



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### [EPA-R10-OAR-2015-0333; FRL-9959-06-Region 10]

Approval and Promulgation of Implementation Plans; Oregon:

Permitting and General Rule Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve, and incorporate by reference, specific changes to Oregon's State Implementation Plan (SIP) submitted on April 22, 2015. The changes relate to the criteria pollutants for which the EPA has established national ambient air quality standards – carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. Specifically, the changes account for new federal requirements for fine particulate matter, update the major and minor source pre-construction permitting programs, and add state-level air quality designations. The changes also address public notice procedures for informational meetings, and tighten emission standards for dust and smoke. In addition, Oregon reorganized rules in the SIP by consolidating definitions, removing duplicate provisions, correcting errors, and removing outdated provisions. We note that certain rule changes are not appropriate for SIP approval, or are inconsistent with Clean Air Act requirements. In those cases, we are not approving the revisions.

**DATES:** Comments must be received on or before [**insert date 30 days after date of publication in the Federal Register**].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2015-0333, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

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## **I. Background**

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) established by the EPA for the criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulfur dioxide). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms. The SIP is a living compilation of these elements and is revised and updated by the state over time – to keep pace with federal requirements and to address changing air quality issues in the state.

On April 22, 2015, the Oregon Department of Environmental Quality (ODEQ) submitted significant revisions to the Oregon SIP. Oregon made changes to 26 Oregon Administrative Rule (OAR) divisions within Chapter 340, and two source sampling and monitoring manuals related to the rules. These changes, effective April 16, 2015, are part of Oregon's ongoing efforts to update state air quality rules and the SIP.

Oregon's April 22, 2015 submission documents the public notice and hearing process undertaken by the state, including the state's response to comments received. The submission requests EPA approval of the following changes to air quality rules in Oregon's federally-approved State Implementation Plan (SIP):

- updates particulate matter emission standards;
- revises permitting requirements for emergency generators and small natural gas or oil-fired equipment;
- establishes two new state air quality area designations – sustainment and reattainment;
- revises the major and minor source pre-construction permitting programs;
- changes public processes for informational meetings;
- revises the state's woodstove replacement program for small commercial solid fuel boilers regulated under the permitting program;
- updates the Oregon Source Sampling Manual, Volumes I and II, and the Oregon Continuous Monitoring Manual; and
- removes annual reporting requirements for small gasoline dispensing facilities.

As part of the submission, Oregon included a staff report outlining the changes to the state air quality rules and how the revised rules have been designed to protect air quality standards. Oregon also developed a "crosswalk" document – a comprehensive list of the rule

changes and why they were proposed. The submission, including the staff report, crosswalk document, public comments and responses, is located in the docket for this action.

We note that on November 14, 2016, Oregon submitted a letter to correct administrative errors in the original April 20, 2015, cover letter and attachment. In the letter of correction, Oregon identified several rules that were submitted to the EPA in error. These rules were not adopted by the Oregon Environmental Quality Commission (EQC) as part of the Oregon SIP, and should not have been submitted for SIP approval. Oregon also noted one provision that was adopted by the EQC and should have been submitted. Please see the November 14, 2016 letter of correction in the docket for this action.

Below, we discuss our review of the submitted changes to the Oregon SIP, and our proposed action. We have focused on the substantive rule revisions. We did not describe the many typographical corrections, minor edits, and renumbering changes. We also note this action does not address submitted revisions for small gasoline dispensing facilities because we approved the revisions on October 27, 2015 (80 FR 65655).

## **II. Evaluation of Revisions**

### **A. Division 200: General Air Pollution Procedures and Definitions**

#### Definitions

Division 200 contains definitions used throughout the air quality divisions of Chapter 340 of the OAR, as well as other generally-applicable rules. However, over time, terms and definitions have also been established throughout other divisions. In the submitted changes, Oregon re-organized and streamlined rules to move most air quality terms and definitions into Division 200. Oregon also moved procedural elements out of the definitions in Division 200, and into the specific divisions to which they apply. Duplicate and obsolete terms were removed.

In this section of our evaluation, we discuss key changes to existing definitions and new terms used in multiple divisions. Substantive new terms, or revisions to definitions that are mostly used in a single division, are evaluated in Sections B through X below (in the discussion of the changes to the specific division).

To improve clarity, the state revised key definitions to consistently use certain terms – such as “regulated pollutant,” “control device,” “major modification,” “major source,” and “unclassified,” – and removed variations on these terms that may have created confusion. Oregon also added new definitions to Division 200. “Capture efficiency,” “control efficiency,” “destruction efficiency,” and “removal efficiency” were added to differentiate amongst similar terms. The state defined the term “internal combustion sources” to clarify the universe of regulated fuel burning equipment under Oregon’s rules.

Oregon also defined the term “portable,” as “designed and capable of being carried or moved from one location to another.” At the same time, the state revised the definition of “stationary source” to include portable sources required to have permits under Oregon’s air contaminant discharge permitting (ACDP) program at Division 216. “Wood fuel-fired device” was used in multiple Oregon rules, but was never formally defined. The state added the term, defined as “a device or appliance designed for wood fuel combustion, including cordwood stoves, woodstoves, and fireplace stove inserts, fireplaces, wood fuel-fired cook stoves, pellet stoves and combination fuel furnaces and boilers that burn wood fuels.” The remainder of the new definitions established are common dictionary terms.

Oregon also made substantive changes to several definitions. The definition of “adjacent” at OAR 340-200-0020(4) was narrowed by limiting the use of this defined term (“interdependent facilities that are nearby to each other”) to its use in the “major source”

definition at OAR 340-200-0020(91), and in the air contaminant discharge permit program (ACDP) at OAR 340-216-0070. In other places where the term “adjacent” is used, the ODEQ’s response to comments document in the submission indicates that the ODEQ intends to use the dictionary definition.

Oregon revised the term “categorically insignificant activities” at OAR 340-200-0020(23) in several respects. In general, the revisions narrow when emissions may be excluded from consideration – in some aspects of Oregon’s permitting program – as “insignificant.” For example, Oregon put a cap on the aggregate emissions from fuel burning equipment that may be considered categorically insignificant, and also restricted when emergency generators may be considered categorically insignificant (limiting the exemption to no more than 3,000 horsepower, in the aggregate). Oregon also narrowed when emissions from oil/water separators in effluent treatment systems may be considered categorically insignificant. We note that Oregon did create a *new* category of insignificant emissions – fuel burning equipment brought on site for six months or less for construction, maintenance, or similar purposes, provided the equipment performs the same function as the permanent equipment, and is operated within the source’s existing plant site emission limit. Importantly, however, insignificant activity emissions must be included in determining whether a source is a “federal major source” (OAR 340-200-0020(66)) or a “major modification” (OAR 340-224-0025(2)(a)(B)) subject to federal major new source review (federal major NSR).<sup>1</sup> In addition, as specified in OAR 340-200-0020(23), categorically insignificant activities must still comply with all applicable requirements.

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<sup>1</sup> This includes both the prevention of significant deterioration (PSD) new source review permitting program that applies in attainment and unclassifiable areas (40 CFR 51.166) and the nonattainment major source new source review permitting program that applies in nonattainment areas (40 CFR 51.165).

Oregon revised the definition of “modification,” at OAR 340-200-0020(93), to differentiate it from the terms “major modification,” “permit modification,” and “title I modification,” and to make clear that it applies to a change in a portion of a source, as well as a source in its entirety. The state also simplified the definition of “ozone precursor” at OAR 340-200-0020(107) to remove redundant language pointing to the reference method for measuring volatile organic compounds (VOCs). Oregon made the same type of change to the definition of “particulate matter” at OAR 340-200-0020(110). For consistency, at OAR 340-200-0020(119) and (120), the short-hand terms for coarse and fine particulate matter, “PM<sub>10</sub>” and “PM<sub>2.5</sub>,” were updated to reference the test method for measuring each pollutant. The definition of “volatile organic compounds” or “VOC,” at OAR 340-200-0020(190), was updated to take into account changes to the EPA’s definition of VOC in the Code of Federal Regulations (CFR) at 40 CFR 51.100(s).

We have evaluated these changes, and the additional changes to definitions discussed in Sections B through X below, and propose to find that they are consistent with Clean Air Act (CAA) requirements and the EPA’s implementing regulations. We therefore propose to approve the revised and added definitions into the Oregon SIP.

#### *LRAPA Jurisdiction*

A key aspect of the submitted revisions relates to jurisdiction. Oregon added new applicability language to Division 200, and throughout the air quality rules, to address the applicability of state rules in Lane County, the authority of the Lane Regional Air Protection Agency (LRAPA) to implement and enforce state rules in the county, and the authority of LRAPA to adopt local rules. The changes clarify that the ODEQ administers its rules in all areas, except where the Oregon Environmental Quality Commission (EQC) has designated the

LRAPA to have primary jurisdiction in Lane County. The revisions also make clear that the LRAPA is authorized to implement state rules within Lane County, and may promulgate a local rule in lieu of a state rule provided: (1) it is as stringent as the state rule; and (2) it has been submitted to and approved by the EQC. We propose to approve the delegation of authority language in Division 200, and in all other divisions, because it is consistent with CAA section 110(a)(2)(E) requirements for state and local air agencies.

We note that the state also submitted the ODEQ-LRAPA Stringency Analysis and Directive, comparing the Oregon state rule revisions to the corollary rules generally applicable in Lane County. The analysis identifies which of the revised state rules are more stringent, and directs the LRAPA to implement them, until such time as the LRAPA revises its own rules to be at least as strict. Please see Section IV below for a listing of the submitted rule revisions that we propose to approve as also applying in Lane County. The ODEQ-LRAPA Stringency Analysis and Directive is in Attachment B of the submission, and may be found in the docket for this action.

#### *Other Provisions*

The submission also includes changes to the generally applicable sections in Division 200. Oregon submitted changes to OAR 340-200-0030 to clarify that woodstove emissions are regulated, and may also be used to create emissions reduction credits. In addition, Oregon added a general rule section at OAR 340-200-0035, listing updated versions of key reference materials for air quality requirements. We propose to approve and incorporate by reference these changes.

We note that this division contains rules on conflicts of interests at OAR 340-200-0100, 0110, and 0120. These rules were not substantively changed in the submittal and remain consistent with the CAA requirements for such rules at CAA sections 110(a)(2)(E) and 128. We

propose to approve, but not incorporate by reference, OAR 340-200-0100, 0110, and 0120, to avoid the potential for confusion or potential conflict with the EPA's independent authorities. We note that, consistent with our 2003 action, we are not approving OAR 340-200-0050 because any compliance schedule established by Oregon under this provision must be submitted to, and approved by EPA, before it will be federally-enforceable or change the requirements of the EPA-approved SIP. 40 CFR 51.102(a)(2) and (c) and 260; 68 FR 2891, 2894 (Jan. 22, 2003).

**B. Division 202: Ambient Air Quality Standards and PSD Increments**

Division 202 contains Oregon's ambient air quality standards and Prevention of Significant Deterioration (PSD) increments. Oregon revised Division 202 by removing obsolete definitions and moving definitions used in more than one division to the general definitions in Division 200. At OAR 340-202-0050, Oregon added language expressly stating that no source may cause or contribute to a new violation of an ambient air quality standard or a PSD increment, even if the single source impact is less than the significant impact level. Oregon made this change to address a court decision vacating and remanding regulatory text for the PM<sub>2.5</sub> significant impact level. Please see Section L below for a more detailed discussion of the basis for our determination that this change, along with other related changes, adequately addresses the court decision.

At OAR 340-202-0210, the specific PSD increments were moved from a table to the text of the rule for readability. Oregon also clarified that PSD increments are compared to aggregate increases in pollution concentrations from the new or modified source, over the baseline concentration. The state moved ambient air quality thresholds for pollutants from Division 224 to this division, to centralize ambient standards and thresholds. Finally, Oregon consolidated requirements for areas subject to an approved maintenance plan, moving ambient standards and

thresholds from Division 224 into a new section, at OAR 340-202-0225. We propose to approve the submitted revisions to Division 202 as being consistent with CAA requirements.

**C. Division 204: Designation of Air Quality Areas**

This division contains provisions for the designation of air quality areas in Oregon. In the submission, the state removed a reference to “Indian Governing Bodies” at OAR 340-204-0060 because the ODEQ does not have authority or jurisdiction to regulate them. Oregon also replaced an expired oxygenated gasoline requirement at OAR 340-204-0090 with an updated reference to the applicable maintenance plan and its associated provisions.

A significant change in this division is the introduction of three new concepts: “sustainment areas,” “reattainment areas,” and “priority” sources. *See* OAR 340-204-0300 through 0320. Both sustainment and reattainment areas are new, state-level designations designed to add to federal requirements. Oregon has implemented a state-level designation in the past – specifically, the maintenance area designation. Now, Oregon has developed two new designations intended to help areas address air quality problems by further regulating emission increases from major and minor sources.

To designate an area as sustainment or reattainment, the ODEQ will undertake the same process as used in the past to designate a state maintenance area. The process includes public notice, a rule change, and approval by the EQC. Oregon asserts that the new designations and associated requirements are intended to help solve air quality issues, and do not change attainment planning requirements or federal requirements for major stationary sources.

The sustainment area designation at OAR 340-204-0300 is designed to apply to an area where monitored values exceed, or have the potential to exceed, ambient air quality standards,

but has not been formally designated nonattainment by the EPA.<sup>2</sup> To construct or modify a major or minor source in a sustainment area, the owner or operator may need to offset new emissions with reductions from other sources, including the option of targeting “priority” sources, in that area. Priority sources are defined as sources causing or contributing to elevated emissions levels in the area. This is determined using local airshed information, such as emissions inventories and modeling results. A new major or minor stationary source seeking to construct in a sustainment area may obtain more favorable offsets from priority sources.

The reattainment area designation is designed to apply to an area that is formally designated nonattainment by the EPA, has an EPA-approved attainment plan, and also has three years of quality-assured/quality-controlled monitoring data showing the area is attaining the relevant standard. *See* OAR 340-204-0310. When an area has met attainment planning requirements and has attained the standard, the CAA requires that a state submit, and the EPA approve, a maintenance plan for the next ten years. The state may then request that the EPA redesignate the area to attainment. In the interim, Oregon may designate the area a reattainment area. The Oregon rules requires that all elements of the area’s attainment plan continue to apply with a reattainment designation. However, minor sources will be subject to less stringent state new source review permitting requirements – unless the ODEQ has specifically identified a source as a significant contributor to air quality problems in the area, or has controlled the source and relied on the controls as part of the attainment plan. The federal requirements for redesignation remain in place and are unchanged.

We propose to approve the revisions to Division 204 because the added rules for state-level designations are consistent with CAA requirements and the EPA’s implementing

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<sup>2</sup> As codified at 40 CFR part 81.

regulations for attainment planning and major source pre-construction permitting. The changes to Oregon's major and minor source permitting program – and our evaluation of those changes – are discussed in detail in Section L below.

**D. Division 206: Air Pollution Emergencies**

This division establishes criteria for identifying and declaring air pollution episodes at levels below the levels of significant harm. Oregon submitted minor changes to this division, such as updating references to the outdated total suspended particulate matter standard, and moving information from four tables into regulatory text. We propose to approve these revisions.

**E. Division 208: Visible Emissions and Nuisance Requirements**

Division 208 contains provisions regulating visible emissions, odor, nuisance, and fugitive emissions from sources. Oregon made substantive changes to the visible emission standards at OAR 340-208-0100 through 0110, supported by a demonstration of why the state believes the changes continue to protect air quality. For all point sources, the state changed visible emission standards from an aggregate exception of three minutes in a 60-minute period to a six-minute block average, aligning the form of and test method for Oregon's visible emission standards with federal New Source Performance Standards (NSPS). At the same time, Oregon made visible emission standards applicable to each individual stack or emission point, to preclude averaging across the source.

Oregon also made changes to phase out less stringent visible emission limits granted to certain older facilities in operation before 1970. These sources were required to meet a 40% visible emission limit. However, starting in 2020, these sources will be required to meet the state's standard 20% visible emissions limit. Wood-fired boilers constructed or installed before

1970, and not since modified, also will be held to the tighter 20% visible emissions limit starting in 2020, except for certain, limited situations.

Oregon asserted in its SIP submittal that a visible emissions standard based on a six-minute average is no more or less stringent than a standard based on an aggregate exception of three minutes in any hour. Oregon argued that, theoretically, either basis could be more stringent than the other, but practically, sources do not typically have intermittent puffs of smoke. Oregon also claimed that changing to a six-minute average is appropriate because a reference compliance method has not been developed for the three-minute standard; EPA Method 9 results are also reported as six-minute averages; and using a three-minute standard results in additional costs for sources that also monitor visible emissions with continuous opacity monitoring systems (COMS).

Many COMS are designed for six-minute averages, and must be modified to record and report data for a three-minute standard. Oregon stated in the submittal that compliance with a six-minute average can be determined with 24 readings (six-minute observation period), while, compliance with a three-minute standard may require as many as 240 readings (60-minute observation period).

We have evaluated the visible emissions rule changes and Oregon's justification for the changes. We propose to approve the revised version of OAR 340-208-0110 and the removal of OAR 340-208-0100 because we agree that the changes will streamline visible emissions and related testing and monitoring requirements for sources, impose more stringent requirements on certain older sources, and are, overall, at least as protective of the ambient air quality standards as the existing SIP requirements.

The final changes made to this division revise fugitive emission requirements at OAR 340-208-0200 through 0210. The revised rules require sources to take reasonable precautions to prevent fugitive emissions, and may require a fugitive emissions control plan to prevent visible emissions from leaving a facility property for more than 18 seconds in a six-minute period. Compliance is based on EPA Method 22, Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares. Oregon also replaced the specific references to “asphalt” and “oil” in the lists of dust suppressants and control measures with the term “other suitable chemicals,” to discourage the use of oil and asphalt as dust suppressants.

We propose to approve the revised version of OAR 340-208-0210 and the repeal of OAR 340-208-0200 because we have determined that the fugitive emissions rule changes are consistent with CAA requirements and are expected to improve the effectiveness of controls and compliance with emission limits.

#### **F. Division 209: Public Participation**

Division 209 governs public participation in the review of proposed permit actions. Oregon revised this division to modernize and clarify public notice requirements. The Oregon SIP provides four different levels of public process, depending on the type of permitting action, with Category I having the least amount of public notice and opportunities for public participation and Category IV having the most. Most new source review permitting actions are subject to category III, for which the ODEQ provides public notice and an opportunity for a hearing at a reasonable time and place if requested, or if the ODEQ otherwise determines a public hearing is necessary. For the state’s category IV public process, which applies to Major NSR permitting actions, the ODEQ provides an informational meeting that occurs before issuing a draft permit for public review and comment. The ODEQ has revised the requirements for

informational meetings to provide at least a 14-day public notice, prior to the scheduled informational meeting. The revisions also make clear that although the ODEQ accepts, and will consider, comments from the public during the informational meeting, the ODEQ does not maintain an official record of the informational meeting, or respond in writing to comments provided at the informational meeting.

Oregon also revised this division to address permitting in new state-designated sustainment and reattainment areas, added email notification as an option, and specified where the public comment records would be made available. We note that revisions to the hearing procedures in OAR 340-209-0070 were reorganized, moving the notice and comment requirements for informational meetings to OAR 340-209-0030.

We have concluded that the submitted revisions to Oregon's public participation rules remain consistent with the CAA and federal requirements for public notice of new source review actions in 40 CFR 51.161 *Public availability of information*, 40 CFR 51.165 *Permit requirements*, and 40 CFR 51.166 *Prevention of significant deterioration of air quality*, and we propose to approve them. We also propose to approve the hearing procedures, but not incorporate them by reference, to avoid confusion or potential conflict with the EPA's independent authorities.

#### **G. Division 210: Stationary Source Notification Requirements**

Division 210 contains a registration program for sources not subject to one of Oregon's operating permit programs, as well as some of the requirements for the construction and modification of sources. In OAR 340-210-0010, Oregon broadened the applicability of this division so that it applies to "air contaminant sources" and to "modifications of existing portable sources that are required to have permits under OAR 340 division 216" – in addition to

stationary sources. Oregon also revised source registration requirements at OAR 340-210-0100 to specify in more detail the information an owner or operator must submit to register and re-register. In addition, at OAR 340-210-0205, Oregon made changes to clarify when a Notice of Construction application is required – with certain exceptions the state has specifically listed.

Oregon revised construction approval and approval to operate provisions at OAR 340-210-0240 and 0250 to spell out when sources may proceed with construction or modification, and that construction approval does not mean approval to operate the source, unless the source is not required to obtain an ACDP under Division 216.

We are proposing to approve the revisions to Division 210 because we have determined they are consistent with CAA requirements, and correct or clarify existing source notification requirements, to help ensure that changes to sources go through the appropriate approval process.

#### **H. Division 212: Stationary Source Testing and Monitoring**

This division contains general requirements for source testing and monitoring. Most of the revisions to this division were clarifications or updates. For example, Oregon revised Division 212 to clarify that the term “stationary source” in this division includes portable sources that require permits under Division 216. This change is consistent with the term as used in other divisions. Oregon also made clear that, with respect to stack height and dispersion technique requirements, the procedures referenced in 40 CFR 51.164 are the major and minor NSR review procedures used in Oregon, as applicable.

OAR 340-212-0140 of this division sets forth test methods, and requires that sampling, testing, or measurements performed pursuant to Division 212 conform to the methods in Oregon’s *Source Sampling Manual, Volumes I and II*, and Oregon’s *Continuous Monitoring Manual*. The manuals, revised as of 2015, have been submitted for approval. As discussed

below in Section X, we have concluded that the revised manuals are consistent with the EPA's monitoring requirements for criteria pollutants and we propose to approve them for the purpose of the limits approved into the SIP.

A final change to this division is Oregon's request to remove rules that were approved into the Oregon SIP on January 22, 2003 (68 FR 2891). The specified rules, under the compliance assurance monitoring section, apply to title V sources only and implement the requirements of 40 CFR parts 64 and 70. We agree with Oregon that these rules are not necessary for SIP approval under section 110 of title I of the CAA, because the rules implement provisions of title V. Therefore, we propose to approve Oregon's request to remove OAR 340-212-0200 through 0280 from the federally-approved Oregon SIP.

**I. Division 214: Stationary Source Reporting Requirements**

This division contains Oregon's provisions for reporting and recordkeeping, information requests (CAA section 114 authority), credible evidence, business confidentiality, emissions statements, and excess emissions. Oregon made substantive changes to several sections of this division. First, at OAR 340-214-0010, Oregon changed the definition of "large source" to align with a recent court decision on the regulation of GHG emissions from new and modified major stationary sources in attainment and unclassifiable areas, in addition to title V sources. Please see our discussion at Section L, below. Oregon also removed from the definition of "large source," those sources subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP). NESHAP reporting requirements are separate and independent of the SIP and CAA section 110 criteria pollutant requirements, and we propose to approve the revision.

Oregon revised OAR 340-214-0100 of this division to clarify that stationary sources include portable sources required to have ACDPs under Division 216. In addition, at OAR 340-

214-0114(5), starting on July 1, 2015, owners and operators of specific sources must retain records of all required monitoring data and supporting information for five years. Oregon also revised the section on disclosure of information at OAR 340-214-0130, to spell out that emissions data cannot be exempted from disclosure as a trade secret. Under OAR 340-214-0200, with respect to emission statements for VOC and NO<sub>x</sub> sources, Oregon clarified that “actual emissions include, but are not limited, to routine process emissions, fugitive emissions, and excess emissions from maintenance, startups and shutdowns, equipment malfunction, and other activities.” We propose to approve these revisions because they are consistent with CAA requirements.

Oregon made several revisions to the excess emissions and emergency provision requirements in Division 214, at OAR 340-214-0300 through 0360, that are currently in the SIP, and these revisions are included in the submittal that is the subject of this proposed action. First, in OAR 340-214-0300, the state clarified that “emissions in excess of applicable standards are not excess emissions if the standard is in an NSPS or NESHAP and the NSPS or NESHAP exempts startups, shutdowns and malfunctions as defined in the applicable NSPS or NESHAP.” By its terms, this provision only applies to standards in NSPS or NESHAPs, and Oregon’s incorporation by reference of the federal NSPS and NESHAP standards are not included in the SIP. Because this addition relates solely to standards that are not in the SIP, the EPA is not approving this provision. The state also expanded the prohibition on planned startups, shutdowns, and scheduled maintenance – that may result in excess emissions during declared air quality alerts, warning or emergencies, or during times when residential wood burning is curtailed in PM<sub>10</sub> nonattainment areas – to include sources in PM<sub>2.5</sub> nonattainment areas.

In addition, Oregon made changes to a provision in its SIP that contains criteria for determining whether Oregon will take an enforcement action for excess emissions (OAR 340-214-0350). In the context of the EPA’s recent “SSM SIP Action of 2015,” the EPA evaluated the enforcement discretion provision of OAR 340-214-0350 (re-codified from OAR 340-028-1450) and found it to be consistent with CAA requirements and with the EPA’s SSM policy as it applies to SIPs.<sup>3</sup> The EPA’s SSM SIP Action of 2015 responded to a petition from the Sierra Club requesting that the EPA address concerns about specific provisions approved into 39 state SIPs. Sierra Club’s petition alleged that specific provisions in these states’ SIPs were inconsistent with the CAA. With respect to Oregon’s SIP, the petitioner objected to OAR 340-028-1450 (recodified as OAR 340-214-0350) which specifies criteria to be considered by Oregon in determining whether to pursue enforcement action for excess emissions.

In the SSM SIP Action of 2015, we noted that Oregon’s provision provides that “[i]n determining whether to take enforcement action for excess emissions, DEQ considers, based upon information submitted by the owner or operator,” a list of factors. As discussed in the SSM SIP Action of 2015, the EPA has interpreted the CAA to allow states to elect to have SIP provisions that pertain to the exercise of enforcement discretion by state personnel. *See* 80 FR 33839, 33980. We explained that the provision cited by the petitioners – OAR 340-028-1450 (recodified as OAR 340-214-0350) – is plainly a statement of enforcement discretion, delineating factors to be considered by the ODEQ in determining whether to pursue state enforcement for violations of the applicable SIP emission limits due to excess emissions. The EPA further concluded that there was no language in this Oregon regulation suggesting that

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<sup>3</sup> State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s [Startup, Shutdown and Malfunction] SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to

Oregon's determination to forgo enforcement by the state against a source would in any way prevent the EPA or the public from demonstrating that violations occurred and taking enforcement action. The EPA therefore concluded that Oregon's regulation was consistent with the requirements of the CAA and denied the petitioner's request to require Oregon to revise its SIP provision. *See* 80 FR 33839, 33973 (final action); 78 FR 12459, 12537 (February 22, 2013) (proposed action).

In the submittal that is the subject of this proposed action, Oregon has added to OAR 340-214-0350 two criteria that the ODEQ considers in determining whether to take enforcement action: 1) whether any federal NSPS or NESHAP apply to the source in question and whether the excess emission event caused a violation of the federal standard,<sup>4</sup> and 2) whether the excess emission event was due to an "emergency."<sup>5</sup> Because OAR 340-214-0350 is a true enforcement discretion provision, rather than an affirmative defense, the addition of these criteria does not change the EPA's recent conclusion that this provision is approvable, consistent with EPA guidance in the SSM SIP Action of 2015 and CAA requirements for SIP provisions.

Further, Oregon changed an affirmative defense provision for excess emissions (OAR 340-214-0360) that is in the current SIP. OAR 340-214-0360 provides, by its title and language, an affirmative defense to excess emissions due to an "emergency." The language in this

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Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction: Final Rule." (June 12, 2015, 80 FR 33839).

<sup>4</sup> Unlike the provision addressing NSPS and NESHAP added to OAR 340-214-0300 above, which by its terms applies only to NSPS and NESHAP, which are not part of the SIP, the provision here is not limited to NSPS and NESHAP standards. For example, a SIP provision and an NSPS could each have an opacity limit of 20% that applies to the same emission unit at a facility. The fact that the NSPS limit does not apply during startup of the emission unit could be a relevant factor for Oregon to consider in determining whether to take an enforcement action for emissions in excess of the SIP opacity limit during startup.

<sup>5</sup> "Emergency" is defined as any situation arising from sudden and reasonably unforeseen events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limit under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency does not include noncompliance to

provision closely follows language in regulations that govern title V operating permit programs, and states are currently authorized under the 40 CFR part 70 regulations to include this provision in title V permits. *See* 40 CFR 70.6(g).<sup>6</sup> The EPA most recently approved this provision into the Oregon SIP on December 27, 2011 (76 FR 80747). Although this provision was not a subject of the SIP call, the SSM SIP Action of 2015 expressly concluded that affirmative defense provisions are inconsistent with CAA requirements for SIPs and cannot be approved. *See* 80 FR at 33852.

Oregon revised OAR 340-214-0360 so that it provides an affirmative defense available only in penalty actions due to noncompliance with technology-based emission limits in title V operating permits; as revised, the affirmative defense would no longer be available for violations of SIP requirements. Oregon's revision makes OAR 340-214-0360 consistent with current requirements for title V operating permit programs. Oregon has not submitted the revised version of section 0360 for approval into the SIP and instead, as part of the current submittal, has requested that the EPA remove the old version of OAR 340-214-0360 from the SIP. The removal of this affirmative defense provision from the SIP is consistent with EPA guidance in the SSM SIP Call and CAA requirements for SIP provisions. We are therefore proposing to approve the removal of this title V affirmative defense provision from the Oregon SIP.

We note that Oregon also repealed the sulfur dioxide emission inventory requirements at OAR 340-214-0400 through 0430. These provisions are not part of the federally-approved Oregon SIP. These provisions were repealed as a matter of state law because they were replaced

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the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. *See* OAR 340-200-020(50).

<sup>6</sup> The EPA proposed changes to federal title V regulations on June 14, 2016 (81 FR 38645). The proposed changes would remove this affirmative defense from the title V rules. If finalized, states would be required to make changes to their title V programs, where applicable, to conform to the revised federal title V regulations.

with more stringent sulfur dioxide limits established as a part of the state's regional haze plan (July 5, 2011; 76 FR 38997).

**J. Division 216: Air Contaminant Discharge Permits**

Oregon's Air Contaminant Discharge Permit (ACDP) program is both Oregon's federally-enforceable non-title V state operating permit program, and also the administrative mechanism used to implement the notice of construction and new source review programs. There are six types of ACDPs under Oregon's rules: Construction, General, Short Term Activity, Basic, Simple, and Standard. The types of ACDPs have not changed, but the ODEQ has made some changes and clarifications to the criteria and requirements for the various ACDPs. Oregon also revised application requirements to set application renewal deadlines, and to clarify the required contents of applications.

The applicability section at OAR 340-216-0020 references the table of applicability criteria for the various types of permits in OAR 340-216-8010. The associated fees are listed at OAR 340-216-8020. Oregon made clarifying changes throughout the table in OAR 340-216-8010, and made some revisions to the type of ACDP (Basic, General, Simple, or Standard) each source category is required to obtain prior to construction and operation. Overall, Oregon slightly expanded the list of sources required to obtain Basic, General, Simple, or Standard ACDPs, with one exception. Oregon removed the requirement that GHG-only sources obtain a Standard ACDP, and pay the associated permitting fees, consistent with the federal court decision described below in Section L.

Oregon also made revisions, mostly clarifying, to the requirements for applying for and issuing certain types of permits, as well as the contents of the various permits. For Construction ACDPs at OAR 340-216-0052, Oregon added a qualifier to the rule that construction commence

within 18 months after the permit is issued. This deadline now applies only if a source is subject to federal major NSR and certain state major NSR permitting (discussed in more detail below). Oregon also added language to the public notice requirements for a modified Construction ACDP, making clear when public notice as a Category I permit action is appropriate, as opposed to a Category II permit action under OAR 340 Division 209. Oregon spelled out that, although the construction permit itself expires, the requirements remain in effect and must be added to the subsequent operating permit (ACDP or Title V operating permit). *See* OAR 340-216-0082.

General ACDP requirements at OAR 340-216-0060 were updated to refer to the appropriate public notice procedures, reference the fee class for specific source categories, and confirm the procedures the ODEQ will use to rescind a source's General ACDP if the source no longer qualifies and must obtain a Simple or Standard ACDP instead. Oregon also changed the rule to make clear that the ODEQ may rescind an individual source's assignment to a General Permit. When the ODEQ notifies the source that the department intends to rescind the permit, the source has 60 days to submit an application for a Simple or Standard ACDP. Oregon also revised General ACDP Attachments to clarify public notice requirements and fees.

For Simple ACDPs at OAR 340-216-0064, it is now clear that the ODEQ may determine a source ineligible for a Simple ACDP with generic emission limits, and instead, require the source obtain a Standard ACDP with source-specific emission limits, as necessary. Oregon has also clarified the public notice requirements and fees for Simple ACDPs and removed redundant requirements from the Simple ACDP section that are also in the applicability and jurisdiction section.

The Standard ACDP requirements at OAR 340-216-0066 were updated to lay out the different application requirements for sources seeking this type of permit when they are subject

to federal major versus minor NSR. Oregon also changed this section to allow sources with multiple activities or processes at a single site, covered by more than one General ACDP or that has multiple processes, to obtain a Standard ACDP.

With respect to processing permits, Oregon's provision at OAR 340-216-0082 now expressly provide that sources with expired ACDP permits may continue operating under the expired permit if they have submitted a timely and complete renewal application. Sources may also request a contested case hearing, if the ODEQ revokes a permit or denies a permit renewal. The ODEQ has clarified in a written supplement that department-initiated modifications at OAR 340-216-0084 follow the public notice procedures for the relevant ACDP permit type spelled out in Division 209. Based on the evaluation above and this clarification from the ODEQ, we propose to approve the revisions to Division 216.

**K. Division 222: Stationary Source Plant Site Emission Limits**

This division contains the Oregon program for managing airshed capacity through a Plant Site Emission Limit (PSEL). PSELs are used to protect ambient air quality standards, prevent significant deterioration of air quality, and to ensure protection of visibility. Establishing such a limit is a mandatory step in the Oregon permitting process. A PSEL is designed to be set at the actual baseline emissions from a source plus approved emissions increases and minus required emissions reductions. This design is intended to maintain a more realistic emissions inventory. Oregon uses a fixed baseline year of 1977 or 1978 (or a prior year if more representative of normal operation) and factors in all approved emissions increases and required emissions decreases since baseline, to set the allowable emissions in the PSEL. Increases and decreases since the baseline year do not affect the baseline, but are included in the difference between baseline and allowable emissions.

“Netting basis” is a concept in Oregon’s program that defines both the baseline emissions from which increases are measured – to determine if changes are subject to review – as well as the process for re-establishing the baseline, after changes have been through the new source review permitting process.

As noted above, Oregon’s PSEL program is used, in part, to implement NSR permitting. For major NSR, if a PSEL is calculated at a level greater than an established significant emission rate (SER) over the baseline actual emission rate, an evaluation of the air quality impact and major NSR permitting are required. If not, the PSEL is set without further review (a construction permit may also be required). For minor NSR (State NSR), a similar calculation is conducted. If the difference is greater than the SER, an air quality analysis is required to evaluate whether ambient air quality standards and increments are protected. The air quality analysis results may require the source to reduce the airshed impact and/or comply with a tighter emission limit.

Oregon submitted a number of changes to the PSEL requirements in this division. Many of the changes are organizational, centralizing requirements related to PSELs in Division 222. We propose to approve the organizational changes. Other submitted changes are substantive. Oregon revised the criteria for establishing PSELs at OAR 340-222-0035 through 0090 by consolidating requirements from other sections into these provisions, and revising them to take into account the differentiated major and State NSR requirements. Oregon also updated the source-specific annual PSEL provision, at OAR 340-222-0041, to account for PM<sub>2.5</sub> and major and State NSR requirements. We note that the current SIP-approved rule includes provisions at OAR 340-222-0041(3)(b) for PSEL increases that were not subject to New Source Review. The revised rule revokes those provisions and instead makes these PSEL increases

subject to the new State New Source Review requirements in Division 224 (see new applicability provision in OAR 340-224-0010(2)(b)(B)). The comprehensive requirements for approval of such PSEL increases in sustainment, nonattainment, reattainment, maintenance, and attainment/unclassifiable areas are as stringent as the current requirements in OAR 340-222-0041(b)(A) through (D).

Oregon also revised the short-term PSEL requirements at OAR 340-222-0042 to spell out the process a source must follow to request an increase in a short-term PSEL – and when that source must obtain offsets, or an allocation, from an available growth allowance in the area.

At OAR 340-222-0046, Oregon clarified the process for setting the initial netting basis for PM<sub>2.5</sub> and how potential increases are limited. The state also made changes to spell out how a source's netting basis may be reduced – when a rule, order or permit condition requires the reductions – and how unassigned emissions and emissions reduction credits are to be addressed. In addition, Oregon clarified that a source may retain a netting basis if that source relocates to a different site, as opposed to an adjacent site. However, it is only allowed if the ODEQ determines the different site is within or affects the same airshed, and that the time span between operation at the old site and new sites is less than six months.

At OAR 340-222-0048, Oregon consolidated baseline period and baseline emission rate provisions, and indicated when a baseline emission rate may be recalculated – limited to circumstances when more accurate or reliable emission factor information becomes available or when regulatory changes require that additional emissions units be addressed. Changes were also made to OAR 340-222-0051, which addresses actual emissions, and how to appropriately calculate the mass emissions of a pollutant from an emissions source during a specified time

period. The state revised this provision to account for the changes in the program that differentiate major NSR from State NSR.

We note that Oregon also clarified OAR 340-222-0055, which establishes how unassigned emissions are to be treated. The rule was revised to state that a source may not use emissions that are removed from the netting basis – including emission reductions required by rule, order or permit condition – for netting any future permit actions.

Oregon also revised OAR 340-222-0060, applicable to sources of hazardous air pollutants, and submitted it for approval. However, the provision is not appropriate for SIP approval because it is related to CAA section 112 and hazardous air pollutants, not CAA section 110 and the criteria pollutants. Oregon also updated OAR 340-222-0090, which addresses the impact on PSEL calculations and permitting requirements when sources combine, split, and change primary Standard Industrial Code. The changes make clear that sources must qualify to combine, and that it will impact the netting basis and SER, and trigger new source review and recordkeeping requirements, if applicable.

With the exception noted below, we are proposing to approve the submitted changes to Division 222 because we believe the revisions to the PSEL provisions are intended to clarify and strengthen the rules. We are not approving OAR 340-222-0060 because it is related to CAA section 112 and hazardous air pollutants, not CAA section 110 and the criteria pollutants.

**L. Division 224: New Source Review**

Parts C and D of title I of the CAA, 42 U.S.C. 7470-7515, set forth preconstruction review and permitting program requirements that apply to new and modified major stationary sources of air pollutants, known as major New Source Review (major NSR). The CAA major NSR programs 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 (PSD) program, which applies in areas that meet the NAAQS (attainment areas), as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS (unclassifiable areas). Part D is the Nonattainment New Source Review (major nonattainment NSR) program, which applies in areas that are not in attainment of the NAAQS (nonattainment areas). The EPA regulations for SIPs implementing these programs are contained in 40 CFR 51.165 and 51.166, and appendix S to part 51. As discussed above, regulations addressing the EPA's minor new source review (NSR) requirements are set forth at 40 CFR 51.160 through 164. States generally have more flexibility in designing minor NSR programs. Minor NSR programs, however, must still ensure that emissions from the construction or modification of a facility, building, structure, or installation (or any combination thereof) will not interfere with attainment and maintenance of the NAAQS, or violate an applicable portion of a control strategy approved into the SIP.

Oregon's major NSR program has long differed from the federal major NSR programs in several respects. Oregon's program does not subject the same sources and modifications to major NSR as would the EPA's rules. Oregon's program has had lower major source thresholds for sources in nonattainment and maintenance areas. The program also requires fugitive emissions to be included in applicability determinations for all new major sources and modifications to existing major sources. However, Oregon also utilizes a PSEL approach to defining "major" modifications, rather than the contemporaneous net emissions increase approach used in the EPA's main, non-PAL major NSR program. The EPA has previously determined that, over all, Oregon's major NSR program is at least as stringent as the EPA's major NSR program and meets the requirements of 40 CFR 51.165 and 51.166. *See* 76 FR

80747, 80748 (December 27, 2011) (final action); 76 FR 59090, 59094 (Sept. 23, 2011) (proposed action).

Under Oregon's SIP-approved program, to which the state has made changes, both federal major sources and large minor sources have been covered by this Division. The submitted changes to Division 224 revise this approach and establish distinct components within Division 224, referred to as Major New Source Review (Oregon Major NSR – sections 0045 through 0100) and State New Source Review (State NSR – sections 0245 through 0270) to help clarify the requirements that apply to federal major sources and larger minor sources. Pre-construction review and permitting of other minor sources continue to be covered in Division 210 *Stationary Source Notification Requirements*, Division 216 *Air Contaminant Discharge Permits*, and Division 222 *Plant Site Emission Limits*.

As discussed above, Oregon has also created two new state designations. Sustainment areas are state-designated areas that are violating or close to violating the NAAQS but which are not formally designated nonattainment by the EPA. Reattainment areas are state-designated areas that have been designated nonattainment by the EPA but that now have air quality data showing the area is attaining the NAAQS. Key changes to the Oregon Major NSR and State NSR programs are discussed below.

*OAR 340-224-0010 Applicability, General Prohibitions, General Requirements, and Jurisdiction*

Oregon has narrowed the scope of sources that are subject to Oregon Major NSR in nonattainment and maintenance areas by increasing the thresholds, from the significant emission rate (SER) to the major source thresholds in the CAA specified for the current nonattainment areas in Oregon. See OAR 340-200-0020(66)(d) and OAR 340-224-0010(b). At the same time,

Oregon's State NSR requirements under Division 224 apply to the construction of new sources with emissions of a regulated air pollutant at or above the SER, as well as increases in emissions of a regulated pollutant from existing sources that equal or exceed the SER over the netting basis.

Oregon has divided its State NSR program into two parts: Type A, which generally applies in nonattainment, reattainment, and maintenance areas, and Type B, for attainment, unclassifiable, and sustainment areas. Sources subject to Type A State NSR remain subject to many of the same requirements that apply to such sources under Oregon's current SIP-approved program in nonattainment<sup>7</sup> and maintenance areas, whereas sources subject to Type B State NSR are subject to requirements equivalent to the minor NSR requirements under Oregon's PSEL rule at OAR 340-222-0041 in its current SIP.<sup>8</sup> Because Oregon's changes to the definition of "federal major source" in nonattainment areas are consistent with the federal definition of "major stationary source" at 40 CFR 51.165 for the designated areas in Oregon, and because Oregon has retained most of the characteristics of the Oregon's SIP-approved Major NSR permitting program for Type A State NSR, the EPA is proposing to approve these revisions.

The state also made revisions here, and in several other places in its rules, to be consistent with revisions to the federal PSD rules made in response to a Supreme Court decision<sup>9</sup> regarding the regulation of GHGs (May 7, 2015, 80 FR 26183). Specifically, Oregon revised definitions and procedures in Divisions 200, 214, 216, 222 and 224 to remove GHG-only sources from PSD applicability. Therefore, as required by the federal PSD program, a source is now subject to the Oregon Major NSR requirements for GHGs in attainment and unclassifiable areas only when the

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<sup>7</sup> Key changes are discussed below in the discussion of State NSR.

<sup>8</sup> Sources in sustainment areas subject to OAR 340-224-0245(2) are also subject to Type A NSR.

<sup>9</sup> *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427 (2014).

source is subject to Oregon Major NSR requirements anyway for one or more criteria pollutants. As specified in the federal PSD regulations, Oregon's rules continue to require that sources of GHGs subject to Oregon Major NSR in attainment and unclassifiable areas for a criteria pollutant, are also subject to Oregon Major NSR for GHGs.

Oregon also made clear in this section that a source is subject to Division 224 requirements for the designated area in which the source is located – for each regulated pollutant, including precursors. Finally, Oregon spelled out that sources subject to Division 224 must not begin actual construction, continue construction, or operate without complying with the requirements of Division 224 and obtaining an ACDP permit authorizing construction or operation.

*OAR 340-224-0025 Major Modification*

Importantly, Oregon moved the definition of “major modification” from Division 200 to Division 224, to reflect that the former definition was really a procedure for determining whether a major modification has or will occur, rather than a true definition. The revised definition and procedure are intended to better explain how emissions increases and decreases are tracked to determine whether a major modification has, or will, occur.

Oregon also specified that emissions from categorically insignificant activities, aggregate insignificant emissions, and fugitive emissions must be included in determining whether a major modification has occurred. In addition, the state clarified that major modifications for ozone precursors, or PM<sub>2.5</sub> precursors, also constitute major modifications for ozone and PM<sub>2.5</sub>, respectively. Finally, Oregon added language stating that the PSEL, netting basis, and emissions changes must be recalculated when more accurate or reliable emissions information becomes available to determine whether a major modification has occurred.

OAR 340-224-0030 New Source Review Procedural Requirements

Oregon revised this section to account for differing Oregon Major NSR and State NSR procedures. These revisions include when the ODEQ will determine whether an application is complete, when a final determination will be made, when construction is permitted, how to revise a permit and extend it, and when and how the ODEQ will terminate an NSR permit. With respect to the provision in the federal PSD regulations authorizing extensions to the 18-month construction time limitation in 40 CFR 52.21(r)(2) “upon a satisfactory showing that an extension is justified,” Oregon revised its extension provisions to be consistent with recent EPA guidance. This guidance set out the EPA’s views on what constitutes an adequate justification for an extension of the 18-month timeframe under 40 CFR 52.21(r)(2) for commencing construction of a source that has been issued a PSD permit. *See* Memorandum from Stephen D. Page, Director of EPA’s Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region 1-10, entitled Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR 52.21(r)(2), dated January 31, 2014 (Extension Guidance). In addition, Oregon extended the time period for making a final determination on an Oregon Major NSR or Type A State NSR permit from six months to one year, to reflect the more complex nature of such permitting actions. The one-year time-frame for permit issuance is consistent with the EPA’s requirements for major NSR permitting. *See* 40 CFR 52.21(q)(2).

OAR 340-224-0038 Fugitive and Secondary Emissions

This section was moved and amended to account for State NSR requirements. For sources subject to Oregon Major NSR and Type A State NSR, fugitive emissions are included in the calculation of emission rates and subject to the same control requirements and analyses required for emissions from identifiable stacks or vents. Secondary emissions are not included in

potential to emit calculations for Oregon Major NSR or Type A State NSR, but once a source is subject to Oregon Major NSR or Type A State NSR, secondary emissions must be considered in the required air quality impact analysis under Divisions 224 and 225.

340-224-0045 to 340-224-0070 Major NSR

Oregon has specified Oregon Major NSR requirements for each of the following designations: sustainment, nonattainment, reattainment, maintenance, and attainment/unclassifiable.

Major NSR in Sustainment Areas

New sources and modifications subject to Oregon Major NSR in sustainment areas (areas that are classified as attainment/unclassifiable by the EPA but have air quality either violating the NAAQS or just below the NAAQS) must meet PSD requirements for each sustainment pollutant, but must also satisfy additional requirements for obtaining offsets and demonstrating a net air quality benefit to address the air quality problems in the area, as discussed in more detail below. Because such areas are designated as attainment/unclassifiable by the EPA, requiring compliance with Oregon's PSD requirements meets federal requirements. The additional requirements for obtaining offsets and demonstrating a net air quality benefit go beyond CAA requirements for attainment/classifiable areas and are thus approvable.

Major NSR in Nonattainment Areas

For new sources and modifications subject to Oregon Major NSR in nonattainment areas, Oregon reorganized and clarified the requirements, including that they apply for each pollutant for which the area is designated nonattainment. Lowest Achievable Emission Rate (LAER) and offsets continue to be required for such sources and modifications. Oregon's submitted revisions tighten offsets required in nonattainment areas (except with respect to ozone). Oregon's rules

now initially require 1.2:1 offsets to emissions in non-ozonable areas. If offsets are obtained from priority sources in the area, the ratio may be reduced to 1:1, equivalent to the federal requirement in 40 CFR 51.165(a)(9)(i). Oregon's revisions also tighten requirements for sources seeking construction permit extensions, and limits extension requests to two 18-month periods, with certain additional review and re-evaluation steps. We note that beyond the federal rules, Oregon's rules extend BACT and offset requirements to new and modified minor sources in nonattainment areas.

The EPA is proposing limited, rather than full, approval of the Oregon Major NSR program for nonattainment areas because, although the submitted revisions strengthen the existing SIP-approved program, we cannot fully evaluate the program for the following reasons. On January 4, 2013, the U.S. Court of Appeals for the District of Columbia, in *Natural Resources Defense Council (NRDC) v. EPA*,<sup>10</sup> issued a decision that remanded the EPA's 2007 and 2008 rules implementing the 1997 PM<sub>2.5</sub> NAAQS. Relevant here, the EPA's 2008 implementation rule addressed by the court decision, "Implementation of NSR Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)" (the 2008 NSR PM<sub>2.5</sub> Rule),<sup>11</sup> promulgated NSR requirements in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). The court concluded that the EPA had improperly based the implementation rule solely upon the requirements of part D, subpart I, of the CAA, and had failed to address the requirements of part D, subpart 4, which establishes additional provisions for particulate matter nonattainment areas. The court ordered the EPA to "repromulgate these rules pursuant to subpart 4 consistent with this opinion." *Id.* at 437.

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<sup>10</sup> 706 F.3d 428 (DC Cir.).

<sup>11</sup> 73 FR 28321 (May 16, 2008).

As a result of the court's decision, the EPA withdrew its guidance for implementing the 2006 PM<sub>2.5</sub> standard<sup>12</sup> because the guidance was based largely on the remanded rule promulgated to implement the 1997 PM<sub>2.5</sub> standard.<sup>13</sup> On June 2, 2014, the EPA promulgated the Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS) and 2006 PM<sub>2.5</sub> NAAQS (79 FR 31566). This rule promulgated classifications and deadlines under subpart 4, part D, title I of the CAA for 2006 PM<sub>2.5</sub> nonattainment areas, including two areas in Oregon, specifically the Klamath Falls and Oakridge PM<sub>2.5</sub> nonattainment areas. On August 24, 2016, the EPA finalized the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (81 FR 58010). The EPA has now set revised requirements for PM<sub>2.5</sub> nonattainment areas, including new rules for major new and modified sources. The EPA also stated its intent to provide states with guidance regarding precursor demonstrations to supplement the new rules. Because these changes only recently became effective on October 24, 2016, and the EPA's guidance is still forthcoming, we intend to work with Oregon to address the requirements of subpart 4 for PM<sub>2.5</sub> in a separate, future action. In this action, as stated above, we propose a limited approval of the revisions to the Oregon Major NSR program in nonattainment areas as strengthening the current federally-approved program.

#### Major NSR in Reattainment Areas

In reattainment areas (areas meeting the NAAQS but not yet redesignated to attainment), new sources and modifications subject to Oregon Major NSR must continue to meet all

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<sup>12</sup> Memorandum from Stephen D. Page, Implementation Guidance for the 2006 24-Hour Fine Particulate (PM<sub>2.5</sub>) National Ambient Air Quality Standards (Mar. 2, 2012).

nonattainment Oregon Major NSR requirements for the reattainment pollutant. In addition, to ensure air quality does not again deteriorate, Oregon now requires that sources subject to Oregon Major NSR also meet other requirements for each reattainment pollutant. Specifically, the owner or operator of the source must demonstrate the source will not cause or contribute to a new violation of the ambient air quality standard or PSD increment by conducting an air quality analysis as outlined in Division 225.

*Major NSR in Maintenance Areas*

In maintenance areas, as under Oregon's current federally-approved SIP, new sources and modifications subject to Oregon Major NSR must continue to comply with Oregon Major NSR requirements for attainment/unclassifiable areas (i.e., PSD) and also conduct a demonstration or obtain allowances to ensure a net air quality benefit in the area. Rather than setting out the specific PSD requirements in this section, however, this section now simply references the PSD requirements at OAR 340-224-0070.

*Major NSR in Attainment/Unclassifiable Areas (PSD)*

For the construction of new sources and modifications subject to Oregon Major NSR in attainment or unclassifiable areas, Oregon revised its rules to address several court decisions impacting federal PSD rules. First, as discussed above, Oregon revised definitions and procedures in Divisions 200, 214, 216, 222 and 224 to remove GHG-only sources from PSD applicability. Therefore, as required under the EPA's federal PSD program, a source is now subject to the Oregon Major NSR requirements for GHGs only when the source also is subject to Oregon PSD requirements for one or more criteria pollutants. As required, Oregon's rules

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<sup>13</sup> Memorandum from Stephen D. Page, Withdrawal of Implementation Guidance for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (Jun. 6, 2013).

continue to require that sources of GHGs subject to Oregon's PSD rules for a criteria pollutant are also subject to PSD for GHGs.

Second, Oregon revised its requirements for preconstruction monitoring to address another court decision and resulting revisions to the EPA's PSD rules. On October 20, 2010, the EPA promulgated the 2010 PSD PM<sub>2.5</sub> Implementation Rule revising the federal significant monitoring concentration (SMC) and SILs for PM<sub>2.5</sub> (75 FR 64864). On January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club v. EPA*,<sup>14</sup> issued a judgment that, among other things, vacated the provisions adding the PM<sub>2.5</sub> SMC to the federal regulations at 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c). In its decision, the court held that the EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in CAA section 165(e)(2) that ambient monitoring data for PM<sub>2.5</sub> be included in all PSD permit applications. Although the PM<sub>2.5</sub> SMC was not a required element, where a state program contained an SMC and applied it to allow new permits without requiring ambient PM<sub>2.5</sub> monitoring data, the provision would be inconsistent with the court's opinion and CAA section 165(e)(2).

At the EPA's request, the decision also vacated and remanded the portions of the 2010 PSD PM<sub>2.5</sub> Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to SILs for PM<sub>2.5</sub>. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for PM<sub>2.5</sub> because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) was inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the **Federal Register** publication when we promulgated these provisions. Specifically, the EPA erred

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<sup>14</sup> 703 F.3d 458 (D.C. Cir. 2013).

because the language promulgated in 2010 does not provide permitting authorities the discretion to require a cumulative impact analysis notwithstanding that the source's impact is below the SIL, where there is information that shows the proposed source would lead to a violation of the NAAQS or increments. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. On December 9, 2013, the EPA removed the vacated PM<sub>2.5</sub> SILs and SMC provisions from federal PSD regulations (78 FR 73698). The EPA is starting a rulemaking on the PM<sub>2.5</sub> SILs to address the court's remand. In the meantime, we advised states to remove the vacated provisions from state PSD regulations.

In response to the vacatur and remand, Oregon submitted revisions to several divisions, including Divisions 200, 202, 224 and 225. Oregon revised the PM<sub>2.5</sub> SMC to zero, as the EPA did, to address this issue in the federal PSD regulations. Oregon also revised the definition of "significant impact levels" or "SIL" in state rules, removed the vacated language and added text to make clear that "no source may cause or contribute to a new violation of an ambient air quality standard or PSD increment even if the single source impact is less than the significant impact level." We are proposing to approve Oregon's revisions as consistent with the court decision.

Oregon also revised its PSD rules to address a court decision vacating provisions of EPA's 2011 biogenic deferral. In 2011, the EPA revised the definition of "subject to regulation" at 40 CFR 52.21(b)(49)(ii)(a) to defer PSD permitting requirements for carbon dioxide (CO<sub>2</sub>) emissions from bioenergy and other biogenic sources for three years. *See* Deferral for CO<sub>2</sub> Emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs; Final Rule (July 20, 2011, 76 FR 43490) (Biogenic CO<sub>2</sub> Deferral Rule)). On July 12, 2013, the U.S. Court of Appeals for the District of Columbia,

in *Center for Biological Diversity v. EPA*,<sup>15</sup> vacated the provisions of the Biogenic CO<sub>2</sub> Deferral Rule. The deferral expired on July 21, 2014, and by its terms is no longer in effect. The current definition of “greenhouse gases or GHGs” in Division 200 states that CO<sub>2</sub> emissions from the combustion or decomposition of biomass is not included in the definition, except to the extent required by federal law. We are proposing to approve Oregon’s rules as consistent with current federal law, under which CO<sub>2</sub> emissions from biogenic sources are regulated under Oregon’s PSD program to the same extent as CO<sub>2</sub> emissions from any other source.

In addition to revisions addressing these three court decisions, Oregon also eliminated language that allowed the substitution of post-construction monitoring for preconstruction monitoring. Oregon added an exemption from the preconstruction ambient air monitoring requirement, with the ODEQ’s approval, if representative or conservative background concentration data is available, and the source demonstrates that such data is adequate to determine that the source would not cause or contribute to a violation of an ambient air quality standard or any applicable PSD increment. These revisions, along with the other existing provisions regarding preconstruction monitoring in Oregon’s PSD regulations, are consistent with 40 CFR 51.166(m)(iii) and therefore approvable.

Finally, Oregon added the requirement to demonstrate a net air quality benefit for subject sources that will have a significant impact on air quality in a designated area other than the area in which the source is located. This demonstration of net air quality benefit is beyond federal PSD requirements, and will be discussed in more detail below.

*OAR 340-224-0245 to 340-224-0270, State NSR*

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<sup>15</sup> 722 F.3d 401 (D.C. Cir. 2013).

Division 224 now also specifies State NSR requirements for sustainment, nonattainment, reattainment, maintenance, and attainment/unclassifiable areas. For sources that emit between the SER and 100 tons per year in nonattainment and maintenance areas (Type A State NSR sources), Oregon has relaxed some of the requirements, as compared to its current SIP, that historically went beyond federal requirements. In nonattainment areas, if the increase in emissions from the source is the result of a major modification,<sup>16</sup> BACT rather than LAER is now required. In maintenance areas, Type A State NSR sources are no longer required to conduct preconstruction monitoring to support the ambient air impact analysis for the source. In addition, in both nonattainment and maintenance areas, Oregon's new State NSR rules allow a reduction of the offset ratio if some of the offsets come from sources that are contributing to air quality problems in the area (which historically have been woodstoves). In sustainment and reattainment areas, Oregon's new State NSR requirements go beyond CAA requirements for minor NSR programs by requiring a demonstration of a net air quality benefit (discussed below).

Because BACT, LAER, pre-construction monitoring, and offsets are not required components of a State's SIP-approved minor NSR program, and because the offset requirements now provide sources with incentives to obtain offsets from sources found to be specifically contributing to air quality problems in the area, the EPA proposes to find that Oregon's minor NSR program continues to meet CAA requirements for approval.

*OAR 340-224-0500 to 340-224-0540, Net Air Quality Benefit Emission Offsets*

Oregon moved the net air quality benefit emission offset rules from Division 225 to Division 224 to better consolidate new source review requirements. The CAA requires that, for major nonattainment NSR, the proposed major source or major modifications must obtain

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<sup>16</sup> Oregon uses the term "major modification" for physical and operational changes that result in significant

emissions reductions of the affected nonattainment pollutant from the same source or other sources in the area to offset the proposed emissions increase. *See* CAA section 173(c).

Consistent with that requirement, the EPA's major nonattainment NSR regulations require that major sources and major modifications in nonattainment areas obtain emissions offsets at a ratio of at least 1 to 1 (1:1) from existing sources in the area to offset emissions from the new or modified source. 40 CFR 51.165(a)(9)(i).

Oregon revised the state's criteria for demonstrating a net air quality benefit. In addition to the incentives provided to sources subject to Type A State NSR in sustainment and reattainment areas to obtain offsets from priority sources discussed above, Oregon made an additional change. The state revised its rules to provide incentives for major sources to use priority source offsets for Oregon Major NSR sources in nonattainment and reattainment areas by increasing the required offset ratio for major sources to 1.2:1 from the current 1:1. If a source subject to Oregon Major NSR obtains offsets of some emissions increases from priority sources, the ratio may be reduced to no less than 1:1, the minimum offset level under the federal major nonattainment NSR program.

We most recently reviewed and took action on submitted changes to Division 225 on December 27, 2011 (76 FR 80747). Although Oregon adopted the EPA's recommended inter-pollutant offset ratios for PM<sub>2.5</sub> and submitted them to the EPA, we were unable to approve them in our 2011 action because, between the time that Oregon adopted the ratios and our 2011 action, the EPA granted a petition to reconsider the ratios and changed its policy. As a result, in 2011 we deferred action to give Oregon time to demonstrate that the ratios protected ambient air quality standards in Oregon, or otherwise revise the ratios – in line with the EPA's July 21, 2011,

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increases to both existing major and existing minor sources.

memorandum updating the inter-pollutant offset policy.<sup>17</sup> Oregon did revise its rules, moved these provisions to Division 224, at OAR 340-224-0510, and submitted the changes in the April 2015 submission evaluated in this action. Specifically, Oregon removed the state-wide PM<sub>2.5</sub> inter-pollutant offset ratios, and instead, added rule language to require that they be calculated on a case-by-case basis. However, the EPA's revised inter-pollutant offset policy states that a state should make a specific demonstration for set ratios in a SIP submittal.<sup>18</sup> Oregon's submittal does not include a demonstration for set ratios in specific areas. With the exception of OAR 340-224-0510(3), we are proposing to approve the revisions to Oregon's net air quality benefit emissions rules (OAR 340-224-0500 through 0540).

#### Summary

We are proposing to approve the revisions to Division 224, with the exceptions and limitations noted above, because we have determined that, in conjunction with other provisions in Divisions 200, 222, and 225, the revisions are consistent with the requirements of the EPA's PSD, major nonattainment NSR, and minor NSR permitting programs. *See* 40 CFR 51.160 through 161, 51.165, and 51.166.

#### **M. Division 225: Air Quality Analysis Requirements**

This division contains the air quality analysis requirements, which are primarily used in Oregon's NSR program. By its terms, it does not apply unless a rule in another division, primarily Division 224, refers to Division 225 or a rule in Division 225.

Substantive changes include revising the definition of "allowable emissions" at OAR 340-225-0020(1) to add "40 CFR part 62" to the list of referenced standards and clarifying the

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<sup>17</sup> Gina McCarthy, EPA Administrator. "Revised Policy to Address Reconsideration of Inter-pollutant Trading Provisions for Fine Particles (PM<sub>2.5</sub>)," Memorandum to Regional Administrators, July 21, 2011.

<sup>18</sup> *Ibid.*

definition of “baseline concentration year” at OAR 340-225-0020(3) that varies depending on the pollutant for a particular designated area. Oregon revised the definitions of “competing PSD increment consuming source impacts” and “competing NAAQS [national ambient air quality standards] source impacts,” at OAR 340-225-0020(4) and (5) respectively, to broaden the reference to include all of Oregon’s ambient air quality standards at Division 202 (which include the NAAQS)<sup>19</sup> and to specify that in calculating these concentrations, sources may factor in the distance from the new or modified source to other emission sources (range of influence or ROI), spatial distribution of existing emission sources, topography, and meteorology. Oregon also clarified and reorganized the defined ROI formula at OAR 340-225-0020(10). The ROI is the distance from the new or modified source or source impact area to other emission sources that could impact that area. The ROI and source impact area are used to predict the air quality impacts of a new or modified source. Oregon continues to limit the maximum ROI to 50 kilometers and has moved the constant values in the ROI formula from the table at the end of the division into the text of the rule.

Oregon revised the PSD requirements to align with the court decision vacating and remanding the PM<sub>2.5</sub> SIL. Please see Section L above for a discussion of the court decision. Division 225 now includes language stating that application of a SIL as a screening tool does not preclude the ODEQ from requiring additional analysis to evaluate whether a proposed source or modification will cause or contribute to a violation of an air quality standard or PSD increment.

The state also updated the PSD requirements for demonstrating compliance with air quality related values. Oregon made clear that, if applicable, the analysis applies to each emission unit that increases the actual emissions of a regulated pollutant above the portion of the

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<sup>19</sup> Our approval of OAR 340-225-0020(4) and (5) would not extend to those ambient standards in Division 202 that

netting basis attributable to that emission unit. The state also spelled out that the term “air quality related values” includes visibility, deposition, and ozone impacts. In addition, the state mandated a visibility analysis for sources impacting the Columbia River Gorge National Scenic Area (Gorge), instead of recommending sources also evaluate potential impacts on the Gorge. We propose to approve the revisions to Division 225 as meeting CAA requirements, including the EPA’s major NSR permitting regulations at 40 CFR 51.165 and 51.166, and the regional haze requirements at 40 CFR part 51, subpart P.

As discussed above, Oregon repealed the *Requirements for Demonstrating a Net Air Quality Benefit* section at OAR 340-225-0090, after moving the requirements into the *Net Air Quality Benefit Emission Offsets* section in Division 224, which we described above. We propose to approve the repeal of OAR 340-225-0090.

**N. Division 226: General Emission Standards**

This division contains emission standards and requirements of general applicability, including requirements for highest and best practicable treatment and control, operating and maintenance, typically achievable control technology, additional requirements imposed on a permit by permit basis, alternative emission limits (bubbles), and particulate emission limits for process equipment and other sources (other than fuel or refuse burning equipment or fugitive emissions). In OAR 340-226-0120, Oregon clarified that pressure drop and ammonia slip are operational, maintenance and work practice requirements that the ODEQ may establish in a permit condition or notice of construction approval. Oregon also revised OAR 340-226-0130 *Typically Achievable Control Technology* by moving procedural requirements from the

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we have excluded from our approval.

definitions at Division 200 to this division, and revising them to account for Oregon's changes to NSR, Major NSR and Type A State NSR.

Notably, the state made substantive revisions to the particulate emission limits under the *Grain Loading Standards* section starting at OAR 340-226-0200. Oregon's stated goal was to reduce emissions from certain sources built before June 1970. The rules phase in tighter standards for these older sources, based on typically available control technology, such as multiclones. The revisions generally tighten grain loading standards for existing sources from 0.2 grains per dry standard cubic foot (gr/dscf) to between 0.10 and 0.15 gr/dscf depending on whether there is existing source test data for the source and what that data shows. Oregon set timelines to achieve these rates depending on whether sources were built before or after June 1, 1970. Existing sources that operate equipment less frequently (less than 867 hours a year) must meet less stringent standards. For new sources, the ODEQ has increased the stringency of the grain loading standard by adding a significant digit, revising the standard from 0.1 gr/dscf to 0.10 gr/dscf. We propose to approve the revisions to Division 226 because they tighten particulate emission standards and strengthen the SIP.

**O. Division 228: Requirements for Fuel Burning Equipment and Fuel Sulfur Content**

These rules establish generally applicable requirements for fuel burning equipment, including limits on sulfur content and particulate matter. Oregon removed a coal space-heating exemption that expired in 1983 and clarified that sulfur dioxide emissions from recovery furnaces are not subject to this division but are instead regulated under the SO<sub>2</sub> emissions limits for wood products industries in Division 234.

Oregon revised Division 228 to tighten grain loading standards for fuel burning equipment in the same manner as in Division 226, discussed above. We propose to approve the

revisions because they tighten particulate emission standards for fuel burning equipment and strengthen the SIP. We note that revisions to this division related to the federal Acid Rain Program (OAR 340-228-0300, and -0400 through -0530) were not submitted, but were included to show a complete record of the revisions. These rules are not a part of Oregon's federally-approved SIP.

**P. Division 232: Emission Standards for VOC Point Sources**

This division restricts emissions of VOC from new and existing listed source categories in the Portland and Medford Air Quality Maintenance Areas and in Salem-Keizer in the Salem-Keizer Area Transportation Study Area as well as any source in these areas with the potential to emit over 100 tons of VOC per year. Consistent with CAA requirements, Oregon has clarified that the determination of whether a source has a potential to emit over 100 tons of VOC per year is made before consideration of add-on controls.

Oregon expanded the section on marine tank vessels so that the marine vapor control requirements now apply to marine tank vessel loading of other volatile organic liquids in addition to gasoline, effective July 1, 2018. The loading of organic liquids stored in pressurized tanks, such as liquefied natural gas and propane, are not included in this expansion. Consistent with the change discussed above, the state also made clear that, in determining whether a source is subject to the rules on surface coating in manufacturing, determination of the source's potential to emit is made before consideration of add-on controls. Oregon also requires records under the surface coating in manufacturing rule to be retained for five years rather than two, consistent with title V. Finally, Oregon also clarified that determining potential to emit for

rotogravure and flexographic printing sources subject to VOC requirements is made before consideration of add-on controls. We propose to approve the changes described above because they strengthen the SIP and are consistent with the CAA.

**Q. Division 234: Emissions Standards for Wood Products Industries**

Oregon repealed two sections of this division – the neutral sulfite semi-chemical section (OAR 340-234-0300 through 0360) and the sulfite pulp mill section (OAR 340-234-0400 through 0430) – because sources of this type no longer exist in the state. Any new sources constructed would be subject to new source review, as well as applicable NSPS and NESHAP requirements. As a result, Oregon removed terms no longer used in this division, including acid absorption tower, acid plant, average daily production, blow system, continual monitoring, continuous-flow conveying system, modified wigwam waste burner, neutral sulfite semi-chemical (NSSC) pulp mill, production, spent liquor incinerator, sulfite mill, and sulfur oxides.

In the *Kraft Pulp Mills* section at OAR 340-234-0200 through 0270, the state revised what was formerly referred to as “significant upgrading” of equipment for purposes of determining whether more restrictive standards apply. This change was intended to enhance the enforceability of the requirement to meet more restrictive emission standards based on changes to the source. This section was also revised to update the non-recovery furnace opacity limit averaging times to six minutes in lieu of the previous three-minute exception. In making this change, Oregon relied on the same rationale discussed in Section E. above.

Oregon also added source test methods for particulate matter and required demonstrations of oxygen concentrations in recovery furnace and lime kiln gases. Under the *Reporting* section at OAR 340-234-0250, the state removed the alternative sampling option where transmissometers are not feasible because all pulp mills in Oregon now have transmissometers.

Oregon made minor changes to OAR 340-234-0270, a provision authorizing the ODEQ to determine that upset conditions at a subject source are chronic and correctable by the installation of new or modified process or control equipment and requiring a program and schedule to effectively eliminate the deficiencies causing the upset conditions. This provision makes clear that such upsets causing emissions in excess of applicable limits may be subject to a civil penalty or other appropriate action. The EPA is proposing to reapprove this provision with these changes based on the understanding that it does not excuse excess emissions from enforcement action seeking penalties or injunctive relief.

Oregon moved the test method for the opacity limit for veneer and plywood manufacturing operations from the definitions into the requirement itself (OAR 340-234-0510(1)(b)(A)). The state also added test methods for moisture content to the emission standards for veneer and plywood manufacturing requirements. For hardboard tempering ovens, Oregon revised the emission requirements to require that alternative temperatures be approved using the procedures in the federal NESHAP for Plywood and Composite Wood Products, 40 CFR part 63, subpart DDDD. Because these rules did not include testing and monitoring requirements, Oregon added a new section, OAR 340-234-0540 *Testing and Monitoring*.

We propose to approve the changes to Division 234, except with respect to requirements regulating total reduced sulfur and odor, because they strengthen the SIP and are consistent with CAA requirements. Total reduced sulfur and odor requirements are not appropriate for SIP approval because they are not criteria pollutants under title I of the CAA. We therefore are excluding from approval into the Oregon SIP the references to total reduced sulfur and odor in definitions at OAR 340-234-0010(8) and (10), and in Kraft Pulp Mill rules at OAR 340-234-0210(1), OAR 340-234-0220(2), OAR 340-234-0240(1), and OAR 340-234-0250(1) and (2).

**R. Division 236: Emissions Standards for Specific Industries**

Under Division 236, Oregon repealed rules designed to regulate aluminum (OAR 340-236-0100 through 0150) and laterite ore production of ferronickel (OAR 340-236-0200 through 0230) because sources of this type no longer exist in the state. Any new facilities would be subject to new source review as well as applicable NSPS and NESHAP requirements. Oregon also made clear the appropriate test method to determine compliance with the hot mix asphalt plant rules at OAR 340-236-0410(1). In addition, the state added a requirement that hot mix asphalt plants must develop a fugitive emissions control plan if requested by the ODEQ. *See* OAR 340-236-0410(4).

We note that Oregon repealed OAR 340-236-0430 specific to portable hot mix asphalt plants, which addressed only permit requirements for such plants, because these plants are now regulated under general permits in Division 216. With the exception of the provisions regulating animal matter and municipal solid waste landfills, we propose to approve the revisions and repeals because they are consistent with CAA requirements. The provisions regulating animal matter and municipal solid waste landfills are not related to the criteria pollutants regulated under title I of the CAA, not essential for meeting and maintaining the NAAQS, nor related to the requirements for SIPs under section 110 of the CAA.

**S. Division 240: Rules for Areas with Unique Air Quality Needs**

In the submission, Oregon revised air quality control requirements for certain areas – these are generally areas that are, or have been, designated nonattainment by the EPA. At OAR 340-240-0050, the state clarified the appropriate test methods for determining compliance with emission standards in this division, improving the enforceability of the standards. In addition, visible emissions requirements, at OAR 340-240-0110, 0140, 0330, 0350, and 0510, were

revised to update opacity testing averaging times from an aggregate three-minute exception in any one hour to a six-minute average. The state explained the basis for this change in its submission, and we describe, in Section E above, why we propose to approve this change.

Oregon also revised particulate control requirements for air conveying systems, at OAR 340-240-0350, setting removal efficiency standards designed to ensure that the pollution collected from a source is not ultimately discharged into the atmosphere. In making this change, the state regulated design removal efficiency rather than actual removal efficiency because of the challenges of testing for removal efficiency, which requires measuring emissions at the inlet and the outlet. Oregon updated the grain loading standard for air conveying systems in the La Grande Urban Growth Area emitting ten tons or less a year (from 0.1 to 0.10 grains per standard cubic foot) but allowed extensions of up to one year, if necessary to install controls to meet the revised standard. Oregon made the changes intending to better align the rules with federally-approved standards and testing methods.

Also in this division, Oregon repealed the charcoal producing plant rules at OAR 340-240-0170 because there are no longer any existing sources of this type in Oregon outside of Lane County (which is subject to rules in addition to, or in lieu of, these rules), and any new charcoal producing plants would be subject to new source review and any applicable NSPS and NESHAP requirements. In accord with changes to other divisions discussed above, the state removed the sanctioned use of asphalt and oil as dust suppressants. Oregon also repealed old, expired provisions in this division.

We note that Oregon's federally-approved SIP currently controls sources in the Klamath Falls nonattainment area, and incentivizes sources in Klamath Falls to offset particulate emissions by decommissioning fireplaces, installing fireplace inserts, replacing old stoves with

certified stoves, and replacing wood-fired heaters with alternatives like natural gas and electric baseboards. In this submission, Oregon updated requirements in Klamath Falls by removing an exception from the 20% opacity standard, and by uniformly applying the 6-minute averaging time to measure opacity, as described above in Section E.

Oregon also revised this section to expand offsets to the Lakeview sustainment area as well as other eligible areas. *See* OAR 340-240-0560. We propose to approve the revisions because they are consistent with the CAA and strengthen the SIP.

**T. Division 242: Rules Applicable to the Portland Area**

This division contains additional requirements that apply in the Portland area. The industrial emissions management program was updated to account for the changes to Oregon's Major NSR and State NSR programs. Oregon also moved the net air quality benefit provisions to Division 224 to consolidate NSR requirements. We note that we already approved the changes to the *Gasoline Vapors from Gasoline Transfer and Dispensing Operations* section at OAR 340-242-0500, 0510, and 0520 on October 27, 2015 (80 FR 65655), and are therefore not addressing them in this action.

Oregon repealed the *Spray Paint* rule sections at OAR 340-242-0700 through 0790 because the EPA has set national rules designed to be more stringent. The Oregon spray paint rules were originally a mass-based standard adopted in 1995 and projected to have a 15 percent reduction in VOCs in the 1996 Portland Ozone Maintenance Plan. On March 24, 2008, the EPA finalized national VOC rules (73 FR 15604). As described in the proposal for the EPA's rule, the EPA's reactivity-based standard would provide a 19 percent reduction in VOCs (July 16, 2007, 72 FR 38952). The EPA also cited the rule's projected 19 percent reduction of VOC in an

EPA memo providing guidelines on emissions reduction credit.<sup>20</sup> In addition, California Air Resource Board developed a reactivity-based standard, approved by the EPA in September 2005 (70 FR 53930). We find the repeal to be approvable and propose to approve the submitted changes to Division 242 as consistent with CAA requirements.

**U. Division 262: Heat Smart Program for Residential Woodstoves and Other Solid Fuel Heating Devices**

Oregon submitted a change to the definitions section of this division, at OAR 340-262-0450. Oregon's rules now expressly exclude boilers providing process heat to a commercial, industrial, or institutional establishment (that obtain a construction approval from the ODEQ) from the definition of "solid fuel burning device" regulated under the Heat Smart Program. These units are currently exempt from the Heat Smart Program under Oregon's SIP and the revision to Oregon's rules continues that exemption. We propose to approve the change because as a matter of federal law, this revision results in no change to the Oregon SIP.

**V. Division 264: Rules for Open Burning**

The only substantive change to this division is the repeal of the forced air pit incinerators rule and associated references at OAR 340-264-0190. Forced air pit and air curtain incinerators are regulated under the EPA's rules for Commercial/Industrial Solid Waste Incinerators and are required to have title V operating permits. The ODEQ has therefore determined that such units should no longer be regulated under Oregon's rules for open burning. We propose to approve the repeal as consistent with the CAA.

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<sup>20</sup> Stephen Page, "Emission Reduction Credit for Three Federal Rules for Categories of Consumer and Commercial

**W. Division 268: Emission Reduction Credits**

In Division 268, Oregon submitted revisions to OAR 340-268-0030 to clarify when reductions in criteria pollutant emissions that are also hazardous air pollutant emissions are creditable. Emissions reductions required to meet federal NESHAP standards in 40 CFR part 61 or 63 are not creditable as emission reduction credits for purposes of Major NSR in nonattainment or reattainment areas in Oregon. However, criteria pollutant reductions that are in excess of, or incidental to, the required hazardous air pollutant reductions can potentially earn credits – as long as all conditions are met. Oregon also lowered the threshold for banking credits in the Klamath Falls and Lakeview areas from ten tons to one ton – to encourage trading activity. Finally, Oregon specified when such credits are considered used up, and when they expire. The revisions are consistent with the CAA and the EPA’s implementing regulations and we propose to approve them.

**X. Source Sampling Manual and Continuous Monitoring Manual**

Oregon submitted the ODEQ Source Sampling Manual, Volumes I and II, and the ODEQ Continuous Monitoring Manual, revised as of April 2015. These manuals are key reference materials used in OAR Divisions 200 through 268. As noted above, Oregon added references to the April 2015 edition of both manuals in Division 200. Oregon incorporates changes to testing and monitoring requirements – spelled out in these manuals – into the permits of source owners and operators, as necessary.

The Source Sampling Manual addresses air emissions source sampling practices and procedures for projects in Oregon. Volume I of this manual was updated to account for changes to the EPA methods for measuring fine particulate matter, and other new and modernized

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Products,” Memo to Regional Administrators, 2007.

methods. Volume II of this manual was revised to remove the annual reporting requirements for small gasoline dispensing facilities (throughput of less than 10,000 gallons of gasoline per month). The state determined that the annual reporting requirement was not needed to measure compliance because the ODEQ collected one-time throughput data from these facilities and is authorized to request additional information if needed.

Oregon extensively revised the Continuous Monitoring Manual, originally published in 1992. The manual includes federal monitoring requirements for the NSPS, NESHAP, and Acid Rain programs and was updated primarily to address continuous monitoring systems of all types. The changes affect commercial operations that are required to install and operate continuous monitoring systems, contractors that audit or certify the systems, and vendors that sell or design the systems. We reviewed the revised manuals, and we propose to approve the changes as consistent with 40 CFR part 51, subpart M, and part 60, subparts A and B, for purposes of the emission limits and requirements approved into the SIP.

#### **IV. Proposed Action**

We propose to approve, and incorporate by reference, specific rule revisions submitted by Oregon on May 21, 2015. As documented in the submission, we propose to approve certain of the state rule revisions to also apply in Lane County, because the Oregon EQC has determined those rule to be more stringent than the corresponding local rules. We also propose to approve, but not incorporate by reference, specific provisions that provide the ODEQ with authority needed for SIP approval.

In addition, we propose to remove repealed rules from Oregon's federally-approved SIP, as requested by the state, because they are obsolete or redundant. Finally, we are not approving certain rules that are inconsistent with CAA requirements, or that are inappropriate for SIP

approval, because they are not related to the criteria pollutants regulated under title I of the CAA, not essential for meeting and maintaining the NAAQS, or not related to the requirements for SIPs under section 110 of the CAA.

**A. Rules Approved and Incorporated by Reference**

We propose to approve into the Oregon SIP, and incorporate by reference at 40 CFR part 52, subpart MM, the submitted revisions to Chapter 340 of the OAR listed below, state effective April 16, 2015:

- Division 200 – General Air Pollution Procedures and Definitions (0010, 0020, 0025, 0030, 0035);
- Division 202 – Ambient Air Quality Standards and PSD Increments (0010, 0020, 0050, 0070, 0100, 0130, 0200, 0210, 0220, 0225);
- Division 204 – Designation of Air Quality Areas (0010, 0020, 0030, 0040, 0050, 0060, 0070, 0080, 0090, 0300, 0310, 0320);
- Division 206 – Air Pollution Emergencies (0010, 0020, 0030, 0040, 0050, 0060, 0070, 8010, 8020, 8030, 8040);
- Division 208 – Visible Emissions and Nuisance Requirements (0005, 0010, 0110, 0210);
- Division 209 – Public Participation (0010, 0020, 0030, 0040, 0050, 0060, 0070, 0080);
- Division 210 – Stationary Source Notification Requirements (0010, 0020, 0100, 0110, 0120, 0205, 0215, 0225, 0230, 0240, 0250);
- Division 212 – Stationary Source Testing and Monitoring (0005, 0010, 0110, 0120, 0130, 0140, 0150);

- Division 214 – Stationary Source Reporting Requirements (0005, 0010, 0100, 0110, 0114, 0130, 0200, 0210, 0220, 0300 – except introductory sentence related to NSPS and NESHAPs, 0310, 0320, 0330, 0340, 0350);
- Division 216 – Air Contaminant Discharge Permits (0010, 0020, 0025, 0030, 0040, 0052, 0054, 0060, 0062, 0064, 0066, 0068, 0070, 0082, 0084, 0090, 0094, 8010, 8020);
- Division 222 – Stationary Source Plant Site Emission Limits (0010, 0020, 0030, 0035, 0040, 0041, 0042, 0046, 0048, 0051, 0055, 0080, 0090);
- Division 224 – New Source Review (0010, 0020, 0025, 0030, 0034, 0038, 0040, 0045, 0050, 0055, 0060, 0070, 0245, 0250, 0255, 0260, 0270, 0500, 0510 – except paragraph (3), 0520, 0530, 0540);
- Division 225 – Air Quality Analysis Requirements (0010, 0020, 0030, 0040, 0045, 0050, 0060, 0070);
- Division 226 – General Emissions Standards (0005, 0010, 0100, 0110, 0120, 0130, 0140, 0210, 0310, 0320, 0400, 8010);
- Division 228 – Requirements for Fuel Burning Equipment and Fuel Sulfur Content (0010, 0020, 0100, 0110, 0120, 0130, 0200, 0210);
- Division 232 – Emission Standards for VOC Point Sources (0010, 0020, 0030, 0040, 0050, 0060, 0080, 0085, 0090, 0100, 0110, 0120, 0130, 0140, 0150, 0160, 0170, 0180, 0190, 0200, 0210, 0220, 0230);
- Division 234 – Emission Standards for Wood Products Industries (0005, 0010 – except (8) and (10), 0100, 0140, 0200, 0210 – except (1), 0220 – except (2), 0240 – except (1), 0250 – except (1) and (2), 0270, 0500, 0510, 0520, 0530, 0540);

- Divisions 236 – Emission Standards for Specific Industries (0005, 0010, 0400, 0410, 0420, 0440, 8010);
- Division 240 – Rules for Areas with Unique Air Quality Needs (0010, 0020, 0030, 0050, 0100, 0110, 0120, 0130, 0140, 0150, 0160, 0180, 0190, 0210, 0220, 0250, 0300, 0320, 0330, 0340, 0350, 0360, 0400, 0410, 0420, 0430, 0440, 0510, 0550, 0560, 0610);
- Division 242 – Rules Applicable to the Portland Area (0400, 0410, 0420, 0430, 0440, 0600, 0610, 0620, 0630);
- Division 262 – Heat Smart Program for Residential Woodstoves and Other Solid Fuel Heating Devices (0450);
- Division 264 – Rules for Open Burning (0010, 0020, 0030, 0040, 0050, 0060, 0070, 0075, 0078, 0080, 0100, 0110, 0120, 0130, 0140, 0150, 0160, 0170, 0175, 0180); and
- Division 268 – Emission Reduction Credits (0010, 0020, 0030).

**Rules Also Approved for Lane County**

- Division 200 – General Air Pollution Procedures and Definitions (0020);
- Division 202 – Ambient Air Quality Standards and PSD Increments (0050);
- Division 204 – Designation of Air Quality Areas (0300, 0310, 0320);
- Division 208 – Visible Emissions and Nuisance Requirements (0110, 0210);
- Division 214 – Stationary Source Reporting Requirements (0114)(5);
- Division 216 – Air Contaminant Discharge Permits (0040, 8010);
- Division 222 – Stationary Source Plant Site Emission Limits (0090);
- Division 224 –New Source Review (0030, 0530);

- Division 225 – Air Quality Analysis Requirements (0010, 0020, 0030, 0040, 0045, 0050, 0060, 0070);
- Division 226 – General Emissions Standards (0210); and
- Division 228 – Requirements for Fuel Burning Equipment and Fuel Sulfur Content (0210).

**B. Rules Approved but Not Incorporated by Reference**

We propose to approve, but not incorporate by reference, the following provisions:

- ODEQ Source Sampling Manual, Volumes I and II, April 2015 (for purposes of the limits approved into the SIP);
- ODEQ Continuous Emissions Monitoring Manual, April 2015 (for purposes of the limits approved into the SIP);
- ODEQ-LRAPA Stringency Analysis and Directive, Attachment B; and
- Division 200 – General Air Pollution Procedures and Definitions (0100, 0110, 0120).

**C. Rules Removed**

We propose to remove the following sections from the Oregon SIP because they have been repealed, replaced by rules noted in paragraph A above, or the state has asked that they be removed:

- Division 208 – Visible Emissions and Fugitive Emissions Requirements (0100, 0200);
- Division 212 – Compliance Assurance Monitoring (0200, 0210, 0220, 0230, 0240, 0250, 0260, 0270, 0280);
- Division 214 – Stationary Source Reporting Requirements (0360);
- Division 222 – Stationary Source Plant Site Emissions Limits (0043, 0045, 0070);
- Division 224 – New Source Review (0080, 0100);

- Division 225 – Air Quality Analysis Requirements (0090);
- Division 226 – General Emission Standards (0200);
- Division 228 – Requirements for Fuel Burning Equipment and Fuel Sulfur Content (0400, 0410, 0420, 0430, 0440, 0450, 0460, 0470, 0480, 0490, 0500, 0510, 0520, 0530);
- Division 234 – Emission Standards for Wood Products Industries (0300, 0310, 0320, 0330, 0340, 0350, 0360, 0400, 0410, 0420, 0430);
- Division 236 – Emission Standards for Specific Industries (0100, 0110, 0120, 0130, 0140, 0150, 0200, 0210, 0220, 0230, 0430);
- Division 240 – Rules for Areas with Unique Air Quality Needs (0170, 0230, 0310);
- Division 242 – Rules Applicable to the Portland Areas (0700, 0710, 0720, 0730, 0740, 0750, 0760, 0770, 0780, 0790); and
- Division 264 – Rules for Open Burning (0190).

**D. Rules Not Approved**

For the reasons stated above, we are not approving the following revised provisions submitted by Oregon because they are inconsistent with CAA requirements, or because they are inappropriate for SIP approval under section 110, title I of the CAA:

- Division 200 – General Air Pollution Procedures and Definitions (0050) (compliance schedules);
- Division 214 – Stationary Source Reporting Requirements (0300 introductory sentence related to NSPS and NESHAPs);
- Division 222 – Stationary Source Plant Site Emission Limits (0060) (hazardous air pollutants);
- Division 224 – New Source Review (0510(3)) (PM<sub>2.5</sub> inter-pollutant offset ratios); and

- Division 234 – Emission Standards for Wood Products Industries (0010(8) and (10), 0210(1), 0220(2), 0240(1), 0250 (1) and (2)) (total reduced sulfur and odor).

## **V. Incorporation by Reference**

In this rule, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are proposing to incorporate by reference the provisions described above in Section IV. Proposed Action. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

## **VI. Oregon Notice Provision**

Oregon Revised Statute 468.126 prohibits the ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

## **VII. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely

approves 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Public Law 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 this action does not involve technical standards; and

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

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

#### **List of Subjects in 40 CFR Part 52**

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

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

Dated: March 9, 2017.

Michelle L. Pirzadeh,  
Acting Regional Administrator,  
EPA Region 10.

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