States to submit SIPs to address a new or revised NAAQS within three years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i) which pertains to interstate transport of certain emissions. On August 15, 2006, and September 25, 2009, respectively, EPA issued guidance for States making submissions to meet

the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 PM_{2.5} standards (2006 Guidance)⁶ and for the 2006 PM_{2.5} standards (2009 Guidance).⁷

The interstate transport SIP provisions in section 110(a)(2)(D)(i) (also called "good neighbor" provisions) require each State to submit a SIP that contains provisions that prohibit emissions that adversely affect another State in the ways contemplated in the statute. Section 110(a)(2)(D)(i) identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this rulemaking EPA is addressing the third element in this subsection. The third element of section 110(a)(2)(D)(i) requires a SIP to contain adequate provisions prohibiting emissions that interfere with any other State's required measures to prevent significant deterioration of its air quality.

As a part of its SIP submittal addressing interstate transport, ODEQ submitted an analysis entitled "Oregon SIP Infrastructure for Addressing the Interstate Transport of Ozone and Fine Particulate Matter", dated November 5, 2009, to EPA on December 22, 2010.⁸ EPA believes that ODEQ's submission is consistent with EPA's recommendations in both the 2006 and 2009 Guidance, when evaluated in conjunction with the NSR/PSD rule revisions that EPA proposes to approve in today's action. EPA's proposed approval of Oregon's SIP submission for purposes of meeting the requirements of section 110(a)(2)(D)(i) is contingent upon the final approval of the NSR/PSD rule revisions also included in this proposed action. (In addition to this section, see sections II. C through E of this action for a discussion of the rule revisions proposed for approval.)

EPA proposes to find that the Oregon SIP (40 CFR part 52 subpart MM), as amended by today's proposed action, includes the requirements under the CAA necessary to avoid interference with another State's SIP measures for preventing significant deterioration of air quality.

³ See 62 FR 38856. The level of the 1997 8-hour ozone NAAQS is 0.08 parts per million (ppm). 40 CFR 50.10. The 8-hour ozone standard is met when the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentrations is 0.08 ppm or less (*i.e.*, less than 0.085 ppm based on the rounding convention in 40 CFR part 50, appendix I). This 3-year average is referred to as the "design value."

⁴ See 62 FR 38652. The level of the 1997 PM_{2.5} NAAQS are 15.0 µg/m³ (annual arithmetic mean concentration) and 65 µg/m³ (24-hour average concentration). 40 CFR 50.7. The annual standard is met when the 3-year average of the annual mean concentrations is 15.0 µg/m³ or less (*i.e.*, less than 15.05 µg/m³ based on the rounding convention in 40 CFR part 50, appendix N section 4.3). The 24-hour standard is met when the 3-year average annual 98th percentile of 24-hour concentrations is 65 µg/m³ or less (*i.e.*, less than 65.5 µg/m³ based on the rounding convention in 40 CFR part 40 appendix N section 4.3). *Id.* These 3-year averages are referred to as the annual PM_{2.5} and 24-hour PM_{2.5} "design values," respectively.

⁵ See 71 FR 61144. In 2006, the 24-hour PM_{2.5} NAAQS standard was changed from 65 µg/m³ to 35 µg/m³ (24-hour average concentration). The annual PM_{2.5} standard was not changed. 40 CFR 50.13.

⁶ Memorandum from William T. Harnett entitled "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," August 15, 2006.

⁷ Memorandum from William T. Harnett entitled "Guidance SIP Elements Required Under Sections 110(a)(1) and (2) for the 24-hour Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)," September 25, 2009.

⁸ This interstate transport report was inadvertently left out of the original June 23, 2010, SIP submittal.

Oregon has no EPA designated 8-hour ozone nonattainment areas, and has two designated 24-hour PM_{2.5} nonattainment areas (Klamath Falls and Oakridge). For most of the State, ODEQ permits new major industrial sources through the PSD program for these pollutants. ODEQ's major NSR rules (division 224—which includes both nonattainment NSR and PSD rule provisions), as reflected in the rules proposed for incorporation into the SIP in today's action, ensure that the programs for PSD in other States are not jeopardized by new or expanding industrial sources. Specifically, all new industrial sources and major modifications to existing industrial sources in attainment areas are subject to ODEQ PSD rules requiring pre-construction review, air quality analysis, the application of any required emission control technology, and air permitting. All new sources and major modifications in nonattainment areas are subject to the nonattainment New Source Review provisions of these rules, including LAER, offsets, and net air quality benefit. ODEQ's PSD program directly regulates PM_{2.5} meeting the requirements of NSR/PSD and also includes procedures to address Phase-II requirements of the final rule to implement the 8-Hour Ozone NAAQS.

EPA believes that Oregon's regulatory and SIP revision for the 1997 8-hour ozone NAAQS that makes NO_x a precursor for ozone for PSD purposes and the PSD revision for the 1997 and 2006 PM_{2.5} NAAQS that makes SO₂ and NO_x precursors for PM_{2.5} for PSD purposes, taken together with the other revised PSD rule revisions that EPA proposes to approve in this action, satisfy the requirements of the third element of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS. That is, these provisions ensure that there will be no interference with any other State's required PSD measures because Oregon's SIP, as proposed for approval in this action, will meet current CAA requirements for PSD.

B. How Oregon's NSR/PSD Permitting Program Meets Federal Requirements

Parts C and D of title I of the CAA, 42 U.S.C. 7470–7515, set forth preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA, known as "major New Source Review" or "major NSR." The major NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. States adopt

major NSR programs as part of their SIP. Part C is the “Prevention of Significant Deterioration” or “PSD” program, which applies in areas that meet the NAAQS (*i.e.*, “attainment” areas) as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS (*i.e.*, “unclassifiable” areas). Part D is the “Nonattainment New Source Review” or the “NNSR” program, which applies in areas that are not in attainment of the NAAQS (*i.e.*, “nonattainment areas”). EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S.

On December 31, 2002, EPA published final rule changes to the PSD and NNSR programs (67 FR 80186) and on November 7, 2003, EPA published a notice of final action on the reconsideration of the December 31, 2002 final rule changes (68 FR 63021). In the November 7, 2003 final action, EPA added a definition of “replacement unit,” and clarified an issue regarding plantwide applicability limitations (PALs). The December 31, 2002 and the November 7, 2003, final actions, are collectively referred to as the “2002 NSR Reform Rules.”

The 2002 NSR Reform Rules made changes to five areas of the major NSR programs related to physical and operational changes at existing major stationary sources. In summary, the 2002 rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with PALs to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of “physical change or change in the method of operation.”

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), various petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA’s 1980 NSR rules (45 FR 5276, August 7, 1980). On June 24, 2005, the DC Circuit Court issued a decision on the challenges to the 2002 NSR Reform Rules. *See New York v. United States*, 413 F.3d 3 (DC Cir. 2005). In summary, the DC Circuit Court vacated portions of the 2002 NSR Reform Rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping (40 CFR 52.21(r)(6) and

40 CFR 51.166(r)(6)), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from Federal law all provisions pertaining to clean units and the PCP exemption that were vacated by the DC Circuit Court.

The 2002 NSR Reform Rules require that State agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. To meet this requirement, ODEQ submitted an NSR reform equivalency demonstration report on December 22, 2005.

1. Oregon’s NSR/PSD Rule Revisions

EPA last approved the Oregon major NSR rules addressing part D NSR and PSD on December 17, 2002 (published January 22, 2003, 68 FR 2891). This approval acted on a July 1, 2001, comprehensive version of Oregon’s NSR rules submitted to EPA on June 26, 2001.

On May 5, 2011, ODEQ submitted a series of rule changes as revisions to the Oregon SIP. These rule changes are necessary to align its rules with significant changes made to EPA’s air quality permitting regulations, including the 2002 NSR Reform Rules (published on December 31, 2002, effective date March 3, 2003), and the permitting of PM_{2.5} and GHG emissions. The SIP submittal covers revisions to OAR chapter 340, divisions 200, 202, 216, 224, 225, and 228.

The rule revisions include the adoption of a threshold or significant emission rate of 10 tons per year of PM_{2.5} as a significant change at an existing facility. Facilities would trigger NSR/PSD permitting only if a physical or operational change increased emissions above this threshold. The rule revisions also include the adoption of levels to determine if additional ambient air quality analysis is required, track the cumulative impact of emissions growth in areas that meet air quality standards, and determine if preconstruction monitoring is required for PM_{2.5}.

The May 5, 2011, SIP submittal also includes rules to allow the permitting of GHG emissions under Oregon’s NSR/PSD program. Oregon’s definition of “federal major source” is almost identical to EPA’s definition of “major stationary source” and as such, Oregon has tailored its PSD rules in a manner identical to EPA’s with respect to major sources of GHG emissions. That is, for

a “federal major source” to be “major” for GHGs under the Oregon PSD program, it must have the potential to emit GHGs equal to or greater than 100,000 tons per year on a carbon dioxide equivalent (CO₂e) basis and a potential to emit GHGs equal to or greater than 100/250 tons per year on a mass basis.⁹ However, as discussed above, Oregon’s definition of “major modification” is substantially different than (but equivalent to) EPA’s definition of “major modification” so Oregon has tailored its PSD rule in a different manner in order to produce the same outcome with respect to major modifications for GHGs as EPA’s Tailoring Rule.

In order for Oregon’s PSEL-based definition to have the same effect as EPA’s definition of “major modification” with respect to GHG emissions (*i.e.*, an increase greater than 75,000 tons per year on a CO₂e basis and an increase greater than “zero” on a mass basis), Oregon’s rule requires the establishment of PSELs on a CO₂e basis and an increase in the PSEL of more than 75,000 tons per year on a CO₂e basis, before a “major modification” under the Oregon rules will have occurred.¹⁰ This approach is consistent with how the Oregon program defines major modifications for all other NSR regulated pollutants and results in the same outcome as EPA’s Tailoring Rule with respect to major modifications for GHG emissions.

EPA proposes to find that these provisions are consistent with EPA’s GHG Tailoring Rule and is proposing to approve this GHG PSD permitting revision into the Oregon SIP providing Oregon with the authority to issue PSD permits addressing GHG emissions. In addition, EPA will rescind the FIP codified in 40 CFR 52.1987(d) that ensures the availability of a PSD-permitting authority for GHG-emitting sources in Oregon once this proposed action has been approved into the Oregon SIP.

Additionally the May 5, 2011, SIP submittal includes rule changes providing small-scale local energy

⁹ Carbon dioxide equivalent or CO₂e is a unit of measurement that allows the effect of different GHGs to be compared using carbon dioxide as a standard unit for reference.

¹⁰ Oregon’s rules use the terms “significant emission threshold” or “significant emission rate (SER)” for GHG PSD permitting purposes. However, these terms do not have the same meaning as “significant” as used in the context of EPA’s PSD regulation at 40 CFR 51.166. EPA has not established a significant emission rate for GHGs under 40 CFR 51.166(b)(23)(i). Oregon’s PSEL PSD permitting program establishes a GHG threshold of 75,000 CO₂e to tailor the application of its PSD permitting program in a manner similar to EPA’s GHG Tailoring Rule.

projects more flexibility in obtaining reductions to offset proposed emission increases.

EPA has reviewed these amendments to the ODEQ rules and, as discussed below, has determined that they meet EPA's requirements under sections 110, part C and part D of title I of the CAA. EPA is therefore proposing to approve them as revisions to the Oregon SIP.

2. Analysis of Oregon's NSR/PSD Revisions

In 1982, EPA approved Oregon's Major NSR/PSD program as equivalent to, or more stringent than, EPA's NSR/PSD regulations (47 FR 35191, August 13, 1982). Oregon's program includes a Major NSR rule that covers non-attainment NSR and PSD applicability provisions as well as a separate but related PSEL (plant-wide cap) rule. The PSEL rule employs a similar, though not identical, approach to EPA's PAL program and was in fact identified as an example of a State program successfully using a PAL concept during EPA's development of its PAL regulations.

In the December 31, 2002, preamble to its 2002 NSR Reform Rules, EPA discussed potential state PAL regulatory programs that could differ from the Federal rules while still affording equivalent effectiveness as an NSR/PSD program. The 2002 NSR Reform rules did not include specific requirements for an area-wide PAL program. However, the Agency did provide that "[i]f a State currently has or wants to pursue an area-wide PAL program, then it must demonstrate that its program is equivalent to or more stringent than our final [PAL] rules."¹¹ Later on, EPA affirmed that "[e]ver since our current NSR regulations were adopted in 1980, we have taken the position that States may meet the requirements of part 51 'with different but equivalent regulations.' 45 FR 52676. Several states have, indeed, implemented programs that work every bit as well as our own base programs, yet depart substantially from the basic framework established in our rules. A good example is Oregon, where the SIP-approved program requires all major sources to obtain plantwide permits not unlike the PALs that we are finalizing today * * *"¹²

Oregon's NSR/PSD program differs from the Federal program in several ways. It doesn't subject the same sources and modifications to major NSR as would EPA's rules. The program has lower major source thresholds for sources in nonattainment areas and maintenance areas, so smaller new

sources and changes to smaller existing sources are subject to review. The program also requires fugitive emissions to be included in the applicability determination for all new sources and modifications to existing sources. However, as mentioned, the program also utilizes a PSEL approach to defining major modifications rather than a contemporaneous net emissions increase approach as does EPA's main (non PAL alternative) NSR reform approach.

The effect of Oregon's PSEL approach is that, generally, changes which would be subject to review under the PAL provisions in the 2002 NSR Reform Rules are subject under Oregon's rules. However, there are some differences between the Oregon rules and EPA's rules that, generally, result in Oregon's program being more protective. For example, when a major modification is permitted, BACT and/or LAER is required for more new and modified emission units than under EPA's PAL rules. Oregon's rules require BACT/LAER for all new and modified units, not just significant and major units, as well as defining what constitutes a modified unit more broadly than EPA's rules. In addition, changes which would result in increased emissions, but would not be considered modifications under either the Oregon rules or EPA's reform rules are still reviewed for compliance with ambient standards and PSD increments under Oregon's PSEL program.

Overall, EPA has determined that Oregon's PSD program for reviewing and controlling emissions from new and modified sources is at least as strict as EPA's program. We have reviewed Oregon's NSR/PSD program and ODEQ's recent rule revisions included in today's proposed action, and have determined that the NSR/PSD program meets the current requirements in 40 CFR 51.165 and 51.166. Accordingly, EPA proposes in this action to approve the specified changes into the Federally approved SIP.

C. Agricultural Operations (as Specified in Oregon Revised Statute 468A.020)

The CAA does not provide an exemption for agricultural operations while, prior to 2007, Oregon's State law exempted most agricultural operations from air quality regulations. To address this discrepancy, the 2007 Oregon Legislature (in accordance with Oregon Senate Bill 235) updated Oregon's air quality law (Oregon Revised Statute (ORS) 468.020 and 468A.020) to be consistent with the Federal CAA enabling the regulation of air emissions from agricultural sources if necessary to

implement the Federal CAA. The Oregon Environmental Quality Commission in turn adopted rule amendments to OAR 340-200-0030, 340-210-0205, and 340-264-0040 to align these rules with ORS 468A.020 and to make revisions to Oregon's SIP and the Oregon title V operating permit program. The revisions to OAR 340-200-0030, 340-210-0205, and 340-264-0040 were submitted to EPA by ODEQ on October 8, 2008. OAR rules now allow agricultural air quality pollution sources to be regulated in Oregon as necessary to meet CAA requirements.

EPA believes that the revised ORS 468A.020 (in conjunction with the corresponding revisions to the OAR 340-200-0030, 340-210-0205, and 340-264-0040) meet CAA requirements and, therefore, we propose to incorporate these revised OAR provisions into the Federally approved Oregon SIP.

D. Permitting Rule Corrections, Clarifications and Streamlining

EPA is proposing to take action on portions of the following three SIP submittals by ODEQ that correct previous errors, provide clarification and streamline air quality permitting rules in the State of Oregon. These rules are described with additional specificity in section E of this notice.

1. Rule Revisions in the October 10, 2008, SIP Submittal

In 2001, ODEQ streamlined the Air Quality Program's permitting program which was previously approved by EPA. In 2007, ODEQ's rulemaking further streamlined and updated the permitting process by clarifying requirements, eliminating duplicative and conflicting standards; keeping rules in line with Federal requirements, and correcting errors. This rulemaking package was submitted by ODEQ to EPA as a SIP revision on October 10, 2008. The SIP submittal covers revisions to OAR chapter 340, divisions 200, 208, 209, 214, 216, 218, 228, 232, 234 and 236 and EPA is proposing to approve incorporation of these provisions into the Federally approved SIP. The rule revisions in the October 10, 2008 SIP submittal:

(1) Add the chemical HFE-7300 to a list of compounds exempt from the definition of volatile organic compounds (VOC), or ground-level ozone precursors to be consistent with Federal regulations;

(2) Revise Excess Emissions rules to address the factors which ODEQ will take into consideration to determine how it will exercise its enforcement discretion with respect to excess

¹¹ 67 FR 80221 (December 31, 2002).

¹² 67 FR 80241.

emissions incidents meeting specified criteria;

(3) Delete unused Basic Permit categories in the Air Contaminant Discharge Permit (ACDP) rules that have been replaced by other permit categories;

(4) Update, correct errors, and clarify general permits for asphalt plants, boilers, concrete plants, rock crushers, and wood products facilities (These changes clarify monitoring, reporting and compliance procedures in division 216 (ACDPs) and include a provision that facilities with ACDPs may not be operated if the permit expires or is terminated, unless a timely renewal application has been submitted or another type of permit has been issued. The revisions also clarify that for facilities with title V or ACDPs, requirements established in preceding permits remain in effect unless specifically modified or terminated.);

(5) Change the averaging time in the sulfur dioxide standards for fuel-burning equipment from two hours to three hours to align with Federal standards (refer to section D, division 228 of this proposal—Requirements for Fuel Burning Equipment and Fuel Sulfur Content—for a complete discussion of the revised averaging time of the sulfur dioxide emission standards);

(6) Add a requirement for prior notification for those seeking to avail themselves of the exemption allowing a higher (currently SIP-approved) emission rate for burning salt laden wood waste;

(7) SIP-strengthening measures that replace outdated regulations governing wigwam burners with a state-wide prohibition on their use;

(8) Streamline the kraft pulp mill rules (in division 234) by clarifying permitting and compliance determinations, and eliminating unnecessary reporting, which includes removing a Director's discretion reference in the definition of "Daily Arithmetic Average" allowing alternatives to emission limits, testing or monitoring methods without prior EPA approval, removing a section on submission of plans for construction and modification because general permitting regulations in division 210 address these requirements, removing a section requiring use of obsolete sodium ion probe, as well as clarifying Federal New Source Performance Standards requirements that apply to kraft pulp mills;

(9) Specifies average hourly emission rate calculation procedures and measurement methods for board products manufacturing.

These changes clarify, correct and update Oregon's existing rules to be consistent with Federal regulations as well as streamline the permitting process and are proposed for approval into the SIP.

It should also be noted that on November 5, 1999, ODEQ submitted a complete rule renumbering to EPA for approval. On January 22, 2003 (68 FR 2891), we approved most of these new divisions but at that time did not take action on division 208 (Visible Emissions and Nuisance Requirements). We are now proposing to approve rules 0010 (Definitions), 0100 (Visible Emissions, Applicability), 0110 (Visible Emissions, Visible Air Contaminant Limitations), 0200 (Fugitive Emissions Requirements, Applicability) and 0210 (Fugitive Emissions Requirements) of division 208 into the Oregon SIP which will replace division 21, rules 015, 050, 055, and 060.

Additionally, we are proposing to approve Oregon's current excess emission rules (division 214, rules 0300 through 0360) into the Oregon SIP. Upon approval, these division 214 rules will replace the Federally-approved division 28 which will be removed from the SIP. EPA finds that the division 214 rules included in the October 10, 2008, SIP submittal conform to Federal guidance related to excess emissions, and proposes to incorporate these rules into the SIP. Oregon's excess emission provisions specify the factors that the State will take into account regarding the exercise of its enforcement discretion in response to excess emissions.

Finally, on January 18, 2007, EPA added 1,1,1,2,2,3,4,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (also known as HFE-7300) to the list of compounds¹³ which are excluded from the definition of VOC on the basis that these compounds make a negligible contribution to tropospheric ozone formation (72 FR 2193–2196). Exempting HFE-7300 from the definition of VOC in OAR 340–200–0020 is consistent with Federal regulations.

2. Rule Revisions in the March 17, 2009, SIP Submittal

The Stationary Source PSEL rule (OAR chapter 340, division 222) sets limits on emissions of specified regulated air pollutants. The primary purpose of establishing a PSEL is to assure compliance with ambient air standards and PSD increments, which regulate criteria pollutants (*i.e.*, particulate matter, ground-level ozone,

carbon monoxide, sulfur oxides, nitrogen oxides, and lead).

The March 17, 2009, SIP submittal exempts pollutants regulated by the Accidental Release Prevention rules and the Early Reduction High Risk Pollutant rules from regulation under the PSEL rule. These pollutants were erroneously included in ODEQ's previous rule and have subsequently been removed. The Accidental Release Prevention rule (OAR-244–0230) was established to require businesses storing large quantities of hazardous materials to have a Risk Management Plan to prevent the accidental release of those regulated substances. The Early Reduction High Risk Pollutants rules (OAR 340–244–0120) are used to allow a source to make early voluntary emission reductions of listed chemicals in order to be allowed greater flexibility later when complying with new Federal regulations. These programs are not implemented through the PSEL rule and do not depend on that rule for implementation.

3. Rule Revisions in the June 23, 2010, SIP Submittal

Sections 110(a)(1) and (2) of the Federal CAA requires States to submit changes to SIP interstate transport provisions to EPA for approval. The rule revisions submitted to EPA on June 23, 2010, are needed to update Oregon's SIP and meet EPA infrastructure requirements. The SIP submittal covers revisions to OAR chapter 340, divisions 200, 202, 204, and 206.

These rule revisions include provisions necessary to address changes to the NAAQS for PM_{2.5}, ozone and lead. Specifically these revisions add PM_{2.5} to the list of regulated air pollutants so that Oregon no longer needs to rely on a surrogacy policy; include PM_{2.5} thresholds for significant harm, PM_{2.5} levels for triggering alerts, warnings, and emergencies (developed by ODEQ pursuant to the requirements of 40 CFR 51.151); include PM_{2.5} non-attainment area boundary descriptions for the cities of Klamath Falls and Oakridge; and, in accordance with EPA regulations, exempt dimethyl carbonate and propylene carbonate from the definition of VOC. On February 20, 2009, EPA added dimethyl carbonate and propylene carbonate to the list of compounds (40 CFR 51.100(s)) which are excluded from the definition of VOC on the basis that these compounds make a negligible contribution to tropospheric ozone formation (74 FR 3437–3441). Exempting dimethyl carbonate and propylene carbonate from the definition of VOC in OAR 340–200–0020 will make Oregon rule consistent with Federal regulations.

¹³ See 40 CFR 51.100(s).

E. Significant Changes to Oregon's SIP

The docket to today's proposed action includes a technical support document which describes in more detail the substantive changes to the Oregon rules that have been submitted by ODEQ as revisions to the SIP, EPA's evaluation of the changes, and the basis for EPA's action.

A summary of significant regulatory changes proposed for incorporation into the SIP under today's proposal are provided below.

Division 200 General Air Pollution Procedures and Definitions

This division includes ODEQ's general air quality definitions (rule 0020), a list of abbreviations and acronyms (rule 0025), general exceptions (rule 0030), provisions for compliance schedules (rule 0050), and rules for conflicts of interest and makeup of boards (rules 0100 to 0120).

ODEQ has revised the method of setting the starting emission level, or netting basis, for counting emission changes for new and expanding facilities when they are initially permitted. Under the current SIP, to ensure that Oregon's NSR/PSD program is protective, companies are required to evaluate the air quality effects that would occur if a new or expanded facility operated at its capacity. Once this level is approved, it is added to a facility's netting basis even though the facility may never actually operate at that level. This unrealistically high starting emission level could allow a future expansion to avoid NSR/PSD. To prevent this, ODEQ has added a process to reset the netting basis once a new or expanded facility has been operating for up to 10 or 15 years to establish a realistic level. This applies to major GHG sources that were permitted but not yet operating before the GHG rules were adopted and to future NSR/PSD sources. The process will not limit the ability of a facility to operate permitted equipment, but will prevent use of the added netting basis until the level is reset.

General Definitions 340–200–0020

Actual emissions—The rule revision adds provisions in definition of actual emissions for sources that had not begun normal operation during the baseline period but were approved or permitted to construct and operate. Oregon revised its major source permitting program by reducing the netting basis from potential to emit (PTE) down to the highest actual emissions at the end of the baseline period for sources approved under

division 224. This will be required before any future netting can take place and will prevent sources from netting out of NSR/PSD. Sources that reduce actual emissions because of voluntary controls will not lose that portion of the netting basis. This reduction will not affect the PSEL so sources with NSR/PSD permits will be able to utilize permitted emission units up to their permitted PTE without going through NSR/PSD again. ODEQ also revised its major source permitting program by reducing the netting basis from PTE down to the highest actual emissions in the last 10 years since the date of permit issuance for sources permitted under division 224 (Major NSR which includes PSD).

The revision to the definition of actual emissions also adds (1) a provision for sources that had not begun normal operation but were permitted under division 224 to reset actual emissions, (2) a provision to reduce PTE to actual emissions for sources that had not begun normal operations but were permitted to construct and operate under division 224, (3) a provision to reduce PTE to actual emissions for sources permitted under division 224 or approved under division 210 (Stationary Source Notification Requirements) after the baseline period, and (4) adds aggregate insignificant emissions threshold for PM_{2.5} in PM_{2.5} nonattainment areas. This makes PM_{2.5} consistent with the PM₁₀ threshold, which is 5% of the significant emission rate (SER) of 5 tons in Medford and other nonattainment areas in older rules.

Aggregate insignificant emissions—The revision to the definition of aggregate insignificant emissions adds an emissions threshold for GHG. The *de minimis* level for GHG is set at the State of Oregon GHG reporting threshold (2,756 tons CO₂e).

Baseline Emission Rate—The revised definition for baseline emission rate does not include a specific rate for PM_{2.5} because PM_{2.5} will be ratioed to PM₁₀ for both netting basis and PSEL. The revised definition includes a baseline emission rate for GHG with the first permit action after July 1, 2011, since that is when GHG sources are required to get permits for GHGs alone.

The revised definition further adds a provision for recalculating the baseline emission rate if actual emissions are reset in accordance with the definition of actual emissions. The revised definition also adds a provision for freezing only the production basis used to establish the baseline emission rate, not the entire baseline emission rate.

Biomass—The revised rule adds a definition of biomass and defers carbon dioxide (CO₂) emissions from biomass in accordance with EPA's July 2011 deferral. The application of the PSD and title V permitting requirements to CO₂ emissions from bioenergy and other biogenic stationary sources has been deferred for a period of 3 years.

Criteria Pollutant—The revised rule adds PM_{2.5} to the definition of criteria pollutant.

Federal Major Source—The revised rule adds a GHG threshold of 100,000 tons CO₂e per year to definition of Federal Major Source consistent with EPA's GHG Tailoring Rule and includes fugitive emissions in the definition of major modification. This inclusion clarifies that fugitive emissions must be included in the major NSR applicability. The GHG threshold in 340–200–0020(55) is consistent with the requirements in the GHG Tailoring Rule.

Major Modification—The definition of major modification has been revised. The revised definition adds a provision stating that major modifications for precursors are also major modifications for ozone and PM_{2.5}. This revision aligns the definition with EPA rules. The revised definition also specifies (1) that a major modification is triggered if the PSEL exceeds the netting basis, (2) the type of accumulation of physical changes and changes in operation that trigger a major modification, (3) that fugitive emissions must be included in the major NSR applicability, (4) that emissions increases from the increased use of equipment permitted or approved to construct are not included in major modification applicability, and (5) when sources would trigger NSR with only a 1 ton/year increase.

The revised definition of major modification also states that the portion of the netting basis and PSEL that was based on PTE because the source had not begun normal operations must be excluded from major modification applicability until it is reset and deletes the exception for PCPs that has been removed from Federal regulations.

Major Source—The revised major source definition states that fugitive emissions must be included in determining whether or not a source is considered major. The revised definition also indicates that PTE calculations must include emissions increases due to the new or modified source.

Netting Basis—The revised netting basis definition states that the initial netting basis and PSEL for PM_{2.5} and GHG will be established with the first permitting action issued after July 1, 2011, provided the permitting action

involved a public notice period that began after July 1, 2011 (*i.e.*, when major GHG sources will be required to obtain permits).

The revised definition also adds a provision that the initial netting basis and PSEL for PM_{2.5} will be the PM_{2.5} fraction of the PM₁₀ netting basis and PSEL. ODEQ treats PM_{2.5} and PM₁₀ in a comparable manner since PM_{2.5} is a subset of PM₁₀, which is a pollutant already addressed by the existing permitting rules. As a result, a facility's PM_{2.5} fraction will be determined and used to calculate permitted levels for PM_{2.5}. This approach incorporates PM_{2.5} at this time as if it had been part of the program all along; allowing previously approved expansions to continue to operate and new expansions to be reviewed consistent with State and Federal requirements. It also avoids the need to select a unique baseline period for counting changes in PM_{2.5} emissions towards triggering NSR/PSD. Because the PM₁₀ SER is 15 tons/year and the PM_{2.5} SER is 10 tons/year, sources could retroactively trigger the PM_{2.5} SER because of past approved increases in PM₁₀. As a result, ODEQ may conduct a one time 5 ton true up to eliminate this possibility.

The revised definition also sets the initial source-specific PSEL for a source with a PTE greater than or equal to the SER to be equal to the PM_{2.5} fraction of the PM₁₀ PSEL. The revision further clarifies when the netting basis is zero and when changes to the netting basis are effective and adds a provision to reduce the netting basis from PTE for sources permitted under OAR 340–224 (Major NSR) after the baseline period.

Opacity and Source Test—The reference to Director's discretion to allow alternatives to emission limits, testing or monitoring methods in Federal rules or the SIP without prior EPA approval has been deleted from the definitions of opacity and source test.

PM_{2.5}—The revised PM_{2.5} definition adds EPA's new reference test methods and adds a provision for PM_{2.5} precursors. This definition is consistent with EPA's rules for purposes of title V and NSR.

Regulated Pollutant—The revised definition for regulated pollutant includes precursors and GHGs and clarifies that only regulated pollutants with significant emissions are subject to NSR.

The revised definitions discussed above are consistent with the EPA definition in 40 CFR 51.165(a)(1) and 51.166(b).

Exceptions 340–200–0030

The rule was revised to clarify that the statutory exemption for agricultural operations and equipment do not apply to the extent necessary to implement the CAA. This allows agricultural operations and equipment to be regulated as necessary in Oregon to meet CAA requirements.

Division 200 Tables

The Significant Air Quality Impact, Significant Emission Rates, *De minimis* Emission Levels, and Generic PSEL tables (Tables 1 through 5) in division have also been revised. The tables add: (1) EPA-adopted PM_{2.5} significant impact levels; (2) EPA-adopted SERs for GHG, direct PM_{2.5}, PM_{2.5} precursors and VOC precursors; (3) *de minimis* levels for GHG, for PM_{2.5} in the Medford AQMA, and for direct PM_{2.5}; and (4) a generic PSEL for PM_{2.5} and GHG. The *de minimis* level for GHG has been set at the State of Oregon GHG reporting threshold. The *de minimis* levels for PM_{2.5} are consistent with PM₁₀ and the generic PSEL for GHG is based on proposed SER minus 1000 tpy. In addition, the generic PSEL for PM_{2.5} is based on the proposed SER minus 1 tpy, consistent with other criteria pollutants.

Division 202 Ambient Air Quality Standards and PSD Increments

This division contains the State ambient air quality standards and the PSD increments.

Definitions 340–202–0010

Baseline Calculation—The revised definition clarifies that actual emission increases from any source or modification (not just major sources and major modifications) on which construction commenced after January 6, 1975, cannot be included in the baseline calculation. It also adds the baseline concentration for PM₁₀ in the Medford-Ashland AQMA from the definition in division 225 (Air Quality Analysis Requirements) and the baseline concentration year for PM_{2.5} that is set on the year when ambient monitoring was done and when the increment was proposed.

Ambient Air Quality Standards for Suspended Particulate Matter 340–202–0060, Ozone 340–202–0090 and Lead 340–202–0130

The revised rules update the Oregon's ambient air quality standards to be consistent with Federal NAAQS by adding the 2006 annual average and 24-hour Federal standards for PM_{2.5}, the 2008 8-hour Federal standard for ozone and the 2010 one-hour Federal standard for lead.

Division 204 Designation of Air Quality Areas

This division identifies the carbon monoxide, PM₁₀, and ozone nonattainment areas in the State of Oregon.

Designation of Nonattainment Areas 340–204–0030

The rule was revised to add two PM_{2.5} nonattainment areas, Klamath Falls and Oakridge, that were designated by EPA to not be in attainment of the 2006 24-hour PM_{2.5} NAAQS (74 FR 58688, November 13, 2009).

Division 206 Air Pollution Emergencies

This division establishes criteria for identifying and declaring air pollution episodes at levels below the level of significant harm. The division was revised to add a significant harm level for PM_{2.5} of 350.5 µg/m³ (24-hour average), an air pollutant alert level for PM_{2.5} of 140.5 µg/m³ (24-hour average), an air pollution warning level of 210.5 µg/m³ (24-hour average) for PM_{2.5}, and an air pollutant emergency level of 280.5 µg/m³ (2-hour average) for PM_{2.5}.

Division 214 Stationary Source Reporting Requirements

This division contains ODEQ's provisions for reporting and recordkeeping, information requests (section 114 authority), credible evidence, business confidentiality, emission statements, and excess emissions.

Excess Emissions and Emergency Provisions 340–214–0300 Through 0360 (Formally in Division 28)

The applicability of the Excess Emissions and Emergency Provisions rule has been revised to align with EPA policy regarding applicability, planned start-up and shutdown, schedule maintenance, other excess emissions, enforcement action criteria, and affirmative defense by clarifying that the affirmative defense of emergency does not take away ODEQ's enforcement discretion, but is relevant when evaluating a violation to determine the level of penalty. It also clarifies that excess emission reports must include whether a source followed approved procedures for startup, shutdown or maintenance activity when applicable and consolidates and further describes criteria for demonstrating emergency as an affirmative defense. The rule revisions are consistent with EPA policy

as specified in 1999 memorandum by EPA.¹⁴

Division 216 Air Contaminant Discharge Permits

This division is the ODEQ Federally-enforceable State Operating Permit program, and is also the administrative permit mechanism used to implement the notice of construction and major NSR programs.

The revisions to the rules in division 216 clarify that facilities with ACDPs may not be operated if the permit expires or is terminated, unless a timely renewal application has been submitted or another type of permit has been issued. The revisions also clarify that for facilities with title V or ACDPs, requirements established in preceding permits remain in effect unless specifically modified or terminated.

In addition, the following unused Basic Permit categories currently in the Oregon SIP have been deleted from this rule and, following this action, are proposed to be removed from the SIP:

(1) Wood Furniture and Fixtures more than 5,000 but less than 25,000 board feet/maximum 8 hour input.

(2) Flour, Blended and/or Prepared and Associated Grain Elevators more than 2,000 but less than 10,000 tons per year throughput.

(3) Grain Elevators used for intermediate storage more than 1,000 but less than 10,000 tons/year throughput.

(4) Millwork (including kitchen cabinets and structural wood members) more than 5,000 but less than 25,000 bd. ft./maximum 8 hour input.

(5) Non-Ferrous Metal Foundries more than one ton/yr. but less than 100 tons/yr. of metal charged.

(6) Pesticide Manufacturing more than 1,000 tons/yr. but less than 5,000 tons/yr.

(7) Sawmills and/or Planing Mills more than 5,000 but less than 25,000 board feet/maximum 8 hour finished product.

(8) Seed Cleaning and Associated Grain Elevators more than 1,000 but less than 5,000 tons per year throughput.

(9) Bakeries, Commercial baking more than 500 tons of dough per year.

(10) Cereal Preparations and Associated Grain Elevators more than 2,000 but less than 10,000 tons per year throughput.

(11) Coffee Roasters roasting more than 6 tons coffee beans in a year, but less than 30 tons/yr.

In 2001, ODEQ instituted 19 Basic Permit categories to track small air emission sources. ODEQ intended that basic permits function as a registration, or means to track sources with potential to grow or require a different type of permit and to trigger control requirements. The purpose was to anticipate emission increases and reduce potential for source violations. Because no basic permits have been issued in the above categories, removing these categories does not result in termination of any existing permits. A general provision in the ODEQ's ACDP rules (division 216) ensures that any facility with significant emissions is regulated through a permit.

The rule revision also delegates authority to Lane Regional Air Protection Agency to implement ACDP and Oregon title V operating permit programs for regulation of PM_{2.5} and GHG within its area of jurisdiction. It also adds: (1) PM_{2.5} and GHGs to pollutant-based source categories requiring ACDPs, (2) a 5 ton PM_{2.5} threshold for requiring a permit in nonattainment areas to provide more protection for the area through source surveillance, and (3) a 100,000 ton GHG CO_{2e} threshold for GHG permitting, consistent with the GHG tailoring rule. These rule revisions are proposed for approval into the SIP.

Division 224 Major New Source Review

This division contains the ODEQ major source permit to construct programs as required by title I, parts C and D of the Act. It requires an ACDP prior to beginning construction on a new major source or major modification.

This division applies to new major sources and major modifications and requires that no owner or operator begin actual construction without first having received an ACDP and having satisfied the requirements of division 224.

The division includes the procedural requirements for the NSR program, including specifying the information that must be submitted in a permit application, the time period for which the approval to construct is valid, the obligation to comply with all applicable requirements, and the time period that the new or modified source can operate without applying for a title V operating permit, and when a title V operating permit must be revised before commencing construction or operation. The division also includes the procedures for processing permit applications.

The division also includes the substantive requirements which must be met for approval of a new major source

or major modification. These include the requirement that the owner or operator must demonstrate the ability of the source to comply with all applicable requirements.

ODEQ's major source permit to construct program as revised in division 224 complies with EPA's requirements in 40 CFR 51.165 through 51.166 and ensures that new and modified major sources will not cause or contribute to violations of any NAAQS. Therefore, EPA proposes to approve these provisions into the Oregon SIP.

Applicability and General Prohibitions 340-224-0010

The rule revision clarifies that division 224 (Major NSR) applies to the regulated pollutant for which the area is designated nonattainment or maintenance within nonattainment and maintenance areas, as well as to the regulated pollutant for which the area is designated attainment or unclassified within attainment and unclassified areas. It also adds applicability requirements for GHG PSD permitting of sources that have already triggered NSR/PSD for other pollutants and that are major for GHGs and trigger PSD. This is consistent with EPA's Tailoring Rule for purposes of title V and PSD.

Requirements for Sources in Nonattainment Areas 340-224-0050

The rule revision adds requirements for PM_{2.5} precursors to sources in designated PM_{2.5} nonattainment areas (*i.e.*, Oakridge and Klamath Falls). It also clarifies that LAER applies to each emissions unit that emits the nonattainment pollutant or precursor not included in the most recent netting basis or included in the most recent netting basis but has been modified to increase actual emissions.

Requirements for Sources in Maintenance Areas 340-224-0060

The rule revision adds precursors to the list of pollutants subject to BACT in maintenance areas. It clarifies that BACT applies to each emissions unit that emits the maintenance pollutant or precursor not included in the most recent netting basis or included in the most recent netting basis but has been modified to increase actual emissions.

Prevention of Significant Deterioration Requirements in Attainment or Unclassified Areas 340-224-0070

The rule revision: (1) Adds precursors to the BACT requirement, (2) clarifies that BACT applies to each emissions unit that emits the nonattainment pollutant or precursor not included in the most recent netting basis, or is

¹⁴ Memorandum from Steven A. Herman entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown, September 20, 1999.

included in the most recent netting basis but has been modified to increase actual emissions, (3) indicates that the required air quality analysis is for the pollutant with increases above the SER over the netting basis, and (4) adds a provision that increases above the SER for direct PM_{2.5} or PM_{2.5} precursors also trigger an analysis of PM_{2.5}.

Division 225 Air Quality Analysis Requirements

This division contains all of the modeling, monitoring, impact analysis, and net air quality benefit requirements that are necessary to ensure ambient air quality requirements are met in the permitting process. The division also includes provisions which specify the technical information and processes to be used in air quality impact analyses.

The provisions for demonstrating net air quality benefit in the revisions to division 225 comply with the CAA and EPA's requirements for emission offsets (section 173 of the Act, 40 CFR 51.165(a) and 40 CFR part 51, appendix S, Emission Offset Interpretative Ruling). EPA is therefore proposing to approve these provisions as complying with part D of the CAA.

Definitions 340–225–0020

Baseline Concentration—The revised baseline concentration definition adds a baseline concentration year of 2007 for PM_{2.5} consistent with EPA regulations. The definition of baseline concentration is consistent with EPA's definitions in 40 CFR 51.165(a) and 51.166(b).

Requirements for Analysis and Demonstrating Compliance in Maintenance Areas 340–225–0045 and PSD Class I, II and III Areas 340–225–0050 and 0060

The rule revisions clarify that a single source impact analysis is sufficient to show compliance with standards and increments for only the pollutants that trigger PSD, and that a single source impact analysis is for emission increases equal to or greater than a significant emission rate above the netting basis due to the proposed source or modification. The revisions also add a PM_{2.5} significant monitoring concentration of 4 µg/m³ as specified in EPA's PM_{2.5} NSR/PSD implementing rule for use in determining the need for preconstruction monitoring of a proposed source or modification in a PSD Class II and III area.

Requirements for Demonstrating a Net Air Quality Benefit 340–225–0090

The rule revision adds PM_{2.5} to the list of pollutants for non-ozone areas and adds PM_{2.5} precursor, SO₂ and NO_x offset ratios for non-ozone areas. These offset ratios are based on levels established by EPA. The revision also indicates that precursor emissions can be used to offset direct PM_{2.5} and vice versa. We are taking no action on these interpollutant offset ratios for PM_{2.5} at this time to give Oregon time to provide a demonstration that these interpollutant offset ratios are NAAQS protective in Oregon or alternatively revise these ratios in accordance with the July 21, 2011, memorandum by EPA that revises the Federal interpollutant offset policy.¹⁵

The rule revision further adds an alternative provision for small scale local energy projects (and related infrastructure) located in nonattainment and maintenance areas indicating that the net air quality benefit requirement is satisfied if the nonattainment or maintenance pollutant emissions are offset using the offset ratios specified in this rule, provided that the proposed major source or major modification does not cause or contribute to a violation of the NAAQS or otherwise pose a material threat to compliance with air quality standards in the nonattainment area. The State of Oregon House Bill 2952 amended ORS 468A.040 to add an exception for small scale local energy projects regarding net air quality benefit.

Division 228 Requirements for Fuel Burning Equipment and Fuel Sulfur Content

This division provides sulfur content of fuel requirements and general

emission standards for fuel burning equipment.

Sulfur Dioxide Standards 340–228–0200

To be consistent with Federal emission standards and the reference source test method, the averaging time for sulfur dioxide emission standards for fuel-burning equipment in this rule has been changed from two hours to three hours. As part of their June 23, 2010, SIP submittal, ODEQ provided a demonstration that this rule change will have no discernable effect on the air quality or on the stringency of their revised emission standard. EPA has reviewed ODEQ's demonstration and has determined that the revised rule will not interfere with the attainment or maintenance of the NAAQS for sulfur dioxide. Therefore, EPA proposes to approve these regulations.

Division 234 Emission Standards for Wood Products Industries

The division establishes emission standards and monitoring and reporting requirements for wigwam waste burners, kraft pulp mills, neutral sulfite semi-chemical (NSSC) pulp mills, sulfite pulp mills, and board products industries (veneer, plywood, particleboard, hardboard).

Definitions 340–234–0010

Wigwam Waste Burner—The definition of wigwam waste burner has been revised. The outdated regulations governing the use of wigwam waste burners have been deleted and a prohibition statewide has been added.

III. EPA's Proposed Action

Consistent with the discussion above, EPA proposes to approve most of the submitted SIP provisions and to take no action on certain other provisions, as discussed below. This action will result in proposed changes to the Oregon SIP in 40 CFR part 52, subpart MM.

A. Rules To Approve Into SIP

EPA proposes to approve into the Oregon SIP at 40 CFR part 52, subpart MM, the following revisions to chapter 340 of the OAR listed in Table 2. It is important to note that in those instances where ODEQ submitted multiple revisions to a single rule of chapter 340 of the OAR, the most recent version of that rule (based on State effective date) is proposed to be incorporated into the SIP since it supersedes all previous revisions.

¹⁵ In a memorandum from Gina McCarthy, EPA Assistant Administrator, entitled "Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles (PM_{2.5})," July, 21, 2011, EPA revised its policy originally set forth in the 2008 PM_{2.5} New Source Review Implementations Rule (the 2008 final rule, 73 FR 28321) concerning the development and adoption of interpollutant trading (offset) provisions for PM_{2.5} under state nonattainment area NSR programs for PM_{2.5}. As a result of our reconsideration of the policy, EPA no longer supports the ratios provided in the preamble to the 2008 final rule as presumptively approvable ratios for adoption in SIPs containing nonattainment NSR programs for PM_{2.5}. This revised policy does not affect the EPA rule provisions that allow states to adopt as part of their nonattainment NSR programs for PM_{2.5} appropriately supported interpollutant offset provisions involving PM_{2.5} precursors.

TABLE 2—ODEQ REGULATIONS FOR PROPOSED APPROVAL

State citation	Title/subject	State effective date	Explanation
OAR 340–200—General Air Pollution Procedures and Definition			
0010	Purpose and Applicability	11/8/2007	
0020	General Air Quality Definitions	5/1/2011	
0025	Abbreviations and Acronyms	5/1/2011	
0030	Exceptions	9/17/2008	
OAR 340–202—Ambient Air Quality Standards and PSD Increments			
0010	Definitions	5/1/2011	
0060	Suspended Particulate Matter	5/1/2011	
0090	Ozone	5/21/2010	
0130	Ambient Air Quality Standard for Lead	5/21/2010	
0210	Ambient Air Increments	5/1/2011	
OAR 340–204—Designation of Air Quality Areas			
0010	Definitions	5/21/2010	
0030	Designation of Nonattainment Areas	5/21/2010	
OAR 340–206—Air Pollution Emergencies			
0010	Introduction	5/21/2010	
0030	Episode Stage Criteria for Air Pollution Emergencies.	5/21/2010	
OAR 340–208—Visible Emissions and Nuisance Requirements			
0010	Definitions	11/8/2007	
0100	Visible Emissions, Applicability	11/8/2007	
0110	Visible Air Contaminant Limitations	11/8/2007	
0200	Fugitive Emission Requirements, Applicability	11/8/2007	
0210	Fugitive Emission Requirements, Requirements	11/8/2007	
OAR 340–209—Public Participation			
0040	Public Notice Information	11/8/2007	
0070	Hearings and Meeting Procedures	11/8/2007	
0080	Issuance or Denial of a Permit	11/8/2007	
OAR 340–210—Notice of Construction and Approval of Plans			
0205	Applicability	9/17/2008	
OAR 340–214—Stationary Source Reporting Requirements			
0010	Definitions	11/8/2007	
0300 (Formally OAR–340–28–1400)	Purpose and Applicability	11/8/2007	
0310 (Formally OAR–340–28–1410)	Planned Startup and Shutdown	11/8/2007	
0320 (Formally OAR–340–28–1420)	Scheduled Maintenance	11/8/2007	
0330 (Formally OAR–340–28–1430)	Upsets and Breakdowns	11/8/2007	
0340 (Formally OAR–340–28–1440)	Reporting Requirements	11/8/2007	
0350 (Formally OAR–340–28–1450)	Enforcement Action Criteria	11/8/2007	
0360	Emergency as an Affirmative Defense	11/8/2007	
OAR 340–216—Air Contaminant Discharge Permits			
0020 and Table 1	Applicability	5/1/2011	
0040	Application Requirements	5/1/2011	
0060	General ACDPs	5/1/2011	
0064	Simple ACDPs	5/1/2011	
0082	Termination or Revocation of an ACDP	11/8/2007	
OAR 340–222—Stationary Source Plant Site Emission Limits			
0020	Applicability	8/29/2008	
OAR 340–224—Major New Source Review			
0010	Applicability and General Prohibitions	5/1/2011	
0050	Requirements for Sources in Nonattainment Areas.	5/1/2011	

TABLE 2—ODEQ REGULATIONS FOR PROPOSED APPROVAL—Continued

State citation	Title/subject	State effective date	Explanation
0060	Requirements for Sources in Maintenance Areas	5/1/2011	
0070	Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas.	5/1/2011	
OAR 340–225—Air Quality Analysis Requirements			
0020	Definitions	5/1/2011	
0030	Procedural Requirements	5/1/2011	
0045	Requirements for Analysis in Maintenance Areas	5/1/2011	
0050	Requirements for Analysis in PSD Class II and Class III Areas.	5/1/2011	
0060	Requirements for Demonstrating Compliance with Standards and Increments in PSD Class I Areas.	5/1/2011	
0090	Requirements for Demonstrating a Net Air Quality Benefit.	5/1/2011	EPA is not taking action on the inter-pollutant offset ratios provided in 0090(2)(a)(C).
OAR 340–228—Requirements for Fuel Burning Equipment and Fuel Sulfur Content			
0020	Definitions	11/8/2007	
0200	Sulfur Dioxide Standards	11/8/2007	
0210	Grain Loading Standards	11/8/2007	
OAR 340–232—Emission Standards for VOC Sources			
0010	Introduction	11/8/2007	
OAR 340–234—Emission Standards for Wood Products Industries			
0010	Definitions	11/8/2007	
0100	Wigwam Waste Burners—Statement of Policy and Applicability.	11/8/2007	
0110	Wigwam Waste Burners—Authorization to Operate a Wigwam Burner.	11/8/2007	Rule repealed, remove from SIP.
0120	Wigwam Waste Burners—Emission and Operation Standards for Wigwam Waste Burners.	11/8/2007	Rule repealed, remove from SIP.
0130	Wigwam Waste Burners—Monitoring and Reporting.	11/8/2007	Rule repealed, remove from SIP.
0140	Wigwam Waste Burners—Existing Administrative Agency Orders.	11/8/2007	
0210	Kraft Pulp Mills—Emission Limitations	11/8/2007	
0230	Kraft Pulp Mills—Plans and Specifications	11/8/2007	Rule repealed, remove from SIP.
0240	Kraft Pulp Mills—Monitoring	11/8/2007	
0250	Kraft Pulp Mills—Reporting	11/8/2007	
0260	Kraft Pulp Mills—Upset Conditions	11/8/2007	Rule repealed, remove from SIP.
0500	Board Product Industries—Applicability and General Provisions.	11/8/2007	
0510	Board Product Industries—Veneer and Plywood Manufacturing Operations.	11/8/2007	
0520	Board Product Industries—Particleboard and Manufacturing Operations.	11/8/2007	
0530	Board Product Industries—Hardboard Manufacturing Operations.	11/8/2007	
OAR 340–236—Emission Standards for Specific Sources			
0010	Definitions	11/8/2007	
0410	Hot Asphalt Plants—Control Facilities Required	11/8/2007	
OAR 340–264—Rules for Open Burning			
0040	Exemptions, Statewide	9/17/2008	

B. Rules on Which No Action Is Taken

The following provisions were included in the SIP submittals

discussed above. However, EPA is not proposing to approve these provisions.

OAR 340–200–0040—State of Oregon Clean Air Act Implementation Plan.

OAR 340–215—Greenhouse Gas Reporting Requirements.

OAR 340–218 (0010, 0020, 0040, 0050, 0120, 0150, 0180, 0190 and

0250)—Oregon Title V Operating Permits.

OAR 340–228—Requirements for Fuel Burning Equipment and Fuel Sulfur Content, Mercury Rules (0672 Emission Caps, 0673 Monitoring Requirements for the Hg Emission Standards, 0676 Heat Input Determinations 0674, 0676 Coal Sampling and Analysis, and 0678 Hg Mass Emissions Measurement Prior to Any Control Devices 0678).

OAR 340–228—Requirements for Fuel Burning Equipment and Fuel Sulfur Content Federal Acid Rain Program (0300).

OAR 340–230—Incinerator Regulations.

OAR 340–234–0010—Standards for Wood Products Industries—EPA is not acting on references to total reduced sulfur from smelt dissolving tanks, sewers, drains, categorically insignificant activities, and wastewater treatment facilities in the revised definition of other sources.

IV. 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 state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: September 15, 2011.

Michelle L. Pirzadeh,

Acting, Regional Administrator, Region 10.

[FR Doc. 2011–24525 Filed 9–22–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622 and 640

[Docket No. 100305126–1558–03]

RIN 0648–AY72

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 10

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 10 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP), as prepared and submitted by the Gulf of Mexico and South Atlantic Fishery Management

Councils (Councils). If implemented, this rule would revise the lobster species contained within the fishery management unit, establish an annual catch limit (ACL) for spiny lobster, revise the Federal spiny lobster tail-separation permitting requirements, revise the regulations specifying the condition of spiny lobster landed during a fishing trip, modify the undersized attractant regulations, modify the framework procedures, and incorporate the state of Florida's derelict trap removal program into the Federal regulations that apply to the exclusive economic zone (EEZ) off Florida. Additionally, this rule would revise codified text to reflect updated contact information for the state of Florida and regulatory references for the Florida Administrative Code. The intent of this proposed rule is to specify ACLs for spiny lobster while maintaining catch levels consistent with achieving optimum yield (OY) for the resource.

DATES: Written comments must be received on or before October 24, 2011.

ADDRESSES: You may submit comments on the proposed rule identified by NOAA–NMFS–2011–0106 by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-rulemaking portal: <http://www.regulations.gov>, click on "submit a comment," then enter "NOAA–NMFS–2011–0106" in the keyword search and click on "search." To view posted comments during the comment period, enter "NOAA–NMFS–2011–0106" in the keyword search and click on "search." NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.