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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R10–OAR–2008–0155; FRL–9144–8 ]

### Approval and Promulgation of State Implementation Plans: Oregon

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Oregon, Department of Environmental Quality (ODEQ). These revisions pertain to the Clean Air Act (CAA) section 110(a)(1) maintenance plans prepared by ODEQ to maintain the 8-hour national ambient air quality standard (NAAQS) for ozone in the Portland portion of the Portland/Vancouver Air Quality Maintenance Area (Pdx/Van AQMA) and the Salem-Keizer Area Transportation Study (SKATS) air quality area. The 110(a)(1) maintenance plans for this area meet CAA requirements and demonstrate that each of the above mentioned areas will be able to remain in attainment for the 1997 and 2008 8-hour ozone NAAQS through 2015. As SKATS appears to be significantly impacted by emissions from the Portland area, an approved plan for the Pdx/Van AQMA is one of the control strategies for SKATS air quality area. Therefore, EPA is proposing to approve the section 110(a)(1) plans for the Portland portion of the Pdx/Van AQMA and the SKATS area at the same time.

Additionally, the EPA is proposing to approve SIP revisions submitted by ODEQ that phase out the State's Vehicle Inspection Program (VIP) enhanced BAR–31 test, and eliminate the Gas Cap Pressure Test and the Evaporative Purge Tests.

**DATES:** Written comments must be received on or before June 7, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R10–

OAR-2008-0155, by one of the following methods:

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

B. *Mail*: Krishna Viswanathan, EPA, Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

C. *Hand Delivery*: EPA, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Krishna Viswanathan, Office of Air Waste, and Toxics (AWT-107). Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions*: Direct your comments to Docket ID No. EPA-R10-OAR-2008-0155. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the electronic docket are listed in the <http://www.regulations.gov/index>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material is not placed on

the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** Krishna Viswanathan, (206) 553-2684, or by e-mail at [R10-Public\\_Comments@epa.gov](mailto:R10-Public_Comments@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

#### Table of Contents

- I. Background
- II. Summary of SIP Revisions
  - A. The Pdx/Van AQMA, SKATS, and Section 110(a)(1) Maintenance Plans for the 1997 8-Hour Ozone NAAQS
  - B. Phasing Out of the State's VIP Enhanced BAR-31 Test, the Elimination of the Gas Cap Pressure Test and the Evaporative Purge Test
- III. Proposed Action
- IV. Oregon Notice Provision
- V. Statutory and Executive Order Reviews

#### I. Background

Section 110(a)(1) of the CAA requires, in part, that states submit to EPA plans to maintain any NAAQS promulgated by EPA. EPA interprets this provision to require that states with areas that were maintenance areas for the 1-hour ozone NAAQS but attainment for the 8-hour ozone NAAQS must submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS. EPA established June 15, 2007, three years after the effective date of the initial 8-hour ozone designations, as the deadline for submission of plans for these areas.

On May 20, 2005, EPA issued guidance for States in preparing maintenance plans under section 110(a)(1) of the CAA for areas that are required to do so under 40 CFR 51.905(c) and (d). At a minimum, the maintenance plan should include the five following components:

1. An attainment inventory, which is based on actual typical summer day emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) for a 10-year period from a base year chosen by the State;
2. A maintenance demonstration which shows how the area will remain in compliance with the 8-hour ozone standard for 10 years after the effective date of designations (June 15, 2004);

3. A commitment to continue to operate air quality monitors;

4. A contingency plan that will ensure that a violation of the 8-hour ozone NAAQS is promptly addressed; and

5. An explanation of how the State will track the progress of the maintenance plan.

On May 22, 2007, EPA received a request from the ODEQ to approve a SIP revision pertaining to the maintenance plan for the Portland portion of the Pdx/Van AQMA and SKATS, under section 110 of the CAA. This plan was developed by the ODEQ, in collaboration with the Southwest Clean Air Agency in Vancouver, Washington, and the Washington State Department of Ecology (Ecology).

In 1979, SKATS was defined by EPA as a "rural area" for ozone plan development that appeared to be significantly impacted by emissions from Portland, a major urban area located approximately 40 miles north of Salem (44 FR 20375). Oregon submitted an attainment Plan for SKATS which was approved by EPA on April 12, 1982 (47 FR 15587). Based on EPA's rural ozone policy (45 FR 42265), one of the controls strategies for ozone in the SKATS area, is an approved plan for the Portland portion of the Pdx/Van AQMA; therefore the two plans are considered concurrently in this action.

On January 17, 2007, EPA received a request from Ecology to approve under section 110 of the CAA a SIP revision pertaining to the maintenance plan for the Vancouver portion of the Pdx/Van AQMA. As both these submissions from the States of Washington and Oregon pertain to the Pdx/Van AQMA, EPA intends to act on these submissions concurrently. This action addresses only the Portland portion of the Pdx/Van AQMA and SKATS.

The EPA has also prepared a Technical Support Document (TSD) with more detailed information about the SIP revisions ODEQ has asked us to approve. The TSD is available for review as part of the docket for this action.

#### II. Summary of SIP Revisions

*A. The Pdx/Van AQMA, SKATS, and Section 110(a)(1) Maintenance Plans for the 1997 8-Hour Ozone NAAQS*

ODEQ's 8-hour ozone maintenance plan addresses the five components of the section 110(a)(1) 8-hour ozone maintenance plan as outlined in EPA's May 20, 2005 guidance. Oregon has submitted its 8-hour ozone maintenance plan for approval and also submitted rules that support the maintenance for

approval and incorporation into the federally enforceable SIP.

#### 1. Attainment Inventory

An emissions inventory is an itemized list of emission estimates for sources of air pollution in a given area for a specified time period. ODEQ provided a comprehensive and current emissions inventory for NO<sub>x</sub> and VOCs. ODEQ used 2002 as the base year from which it projected emissions. The maintenance plan includes an explanation of the methodology used to determine emissions from point, area, and mobile sources. The inventory is based on emissions from a "typical summer day." The term "typical summer day" refers to a weekday during the months when ozone concentrations are typically the highest.

#### 2. Maintenance Demonstration

With regard to demonstrating continued maintenance of the 8-hour ozone standard, ODEQ projects that the total emissions from the Portland and Salem areas will decrease overall during the 10-year maintenance period. EPA has reviewed ODEQ's emissions projections and maintenance demonstration and finds it to be adequate. ODEQ projected emissions for 2015, which is more than 10 years from the effective date of initial designations, as suggested in the EPA guidance for section 110(a)(1) maintenance plans. In 2002, the total emissions from the Portland portion of the Pdx/Van AQMA were 958,531 lbs/day for VOCs and 377,794 lbs/day for NO<sub>x</sub>. The projected 2015 emissions are 1,005,171 lbs/day for VOCs and 261,375 lbs/day for NO<sub>x</sub>. For the Portland area, this amounts to 2015 VOCs increasing by about 5% from 2002 actual emissions, and 2015 NO<sub>x</sub> emissions decreasing by about 30% from 2002 levels. The greatest reduction in VOC and NO<sub>x</sub> emissions is from on-road and non-road mobile sources.

For SKATS, the 2002 total emissions were 439,610 lbs/day of VOCs and 106,967 lbs/day of NO<sub>x</sub>. The 2015 projections for this area are 405,062 lbs/day of VOCs and 52,103 lbs/day of NO<sub>x</sub>. For SKATS, this summarizes to 2015 VOCs decreasing by about 8% from 2002 actual emissions, and 2015 NO<sub>x</sub> emissions decreasing by about 51% from the 2002 levels. As such, the plan demonstrates that emissions are projected to decrease overall in both the Portland portion of the Pdx/Van AQMA and SKATS.

It is important to note that the formation of ozone is dependent on a number of variables which cannot be estimated solely through emissions growth and reduction calculations. A

few of these variables include weather and the transport of ozone precursors from outside the maintenance area. In order to demonstrate continued maintenance of the standards, a State may utilize more sophisticated tools such as air quality modeling to support their analysis; Oregon used air quality modeling to assess the comprehensive impacts of growth through 2015 on ozone levels in both areas. Results of modeling conducted by ODEQ and submitted to EPA demonstrate that the highest predicted design value for this area is 0.072 parts per million, which is below the 1997 and the 2008 ozone NAAQS and is therefore in compliance with both the 8-hour ozone NAAQS.

#### *EPA's Evaluation of CAA 110(l) Considerations*

The maintenance demonstration discussed in the preceding section also meets section 110(l) requirements of the CAA which states "Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter." ODEQ has submitted evidence to EPA that the State provided reasonable notice and public comments prior to State adoption and submission of this plan to the EPA.

EPA concludes that this plan demonstrates maintenance of all applicable ozone NAAQS, namely the 2008 and 1997 8-hour standards. The Portland and SKATS areas are within the compliance levels for all criteria pollutants<sup>1</sup>, based on historical monitoring.

Based on the VOC, NO<sub>x</sub>, and carbon monoxide (CO) emissions information submitted with this plan, EPA concludes that approval of the changes in this proposed plan will not cause an increase of direct or precursor emissions that will interfere with the Portland area's maintenance of any criteria pollutant NAAQS.

SKATS is well within the compliance level for the remaining NAAQS<sup>1</sup> based on actual monitoring and actions in this proposed SIP will not cause or contribute to higher levels of other criteria pollutants. Therefore, an approval of this plan revision will not interfere with any applicable

requirement concerning attainment or maintenance of any NAAQS.

#### 3. Ambient Air Quality Monitoring

With regard to the ambient air monitoring component of the maintenance plan, ODEQ commits to continue operating air quality monitoring stations in accordance with 40 CFR part 58 throughout the maintenance period to verify maintenance of the 8-hour ozone standard, and will submit quality-assured ozone data to EPA through the Air Quality System.

#### 4. Contingency Measures

EPA interprets section 110(a)(1) of the CAA to require that the State develop a contingency plan that will ensure that any violation of a NAAQS is promptly corrected. The purposes of contingency measures, as outlined in ODEQ's maintenance plan, is to accordingly select and adopt one or more measures outlined in the maintenance plan so as to assure continued attainment in the event that a violation of the 1997 8-hour ozone NAAQS is measured. Violation of the 1997 8-hour ozone standard would trigger one or more of the control measures as outlined in the plan.

#### 5. Verification of Continued Attainment

ODEQ will continue to monitor ambient air quality ozone levels in the Portland portion of the Pdx/Van AQMA and SKATS as described in the Contingency Plan. ODEQ will update countywide emissions inventories every three years as required by the Consolidated Emissions and Reporting Rule (CERR) to update the National Emissions Inventory. If ambient ozone levels increase, ODEQ will compare CERR updates with the 2002 and 2015 emissions inventories and evaluate the assumptions used in the 2015 emissions projections to determine whether emissions are increasing at a rate not anticipated in the maintenance plan.

#### *EPA's Evaluation of Supporting Rules*

ODEQ submitted several rules that would create controls programs to support the emissions reductions and the maintenance demonstration. ODEQ submitted the following modified sections of the Oregon Administrative Rules (OAR) to EPA for approval and incorporation into the Oregon SIP. These sections include: General Air Pollution Procedures and Definition: OAR 340-200; Ambient Air Quality Standards and PSD Increments: OAR 340-202; Designation of Air Quality Areas: OAR 340-204; Major New Source Review: OAR 340-224; Air Quality Analysis Requirements: OAR 340-225;

<sup>1</sup> EPA's AirData Database—<http://www.epa.gov/oar/data/reports.html>.

Emission Standards for VOC Point Sources: OAR 340–232; Rules Applicable to the Portland Area: OAR 340–242; Employee Commute Options Program (OAR 340–242–0010 through 0290); and Industrial Emission Management Program (OAR 340–242–0400 through 0440). After a review of the submissions, EPA is proposing to approve these changes to Oregon's rules and incorporate them into the federally approved SIP for Oregon.

#### *1-Hour Ozone NAAQS Requirements That No Longer Apply in This Area*

Approval of two amendments to ODEQ's existing 1-hour maintenance plan has also been requested by the State of Oregon pursuant to 40 CFR 51.905(e)(1). ODEQ has submitted a maintenance SIP for the 8-hour ozone NAAQS for these areas that meets the requirements of sections 110 and 193 of the CAA. Therefore, EPA is concurrently proposing to approve these two amendments to the existing 1-hour ozone maintenance plan:

(1) Removal of the obligation to submit a maintenance plan for the 1-hour NAAQS eight years after approval of the initial 1-hour maintenance plan; and

(2) Removal of the State's obligation to implement contingency measures upon a violation of the 1-hour NAAQS. Oregon's SIP submittal meets the CAA requirements for SIP submittals with respect to these two changes.

#### *B. Phasing Out of the State's VIP Enhanced BAR–31 Test, the Elimination of the Gas Cap Pressure Test and the Evaporative Purge Test*

On August 9, 2005, ODEQ submitted revisions to the Oregon State Implementation Plan: Volume 2—section 5.4.7—Test Procedures and Standards, pertaining to phasing out of the State's VIP enhanced BAR–31 test, the elimination of the Gas Cap Pressure Test and the Evaporative Purge Test.

The submitted revisions are supported by a demonstration that these changes will not affect the ability of the State of Oregon to meet all applicable NAAQS, especially CO and ozone. For CO, this requirement was addressed when the Portland CO Second 10-Year Maintenance Plan demonstrated continued maintenance of attainment of the CO standard through the year 2017, without the enhanced test. The CO maintenance plan was approved by the EPA on January 24, 2006 (71 FR 3768). For ozone, the submittal refers to the subsequently submitted section 110(a)(1) maintenance plans for the Portland portion of the Pdx/Van AQMA and SKATS. Section 110(a)(1)

maintenance plans for these areas demonstrate how the State of Oregon will maintain compliance with the 1997 8-hour ozone NAAQS. The 110(a)(1) maintenance plans for both these areas meet the CAA requirements and demonstrate that the Portland portion of the Pdx/Van AQMA and the SKATS Air Quality Area will be able to remain in attainment for 1997 ozone NAAQS through 2015. The applicable NAAQS for ozone is the 2008 8-hour standard and the 110(a)(1) maintenance plan includes technical information that shows the 2008 8-hour ozone NAAQS will also not be violated with all the revisions and changes proposed.

### **III. Proposed Action**

EPA is proposing to approve the section 110(a)(1) maintenance plan and supporting rules for Portland and Salem, OR submitted on May 22, 2007 and described in this action and the TSD, as revisions to the Oregon SIP. EPA is proposing to approve the maintenance plan and supporting rules for the Portland portion of the Pdx/Van AQMA and the SKATS Air Quality Area because they meet the requirements of section 110(a)(1) and section 110(l) of the CAA.

Further, based on our review, we are proposing recommending a full approval of the revisions to the Oregon State Implementation Plan: Volume 2—section 5.4.7—Test Procedures and Standards and supporting rules.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### **IV. Oregon Notice Provision**

Oregon Revised Statute 468.126 prohibits 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.

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

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the

provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
  - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
  - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
  - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
  - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
  - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
  - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
  - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
  - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Environmental protection, Air pollution control, Carbon monoxide,

Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 3, 2010.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

[FR Doc. 2010-10652 Filed 5-5-10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 745

[EPA-HQ-OPPT-2010-0173; FRL-8823-6]

RIN 2070-AJ56

### Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** EPA is giving advance notice of the Agency's intention to regulate the renovation, repair, and painting of public and commercial buildings under section 402(c)(3) of the Toxic Substances Control Act (TSCA). This notice announces the commencement of proceedings to propose lead-safe work practices and other requirements for renovations on the exteriors of public and commercial buildings and to determine whether lead-based paint hazards are created by interior renovation, repair, and painting projects in public and commercial buildings. For those renovations in the interiors of public and commercial buildings that create lead-based paint hazards, EPA will propose regulations to address these hazards.

**DATES:** Comments must be received on or before July 6, 2010.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2010-0173, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC; Attention: Docket ID

Number EPA-HQ-OPPT-2010-0173. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to docket ID number EPA-HQ-OPPT-2010-0173. EPA's policy is that all comments received will be included in the docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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#### FOR FURTHER INFORMATION CONTACT:

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*For general information contact:* The TSCA-Hotline, ABVI—Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

This document is directed to the public in general. However, this document may be of particular interest to the following entities:

- Building construction (North American Industrial Classification System (NAICS) code 236), e.g., commercial building construction, industrial building construction, commercial and institutional building construction, building finishing contractors, drywall and insulation contractors, painting and wall covering contractors, finish carpentry contractors, other building finishing contractors.

- Specialty trade contractors (NAICS code 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.

- Real estate (NAICS code 531), e.g., lessors of non-residential buildings and dwellings, non-residential property managers.

- Facilities support services (NAICS code 561210).

- Other general government support (NAICS code 921) e.g., general services departments, government, public property management services, government.